

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 4 AND 8]

Proposed Amendments to Rules 120, 163, 167, 170, 172, 408 and 800 and Proposed New Rule 173

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 163, 167, 170, 172, 173, 408, and 800 be adopted and prescribed. These proposed modifications set forth the procedures for expunging and destroying documents, fingerprints, and photographs.

The following Explanatory Report highlights the intent of these 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.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
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All comments shall be received no later than Monday, September 27, 2010.

By the Juvenile Court Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

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DESTROY OR DESTRUCTION is to permanently erase or the process of permanent erasure of an item leaving no trace or indication that it ever existed.

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EXPUNGE or EXPUNGEMENT is to legally erase or the process of legal erasure of juvenile record information making it permanently not available to the public, but where some information may be kept only by a juvenile justice agency for limited purposes: 1) to determine eligibility in a court program; or 2) for retention of statistical records when all identifiers to trace the identity of an individual have been removed.

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INTELLIGENCE INFORMATION is information concerning the habits, practices, characteristics, possessions, associations, or financial status of any juvenile compiled in an effort to anticipate, prevent, monitor, investigate, or prosecute delinquent activity.

INVESTIGATIVE INFORMATION is the information assembled as result of the performance of any inquiry, formal or informal, into delinquent activity or an allegation of a delinquent act and may include *modus operandi* information.

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JUVENILE JUSTICE AGENCY is any court, including the minor judiciary, or any other governmental agency specifically authorized to perform the administration of juvenile justice as its function. Juvenile justice agencies include, but are not limited to, organized State and municipal police departments, probation agencies, district or prosecuting attorneys, or any such persons, agencies, or departments as determined by the court to be juvenile justice agencies.

JUVENILE RECORD is the information collected and retained by juvenile justice agencies concerning juveniles, and arising from the initiation of delinquency proceedings, consisting of identifiable descriptions, dates and notations of arrest, written allegations, petitions, other formal charging documents, official court records, and any dispositions arising from those records. The juvenile record does not include intelligence information or investigative information that is maintained separately by law enforcement agencies.

* * * * *

Comment

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“Destroy” and “expunge” do not have the same meaning. “Destroy” is to permanently erase; whereas, “expunge” is to *legally* erase. Outside of law enforcement and prosecuting attorneys, no one has access to expunged items. Documents in which personal identifiers have been removed may be dispensed to agencies authorized by the court to compile statistics. For limited purposes, specific information should be kept.

The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a

finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

The term “intelligence information” may include information on prescribing, dispensing, selling, obtaining, or using a controlled substance as defined in the act of April 14, 1972 (P. L. 233, No. 64) known as the “Controlled Substance, Drug, Device and Cosmetic Act.”

“Juvenile records” as used in these Rules do not include investigative and intelligence information kept separately by law enforcement agencies. Those documents kept separately by law enforcement agencies are not subject to Rules 170 and 172.

The term “juvenile justice agency” is a very broad term that includes all those agencies that enforce the administration of justice.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 163. Release of Information to School.

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

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;

- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. *Additional information.*

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

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

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

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

Comment

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

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

Pursuant to paragraph (D), information provided by the court is to be kept and maintained separately from the juvenile’s official school record. If the court has ordered a record to be expunged, the court should concurrently order the destruction of the information provided to the school by the court; including information subsequently provided to another school. The terms “expunged” and “destruction” should not be confused in this Comment. Because the school is not law enforcement or a prosecutor, there is no reason for the school to maintain its information. Therefore, the school is to destroy all information received by the court.

Official Note: Rule 163 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).

PART C(2). MAINTAINING RECORDS

Rule 167. Filings and Service of Court Orders and Notices.

A. *Filings.*

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

2) All orders and court notices shall be filed in the official court record.

B. *Service.*

1) A copy of any order or court notice shall be served promptly on each [**party's attorney, and the juvenile, if unrepresented**] party, their attorneys, the juvenile probation officer, and any other person, service provider, or agency listed in the court order.

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

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

a) in writing by:

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

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

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

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

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

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

b) orally in open court on the record.

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

Comment

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

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

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

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 167 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

PART C(3). EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, OR PHOTOGRAPHS

Rule 170. [**Expunging or Destroying Juvenile Court**] Motion to Expunge or Destroy Records.

A. *Motion.* [**Juvenile**] Upon motion, the court may order that juvenile records [**may**], fingerprints, or photographs be expunged [**upon motion**] or destroyed.

B. *Contents of Motion.* A motion, which shall [**take the form of**] include a proposed court order, shall contain the following information:

- 1) [**The**] the name of the juvenile;
- 2) the date of birth of the juvenile, if known;
- 3) the juvenile's case docket number, if any;
- 4) the allegations to which the order pertains;
- 5) the law enforcement agency that initiated the allegations;
- 6) the reference number of the police report or written allegation to be expunged or destroyed;
- 7) the date of arrest;
- 8) the disposition of the written allegation or petition;
- 9) the reasons [**and statutory authority**] for expunging or destroying the [**document**] documents, fingerprints, or photographs; and
- 10) the agencies upon which certified copies of the court order shall be served.

C. *Service of Motion.* In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

D. *Answer.* The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.

E. *Hearing.* Unless the attorney for the Commonwealth consents to expunging the records or destroying the fingerprints and photographs, the court shall:

- 1) schedule and conduct a hearing[, and thereafter grant or deny the motion.];
- 2) absent good cause, order the destruction of the juvenile's fingerprints and photographs, if the court has found that the juvenile:
 - 1) committed none of the delinquent acts, or
 - 2) is not in need of treatment, supervision, and rehabilitation; and
 - 3) if the motion is granted, specify whether items shall be expunged or destroyed.

F. *Inter-county transferred cases.*

- 1) A motion should be filed in the county which received the transfer of the case pursuant to Rule 302.
- 2) The receiving county should include any transferring court(s) in the order to expunge juvenile records.

Comment

[See 18 Pa.C.S. § 9123 for records that may be expunged and 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.]

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be an offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Pursuant to paragraph (B)(9), the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion.

