

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CH. 1930]

#### Assignment of Counsel; Recommendation 64

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.C.P. 1930.7 (Assignment of Counsel) regarding a defendant's right to counsel in family law matters in which the defendant may be sentenced to a period of imprisonment. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The explanatory Committee Report following the proposed rule highlights the committee's considerations in formulating this recommendation. Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The Committee solicits comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, May 2, 2003, directed to:

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By the Domestic Relations Procedural Rules Committee

ROBERT C. CAPRISTO,  
Chair

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

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

#### Rule 1930.7. Assignment of Counsel.

(a) Prior to any contempt proceeding in which a defendant may be sentenced to a period of imprisonment, the defendant shall be advised of the right to counsel and, upon request, be given a reasonable opportunity to secure counsel. In contempt proceedings in which a period of imprisonment may be imposed, the court shall appoint counsel to represent a defendant who is without financial resources, or who is otherwise unable to employ counsel, unless the defendant knowingly, voluntarily and intelligently waives the right to counsel in writing or on the record.

(b) A motion for change of counsel by a defendant to whom counsel has been assigned shall not be granted except for substantial reasons.

(c) Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceedings on direct appeal.

**Official Note:** Application for appointment of counsel when the defendant is without financial resources shall be pursuant to local rule.

#### Committee Report Rule 1930.7

#### Recommendation 64

The Supreme Court of Pennsylvania asked the Domestic Relations Procedural Rules Committee to review the Rules of Civil Procedure related to domestic relations matters in light of the United States Supreme Court's decision in *Alabama v. Shelton*, 122 S. Ct. 1764 (2002). In that case, the court held that a suspended sentence that may result in an actual deprivation of a person's liberty may not be imposed unless the defendant was accorded the right to counsel in the prosecution for the crime charged. 122 S. Ct. at 1767 (citing *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006, 32 L.Ed.2d 530 (1972) (holding that defense counsel must be appointed in a criminal prosecution that leads to imprisonment)). The court also reaffirmed its holding in *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158, 59 L.Ed.2d 383 (1979), that actual imprisonment is the trigger for the right to appointed counsel in a criminal matter. In *Shelton*, *Argersinger*, and *Scott*, the underlying charges were criminal in nature and thus were analyzed under the Sixth Amendment to the United States Constitution.

Although family law matters generally are civil in nature, willful failure to comply with certain domestic relations orders may result in a party being sentenced to a period of incarceration. For example, a person who willfully fails to comply with a support, visitation or partial custody order may be held in contempt and imprisoned for a period of up to six months. 23 Pa.C.S. §§ 4345(a), 4346(a). In such contempt cases, sentences often are suspended so long as the defendant remains in compliance with the terms of the support or custody order.

The Supreme Court of Pennsylvania has stated that "in certain situations, the Due Process Clause of the Fourteenth Amendment to the United States Constitution may require court appointed counsel in civil matters." *Commonwealth v. \$9,847.00 U.S. Currency*, 704 A.2d 612, 615 (Pa. 1997) (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976)). Noting that there is a presumption that "an indigent litigant has a right to court-appointed counsel only when, if he loses, he may be deprived of his physical liberty," the court determined that an indigent litigant did not have a constitutional right to appointed counsel in civil forfeiture proceedings. *Id.* (quoting *Lassiter v. Department of Social Services*, 452 U.S. 18, 26, 101 S. Ct. 2153, 2159, 68 L.Ed.2d 640 (1981)). Earlier, in *Corra v. Coll*, 451 A.2d 480, 482 (Pa. Super. 1982), the Pennsylvania Superior Court opined that "a wooden civil/criminal distinction" would not resolve the question of whether an indigent defendant has a right to appointed counsel. Also applying the three balancing factors in *Mathews* and the *Lassiter* presumption, the *Corra* court held that due process requires that indigent defendants be entitled to the appointment of counsel in civil paternity actions.

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures

used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335, 96 S. Ct. at 903.

One Pennsylvania common pleas court has held that an indigent defendant in a support matter is entitled to court-appointed counsel in civil contempt proceedings because there is a possibility of incarceration. In that case, *Carnes v. Carnes*, 7 D.&C. 4th 4 (Erie 1990), appeal quashed, 598 A.2d 1325 (Pa. Super. 1991), the plaintiff filed a petition for civil contempt for violation of a support order and the defendant petitioned for court-appointed counsel. In his petition, the defendant alleged that he was on public assistance, did not have the resources to retain counsel and that he had been denied representation by the public defender's office and legal services. He argued that because he was indigent and at risk of losing his liberty, he had a right to appointed counsel. Applying *Mathews* and *Lassiter*, as well as the reasoning in *Corra*, the trial court agreed with the defendant and appointed counsel. Further, the court stated, "It is axiomatic that, once it has been determined that the indigent defendant has a right to court-appointed counsel, he or she must be informed of that right and that, once informed, may knowingly and intelligently waive that right." *Id.* at 11.

In light of the cases discussed above, the committee agrees that the Rules of Civil Procedure relating to domestic relations matters should be amended to provide that an indigent defendant has a right to court-appointed counsel, or must knowingly waive that right, in domestic relations contempt proceedings in which a sentence of imprisonment, suspended or not, may be imposed. The committee thus proposes new Rule 1930.7 in the series of Rules Relating to Domestic Relations Matters Generally.

[Pa.B. Doc. No. 03-561. Filed for public inspection March 28, 2003, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [237 PA. CODE CHS. 1—6 AND 8]

#### Delinquency Matters

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the Rules of Juvenile Court Procedure be adopted and prescribed to govern juvenile court procedure and practice in this Commonwealth. The proposed rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the history of the committee, the process of rule-drafting, and the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
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no later than Wednesday, May 14, 2003.

By the Juvenile Court Procedural Rules Committee

FRANCIS BARRY MCCARTHY,  
*Chair*

### Annex A

#### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

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**Rule 100. Scope of Rules.**

A. These rules shall govern delinquency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to domestic relations proceedings and dependency proceedings.

B. Each of the courts exercising juvenile jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may adopt local rules of procedure in accordance with Rule 111.

**Comment**

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Juvenile Court. See 42 Pa.C.S. §§ 6321 and 6302. These rules do not govern summary offense proceedings unless: 1) the summary offense(s) was committed with a delinquent act, as defined by 42 Pa.C.S. § 6302, during the same episode or transaction, as provided in 42 Pa.C.S. § 6303(a)(5), and has been properly charged in a delinquency petition; or 2) a juvenile has failed to comply with a lawful sentence imposed for the summary offense(s), as provided in 42 Pa.C.S. § 6302.

The Rules of Criminal Procedure apply in cases involving juveniles in summary and court cases, as defined by Pa.R.Crim.P. 103, to the extent that the Juvenile Act does not apply to these proceedings. See, e.g., Pa.Rs.Crim.P. 100 and 400. See also 42 Pa.C.S. §§ 6302 and 6303.

Each judicial district may promulgate local rules that follow the requirements of Rule 111 and Pa.R.J.A. 103.

**Rule 101. Purpose and Construction.**

A. These rules are intended to provide for the just determination of every delinquency proceeding.

B. These rules shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).

D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

**Rule 102. Citing the Juvenile Court Procedural Rules.**

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

**Comment**

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

**Rule 105. Search Warrants.**

The Pennsylvania Rules of Criminal Procedure, Rules 200 through 211, shall apply to search warrants for juveniles.

**PART A. BUSINESS OF COURTS****Rule 110. Definitions.**

**AFFIANT** is any responsible person capable of taking an oath who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

**CLERK OF COURTS** is that official in each judicial district who has the responsibility and function under state and local law to maintain the official juvenile court file and docket, without regard to that person's official title.

**COURT** is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile Court shall have the same meaning as Court.

**DETENTION FACILITY** is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

**GUARDIAN** is any parent, custodian or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

**INTAKE STAFF** is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

**ISSUING AUTHORITY** is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a district justice.

**JUVENILE** is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

**LAW ENFORCEMENT OFFICER** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

**MASTER** is an attorney with delegated authority to hear and decide juvenile delinquency matters. Master has the same meaning as hearing officer.

**MEDICAL FACILITY** is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

**ORDINANCE** is a legislative enactment of a political subdivision.

**PENAL LAWS** include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon finding of delinquency or upon failure to pay a fine or penalty.

**PETITION** is a formal written document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile is delinquent.

**PETITIONER** is an attorney for the Commonwealth or, when permitted by these rules, a probation officer, who signs, swears to, affirms, or verifies and files a petition.

**PLACEMENT FACILITY** is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition.

Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process once a written allegation has been submitted.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

#### Comment

Under the term "court," to determine if masters are permitted to hear cases, see Rule 172.

Neither the definition of "law enforcement officer" nor the definition of "police officer" gives the power of arrest to any person who is not otherwise given that power by law.

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formally known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction must be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of "delinquent act," see 42 Pa.C.S. § 6302.

#### Rule 111. Local Rules.

A. For the purpose of this rule, the term, "local rule" shall include every rule, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern juvenile delinquency practice and procedure, which requires a party or party's attorney to do or refrain from doing something.

B. Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.

2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

C. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

1) A local rule shall be in writing.

2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

3) Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.

5) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

D. All local rules promulgated before the effective date of this rule are hereby vacated on the date this rule becomes effective.

E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.

F. No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

#### Comment

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

To simplify the use of local rules, local juvenile delinquency procedural rules are required to be given numbers that are keyed to the number of the general juvenile delinquency procedural rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile delinquency procedural rule.

The purpose of paragraph (C) is to emphasize that the adopting authority shall comply with all the provisions of paragraph (C) before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (C)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

Paragraph (D) vacates all current local rules on the effective date of this rule. The local rules must be repromulgated to comply with this rule. This includes

rekeying pursuant to paragraph (B)(2) and meeting the appropriate filing requirements under paragraph (C).

The Administrative Offices of Pennsylvania Courts maintains a web-page containing the texts of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.

Although under paragraph (E) a local rule shall not be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (F) is to prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F), the court may impose a sanction for subsequent noncompliance either on the attorney or the juvenile if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

#### **Rule 112. Continuances.**

A. *Generally.* In the interests of justice, the court may grant a continuance on its own motion or the motion of either party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

B. *Notice and rescheduling.* If a continuance is granted, each party shall be notified of the date, place, and time of the rescheduled hearing.

#### **Comment**

Under paragraph (B), if a party is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rule 344 for motion procedures.

#### **Rule 113. Contents of Subpoena.**

A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

#### **Comment**

For power to compel attendance, see 42 Pa.C.S. § 6333.

#### **Rule 114. Summons and Notices.**

- A. *Requirements of the summons.* The summons shall:
- 1) be in writing;
  - 2) set forth the date, time, and place of the hearing;
  - 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and

4) give a warning stating that the failure to appear for the hearing may result in arrest.

B. *Method of Service.* Summons or notices shall be served:

- 1) in-person; or
- 2) by first-class mail.

C. *Warrant of arrest.* If any summoned person fails to appear for the hearing and the court is assured that sufficient notice was given, the court may issue a warrant of arrest.

#### **Rule 115. Habeas Corpus.**

A. The petition for writ of habeas corpus challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered.

B. The clerk of courts shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive.

#### **Comment**

See Rule 344 for motion procedures.

See *In re Crouse*, 4 Whart. 9 (Pa. 1839).

#### **Rule 116. Defects in Form, Content, or Procedure.**

A juvenile shall not be discharged, nor shall a case be dismissed, because of a defect in the form or content of the petition, written allegation, or warrant, or a defect in the procedures of these rules, unless the juvenile raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of the juvenile.

#### **Comment**

As a condition of relief regardless of whether the defect is in form, content, or procedure, the court must determine that there is an actual prejudice to the rights of the juvenile.

A petition, written allegation, or warrant may be amended at any time so as to remedy any defect in form or content that is not prejudicial to the rights of the juvenile. Nothing in this rule is to prevent the filing of a new written allegation, a new petition, or the reissuance of process. Any new written allegation or petition is to be filed within the time permitted by the applicable statute of limitations.

If a juvenile does not raise a defect before the adjudicatory hearing, the juvenile cannot thereafter raise the defect as grounds for dismissal or discharge at a later stage.

#### **Rule 117. Recording and Transcribing Juvenile Court Hearings.**

A. *Recording.* There shall be a recording of all juvenile delinquency hearings, including hearings conducted by masters.

B. *Transcribing.* Upon the motion of any party, upon its own motion, or as required by law, the court shall determine and designate those portions of the record, if any, that are to be transcribed.

C. *Modifying.* At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

**Comment**

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and an adequate effective appellate review. See, e.g., Pa.Rs.A.P. 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). No substantive change in law is intended by this rule; rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court hearings.

The rule is intended to apply to all juvenile delinquency hearings and to ensure all hearings are recorded, including hearings before masters.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

**Rule 118. Proceedings in Absentia.**

If the juvenile fails to appear, the court may proceed with a hearing in the absence of the juvenile if the court finds that the juvenile was properly subpoenaed or summoned to appear and has willfully failed to attend, and the juvenile's attorney is present.

**Comment**

The court has discretion whether to proceed if the court finds that the juvenile received proper notice of the hearing and has willfully failed to appear. Requiring the juvenile's attorney to be present protects the juvenile's interest if the proceeding is conducted in the juvenile's absence.

*Cf. Commonwealth v. Ford*, 650 A.2d 433 (Pa. 1994); *Commonwealth v. Sullens*, 619 A.2d 1349 (Pa. 1992).

**Rule 119. (Reserved).****Rule 120. Public Discussion by Courtroom Personnel of Pending Matters.**

All court personnel including, among others, court clerks, bailiffs, tip-staffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public. This rule specifically prohibits the divulgence of information concerning arguments and hearings that are closed proceedings, held in chambers, or otherwise outside of the presence of the public.

**Rule 121. Guardian's Presence.**

The court may, when the court determines that it is in the best interests of the juvenile, order a guardian of a juvenile to be present at and to bring the juvenile to any proceeding. The court shall direct the juvenile probation officer to provide the guardian with timely notice of any hearing.

**Comment**

Nothing in these rules gives the guardian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

**Rule 122. Victim's Presence.**

The victim, counsel for the victim, and other persons accompanying a victim for his or her assistance shall be permitted to attend the proceedings.

**Comment**

The court has discretion to maintain confidentiality of mental health, medical, or juvenile institutional documents or juvenile probation reports. See 42 Pa.C.S. § 6336(f).

