

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 521(c) of the Rules of Disciplinary Enforcement; No. 89 Disciplinary Rules

Order

Per Curiam:

And Now, this 29th day of July, 2010, upon the recommendation of the Board of the Pennsylvania Lawyers Fund For Client Security; 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:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 521(c) of the Pennsylvania Rules of Disciplinary Enforcement is amended in the following form.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY

PAYMENT OF CLAIMS

Rule 521. Investigation and payment of claims.

* * * * *

(c) *Subpoenas.*

(1) At any stage of an inquiry being conducted in accordance with Rule 221, the Board or a designated representative on behalf of the Board shall have the right to require production of records by issuance of a subpoena(s). The attorney whose account is the subject of the inquiry under Rule 221 shall have the right, upon written request and payment of appropriate duplicating costs, to receive copies of the records produced.

(2) At any stage of an investigation and/or proceeding under this subchapter, the Board, a Claimant and a contesting Covered Attorney shall have the right to summon witnesses [before a hearing committee and] and/or require production of records [before the same] by issuance of subpoenas [in substantially the same manner, and with the effect provided by Rule 213(b), (e), (f), (g) and (h), and if applicable, (c) and (d) (relating to subpoena power, depositions and related matters)].

(3) Subpoenas authorized by this subparagraph (c) shall be obtained by filing with any Prothonotary of the Supreme Court of Pennsylvania a statement calling for the issuance of the subpoena. On the same day that the statement is filed with the Prothonotary, the party seeking the subpoena shall send by certified mail a copy of the statement to either the Executive Director or the Covered Attorney as the case may be. Upon the filing of the statement, the Prothonotary shall forthwith issue the subpoena and it shall be served by certified mail, return receipt or by personal service. A subpoena issued under this subparagraph (c) shall not be returnable until at least 10 days after the date of its issuance.

(4) A subpoena issued under this rule shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under these rules and, that it is regarded as contempt of the Supreme Court or grounds for discipline under the Rules of Disciplinary Enforcement for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney. The subpoena procedures of this rule shall be subject to the protective requirements of confidentiality provided in Rule 504.

(5) Any challenge to the validity of a subpoena issued under this rule shall be heard by a hearing committee or the full Board. A determination by such committee or the Board may be appealed to the Supreme Court under subparagraph (8) within ten days after service of the determination on the party bringing the appeal.

(6) Witnesses before a hearing committee or the Board shall be examined under oath or affirmation.

(7) With the approval of a hearing committee or the Board, testimony may be taken by deposition or by commission if the witness is not subject to service of subpoena or is unable to attend or testify at the proceeding because of age, illness or other compelling reason. A complete record of the testimony so taken shall be made and preserved.

(8) Enforcement of subpoenas; appeal of challenges to subpoenas:

(i) The Board, through a designated representative, or a Covered Attorney may petition the Supreme Court to enforce a subpoena or to review a determination under subparagraph (5) on the validity of a subpoena. No challenge to the validity of a subpoena will be considered by the Court unless previously raised as provided in subparagraph (5).

(ii) Upon receipt of a petition for enforcement of a subpoena, the Court shall issue a rule to show cause upon the person to whom the subpoena was directed, returnable within ten days, why the person should not be held in contempt. If the period of response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

(iii) A petition for review of a determination made under subparagraph (5) must set forth in detail the grounds for challenging the determination. Upon timely receipt of a petition for review, the Court shall issue a rule to show cause upon the party to the proceeding who is not challenging the determination, returnable within ten days, why the determination should not be reversed. If the period for response has passed without a response having been filed, or after consideration of any response, the Court shall issue an appropriate order.

(9) Any rule of the Supreme Court or any statute providing for discovery shall not be applicable in a proceeding under these rules, which proceeding shall be governed by these rules alone.

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[Pa.B. Doc. No. 10-1472. Filed for public inspection August 13, 2010, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rule 1910.13-1 of the Rules of Civil Procedure; No. 532; Civil Procedural Rules

Order

Per Curiam:

And Now, this 30th day of July, 2010, upon the recommendation of the Domestic Relations 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:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.13-1 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

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

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was ordered to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(i) the order of court scheduling the conference and/or hearing was served by ordinary mail with the return address of the domestic relations section appearing thereon, that the mail was not returned to the domestic

relations section within fifteen days after mailing, and that, at a date after the order of court was mailed, the [United States Postal Service] domestic relations section has verified through the U. S. Postal Service or by electronic means that mail for the party was being delivered at the address to which the court order was mailed; or

(ii) the party signed a receipt indicating acceptance of a copy of the court order; or

(iii) an employee of the court handed a copy of the order to the party; or

(iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Official Note: See Rule 76 for the definition of “competent adult.”

The support statute, at 23 Pa.C.S.A. § 4353(a), requires parties to a support proceeding to notify the domestic relations section within seven days of a change of personal address. Pursuant to 23 Pa.C.S.A. § 4353(a.1), the court may deem due process service requirements to have been met upon delivery of written notice to the most recent address the party filed with the domestic relations section.

* * * * *

[Pa.B. Doc. No. 10-1473. Filed for public inspection August 13, 2010, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendment of Rules 1915.8 and 1915.18 of the Rules of Civil Procedure; No. 533; Civil Procedural Rules

Order

Per Curiam:

And Now, this 2nd day of August 2010, upon the recommendation of the Domestic Relations 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:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1915.8 and 1915.18 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

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

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.8. Physical and Mental Examination of Persons.

* * * * *

(b) Unless otherwise directed by the court, the expert shall deliver to the court, to the attorneys of record [and] for the parties, to any unrepresented party, and to the guardian ad litem and/or counsel for the child, if any, copies of any reports arising from the evaluation setting out the findings, results of all tests made, diagnosis and conclusions. No reports shall be filed of record or considered evidence unless and until admitted by the court. Any report which is prepared at the request of a party, with or without a court order, and which a party intends to introduce at trial, must be delivered to the court and the other party at least thirty days before trial. If the report or any information from the evaluator is provided to the court, the evaluator shall be subject to cross-examination by all counsel and any unrepresented party without regard to who obtains or pays for the evaluation.

* * * * *

Rule 1915.18. Form of Order Directing Expert Examination and Report.

The order of court directing expert evaluation in a custody matter pursuant to Rule 1915.8 shall be in substantially the following form:

(Caption)
ORDER OF COURT

AND NOW, this ____ day of _____, 20____, it is hereby ORDERED, that:

* * * * *

5. [Both] If the evaluation is a medical necessity, the service may be covered by insurance. If so, both parties shall promptly cooperate to maximize the use of available insurance coverage, if any, and to notify the other party of the result. The plaintiff defendant shall submit the costs to his or her insurance first. The cost of the unreimbursed portion of the evaluation shall preliminarily be allocated between the parties with the plaintiff paying ____% and the defendant paying ____% without prejudice to the ultimate apportionment of such costs by subsequent agreement of the parties or order of court.

* * * * *

11. Provided that the parties cooperate on a timely basis, the evaluator shall deliver his or her report to counsel for the parties, any unrepresented party, the guardian ad litem and/or counsel for the child, if any, and to the court at least ____ days prior to the first day of trial. The report shall not be filed of record.