“Expunge” is defined by Rule 120 which means to legally erase or the process of legal erasure of an item making it permanently not available to the public, but where some information may be kept only by a juvenile justice agency or to determine subsequent eligibility in a court program; or is when all identifiers to trace the identity of an individual have been removed for retention of statistical records.

The retention of certain information is crucial for many statistical purposes, such as those statistics produced by the Juvenile Court Judges’ Commission, the Office of Children and Families in the Court, the Administrative Office of Pennsylvania Courts, and other legitimate research bodies. All identifiers used to trace the identity of an individual are to be removed from items kept for these statistical purposes.

See Rule 800 for suspension of the Criminal History Records Information Act (CHRIA) and 42 Pa.C.S. § 6309(a), which makes CHRIA applicable in juvenile cases. All procedures expunging juvenile cases are governed by this Rule. See also Rule 120 for the definition of “expunge” and Rule 172 for entry of the court order.

In addition, Rule 800 suspends § 6341(a) of the Juvenile Act, which provides for the automatic destruction of fingerprints or photographs if the court finds that the juvenile committed none of the alleged delinquent acts.

Pursuant to paragraph (D), the attorney for the Commonwealth is given an opportunity to respond to the motion. The attorney for the Commonwealth should specify its position on whether items should be expunged or destroyed. Expunged items are available to law enforcement and the attorney for the Commonwealth in limited circumstances. Whereas, destroyed items are permanently erased.

Intelligence and investigative information kept separately by law enforcement agencies is not subject to this Rule.

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 170 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 172. Order to Expunge or Destroy.

A. Contents. Any order to expunge or destroy the official court record, juvenile probation records, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) [All] all items contained in Rule 170(B);
 - 2) a directive specifically identifying which items shall be expunged or destroyed, including all official and unofficial law enforcement, probation, and juvenile court records; fingerprints; photographs; and any other information pertaining to the arrest;
 - 3) a directive that the keeper of the juvenile records shall expunge or destroy such items;
 - 4) a directive that each agency, department, or office upon request shall notify the court or its designee, in writing, of the action taken in response to the order to expunge or destroy;
 - 5) the printed name and signature of the judge issuing the order; and
- [3] 6) the date of the court order.

B. Service. In addition to the service required by Rule 167, the clerk of courts, court administrator, or other court designee shall serve certified copies of the order on the chief juvenile probation officer and any other person or agency as directed by the court.

Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 172 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

Rule 173. Retention of Specific Information in Juvenile Records.

A. Maintenance of specific information. All information retained according to this Rule shall be confidential. This information is not eligible for inspection pursuant to Rule 160.

B. By court. The court may maintain the following information:

- 1) a list of juvenile names;
- 2) identifying information, such as date of birth;
- 3) the case docket number;
- 4) a copy of the order to expunge; and
- 5) any compliance letters sent pursuant to Rule 172(A)(3);

C. By Juvenile Justice Agencies.

1) Juvenile Justice Agencies may maintain the following information solely for purpose of determining subsequent eligibility for a court program or in the preparation of a pre-sentence report in criminal court:

- a) a list of the names of juveniles who have been adjudicated delinquent;
- b) identifying information, such as date of birth;
- c) a list of the delinquent acts petitioned; and
- d) a list of the delinquent acts founded.

2) Juvenile Justice Agencies may maintain necessary records as intelligence and investigative information.

Comment

Pursuant to Rule 167(B)(2), the clerk of courts is to serve orders from the court unless the President Judge has promulgated a local rule designating service to be by the court administrator or other court designee. See Rule 121 for procedures on local rules.

The directive is to include expungement from all registries, including but not limited to the Central Repository maintained by the Pennsylvania State Police, JNET, CLEAN, PCIC, and NCIC. Each agency, department, or office is to notify the court that it has complied with the expungement order. See also 42 Pa.C.S. § 6309.

Pursuant to paragraph (A)(3), the agency, department, or office is to notify the court of the action taken. This notification may be accomplished by filing a signed affidavit when requested.

Paragraph (C) sets forth the information that can be maintained by the court, prosecuting attorney, and the Central Repository.

CHAPTER 4. ADJUDICATORY HEARING

Rule 408. Ruling on Offenses.

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

B. *Did not commit acts.*

1) If the court finds the juvenile [**did not commit all**] committed none of the alleged delinquent acts, the court shall dismiss the petition and release the juvenile, if detained, unless there are other grounds for the juvenile's detention.

2) The court shall move to expunge the records related to the dismissed petition pursuant to 18 Pa.C.S. § 9123(a)(1) and Rule 172.

3) Absent cause shown, the court shall expunge the records and order the destruction of any fingerprints or photographs.

C. *Committed act.* [**If**] After an adjudicatory hearing, if the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409.

Comment

Under paragraph (A), for any offense the court finds that the juvenile committed, the court is to specify the grading and count(s). See 42 Pa.C.S. § 6341(b). It is noted that some offenses have no specific grading, i.e., ungraded felony or misdemeanor of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 *et seq.*, or the ungraded delinquent act of failure to comply with a sentence for a summary offense, 42 Pa.C.S. § 6302 (definition of "delinquent act").

Pursuant to paragraph (B), if the court finds that the juvenile [**did not commit all**] committed none of the alleged delinquent acts, the court, upon its own motion, is to expunge the records pursuant to 18 Pa.C.S. § 9123(a)(1) and Rule 172 and is to order the de-

struction of the fingerprints and photographs pursuant to 42 Pa.C.S. § 6341(a). If the court does find that the juvenile committed at least one of the offenses petitioned, there is no expungement or destruction of records, fingerprints, or photographs. Absent cause shown, the court is to expunge the records pursuant to Rule 172. In its order, the court is to specify the case reference number or other identifying number so the order only applies to the specified case. See Comment to Rule 170 for further definition of a reference number.

Paragraph (C) requires that there is to be an adjudicatory hearing before proceeding pursuant to Rule 409. This rule is not meant to preclude the use of a consent decree. If a consent decree is ordered, the court does not proceed under Rule 409.

Official Note: Rule 408 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 408 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 408 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P.L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206 and 211.

