

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

Order Amending Rule 462; Criminal Procedural No. 375; Doc. No. 2

### Order

*Per Curiam:*

Now, this 16th day of December, 2008, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration, 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 Rule of Criminal Procedure 462 is amended as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2009.

Mr. Justice Seamus P. McCaffery dissents.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 4. PROCEDURES IN SUMMARY CASES

#### PART F. Procedures in Summary Cases for Appealing to Court of Common Pleas for Trial De Novo

#### Rule 462. Trial De Novo.

\* \* \* \* \*

(F) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, **or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.**

\* \* \* \* \*

#### Comment

\* \* \* \* \*

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial de novo is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial de novo on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge **also** may [ **also** ] permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

\* \* \* \* \*

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from

the trial de novo. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

**Paragraph (F) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (relating to driving while operating privileges is suspended or revoked, but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial de novo at the time of sentencing.**

\* \* \* \* \*

**Official Note:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; **amended December 16, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

\* \* \* \* \*

NEW RULE 462:

\* \* \* \* \*

**Final Report explaining the December 16, 2008 amendments to permit the delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. (January 3, 2008).**

#### FINAL REPORT<sup>1</sup>

*Amendment to Pa.R.Crim.P. 462*

#### DELAY IN SENTENCING FOLLOWING TRIAL DE NOVO IN SUMMARY CASES

On December 16, 2008, effective February 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 462 to permit a common pleas court judge following a trial de novo in a summary case to delay sentencing to determine the defendant's eligibility for intermediate punishment.<sup>2</sup> These amendments conform the procedures in Rule 462 with the procedures in the summary case rules that were adopted by the Court on January 25, 2007 to permit a delay in sentencing following a guilty plea in a summary case or a summary trial for determination of the availability of intermediate punishment.

<sup>1</sup> 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.

<sup>2</sup> Mr. Justice Seamus P. McCaffery dissents.

Subsequent to the 2007 changes, the Committee discussed whether to add a comparable provision to the trial de novo rule, Rule 462, that would permit the common pleas judge to delay sentencing at the conclusion of the trial de novo in order to determine if the defendant is eligible for intermediate punishment. The Committee noted that Rules 409(C)(4), 414(C)(4), 424(C)(4), and 454(E), prior to the January 25th changes, required the sentence to be imposed at the time the plea is entered or at the conclusion of the trial with no provision for delaying imposition of sentence to determine eligibility for intermediate punishment. Similarly, Rule 462 requires, in the trial de novo following a summary appeal, that sentence be imposed at the time the verdict is announced in open court immediately upon the conclusion of trial. Although the Committee recognized that it is unlikely that a defendant who is accepted into summary intermediate punishment would appeal de novo, the members reasoned what is more likely is that a defendant, who did not receive intermediate punishment, for whatever reason, would appeal de novo. Furthermore, a common pleas judge also might be faced for the first time with a plea bargain of a guilty plea in exchange for receiving intermediate punishment.

A final consideration is that the question of eligibility for intermediate punishment could arise when the common pleas court determines, after the de novo trial, that the defendant is guilty and the judge or defendant seeks intermediate punishment for the first time. In this latter circumstance, the defendant would not have been prescreened prior to the trial de novo. Unless a jurisdiction addresses this situation through local practice, such as not permitting intermediate punishment if found guilty (rather than plead guilty) and always prescreening for eligibility prior to taking a negotiated plea, the situation could arise at common pleas similar to that faced by the magisterial district judges.

In view of these considerations, the Court amended Rule 462 to permit the trial judge following a trial de novo to delay sentencing until such time as a determination could be made as to the availability of intermediate punishment.

[Pa.B. Doc. No. 09-1. Filed for public inspection January 2, 2009, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

[ 237 PA. CODE CH. 16 ]

#### Proposed Modified Rule 1607

##### Introduction

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 1607 be adopted and prescribed. The proposed modified Rule 1607 provides that permanency hearings shall be conducted every 6 months in every case. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of the rule. 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,

A. Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Monday, February 2, 2009

By the Juvenile Court  
Procedural Rules Committee

FRANCIS BARRY MCCARTHY,  
*Chair*

### Annex A

#### TITLE 237. JUVENILE RULES

##### PART I. RULES

##### Subpart B. DEPENDENCY MATTERS

#### CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

##### PART B. PERMANENCY HEARING

#### Rule 1607. Regular Scheduling of Permanency Hearings.

A. *Thirty days.* The court shall conduct permanency hearings within thirty days of:

1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;

2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or

4) a motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. *Six months.* The court shall conduct a permanency hearing within six months of:

1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody or other disposition pursuant to Rule 1515; or

2) each previous permanency hearing until the child is [ returned to the child's guardian or ] removed from the jurisdiction of the court pursuant to Rule 1613.