* * * * *

[Pa.B. Doc. No. 10-1474. Filed for public inspection August 13, 2010, 9:00 a.m.]

PART I. GENERAL
[231 PA. CODE CH. 3000]

Amendment of Rule 3135 of the Rules of Civil Procedure; No. 531; Civil Procedural Rules

Order

Per Curiam:

And Now, this 28th day of July, 2010, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at

40 Pa.B. 413 (January 16, 2010) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 984 No. 3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 3135 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective September 1, 2010.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 3135. Sheriff's deed to real property. Correction of deed.

(a) When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of twenty days **but no later than 40 days** after either the filing of the schedule of distribution or the execution sale if no schedule of distribution need be filed, shall execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required. Confirmation of the sale by the court shall not be required.

Official Note: See Rule 3136(a) governing the filing of the schedule of distribution.

(b) If the sheriff has made a defective return of the execution proceeding or has executed a defective deed, including the erroneous description of the real estate, the court upon petition of the purchaser or the purchaser's successors in title may correct the return or deed or order that a new return or deed be executed.

Explanatory Comment—2005

Prior to the present amendment, Rule 3135(a) governing execution sales provided in part that "the sheriff, at the expiration of ten days after the filing of the schedule of distribution, shall execute and acknowledge before the prothonotary a deed to the property sold." There was a gap in the rule because Rule 3136(a) provides that a schedule of distribution need not be filed where the real property is sold to the plaintiff for costs only.

The amended rule eliminates this gap. Where a schedule of distribution is not required, the sheriff must execute and acknowledge the deed no sooner than twenty days after the date of the sale.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of both Rule 3135 and the 2005 explanatory comment to the rule. First, current Rule 3135, which provides for the sheriff to execute a sheriff's deed only at the expiration of twenty days after either the filing of a schedule of distribution or the execution sale, is inconsistent with the 2005 explanatory comment, which advises that where a schedule of distribution is not required, the sheriff must execute and acknowledge the deed within twenty days of the date of the sale. The 2005 explanatory

comment was incorrect in that if the sheriff were required to execute the deed within twenty days of the date of the sale where no schedule of distribution is required, there would be no time for the debtor to petition the court before the delivery of the sheriff's deed if the sheriff were to execute the deed immediately after the sale. The proposed amendment corrects the 2005 explanatory comment by conforming it to the text of the rule.

Second, Rule 3135 has been amended to provide a set time period within which the sheriff must execute the deed after either the filing of the schedule of distribution or the execution sale if no schedule of distribution is required. Current Rule 3135 only provides a minimum amount of time, i.e. twenty days after the filing of the schedule of distribution or the execution sale if no schedule of distribution is required, after which the sheriff is authorized to execute the deed. It sets no future date by which the sheriff must have executed the deed. The proposed amendment establishes a twenty to forty day window within which the sheriff must execute the deed after either the filing of the schedule of distribution or the sheriff's sale. This time period will ensure that a debtor has sufficient time to petition the court to set aside the sale pursuant to Rule 3132, while encouraging the timely execution of the deed by the sheriff.

By the Civil Procedural Rules Committee

STEWART L. KURTZ,
Chair

[Pa.B. Doc. No. 10-1475. Filed for public inspection August 13, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]

Proposed New Pa.Rs.Crim.P. 595 and 596; Amendments to Pa.Rs.Crim.P. 113, 119, 504, 510, 540, 571 and 578; and Revision of the Comment to Pa.R.Crim.P. 570

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules of Criminal Procedure 595 and 596; amend Rules of Criminal Procedure 113, 119, 504, 510, 540, 571 and 578; and approve the revision of the Comment to Rule of Criminal Procedure 570. The proposed rule changes establish the procedures for the transfer of cases from criminal proceedings to juvenile proceedings. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

no later than Friday, September 10, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

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 113. Criminal Case File and Docket Entries.

* * * * *

(C) The docket entries shall include at a minimum the following information:

* * * * *

(6) **a notation if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302;**

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

[(7)] (8) all other information required by Rules 114 and 576.

* * * * *

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; **amended , 2010, effective , 2010.**

Committee Explanatory Reports:

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Report explaining the proposed amendment adding new paragraph (6) concerning defendants under the age of 18 published for comment at 40 Pa.B. 4642 (August 14, 2010).

Rule 119. 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:

* * * * *

(3) **proceedings pursuant to Rule 595;**

(4) trials;

[(4)] (5) sentencing hearings;

[(5)] (6) parole, probation, and intermediate punishment revocation hearings; and

[(6)] (7) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

* * * * *

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006; Comment revised May 4, 2009, effective August 1, 2009; **amended** , **2010, effective** 2010.

Committee Explanatory Reports:

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Final Report explaining the May 4, 2009 revision to the Comment adding PCRA hearings as a proceeding to which the defendant may consent to be held using ACT published with the Court's Order at 39 Pa.B. [2434] 2435 (May 16, 2009).

Report explaining the proposed amendment to paragraph (A) adding proceedings under Rule 595 as a proceeding for which ACT may not be used published for comment at 40 Pa.B. 4642 (August 14, 2010).

**CHAPTER 5. PRETRIAL PROCEDURES
IN COURT CASES**

PART B(1). Complaint Procedures

Rule 504. Contents of Complaint.

Every complaint shall contain:

* * * * *

(10) a notation if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302;

(11) a notation if the defendant is under the age of 18 at the time the complaint is filed whether the defendant's parents, guardian, or other custodian have been notified of the charge(s);

(12) a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

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

[(12)] (14) the signature of the affiant and the date of the execution of the complaint.

Comment

* * * * *

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

Paragraph (10) requires the law enforcement officer who issues a complaint to indicate on the complaint if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

If the defendant is under the age of 18 when the complaint is filed, paragraph (11) requires the law enforcement officer to indicate on the complaint whether the defendant's parents, guardian, or other custodian were notified.

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

Official Note: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended July 10, 2008, effective February 1, 2009; **amended** , **2010, effective** , 2010.

Committee Explanatory Reports:

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Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. [6] 18 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

* * * * *

Report explaining the proposed amendment adding new paragraphs (10) and (11) concerning defendants under the age of 18 published for comment at 40 Pa.B. 4642 (August 14, 2010).

PART B(2). Summons Procedures

Rule 510. Contents of Summons; Notice of Preliminary Hearing.

* * * * *

(D) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant's parents, guardian, or other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall send a copy of the summons to the parents, guardian, or other custodian.

Comment

* * * * *

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a

right of the defendant to have his or her parents, guardian, or other custodian present.

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 109.

Official Note: Original Rule 109 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; **amended** , **2010, effective** , **2010.**

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. [6] 18 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

* * * * *

Report explaining the proposed amendments adding new paragraph (B) concerning notice to parents, guardian, or other custodian when defendant under the age of 18 published for comment at 40 Pa.B. 4642 (August 14, 2010).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

* * * * *

(B) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant's parents, guardian, or other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall notify them.

