

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Promulgating New Rule 118; No. 295 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining new Rule 118. The new rule provides the procedures generally authorizing a court or issuing authority to use two-way simultaneous audio-visual communication, which is a form of advanced communication technology (ACT), in criminal proceedings, and makes it clear there are certain proceedings in which the use of two-way simultaneous audio-visual communication would not be permitted. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 11th day of August, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 32 Pa.B. 2197 (May 4, 2002), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 795), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Rule of Criminal Procedure 118 is promulgated in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective September 1, 2003.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 118. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

- (1) preliminary hearings;
- (2) trials;
- (3) sentencing hearings;
- (4) parole, probation, and intermediate punishment revocation hearings; and
- (5) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

(B) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

(C) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

Comment

This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in

paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. See, e.g., Rule 602 Comment. Negotiated guilty pleas when the defendant has agreed to the sentence and probation revocation hearings are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

Within the meaning of this rule, counsel is present when physically with the defendant or with the judicial officer conducting the criminal proceeding.

This rule does not apply to preliminary arraignments (Rule 540), arraignments (Rule 571), or to search warrant (Rule 203) and arrest warrant (Chapter 5 Part B(3)) procedures.

This rule is not intended to preclude the use of advanced communication technology for the preservation of testimony as permitted by Rules 500 and 501.

See Rule 542 for the procedures governing preliminary hearings.

See Chapter 6 for the procedures governing trials.

See Chapter 7 for the procedures governing sentencing hearings.

See Rule 708 for the procedures governing revocation of probation, intermediate punishment, and parole.

The paragraph (A)(4) reference to revocation hearings addresses *Gagnon II*-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (*Gagnon I*).

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003.

Committee Explanatory Reports:

Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B. 4287 (August 30, 2003).

FINAL REPORT¹

New Pa.R.Crim.P. 118

Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings

A. Introduction

On August 7, 2003, effective September 1, 2003, upon the recommendation of the Criminal Procedural Rules

¹ The Committee's Final 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 Committee's explanatory Final Reports.

Committee, the Court promulgated new Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). The new rule provides the procedures generally authorizing a court or issuing authority to use two-way simultaneous audio-visual communication, which is a form of advanced communication technology (ACT),² in criminal proceedings, and makes it clear there are certain proceedings in which the use of two-way simultaneous audio-visual communication would not be permitted.

B. Background

Over the past several years, the Committee has been monitoring the use of ACT in criminal proceedings in Pennsylvania, and the need to include in the Criminal Rules provisions that specifically permit its expanding use as well as specifically limit its use in certain criminal proceedings. In developing its proposals concerning ACT, the Committee has focused on its belief that the implementation of provisions for the use of ACT in criminal proceedings furthers the goals of 1) achieving statewide uniform procedures in criminal proceedings, 2) providing quick and efficient administration of justice, and 3) bringing convenience to the parties.³ During the development of these proposals, through various communications to the Committee from AOPC Staff, Common Pleas Court Management System staff (CPCMS), and members of the bench and bar, we became aware that the uses of ACT are expanding rapidly throughout Pennsylvania. To confirm these "reports" and to learn of the ways ACT is being used in the judicial districts, the Committee conducted a survey of the president judges concerning their uses of ACT,⁴ and learned that, in those judicial districts that have ACT capabilities, its uses are rapidly expanding to include all types of criminal proceedings. Several other president judges who perceive a need to use ACT are 1) reluctant to invest the resources in ACT until the Criminal Rules provide guidance for its use, or 2) not using ACT because of concerns about the "face to face" constitutional provision.⁵ In view of the survey responses and the general communications concerning when ACT should be used in criminal proceedings, the Committee agreed that it is imperative to have a general rule governing the use of ACT in all criminal proceedings.⁶

The Committee, in favor of encouraging the use of ACT generally, and recognizing the need to pursue a general rule, was concerned on the one hand about the implications of having certain criminal proceedings, including, inter alia, preliminary hearings, trials, and sentencing hearings, conducted by using ACT, and concerned on the other hand about protecting the defendant's rights, including the defendant's participation in the defense of his or her case and access to defense counsel. The Committee agreed that, when the criminal proceeding is one that requires rigid protection of the defendant's rights and the integrity and fairness of the judicial process, any rules addressing this type of procedure must be one capable of providing two-way simultaneous audio-visual communica-

tion, and allow for confidential communications between the defendant and defendant's counsel.