##### Comment

See 42 Pa.C.S. § 6351(e)(3).

**Official Note:** Rule 1607 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1607 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

**EXPLANATORY REPORT***Rule 1607—Regular Scheduling of Permanency Hearing*

The proposed modified Rule 1607 provides for permanency hearings every six months in **every** case. It was brought to the Committee's attention that courts are not reviewing cases in which the child was not removed from the home or the child has been returned to the guardian but the dependency case has not been terminated pursuant to Rule 1613.

If a child is under the court's supervision and living at home, the court shall review those cases to see whether the situation that brought the child under the court's supervision has been resolved, whether the goals of the permanency plan are being met, and whether supervision continues to be necessary.

When the child has been removed from the home, the court shall continue to conduct permanency hearings and make findings consistent with 42 Pa.C.S. § 6351(f) and (f.1).

[Pa.B. Doc. No. 09-2. Filed for public inspection January 2, 2009, 9:00 a.m.]

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## Title 25—LOCAL COURT RULES

**BERKS COUNTY**

**Administrative Order Relative to Rule 507 of the  
Local Rules of Criminal Procedure; Prothonotary  
No. 08-104; Clerk of Courts No. CP-06-AD-  
0000025-2008**

**Order**

*And Now*, this 5th day of December, 2008, the District Attorney of Berks County hereby certifies that, pursuant to Pennsylvania Rule of Criminal Procedure, No. 507, the District Attorney is requesting that Rule 507 of the Local Rules of Criminal Procedure be amended to hereby require that the following charges also require the approval of an Attorney for the Commonwealth prior to filing. Accordingly, *It Is Ordered* that these additional charges are added as follows:

1. Title 18, Chapter 31, Subsection 3121—Rape.
2. Title 18, Chapter 31, Subsection 3122.1—Statutory Sexual Assault.
3. Title 18, Chapter 31, Subsection 3123—Involuntary Deviate Sexual Intercourse.
4. Title 18, Chapter 31, Subsection 3124.1—Sexual Assault.
5. Title 18, Chapter 31, Subsection 3124.2—Institutional Sexual Assault.
6. Title 18, Chapter 31, Subsection 3125—Aggravated Indecent Assault.

*It Is Hereby Ordered* that the criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an Attorney for the Commonwealth prior to filing.

This Order shall become effective January 2, 2009.

*By the Court*

JEFFREY L. SCHMEHL,  
*President Judge*

[Pa.B. Doc. No. 09-3. Filed for public inspection January 2, 2009, 9:00 a.m.]

**FAYETTE COUNTY**

**Compulsory Arbitration: Initiation, Scheduling,  
Hearings and Continuances; Civil Division; No.  
3864 of 2008**

**Order**

*And Now*, this 16th day of December, 2008, pursuant to Rule 239 of the Pennsylvania Rules of Civil Procedure, it is hereby ordered that the above-stated Local Rule 1303(a) is amended as set forth as follows.

The Prothonotary is directed as follows:

- (1) Seven certified copies of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.
- (2) Two certified copies of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (3) One certified copy of the Local Rule shall be sent to the State Civil Procedural Rules Committee.
- (4) One certified copy shall be sent to the Fayette County Law Library.
- (5) One certified copy shall be sent to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be continuously available for public inspection and copying in the Office of the Prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

This Local Rule shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

*By the Court*

CONRAD B. CAPUZZI,  
*President Judge*

**Rule 1303. Compulsory Arbitration: Initiation,  
Scheduling, Hearings and Continuances.**

(a) The Court Administrator shall designate the third and fourth Tuesday of each calendar month as arbitration day. In the event it conflicts with Criminal or Civil Court Trial Sessions, the Court Administrator shall designate an alternate date and advise all parties thereof.

[Pa.B. Doc. No. 09-4. Filed for public inspection January 2, 2009, 9:00 a.m.]

**VENANGO COUNTY**

**In the Matter of the Promulgation of Local Rules  
Criminal Procedure; MD. No. 81-2008**

**Order of the Court**

*And Now*, December 16, 2008, it is hereby *Ordered* and *Decreed* that Venango County Court of Common Pleas

Local Rules of Criminal Procedure 101, 102, 105, 106, 117, 118, 120, 122, 131, 131.1, 211, 507, 528, 528.1, 528.2, 536, 602, 700 and 904 are adopted. These rules shall be continuously available for public inspection and copying in the office of the prothonotary/clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary/clerk shall furnish to any person a copy of any local rule. The said local rules shall become effective and enforceable thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

*By the Court*

OLIVER J. LOBAUGH,  
*President Judge*

**V.C.R.Crim.P. 101. Construction.**

These rules shall be construed using the same rules of construction used in construing the Pennsylvania Rules of Criminal Procedure.