2) The Act of July 16, 1979, P.L. 116, No. 47, § 2, 18 Pa.C.S. § 9101 *et seq.*, which provides for the expungement of juvenile records, is suspended only insofar as it applies to juvenile cases. All procedural requirements for expunging juvenile records are governed by Rules 120, 170, and 172.

3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6341(a), which provides that fingerprints and photographs are to be immediately destroyed where it is determined that the acts ascribed to the juvenile were not committed by him, is suspended only insofar as the Act is inconsistent with Rule 120 and 171, which require a motion for the destruction of fingerprints and photographs.

4) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.

[3] 5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsis-

tent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

[4] 6) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which require separate counsel if there is a conflict of interest.

[5] 7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

[6] 8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

[7] 9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

[8] 10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

[9] 11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

[10] 12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

[11] 13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

[12] 14) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a

delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[13] 15) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[14] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[15] 17) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[16] 18) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately; amended March 23, 2007, effective August 1, 2007; amended February 26, 2008, effective June 1, 2008; amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Explanatory Report

Background

The Committee has received several inquiries as to the application of the Criminal History Record Information Act (CHRIA) in juvenile cases. 18 Pa.C.S. § 9101 *et seq.*

According to 18 Pa.C.S. § 9105, nothing in CHRIA shall apply to juveniles except as provided in § 9123. Section 9123 governs juvenile records and provides the Court with criteria for expunging records. *See* 18 Pa.C.S. §§ 9105 and 9123.

CHRIA was adopted in 1980. Subsequently in 1986, the legislature enacted § 6309(a) of the Juvenile Act, making other sections of CHRIA applicable to alleged delinquents. The Juvenile Act expanded CHRIA's applicability regarding: 1) fingerprints and photographs; and 2) information collected, maintained, disseminated, or received by juvenile justice agencies.

Except for §§ 9105 (relating to other criminal justice agencies), 9112(a) & (b) (relating to mandatory fingerprinting), 9113 (relating to disposition reporting by criminal justice agencies) and 9121(b) (relating to general regulations), the remaining provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information) shall apply to all alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to § 6308(c) (relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information. 42 Pa.C.S. § 6309(a)

Section 9104 of CHRIA sets forth its scope and it does not apply to court documents, records, or indices prepared or maintained by or filed in any court. 18 Pa.C.S. § 9104(a)(2).

Because there are no criteria for expunging court cases, these proposed rule additions address the expunging of the official court record.

In addition, these proposed rule modifications address the destruction of fingerprints and photographs of juveniles. Section 6341(a) of the Juvenile Act provides for the immediate destruction of fingerprints and photographs if it is determined that the juvenile did not commit the alleged delinquent acts. "Destruction" was not defined and did not take into account any compelling reasons for keeping the documents. With the new definitions of "destroy" and "expunge," the Commonwealth may argue that the fingerprints and photographs be expunged but not destroyed.

Rule 120—Definitions

This proposed Rule provides specific definitions of "expunge" and "destroy." Although many standard dictionaries and thesauruses use these terms to define each other or as synonyms, it is important to note that they have different legal meanings.

"Destroy," as used in these Rules, is the permanent erasure of a document or item. There shall be nothing left to trace or indicate that the item ever existed.

The term, "expunge," as distinguished from destroy means making a document or item not available to the public under any circumstances. There are several circumstances where the information may be necessarily retained for limited use by "juvenile justice agencies" and/or for statistical purposes. However, expunging a

document allows the juvenile to have a clean record when trying to secure a job, enrolling in college, or enlisting in the military.

"Intelligence information" and "investigative information" have also been defined to limit the information that may be kept by "juvenile justice agencies."

"Juvenile justice agencies" is defined as the court and agencies authorized to perform the administration of justice, including the attorney for the Commonwealth. This is especially important in retention of specific information to determine subsequent eligibility in a court program.

"Juvenile record" is defined to discern it from the "official court record." The "official court record" is the juvenile court file maintained by the clerk of courts; whereas, the "juvenile record" is collected and maintained by "juvenile justice agencies."

Rule 163—Release of Information to School

When the court enters an order to expunge records, it should concurrently enter an order to destroy all information provided to the school. Because the school is not a "juvenile justice agency"; it should not retain any information provided by the court.

Paragraph (D) of this Rule requires that the school maintain a separate file of information provided from the court. This information is not to be placed in the juvenile's official school record. Therefore, when the court enters a destruction order, the school can destroy the separate file without affecting the official school record.

Rule 167—Filings and Service of Court Orders and Notices

This proposal modifies Rule 167 to include a party, juvenile probation officer, and any other person, service provider, or agency listed in the court order among those individuals or entities who must receive copies of court orders and notices.

The juvenile should always receive a copy of court orders and notices regardless of whether the juvenile is represented by counsel. The juvenile probation officer and any other person, service provider, or agency listed in the court order should also be provided with a copy.

Rule 170—Motion to Expunge or Destroy Records

Upon motion, the court may order that juvenile records, fingerprints, or photograph be expunged or destroyed.

The court should specify whether an item is being destroyed or expunged. The presentation of a motion allows the Commonwealth the opportunity to object and provide compelling reasons why the items at issue should be "expunged," rather than "destroyed." *See also* Rule 800 for suspension of § 6341(a) of the Juvenile Act.

Intelligence and investigative information kept separately by law enforcement agencies is not subject to this Rule.

Rule 172—Order to Expunge or Destroy

The proposed language adds that the court's order must identify with specificity which items shall be expunged or destroyed. *See discussion infra.*

Rule 173—Retention of Specific Information in Juvenile Records

This new proposed Rule provides for the retention of specific information by the court and juvenile justice agencies.

The information kept by the court must be limited to the information provided in paragraph (B). However, juvenile justice agencies have more latitude in keeping information for the purpose of determining subsequent eligibility in a court program, preparing a pre-sentence report, or for maintaining intelligence and investigative information.

Information retained by juvenile justice agencies is neither open to inspection by the public, nor governed by Rule 160 or § 6308 of the Juvenile Act.

Rule 408—Ruling on Offenses

It was brought to the Committee's attention that paragraph (B) was confusing because of its use of the term "all." The proposed modification clarifies the intent of the Rule and provides new language to read that if the court finds that the juvenile committed none of the alleged delinquent acts, the court shall dismiss the petition and release the juvenile.