The Committee also agreed the scope of new Rule 118 should be broad enough to cover all types of hearings. In addition, when developing the procedures for the new rule, the Committee agreed that the proposed new rule should preserve the status quo, i.e., the new rule should not create nor abridge existing rights of the defendant to appear at a criminal proceeding; rather the new rule merely should be permissive of the use of two-way simultaneous audio-visual communication in criminal proceedings. The Committee recognized that the rule also should not alter a defendant's right to effectively waive his or her right to be present at a hearing, nor address whether the parties must agree to its use. Finally, the Committee agreed that although the scope of the new rule should be broad, the rule should be clear that in those criminal proceedings in which the use of two-way simultaneous audio-visual communication would not be appropriate, no other form of ACT may be used to conduct the proceeding.

C. Discussion of New Rule 118

New Rule 118 is divided into three paragraphs. Paragraph (A) provides the general rule that a court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding. Paragraph (A) also provides several enumerated exceptions to the general rule. These exceptions, which are the proceedings the Committee expressed serious concerns about the defendants' rights to be physically present, are (1) preliminary hearings, (2) trials, (3) sentencing hearings, (4) parole, probation, and intermediate punishment revocation hearings, and (5) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

Following the Committee's publication of our proposal for new Rule 118, some correspondents raised the question whether the new rule would permit a defendant to consent to having any proceeding, including those specifically listed as an exception in paragraph (A), conducted by using two-way simultaneous audio-visual communication. The Committee agreed with this point concerning the defendant's consent raised in the correspondence. Accordingly, paragraph (B) permits the defendant to consent to having any criminal proceeding conducted using two-way simultaneous audio-visual communication, including the proceedings in paragraph (A). The types of proceedings that require the defendant's consent are further clarified in the Comment.

Paragraph (C) makes it clear that when counsel for the defendant is present for the criminal proceeding, the defendant must be permitted to communicate fully and confidentially with him or her immediately prior to and during the proceeding. This language is consistent with the language included in the earlier ACT-related rule changes and recognizes the importance of the defendant's access to defense counsel, and the confidentiality of communications between the defendant and defense counsel, and allays our concerns about the defendant's ability to participate in his or her defense.

The Comment also:

1) highlights that the criminal proceedings contemplated by the rule require two-way simultaneous audio-visual communication;

2) makes it clear that the new rule is not intended to alter the right of a defendant to waive his or her presence at a criminal proceeding and provides examples concerning when the defendant's consent to having a criminal

² See Rule 103 (Definitions).

³ The Committee's first published proposals concerned providing the procedures for ACT in, inter alia, the rules governing preliminary arraignments, arraignments, search warrants, and arrest warrants. The Court adopted these rule changes on May 10, 2002, effective September 1, 2002. See 32 Pa.B. 2582 (May 25, 2002).

⁴ We received 41 responses to our survey: 17 judicial districts reported that they experimenting with ACT; 16 would like to begin to use ACT in criminal proceedings; and 8 report no plans nor needs for using ACT. Some judicial districts use ACT for a large number of criminal cases and a panoply of criminal proceedings. In many instances, funding was reported to be a problem, but the anticipation is that the judicial districts would achieve ACT capabilities and use it in the same way as the judicial districts already using ACT.

⁵ See PA. CONST. art. I, § 9.

⁶ We agreed the new rule should be Rule 118 in the general provisions chapter because of its application. We published the proposal at 32 Pa.B. 2197 (May 4, 2002).

proceeding conducted using two-way simultaneous audio-visual communication is required;

3) explains that the "counsel for the defendant is present" requirement is satisfied when counsel is physically with the defendant or with the judicial officer presiding over the criminal proceeding;

4) explains that the rule does not apply to preliminary arraignments and arraignments, or to search warrant and arrest warrant procedures, which are addressed in other rules;

5) makes it clear that the rule is not intended to preclude the use of ACT for the preservation of testimony as permitted by Rules 500 and 501; and

6) explains that the paragraph (A)(4) exception for revocation hearings addresses *Gagnon* II-type hearings, in which there may be a sentencing for a violation of the defendant's probation or parole, and not the *Gagnon* I-type hearings in which there only is a probable cause finding that a violation has occurred.