(C) At the preliminary arraignment, a copy of the complaint accepted for filing pursuant to Rule 508 shall be given to the defendant.

[(C)] (D) If the defendant was arrested with a warrant, the issuing authority shall provide the defendant with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant shall be given copies no later than the first business day after the preliminary arraignment.

[(D)] (E) If the defendant was arrested without a warrant pursuant to Rule 519, unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

[(E)] (F) The issuing authority shall not question the defendant about the offense(s) charged but shall read the complaint to the defendant. The issuing authority shall also inform the defendant:

* * * * *

[(F)] (G) Unless the preliminary hearing is waived by a defendant who is represented by counsel, the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not be less than 3 nor more than 10 days after the preliminary arraignment, unless:

* * * * *

[(G)] (H) After the preliminary arraignment, if the defendant is detained, the defendant shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail as provided by law.

[(H)] (I) If a monetary condition of bail is set, the issuing authority shall accept payment of the monetary condition, as provided in Rule 528, at any time prior to the return of the docket transcript to the court of common pleas.

Comment

* * * * *

Paragraph [(C)] (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See also Rules 513(A), 208(A), and 1003.

Paragraph [(C)] (D) includes a narrow exception [which] that permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 ([Pa.] 1987).

When a defendant has not been promptly released from custody after a warrantless arrest, the defendant must be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. See Rule 519(A).

Under paragraph [(D)] (E), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph [(F)(2)] (G)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without good cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

See Rule 595 for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the provisions of the new Rule 140 published at 22 Pa.B. [6] 18 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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Report explaining proposed amendments concerning defendants under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (ii), or (iii) for comment at 40 Pa.B. 4642 (August 14, 2010).

PART F. Procedures Following Filing of Information

Rule 570. Pretrial Conference.

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Comment

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The 1978 addition of the phrase "or a pro se defendant" in paragraph (A), and the deletion of paragraph (d), were made pursuant to the decision of the United States Supreme Court in *Faretta v. California*, 422 U.S. 806 (1975).

See Rule 595 for the requirements for a mandatory prehearing conference following the arraignment in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Rule 311 adopted June 30, 1964, effective January 1, 1965; amended February 15, 1974, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended August 12, 1993, effective September 1, 1993; renumbered Rule 570 March 1, 2000, effective April 1, 2001; Comment revised , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. [3826] 3836 (July 25, 1992).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Report explaining proposed Comment revision cross-referencing proposed new Rule 595 concerning requests for transfer from criminal proceedings to juvenile proceedings published for comment at 40 Pa.B. 4642 (August 14, 2010).

Rule 571. Arraignment.

* * * * *

(C) At arraignment, the defendant shall be advised of:

* * * * *

(3) the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.

* * * * *

Comment

* * * * *

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

See Rule 595 for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303.

New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended 2010, effective 2010.**

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. [3826] 3836 (July 25, 1992).

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Report explaining proposed amendments concerning requests for transfer from criminal proceedings to juvenile proceedings published for comment at 40 Pa.B. 4642 (August 14, 2010).

PART F(1). Motion Procedures

Rule 578. Omnibus Pretrial Motion for Relief.

* * * * *

Comment

Types of relief appropriate for the omnibus pretrial motions include the following requests:

* * * * *

- (8) for appointment of investigator; [and]
- (9) for pretrial conference; and

(10) for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322.

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions in limine, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

Official Note: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised , 2010, effective , 2010.**

Committee Explanatory Reports:

* * * * *

Report explaining the August 12, 1993 Comment revision published at 22 Pa.B. [3826] 3836 (July 25, 1992).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Report explaining the proposed Comment revision adding motions for transfer published for comment at 40 Pa.B. 4642 (August 14, 2010).

(Editor's Note: The following part is new and printed in regular type to enhance readability.)

PART H. Transfer to Juvenile Proceedings

Rule 595. Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.

(A) The motion requesting the transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 shall be filed within 30 days after arraignment unless opportunity did not exist; the defendant, the defendant's attorney, or the attorney for the Commonwealth was not aware of the grounds for the motion; or the time for filing has been extended by the judge for cause shown. The motion shall be filed with the clerk of courts. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing.

(B) In all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the judge shall hold a prehearing conference not later than 35 days after the arraignment.

(1) The defendant, the defendant's attorney, and the attorney for the Commonwealth shall be present at the prehearing conference.

(2) At the prehearing conference, the judge shall determine whether the defendant has filed a motion requesting the transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, or is requesting additional time to file a motion for transfer, or does not intend to file a motion.

(a) If the defendant is requesting additional time to file the motion for transfer and the judge agrees to the request, the judge shall set the date by which the motion for transfer shall be filed.

(b) When the defendant has filed a motion, the judge shall determine whether the motion for transfer is ready to be heard. If the parties agree the motion for transfer is ready to be heard, the judge shall schedule the hearing on the motion for transfer to be held no later than 30 days after the prehearing conference.

(c) If the defendant does not intend to file a motion for transfer, the case shall proceed as a court case under the Rules of Criminal Procedure.

(3) At the prehearing conference, the judge and parties may consider:

(a) the simplification or stipulation of factual issues, including admissibility of evidence;

(b) the qualification of exhibits as evidence to avoid unnecessary delay;

(c) the number of witnesses who are to give testimony of a cumulative nature; and

(d) such other matters as may aid in the disposition of the motion.

(4) The parties shall have the right to record an objection to rulings of the judge during the prehearing conference.

(5) The judge shall place on the record the agreements or objections made by the parties and rulings made by the judge as to any of the matters considered in the prehearing conference. Such order shall control the subsequent proceedings unless modified at the hearing on the motion to prevent injustice.

(C) If the judge at the prehearing conference determines the motion for transfer is not ready to be heard, the judge shall schedule status hearings no later than every 60 days after the prehearing conference until the motion for transfer is ready to be heard. At the status hearing, the parties shall advise the judge of the status of all matters pertinent to whether the motion for transfer is ready to be heard.

(D) When the judge determines the motion for transfer is ready to be heard, the judge shall schedule the hearing on the motion for transfer to be held no later than 30 days after the determination. Notice of the hearing date shall be given to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

(E) At the conclusion of the hearing, but in no case longer than 20 days after the conclusion of the hearing, the judge shall announce the decision in open court. The judge shall enter an order granting or denying the motion for transfer, and set forth in writing or orally on the record the findings of fact and conclusions of law.

(F) If the judge does not render a decision within 20 days of the conclusion of the hearing, the motion for transfer shall be denied by operation of law. The clerk of courts immediately shall enter an order on behalf of the judge.

(G) If the judge grants the motion,

(1) the judge immediately shall order the transfer of the case from criminal proceedings to juvenile proceedings and the case shall proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act.

(2) The judge shall order the defendant to be taken to the juvenile probation office.

(H) If the judge denies the motion for transfer or the clerk of courts enters an order denying the motion for transfer on behalf of the judge, the case shall proceed as a court case under the Rules of Criminal Procedure.

(I) The clerk of courts shall serve copies of the order granting or denying the motion for transfer to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

Comment

For the procedures concerning the pretrial place of detention of the defendant who was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, see Rule 596.