See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

**Rule 125. Captions.**

All court documents and orders shall contain a caption that includes the following:

- 1) "In the interest of (the juvenile's name);"
- 2) the juvenile's case docket number; and
- 3) the name of the court.

**PART B. COUNSEL****Rule 130. Attorneys—Appearances and Withdrawals.****A. Appearances.**

1) Counsel for the juvenile shall file an entry of appearance with the clerk of courts promptly after being retained or assigned, and serve a copy on the attorney for the Commonwealth and the juvenile probation office.

2) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.

**B. Duration.** Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw pursuant to paragraph (C).

**C. Withdrawals.** Upon motion, counsel shall be permitted to withdraw only:

- 1) by order of the court for good cause shown; or
- 2) if new counsel has entered an appearance with the court.

**Comment**

Paragraph (A)(1) is intended to alleviate any problems when the court or a party(s) is unaware of who is representing the juvenile.

Paragraph (B) follows the same requirements as the Pennsylvania Rules of Criminal Procedure, except that dispositional review was added to this rule. Paragraph (B) implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that counsel assigned originally shall retain his or her assignment until final judgment, which includes appellate procedure.

Under paragraph (C)(1), a court can terminate an attorney's appearance if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation, as provided for in the Rules of Professional Conduct 1.16 are met.

If the court allows counsel to withdraw under paragraph (C)(1), the court may need to assign new counsel.

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the juvenile reaches the age of twenty-one. See 42 Pa.C.S. §§ 6302, 6303.

Under paragraph (C), because the juvenile probation office and attorney for the Commonwealth's office will be on notice of the identity of the new attorney, they should comply with the discovery requirements of Rule 340.

See also Rule 613 for termination of court supervision.

#### **Rule 131. Assignment of Counsel.**

A. *General.* If counsel does not enter an appearance for the juvenile, the court shall inform the juvenile of the right to counsel prior to any proceeding. In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.

B. *Time.*

1) If the juvenile is detained, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained, the court shall assign counsel prior to the adjudicatory hearing.

#### **Comment**

Counsel may be present at an intake hearing or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337.

#### **Rule 132. Waiver of Counsel.**

A. *Waiver requirements.* A juvenile may not waive the right to counsel unless:

1) the waiver is knowingly, intelligently, and voluntarily made; and

2) the court conducts a colloquy on the record.

B. *Stand-by counsel.* The court may assign stand-by counsel if the juvenile waives counsel at any stage.

C. *Notice and revocation of waiver.* If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile must be informed of the right to counsel.

#### **Comment**

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1) Whether the juvenile understands the right to be represented by counsel;

2) Whether the juvenile understands the nature of the charges and the elements of each of those charges;

3) Whether the juvenile is aware of the permissible range of dispositions, community service, or fines that may be imposed by the court;

4) Whether the juvenile understands that if he or she waives the right to counsel he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

5) Whether the juvenile understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;

6) Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;

7) Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and

8) Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

This rule is not meant to preclude the guardian's presence in any hearing. As provided in Rule 121 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interests of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as, the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

### **PART C. RECORDS**

#### **PART C(1). ACCESS TO JUVENILE RECORDS**

##### **Rule 140. Inspection of Juvenile File/Records.**

All files and records of the court in a proceeding are open to inspection only by:

1) the judges, masters, juvenile probation officers, and staff of the court;

2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except in the discretion of the court;

3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;

4) a court and its probation officers and other officials or staff and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;

5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;

6) the Administrative Office of Pennsylvania Courts;

7) officials of the Department of Corrections or a state correctional institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;

8) a parole board, court or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;

9) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties; and

10) with leave of court, any other person, agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

**Comment**

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file.

**Rule 143. Release of Information to School.**

A. *Generally.* Upon finding a juvenile to be a delinquent, the court shall, through the juvenile probation office, provide the following information to the building principal or his or her designee of any public, private, or parochial school in which the juvenile is enrolled:

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;
- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. *Additional information.*

1) If the juvenile is adjudicated delinquent of a felony offense, the court, through the juvenile probation office, shall provide to the building principal or his or her designee relevant information regarding the juvenile contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history, and the supervision plan of the juvenile.

2) The court or the juvenile probation office shall have the authority to share any additional information regarding the juvenile under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile.

C. *Transfers to other schools.* Any information provided to and maintained by the building principal or his or her designee under this rule shall be transferred to the building principal or his or her designee of any public, private, or parochial school to which the juvenile transfers enrollment.

D. *Maintained separately.* Any information provided to the building principal or his or her designee under this rule shall be maintained separately from the juvenile's official school record.

**Comment**

The delinquency information in the school record may be used only by school officials and may not be released to the general public or third parties unless ordered by the court.

For further dissemination and usage in school, see 42 Pa.C.S. § 6341(b.1).

**PART C(2). MAINTAINING RECORDS**

**Rule 152. Design of Forms.**

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

**Comment**

The purpose of the unified judicial system can be further achieved by creating uniform forms to accompany a particular rule.

**Rule 155. Maintaining Records in the Clerk of Courts' Office.**

A. *Generally.* The juvenile case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records shall be maintained by the clerk of courts' office and shall not be taken from the custody of the clerk of courts without order of the court. Juvenile records are confidential. Only the persons enumerated in Rule 140 may inspect or copy the juvenile's record or file.

B. *Docket entries.* The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the juvenile case file and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.

C. *Contents of docket entries.* The docket entries shall include at a minimum the following information:

1) the juvenile's name, last known address, date of birth, if known;

2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, and the date of any withdrawal of appearance;

3) notations concerning all papers filed with the clerk, including all court notices, appearances, acknowledgments, motions, orders, findings and adjudications, and dispositions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;

4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;

5) a notation of every judicial proceeding, continuance, and disposition;

6) the location of exhibits made part of the record during the proceedings; and

7) all other information required by Rules 156 and 345.

**Comment**

This rule sets forth the mandatory contents of the list of docket entries and the juvenile case file. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a juvenile case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the delinquency case.

This rule is not intended to include items contained in the juvenile probation records or reports. Juvenile probation records or reports, include, but are not limited to, social summaries, psychological and psychiatric evaluations, personal histories, school reports and records, mental health histories and reports, drug and alcohol evaluations, treatment facility records and reports. These items are not to be copied or reviewed or open to any person

except the court and its staff, the attorney for the Commonwealth, the juvenile, and the juvenile's attorney.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any juvenile in the case. The requirement also ensures that attorneys are served as required by Rules 156 and 345. See also Rule 345(C) concerning certificates of service.

In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(2) must include the facsimile number or electronic address.

Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus motions as provided in Rule 346.

**Rule 156. Filings, Docket Entries, and Service of Court Orders and Notices.**

*A. Filings.*

1) All orders and court notices shall be transmitted promptly to the clerk of courts' office for filing. Upon receipt in the clerk of courts' office, the order or court notice shall be time stamped promptly with the date of receipt.

2) All orders and court notices shall be filed in the juvenile case file.

*B. Service.*

1) A copy of any order or court notice shall be served promptly on each party's attorney, and the juvenile, if unrepresented.

2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

3) *Methods of service.* Service shall be:

a) in writing by:

i) personal delivery to the party's attorney, and if unrepresented, the juvenile;

ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;

iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;

iv) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement; or

v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or

vi) delivery to the party's attorney, and if unrepresented, the juvenile by carrier service; or

b) orally in open court on the record.

*C. Docket entries.*

1) Docket entries promptly shall be made.

2) The docket entries shall contain:

a) the date of receipt in the clerk's office of the order or court notice;

b) the date appearing on the order or court notice; and

c) the date and manner of service of the order or court notice.

D. *Unified Practice.* Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to file or serve orders or court notices.

**Comment**

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization must be filed in each case the juvenile, if unrepresented, or the attorney wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping or making docket entries.

**PART C(3). EXPUNGING OR DESTROYING RECORDS**

**Rule 160. Contents of Order to Expunge or Destroy.**

Any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

1) the name of the juvenile;

2) the date of birth of the juvenile, if known;

3) the juvenile's case docket number, if any;

4) the charges to which the order pertains;

5) the law enforcement agency that initiated the charges;

6) the reference number of the police report or written allegation to be expunged or destroyed;

7) the date of arrest;

8) the disposition of the written allegation or petition;

9) the reasons for expunging or destroying the document;

10) the agencies upon which certified copies of the court order shall be served;

11) the printed name and signature of the judge issuing the order; and

12) the date of the court order.

**Comment**

Under paragraph (6), any number assigned to police papers helpful in tracking the police report or written allegation would assist the law enforcement agency in expunging or destroying the document. A reference number could be an offense tracking number, district control

number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

**Rule 162. Expunging or Destroying Juvenile Court Records.**

A. *Expunging records.* Juvenile records may be expunged upon motion.

B. *Notice and answer.*

1) *Notice.* The movant shall serve the motion to expunge juvenile court records upon all parties.

2) *Answer.* The respondent, the attorney for the Commonwealth, the juvenile's attorney, or the juvenile, if unrepresented, shall respond within thirty days of the service of the motion to expunge the juvenile's record. If the respondent fails to respond, the failure to respond shall constitute a waiver of any objections to expunge the juvenile's record.

C. *Hearing.* If the attorney for the Commonwealth objects to expunging the juvenile's record, the court shall hold a hearing prior to deciding the motion.

**Comment**

Juveniles who have been adjudicated delinquent are not entitled to have their records expunged. *In re Lowe*, 448 A.2d 632 (Pa. Super. Ct. 1982).

See 18 Pa.C.S. § 9123 for records that may be expunged.

**PART D. PROCEEDINGS IN CASES BEFORE MASTER**

**Rule 171. Appointment to Cases.**

A. *Appointment.* If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear juvenile delinquency matters.

B. *Prohibited practice.* Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over juvenile matters.

**Comment**

Each judicial district should create and maintain a contract with the master establishing the salary and the terms of employment.

**Rule 172. Authority of Master.**

A. *Cases to be heard by Master.* A master shall have the authority to preside over only the following:

1) detention hearings, detention review hearings, or shelter care hearings;

2) discovery, pre-adjudicatory or preliminary proceedings for misdemeanors;

3) any hearing in which the petition charges only misdemeanors; and

4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. *No authority.* A master shall not have the authority to:

1) conduct or hear transfer hearings;

2) issue warrants; and

3) hear requests for writs of habeas corpus.

C. *Right to hearing before judge.* Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile's guardian(s), the juvenile's

attorney, and the attorney for the Commonwealth that they have a right to have the matter heard by a judge. If any person objects to having the matter heard by the master, the case shall proceed before the judge.

**Comment**

Under paragraph (B)(2), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), see 42 Pa.C.S. § 6305(b).

See Rule 117 for recording of hearings before a master.

**PART D(1). FORMS AND RECORDS**

**Rule 175. Acknowledgments Before Master.**

A. *Types of cases.* A master may accept an acknowledgment to any misdemeanor.

B. *Requirements.* The acknowledgment requirements of Rule 407 shall be followed.

**Rule 176. Master's Findings and Recommendation to the Judge.**

A. *Announcement of Findings and Recommendation.* At the conclusion of the hearing, the master shall announce in open court on the record, the findings of fact, conclusions of law, and the recommendation to the judge.

B. *Submission of Papers and Contents of Recommendation.* Within one business day, the master shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge based on the outcome of the hearing and shall include the following information:

1) a caption pursuant to Rule 125;

2) the charges that the juvenile is acknowledging or found delinquent of; and

3) the final recommendation of the master.

C. *Judicial Action.* The judge shall:

1) accept the recommendation;

2) reject the recommendation and issue an order with new findings or disposition;

3) send the recommendation back to the master for more specific findings; or

4) order a rehearing under Rule 177 within seven days.

**Comment**

The juvenile court may promulgate a form for masters to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. The judge may reject the master's findings and enter a new finding or disposition without a rehearing. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983). Jeopardy does not attach at a master's hearing. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

**Rule 177. Appealing Decision of Master to Judge.**

A. *Time limitation.* A party may appeal the recommendation made by the master within three days. The party shall petition the court for a rehearing and aver reasons for the appeal.

B. *Rehearing.* The judge may order a rehearing to be held within seven days of the date of the appeal. The detention status of the juvenile will remain the same pending the rehearing unless otherwise ordered by the judge.

**Comment**

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the petition. If the judge does grant a hearing, it should be held within seven days of the date of the appeal.

Jeopardy does not attach at a master's hearing. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

**CHAPTER 2. COMMENCEMENT OF  
PROCEEDINGS, ARREST PROCEDURES, AND  
PRE-ADJUDICATORY DETENTION**

**PART A. COMMENCING PROCEEDINGS**

Rule  
200. Commencing Proceedings.

**PART B. ARREST PROCEDURES IN DELINQUENCY CASES**

**(a) Arrest Warrants**

210. Arrest Warrants.  
211. Requirements for Issuance.  
212. Duplicate and Alias Warrants of Arrest.  
213. Execution of Arrest Warrant.

**(b) Arrests Without Warrant**

220. Procedure in Cases Commenced by Arrest Without Warrant.  
221. Temporary Detention Following Arrest.

**PART C. WRITTEN ALLEGATION PROCEDURES**

231. Written Allegations.  
232. Contents of Written Allegation.  
233. Approval of Private Written Allegation.

**PART D. PRE-ADJUDICATORY DETENTION**

240. Detention of Juvenile.  
241. Notice of Detention Hearing.  
242. Detention Hearing.  
243. Detention Rehearings.

**PART A. COMMENCING PROCEEDINGS**

**Rule 200. Commencing Proceedings.**

Juvenile delinquency proceedings within a judicial district shall be commenced by:

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
  - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
  - b) upon probable cause when the offense is a felony; or
  - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;
- 3) transfer of a case from a criminal proceeding pursuant to 42 Pa.C.S. § 6322;
- 4) the court accepting jurisdiction of a resident juvenile from another state; or
- 5) the court accepting supervision of another state's order.

**Comment**

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. Probation officers may "receive and examine complaints and charges of delinquency . . . of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," see Rule 110.

The Juvenile Act provides that "a child may be taken into custody . . . pursuant to the laws of arrest." 42 Pa.C.S. § 6324. Paragraph (2) states the laws of arrest without a warrant in Pennsylvania. See Pa.R.Crim.P. 502.