[Pa.B. Doc. No. 03-1689. Filed for public inspection August 29, 2003, 9:00 a.m.]

[234 PA. CODE CH. 4]

Order Amending Rules 403, 431 and 441, and Approving the Revision of the Comments to Rules 400, 409, 414, 424, 430, 454, 455 and 456; No. 296 Criminal Procedural Rules; Doc. No. 2

On August 7, 2003, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.Rs.Crim.P. 403 (Contents of Citation), 431 (Procedure When Defendant Arrested With Warrant), and 441 (Procedure Following Arrest Without Warrant), and approved the revisions of the Comments to Pa.Rs.Crim.P. 400 (Means of Instituting Proceedings in Summary Cases), 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), 430 (Issuance of Arrest Warrant), 454 (Trial in Summary Cases), 455 (Trial in Defendant's Absence) and 456 (Default Procedures: Restitution, Fines, and Costs). These rule changes clarify the procedures in summary cases when the defendant is under the age of 18 at the time a summary offense is committed, and make other correlative and conforming changes.

Order

Per Curiam:

Now, this 11th day of August, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 30 Pa.B. 5531 (October 28, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 759), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Rules of Criminal Procedure 403, 431, and 441 are hereby amended; and

(2) the revisions of the Comments to Rules of Criminal Procedure 400, 409, 414, 424, 430, 454, 455, and 456 are hereby approved

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 4. PROCEDURES IN SUMMARY CASES
PART A. Instituting Proceedings**

Rule 400. Means of Instituting Proceedings In Summary Cases.

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Comment

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The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving [juveniles] defendants under 18 years of age to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act [§§ 6302—6303], 42 Pa.C.S. §§ 6302[—], 6303, and 6326; Vehicle Code [§ 6303], 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

See Section 1522 of the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving [juveniles] defendants under 18 years of age.

Official Note: Previous Rule 51 adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes to the last two paragraphs of the Comment concerning the Juvenile Act and the rules published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART B. Citation Procedures

Rule 403. Contents of Citation.

(A) Every citation shall contain:

* * * * *

(3) a notation if the defendant is [a juvenile] under 18 years of age and whether the parents or guardians have been notified of the charge(s);

* * * * *

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

* * * * *

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

* * * * *
Comment
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Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

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Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004.

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART B(1). Procedures When Citation Is Issued to Defendant

Rule 409. Guilty Pleas.

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Comment

* * * * *

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303. For procedure upon default in payment of fine or costs, see Rule 456.

For procedure upon default in payment of fine or costs, see Rule 456.

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Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004.

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART B(2). Procedures When Citation Filed

Rule 414. Guilty Pleas.

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Comment

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When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of fine or costs, see Rule 456.

* * * * *

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004.

Committee Explanatory Reports:

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Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

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Comment

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When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority

must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of fine or costs, see Rule 456.

* * * * *

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Arrest Warrant.

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Comment

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When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue an arrest warrant as provided in paragraph (A)(1) and (2).

An arrest warrant may not be issued under paragraph (A)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

* * * * *

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. (6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

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Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Rule 431. Procedure When Defendant Arrested With Warrant.

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(D) When the defendant is taken before the issuing authority under paragraph (B)(4),

(1) the defendant shall enter a plea; and

(2) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

[(1)] (a) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, [in which event] and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial;

[(2)] (b) * * *

[(3)] (c) * * *

(3) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognition.

Comment

* * * * *

Delay of trial under paragraph (D)[(1)] (2)(b) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to the Juvenile Act instead of these rules.

* * * * *

Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; **amended August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes to paragraph (D) and Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART D(2). Arrests Without a Warrant

Rule 441. Procedure Following Arrest Without Warrant.

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(C) When the defendant has not been released from custody under paragraph (B), the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant [. The], and

(1) the defendant shall enter a plea.

(2) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, [The] the defendant shall be given an immediate trial unless:

[(1)] (a) * * *

[(2)] (b) * * *

(3) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

Comment

* * * * *

Delay of trial under [subparagraph] paragraph (C)(2)(b) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this [subparagraph] paragraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. See also Rules 408, 413, and 423.

On the defendant's right to counsel and waiver of counsel, see Rules [122 and 121] 121 and 122.