**V.C.R.Crim.P. 102. Citing the Local Rules of Criminal Procedure.**

These rules shall be cited as "V.C.R.Crim.P. \_\_\_\_."

**V.C.R.Crim.P. 105. Local Rules. Noncompliance.**

No case shall be dismissed nor request for relief granted or denied because of failure to comply with one or more of these local rules. In any case of noncompliance, the Court will alert the party to the specific provision at issue and will provide a reasonable time for subsequent compliance.

**V.C.R.Crim.P. 106. Continuance for Preliminary Hearings.**

(A) The court or issuing authority may, in the interest of justice, grant a continuance on its own motion, or on the motion of either party.

(B) A motion for continuance shall be filed on a form as provided by the Central Court Administrator.

(C) The Central Court Administrator shall have authority to grant or deny a motion for continuance filed prior to the date set for the preliminary hearing.

(D) The party requesting or opposing the continuance shall have the right to a review of the Central Court Administrator's decision by the issuing authority if there is an objection to the decision of the Central Court Administrator.

(E) The presiding Magisterial District Judge shall rule on any motion for continuance filed on the date scheduled for the preliminary hearing.

(F) On all cases continued, where the defendant is currently being held on bail, the presiding Magisterial District Judge or issuing authority shall review bail contemporaneously with the motion for continuance.

**V.C.R.Crim.P. 117. Continuous Availability of Issuing Authority.**

To ensure continuous availability of issuing authorities to provide the services required by the Pennsylvania Rules of Criminal Procedure, the following on-call system of coverage is established by local rule.

Each Magisterial District Judge (MDJ) shall be available to provide services for his or her judicial district on a 24 hour basis from Monday at 8:30 a.m. through Friday at 4:30 p.m.

After-hours coverage for the entire Twenty-Eighth Judicial District shall be from Wednesday at 8:30 a.m. through the following Wednesday at 8:30 a.m. Coverage

shall be by one MDJ that shall be determined on a rotating schedule to be distributed prior to the beginning of each calendar year.

If a MDJ will not be available at any time that he or she may otherwise be required to be available to provide services, the MDJ shall make arrangements with another MDJ to provide coverage during such period of unavailability. Notice of any change in coverage shall be sent/faxed to each police agency, the 911 Emergency Management Agency, and the Venango County Court Administrator.

For purposes of availability under Pennsylvania Rule of Criminal procedure 431(c), Bench Warrants, during regular business hours (8:30—4:30, Monday through Friday), the issuing authority shall determine availability to conduct a bench warrant hearing. After regular business hours, or if the issuing authority is unavailable to conduct a bench warrant hearing during regular business hours, the case shall proceed as if it were a court case in accordance with the procedures set forth in Pa.R.Crim.P. 150.

**V.C.R.Crim.P. 118. Use of Two-Way Simultaneous Advanced Communication Technology in Criminal Proceedings.**

(A) The issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding authorized by Pa.R.Crim.P. 118.

(B) For Preliminary Arraignments on arrest without warrant, the arresting agency shall fax a signed copy of the criminal complaint along with the bail questionnaire to the issuing authority. The issuing authority shall prepare all necessary documents and fax them to the arresting agency. The defendant shall be provided a copy of all documents. The video-conference call shall then be conducted between the defendant and the issuing authority. The arresting agency shall deliver to the issuing authority the original signed criminal complaint the next business day.

(C) For Preliminary Arraignments on arrest with a warrant, the arresting agency shall fax a copy of the criminal complaint, bail questionnaire, and signed served warrant to the issuing authority. The procedure will then follow subsection B.

(D) For Search Warrants, the requesting agency shall contact the issuing authority and arrange for a video-conference call. At such time as the video-conference call, the affiant shall swear to the affidavit of probable cause and then sign the search warrant application. The affiant will then fax the signed search warrant application to the issuing authority. The issuing authority will then issue or decline the application for search warrant and shall fax back to the affiant the completed search warrant. The affiant shall deliver to the issuing authority the original signed search warrant application the next business day.

(E) For Arrest Warrants, the affiant and issuing authority shall follow the same procedure as set forth in subsection D.

**V.C.R.Crim.P. 120. Representation, Appearance.**

An attorney who is representing a defendant at the time of the scheduled preliminary hearing at Venango County Central Court shall enter his/her appearance of record in the Venango County Court of Common Pleas on the form provided. An entry of appearance is not required if the entire court case is dismissed, withdrawn, or otherwise not held for the Court of Common Pleas of Venango County, Pennsylvania. Upon failure of counsel to

enter his or her appearance, it shall be entered into the record by the Magisterial District Court. Thereafter, withdrawals of appearance by counsel shall be in accordance with Pennsylvania Rule of Criminal Procedure 120.