If the court finds, for example, that the juvenile committed one of the twelve alleged delinquent acts, then the petition cannot be dismissed.

Rule 800—Suspension of Acts of Assembly

Application of CHRIA to juvenile matters, specifically fingerprints, photographs, and other law enforcement records has been much debated and created confusion among the bench and bar.

This Rule suspends CHRIA, 18 Pa.C.S. § 9101 *et seq.*, as it applies to juvenile cases.

Rules 170, 172, and 173 govern expunging and destroying records, fingerprints, or photographs.

This Rule also suspends § 6341(a) of the Juvenile Act only to the extent that it conflicts with Rules 120 and 171, which require a motion for the destruction of fingerprints and photographs.

[Pa.B. Doc. No. 10-1575. Filed for public inspection August 27, 2010, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Philadelphia Traffic Court Local Rule No. 1036; Administrative Order 01 of 2010

Order

And Now, this 9th day of August, 2010, *It Is Hereby Ordered* that Philadelphia Traffic Court Local Rule No. 1036, is amended as follows.

As required by Pa.R.Crim.P. No. 105(D), the proposed amended rule has been submitted to the Supreme Court's Criminal Procedural Rules Committee for review and written notification has been received from the Committee certifying that the proposed amended rule is not inconsistent with any general rule of the Supreme Court. The original Administrative Order and amended local rule shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the Administrative Judge of the Philadelphia Traffic Court, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this Administrative Order and amended local rule as well as a copy on a computer diskette shall be

distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The amended local rule will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.Crim.P. No. 105(F) one certified copy of this Administrative Order and amended local rule shall be filed with the Administrative Office of Pennsylvania Courts and the local rule will also be published on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx> and posted on the First Judicial District's web site at <http://courts.phila.gov>. Copies of this Administrative Order and amended local rule shall be published in *The Legal Intelligencer* and will be submitted to *American Lawyer Media*, *Jenkins Memorial Law Library*, and the Law Library for the First Judicial District.

By the Court

HONORABLE BERNICE A. DeANGELIS,
Administrative Judge
Philadelphia Traffic Court

Philadelphia Traffic Court Local Rule 1036. Traffic Court Hearing Officers.

(a) *Qualifications.* Traffic Court Hearing Officers shall be knowledgeable with the Pennsylvania Motor Vehicle Code and the Pennsylvania Rules of Criminal Procedure, and any other rules or laws which control the issuance, processing and disposition of citations issued pursuant to the Motor Vehicle Code, including these Local Rules, shall complete an initial course of training and instruction of not less than [**thirty-five (35)**] **twenty (20)** hours as may be established from time to time by the Administrative Judge of the Traffic Court, shall possess such experience and educational requirements as may be established from time to time by the Administrative Judge of the Traffic Court, and must pass a written examination and be certified by the Administrative Office of Pennsylvania Courts prior to assuming office. Attendance at training courses conducted by or on behalf of the Minor Judiciary Education Board may satisfy the training and instructional requirements.

(b) *Continuing Education.* Traffic Court Hearing Officer shall complete a continuing education program each year equivalent to not less than [**twenty (20)**] **ten (10)** hours per year in such courses or programs as may be established from time to time by the Administrative Judge of the Traffic Court. Attendance of continuing education courses conducted by or on behalf of the Minor Judiciary Education Board may satisfy the continuing education requirement. Failure to meet the continuing education requirements on a yearly basis shall result in the Hearing Officer being suspended, without pay, until such time as the continuing education requirements are met.

(c) *Duties.* As authorized by Pa.R.Crim.P. 1036(A), Traffic Court Hearing Officers are authorized to perform the following duties:

(1) set collateral consistent with Pa.R.Crim.P. 452 and 1034;

(2) establish or re-establish payment plans consistent with Pa.R.Crim.P. 456;

(3) conduct warrant hearings as provided in Local Rule 1033. At the conclusion of the warrant hearing, the Hearing Officer shall:

(i) if it appears that a summary trial can be held immediately, forward the case to a Traffic Court judge for an immediate summary trial;

(ii) if it appears that a summary trial cannot be held immediately, schedule a summary trial date and serve the notice on the defendant and determine whether collateral must be posted by the defendant to secure defendant's release pending the summary trial. The Scheduling Orders shall be substantially as set forth in Local Rule 1033;

(iii) release the defendant unless collateral has been ordered and is not posted. If collateral is ordered and is not posted, the defendant shall be brought to the county prison and held pending the summary trial or hearing. However, the defendant shall be released at any time before the summary trial or hearing when the collateral is posted; and

(iv) direct that all outstanding Traffic Court warrants against the defendant be withdrawn.

(4) such other duties as may, from time to time, be designed by the Administrative Judge of the Philadelphia Traffic Court through an amendment to this Local Rule.

COMMENT: The Traffic Court Hearing Officer shall set collateral, pursuant to Pa.R.Crim.P. 1034, in a reasonable amount, i.e. an amount which upon consideration of the defendant's income and the defendant's expenses may be reasonably posted by the defendant. It is the intention of the court that most, if not all, defendants arrested pursuant to Traffic Court warrants will be released pending the date of the summary trial or hearing. However, should Traffic Court records disclose that the defendant has a history of failure to appear for Traffic Court summary trials or hearings, especially after personal service of the notice of trial or scheduling order, the defendant may be held until the summary trial or hearing date and may be released only upon payment of the full amount of collateral or outstanding fines. Should the defendant be ordered held until the date of the summary trial or hearing, the summary trial or hearing should be scheduled as soon as practical.

Adopted January 3, 2006, published in the *Pennsylvania Bulletin* on January 14, 2006, and effective on February 13, 2006; **Amended on August 9, 2010, Effective on _____** (thirty days after publication in the *Pennsylvania Bulletin*).