Paragraph (B) mandates a prehearing conference in all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense, was charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, and therefore may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322. *Cf.* Rule 570 (pretrial conference discretionary with judge).

The parties may request an order from the judge for the release of records or other materials relevant to the defendant's motion for transfer, for the appointment of experts, for the examination of the defendant, for a report from the juvenile probation office, or for any other aids necessary to the disposition of the motion for transfer. The request, if authorized by law, may be made *ex parte*.

Pursuant to 42 Pa.C.S. § 6322(a) of the Juvenile Act, at the hearing on the motion for transfer, the burden of

proof is on the defendant "to establish by a preponderance of the evidence that the transfer will serve the public interest."

Paragraph (E) is derived from the 42 Pa.C.S. § 6322(b) of the Juvenile Act. The judge, when making his or her findings of fact and conclusions of law, must comply with the Juvenile Act's requirement that the judge "make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order."

Paragraph (F) also is derived from the requirements of 42 Pa.C.S. § 6322(a) of the Juvenile Act, that "the defendant's petition to transfer the case shall be denied by operation of law" in any case in which the judge "does not make its finding within 20 days of the hearing on the petition to transfer the case."

When the judge grants a motion to transfer, paragraph (G) requires that the case immediately be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act, and the criminal court no longer has jurisdiction over the case.

When the defendant is taken to the juvenile probation office following the granting of a transfer motion as required in paragraph (G)(2), the juvenile probation office should determine, for example, whether there should be a detention hearing or whether the defendant should be released to the custody of his or her parent, guardian, custodian, or other person legally responsible for him or her. *See, also*, 42 Pa.C.S. § 6322(d).

For the procedures for motions and answers, and filing and service of motions and answers, see Rules of Criminal Procedure 575 and 576.

Nothing in this rule gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a defendant to have his or her parents, guardian, or other custodian present.

Official Note: Adopted _____, effective _____.

Committee Explanatory Reports:

Report explaining the proposed new rule published for comment at 40 Pa.B. 4642 (August 14, 2010).

Rule 596. Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.

(A) Except as provided in paragraph (B), a defendant who is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 shall be detained in the county jail unless released on bail.

(B) A defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 and has not been released on bail, may file a motion requesting that he or she be detained in a secure detention facility.

(1) If the attorney for the Commonwealth consents to the motion requesting detention in a secure detention facility, the judge may order that the defendant be detained in a secure detention facility until:

(a) the defendant is released on bail; or

(b) there is a disposition of the motion for transfer, or it is determined the defendant is not filing a motion for transfer.

(2) In no event may the defendant be detained in a secure detention facility after the defendant's 18th birthday.

(C) If the judge orders the defendant to be detained in a secure detention facility and subsequently denies the defendant's motion for transfer, or determines that the defendant is not filing a motion, or determines that the defendant has reached his or her 18th birthday, the judge promptly shall order the defendant's transfer to the county jail.

(D) If the defendant's motion for transfer is granted, the judge shall order the defendant to be taken to the juvenile probation office pursuant to Rule 595(G)(2).

Comment

As provided in paragraph (B), a defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, with the consent of the attorney for the Commonwealth, may be transferred to a secure detention facility during the pendency of proceedings under this rule. As used in this rule, "secure detention facility" is a facility approved by the Department of Public Welfare to provide secure detention as defined in 55 Pa. Code § 3800.5 and does not include shelter care.

Nothing in paragraph (B) is intended to preclude detention in a secure detention facility of an individual older than 18 years of age who is otherwise subject to proceedings under the Juvenile Act.

Nothing in this rule is intended to restrict or enlarge the defendant's opportunity to address bail.

Official Note: Adopted _____, effective _____.
Committee Explanatory Reports:

Report explaining the proposed new rule published for comment at 40 Pa.B. 4642 (August 14, 2010).

REPORT

***Proposed New Pa.Rs.Crim.P. 595 and 596;
Amendments to Pa.Rs.Crim.P. 113, 119, 504,
510, 540, 571, and 578; and Revision of the
Comment to Pa.R.Crim.P. 570***

**Procedures for Transfer from Criminal
Proceedings to Juvenile Proceedings
Pursuant to 42 Pa.C.S. § 6322**

I. Background

The Committee, in conjunction with the Juvenile Court Procedural Rules Committee,¹ is planning to propose to the Supreme Court new Rules of Criminal Procedure 595 (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322) and 596 (Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322); and correlative amendments to Rules 113, 119, 504, 510, 540, 570, 571, and 578 that would establish new procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

In June 2009, the Committee was asked to participate in a Joint Ad Hoc Subcommittee that was exploring

procedures for transferring "direct file" cases² from criminal proceedings to juvenile proceedings as permitted by statute.³ The other participants included members and staff from the Juvenile Court Judges Commission (JCJC), the Juvenile Court Procedural Rules Committee, and the Appellate Court Procedural Rules Committee. The Joint Ad Hoc Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees.

Prior to the formation of the Joint Ad Hoc Subcommittee, JCJC formed a working group to develop best practices in de-certification proceedings to address issues such as detention of these "direct file" defendants, and the long delays in some cases before it is determined whether a case should be transferred. The JCJC's recommendations for best practices provided the starting point that the Joint Ad Hoc Subcommittee used in developing the rule proposals.

II. Introduction

In developing the proposed new Criminal Rules and the correlative rule changes, the Joint Ad Hoc Subcommittee agreed that, generally, the procedures for instituting a direct file case and the progression of that case should be pursuant to the Criminal Rules. In addition, the members determined that the procedures for requesting the transfer of these cases would not formally come into play until after the case is held for court. As explained more fully below in the discussion of the rules, procedurally, the direct file cases would be instituted by the filing of the complaint or an arrest without a warrant as provided in Pa.R.Crim.P. 502, and move through the preliminary hearing (Pa.R.Crim.P. 542), and the filing of an information (Pa.R.Crim.P. 560), to the "formal" arraignment (Pa.R.Crim.P. 571) in the same manner as any other court case under the Criminal Rules. In addition, if a motion for transfer of criminal proceedings to juvenile proceedings is going to be filed, the motion must be filed as part of the omnibus pretrial motion as provided in Pa.R.Crim.P. 578.

The Joint Ad Hoc Subcommittee determined that, following the arraignment, the direct file cases would vary procedurally from court cases by proceeding to a mandatory prehearing conference following the arraignment to determine whether a motion for transfer has been or will be filed. In those cases in which a motion has been filed but is not ready to be heard, the next procedural step would be mandatory status conferences. Finally, once the motion for transfer is ready to be heard, there would be a hearing on the motion. If the motion is granted, the case would be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act. If the motion is not granted, the case would continue to proceed as a court case under the Criminal Rules.

The Joint Ad Hoc Subcommittee noted that, although direct file cases would proceed in the same manner as all other court cases under the Criminal Rules, these cases should be flagged as direct file cases at the time the case is instituted and, if the case is held for court, the case should be flagged in the docket entries. This notice will alert the participants and court to the nature of the case. In addition, the members agreed that the proposed changes should not prohibit earlier determinations of

¹ The Juvenile Court Procedural Rules Committee proposal is for new Pa.R.J.C.P. 337 (Filing of Petition After Case Has Been Transferred from Criminal Proceedings).