**V.C.R.Crim.P. 122. Appointment of Counsel.**

(A) Counsel shall be appointed:

(1) In all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed.

(2) In all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment may be imposed in the future for a violation of a condition of the sentence or non-compliance with the sentence imposed.

(B) The Magisterial District Judge shall provide notice to all defendants of their right to counsel on all summary cases as required under subsection (A)(1) and (A)(2) of this Rule and shall include reference to the Public Defender's Office and all necessary information on how to contact them.

(C) This Rule is not to be construed as requiring appointment of counsel when a defendant desires to waive his right to counsel pursuant to Pa.R.Crim.P. 121.

*Comment:* No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *Alabama v. Shelton*, 535 U.S. 654 (2002).

**V.C.R.Crim.P. 131. Locations of Proceedings Before an Issuing Authority.**

(A) In addition to the issuing authority's office, preliminary arraignments may be held at the Venango County Courthouse, any Pennsylvania State Police barracks, any municipal police department, the Venango County Prison, and any other location approved by the President Judge.

(B) Preliminary arraignments may be conducted using advanced communication technology pursuant to Pa.R.Crim.P. 540. Approved advanced communications technology sites shall include each Magisterial District Judge's office and home, PSP barracks, all municipal police departments, the Venango County Prison, the Venango County Courthouse, and all approved sites in other counties throughout the Commonwealth.

(C) Preliminary Hearings are to be conducted at the Venango County Courthouse, hereinafter Central Court. Each of the District Court Judges shall preside over cases at Central Court pursuant to a rotating schedule to be distributed prior to the beginning of each calendar year. Preliminary Hearings shall be scheduled for Wednesdays at 8:30 am and 1:30 pm, pursuant to a schedule of police departments as established by the Central Court Administrator. Central Court shall be conducted according to the procedures set forth at V.C.R.Crim.P. 131.1.

**V.C.R.Crim.P. 131.1. General Procedures Governing Central Court.**

(A) The Sheriff's Deputy assigned to each courtroom shall call the courtroom to order when necessary to maintain proper courtroom decorum. When a Sheriff's Deputy is not available, a member of the Central Court staff shall call court to order at 8:30 a.m., for cases scheduled to commence at that time, and at 1:30 p.m. for cases scheduled to commence at that time, for roll call and at such other times as may be necessary to maintain order.

The Sheriff's Deputy assigned to Central Court shall not be responsible for guarding prisoners unless assigned that duty by the Sheriff of Venango County or his designee.

(B) All defendants shall be present for roll call at 8:30 a.m. and 1:30 p.m. as scheduled, including defendants who are in pre-trial confinement except by prior arrangement with the court.

All defendants who are in pre-trial confinement shall be secured in the designated area by the arresting officer or an officer from the arresting officer's department.

(C) During roll call, all persons shall be quiet and shall remain seated until asked to respond by the presiding Magisterial District Judge. When a defendant's name is called, the defendant shall stand and state the name of his/her attorney and whether they have decided to waive the preliminary hearing, enter a guilty plea or proceed to a preliminary hearing.

(D) Attorneys representing defendants shall be present at roll call at 8:30 a.m. or 1:30 p.m. respectively.

(E) All persons present in the Central Courtroom shall act in a proper manner, which includes prohibition of the following: loud conversations, food or beverages, use of tobacco products or smoking, chewing gum, wearing hats, use of video games, cell phones or pagers with activated sound signals, or other disruptive behavior. Parties in violation of this rule shall be asked to leave the courtroom.

(F) The Magisterial District Judge presiding over preliminary hearings shall begin calling cases for hearings at 9:00 a.m. for those cases scheduled for 8:30 a.m., and 2:00 p.m. for those cases scheduled for 1:30 p.m. Cases shall be called in the order of seniority of membership in the bar of the defendant's attorney, subject to modification at the discretion of the presiding Magisterial District Judge for cause shown. Preference should be given to private counsel in expediting calling cases.

(G) Defendants who are not present by 8:30 a.m. or 1:30 p.m. as scheduled shall have their case proceed per Pa.R.Crim.P. Rule 543.

(H) Witnesses who have been subpoenaed and do not appear for a preliminary hearing may upon request of the attorney for the Commonwealth, have contempt proceedings commence against them if service of the subpoena can be substantiated.

Notice of the contempt of court proceedings against them may be via first class mail or certified mail. It shall be noted on the docket that the witness failed to appear and a contempt of court proceeding may be scheduled for the next Central Court date of the Presiding Magisterial District Judge.

The proceeding may be initiated by a warrant issued to either a constable or police officer, with the contempt of court hearing to commence immediately upon arrest of the individual. If upon arrest of the individual the issuing authority is unavailable, the individual shall be released and notified of the contempt of court proceeding by mail as previously described.