[Pa.B. Doc. No. 10-1576. Filed for public inspection August 27, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY

Adult Probation/Parole Firearms Policy; Administrative Order No. 60; MD 1988-2010

And Now, this 2nd day of August, 2010, it is *Hereby Ordered and Directed* that the Chief of the Office of Adult Probation of Bucks County may designate certain Bucks County Probation/Parole Officers on the search/arrest team to carry firearms, providing they have successfully completed the training required by the Bucks County Adult Probation/Parole Department and the Firearm Education and Training Commission.

All Bucks County Probation/Parole Officers authorized to carry firearms must comply with the requirements of the Bucks County Adult Probation/Parole Firearms Policy.

The Firearms Policy is as follows and incorporated herein, subject to amendment only by approval of the President Judge.

This order shall take effect September 15, 2010.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

Bucks County Adult Probation and Parole Department
55 East Court Street
Doylestown, PA 18901

Subject: Firearm Training

I. Purpose:

To describe the requirements for special training for arrest/search team members issued departmental firearms for use in the performance of their duties.

II. Policy:

All members of the Departmental arrest/search team are required to be armed. Prior to being issued a firearm, team members must complete all requirements as outlined in the following procedures. These requirements include, but are not limited to, psychological testing, successful completion of the initial qualification course and successful participation in other trainings as described in the procedures.

III. Procedures:

Carrying Firearms:

A. General Policy Overview:

Recognizing the potential danger in making arrests, executing warrants, locating absconders, working in high crime areas, and dealing with individuals having the capacity to demonstrate violent behavior, the Court authorizes the carrying of firearms by the department's arrest/search team for defensive purposes only.

1. The request is initiated in writing to the Chief Adult Probation Officer and is approved in accordance with Court policy.

2. The requesting individual has met the standards as set forth by the Court.

3. The individual continues to follow procedure meeting all safety and qualification requirements.

Only those members of the department's arrest/search team may request permission to carry firearms. Participation in the arrest/search team is strictly voluntary and member selection will be dependent on the individual officer's demonstrated ability in physical conflict control training, understanding of the Use of Force Model and ability to perform these duties in addition to their normal work responsibilities.

It must be realized that in making the decision to carry a weapon a great deal of legal, ethical, and professional responsibility is undertaken by both the agency and individual employee. This policy has been developed to provide needed direction and support by helping to assure adequate training, safety and handling of a weapon in meeting these requirements.

B. Legal Background

The Parole Act of 1941 in Section 27 states, "Parole officers appointed by the Court are hereby declared to be peace officers and are hereby given police power throughout the Commonwealth to arrest without warrant, writ, rule or process any parolee or probationer under the

supervision of the Court for failing to report as required by the terms of his or her probation or parole or for any other violation thereof." Legally this limits the authority of the parole officer to those individuals on probation and parole under supervision of the Court and outlines the conditions under which this authority may be used. In an opinion issued by the Attorney General on August 12, 1971, it was stated that "... Parole Agents may legally carry firearms while conducting their official duties..." provided adequate training is provided with the individual passing an approved firearm course and "... only in accordance with strict criteria."

In 1973, with the adoption of the Pennsylvania Crimes Code, a peace officer was defined in Chapter 5, as "... any person who by virtue of his public office or public employment is vested by law to make arrests for offenses..." Therefore, the police power of Parole Agents differs from that of the police officer. This necessitates special policy guidelines considering the conditions found in the probation and parole setting. Reference Act No. 277 of 1963. This section was later repealed and re-enacted under Section 42 Pa.C.S.A. § 9913, Peace officer power for probation officers.

"An officer is declared to be a peace officer and shall have police powers and authority throughout this Commonwealth to arrest, with or without warrant, writ, rule or process, any person on probation, intermediate punishment or parole under the supervision of the court for failing to report as required by the terms of that person's probation, intermediate punishment or parole or for any other violation of that person's probation, intermediate punishment or parole."

C. Carrying and Use of Firearms

1. General Principles

The Pennsylvania Criminal Law and Criminal Procedure Manual defines deadly force as "... force which, under the circumstances in which it is used, is readily capable of causing death or serious injury."

The use of deadly force by Probation Officers is strictly limited to defensive situations. An officer may use a firearm only to defend him/herself or another person from what the officer perceives as an immediate threat of death or serious injury when there appears to be no other alternative. All nonviolent alternatives, including withdrawal from the scene, should be attempted before the use of a firearm is contemplated. Firearms will not be drawn or displayed routinely during arrests, nor should they be used for any other reason other than as described above. The Court does not authorize the carrying of a departmental issued firearm during off-duty hours, while in the Courthouse where there are designated storage cabinets, while attending training sessions other than firearms training, or during court appearances. The continued authorization to carry a firearm will be dependent upon the individual's compliance with the Court Firearms Policy and safe proper conduct while in possession of a weapon. Generally, the firearm is to be concealed on the person and not drawn or displayed unless there is a reasonable belief of a threat of immediate death or serious bodily injury. The carrying of a firearm places a great deal of responsibility upon the person, and the weapon must be treated with respect. Individuals found to be careless or negligent in their handling of a weapon will have their authorization to carry a firearm withdrawn.

2. Issuance of Authorization to Carry a Firearm

The process of requesting authorization to carry an office issued .40 cal. Smith & Wesson (Model M&P 40), shall be initiated by submitting a request for Firearms Authorization (See Exhibit "A") through management channels to the Chief Adult Probation Officer requesting the permission to carry a firearm. This written request will be analyzed by the Chief Adult Probation Officer in terms of:

a. Documentation that the requesting individual has taken an initial firearms training course.

b. Observation and documentation of the following: serious physical impairment; drug, alcohol or emotional related problems; and/or receipt of a report from a certified psychiatrist or doctor stating the individual is unable to perform his prescribed duties. Under such circumstances, the employee will agree to have the information provided that is needed by the Court to make a decision. Such information gathered will be handled in a confidential manner by the Chief Adult Probation Officer as called for by the Court. Failure to agree to the release of this information by a treatment provider can result in the request to carry a firearm being denied.

Arrest team members desiring to carry, or have access to, a firearm in conjunction with the performance of their duties must first pass an initial firearms training program. This training is mandatory for all arrest/search team members.

Under no circumstances can a weapon be carried without the prior authorization of the Court.