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Official Note: Rule 71 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001; **amended August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

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Comment

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When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Under paragraph (E)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

* * * * *

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; **January 1, 1986** effective [date] dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Rule 455. Trial in Defendant's Absence.

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Comment

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When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Paragraph (D) provides notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. See Rule 413(B)(3).

If the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defen-

dant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

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Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Rule 456. Default Procedures: Restitution, Fines, and Costs.

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Comment

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If the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Juvenile Act instead of these rules.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

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[When a "child" fails to pay a fine levied for a summary offense, notice of that fact must be certified by the court of common pleas and the Juvenile Act would then apply, rather than these rules. See 42 Pa.C.S. §§ 6302—6303.]

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may

impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules [122 and 121] 121 and 122 (dealing with the right to counsel).

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Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; **Comment revised August 7, 2003, effective July 1, 2004.**

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

FINAL REPORT¹

Proposed Amendments to Pa.Rs.Crim.P. 403, 431, and 441, and Revision of the Comments to Pa.Rs.Crim.P. 400, 409, 414, 424, 430, 454, 455, and 456

Summary Case Procedures When Defendant Is A Juvenile

I. Introduction

On August 7, 2003, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.Rs.Crim.P. 403 (Contents of Citation), 431 (Procedure When Defendant Arrested With Warrant), and 441 (Procedure Following Arrest Without Warrant), and approved the revisions of the Comments to Pa.Rs.Crim.P. 400 (Means of Instituting Proceedings in Summary Cases), 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), 430 (Issuance of Arrest Warrant), 454 (Trial in Summary Cases), 455 (Trial in Defendant's Absence) and 456 (Default Procedures: Restitution, Fines, and Costs). These rule changes clarify the procedures in summary cases when the defendant is under the age of 18 at the time a summary offense is committed, and make other correlative and conforming changes.

II. Background

One area of criminal practice that continues to be a source of confusion for the bench, bar, and minor judiciary concerns the handling of summary cases in which the defendant is under the age of 18 (a juvenile) at the time a summary offense is committed. The confusion arises from how the Juvenile Act, 42 Pa.C.S. § 6301 et seq., is interpreted, the interplay of Sections 6302, 6303, and 6326, and how these sections relate to the rules. Section 6302 defines "delinquent act," and paragraph (iv) of the definition specifically excludes "summary offenses unless the child² fails to comply with a lawful sentence imposed thereunder." Paragraph (a)(5) of Section 6303 (Scope of

¹ The Committee's Final 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 Committee's explanatory Final Reports.

² "Child" is defined, inter alia, as "an individual who is under the age of 18 years" or "is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years." 42 Pa.C.S. § 6302.

Chapter) provides the chapter will apply to "proceedings in which a child is charged with a summary offense arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed under the Act," and paragraph (b) limits the ability of a district justice to detain, commit, or sentence to imprisonment a defendant who is a juvenile for those offenses enumerated in Section 6302(2) other than summary offenses. Finally, Section 6326 (Release or Delivery to Court) provides for taking the child into custody, and the release of the child to his or her parents or guardian or for custody in certain limited circumstances.

Other than some cross-references to the Juvenile Act³, and the requirement in paragraph (A)(3) of Rule 403 (Contents of Citation) that the citation include a notation if the defendant is a juvenile and whether the parents or guardians have been notified of the charges, the Criminal Rules do not provide procedures for handling cases when the defendant is a juvenile, which also has contributed to the confusion. For example, the Committee has received several inquiries asking whether, when a defendant who is a juvenile fails to respond to a citation, the issuing authority should proceed pursuant to Rule 430 (Issuance of Arrest Warrant) and issue a warrant, and, if such a warrant is issued, how the issuing authority should proceed when the juvenile is apprehended. Others have asked whether the issuing authority should issue a warrant or the notice required by Rule 430(D) when a juvenile has failed to pay fines and costs, and how to accomplish the certification of the fact of the non-compliance as required by Section 6302 of the Act.

In view of the questions that continue to arise and the confusion about the interpretation of the Juvenile Act, the Committee agreed that the minor judiciary, the bar, law enforcement, and the criminal justice system in general would achieve great benefit if the Criminal Rules were amended to clarify the summary case procedures when the defendant is a juvenile, particularly when a warrant is issued.