(I) Defendants who have not notified Central Court at or prior to roll call of their decision in regard to having a preliminary hearing, waiving the preliminary hearing or pleading guilty by 9:00 a.m. or 2:00 p.m. shall be treated as if they desire a preliminary hearing.

(J) Motions for continuances shall be submitted in writing to the Central Court Administrator on forms

approved and provided by Central Court. No defendants or witnesses shall be excused until the Motion has been reviewed and approved in writing by the presiding Magisterial District Judge. If the motion is denied and the defendant is not present, it shall result in the case proceeding under Pa.R.Crim.P. Rule 543. If the motion is denied and a witness is not present, the case will move forward without the witness.

(K) All continuance notices shall be mailed to the last known address of all parties involved in a particular case and in compliance with Pa.R.Crim.P. Rule 542.

(L) If a member of the District Attorney's office or a defense attorney asks for a sentencing hearing on a particular guilty plea case, the sentencing hearing shall be conducted in open court at a time set by the presiding Magisterial District Judge.

(M) Defendants who are in pre-trial confinement shall not have contact with anyone except the arresting police officer, their attorney and the attorney for the Commonwealth.

(N) All persons entering the courtroom shall be subject to a reasonable search for weapons and contraband.

(O) In the event that all charges are withdrawn, except for summary offenses, the police officer shall file the summary citation(s) with the appropriate Magisterial District Court. If the other charges are withdrawn as part of a plea agreement, the defendant shall sign the guilty plea portion of the citation and a copy of the plea agreement shall be attached to the citation when it is filed.

(P) All matters not addressed by the Central Court Rules shall be governed by Rules promulgated by either the Supreme Court of Pennsylvania or the President Judge of the Court of Common Pleas of Venango County.

**V.C.R.Crim.P. 211. Sealing Search Warrant Affidavits.**

(A) When a Judge of the Court of Common Pleas of Venango County issues a Search Warrant and seals the Affidavit, the Judge shall attach a copy of the Order to the outside of the sealed envelope. Said order shall state the length of time the Affidavit shall remain sealed.

(B) The Judge shall cause the sealed Search Warrant Affidavit to be filed with the Clerk of Courts in the Judicial District.

(C) The Clerk of Courts shall establish a system for filing and monitoring said Affidavits.

(D) Forty-eight (48) hours before the recited expiration date, the Clerk of Courts shall forward the sealed documents to the issuing Judge who will then review the matter and, if appropriate, open the file and provide for filing the matter publicly as part of the criminal proceeding, if one has been initiated, or as a distinct proceeding. The Judge shall give notice to the District Attorney twenty-four (24) hours prior of his or her intent to unseal the affidavit.

**V.C.R.Crim.P. 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth.**

The District Attorney of Venango County having filed a certification pursuant to Pennsylvania Rule of Criminal Procedure 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rule of Criminal Procedure, charging the following offenses shall not hereafter be accepted by any judicial officer unless the complaint and affidavit has the approval of an

attorney for the Commonwealth prior to filing. The approval of the attorney for the Commonwealth may be oral. Whenever feasible, such oral approval should be communicated directly to the judicial officer who should make proper notations in the record thereof.

- Criminal Homicide 18 § 2501
- Murder 18 § 2502
- Voluntary Manslaughter 18 § 2503
- Involuntary Manslaughter 18 § 2504
- Causing or Aiding Suicide 18 § 2505
- Drug Delivery Resulting in Death 18 § 2506
- Rape 18 § 3121
- Involuntary Deviate Sexual Intercourse 18 § 3123
- Aggravated Indecent Assault of a Child 18 § 3125(b)
- Indecent Assault of a Child 18 § 3126(7)
- Arson 18 § 3301
- Causing or risking catastrophe 18 § 3302
- Perjury 18 § 4902
- Homicide by Vehicle 75 § 3732
- Homicide by Vehicle While Driving Under the Influence 75 § 3735
- Criminal Attempt, Solicitation or Conspiracy to Commit any of the above listed offenses 18 § 901, 902, 903
- Any criminal complaint and arrest warrant affidavit that charges a minor to be prosecuted as an adult.

**V.C.R.Crim.P. 528. Monetary Condition of Release on Bail-Realty as Security.**

(A) When realty is offered to satisfy a monetary condition of bail as permitted by Pa.R.Crim.P. 528(D)(3), in full or in combination with other forms of security, a completed affidavit of surety and surety information page (including a warrant of attorney for confession of judgment) must be submitted to the Clerk of Courts. The affidavit and the surety information page shall be in such form as the Clerk of Courts may prescribe from time to time.

(B) The affidavit of surety and the surety information page shall be signed by the defendant and by any and all other owners of the realty being offered as security.