² A "direct file" case is one in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "juvenile act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 so the case is considered a court case and proceeds as any other court case. For purposes of this Report, we will use the term "direct file" when we are referring to these cases.

³ See, 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings).

whether a direct file defendant's case should be transferred. The members noted, for example, in some judicial districts a determination is made as early as the preliminary hearing when the parties agree at the preliminary hearing that the case should be in Juvenile Court and the attorney for the Commonwealth withdraws the charges and re-files a petition in Juvenile Court.

In developing this proposal, the Joint Ad Hoc Subcommittee also addressed the issue of whether a defendant in a direct file case may be detained pretrial in a secure detention facility rather than the county jail when the defendant is unable to post bail. The members, acknowledging that there is no uniform statewide practice, ultimately agreed that there should be a separate motion procedure for determining the question of the place of pretrial detention.

III. Discussion of Rule Drafts

RULE 113 (Criminal Case File and Docket Entries)

Rule 113 (Criminal Case File And Docket Entries) requires the clerk of courts to maintain the criminal case file and to maintain a list of docket entries, and requires certain information to be maintained in the list of docket entries. Under this proposal, Rule 113(C) would be amended to require the clerk of courts to make a specific notation in the docket entries when the case is a direct file case. Having this information on the docket would provide early notice to the judges, court staff, and attorneys that this may be a case in which transfer to juvenile proceedings should be considered.

RULE 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings)

As explained in the discussion of proposed new Rule 595, the defendant will be required to appear in person for the mandatory prehearing conference. Because Rule 119 provides for the use of two-way simultaneous audio-visual communications in many criminal proceedings with exceptions, Rule 119 would be amended to include the prehearing conference under Rule 595 as one of the proceedings that is an exception to conducting the proceeding using two-way simultaneous audio-visual communications.

RULE 504 (Contents of Complaint)

In summary cases, when the defendant is under the age of 18, the parents must be notified when the defendant receives a citation.⁴ To ensure the issuing authority knows whether the police have notified the parents, Rule 403 (Contents of the Citation) includes a requirement that the law enforcement officer indicate on the citation whether the parents were notified. However, there is no comparable statutory or rule notice provision for court cases.

During the discussion about adding such a provision to the Criminal Rules for court case, the Committee agreed there are two purposes to be accomplished in "direct file" cases. First, it is important to flag that the defendant was under 18 at the time the excluded offense was committed for purposes of alerting the judges, court staff, and attorneys. Second, it is important to alert the magisterial district judge whether the defendant's parents, guardian, or other custodian were notified at the time the complaint was filed. In view of these distinct considerations, Rule 504 would be amended by the addition of new paragraphs (10) and (11) to require the police to note on the complaint that the case is a "direct file" case and whether

the defendant's parents, guardian, or other custodian have been notified of the case.

In considering the requirement that the defendant's parents, guardian, or other custodian be notified, the Committee agreed the notice would not give the defendant's parents, guardian, or other custodian standing in these "direct file" cases. Rather, the defendant's parents, guardian, or other custodian are being notified solely to alert them to the charges against their child. To make this clear, the Rule 504 Comment would be revised. The Committee agreed to use language similar to the language in the Juvenile Court Procedural Rule 131 Comment, which provides "[n]othing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present."

RULE 510 (Contents of Summons; Notice of Preliminary Hearing)

During the discussions about the proposed changes to Rule 504 concerning the requirement that the police make a notation on the complaint whether the defendant's parents, guardian, or other custodian have been notified if the defendant was under 18 at the time the complaint is filed, the members recognized that, realistically, at this point in the process, the police rarely will have notified the defendant's parents, guardian, or other custodian. Since the goal is to have the defendant's parents, guardian, or other custodian be notified of the case, the notification of the defendant's parents, guardian, or other custodian is more likely to occur when the defendant is arrested or when the summons is issued. In view of this consideration, in addition to the proposed new notice provision in Rule 504, a new paragraph (D) would be added to Rule 510 requiring, in cases in which a summons is being issued, that the issuing authority determine whether the defendant's parents, guardian, or other custodian have been notified at the time the summons is issued. If the defendant's parents, guardian, or other custodian have not been notified, then the issuing authority is required to send a copy of the summons to the defendant's parents, guardian, or other custodian. The Comment includes the provision about the defendant's parents, guardian, or other custodian not having standing in the proceedings discussed above.

RULE 540 (Preliminary Arraignment)

A new paragraph (B) would be added to Rule 540 for the same reasons discussed above with regard to Rule 510(D). In a "direct file" case, when the defendant has been arrested, the issuing authority would be required at the time of the preliminary arraignment to determine whether defendant's parents, guardian, or other custodian have been notified of the charges. If they have not been notified, the issuing authority would be required to notify the parents at the time of the preliminary arraignment. The Comment also includes the same provision about the parents not having standing in the proceedings.

In addition, the Rule 540 Comment includes a reference to proposed new Rule 595 to alert the bench and bar at this early stage in the proceedings to the special procedures for transfer from criminal proceedings to juvenile proceedings in "direct file" cases. The Committee agreed this early reference to proposed new Rule 595 is necessary because frequently there are attorneys who are new to the criminal and juvenile systems and not as knowledgeable about the procedures.

⁴ See 42 Pa.C.S. § 1522 concerning parental notification in certain summary cases involving juveniles.

RULE 570 (Pretrial Conference)

As explained more fully in the discussion below about proposed new Rule 595, the new rule will require that after the arraignment there should be a mandatory prehearing conference in the “direct file” cases. Although this prehearing conference is procedurally comparable to the Rule 570 pretrial conference, it is mandatory, rather than discretionary, and addresses issues that relate specifically to “direct file” cases. To alert the bench and bar to the new mandatory prehearing conference procedures, a cross-reference to new Rule 595 has been added to the Rule 570 Comment.

RULE 571 (Arraignment)

After reviewing the procedural flow of a criminal case from the time of arrest or issuance of a summons, the Committee agreed that the arraignment is the point in the proceedings when a “direct file” defendant formally should be advised of the right to file a motion for transfer from criminal proceedings to juvenile proceedings. To accomplish this, Rule 571(C)(3) would be amended by adding a motion requesting transfer from criminal proceedings to juvenile proceedings to the example of motions that are to be filed after the arraignment. In addition, a cross-reference to new Rule 595 for the procedures for transfer of proceedings would be added to the Rule 571 Comment.

RULE 578 (Omnibus Pretrial Motion for Relief)

Consistent with the decisions made with regard to the procedural framework of the “direct file” cases, as explained above, the motion for transfer from criminal proceedings to juvenile proceedings should be treated in the same manner as all other motions that are part of the omnibus pretrial motion. To make this clear, the transfer motion would be added to the list of the types of requests that are to be in the omnibus pretrial motion set forth in the Comment to Rule 578.