Upon authorization, a firearm shall be issued by the Chief County Adult Probation Officer and only that weapon shall be carried in the performance of their duties.

3. Relinquishing Authorization

Once an arrest/search team member has been authorized to carry a firearm, that officer cannot request relinquishment of that authorization for at least 3 years. The decision to carry a firearm is a difficult and moral decision that must be considered carefully by the Officer before requesting authorization. Special situations that arise will be evaluated on an individual basis.

4. Firearms Not To be Carried Without a License

Since Probation/Parole Officers are declared peace officers with police powers to arrest offenders in violation of probation, parole or intermediate punishment, a license to carry a firearm during the performance of their official duties is not required. However, the department recommends that all weapon-carrying Officers obtain a license to carry a weapon. The costs of the permit shall be absorbed by the Officer.

5. Safety

The safe handling of weapons is of paramount concern. This involves the joint effort of individual staff, supervisors, and the overall agency in assuring that every possible effort is made to avert accidents, negligence or misuse.

6. Authorized Weapons and Equipment

Arrest/search team members are authorized to carry approved weapons only (Smith & Wesson Model M&P 40).

Staff shall use only approved and county issued holsters.

Arrest team members approved to carry a firearm will be issued a Smith & Wesson M&P .40 cal. and three (3) magazines with no more than fifteen (15) rounds of ammunition in each magazine.

Staff shall use only county/office issued ammunition.

Staff who have been approved and issued a firearm shall carry their firearm while performing field duties during working hours.

Staff carrying unapproved weapons do so at their own risk and are subject to having their authorization to carry a weapon withdrawn or possibly face disciplinary action.

a. *Storing the Weapon*

When in the field, weapons are to be carried but concealed on the individual and not left in the car, a briefcase, etc. where they are vulnerable to theft or use by others.

Firearms should not be left in vehicles or other unsecured areas. Should circumstances arise requiring the emergency or brief storage of a firearm, the containment area must be stationary, locked and inaccessible to all except the probation officer.

Where firearms storage cabinets are provided, staff will secure their weapons in these cabinets while working in the Courthouse. If this cabinet is not utilized or available, staff must keep firearms and holsters concealed on their person. Weapons and/or holsters shall not be displayed. Under no circumstances are weapons to be stored anywhere in the office other than the approved storage cabinet. Provisions for the safe storage of any unassigned weapons should be made with an appropriate local law enforcement agency or by the Chief Adult Probation Officer.

When at home the officer shall secure their weapon where it is safe and not accessible to others. Firearm lock boxes, issued with the weapon, must be used whenever the weapon is not being carried, and the ammunition must be removed and stored separately to further reduce the chances of an accident.

Under no circumstances will staff dry fire weapons in the office.

b. *Care, Cleaning and Inspection*

Weapons shall be inspected for cleanliness prior to any practice or qualification.

Individuals to whom a firearm is issued are responsible for the care and cleaning of the weapon and for the proper use of safety equipment. If defects are noted or repairs are needed, the individual should effect repairs and immediately notify the Chief Adult Probation Officer or office firearms instructor.

Weapons shall be cleaned immediately following their use (practice, qualifying). Also, weapons shall be cleaned at least once a month regardless of their use.

7. *Handling of Special Occurrences*

In the case of theft, loss, allegations of misuse, or the discharge of a weapon, a prompt inquiry will be initiated involving the Chief Adult Probation Officer and the Court. A written report of this investigation shall be completed and received in writing within two (2) working days of the initiation of the request. Extensions of up to an additional three (3) days may be granted with the approval of the Court.

Additional steps in handling each type of situation follow:

a. *Lost or Stolen Weapons*

1.) All lost or stolen weapons will be immediately reported to the local police and State Police providing the weapon serial number, details of the occurrence, person discovering theft, etc.

2.) The Chief Adult Probation Officer will be notified as soon as possible followed promptly by a memorandum from the employee involved, fully explaining the circumstances.

3.) The Chief Adult Probation Officer will notify the Court who will decide if further inquiry is necessary.

4.) Where a weapon is damaged or lost through the employee's negligence or misuse, the employee will be held responsible for the costs of repair or replacement of the weapon and may face additional disciplinary action.

b. *Discharge of a Weapon*

1.) Any discharge or firing of an authorized weapon other than during agency-approved training, or during practice at an established range, must be reported immediately to the Chief Adult Probation Officer by the employee firing the weapon providing the exact location and time of the incident, a detailed description of the incident, names and addresses of any witnesses, reasons the firearm was fired, names of any investigating police officers, and information that may be necessary in understanding and investigating the incident. The failure to promptly report the discharge of a weapon may result in disciplinary/corrective action. This information will be immediately conveyed, followed by a complete written report to the Chief Adult Probation Officer through the Court.

2.) In the event death or injury results from the discharge of a weapon, local and State Police must be immediately notified by the person discharging the weapon. The area in which the discharge occurred must be secured and cordoned off as soon as possible. The officer shall remain in the area until dismissed by the Law Enforcement Agent (LEA) in charge or by the Chief Adult Probation Officer.

3.) The Chief Adult Probation officer will contact the Court, and they will decide what course of action is necessary in investigating the incident.

c. *Warning Shots*

1.) Probation officers are prohibited from firing warning shots under any circumstances.

2.) Warning shots are usually not aimed at a specific target; therefore, they may create a danger to other probation officers and the public.

3.) Warning shots invite inappropriate responses from other probation officers who may mistake the intention of the warning shot and subsequently shoot at the subject without appropriate justification.

d. *Rescue Shots*

1.) A rescue shot is utilized for the purpose of identifying location and/or acquiring appropriate assistance.