(C) Attached to each affidavit of surety submitted pursuant to paragraph (A), above, shall be the following:

(1) a photocopy of the deed, decree of distribution or other instrument of record, bearing all pertinent recording data, by which title was acquired, and;

(2) a written certification by a lawyer licensed to practice law in the Commonwealth of Pennsylvania certifying the names of the current owners of record of the realty, certifying that good and marketable title is vested in them, and further certifying the nature, holder and unpaid balance of each lien that then encumbers the realty, including, but not limited to, mortgage, judgment and tax liens. A title insurance policy with Venango County appearing as the named insured may be substituted for the lawyer's written certification, and;

(3) evidence of the value of the realty. This can be either a certified copy of the most recent tax assessment or a sworn statement as to the fair market value of the real estate prepared by a licensed real estate appraiser to appraise in the Commonwealth of Pennsylvania.

(D) The Judge or Magisterial District Judge, as the case may be, shall make the determination of whether the value of the property less liens and encumbrances is sufficient to satisfy the monetary condition. For property located outside the Commonwealth but within the United States, the Clerk may impose reasonable conditions designed to perfect the lien. The Clerk shall not accept realty outside the Commonwealth as fulfillment of the monetary condition, in whole or in part, without special approval of Court.

(E) The Judge or the Magisterial District Judge, as the case may be, shall ensure that any realty bond complies with these rules prior to approval of any realty bond.

(F) As final acceptance of the realty as security, the Clerk of Courts shall cause a judgment to be confessed against all owners thereof in the appropriate county in favor of the Commonwealth for the use of Venango County. The Clerk of Courts is hereby authorized to execute all judgment lien releases for property that may be encumbered by the judgment lien but not intended to serve as security, and is further authorized to cause the judgment lien to be marked as satisfied after the full and final disposition of the case. The Clerk shall file a certificate among the papers of the criminal case certifying that judgment has been entered and setting forth the pertinent details of entry.

**V.C.R.Crim.P. 528.1. Percentage Cash Bail System.**

(A) A defendant charged with a crime in Venango County, or a third party surety who is not a professional bondsman or an agent or representative of a professional bondsman, may if authorized by the issuing authority or the Court execute a bail bond and deposit with the issuing authority or Clerk of Courts by depositing money equal to ten percent (10%) of the amount of bail set, but in no event less than fifty dollars (\$50.00).

(B) The money furnished shall be receipted for, deposited, accounted for, forfeited or returned in accordance with Pennsylvania Rules of Criminal Procedure 535 and 536.

(C) If there has been no forfeiture, upon full and final disposition of the case, the Clerk of Courts or issuing authority shall retain any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the cash bail system. The balance shall be returned to the person who posted the money with the issuing authority or the Clerk of Courts within twenty (20) days of full and final completion of the case. Notice of the full and final disposition shall be sent by the Clerk of Courts to the person who originally posted the money at the address of record upon a full and final completion of the case. Any money not claimed within one hundred eighty (180) days from the date of notice shall be deemed as fees and shall be forfeited to the use of the County of Venango.

**V.C.R.Crim.P. 528.2. After Hours Bail.**

The Venango County Prison shall be authorized to accept bail and release defendants after normal business hours of the Court and on weekends upon receipt of the amount of monetary bail set by the issuing authority and the proper execution of all necessary documentation. The Warden of the Venango County Prison shall designate the appropriate officer to accept bail and complete all necessary documentation to admit the defendant to bail and release him or her from custody. All necessary forms shall be sent along with the defendant upon his or her commitment to the Venango County Prison by the issuing authority. All money received by the Venango County

Prison for bail shall be transmitted along with a set of signed original bond forms to the issuing authority within forty-eight (48) hours, or if the case has been held for court then to the Clerk of Courts.

**V.C.R.Crim.P. 536. Pre-Release Advisory Board (PRAB).**

(A) BOARD MEMBERS

(1) The Pre-Release Advisory Board shall consist of the following members:

(i) Director of Court Supervision Services or a representative designated by that person;

(ii) Parole Agent Supervisor of the State Board of Probation and Parole for the parole agents who supervise Venango County or a representative designated by that person;

(iii) Warden of the Venango County Prison or a representative designated by that person;

(iv) a representative from Venango County Mental Health;

(v) a representative from Venango County Drug and Alcohol;

(2) The chairman shall be appointed by a majority of the board and shall maintain that position until such time as a majority of the board requests that a new chairman be appointed.

(3) The Prison Advocate shall be given notice of and permitted to attend all board meetings and act in an advisory capacity for treatment programming.

(B) PURPOSE AND SCOPE

(1) The scope of the Board is to advise the judges and magisterial district judges of the 28th Judicial District on pre-release planning and release decisions for prisoners who are sentenced to the Venango County Prison with a minimum sentence (other than a flat sentence) that exceeds sixty (60) days or confined on a parole revocation order. The Board will at all times be acting as a representative of the court.