NEW RULE 595 (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322)

Determining the placement of a new rule providing the procedures for requesting transfer from criminal proceedings to juvenile proceedings was difficult. However, once it was determined that these cases would proceed according to the Criminal Rules until after the arraignment, the members agreed the new rule should fall somewhere in the rules after Rule 571. To make the rule “fit” without renumbering all the rules in Chapter 5 Parts F and G, the Committee is proposing that the new rules governing transfer of proceedings be at the end of Chapter 5 (Pretrial Procedures in Court Cases) as a separate new Part H (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings).

In discussing the title to the proposed new rule, the Committee considered using “decertification procedures,” “direct file procedures,” and “transfer from criminal court to juvenile court.” After thoroughly vetting all this terminology and recognizing that not all judicial districts have distinct criminal or juvenile courts, the members finally determined that, to more accurately represent the nature of the procedures set forth in the proposed new rule, the title should read “Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.” The members also agreed that this phrase should be used throughout the rule.

Paragraph (A)

After considering a number of options with regard to the filing of the motion for transfer,⁵ the members concluded that a motion requesting transfer should be filed in the same manner as any other motion in a criminal case that is subject to the omnibus pretrial motion procedures. Paragraph (A) incorporates the provisions from paragraph (A) of Rule 579 (Time for Omnibus Pretrial Motion and Service). The motion for transfer must be filed within 30 days of the arraignment, unless the opportunity to file did not exist, or the parties were not aware of the grounds for the motion, or the time for filing was extended by the judge.

Paragraph (A) also requires that the motion be filed with the clerk of courts and a copy of the motion be served on the attorney for the Commonwealth concurrently with filing.

Paragraph (B)

Paragraph (B) sets forth the procedures for the mandatory prehearing conference. The prehearing conference must be conducted in every case in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with the direct file offenses enumerated in 42 Pa.C.S. § 6322(2)(i), (ii), and (iii).

The issues concerning the time when the prehearing conference should be held, whether the defendant should be required to be present at the prehearing conference, and what would occur at the prehearing conference were discussed at length. Concerning the time for the prehearing conference, the consensus was that the prehearing conference must be held no later than 35 days after the arraignment. The members reasoned that the time for the prehearing conference should be tied to the time for the arraignment and the time for filing omnibus pretrial motions. Setting the outside limit for the prehearing conference at 35 days after the arraignment provides adequate time for the defendant to file a motion for transfer as part of the omnibus pretrial motion.

Paragraph (B)(1) addresses the defendant’s presence at the prehearing conference. The Committee initially considered permitting the defendant to waive his or her presence with the consent of the defendant’s attorney and the judge. Upon further reflection, the members concluded the prehearing conference in the context of a request for transfer from criminal proceedings to juvenile proceedings is a critical stage in the proceedings. In these cases, it is important that the defendant be involved in making the decision whether to file a motion rather than permitting the defendant’s attorney to make the decision for the defendant. In view of these considerations, Rule 595(B)(1) and Rule 119 make the defendant’s presence in person at the prehearing conference mandatory. The defendant’s attorney and the attorney for the Commonwealth also are required to be present at the prehearing conference.

Paragraph (B)(2) sets forth the procedures the judge is to follow at the prehearing conference. The prehearing conference provides the forum for the judge to determine whether the defendant has filed a motion requesting transfer, is requesting additional time to file the motion, or has decided not to file the motion. The prehearing conference also is the stage in the proceedings from which the remaining proceedings related to the request for transfer will flow. Accordingly, the proposed new para-

⁵ The Committee agreed to use “motion” instead of “petition” to be consistent with the Criminal Rules. See Rule 575.

graph (B)(2)(a), (b), and (c) enumerate what the judge is to do once the judge ascertains whether a motion has been filed, or will be filed, or will not be filed.

If the defendant is requesting additional time and judge agrees, the judge is required to set a date for filing the motion, paragraph (B)(2)(a). The judge has the responsibility to move these cases along in a timely manner based on the information provided by the defendant. Accordingly, the judge is given the discretion to set the time when the motion must be filed.

If the motion for transfer has been filed, the judge must determine if the motion is ready to proceed, paragraph (B)(2)(b). If the parties agree the motion is ready to be heard, the judge is required to set the date for the hearing. Although it is left to the discretion of the judge to determine the date for the hearing, the hearing must be held no later than 30 days after the pretrial conference. If the motion is not ready to be heard, pursuant to paragraph (C), the judge is required set up status conferences.

If the defendant indicates he or she is not going to file a motion, the case will proceed as any other criminal case under the Criminal Rules, subparagraph (B)(2)(c).

Paragraphs (B)(3), (B)(4), and (B)(5) are taken from Rule 570 (Pretrial Conference). As with the Rule 570 pretrial conference, at the prehearing conference, the parties should consider such things as the simplification or stipulation of factual issues, the qualification of exhibits, the number of witnesses giving testimony of a cumulative nature, and such other matters that may aid the disposition of the motion. In addition, the parties should have the right to object to rulings by the judge, and the judge should be required to make a record of the agreements or objections of the parties and of any other rulings made during the prehearing conference.

Paragraph (C)

As noted above, paragraph (C) provides, in cases in which the judge determines the motion is not ready to be heard, that the judge is required to schedule status conferences. The status conferences provide a tool to assist the judge in moving the case along. The judge has the discretion for when to schedule the status conferences, but the dates have to be within the timeframe of "no later than every 60 days after the prehearing conference." This timeframe permits the judge to schedule the status conferences for shorter periods of time in the appropriate cases. The judge must conduct status conferences until the motion is ready to be heard.

At the status conferences, the parties are required to advise the judge of the status of all matters pertinent to whether the motion is ready to be heard.

Paragraph (D)

Paragraph (D) sets forth the requirements for the judge to schedule the hearing. The hearing must be held no later than 30 days after the motion is ready to be heard. Notice of the hearing date is to be given to the defendant, defendant's attorney, and the attorney for the Commonwealth. The Committee did not think it necessary to set forth what the hearing procedures should be so the rule is silent in this regard.

Paragraphs (E) and (F)

Paragraph (E) and paragraph (F) incorporate the provisions from 42 Pa.C.S. § 6322 that require a decision within 20 days after the hearing, paragraph (E), and require the clerk of courts to enter an order on behalf of

the judge denying the motion by operation of law if the judge does not decide the motion within 20 days, paragraph (F).

The issue of whether the judge should be required to make his or her findings in open court was discussed at length. The members noted that 42 Pa.C.S. § 6322(b) merely provides, *inter alia*, "the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order." The members believe that the transfer proceeding is a critical proceeding and the defendant and counsel should be in court when the judge issues his or her decision. Accordingly, proposed new Rule 595(E) requires that the judge announce the decision in open court with all the parties present at the conclusion of the hearing. If the judge delays making the decision, the judge still must announce the decision in open court with all the parties present. Paragraph (E) also requires the judge to enter an order granting or denying the motion and to set forth the findings of fact and conclusions of law orally on the record or in writing. The findings of fact and conclusions of law are important for the record in the event of an appeal.

Paragraph (G)

Paragraph (G) sets forth the procedures when the judge grants the motion. Once the motion is granted, the judge is required to order the transfer of the case from criminal proceedings to juvenile proceedings. Once the transfer is ordered, the case will then proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act.