2.) An officer who is in danger of death or serious bodily injury and incapacitated to such an extent that they cannot signal in any other manner, may fire a rescue shot(s). Probation officers must exercise reasonable care in these situations.

e. *Target Identification and Isolation*

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

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

3.) Probation officers shall establish target identification and target isolation. Target identification shall be defined as an empirical verification of a person at which force may be directed and used. Target isolation shall be defined as the ability to segregate a target from surrounding people or objects.

f. *Shooting and Moving Vehicles*

Probation officers shall not discharge a firearm at or from a moving vehicle except under the following conditions:

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

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

3.) In deciding to shoot at a moving vehicle, probation officers must take into account the following limitations and consequences:

- a.) the difficulty of hitting a moving target;
- b.) the possibility of ricochets striking unintended targets;
- c.) population densities;
- d.) the difficulty in penetrating the automobile body and/or steel-belted radial tires;
- e.) the inability to stop a vehicle's momentum even when the target actor is hit; and
- f.) the possibility of damage or injury that might result from causing the vehicle to go out of control.

8. *Incidents or Allegation*

An incident is defined as, but not limited to:

- a. Allegations of misuse of a firearm.
- b. The drawing or displaying of a weapon during performance of duty.

It is the responsibility of the individual carrying a firearm to report immediately to the Chief Adult Probation officer any incidents or situations that may result in allegations being made or complaints filed regarding the use or displaying of a firearm. Other staff who observe any unusual situation involving a firearm should verbally report it to the Chief Adult Probation Officer/firearm instructors.

The Court will be promptly notified by phone by the Chief Adult Probation Officer of all incidents. If the Chief Adult Probation Officer is the subject of the incident or allegation, the notification or report should be made directly to the Court.

9. *Other Incidents or Special Occurrences*

Other incidents of noncompliance with policies, such as failure to properly maintain, failure to carry a weapon concealed in the office, carrying or use of unauthorized

equipment, or modifications of equipment, will be handled on a local level with a memo to the Court.

10. *Surrender of Weapon*

The Chief Adult Probation Officer will withdraw authorization to carry a weapon upon the following circumstances:

- a. From an employee involved in a serious weapon incident until the investigation is complete.
- b. If an employee is observed in unsafe behavior with a weapon, fellow employees or supervisors.
- c. If upon inspection by the Chief Adult probation officer the employee's weapon has been damaged through negligence, recklessness, or misuse.
- d. When an employee is terminated, suspended, or on extended leave.
- e. When an employee fails to obtain a passing score on bi-annual firearms requalification, held every 6 months.

f. Upon observation and documentation by the Chief Adult Probation Officer of: serious impairment; drug, alcohol or emotionally related problems; and/or receipt of a report from a certified psychiatrist or doctor stating the individual is unable to perform his/her prescribed duties. Under such circumstances, the employee will agree to the release of pertinent information by a treatment provider such that a decision can be made concerning his/her ability to carry a firearm in a responsible manner. Information gathered will be handled in a confidential manner in keeping with Court policy. Failure to agree to this release of information will require that the firearm be surrendered and authorization withdrawn.

The Chief Adult Probation Officer may suspend the authorization to carry a weapon should an immediate need be presented and/or in the event one of the previously cited conditions exists.

Other sanctions may be considered by the Court based on the findings and depending on the degree of negligence or malpractice.

The concerned employee may appeal the Chief Adult Probation Officer's decision in writing through appropriate channels. The Court has final reviewing responsibility and authority in these matters.

11. *Training*

a. *Initial qualifications*

Arrest/search team members requesting permission to carry a firearm must attend the Basic Firearms Training course as outlined by the County Probation/Parole Firearm Education and Training Commission (per Act 158 of 1994), consisting of: three days of classroom and four days of range firing, according to a schedule provided by the Commission. This training will be augmented with deadly force response and decision making training through use of the AIS PRISim® program available at the Public Safety Training Center.

Those staff failing to obtain a passing score on the first course will be permitted to retake the training a second time depending on the financial training budget or at their own expense.

b. *Re-qualification*

1.) In order to maintain the authorization to carry a firearm personnel must re-qualify twice per year with the firearm the officer will be carrying. The re-qualifications

are mandatory to continue to carry a firearm with the minimum passing score being 75%. These courses will be held and organized by the head firearm instructor for the Department as approved by the Chief Adult Probation Officer. The re-qualification is the County Probation/Parole Officers Firearm Education and Training Commission's course of fire. The procedures for qualification on this course are governed by the Commission and allow for one practice and two attempts on the course of fire during each opportunity to qualify. If the officer fails at that point there must be a period of remedial practice and another opportunity to qualify will be permitted within 30 days. Failure to qualify during the second opportunity will require the officer to retake the range portion of the basic firearms class sponsored by the Commission.

Following the completion of an initial qualification or requalification program, the Chief Adult Probation Officer shall record copies of the scores of each individual taking the training. Notation of these scores will be made in the employee's file.

2.) All officers will be subject to mandatory training as determined and outlined by the Chief of Adult Probation Officer to included dim-light shooting, tactical courses of fire and advanced firearms training as mandated by the department and/or the County Probation/Parole Officers Firearm Education and Training Commission.

3.) All arrest/search team members will be required to attend the 5 supplemental trainings provided by the Commission as time and schedules permit.

12. *Conditions for Carrying a Firearm*

All weapon-carrying officers shall carry their firearm concealed and under the following circumstances:

- a. During an arrest or search and seizure situation;
- b. While conducting field contacts, including after-hour investigations by assigned on-call personnel;
- c. Range qualification and related training, including practice shooting;
- d. While in the offices of Adult Probation.

Firearms are to be carried in a concealed manner on the officer, under an article of clothing, except that when participating in an arrest/search situation, the officer may position the weapon in an unconcealed manner to enhance accessibility.

Additionally, officers must carry their departmentally issued baton and oleoresin capicum spray. Officers are required to wear their ballistic vest at all times while armed. Officers have the option of storing their weapon in the secure locker should they want to remove their ballistic vest.

13. *Displaying a Firearm*

Firearms shall not be displayed or drawn for any other reason than described below:

- a. During an arrest/search situation.
- b. Justifiable self-protection or the protection of others.
- c. When the officer perceives an immediate threat of death or serious bodily injury.
- d. Cleaning the firearm, storage and inspection.
- e. Range qualification or practice shooting.
- f. Storage at a correctional facility, courthouse or other secure facility.