(2) The purpose of the Board is to have prisoners considered for parole or re-parole beginning 30 days prior to either the minimum sentence or re-parole eligibility date so that, if possible, the following can occur:

(i) recommended programming is in place at the time of release;

(ii) a determination as to the existence of suitable housing prior to the prisoner's release;

(iii) if appropriate, and as authorized in the sentence order when required under 42 Pa.C.S.A. § 9756 (as amended by Act 81, effective November 24, 2008), that the Prisoner may be released prior to the stated minimum in the case; and

(iv) allow for input regarding the prisoner's institutional behavior.

(3) Nothing in this Rule shall impair a prisoner's right to file a motion for early parole consideration with the Court and having a hearing thereon.

(C) BOARD MEETINGS

(1) The Board shall meet no less than once per month, with the frequency of meetings dictated by the Chairman.

(2) Official action of the Board occurs when a quorum is present. A quorum for this purpose consists of at least the three following persons:

(i) Director of Court Supervision Services or a representative designated by that person;

(ii) Parole Agent Supervisor of the State Board of Probation and Parole for the parole agents who supervise Venango County or a representative designated by that person; and

(iii) Warden of the Venango County Prison or a representative designated by that person.

(3) The Board shall meet at a time and place designated by the Chairman and when applicable will have the following available at that office:

(i) Pre-Sentence Investigations;

(ii) Psychological and Psychiatric reports;

(iii) Counseling assessments;

(iv) Earned time data;

(v) Letters from employers, clergy, or other relevant information made available to the court for sentencing or ordered by the court pursuant to the sentence; and

(vi) Such other information, as in the discretion of any Board member, that may be useful in making recommendations to the court concerning release planning and parole decisions.

(D) GUIDELINES—The Board will develop guidelines for use by the judges and magisterial district judges of this judicial district in establishing minimum periods of incarceration for parolees whose parole has been revoked. The guidelines will be available to the members of the bar, the Prison for reference by prisoners, the parole agents for Venango County, and the Court Supervision Services Officers.

#### (E) PAROLE REVOCATION PROCEDURE

(1) If the Court makes the finding of a material violation of a condition or conditions of parole and therefore revokes parole, the Court may act in the following manner:

(i) as part of the parole revocation order, the Court shall consider the guidelines in making a determination of the date of eligibility for possible re-parole. This does not preclude the Court from making a determination that the prisoner shall remain incarcerated for the entire balance of that prisoner's sentence.

(ii) If the Court determines that a date of eligibility for re-parole is appropriate, it shall be a date certain and announced in open court and made a part of the revocation Order.

#### (F) REVIEW BY THE BOARD

(1) Regarding prisoners serving an original sentence of incarceration, including a re-sentence to incarceration following a probation revocation, the Board shall consider their eligibility for release thirty days prior to the expiration of their minimum sentence.

(2) Regarding prisoners recommitted to the Venango County Prison to serve the unexpired term of their sentence following a parole revocation, the Board shall consider those prisoners for re-parole consideration beginning thirty days prior to the date set by the court in the parole revocation order for PRAB review.

(3) Prior to each meeting of the Board, all prisoners shall be identified who are to be considered for release by the Board and the Chairman shall ensure that the names of these prisoners are reported to the other Board members in advance of the meeting.

#### (G) RECOMMENDATIONS BY THE BOARD

(1) The Board shall review the status of the prisoners being considered for release and make the following recommendations to the Court:

(i) whether the release of the inmate at his minimum or re-parole eligibility date would be appropriate;

(ii) whether the prisoner should be confined for some additional period;

(iii) whether the prisoner may be released before the minimum or re-parole eligibility date to a treatment program or to house arrest, electronic monitoring; and

(iv) otherwise design and articulate any conditions for release of the prisoner and any parole conditions that may be appropriate.

(2) All of the recommendations will be submitted to the court or sentencing magisterial district judge on a form designed by the Board for use by the court in making decisions concerning release of the prisoner.

(3) The judge, or sentencing magisterial district judges, on receiving petitions, motions, and letters requesting release consideration by a prisoner, will refer these to the Board for comment and recommendation. The court may also refer other release questions to the Board, such as furloughs, release for drug treatment and any other special circumstances that the Court may be required to address in managing a prisoner serving a county sentence. However, nothing in this Rule shall impair a prisoner's right to file a Motion for early parole or re-parole consideration with the Court and having a hearing thereon.

(H) FORMS—The Board shall promulgate and the Court shall approve forms to implement this program.

(I) AGENCIES AND OTHER INFORMATION—All agencies that routinely provide the court information shall also make such information available to the Board upon the Board's request as if such request were made by the court. The Board may order assessments from SAP or other providers to assist in making pre-release decisions.