One issue that the Joint Ad Hoc Subcommittee spent a great deal of time considering concerns the treatment of the defendant when a transfer is ordered. The members noted that the transfer proceedings are conducted in criminal court and, frequently, the judges are not as familiar with the proceedings for juveniles, particularly with regard to placement. In view of this, and because the juvenile probation office, as the intake office for juveniles, is in the best position to expeditiously assess the case and determine where the defendant should be placed and what should happen next in the case, proposed Rule 595(G)(2) requires the judge to order the defendant to be taken to the juvenile probation office. Although 42 Pa.C.S. § 6322(d) provides:

[w]here review of the transfer order is not sought or where the transfer order is upheld the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the court at a time to be designated,

the proposed new provisions in Rule 595(G)(2) and statute are not inconsistent because the rule provision merely sets the stage for the juvenile probation office to implement the "next step" and that includes the procedures set forth in Section 6322(d).

Paragraph (H)

Paragraph (H) addresses the procedures when the judge denies the motion for transfer or the clerk of courts enters an order on behalf of the judge denying the motion by operation of law. In these circumstances, the case will proceed as a court case under the Rules of Criminal Procedure.

Paragraph (I)

Paragraph (I) sets forth the requirement that the clerk of courts serve the order granting or denying the motion on the parties.

Rule 595 Comment

The first paragraph of the Comment cross-references proposed new Rule 596 that addresses the place of detention of a defendant in a “direct file” case. Proposed new Rule 596 is discussed more fully below.

The second paragraph of the Comment emphasizes that the prehearing conference in the rule is mandatory and therefore is different from the Rule 570 pretrial conference.

The third paragraph of the Comment addresses the difficulties the parties encountered in these transfer cases. The provision suggests to the parties that they may request that the judge issue an order for the release of records or other materials relevant to the defendant’s motion, for the appointment of experts, for the examination of the defendant, and any other aids necessary to the disposition of the motion. In addition, the provision makes it clear that these requests, if authorized by law, may be made *ex parte*.

During the discussions about the prehearing conference, the role of the juvenile probation office in these proceedings was discussed. Although the members agreed the rules should not require juvenile probation office to have a role, they thought the parties could request that probation prepare a report. Accordingly, the suggested list of things the parties may request the judge to order includes “a report from the juvenile probation office.”

The next three paragraphs include cross-references to the correlative provisions of 42 Pa.C.S. § 6322, and explain the interplay between these provisions and proposed new Rule 595. In addition, the third paragraph references the statutorily established burden of proof in these cases.

The sixth paragraph of the Comment makes it clear that once the judge grants a motion for transfer and has the defendant taken to the juvenile probation office, the criminal court no longer has jurisdiction over the case.

The seventh paragraph of the Comment elaborates on the interplay between Rule 595(G) and 42 Pa.C.S. § 6322(d) discussed above.

The ninth paragraph sets forth the provision that the defendant’s parents, guardian, or other custodian are not given standing in the matter nor do the rule provisions create a right for the defendant to have his guardian present.

NEW RULE 596 (Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322)

The issue of whether a defendant under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (2)(ii), or (2)(iii) may be detained pretrial in a secure detention facility rather than in a county jail when the defendant is unable to make or ineligible for bail was debated at length. After researching this matter, the members concluded the new transfer procedures should include provisions for the detention of the “direct file” defendants in a secure detention facility.

Proposed new Rule 596 would provide, with the consent of the attorney for the Commonwealth, that the judge may transfer the defendant to a secure detention facility. Because the defendants in the direct file cases are charged with serious crimes including murder, if the defendant is going to be detained in other than the county jail, the facility must be a secure detention facility.

To make this clear, the first paragraph of the Comment includes the following definition of “secure detention facility” as the term is used in the new rule:

As used in this rule, “secure detention facility” is a facility approved by the Department of Public Welfare to provide secure detention as defined in 55 Pa. Code § 3800.5.

Proposed new Rule 596 sets forth the procedures related to the place of pretrial detention in “direct file” cases when the defendant is not released on bail. Paragraph (A) provides the “norm” with regard to pretrial detention. The defendant in a “direct file” case is to be detained in the county jail unless released on bail except as provided in paragraph (B).

Paragraph (B) provides the exception to detention in the county jail. The defendant may file a motion requesting to be detained in a secure detention facility pending disposition of a motion for transfer. If the attorney for the Commonwealth consents, the judge may order that the defendant be detained in a secure detention facility. If the judge orders a defendant to be detained in a secure detention facility, this place of pretrial detention has clear limitations. Specifically,

(1) when the defendant is granted bail, he or she is released from detention;

(2) if the judge denies the motion for transfer or the judge determines the defendant is not filing a motion for transfer, then the judge must order the defendant transferred to the county jail because the case will proceed as a criminal court case;

(3) if the defendant turns 18 while in the secure detention facility before the motion is disposed, the judge must order the defendant transferred to the county jail because the defendant is no longer a child; and

(4) if the judge grants the motion for transfer, then the judge must order that the defendant be taken to the probation office so that office will be able to promptly process the case as provided by the Juvenile Court Procedural Rules and the Juvenile Act.

These four scenarios are addressed on paragraphs (B)(1), (B)(2), (C), and (D).

The Comment clarifies that the detention facility provisions of new Rule 596 do not preclude detention in a secure facility of an individual older than 18 who is otherwise subject to proceedings under the Juvenile Act. The Comment also notes that the provisions of the new rule are not intended to restrict or enlarge the defendant’s opportunity to address bail.

[Pa.B. Doc. No. 10-1476. Filed for public inspection August 13, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 2 AND 3]

Proposed Amendments to Rule 200 and Proposed New Rule 337

Introduction

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsyl-

vania that the modification of Rule 200 and new Rule 337 be adopted and prescribed. The proposed modified Rule 200 adds that the new Pa.R.Crim.P. 595 be followed when transferring a case from a criminal proceeding to a juvenile proceeding. The new Rule 337 provides for the filing of a petition or conversion of the criminal complaint into a petition after a case has been transferred from criminal proceedings. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the intent of the Rules. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

We request that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenile.rules@pacourts.us. E-mail is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. If you send in an e-mailed comment, do not resubmit it as a written comment. We will acknowledge receipt of your comment.

If you do not have access to e-mail, comments may be faxed to the Committee at (717) 231-9541 or written comments may be mailed to:

Christine Riscili, Counsel
 Supreme Court of Pennsylvania
 Juvenile Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Avenue, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635

no later than Friday, September 10, 2010.

By the Juvenile Court Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chairperson

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

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

PART A. COMMENCING PROCEEDINGS

Rule 200. Commencing Proceedings.

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

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
 - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
 - b) upon probable cause when the offense is a felony; or
 - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;

3) the filing of a certification with the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense;

4) transfer of a case from a criminal proceeding pursuant to **Pa.R.Crim.P. 595 and 42 Pa.C.S. § 6322**;

5) the court accepting jurisdiction of a resident juvenile from another state; or

6) the court accepting supervision of a juvenile pursuant to another state's order.