Paragraph (4) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (5) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

For procedures for when the juvenile is alleged to have violated probation, see Rule 612.

For inter-county transfer of juveniles, see Rule 302.

See § 6321(a) of the Juvenile Act for commencement of proceedings under the Juvenile Act. 42 Pa.C.S. § 6321(a).

**PART B. ARREST PROCEDURES IN  
DELINQUENCY CASES**

**(a) Arrest Warrants**

**Rule 210. Arrest Warrants.**

A. *Application.* An application for an arrest warrant shall be made by filing a written allegation supported by a probable cause affidavit with the president judge or any issuing authority designated by the president judge of each judicial district. The president judge shall ensure twenty-four hour availability of a designated issuing authority.

B. *Arrest procedures.* When a juvenile is arrested pursuant to a warrant, the case shall proceed in the same manner as a warrantless arrest pursuant to Rule 220.

**Comment**

For the contents of a written allegation, see Rule 232. For the requirements of the issuance of an arrest warrant, see Rule 211.

Before issuing an arrest warrant, the issuing authority may inquire as to whether other reasonable remedies available through the Juvenile Act have been considered.

Under paragraph (A), the president judge of each judicial district may designate a juvenile court judge, another common pleas judge, or another issuing authority to receive applications for arrest warrants. The president judge also must designate an issuing authority to receive applications after normal business hours and on holidays. For the definition of "issuing authority," see Rule 110.

In addition to paragraph (A), the police officer is to submit a copy of the written allegation to the juvenile probation office or to the attorney for the Commonwealth. See Rule 231(A)(2).

**Rule 211. Requirements for Issuance.**

A. *Probable Cause.* No arrest warrants shall be issued but upon probable cause, supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

B. *Evidence.* At any hearing on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant, other than the affidavits provided for in paragraph (A).

**Comment**

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to the issuance of a warrant. All affidavits in support of an application for an arrest warrant should be sworn to before the issuing authority prior to the issuance of the warrant.

This rule carries over to the arrest warrant, the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. See Pa.R.Crim.P. 203.

For a discussion of the requirements of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, 369 A.2d 362 (Pa. Super. Ct. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

**Rule 212. Duplicate and Alias Warrants of Arrest.**

A. *Duplicates.* When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be assessed only for one such warrant and only one service fee may be charged.

B. *Alias.* After service and execution of an original or duplicate warrant, an alias warrant may be issued if the purpose for which the original or duplicate has been issued has not been accomplished.

**Rule 213. Execution of Arrest Warrant.**

A. A warrant of arrest may be executed at any place within the Commonwealth.

B. A police officer shall execute a warrant of arrest.

**Comment**

For the definition of "police officer," see Rule 110.

**(b) Arrests Without Warrant****Rule 220. Procedure in Cases Commenced by Arrest Without Warrant.**

The person arresting a juvenile, with all reasonable speed and without first taking the juvenile elsewhere, shall notify the guardian of the arrest of the juvenile, the reason for the arrest, and the juvenile's whereabouts, and promptly shall either:

1) release the juvenile to his or her guardian upon the guardian's promise to bring the juvenile before the court when requested by the court, unless detention of the juvenile is warranted; or

2) deliver the juvenile before the court or to a detention facility designated by the court; or

3) deliver the juvenile to a medical facility if the juvenile is believed to be suffering from a serious physical condition or illness that requires prompt treatment.

In all cases, the police officer promptly shall submit the written allegation, as required by Rule 231(A)(2).

**Comment**

The release of the juvenile does not eliminate the requirement of submission of a written allegation. For the general procedures governing written allegations, see Chapter 2, Part (C).

See 42 Pa.C.S. § 6326.

**Rule 221. Temporary Detention Following Arrest.**

A. *Secure detention.* A juvenile under arrest may be held securely in a municipal police lock-up or other facility that houses an adult lock-up only under the following conditions:

1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the juvenile to a guardian, juvenile court, or detention facility;

2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (A)(1), but in no case may such holding exceed six hours; and

3) if so held, the juvenile must be separated by sight and sound from incarcerated adult offenders and must be under the continuous visual supervision of law enforcement officials or facility staff.

A juvenile shall be deemed to be held securely only when physically detained, confined in a locked room or cell, or when secured to a cuffing rail or other stationary object within the facility.

B. *Non-secure detention.* Notwithstanding other provisions of law, a juvenile may be held in non-secure custody in a building or facility that houses an adult lock-up only under the following conditions:

1) the area where the juvenile is held is an unlocked multi-purpose area that is not designated or used as a secure detention area or is not part of a secure detention area; or, if the area is a secure booking or similar area, it is used only for processing purposes;

2) the juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

3) the area is limited to providing non-secure custody only long enough for the purposes of identification, investigation, processing or release to guardians or for arranging transfer to another agency or appropriate facility; and

4) the juvenile must be under continuous visual supervision by a law enforcement officer or other facility staff during the period of non-secure custody.

**Comment**

This rule reflects certain provisions of § 6326 of the Juvenile Act. 42 Pa.C.S. § 6326.

**PART C. WRITTEN ALLEGATION PROCEDURES****Rule 231. Written Allegation.**

A. *Submission.* In every delinquency case, the law enforcement officer shall submit a written allegation to the juvenile probation office.

1) *Juvenile not under arrest.* When a juvenile is not under arrest, a written allegation shall be submitted to the juvenile probation office and a copy shall be forwarded to the attorney for the Commonwealth's office unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

2) *Juvenile under arrest.* When a juvenile is under arrest, a written allegation shall be submitted promptly to the court or detention facility, and copies shall be immediately forwarded to the juvenile probation office and the attorney for the Commonwealth's office unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

B. *Approval by the District Attorney.* The District Attorney of any county may require initial receipt and approval of written allegations by an attorney for the Commonwealth before a delinquency proceeding is commenced.

1) *Certification.* If the District Attorney elects to require initial receipt and approval of written allegations in his or her county, the District Attorney shall file a certification with the court of common pleas. The certification shall specifically state the classes, grading, or types of cases that the police officer shall submit to the attorney for the Commonwealth's office.

2) *Timeliness.* All written allegations shall be approved or disapproved without unreasonable delay. An attorney for the Commonwealth shall be available at all times for this purpose.

C. *Procedures Following the Attorney for the Commonwealth's Approval.*

1) *Juvenile not under arrest.* If a juvenile is not under arrest and an attorney for the Commonwealth approves the written allegation, notice of the approval and a copy of the written allegation shall be forwarded immediately to the juvenile probation office.

2) *Juvenile under arrest.* If a juvenile is under arrest, the written allegation shall be submitted to the attorney for the Commonwealth and approved prior to taking the juvenile to a detention facility. The attorney for the Commonwealth shall ensure the compliance of the time requirements of Rule 221(A). If the written allegation is approved, it shall be submitted promptly to the court or detention facility. A copy of the notice of the approval and the written allegation shall be forwarded to the juvenile probation office.

D. *Attorney for the Commonwealth's Disapproval.* If the written allegation has been disapproved for prosecution, it shall nevertheless be transmitted to the juvenile probation office with notice of the disapproval. If the juvenile is in custody, the juvenile shall be released immediately.

#### Comment

See Rules 210 (Arrest Warrants) and 220 (Procedures in Cases Commenced by Arrest Without Warrant) for the procedures on submitting written allegations for arrests.

Under paragraphs (A)(2) and (C)(2), the police officer must submit the written allegation promptly to the intake staff at the court or the detention facility. The facility should not accept a juvenile for detention if a written allegation is not sent with the juvenile.

Under paragraph (B), the District Attorney decides whether an attorney for the Commonwealth receives initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the

court under paragraph (B)(1), any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney.

Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending charges.

#### Rule 232. Contents of Written Allegation.

Every written allegation shall contain:

- 1) the name of the person making the allegations;
- 2) the name, date of birth, and resident address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
  - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
  - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
  - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
  - b) if the date or day of the week is an essential element of the offense charged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;
- 6) a) a summary of the facts sufficient to advise the juvenile of the nature of the offense charged;
  - b) the official or customary citation of the statute and section thereof, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; and
  - c) the name of any conspirators, if known;
- 7) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 8) a notation if criminal laboratory services are requested in the case;
- 9) a verification by the person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made therein are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and
- 10) the signature of the person making the allegation and the date of execution of the written allegation.

#### Comment

This rule sets forth the required contents of all written allegations whether the person making the allegation is a law enforcement officer, a police officer, or a private citizen.

#### Rule 233. Approval of Private Written Allegations.

A. *Submission of written allegation.* When the person making the allegation is not a law enforcement officer, the written allegation shall be submitted to the juvenile

probation officer for approval, unless the District Attorney has elected to require initial receipt and approval under Rule 231(B). The juvenile probation officer or the attorney for the Commonwealth shall approve or disapprove the written allegation without unreasonable delay.

**B. Requirements.**

1) *Approval.* If the private written allegation is approved, the case shall proceed as any other written allegation under Rule 231(C) and (D).

2) *Disapproval.* If the written allegation is disapproved, the attorney for the Commonwealth or the juvenile probation officer shall state the reasons on the written allegation form and return it to the person making the allegation. The person making the allegation may file a motion for review of the disapproval by the court.

**Comment**

For the contents of a written allegation, see Rule 231.

In all cases where the affiant is not a law enforcement officer, the written allegation should be submitted for approval or disapproval by the juvenile probation officer or the attorney for the Commonwealth. Once the allegation is approved, the case should proceed as any other written allegation would proceed. See Rule 231.

When the person filing a document alleging a juvenile committed a delinquent act is a private citizen, they should follow the same process and proceedings as probation officers and law enforcement officers. Private citizens are not to be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of the Juvenile Act, 42 Pa.C.S. § 6334, is achieved by providing an avenue for the private citizen to commence a delinquency proceeding by submitting a written allegation. If the written allegation is disapproved, the private citizen has the right to appeal the case by motion to the court of common pleas. If the court of common pleas overturns the decision of the attorney for the Commonwealth or the juvenile probation officer, the court should direct the attorney for the Commonwealth or juvenile probation officer to approve the written allegation and proceed with the case in the same manner as any other case. This procedure ensures informal court action is not precluded, such as, informal adjustment. Once a petition is filed, informal adjustment is not allowed. See Comment to Rule 312.

For motions and service, see Rules 344 and 345.

**PART D. PRE-ADJUDICATORY DETENTION**

**Rule 240. Detention of Juvenile.**

**A. Detention requirements.** If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:

- 1) examine the written allegation;
- 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
- 3) release the juvenile, unless it appears that the juvenile's detention is warranted.

**B. Filing of petition.** The release of the juvenile shall not prevent the subsequent filing of a petition.

**C. Prompt hearing.** If the juvenile is not released, a detention hearing shall be held no later than seventy-two hours after the juvenile is placed in detention.

**D. Time restrictions.** Except as provided in paragraphs (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of intent to transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:

- a) evidence material to the case is unavailable;
- b) due diligence to obtain such evidence has been exercised;
- c) there are reasonable grounds to believe that such evidence will be available at a later date; and
- d) the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

**Comment**

If a juvenile is detained, the guardian should be notified immediately. See Rules 220 (Procedures in Cases Commenced by Arrest Without Warrant) and 313(B) (Taking into Custody from Intake) for notification of the guardian.

Under paragraph (D), if the juvenile causes delay, the juvenile may continue to be held in detention. The additional period of detention should not exceed ten days. The court may continue such detention for successive ten-day intervals. The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code § 200.101 et seq. (2003).

**Rule 241. Notice of Detention Hearing.**

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; and
- 6) any other parties necessary for the detention hearing.

**Comment**

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing must be ordered under Rule 243 upon submission of an affidavit by the guardian.

**Rule 242. Detention Hearing.**

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall inform the juvenile of:

- 1) the nature of the delinquency allegations;
- 2) the right to counsel and to assigned counsel; and
- 3) the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

- a) cross-examine witnesses offered against the juvenile; and
- b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. *Findings.* The court shall determine whether:

- 1) there is probable cause that a delinquent act was committed by the juvenile; and
- 2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

**Comment**

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile must be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence from all parties concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the charges prior to the adjudicatory

hearing to prepare for the defense of the juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

**Rule 243. Detention Rehearings.**

A. *Mandatory Rehearing.* If the guardian submits an affidavit to the juvenile probation officer alleging that the guardian was not notified of the detention hearing and that the guardian did not appear or waive appearance at the detention hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.

B. *Discretionary Rehearing.* Upon request of the juvenile's attorney, the juvenile, if unrepresented, or the attorney for the Commonwealth, or on its own motion, the court may grant a rehearing within its discretion.

C. *Forum.* The judge, who heard the original detention hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to the master.

**Comment**

Under paragraph (A), upon receiving an affidavit, the juvenile probation officer must schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders the master to hear the case.

**CHAPTER 3. PRE-ADJUDICATORY PROCEDURES**

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**PART A. VENUE AND JURISDICTION**

**Rule 300. Venue.**

A. *Generally.* A delinquency proceeding shall be commenced in:

- 1) the county where the allegation occurred; or
- 2) the juvenile's residential county.

B. *Change of venue.* The juvenile may file a motion for change of venue if there is a hardship on the juvenile. The court shall decide the motion.

**Rule 302. Inter-County Transfer.**

A. *Supervision.* The court may transfer supervision of the juvenile to the juvenile's residential county after a:

- 1) consent decree is entered; or
- 2) dispositional order is entered.

B. *Disposition.* After an adjudication of delinquency, the court may transfer the case for disposition to the juvenile's residential county.

C. *Transmission of juvenile case file.* If the case is transferred under paragraph (A) or (B), the transferring court shall order transfer of certified copies of all documents, reports, and summaries in the juvenile's case file.

**Comment**

The purpose of allowing transfer of disposition and supervision of the juvenile to the juvenile's residential county is to allow probation to closely supervise the juvenile. Supervision is difficult if the juvenile lives in another county.

This rule also may apply if the juvenile moves to a different county in this Commonwealth at some stage in the proceedings.

When the dispositional hearing is being transferred under paragraph (B), the transferring court should enter a finding of the amount of restitution owed and to whom it should be paid, if ordered.

**PART B. INTAKE AND INFORMAL ADJUSTMENT**

**Rule 310. Pre-Intake Duties, Scheduling, and Notice.**

A. *Juvenile probation officer duties.* After a written allegation is submitted, the juvenile probation officer shall gather pertinent information to determine whether:

- 1) the allegations are within the jurisdiction of the juvenile court; and
- 2) it is appropriate to schedule an intake conference.