III. Discussion

A. JUVENILE ACT-RELATED CHANGES

The Committee initiated this project by reviewing the Juvenile Act, 42 Pa.C.S. §§ 6301 et seq. As noted in the Comments to Rules 100 (Scope of Rules) and 400,⁴ the Criminal Rules apply to proceedings involving juveniles "only to the extent the Juvenile Act does not vest jurisdiction in the Juvenile Court." It is clear from Section 6302 (Definitions) that summary cases involving juveniles ordinarily are not within the scope of the Juvenile Act. Section 6302 provides, inter alia:

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"DELINQUENT ACT."

* * * * *

(2) The term shall not include:

³ See, e.g., the Comments to Rules 101 (Scope of Rules) and 400 (Means of Instituting Proceedings in Summary Cases).

⁴ The Comment to Rule 400 (Means of Instituting Proceedings in Summary Cases) includes cross-references to Sections 6302 and 6303 of the Act. In view of the other changes included in the package, the Committee agreed that a reference to Section 6326 should be added because of its provisions concerning detention of juveniles arrested in summary cases.

(iv) Summary offenses, unless the child fails to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court.⁵

The confusion the correspondents noted arises because of several other provisions of the Act. Section 6303 (Scope of Chapter), paragraph (b), provides, inter alia:

(b) Minor Judiciary.—No child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary unless the child is charged with an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in Section 6302 (relating to definitions).⁶

Because this provision makes specific reference to paragraphs that are excluded from the definition of "delinquent act," but does not refer to the exclusion of summary offenses in paragraph (2)(iv), this provision has been interpreted as meaning that the minor judiciary may not sentence a juvenile in a summary case to imprisonment, nor may they detain these juveniles.

On the other hand, Section 6324 (Taking into custody) provides that a child may be taken into custody (1) pursuant to an order of the court under this chapter and (2) pursuant to the laws of arrest, and Section 6326 (Release or delivery to court) provides, inter alia,

(a) General rule—A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:

(1) notify the parent, guardian or other custodian of the apprehension of the child and his whereabouts;

(2) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 6325 (relating to detention of child); or

(3) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

(b) Detention in police lockup generally prohibited—Unless a child taken into custody is alleged to have committed a crime or *summary offense* or to be in violation of conditions of probation or other supervision following an adjudication of delinquency, the child may not be detained in a municipal police lockup or cell or otherwise held securely within a law enforcement facility or structure which houses an adult lockup.

(c) Detention in police lockup under certain circumstances—A child alleged to have committed a crime or *summary offense* or to be in violation of conditions of probation or other supervision following an adjudication of delinquency *may be held securely in a municipal police lockup or other facility which houses an adult lockup only under the following conditions:*

(1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing

⁵ "Court" is defined by the Act as "court of common pleas."

⁶ Paragraph (2)(i)-(iii) and (v) pertains to murder and the enumerated crimes committed by a defendant 15 years and older that would be tried in adult court.

or transferring the child to a parent, guardian, other custodian, or juvenile court or county children and youth official, or to a shelter care or juvenile detention center;

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

(3) if so held, a child 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.

(emphasis added)

In evaluating these two provisions, the Committee observed the provision permitting a child to be taken into custody pursuant to the laws of arrest could be interpreted as encompassing the Criminal Rules, and the provision in Section 6326(c) that does permit a juvenile in a summary case to be taken into custody also could be interpreted as encompassing the Criminal Rules. Notwithstanding these interpretations of the Act, the Committee noted the continuing confusion among law enforcement officers and members of the minor judiciary concerning how to proceed in a summary case when a defendant who is under the age of 18 is subject to an arrest.

After reviewing these provisions of the Act and the concerns raised by the correspondents, the Committee agreed the rules should be amended to provide clarification about how to proceed in summary cases when the defendant is under the age of 18, thereby providing guidance in the rules for the minor judiciary, the bar, and law enforcement officers.