Comment

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. This procedure departs from the Juvenile Act, which provides that the filing of a petition commences a proceeding. Rule 800 suspends 42 Pa.C.S. § 6321 only to the extent that it is inconsistent with the procedures of this rule. Petitions filed by any person circumvent the juvenile probation's office ability to divert the case through informal adjustment as provided in 42 Pa.C.S. § 6323. Probation officers may "receive and examine complaints and charges of delinquency . . . of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," see Rule 120.

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

A proceeding may be commenced pursuant to paragraph (3) by filing a certification that attests the juvenile has failed to comply with a lawful sentence imposed for a summary offense, bypassing the need for a written allegation pursuant to Rule 231.

Under paragraph (4), when a case is transferred from a criminal proceeding pursuant to 42 Pa.C.S. § 6322 to juvenile court, the entire case file is to be transferred. The case file is governed by the disclosure requirements of Rule 160. **See Rule 337 for the filing of petition after case has been transferred from a criminal proceeding. See Rule 404 for prompt adjudicatory hearing.**

Paragraph (5) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (6) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

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

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

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

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**CHAPTER 3. PRE-ADJUDICATORY PROCEDURES
 PART C. PETITION**

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 337. Filing of Petition After Case has Been Transferred from Criminal Proceedings.

A. *Commencement of Proceedings.* Pursuant to Rule 200(4), the transfer of a case from a criminal proceeding pursuant to Pa.R.Crim.P. 595 and 42 Pa.C.S. § 6322 commences juvenile court action.

B. *Filing of the petition.* When a juvenile is transferred from a criminal proceeding:

- 1) a new petition shall be filed; or
- 2) the criminal complaint shall be converted into a petition pursuant to paragraph (C).

C. *Conversion of Criminal Complaint.* The criminal complaint shall be converted into a petition when supplemented with the following information and filed with the clerk of courts pursuant to Rule 330(B):

- 1) the juvenile's date of birth;
- 2) the names and ages of any conspirators, if known;
- 3) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1)(i) for limited public information; and
- 5) the transfer order, including, a statement which provides:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought in juvenile court; and
 - b) the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile.

Comment

When a judge orders that a juvenile is transferred from a criminal proceeding to a juvenile proceeding, the transfer order commences the juvenile delinquency proceeding. See Rule 200(4).

When a juvenile is transferred from a criminal proceeding to a juvenile proceeding, a new petition may be filed, but is not necessary if the criminal complaint is converted into a petition when supplemented with the information as provided in paragraph (C). The petition is to be filed with the clerk of courts and the case is to proceed as any other juvenile case following the Rules of Juvenile Court Procedure.

An adjudicatory hearing is to be held within ten days of the filing of the petition. See also Rule 404.

Explanatory Report

Committee members from the Appellate Court, Criminal, and Juvenile Court Procedural Rules Committees were asked to participate in a Joint Ad Hoc Subcommittee with the Juvenile Court Judges' Commission which was developing best practices for transferring "direct file" cases from criminal proceedings to juvenile proceedings.

The purpose of the Joint Ad Hoc Committee was to make recommendations and develop procedures to smooth the transition of cases from criminal proceedings to juvenile proceedings within the procedural rules.

The majority of the Recommendations affect the Rules of Criminal Procedure because procedures for these cases begin in criminal court. See the proposed Criminal Rule modifications and new Pa.R.Crim.P. 595 for these procedures.

The Juvenile Court Procedural Rules Committee, in conjunction with the Criminal Procedural Rules Committee, is planning to propose the modification of Rule 200 and adoption of new Rule 337.

Rule 200—Commencing Proceedings

The cite to the new Pa.R.Crim.P. 595 was placed in paragraph (4) when transferring a case from a criminal proceeding to juvenile proceedings.

In the Comment, the cite for new Pa.R.J.C.P. 337 was referenced in addition to Rule 404 for a prompt adjudicatory hearing.

Rule 337—Filing of Petition After Case has Been Transferred from Criminal Proceedings

Rather than require a new petition to be filed in every transfer case, this new rule was added to allow the criminal complaint to be converted into the petition when supplemented with the information in paragraph (C). The requirements of this paragraph are the items that are required in the petition which are not required in the criminal complaint. See Pa.R.Crim.P. 504 and Pa.R.J.C.P. 330.

[Pa.B. Doc. No. 10-1477. Filed for public inspection August 13, 2010, 9:00 a.m.]

Title 25—LOCAL COURT RULES

SCHUYLKILL COUNTY

Amendment to Rule of Judicial Administration 1901: Termination of Active Cases; AD-90-10

Order of Court

And Now, this 2nd day of August, 2010 at 3:00, p.m. the Court hereby amends Schuylkill County Rule of Judicial Administration 1901(a), (b) and (c). This rule is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

Pursuant to Rule of Judicial Administration 103, the Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rules with the Administrative Office of the Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a CD-ROM reflecting the text in the hard copy version.
- 3) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 4) Keep continuously available for public inspection copies of this Order and Rule.

By the Court

WILLIAM E. BALDWIN,
President Judge

**AMENDMENT TO SCHUYLKILL COUNTY
RULES OF JUDICIAL ADMINISTRATION****Rule 1901. Termination of Inactive Cases.**

(a) On or before September 1 of each year, the Prothonotary shall prepare and forward to the Court a list of all civil matters in which no steps or proceedings have been taken for two years or more prior thereto. The Court shall pursuant to Pa.R.C.P. 230.2 initiate proceedings to terminate the cases contained on said list.

(b) On or before September 1 of each year, the Clerk of Courts shall prepare and forward to the Court a list of all criminal proceedings in which no steps or proceedings have been taken for two years or more prior thereto. The Court shall thereafter give to the district attorney, any private prosecutor, the defendant and defense counsel of record notice of the Court's intention to terminate the proceedings as provided by Pa.R.J.A. 1901(c). If no good cause for continuing a proceeding is shown in response to said notice, an order for dismissal shall be ordered forthwith by the Court. If an action is terminated pursuant to this rule, an aggrieved party may petition the Court to reinstate the proceeding. The Court may rein-

state the proceeding upon good cause shown both for the failure to respond to the Court's notice of intent to terminate and for continuing the proceeding.

(c) On or before September 1 of each year, each Magisterial District Judge shall prepare and forward to the Court a list of all civil and summary proceedings in the judge's magisterial district in which no steps or proceedings have been taken for two years or more prior thereto. The Court shall thereafter give to the parties in a civil matter and to the prosecutor and defendant in a summary matter notice of the Court's intention to terminate the proceedings as provided by Pa.R.J.A. 1901(c). If no good cause for continuing a proceeding is shown in response to said notice, an order for dismissal shall be ordered forthwith by the Court. If an action is terminated pursuant to this rule, an aggrieved party may petition the Court to reinstate the proceeding. The Court may reinstate the proceeding upon good cause shown both for the failure to respond to the Court's notice of intent to terminate and for continuing the proceeding.

[Pa.B. Doc. No. 10-1478. Filed for public inspection August 13, 2010, 9:00 a.m.]