B. *Scheduling.* Intake conferences shall be scheduled within a reasonable time after submission of the written allegation.

C. *Notice.* The juvenile probation officer shall make all reasonable efforts to provide actual notice of the intake conference to the juvenile and the juvenile's guardian.

**Comment**

If the juvenile probation officer has exhausted all methods of communication with the juvenile's guardian, the probation officer may proceed with the intake conference without the presence of the guardian. If the juvenile is detained at the intake conference without the presence of a guardian, the probation officer must immediately notify the guardian of the detention of the juvenile. See Rule 313(B).

**Rule 311. Intake Conference.**

A. The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. Before proceeding with an intake conference, the juvenile probation officer shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present; and
- 2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights.

C. The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision at the intake conference. Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action. The court shall conduct a hearing on the motion.

**Comment**

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. See 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the juvenile, and the juvenile's guardian to determine how the case should be handled. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

For the statutory procedures concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

**Rule 312. Informal Adjustment.**

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

- 1) an adjudication would not be in the best interest of the public and the juvenile;
- 2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and
- 3) the admitted facts bring the case within the jurisdiction of the court.

B. *Completion.*

- 1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.
- 2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

**Comment**

Informal adjustments may not occur after the filing of a petition. *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000). See 42 Pa.C.S. § 6323(a).

The juvenile probation officer may give "counsel and advice" as to the informal adjustment. See 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. See 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. See 42 Pa.C.S. § 6323(e).

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 should be followed.

**Rule 313. Detention from Intake.**

A. *Detention.* If it is determined at an intake conference that a juvenile should be detained, the matter shall proceed pursuant to Rule 240.

B. *Notice to Guardian.* If a guardian is not present at the intake conference, the probation officer immediately shall notify the guardian of the juvenile's detention.

**Comment**

The provision concerning notification of a guardian in Rule 220 is to be followed.

**PART C. PETITION**

**Rule 330. Petition: Filing, Contents, Function.**

A. *Certification.* The District Attorney of any county may require that an attorney for the Commonwealth must file all petitions. If the District Attorney elects to require an attorney for the Commonwealth to file the petition, the District Attorney shall file a certification with the court of common pleas. The certification shall:

- 1) state that an attorney for the Commonwealth must file petitions; and
- 2) specify any limitations on the filing or classes of petitions.

B. *Filings.* In every delinquency proceeding, the attorney for the Commonwealth or the juvenile probation officer shall file a petition with the clerk of courts if it has been determined that informal adjustment or another diversionary program is inappropriate.

C. *Petition contents.* Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and resident address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
  - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
  - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:

a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and

b) if the date or day of the week is an essential element of the offense charged, such date or day shall be specifically set forth;

5) the place where the offense is alleged to have been committed;

6) a) a summary of the facts sufficient to advise the juvenile of the nature of the offense charged;

b) the official or customary citation of the statute and section thereof, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the petition; and

c) the name of any conspirators, if known.

7) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;

8) a notation if criminal laboratory services are requested in the case;

9) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements therein are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

10) the signature of the petitioner and the date of the execution of the petition;

11) the whereabouts of the juvenile and if taken into custody, the date and time thereof; and

12) the name and resident address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

**Comment**

Under paragraph (A), the District Attorney may file a certification with the court of common pleas stating that only an attorney for the Commonwealth may file a petition. If a certification has not been filed, then an attorney for the Commonwealth or a juvenile probation officer may file a petition.

A private citizen has the right to file a written allegation, not a petition. The written allegation commences the proceedings in the juvenile system. See Rule 200. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may appeal to the court of common pleas. See Comment to Rule 233.

Informal adjustment or other diversionary programs should be considered before a petition is filed. Once a petition is filed, informal adjustment is not permitted. See *In re J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

Petitions should be filed without unreasonable delay. See *Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

The contents of a petition are the same as a written allegation except for the additional requirements in paragraphs (C)(11) and (12).

**Rule 331. Service of Petition.**

A. *Copy.* Upon the filing of a petition, a copy of the petition shall be served promptly upon the juvenile, the

juvenile's guardian, the juvenile's attorney, the attorney for the Commonwealth, and the juvenile probation officer.

B. *Service to juvenile and guardian.* The service of the petition to the juvenile and the juvenile's guardian shall be by first-class mail or delivered in-person.

C. *Service to attorneys and probation officer.* The service of the petition to the juvenile's attorney, attorney for the Commonwealth, and juvenile probation officer shall be by first-class mail or delivered in-person unless all individuals otherwise agree upon an alternative method.

#### Comment

The purpose of paragraph (A) is to insure the juvenile and the juvenile's attorney have notice of the charges to prepare the case adequately. If the juvenile is detained, service is to follow immediately after the filing of the petition. See Rule 242(D) for the twenty-four hour filing requirement.

Alternative methods of services that may be utilized under paragraph (C) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

#### Rule 332. Multiple Offenses in Petition.

A. *Different incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from different incidents or delinquent episodes, one petition may be filed. However, each incident shall be charged separately in conformity with the requirements of Rule 330(C)(4)–(6).

B. *Same incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from the same incident or delinquent episode, a single petition shall be filed.

#### Comment

The purpose of paragraph (A) is to permit one petition for multiple offenses arising from different incidents or delinquent episodes. The offenses must be stated with particularity to inform the juvenile of the charges. See Rule 330(C)(4) through (6) for specific requirements.

Under paragraph (B), a single petition is to be submitted for offenses arising from the same incident or delinquent episode.

#### Rule 333. Separate Petitions.

When more than one juvenile is alleged to have participated in the commission of an offense, a separate petition for each juvenile shall be filed.

#### Comment

If there are conspirators to any of the alleged offenses, the names of all conspirators are to be referenced in the petition. See Rule 330(C)(6)(c).

Hearings on the petitions may be consolidated for such further action as may be required by Rule 351.

#### Rule 334. Amendment of Petition.

A. *Amendment.*

1) The court shall allow a petition to be amended when there is doubt as to:

- a) form;
- b) the description of the offense;
- c) the description of any person or property; or
- d) the date charged.

2) The court shall not allow a petition to be amended if the petition alleges a different set of events or offenses, where the elements or defenses are materially different from the elements or defenses to the offense originally petitioned.

B. *Continuance.* Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

#### Comment

For continuances, see Rule 112.

#### Rule 335. Withdrawal of Petition.

The attorney for the Commonwealth may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

#### Comment

See Rule 345 for the procedures for filings and service.

#### Rule 336. Re-Filing of the Petition After Withdrawal or Dismissal.

A. *Re-filing.* The attorney for the Commonwealth may re-file a petition after the petition has been withdrawn pursuant to Rule 335 or dismissed by the court.

B. *Motion for dismissal.* The court may entertain a motion by the juvenile to dismiss the re-filed petition.

#### Comment

A juvenile may be rearrested after the charges have been dismissed prior to jeopardy attaching if the statute of limitations has not expired. *Cf. Commonwealth v. Revtai*, 532 A.2d 1 (Pa. 1987). The petition should be dismissed upon a finding that the attorney for the Commonwealth acted to harass the juvenile, the offenses are beyond the statute of limitations, or there is some other prejudice to the juvenile. See *Commonwealth v. Chermansky*, 552 A.2d 1128 (Pa. Super. Ct. 1989). See also *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997).

If a petition is re-filed, the procedures of Rule 330 should be followed. It may be necessary to have a detention hearing under the procedures of Rule 240(C).

### PART D. PROCEDURES FOLLOWING FILING OF PETITION

#### Rule 340. Pre-Adjudicatory Discovery and Inspection.

A. *Informal.* Before either party can seek any disclosure or discovery under these rules, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the adjudicatory hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. *Mandatory.*

1) *Disclosure by the Commonwealth.* In all cases, on request by the juvenile's attorney or the juvenile, if unrepresented, and subject to any protective order which the Commonwealth might obtain under this rule, the

Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the juvenile's attorney or the juvenile, if unrepresented, to inspect and copy or photograph such items.

a) Any evidence favorable to the juvenile that is material either to guilt or to disposition, and is within the possession or control of the attorney for the Commonwealth;

b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

c) the circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification;

d) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth;

e) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and

f) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

*C. Discretionary.* Upon motion of the attorney for the Commonwealth, the juvenile's attorney, or the juvenile, if unrepresented, for pre-adjudicatory discovery, the court may order, subject to the juvenile's right against self-incrimination, any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

*D. Continuing Duty to Disclose.* If, prior to or during the adjudicatory hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

*E. Remedy.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the juvenile, or it may enter such other order as it deems just under the circumstances.

*F. Protective orders.* Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

*G. Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports, or

memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the juvenile's attorney, or members of their legal staffs.

#### Comment

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a general dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 344.

For provisions under paragraph (B)(1)(b), see *Commonwealth v. Burke*, 781 A.2d 1136 (Pa. 2001).

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the defense: 1) the names and contact information of eyewitnesses; 2) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at the adjudicatory hearing; 3) all written and recorded statements, and substantially verbatim oral statements, made by juvenile, and by conspirators or accomplices, whether such individuals have been charged or not; and 4) any other evidence specifically identified by the juvenile's attorney, provided the juvenile's attorney can additionally establish that its disclosure would be in the interests of justice, including any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the Commonwealth's case: 1) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the juvenile's attorney, that the juvenile's attorney intends to introduce as evidence in chief, or were prepared by a witness whom the juvenile's attorney intends to call at the adjudicatory hearing, when results or reports relate to the testimony of that witness, provided the juvenile's attorney has requested and received discovery under paragraph (B)(1)(d); and 2) the names and contact information of eyewitnesses whom the juvenile's attorney intends to call in the juvenile's case in chief.

Any evidence or material requested cannot interfere with the juvenile's right against self-incrimination.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at the adjudicatory hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a juvenile by means of the juvenile's person being in some way exhibited to a witness for the purpose

of an identification: e.g., a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, etc. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U.S. 293 (1967) and *United States v. Wade*, 388 U.S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the juvenile to seek suppression of such evidence.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the juvenile, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the *Brady* rule, it must be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

#### **Rule 341. Notice of Alibi Defense.**

A. *Notice by the juvenile's attorney or juvenile, if unrepresented.* A juvenile who intends to offer the defense of alibi at the adjudicatory hearing shall, at any time prior to the adjudicatory hearing, give the attorney for the Commonwealth notice of the intention to claim such defense. Such notice shall include specific information as to the place or places where the juvenile claims to have been at the time of the alleged offense and the names and contact information of witnesses whom the juvenile intends to call in support of such claim.

B. *Failure to Give Notice.* If the juvenile fails to give notice of an alibi defense as required by this rule, or omits any witness from such notice, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the juvenile for the purpose of proving the defense, except testimony by the juvenile, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

C. *Impeachment.* A juvenile may testify concerning an alibi notwithstanding that the juvenile has not given notice, but if the juvenile has given notice and testifies concerning his or her presence at the time of the offense at a place or time different from that given in the notice, the juvenile may be cross-examined concerning such notice.

D. *Disclosure of Reciprocal Witnesses.* Prior to the adjudicatory hearing, the attorney for the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, the names and contact information, that have not been previously disclosed, of all persons the Commonwealth intends to call as witnesses to disprove or discredit the juvenile's claim of alibi.

E. *Failure to Supply Reciprocal Notice.* If the attorney for the Commonwealth fails to disclose a list of its witnesses as required by this rule, or omits any witness therefrom, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, or may grant a

continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

### **PART D(1). MOTION PROCEDURES**

#### **Rule 344. Motions and Answers.**

A. *Generally.* All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

B. *Represented juvenile.* If counsel represents a juvenile, the attorney shall make or file all motions and answers.

C. *Requirements for motions.* All motions shall comply with the following requirements:

1) The person making the motion shall sign a written motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

4) If the motion is written, a certificate of service as required by Rule 345(C) shall be included.

D. *Requirements for answers.* All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:

1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.

4) If the answer is written, a certificate of service as required by Rule 345(C) shall be included.

E. *Alternative relief.* Any motion may request such alternative relief as may be appropriate.

F. *Waiver of relief.* The failure, in any motion, to state a type of relief or order, or a ground therefore, shall constitute a waiver of such relief, order, or ground.

#### **Comment**

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in Juvenile Court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. See Rule 345(B) for service of documents and Rule 345(C) for certificates of service.

**Rule 345. Filing and Service.**

*A. Filings.*

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of courts' duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by represented juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the juvenile case file or make a docket entry, but shall forward it promptly to the juvenile's attorney.

4) *Method of filing.* Filing may be accomplished by:

- a) personal delivery to the clerk of courts; or
- b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

*B. Service.*

1) *Generally.* The party filing the document shall serve all parties concurrently with the filing.

2) *Method of service to parties.* Service on the parties shall be by:

- a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
- b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or
- c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or
- d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

*C. Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

**Comment**

See Rule 155 for maintaining records in the clerk of courts' office.

Under paragraph (A)(2), the court must designate a court official to process motions and other matters for appropriate scheduling and disposition.

Under paragraph (B), the party filing a document is required to serve all parties.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 156.

For service of petitions, see Rule 331.

**Rule 346. Omnibus Motion for Relief.**

Unless otherwise required in the interests of justice, all requests for relief shall be included in one omnibus motion filed prior to the adjudicatory hearing.

**Comment**

Types of relief appropriate for the omnibus motion include the following requests:

- (1) for continuance;
- (2) for separate or joint adjudicatory hearings;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to dismiss a petition;
- (6) to disqualify a judge;
- (7) for appointment of investigator; and
- (8) for pre-adjudicatory hearing conference.

The omnibus motion rule is not intended to limit other types of motions, oral or written. The earliest feasible submissions and rulings on such motions are encouraged.

For instances when the court must recuse itself, see Code of Judicial Conduct. Recusal is necessary when there is bias, prejudice, improper influence, or appearance of impropriety. *Commonwealth v. Benchoff*, 700 A.2d 1289 (Pa. Super. Ct. 1999).

**Rule 347. Time for Omnibus Motion and Service.**

*A. Time.* An omnibus motion shall be made as soon as practical but can be made at any time prior to the calling of the first witness at the adjudicatory hearing.

*B. Service.* If the omnibus motion is written, copies shall be served in accordance with Rule 345.

**Comment**

For general requirements concerning the filing and service of motions and answers, see Rules 345.