(1) *Failure to Comply with Lawful Sentence*⁷

Rule 430(C) permits an arrest warrant to be issued when a defendant fails to pay the fines and costs. Rule 430(D) requires that, before the warrant is issued for failure to pay, a notice of the default must be sent to the defendant. This notice requirement was added to the rules in 1997 to give the defendant notice of the consequence of failing to pay the fines and costs, and to give the defendant a 10-day window of opportunity to comply before the warrant is issued. The Committee decided that it made sense in cases involving a juvenile to provide comparable safeguards, which have been incorporated into the seventh paragraph of the Rule 430 Comment. The change explains what the issuing authority is to do when a defendant is under the age of 18 at the time he or she fails to pay the fine and costs: the issuing authority is to give the 10-day notice provided by the rule, but the notice would advise the defendant that failure to pay or appear within the 10-day time period will result in a notice of the non-compliance being given to the court of common pleas rather than issuance of a warrant. The Committee agreed in these cases the notice also should be given to the defendant's parents, guardian, or other custodian, consistent with the other notice requirements of the Act. A comparable revision explaining the Act's certification requirement has been added to the Comment to Rule 431 (Procedure When Defendant Arrested with Warrant).

(2) *Failure to Respond to Citation*

Rule 430(A) requires when a defendant fails to respond that a warrant should be issued. An exception to this warrant requirement is set forth in Rule 403 (Contents of

Citation) for cases involving a violation of an ordinance or any parking offense. In these cases, a summons must be issued before a warrant, giving the defendant a second opportunity to respond. The Committee agreed, given the confusion about arresting juveniles in summary cases, that it makes sense to have a comparable exception apply to juveniles. Rule 403(B)(4)(a) has been amended by the addition of "or when the defendant is a juvenile," with a brief explanation of this change in the Comment to Rule 403. If the juvenile fails to respond to the summons, the case would proceed in the same manner as any summary case, and a warrant would be issued pursuant to Rule 430(A). This concept also is explained in a new second paragraph in the Rule 430 Comment.

(3) *Detention, Commitment, Sentences of Imprisonment*

The part of the Act that was the most complicated to address in the rules was the provision in Section 6303 that "no child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary . . . ," and the provision in Section 6324 that a child may be taken into custody pursuant to the laws of arrest.

(a) *Detention or Commitment*

Considering first the prohibition on detaining and committing a juvenile, the Committee noted the rules provide, as options in lieu of arresting a defendant in a summary case, for the payment of fines and costs or collateral, Rule 431(B), and for the prompt release of a defendant when certain criteria are satisfied following an arrest without a warrant, Rule 441(B). Because the rules give the police officers some options and do not mandate an arrest in every case, the Committee concluded nothing additional in the rules is necessary concerning these arrest procedures when a juvenile is involved.⁸

On the other hand, Rules 431(D) and 441(C) provide that the defendant, arrested with or without a warrant, be taken without unnecessary delay before the issuing authority for an immediate trial, and, in cases in which an immediate trial cannot be held, that the defendant be given an opportunity to deposit collateral for appearance on a new date. In order to avoid a possible conflict with the detention provisions of the Act, the Committee agreed when the defendant is under the age of 18, the defendant must be released promptly on his or her own recognizance. To accomplish this, Rule 431 has been amended by the addition of a new paragraph (D)(3) and Rule 441 has been amended by the addition of a new paragraph (C)(3), both requiring, in cases in which the juvenile cannot be given an immediate trial, that the issuing authority promptly give notice of the date and time for the summary trial to the defendant and defendant's parents, guardian, or other custodian, and release the juvenile on recognizance. The Committee believes the requirement of notice to the parents as well as the juvenile of the new date and time for the trial adds some insurance that the juvenile will appear.

(b) *Sentence to Imprisonment*

The second prong of the Section 6303 prohibition—no child shall be sentenced to imprisonment—presented the most difficulty for the Committee. As we reviewed the language of the Act, the members considered several possible interpretations for how to handle a summary case under the Act when it is determined there was a

⁸ The Committee, relying on the provision in Section 6324 that a child may be taken into custody pursuant to the laws of arrest, reasoned that it is appropriate for police officers to arrest defendants who are juveniles for summary offenses when the arrest is authorized by law. Furthermore, Section 6326(b) appears to authorize the police to take a defendant who is a juvenile into custody, albeit with a number of limitations.

⁷ For additional discussion concerning failure to pay, see Section 4 below.

likelihood of imprisonment and how this would work under the rules: (1) a summary trial would be conducted by the district justice but the sentence would be imposed in the common pleas court; (2) the trial would be conducted by the district justice only if the district justice determines there is no likelihood of imprisonment, and in these cases, the district justice would be prohibited from imposing a sentence of imprisonment; or (3) when the district justice determines there is a likelihood of imprisonment, the district justice would be required to send the entire matter to the common pleas court. The version of the proposal that the Committee published utilized the last option—sending the case to the common pleas court for the trial—because the Committee thought this option created the least confusion while ensuring no juvenile would be sentenced to imprisonment by a member of the minor judiciary.