#### **V.C.R.Crim.P. 602. Presence of the Defendant. Transportation from Current Place of Detention.**

(A) When a defendant is in detention in any facility other than Venango County Prison, and the defendant is scheduled for an appearance before the Court of Common Pleas of Venango County, the following rules shall apply:

(1) if the defendant is represented by counsel, defense counsel shall petition the court for an order causing the defendant's temporary release from the current place of confinement and causing the defendant to be transported to confinement in the Venango County Jail pending and during the appearance before the Court.

(2) if the defendant is not represented by counsel, the attorney for the Commonwealth shall file such a petition.

(B) The petition may have an appropriate Order attached thereto, and the petition shall be filed no later than ten (10) days before the date of appearance.

#### **V.C.R.Crim.P. 700. Sentencing Judge.**

A sentence on a plea of guilty may be imposed by a judge other than the judge who received the plea if the defendant has been so notified at the time of entering the plea or if he agrees thereto at the time of sentencing.

*Comment:* This rule is not intended to proscribe sentencing by a judge who did not receive the plea.



**V.C.R.Crim.P. 904. PCRA Status Conference.**

At the time counsel is appointed to represent an indigent defendant for a PCRA proceeding, the Order shall include scheduling a status conference within sixty days of appointment. The District Court Administrator shall be copied on the order and shall schedule the status conference at the time of counsel's appointment.

[Pa.B. Doc. No. 09-5. Filed for public inspection January 2, 2009, 9:00 a.m.]

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**YORK COUNTY**

**Common Pleas Criminal Court Case Management System; Payment Plans; No. AD-000025-2008**

**Administrative Order**

*And Now*, this 12th day of December, 2008, this Court directs that the distribution and allocation of all payments of costs, fines, reparation, restitution, penalties and other remittances relating to criminal cases in the Court of Common Pleas of York County shall occur as follows:

(1) Pursuant to the provisions of the Costs and Fines Administrative Order docketed at CP-67-MD-994-1998, The Office of the Clerk of Courts of York County shall be the designated entity responsible for the collection and allocation of all costs, fines, reparation, restitution, penalties and other remittances imposed and collected as a result of criminal cases in the Court of Common Pleas of York County.

(2) All criminal cases requiring payment of costs, fines, reparation, restitution, penalties and other remittances by a single defendant shall be placed into a single individualized payment plan within the Common Pleas Criminal Court Case Management System (CPCMS). Such payment plans shall be created by the Office of the Clerk of Courts or the Adult Probation Department.

(3) Any criminal cases requiring payment of costs, fines, reparation, restitution, penalties and other remittances by a defendant who has a pre-existing payment plan, shall be incorporated into the defendant's pre-existing payment plan, whereby one payment plan may include multiple cases, unless otherwise ordered by the Court.

(4) Each payment of costs, fines, reparation, restitution, penalties and other remittances made by a defendant or by the Pennsylvania Department of Corrections

or the York County Prison as per Act 84 of 1998 on behalf of the defendant to the Office of the Clerk of Courts shall be distributed according to the defendant's individualized payment plan within CPCMS, whereby each payment shall be applied to the defendant's individual payment plan and shall then be divided and applied among each of the cases within the payment plan, unless otherwise ordered by the Court.

(5) In accordance with the Schedule for Standard Distribution of Funds Collected by the Criminal Division of the Courts of Common Pleas Using the Common Pleas Criminal Court Case Management System (CPCMS) found in 204 Pa. Code § 29.405, the Office of the Clerk of Courts shall distribute all fines costs, reparations, restitution, penalties and other remittances imposed and collected in the prioritized order as set forth in the above mentioned regulation, which is incorporated herein, unless otherwise ordered by the Court.

(6) Each payment of costs, fines, reparation, restitution, penalties and other remittances made by a defendant that is distributed among all of the defendant's cases within the defendant's individualized CPCMS payment plan, shall be allocated in the order proscribed by the above referenced priority list, unless otherwise ordered by the Court.

This Administrative Order shall be effective thirty (30) days after its publication in the *Pennsylvania Bulletin*, and shall govern all matters then pending.

*It Is Further Ordered* that in accordance with Pa.R.Crim.P. 105, the District Court Administrator shall:

(a) file seven certified copies hereof with the Administrative Office of the Pennsylvania Courts,

(b) distribute two certified copies hereof to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*,

(c) file one certified copy hereof with the Criminal Procedural Rules Committee,

(d) cause a copy hereof to be published in the *York Legal Record* once a week for two successive weeks at the expense of the County of York,

(e) supervise the distribution hereof to all Judges and all members of the Bar of this Court.

*By the Court*

RICHARD K. RENN,  
*President Judge*

[Pa.B. Doc. No. 09-6. Filed for public inspection January 2, 2009, 9:00 a.m.]

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