**Rule 348. Disposition of Omnibus Motions.**

Unless otherwise provided in these rules, all omnibus motions shall be determined before the adjudicatory hearing. The court for the determination of omnibus motions, if necessary shall postpone the adjudicatory hearing.

**Rule 350. Suppression of Evidence.**

*A. Motion by attorney or juvenile, if unrepresented.* The juvenile's attorney or the juvenile, if unrepresented, may make a motion to the court to suppress evidence. The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the supporting facts and events.

*B. Timeliness.* Unless the opportunity did not previously exist, or the interests of justice otherwise require, a motion to suppress shall be contained in the omnibus motion set forth in Rule 346. If a timely motion is not made, the issue of suppression of such evidence shall be deemed to be waived.

*C. Findings.* At the conclusion of the hearing, the court shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the juvenile's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

*D. Decision final and binding.* If the court determines that the evidence shall not be suppressed, such determi-

nation shall be final, conclusive, and binding at the adjudicatory hearing, except upon a showing of evidence that was unavailable, but nothing in this rule shall prevent a juvenile from opposing such evidence at the adjudicatory hearing upon any ground except its suppressibility.

#### Comment

This rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the juvenile's rights. This rule extends its coverage to specific provisions in violation of the fourth, fifth, and sixth amendments of the Constitution of the United States and Article I, § 9 of the Pennsylvania Constitution. *In re R.H.*, 791 A.2d 331 (Pa. 2002), *Com v. Scott*, 369 A.2d 809 (Pa. Super. Ct. 1976); *Appeal of Cowell*, 364 A.2d 718 (Pa. Super. Ct. 1976). See *In re Gault*, 387 U.S. 1 (1967).

In all cases, the burden of production is upon the Commonwealth. See *In re Stoutzenberger*, 344 A.2d 668 (Pa. Super. Ct. 1975), citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968); *In re Betrand*, 303 A.2d 486 (Pa. 1973).

Under paragraph (B), if a motion to suppress is not timely made, it is deemed waived. *In re Cox*, 402 A.2d 534 (Pa. Super. Ct. 1979). See *Commonwealth v. Spriggs*, 344 A.2d 880 (Pa. 1975); *Commonwealth v. Wylie*, 344 A.2d 491 (Pa. 1975).

With regard to the recording and transcribing of the evidence adduced at the hearing, see Rule 117. All motions to suppress are to comply with the provisions of Rules 344 and 345.

#### Rule 351. Adjudicatory Hearing on Separate Petitions.

A. *Standards.* An adjudicatory hearing may be held for:

- 1) offenses charged in separate petitions if the evidence of each of the offenses would be admissible in a separate adjudicatory hearing for the other;
- 2) offenses charged in separate petitions if the offenses charged are based on the same act or transaction;
- 3) juveniles charged in separate petitions if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions.

#### B. Procedure.

1) Oral or written notice that offenses or juveniles charged in separate petitions will be heard together shall be given to the juvenile's attorney or the juvenile, if unrepresented, prior to the adjudicatory hearing. If the notice is written, a copy of the notice shall be filed with the clerk of courts.

2) When notice has not been given under paragraph (B)(1), any party may move to consolidate the adjudicatory hearing for separate petitions. The motion shall ordinarily be included in an omnibus motion.

#### Comment

Under the scheme set forth in this rule, it can be assumed that offenses charged in the same petition will be heard together. See Rule 332. Similarly, offenses or juveniles will be heard together if notice is given pursuant to (B)(1) of this rule. In these situations, the court may order separate hearings either when the standards in paragraph (A) are not met or pursuant to Rule 352. Absent notice pursuant to paragraph (B)(1), a motion for consolidation is required under paragraph (B)(2). A party

may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 352.

Paragraph (A)(1) is based upon statutory and case law that, ordinarily, if all offenses arising from the same episode or transaction are not heard together, subsequent prosecution on any such offense not already heard may be barred. *Matter of Huff*, 582 A.2d 1093 (Pa. Super. Ct. 1990), citing *Commonwealth v. Campana*, 304 A.2d 432, vacated and remanded, 414 U.S. 808 (1973), addendum opinion on remand, 314 A.2d 854 (Pa. 1974).

#### Rule 352. Separate Adjudicatory Hearings for Offenses or Juveniles.

The court may order separate adjudicatory hearings for offenses or juveniles, or provide other appropriate relief, if it appears that offenses or juveniles being heard together may prejudice any party.

#### Comment

This rule provides the procedure whereby the court may, because of prejudice to a party, order separate adjudicatory hearings for offenses or juveniles that otherwise would be properly heard together under Rule 351. A juvenile may also request separate adjudicatory hearings for offenses or juveniles on the ground that hearing them together would be improper under Rule 351.

Under Rule 346 (Omnibus Motion for Relief), any request for separate adjudicatory hearings should ordinarily be made in an omnibus motion or it is considered waived.

#### Rule 353. Motion for Return of Property.

A. *Return for lawful possession.* A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to its lawful possession. Such motion shall be filed in writing and served pursuant to Rule 345.

B. *Hearing.* The court hearing such motion shall receive evidence on any issue of fact necessary for its decision. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

C. *Joint motion.* A motion to suppress evidence under Rule 350 may be joined with a motion under this rule.

#### Comment

A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 350. However, if the time and effect of a motion brought under the instant rule would be, in the view of the court hearing the motion, substantially the same as a motion for suppression of evidence, the court may dispose of the motion in accordance with Rule 350.

Nothing in this rule is intended to prohibit the court from directing a more appropriate court to hear these motions. For example, a judicial district may have a motions court or specially designed court that hears all motions, including juvenile cases.

Pursuant to Rule 100, only motions for return of property derived from juvenile delinquency cases are appropriate for the juvenile court.

**PART D(2). ADJUDICATORY SUMMONS AND NOTICES PROCEDURES**

**Rule 360. Summons and Notices.**

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the adjudicatory hearing.

B. *Notices.* The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notices procedures of Rule 114 shall be followed.

**Comment**

Section 6335 of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335.

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

**Rule 362. Requirements of the Summons.**

The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
- 5) include a copy of the juvenile petition.

**Comment**

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a).

**Rule 363. Service of Summons and Notices.**

A. *Method of Service.* Summons or notices shall be served:

- 1) in-person; or
- 2) by first-class mail.

B. *Time of Service.*

1) *Juvenile detained.* If the juvenile is detained, the summons or notices shall be served no less than seven days prior to the adjudicatory hearing.

2) *Juvenile not detained.* If the juvenile is not detained, the summons or notices shall be served no less than fourteen days prior to the adjudicatory hearing.

**Comment**

Pursuant to Rule 360, the juvenile and the juvenile's guardian should be served a summons, and the attorney for the Commonwealth, the juvenile's attorney, and the juvenile probation officer should receive notices.

**Rule 364. Failure to Appear on the Summons.**

If any summoned person fails to appear for the adjudicatory hearing and the court is assured that sufficient notice was given, the court may issue a warrant of arrest.

**PART E. CONSENT DECREE**

**Rule 370. Consent Decree.**

At any time after the filing of a petition and before the entry of an adjudication order, the court may, upon agreement of the attorney for the Commonwealth and the juvenile's attorney or the juvenile, if unrepresented, suspend the proceedings, and continue the juvenile under supervision in the juvenile's home, under terms and conditions negotiated with the juvenile probation office. The order of the court continuing the juvenile under supervision shall be known as a consent decree.

**Comment**

See 42 Pa.C.S. § 6340(a).

A consent decree is a device for placing an allegedly delinquent juvenile under supervision of the juvenile probation office prior to, and as an alternative to, adjudication, thus avoiding potential stigma attached to an adjudication of delinquency. *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981).

Before placing the juvenile on a consent decree, the victim(s) of the offense should be consulted. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

**Rule 371. Objection to Consent Decree.**

When the juvenile or the attorney for the Commonwealth objects to a consent decree, the court shall proceed to findings, adjudication, and disposition.

**Comment**

A consent decree may not be used unless the attorney for the Commonwealth consents and the juvenile agrees to accept the conditions required by the court. If the attorney for the Commonwealth objects to a consent decree or the juvenile refuses to accept the conditions required by the court, the court should proceed to findings, adjudication, and disposition. *In re Bosket*, 590 A.2d 774 (Pa. Super. Ct. 1991). See also 42 Pa.C.S. § 6340(b).

See Chapter Four introduction for the stages of the juvenile delinquency process.

See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

**Rule 372. Consent Decree Hearing.**

At the consent decree hearing, the court shall explain on the record or in writing the:

1) terms, conditions, and duration of the consent decree pursuant to Rule 373; and

2) consequences for violating the conditions of the consent decree, which include, if prior to discharge by the juvenile probation officer or expiration of the consent decree, a new petition is filed against the juvenile, or the juvenile otherwise fails to fulfill express terms and conditions of the decree, the petition under which the juvenile was continued under supervision may, in the discretion of the attorney for the Commonwealth following consultation with the juvenile probation officer, be reinstated and the juvenile held accountable as if the consent decree had never been entered.

**Comment**

Under this rule, it is expected that the attorney for the Commonwealth should consult with the juvenile proba-

tion officer before revoking the consent decree. The consent decree should only be revoked if the juvenile fails to meet the conditions of the program or new charges have been filed against the juvenile.

If a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Commonwealth v. Szebin*, 785 A.2d 103 (Pa. Super. Ct. 2001). In *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981), the Supreme Court viewed a consent decree in the same fashion as Accelerated Rehabilitative Disposition. See also *In re John W.*, 446 A.2d 621 (Pa. Super. Ct. 1982).

See also 42 Pa.C.S. § 6340.

**Rule 373. Conditions of Consent Decree.**

A. *Terms and conditions.* The court may place upon the juvenile any reasonable conditions that are consistent with the protection of the public interest. The conditions of the consent decree shall provide a balanced attention to the:

- 1) protection of the community;
- 2) juvenile's accountability for the offenses committed; and
- 3) development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community.

B. *Duration of consent decree.* A consent decree shall remain in force for no more than six months as agreed upon unless the juvenile is discharged sooner upon motion. Upon motion, the court may:

- 1) discharge the juvenile at an earlier time; or
- 2) extend the time period not to exceed an additional six months.

**Comment**

If the juvenile fails to accept the conditions required by the court pursuant to paragraph (A), the case should proceed to findings, adjudication, and disposition. See Comment to Rule 371.

Nothing in this rule is intended to prevent the juvenile probation officer from being the movant for consent decree. For Rules on Motions, see Rule 344.

Paragraph (B) departs from the Juvenile Act, 42 Pa.C.S. § 6340(c), in that an agreement for a consent decree of less than six months is allowed.

**PART F. PRESERVATION OF TESTIMONY AND EVIDENCE**

**Rule 380. Preservation of Testimony After Commencement of Proceedings.**

A. *By Court Order*

1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

2) The court shall state on the record the grounds on which the order is based.

3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

4) The testimony shall be taken in the presence of the court, the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless otherwise ordered.

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

B. *By agreement of the parties.*

1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney.

2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

3) The testimony shall be taken in the presence of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless they otherwise agree.

4) The agreement shall be filed with the clerk of courts pursuant to Rule 345(A).

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

**Comment**

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 381.

Commencement of proceedings includes any action after the submission of a written allegation. See Rule 200 (Commencement of Proceedings).

This rule does not address the admissibility of the preserved testimony. The court must decide all questions of admissibility. See the Pennsylvania Rules of Evidence. Also see, e.g., Judicial Code § 5917, 42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 421 A.2d 147 (Pa. 1980); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977).

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or may become incompetent to testify for any legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the juvenile's attorney, the juvenile, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the attorney for the Commonwealth, the juvenile, and the juvenile's attorney to determine among themselves whether the court should be present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the juvenile from waiving his or her presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to any other party. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see the Pa.Rs.J.A. Nos. 5000.1—5000.13.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections at the time of the adjudicatory hearing.

Paragraphs A(5) and B(5) are intended to guard against pre-adjudicatory hearing disclosure of potentially prejudicial matters.

For the definition of "court," see Rule 110.

**Rule 381. Preservation of Testimony by Video Recording.**

A. When the testimony of a witness is taken and preserved pursuant to Rule 380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.

B. The following technical requirements shall be made part of the court order required by Rule 380(A) or the written agreement provided in Rule 380(B):

- 1) The video recording shall begin with a statement on camera that includes the:
  - a) operator's name and business address;
  - b) name and address of the operator's employer;
  - c) date, time, and place of the video recording;
  - d) caption of the case;
  - e) name of the witness;
  - f) party on whose behalf the witness is testifying; and
  - g) nature of the judicial proceedings for which the testimony is intended.
- 2) The court and all parties shall identify themselves on camera.
- 3) The witness shall be sworn on camera.
- 4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera.
- 5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s).

6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera.

7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony.

8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record.

9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding.

10) The original video recording shall not be altered.

**Comment**

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the parties.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the parties may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 380. It is not intended to affect other rules governing recording devices.

**Rule 384. (Reserved).**

**PART G. TRANSFER FOR CRIMINAL PROSECUTION**

**Rule 390. Notice of Request for Transfer to Criminal Proceedings.**

After a petition is filed but before the first scheduled adjudicatory hearing, any notice of a request for transfer to criminal proceedings pursuant to 42 Pa.C.S. § 6355 shall be filed and served on:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney; and
- 4) the juvenile probation office.

**Comment**

The Juvenile Act gives the juvenile the opportunity to petition the court for transfer to criminal proceeding as reflected in this rule. See 42 Pa.C.S. § 6355(c). The court should use caution when a juvenile petitions the court for

transfer to criminal proceedings. The court should inquire if the petition has been knowingly, intelligently, and voluntarily made.

The charges requested to be transferred must be classified as "delinquent acts," pursuant to 42 Pa.C.S. § 6302 (definition of "delinquent acts") and must comply with the requirements as set forth in 42 Pa.C.S. § 6355 (transfer to criminal proceedings). Any offense excluded from the definition of "delinquent acts," paragraph (2) of the definition of "delinquent act" in 42 Pa.C.S. § 6302, should originate in criminal proceedings and may be transferred to delinquency proceedings, if so determined by the court. See 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings). For juveniles charged in criminal proceedings, the Rules of Criminal Procedure are applicable. See also Rule 100 on Scope of Rules. Also, any juvenile previously found guilty in criminal proceedings, for any charge other than a summary offense, should be charged in criminal proceedings for all subsequent offenses. See paragraph (2)(v) of the definition of "delinquent act" in 42 Pa.C.S. § 6302 and 42 Pa.C.S. § 6355(d).