In response to publication, the Committee received correspondence opposing the proposed changes that would require the district justice to forward a case to the common pleas court for disposition when the defendant is a juvenile and there is a likelihood of imprisonment, explaining that, in the opinion of the correspondents, the Court of Common Pleas has no authority to sentence a child to imprisonment. The correspondents noted “the Juvenile Act provides at 42 Pa.C.S. § 6352(b) that ‘A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences for adults convicted of a crime.’ Moreover, the residential facilities available to the Courts of Common Pleas can accept children for service in conjunction with the disposition of a case only if such children have been adjudicated dependent or delinquent.”

Other communications with the Committee revealed concerns about the Committee’s interpretation of this portion of the Act, particularly when considered together with the statutes imposing mandatory sentences of imprisonment in summary cases,⁹ and suggested, because it is likely that the juvenile is under the supervision of the Juvenile Court due to the DUI conviction, that the mandatory sentence of imprisonment for driving under suspension, DUI related cases should be sent to the common pleas court. The juvenile judge supervising the case would want to know as soon as possible that the juvenile has been charged with driving under suspension. The Committee agreed with this suggestion and modified the published proposal so the Comments to Rules 409, 414, 424, 454, and 455 explain when there is a mandatory sentence of imprisonment and the defendant is under 18 years of age, that the case must be sent to the common pleas court.

(4) *Age of Defendant at Time of Default*

Another issue that arose post-publication concerns how to handle a summary case when the defendant is under

⁹For example, the mandatory sentence of imprisonment for driving under suspension, DUI related cases required by 75 Pa.C.S. § 1543.

18 years of age when he or she is convicted of a summary offense, but is over 18 when he or she defaults on paying the fine, costs, or restitution. Based on the provisions of the Juvenile Act, 42 Pa.C.S. § 6302, which specifically excludes from the definition of “delinquent act” “summary offenses, unless the child fails to comply with a lawful sentence imposed there under, in which event notice of such fact shall be certified to the court,” the Committee concluded the age of the defendant at the time of the failure to pay, which is the event that determines whether the case is to be certified to the common pleas court, is the crucial factor. In these cases, because the defendant is no longer a juvenile/child (i.e., is not under 18 years of age) at the time of the failure to pay, the case would remain with the district justice to deal with the default. This point is clarified in the Comments to Rules 430, 455, and 456. Because the age of the defendant is the critical issue in these failure to pay cases, instead of using the phrase “a defendant who is a juvenile,” which was the published version, the Committee agreed to use the more specific phrase “defendant is under 18 years of age.” In addition, as a further clarification, these Comment provisions explain that when the defendant is under the age of 18, the case will proceed under the Juvenile Act, and if the defendant is 18 years or older when the default occurs, then the case proceeds under the Criminal Rules.

The Committee also agreed after reviewing the proposal relative to the issue concerning the age of the defendant when there is a default that the rules would be clearer if the references to “the juvenile” in all the rules were replaced with “defendant who is under 18 years of age.”

B. MISCELLANEOUS CHANGES

During the review of Rules 431 and 441, the Committee noted several other changes should be made to conform the rules with comparable provisions of Rule 454 and with each other. The changes to Rule 431(D)(1) and (D)(2) and Rule 441(C)(1) and (C)(2), which apply to all summary cases not just those involving juveniles, conform these rules with the provisions in Rule 454 to provide guidance to the minor judiciary about how to proceed when a defendant is brought before the issuing authority following an arrest either with or without a warrant. If a defendant is taken before an issuing authority, the defendant must enter a plea. If the defendant pleads guilty, the issuing authority imposes sentence, or, if the defendant pleads not guilty, the defendant is given an immediate trial.

Rule 431(D)(2)(a) has been amended by the addition of “not capable of proceeding” to be consistent with the comparable provision in Rule 441(C)(2)(a) that was amended in 1999 to make it clear that the district justice may decide not to conduct the trial immediately when a defendant is incapacitated in some way and not able to proceed with the trial.

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