The court should conduct a transfer hearing no sooner than three days after the notice of request for transfer to criminal proceedings is served unless the time requirement is waived. See Rule 394(A).

**Rule 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.**

A. *Generally.* The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing except for the time restrictions provided in paragraph (B) of this rule.

B. *Time Restrictions.* If the transfer hearing is not held within ten days of the filing of the request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:

- a) evidence material to the case is unavailable, including a psychological or psychiatric evaluation;
- b) due diligence to obtain such evidence or evaluation has been exercised;

c) there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and

d) the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

**Comment**

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing must be held within ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for

the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D).

Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.

**Rule 394. Transfer Hearing.**

A. *Scheduling.* The court shall conduct a transfer hearing no sooner than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. *Findings.* At the hearing, the court shall determine whether:

- 1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;
- 2) notice has been given pursuant to Rule 390;
- 3) there is a prima facie showing of evidence that the juvenile committed a felony delinquent act;
- 4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors; and
- 5) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill.

**Comment**

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "prima facie phase." The court should determine if there is a prima facie showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a prima facie showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, and rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, and rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was

fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a prima facie case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii)(relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. See 42 Pa.C.S. § 6355.

If the court determines that the juvenile is amenable to treatment, supervision, and rehabilitation in the juvenile system and there are sufficient resources available to treat, rehabilitate, and supervise the juvenile at the present time, the court should proceed to an adjudicatory hearing under Rule 406 or accept an acknowledgment pursuant to Rule 407. If the court determines that the juvenile is not amenable to treatment, supervision, and rehabilitation in the juvenile system and the transfer of the juvenile to criminal proceedings would serve the public interest, an information should be filed and bail should be determined. See Rules 395 and 396.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

**Rule 395. Procedure to Initiate Criminal Information.**

Once a juvenile has been transferred to criminal proceedings, the case shall proceed pursuant to Pa.R.Crim.P. 565.

**Comment**

The transfer hearing serves as the preliminary hearing, therefore, the attorney for the Commonwealth may file the criminal information after the issuance of the transfer order. See Pa.R.Crim.P. 565 for presentation of information without the preliminary hearing.

For any procedural questions concerning a juvenile whom has been transferred to criminal proceedings, see the Pennsylvania Rules of Criminal Procedure.

**Rule 396. Bail.**

If transfer to criminal proceedings is ordered at the conclusion of the transfer hearing, the juvenile court judge shall determine bail for the juvenile. The bail rules in the Pennsylvania Rules of Criminal Procedure shall apply.

**Comment**

See Pa.Rs.Crim.P. 520 through 536.

If the juvenile cannot post bail, the judge should issue a commitment order so the juvenile may be detained in an adult prison.

**CHAPTER 4. ADJUDICATORY HEARING**

- 404. Prompt Adjudicatory Hearing.
- 406. Adjudicatory Hearing.
- 407. Acknowledgments.
- 408. Ruling on Offenses.
- 409. Adjudication of Delinquency.

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 et seq., the juvenile process is broken down into

several stages once a petition has been filed. First, the court is to hold an adjudicatory hearing, governed by Rule 406 or receive an acknowledgment from the juvenile of the offenses, governed by Rule 407. Second, after hearing the evidence or receiving an acknowledgment, the court is to rule on the offenses pursuant to Rule 408, stating with particularity the gradings and counts of each offense. Next, after ruling on the offenses or entering its findings, the court is to determine if the juvenile is in need of treatment, supervision, or rehabilitation pursuant to Rule 409. Finally, if the court finds that the juvenile is in need of treatment, supervision, or rehabilitation, the court is to hold a dispositional hearing as provided for in Rule 512 and is to enter a dispositional order under Rule 515.

**Rule 404. Prompt Adjudicatory Hearing.**

A. *Detained juvenile.* If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

B. *Non-detained juvenile.* If the juvenile is not detained, the adjudicatory hearing shall be held within a reasonable time.

**Rule 406. Adjudicatory Hearing.**

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner. The court may permit closing summaries.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of the parties;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

**Comment**

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

The court may allow the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, if unrepresented, in some or every case, to make closing summaries.

**Rule 407. Acknowledgments.**

A. *Acknowledgments.* At any time after a petition is filed, the juvenile may tender an acknowledgment of the facts, adjudication of delinquency, and/or disposition.

1) *Agreements.* If the juvenile, the attorney for the Commonwealth, and the juvenile probation officer agree with the terms of a tender of acknowledgment, the tender shall be presented to the court.

2) *Order.* If the court accepts a tender, an order of adjudication of delinquency and disposition may be entered.

3) *Withdrawal of acknowledgment.*

a) If the court does not accept the tender, the case shall proceed to the next stage of the proceedings as if no tender had been made.

b) An acknowledgment cannot be withdrawn after the court enters the disposition order.

B. *Incriminating statements.* An incriminating statement made by a juvenile in the discussions or conferences incident thereto an acknowledgment shall not be used

against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

#### Comment

Under paragraph (A)(3), if the disposition agreed upon by the juvenile, the attorney for the Commonwealth, and the juvenile probation officer is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

Under paragraph (B), any acknowledgments made by the juvenile may not be used against the juvenile in any proceeding.

The court may allow the juvenile to acknowledge an adjudication of delinquency without an adjudicatory hearing if: 1) the acknowledgment of the charge(s) is in writing; 2) the juvenile has spoken with an attorney; 3) the court asks the juvenile if he or she understands what he or she is doing and if the juvenile understands the nature of the offenses; 4) the court asks the juvenile if he or she has any questions about acknowledging the facts or delinquency based upon the charges; 5) the court feels, upon talking with the juvenile, that he or she is making a knowing, intelligent and voluntary decision; 6) the court asks the guardians if they have talked to their child about acknowledging the facts or delinquency; 7) the court finds there is a factual and legal basis for the acknowledgment; and 8) the court feels the juvenile understands the disposition that could be imposed.

#### Rule 408. Ruling on Offenses.

A. Within seven days of hearing the evidence on the petition or accepting an acknowledgment under Rule 407, the court shall enter a finding by specifying which, if any, offenses, including gradings and counts thereof, alleged in the petition were committed by the juvenile.

B. If the court finds the juvenile did not commit the alleged delinquent acts, the court shall dismiss the charges and release the juvenile, if detained.

C. If the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409.

#### Rule 409. Adjudication of Delinquency.

A. *Adjudicating the juvenile delinquent.* Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, and rehabilitation.

1) If the court determines that the juvenile is not in need of treatment, supervision, and rehabilitation, jurisdiction shall be terminated and the juvenile shall be released, if detained.

2) If the court determines that the juvenile is in need of treatment, supervision, and rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.

#### B. Timing.

1) If the juvenile is in detention, the court shall hold the hearing and make its finding within twenty days of the ruling on the offenses under Rule 408.

2) If the juvenile is not in detention, the court shall hold the hearing and make its finding within sixty days of the ruling on the offenses under Rule 408.

C. *Extending Time of Hearing by Agreement.* The time restrictions under paragraphs (B)(1) and (B)(2) may be extended if there is an agreement by both parties.

#### Comment

Under paragraph (A), absent evidence to the contrary, evidence of the commission of acts that constitute a felony is sufficient to sustain a finding that the juvenile is in need of treatment, supervision, and rehabilitation. See 42 Pa.C.S. § 6341(b).

For dispositional hearing procedures, see Chapter Five.

This rule addresses adjudicating the juvenile delinquent or releasing the juvenile from the court's jurisdiction. This stage is different from finding the juvenile committed a delinquent act under Rule 408.

### CHAPTER 5. DISPOSITIONAL HEARING

#### PART A. SUMMONS AND NOTICES OF THE DISPOSITIONAL HEARING

500. Summons and Notices of the Dispositional Hearing.

#### PART B. DISPOSITIONAL HEARING AND AIDS

510. Prompt Dispositional Hearing.

512. Dispositional Hearing.

513. Aids in Disposition.

515. Dispositional Order.

516. Service of the Dispositional Order.

#### PART C. INTER-STATE TRANSFERS OF DISPOSITION

520. (Reserved).

521. (Reserved).

#### PART A. SUMMONS AND NOTICES OF THE DISPOSITIONAL HEARING

##### Rule 500. Summons and Notices of the Dispositional Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.

B. *Notices.* The court shall give notice of the dispositional hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notices procedures of Rule 114 shall be followed.

#### Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

#### PART B. DISPOSITIONAL HEARING AND AIDS

##### Rule 510. Prompt Dispositional Hearing.

A. *General rule.* If the juvenile is detained, the dispositional hearing shall be held no later than twenty days after the adjudication of delinquency.

B. *Continuances.* The dispositional hearing may be continued, if necessary, for additional periods not to exceed twenty days each.

#### Comment

Under paragraph (B), if there is a continuance, the court should review the juvenile's case every twenty days until there is a final dispositional order.

See 42 Pa.C.S. § 6341(b).

**Rule 512. Dispositional Hearing.**

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive all evidence helpful in determining the questions presented, including oral and written reports, and relied upon to the extent of its probative value even though not otherwise competent in the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to speak.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of the parties;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

**Comment**

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

**Rule 513. Aids in Disposition.**

A. *Social Study.* The court may order the preparation of a social study in any case in determining disposition.

B. *Examinations.* The court may order the juvenile to undergo psychological, psychiatric, drug and alcohol, or any other examination, as it deems appropriate to aid in the decision for disposition.

C. *Victim-Impact Statement.* The victim may submit a victim-impact statement to the court. If the victim has submitted a victim-impact statement, the court shall accept and consider the victim-impact statement in determining disposition.

**Comment**

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposition or need of treatment, supervision, and rehabilitation. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

Paragraph (C) addresses a statement submitted by the victim to the court. For the victim's opportunity to be heard, see Rule 512(A)(2). See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

**Rule 515. Dispositional Order.**

A. *Generally.* When the court enters a disposition, the court shall issue a written order including:

- 1) the terms and conditions of the disposition;
- 2) the name of any agency or institution that the court is ordering to provide care, treatment, supervision, or rehabilitation of the juvenile;
- 3) the date of the order; and
- 4) the signature and printed name of the judge entering the order.

B. *Restitution.* If restitution is ordered in a case, the dispositional order shall include:

- 1) a specific amount of restitution to be paid by the juvenile;
- 2) to whom the restitution is to be paid; and

3) a payment schedule, if so determined by the court.

C. *Guardian participation.* The court shall include any obligation in its dispositional order imposed upon the guardian.

**Comment**

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. § 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

**Rule 516. Service of the Dispositional Order.**

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the attorney for the Commonwealth;
- 5) the juvenile probation officer;
- 6) any agency directed to provide treatment; and
- 7) any other person as ordered by the court.

**PART C. INTER-STATE TRANSFERS OF DISPOSITION**

520. (Reserved).

521. (Reserved).

**CHAPTER 6. POST-DISPOSITIONAL PROCEDURES****PART A. SUMMONS AND NOTICES**

600. Summons and Notices of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

**PART B. MODIFICATIONS, REVIEWS, AND APPEALS**

605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.

610. Dispositional and Commitment Review.

612. Modification of Dispositional Order: Probation Revocation.

613. Termination of Court Supervision.

616. (Reserved).

617. (Reserved).

**PART A. SUMMONS AND NOTICES****Rule 600. Summons and Notices of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.**

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

B. *Notices.* The court shall give notice of the hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney;
- 3) the juvenile probation office; and
- 4) the placement facility staff, if the juvenile is in placement.

C. *Requirements.* The general summons and notices procedures of Rule 114 shall be followed.

### Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

### PART B. MODIFICATIONS, REVIEWS, AND APPEALS

#### Rule 605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.

A. A juvenile may be detained for a modification of a dispositional order or a violation of probation by:

- 1) the filing of a motion for modification of the dispositional order;
- 2) the anticipated filing of a motion for modification of the dispositional order within twenty-four hours of the juvenile's detention; or
- 3) the filing of a motion alleging probation violations.

B. The court shall adhere to the detention, notice, time, and manner of hearing provisions of Rules 240, 241 and 242.

#### Rule 610. Dispositional and Commitment Review.

##### A. *Dispositional Review Hearing.*

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, the court shall give all parties notice of the request and an opportunity to be heard.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* If all parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

### Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court should have a hearing at least every six months.

Paragraph (B) includes, but is not limited to, requests: 1) to transfer a juvenile to a lesser-restrictive facility; 2) to transfer the juvenile to a more secure facility for failing to adjust; 3) to change a probationary term; and 4) to modify disposition for another reason.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all parties present in the courtroom.

#### Rule 612. Modification of Dispositional Order: Probation Revocation.

A. *Filing.* A motion to modify disposition or revoke probation shall be filed in accordance with Rule 345.

##### B. *Time of Hearing on the Motion.*

- 1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.
- 2) If the juvenile is not detained, the hearing on the motion shall be held promptly.

C. *Modification.* If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.

### Comment

A juvenile should be afforded minimal requirements of due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). A juvenile's probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

For detention procedures under paragraph (A), see Rules 240 through 243.

This rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

For dispositional orders, see Rule 515.

#### Rule 613. Termination of Court Supervision.

A. *Notice.* When the juvenile has completed the terms of the dispositional order, the juvenile probation officer shall move for the termination of the court's supervision by filing a motion. The motion shall set forth:

- 1) The juvenile has completed the terms of the court's dispositional order;
- 2) Restitution, fines, and costs have been paid in full; and
- 3) The juvenile has not committed any new offenses in which a criminal proceeding or proceeding governed by the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may be commenced.

B. *Objection.* Any party may object to the motion under paragraph (A) and request a hearing. Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.

C. *Hearing.* If objections have been made under paragraph (B), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

D. *Termination.* When the requirements of paragraphs (A) through (C) have been met and the court is satisfied that the juvenile has carried out the terms of the dispositional order, the court may discharge the juvenile from its supervision.

#### Comment

For procedures on motions, see Rule 344. For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352.

Under paragraph (A)(2), see 42 Pa.C.S. § 9728 for collection of outstanding restitution.

**Rule 616. (Reserved).**

**Rule 617. (Reserved).**

### CHAPTER 8. SUSPENSIONS

800. Suspensions of Acts of Assembly.

**Rule 800. Suspensions of Acts of Assembly.**

All Acts of Assembly shall be suspended to the extent that they are inconsistent with these Rules.

#### EXPLANATORY REPORT

##### History of the Committee

The amendments to the Juvenile Act, 42 Pa.C.S. § 6301, et seq., passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. The juvenile court as a result must balance the: 1) needs of the victim, 2) community safety and protection, and 3) accountability of the juvenile. Because the Juvenile Act now provides for the "automatic" transfer to adult court for prosecution for serious offenses, open proceedings in juvenile court, the extension of juvenile pre-adjudicatory detention, and a Victim's Bill of Rights, there was an imperative need for the creation and ongoing review of statewide rules of procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee (hereinafter "Committee") on January 22, 2001. This nine-member advisory Committee to the Court, drawn from members of the bench and bar across Pennsylvania, was charged with the responsibility for conducting a formal review of procedural practice in juvenile court and with developing a comprehensive set of statewide rules for the Court's consideration.<sup>1</sup> The Committee decided that its first task would be to develop rules for delinquency cases only, temporarily setting aside consideration of the dependency jurisdiction of the juvenile court. The Committee will consider rules for dependency in the near future.

#### Process of Rule-Drafting

The Committee surveyed local practices across this Commonwealth by speaking with judges, masters, law

enforcement officials, juvenile probation officers, court administrators, district attorneys, public defenders, and private defense attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301, et seq., the Pennsylvania Rules of Criminal Procedure, the Juvenile Court Judges' Commission Juvenile Court Standards, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and disposition of juveniles.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "written allegation" to describe the document that is completed by a law enforcement officer when an act of delinquency is committed. This document has been commonly labeled "probable cause affidavit," "complaint," "police papers," "charge form," or "allegation of delinquency" and is already submitted in most judicial districts. When juvenile courts are automated, common language will be even more important.<sup>2</sup>

#### The Rules Generally

The Committee has presented the rules in an order that tracks the juvenile system from beginning to end. Chapter One sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Two deals with the commencement of proceedings and the procedures when a juvenile is arrested and detained in a detention facility. Chapter Three provides for the procedures on venue and jurisdiction, intake and informal adjustment, the filing of a petition, discovery, motions, summons and notices, consent decree, preservation of testimony and evidence, and transfer for criminal prosecution. Chapter Four sets forth the adjudicatory hearing procedures. Chapter Five provides for the procedures for the dispositional hearing. Finally, post-dispositional procedures, including modifications, reviews, and appeals are provided for in Chapter Six.

In these rules, the Committee has proposed several terms of general application. We use the term "juvenile" to describe a child in the juvenile court delinquency process. The Committee considered "child," "minor," "delinquent," and "juvenile" as appropriate terms. After careful thought and consideration, the Committee chose "juvenile," reasoning the intent is not to presume the person to be a delinquent or an innocent child, so the least controversial term is "juvenile." In fact, the name of the court is "juvenile court" and the probation officers are called "juvenile probation officers."

The Committee uses the term "attorney for the Commonwealth" instead of district attorney because occasionally, the Attorney General's office is involved in delinquency cases. When the Committee is referring to the elected District Attorney, we use the term "District Attorney," and when referring to the District Attorney's staff or the Attorney General's staff, we use the term "attorney for the Commonwealth."

<sup>1</sup> The Court's responsibility for prescribing general rules governing practice and procedure, and the conduct of all courts and district justices is derived from PA. CONST. art. V § 10(c) and the Judicial Code, 42 Pa.C.S. § 1722.

<sup>2</sup> The Supreme Court is developing a statewide Common Pleas Case Management Project that will automate the common pleas courts. The first phase of this project is the automation of the criminal division.

The Committee uses the term “guardian” throughout the rules to describe “parent,” “guardian,” “custodian,” “foster parent,” “temporary guardian,” or any other person having custody of the juvenile to simplify what we call the many individuals who serve as this interested adult.

Finally, there are some additional procedural areas the Committee believes may necessitate statewide procedural rules. We have reserved consideration of these for later discussion, and have not included them in this initial set of rules that will be recommended to the Supreme Court. Rules that may be developed at a later date include, for example, Rule 119 (Open Proceedings), Rule 384 (DNA Testing), Rule 520 (Transfer of Disposition and Supervision of Juvenile to Another State), Rule 521 (Disposition and Supervision of a Juvenile Received from Another State), Rule 616 (Post-Dispositional Procedures; Appeals), and Rule 617 (Release of a Juvenile Pending Appeal).

The following discussion highlights the major areas addressed in the Rules, but does not discuss every rule in the proposal.

### Chapter One

The general provisions are Rules 100–105. Business of courts is covered in Part A, Rules 110–125. Part B addresses counsel, Rules 130–132. Records are covered in Part C, Rules 140–163. Part D address masters in Rules 171–177.

#### General Provisions

##### Rule 100—Scope of Rules.

Rule 100 provides that these rules govern delinquency proceedings. At this time, these rules do not govern dependency procedures; however, this rule may be amended in the future to include procedures on dependents.

##### Rule 105—Search Warrants.

After careful thought and consideration, the Committee concluded that police officers should follow the same procedure for obtaining and executing search warrants whether the person or place being searched relates to a case that may involve an adult or juvenile offender. To simplify this procedure and keep the standards uniform, and because law enforcement officers are familiar with these procedures, the Committee has deferred to the Pennsylvania Rules of Criminal Procedure for the search warrant procedures.

#### PART A—BUSINESS OF COURTS

##### Rule 111—Local Rules.

So the Court and Committee are able to regulate and monitor local rules to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.), and to ensure that local practices do not inhibit the statewide practice of law, Rule 111 requires all local rules be vacated at the time these rules become effective. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repropulgate their rules after rekeying the rule numbers. See paragraph (B)(2) and Comment.

##### Rule 112—Continuances.

The Committee discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. See paragraph (B) and Comment.

##### Rule 118—Proceedings in Absentia.

The issue of whether a juvenile may be adjudicated in absentia generated a great deal of debate. Our surveys of the judicial districts revealed that in most cases, the juvenile is present for the proceedings. There are a few instances in which the juvenile would not be present, such as, fleeing from the courtroom to avoid prosecution. The Committee agreed that there may be times when it is appropriate to adjudicate a juvenile in absentia, but was concerned that, by providing for this, any time a juvenile did not appear at a hearing, the juvenile could be adjudicated in absentia. To safeguard against this possibility, the rule makes it clear that in absentia adjudications may only be conducted in those few cases where the juvenile willfully fails to appear or disappears. The rule also provides for the in absentia adjudication only in the discretion of the juvenile court judge, and that the judge can chose never to adjudicate a juvenile in his or her absence.

##### Rule 121—Guardian’s Presence.

Rule 121 provides that the guardian may accompany the juvenile to any proceeding. This rule also permits a guardian’s presence to be ordered when the guardian does not accompany the juvenile to the hearing. Under the Juvenile Act, the court may order the guardian to participate in the treatment, supervision, or rehabilitation of the juvenile, including, but not limited to, community service, restitution, counseling, treatment, and education programs. 42 Pa.C.S. § 6310. See also 42 Pa.C.S. § 6335(b), 6336.1.

#### PART B—COUNSEL

##### Rule 130—Attorney—Appearances and Withdrawals.

The Committee discussed at length the issue of duration of counsel. The Committee decided to follow the Rules of Criminal Procedure and the decision of *Douglas v. California*, 372 U.S. 353 (1963) and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969) by requiring counsel to remain in the case until final judgment, including any proceeding upon direct appeal.

From its surveys, the Committee learned that, in some counties, a juvenile does not have an attorney at the dispositional review or the review is continued because counsel is not present. The Committee discussed these divergent practices and concluded the interests of the juvenile are better served if counsel additionally stays in the case through the dispositional reviews because counsel would be familiar with the juvenile and the history of the case.

##### Rule 131—Assignment of Counsel.

The Committee discussed in detail whether every juvenile is in fact indigent. Local practices varied across the Commonwealth with a majority of judicial districts assigning counsel in every case. The phrase “without financial resources or otherwise unable to employ counsel” used in this rule covers every juvenile. The Committee understands that in some situations, the guardian and the juvenile would have a conflict of interest, and the guardian should not be relied upon to employ counsel in those situations. If a juvenile needs counsel, the court must assign counsel. Furthermore, nothing in this rule precludes the court from assessing the cost of counsel on the guardians, which is the current practice in some judicial districts.

##### Rule 132—Waiver of Counsel.

From our survey of local practices, we found that in most cases, the juvenile has counsel present although

waiver of counsel is permitted. The Committee debated whether waiver of counsel should be permitted and decided that this was a substantive right given to the juvenile and could not be taken away. The Committee is concerned about the juvenile's comprehension of the consequences of waiving the right to counsel so we have built into the Rule 132 Comment an extensive colloquy in order for the juvenile to knowingly, intelligently, and voluntarily waive this right with the suggestion that the court is to look at several factors when conducting this colloquy.

The Committee further debated whether an age restriction was appropriate. After discussion, we felt that this was a factor that could not be evenly weighed for every juvenile, but have included it as one factor the court should consider because the court is in the best position to determine what is appropriate in each case with a specific juvenile.

Finally, Rule 132 does not mandate the appointment of stand-by counsel, because, in most cases, the court will appoint stand-by counsel when it is appropriate.

### **PART C—RECORDS**

#### **Rule 156—Filings, Docket Entries, and Service of Court Orders and Notices.**

The Committee tried to anticipate the advances in technology by providing, as one method of service, service by facsimile transmission or other electronic means, if requested. See paragraph (B)(3).

#### **PART (C)(3)—EXPUNGING OR DESTROYING RECORDS**

The Committee considered including provisions on which cases may be expunged but, after extensive discussion, felt 18 Pa.C.S. § 9123 covered this area sufficiently.

#### **Rule 162—Expunging Juvenile Court Records.**

Rule 162 sets forth the motion procedure for expunging juvenile records. Paragraph (A) requires service on all the parties to ensure that every party is aware of a motion to expunge. Paragraph (B) provides for an answer within thirty days, a length of time we deemed reasonable to give the parties an opportunity to object to or agree with the motion. This time requirement is consistent with local practices.

### **PART D—MASTERS**

#### **Rule 171—Appointment to Cases.**

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice under paragraph (B). This prohibition is consistent with what we learned from our surveys; in the majority of the judicial districts, masters are not practicing in juvenile courts.

#### **Rule 172—Authority of Master.**

A major issue for the Committee concerned whether masters should be limited on the types of cases they should hear. After several discussions and reviewing the Juvenile Court Judges' Commission Juvenile Court Standards, the Committee felt that masters should hear only misdemeanors for preliminary, pre-adjudicatory, adjudicatory or dispositional hearings, and that the juvenile court judge should hear the more serious offenses and all felonies. In misdemeanor and felony cases, masters may hear detention hearings, detention review hearings,

shelter-care hearings, uncontested dispositional review hearings, or uncontested probation revocation hearings.

Paragraph (C) provides that at every hearing before the master, the juvenile should be informed of the right to a hearing before the judge. We included this provision here because we thought it made more sense to have a general requirement in one rule that applies across the board rather than including similar language in each rule for a specific hearing. See 42 Pa.C.S. § 6305(b).

#### **Rule 176—Master's Findings and Recommendation to the Judge.**

Paragraph (B) requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the local practices across the Commonwealth. This requirement will assist the attorney for the Commonwealth and the juvenile's attorney if they appeal the master's decision under Rule 177.

### **Chapter Two**

Part A, Rule 200 provides for the commencement of proceedings. Arrest Procedures are covered in Part B, Rules 210—221. For written allegation procedures, see Part C, Rules 231—233. Part D provides for pre-adjudicatory detention in Rules 240—243.

### **PART A—COMMENCING PROCEEDINGS**

#### **Rule 200—Commencing Proceedings.**

Rule 200 provides the methods of commencing proceedings in a case involving a juvenile. This rule deviates from the Juvenile Act in that the submission of a written allegation commences proceedings instead of the filing of a petition. See 42 Pa.C.S. § 6321(a)(3). The Committee developed this new terminology to clarify that commencing a proceeding does not necessarily imply formal court action; there are several steps in the processing of juvenile cases before a petition is ever filed. Thus, the written allegation procedures reflect what occurs in actual practice whereby a case is processed before a petition is ever filed. Under this rule, once a written allegation has been submitted, the juvenile probation officer must determine if the allegations are within the jurisdiction of the juvenile court and if it is appropriate to schedule an intake conference to determine if the case can be resolved by informal court action, such as, informal adjustment, or if formal court action is necessary by the filing of a petition. See Rules 310—312. Under the Juvenile Act, once a petition is filed, informal adjustment is precluded.

The Juvenile Act provides that the taking into custody is a method for commencing proceedings. See 42 Pa.C.S. § 6321(a)(2.1). The Juvenile Act provides five methods of taking into custody. See 42 Pa.C.S. § 6324. This rule incorporates the commencement of proceedings for taking into custody pursuant to the laws of arrest only. See 42 Pa.C.S. § 6324 (2). The other provisions of taking into custody under 42 Pa.C.S. § 6324 (1), (3), and (4) provide for the taking into custody of dependent children; therefore were omitted from this rule. The Committee understands that these provisions may also apply to delinquent children; however, the taking into custody for those reasons alone should not commence delinquency proceedings.

Proceedings have already been commenced for juveniles who have violated their probation; therefore, Rule 605 provides for detaining juveniles for violations of probation under 42 Pa.C.S. § 6324 (5).

In addition, proceedings have already been "commenced" for juveniles under this rule in paragraphs (3),

(4), and (5); however, this is the method for commencing those proceedings in juvenile court in delinquency proceedings within a judicial district.

## **PART B—ARREST PROCEDURES IN DELINQUENCY CASES**

### **Rules 210—220.**

The Committee agreed that the requirements for requesting and executing an arrest warrant in cases involving a juvenile should apply in the same manner as they apply for adults except that the guardian of the juvenile should be notified as to the juvenile's whereabouts. Additionally, because there is no bail in juvenile cases, the juvenile may be released to the care of a guardian, may come before the juvenile court, or may be sent to a juvenile detention facility.

### **Rule 212—Duplicate and Alias Warrants of Arrest.**

The Committee agreed that the courts could assess costs of the warrant; however, we realized that the juvenile might not have the resources to pay this fee. The court will have to evaluate each case independently, and may consider whether there is a court program to allow the juvenile to earn money, whether the juvenile is employed, whether the guardian should be held responsible, and other similar factors in deciding whether and how much of the costs to access.

## **PART C—WRITTEN ALLEGATION PROCEDURES**

### **Rule 231—Written Allegations.**

Submission of a written allegation is not a new procedure. A written allegation is the document submitted to the juvenile probation office by the law enforcement officer, and in a rare case, by a private citizen, that alleges a juvenile has committed an act of delinquency.

In several counties, the District Attorneys are currently requiring the allegation to be approved by their office. To allow this practice to remain and also to keep law enforcement apprised of this requirement, paragraph (B) requires the District Attorney to file a certification, stating which cases should be submitted to their office for prior approval, with the court of common pleas in their judicial district. The court should notify all law enforcement officials in their judicial district of this requirement.

The Committee discussed whether the juvenile probation officer should receive a copy of the written allegation whether or not it was approved. Because there may be instances when it is necessary for the probation office to know about a case, the Committee agreed that the juvenile probation officer should receive a copy of the written allegation, such as there might not be sufficient grounds for the allegation of delinquency, but the act could be a violation of the juvenile's probation. See paragraphs (C) and (D).

### **Rule 232—Contents of Written Allegation.**

The Committee found from its surveys that several counties transform their written allegation into the delinquency petition. To help facilitate this common practice, the Committee tracked the requirements of the written allegation closely with the contents of the petition. Compare Rule 232 with Rule 330 (C). Two additional requirements are mandated for the petition. See Rule 330 (C)(11)—(12).

### **Rule 233—Approval of Private Written Allegation.**

Consistent with the provisions of 42 Pa.C.S. § 6334, the rules allow any person to commence a juvenile proceeding by filing a written allegation; however, pursu-

ant to Rule 330(B) only the attorney for the Commonwealth or the juvenile probation officer may file a petition. The Committee believes that when the person filing a document alleging a juvenile committed a delinquent act is a private citizen, they should follow the same process and proceedings as probation officers and law enforcement officers; private citizens should not be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of this change is to not preclude informal court action in cases submitted by private citizens. The purpose of the Juvenile Act is achieved by providing an avenue for the private citizen to submit a written allegation and appeal a disapproval of the written allegation to the court. If the court overrules the disapproval, the court may order the juvenile probation officer or an attorney for the Commonwealth to proceed with the case in the same manner as any other case. See Comment to this rule.

## **PART D—PRE-ADJUDICATORY DETENTION**

### **Rule 240—Detention of the Juvenile.**

If the juvenile is detained and the attorney for the Commonwealth is seeking transfer of the case to criminal proceedings, the attorney for the Commonwealth must file notice of intent to transfer within the ten-day period as provided for in Rules 391 and 404. See Rule 391 discussion below.

### **Rule 242—Detention Hearing.**

Rule 242 requires that the petition be filed within twenty-four hours after the detention hearing. Although this is a change from the statutory requirement that a petition be filed within twenty-four hours of the juvenile's detention, the Committee believes this change is vital so that informal adjustment or other informal court action will not be precluded.

### **Rule 243—Detention Rehearings.**

The Committee has built in Rule 243 the requirement that a guardian submit an affidavit alleging he or she was not notified of the hearing. Paragraph (A) is designed to limit the number of re-hearings by the court but allow the guardian to be heard if requested.

## **Chapter Three**

Chapter Three addresses the pre-adjudicatory procedures. Part A encompasses venue and jurisdiction in Rules 300—302. Part B addresses intake and informal adjustment, Rules 310—313. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 330—336. For procedures following the filing of a petition, see Part D, Rules 340—364, including motions, service, summons, and notices. Consent decree procedures can be found in Part E, Rules 370—373. Part F, Rules 380—384 includes provisions on preservation of testimony and evidence. Finally, Part G addresses procedures for transfer to criminal prosecution from delinquency proceedings in Rules 390—396.

## **PART A—VENUE AND JURISDICTION**

### **Rule 300—Venue.**

There was substantial debate over this rule and whether a proceeding should be commenced in the juvenile's residential county, rather than only the county where the allegation occurred. The Juvenile Act provides for the commencement of proceedings in the county where the allegation occurred or the juvenile's residential county. See 42 Pa.C.S. § 6321(b). Notwithstanding the statutory provisions, our surveys revealed that in most cases, the proceedings are commenced in the county

where the allegation occurred. In view of this, we decided to follow the statute, but added a procedure that allows a motion for change of venue if there was a hardship on the juvenile recognizing that the court is in the best position to decide this issue and to be able to look at all the pertinent factors, including hardship.

**PART B—INTAKE AND INFORMAL ADJUSTMENT  
Rules 310—313.**

These rules lay out the informal court process. If a case is informally adjusted, no formal court action is sought and the case is dismissed. If it is determined that formal court action would be in the best interest of the public and the juvenile, a petition should be filed.

**Rule 311.**

During the surveys and Committee discussions, it was noted that the Victim's Bill of Rights does not give victims the right to participate in an intake proceeding; however, it gives the victims the right to comment on "disposition." If cases are being dismissed, informally adjusted or diverted, the victims should have the opportunity to give their opinion on the "disposition" of the case. To ensure compliance with this provision of the Victim's Bill of Rights, the Committee has developed a rule that will provide the attorney for the Commonwealth with notice of the outcome of an intake conference, i.e. informal adjustment. If the attorney for the Commonwealth feels the victim is aggrieved by the decision of the juvenile probation officer, the attorney for the Commonwealth may file a motion for review by the court.

**PART C—PETITION**

**Rule 330—Petition: Filing, Contents, Function.**

In the majority of judicial districts, the attorney for the Commonwealth or the juvenile probation officer files the petition. After extensive discussion, the Committee agreed to follow these local practices to the extent that the District Attorney of each county may chose to have the petition filed by an attorney for the Commonwealth by filing a certification with the court of common pleas.

Paragraphs two, three, eleven and twelve incorporate the provisions of Section 6334 of the Juvenile Act. Paragraphs four through seven set forth the allegations of delinquency with particularity. In addition to the Juvenile Act, compliance with due process standards requires that the petition set forth the allegation with particularity. *In re Gault*, 387 U.S. 1 (1967). Paragraphs one, nine and ten are essential because the petition is the official charging document and must be signed by the person filing it. Paragraph eight encompasses the statutory requirement that the law enforcement officer or the attorney for the Commonwealth note that laboratory services have been requested. 42 Pa.C.S. § 1725.3 This rule closely tracks the contents of the written allegation. See discussion of Rule 232 in this Report.

**PART D—PROCEDURES FOLLOWING THE FILING OF PETITION**

**Rule 340—Pre-Adjudicatory Discovery and Inspection.**

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information to the opposing party without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made.

**Rules 344—Motions and Answers.**

Rule 344 provides for motions and answers to be made either orally or in writing. Because of the time con-

straints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

**PART E—CONSENT DECREE**

**Rule 370—Consent Decree.**

The Committee discussed whether there should be rule procedures for consent decrees. We looked at whether the juvenile was a first time offender, whether specific charges would be prohibited from a consent decree disposition, whether the juvenile had to accept responsibility for the delinquent acts alleged, and some other minor issues. Ultimately, the Committee decided that the juvenile court is in the best position to look at each case independently and to decide if the case is appropriate for consent decree.

The Committee noted that if a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Commonwealth v. Szebin*, 785 A.2d 103 (Pa. Super. Ct. 2001). This is explained in the Rule 372 Comment.

**PART F—PRESERVATION OF TESTIMONY AND EVIDENCE**

**Rules 380—384.**

These rules provide for preservation of testimony and evidence. Masters may preside over these cases if they involve only misdemeanors. See Rule 172 on master's authority.

**PART G—TRANSFER FOR CRIMINAL PROSECUTION**

**Rule 390—Notice of Request for Transfer to Criminal Proceedings.**

The Committee noted and discussed that the Juvenile Act gives the juvenile the right to request transfer to criminal proceedings. For several reasons, the Committee was apprehensive about letting a fourteen year old make an inappropriate decision that could affect the rest of the juvenile's life. Because of this concern, the Committee explains in the Rule 390 Comment that the court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should make an inquiry to determine if the request has been knowingly, intelligently, and voluntarily made.

**Rule 391—Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.**

Local practices revealed that preparing for a transfer hearing can be a lengthy process and should not be handled quickly for the sake of swiftness over the welfare of the public or juvenile. Transfer social studies including psychological reports must be prepared. Taking these points into consideration, the Committee agreed the rule should provide that the juvenile may be detained for ten days and up to or on the tenth day, the attorney for the Commonwealth may file a notice of intent to transfer. The ten days allows the attorney for the Commonwealth to consult with the juvenile probation officer and other pertinent persons regarding transfer of the juvenile. The juvenile should normally have a transfer hearing within ten days of the filing of the notice of intent to transfer. However, the juvenile may be detained for one additional ten-day period if the requirements of paragraph (B)(1) are met. Thus, a juvenile may be detained for up to thirty days for a transfer hearing. If the juvenile requests a continuance under paragraph (B)(2), the juvenile may be detained longer than thirty days in ten-day intervals.

**Rule 394—Transfer Hearing.**

This rule requires a transfer hearing in all cases when a notice of request for transfer is filed.

Under paragraph (A), if the attorney for the Commonwealth does not meet the three-day requirement and the case has to be continued, the continuance would be counted against the Commonwealth.

When the transfer hearing is conducted following the juvenile's request for transfer, the court would still make its findings under paragraph (B) although the findings may have been conceded by the juvenile when requesting transfer.

#### **Rules 395—396.**

These rules provide that the Rules of Criminal Procedure apply to the transferred juvenile, and set forth the steps necessary to initiate the criminal prosecution.

### **Chapter Four**

Chapter Four addresses the procedures related to the adjudicatory hearing.

#### **Rule 404—Prompt Adjudicatory Hearing.**

The Committee discussed whether there should be a time limitation for having a hearing for non-detained juveniles. Our survey found that most juveniles are having hearings within six months. The Committee felt that this practice is reasonable; therefore, set no specific time limitation in the rule, other than a "reasonable time."

#### **Rules 406—409.**

These rules separate the stages of proceedings heard by the court. These stages may be consolidated into one hearing by the court as long as everyone is clear that the stages are separate and distinct. Rule 406 governs the adjudicatory hearing. Rule 407 provides for acknowledgments. See discussion of Rule 407 below. After the court has held an adjudicatory hearing or accepted an acknowledgment, the court is to rule on the offenses, stating with particularity the gradings and counts of each offense. Once the court has ruled on the offenses or entered its findings, the court is to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

#### **Rule 407—Acknowledgments.**

This rule reflects current local practices. There are procedures in some form in every judicial district that permit the court to allow the juvenile to acknowledge the facts, adjudication, or disposition rather than holding an adjudicatory hearing.

### **Chapter Five**

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notices in Rule 500. Rules 510—516 are covered in Part B addressing the dispositional hearing and aids in the disposition. Part C is reserved for inter-state transfer of disposition.

### **PART B—DISPOSITIONAL HEARING AND AIDS**

#### **Rule 512—Dispositional Hearing.**

The "one judge—one juvenile" philosophy that is sweeping our country was discussed by the Committee. We agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, the Rule 512 Comment points out that, if and when practicable, the same judge and master should hear all cases involving the same juvenile.

#### **Rule 513—Aids in Disposition.**

Our survey of local practices revealed that social studies or summaries are being prepared in two-thirds of the cases. Although the rule leaves the decision whether to have a social study prepared to the discretion of the court, in serious cases, the court should order the preparation of the study.

#### **Rule 515—Dispositional Order.**

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding. See the Rule 515 Comment.

From the Committee's surveys, we found that the courts' dispositional orders are not always clear concerning restitution. We therefore, included in paragraph (B) specific requirements concerning restitution.

In establishing the appropriate disposition, the court may exercise discretion within the limits of the Juvenile Act. *In re Frey*, 375 A.2d 459 (Pa. Super. Ct. 1977). The Legislature intended to give juvenile courts broad discretion in designing remedies to aid in the reformation of juvenile offenders. *Com. v. Russman*, 378 A.2d 459 (Pa. Super. Ct. 1977). Section 6310 of the Juvenile Act gives the court the power to order the guardians to participate in the disposition of the case for the juvenile through community service, restitution, counseling, treatment and education programs, as well as, other treatments. Paragraph (C) of this rule requires the court to include in its dispositional order any obligation imposed by the court upon the guardian. The guardians should receive a copy of the dispositional order for their obligation. See Rule 516.

### **Chapter Six**

This chapter provides for the post-dispositional procedures, including modifications, reviews, and appeals. Part A, Rule 600 provides for the summons and notices. Part B provides for modifications of the dispositional order, violations of probation, dispositional and commitment reviews, termination of court supervision, and appeals.

### **PART B—MODIFICATIONS, REVIEWS, AND APPEALS**

#### **Rule 605—Detaining Juvenile for Modification of the Dispositional order or Violation of Probation.**

The Committee felt that if a juvenile is detained for modification of the dispositional order or violations of probation, Chapter Two procedures should apply. The Committee's intent is that a hearing should be held within ten days unless the requirements of Rule 240(D) are met. Notice of the detention hearing is to be given to specified persons as provided in Rule 241, the juvenile should be informed of rights under Rule 242(A), the manner of hearing provisions of Rule 242(B) are to be followed, and the court is to find probable cause for modification of the dispositional order or violations of probation and that detention is warranted under Rule 242(C).

#### **Rule 610—Dispositional and Commitment Reviews.**

With advancement in technology, several judicial districts are now equipped with advanced communication technology. Reviewing cases by this method is widely accepted and has been used often in this Commonwealth. The Committee wanted to allow this technology to be used but ensure that due process of law was afforded to each party. The requirements of paragraph (C) will

ensure the juvenile's ability to communicate with counsel as if they were at the same location.

**Rule 613—Termination of Court Supervision.**

The current practice of terminating supervision of the juvenile when restitution, fines, and costs are still outstanding is inconsistent with this rule and the Juvenile

Act, 42 Pa.C.S. § 6352. Courts may change how they supervise juveniles in these situations but the case must be administratively kept open.

[Pa.B. Doc. No. 03-562. Filed for public inspection March 28, 2003, 9:00 a.m.]

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