14. *Handling of Firearms*

The continued authorization to carry a firearm will depend on the following:

- a. The officer's compliance with agency policy and procedure.
- b. The officer's ability to handle the firearm in a safe manner.
- c. The officer's ability to conduct himself/herself in a safe and proper manner while in possession of the firearm.
- d. Except for general maintenance, storage, or authorized training, officers shall not draw or exhibit their firearms unless circumstances create strong reasonable belief that it may be necessary to lawfully use the weapon.
- e. In those situations, the officer shall exercise a reasonable standard of care with the drawn weapon. At a minimum, reasonable care includes: pointing the muzzle in a safe direction; keeping the trigger finger outside the trigger guard.
- f. The use of handling of a firearm by an officer, on or off-duty, in a careless or imprudent manner or the unjustified endangering of human life by a firearm in violation of this policy statement is strictly forbidden and shall result in a disciplinary investigation and may result in the revocation of authorization to carry a firearm, and other possible disciplinary action in accordance with County/Court policy, which may include dismissal from the department.
- g. The department does not authorize or recognize the carrying of an agency issued firearm during off-duty hours. Paid leave status for the purpose of this policy statement shall be deemed as "off-duty."

A violation of any of the above procedures will result in an investigation being conducted by the Chief Adult Probation Officer or his designee. After the completion of that investigation a decision will be made about the officer's continued authorization to carry a firearm.

15. *Violation of Firearm Policy*

Non-compliance with the firearms policy by an employee shall result in disciplinary action being imposed on that employee consistent with court policy.

****Note:** All circumstances that may occur when effecting arrest/search cannot be predicted. The above procedures are not meant to hamper the individual discretion of each staff member, but to act as a guide in carrying out this responsibility. Any injury or unusual incidents occurring during the effect of arrest shall be reported immediately to the Chief Adult Probation Officer or his designee.

Effective September 15, 2010

FIREARMS AUTHORIZATION REQUEST

I, _____, an adult probation/parole officer for the Bucks County Adult Probation/Parole Department and member of the Arrest/Search Team, a division of the Court of Common Pleas, Seventh Judicial District, do hereby request authorization to carry a firearm in the performance of my duties.

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

1. I am a tenured employee and not on a probationary status.

2. I am not pending any disciplinary action nor am I involved in or have knowledge of any departmental, criminal or civil investigation or litigation against me. I have also been free of disciplinary action for the past two years.

3. I do not have a problem with drugs or alcohol. I am not presently using any drugs, except as authorized by a medical physician. I have verified with my physician that the medication prescribed will not have any effect on my judgment or impair my ability to carry a firearm in the performance of my duties.

4. I have completed psychological testing and have been approved mentally sound by a licensed psychologist to carry a firearm.

5. I am medically and physically sound to carry out my assigned duties as a probation/parole officer.

6. I have completed classroom instruction on firearms and have successfully passed a written examination (County Probation/Parole Officers' Firearms Education and Training Commission).

7. I have completed range instruction and have qualified in a practical phase of shooting (County Probation/Parole Officers' Firearms Education and Training Commission).

8. I will only use my firearm for defensive purposes only, where retreat is not possible and death or serious bodily injury is imminent.

9. I have successfully completed training in chemical agents and impact weapons and have received certifications.

10. I have successfully completed training in control tactics, defensive tactics and Use of Force Instruction and have received certification.

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

Signature _____ Date _____

EXHIBIT "A"

FIREARM CERTIFICATION

Officer's Name: _____

- 1. Successful completion of criminal background investigation. [] Yes [] No
- 2. Successful completion of psychological evaluation. [] Yes [] No
- 3. Successful completion of defensive tactics. [] Yes [] No
- 4. Successful completion of chemical agent and expandable baton training. [] Yes [] No
- 5. Successful completion of Use of Force Training. [] Yes [] No
- 6. Successful completion of training at the County Probation and Parole Officer's Firearms and Education and Training Commission. [] Yes [] No
- 7. Ability to demonstrate proficiency, safety and knowledge in the proper use and handling of a firearm. [] Yes [] No

AUTHORIZATION

REQUEST GRANTED [] REQUEST DENIED []

Chief Adult Probation/Parole Officer:

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

Signature _____ Date _____

[Pa.B. Doc. No. 10-1577. Filed for public inspection August 27, 2010, 9:00 a.m.]

BUCKS COUNTY

Order Promulgating Rule of Civil Procedure No. 4019(g)(1)(c) and Rule of Civil Procedure No. 208.2(e); Administrative Order No. 61

Order of Court

And Now, this 13th day of August, 2010, Bucks County Rule of Civil Procedure No. 4019(g)(1)(c) and Bucks County Rule of Civil Procedure No. 208.2(e) are promulgated as follows:

Rule 4019(g)(1)(c). Discovery Motions Court.

(1) In lieu of the procedure set forth in 4019(g)(1)(a), counsel in any civil action, excluding Family Court matters, may present any motion regarding discovery in Discovery Motions Court. The motion must comply with the requirements of Pa.R.C.P. No. 208.2, but need not include the language set forth in B.C.R.C.P. No. 4019(g)(1)(a) in its proposed order.

Note: All actions filed in the Criminal and Orphans' Court divisions are specifically excluded from the procedures set forth by the rule. For the purpose of this rule, "Family Court matters" are actions before the Domestic Relations Section [actions for Support (Pa.R.C.P. No. 1910.1 *et seq.*)] and family court matters such as actions pursuant to the Protection from Abuse Act (Pa.R.C.P. No. 1901 *et seq.*), actions for Custody (Pa.R.C.P. No. 1915.1 *et seq.*), and actions for Divorce (Pa.R.C.P. No. 1920.1 *et seq.*).

(2) Discovery Motions Court shall be held each Friday afternoon at 1:30 PM. Discovery motions may be presented to the motions judge only after a copy of the motion and the proposed order of court have been served on all counsel of record and any unrepresented party not later than the Friday preceding the intended date of presentation.

(3) Notice of the date, time and place of presentation must accompany the copy of the motion and the proposed order of court. Service may be made in any manner as authorized by the Pennsylvania Rules of Civil Procedure, including facsimile transmission pursuant to Pa.R.C.P. No. 440(a)(1)(ii) and/or e-mail pursuant to Pa.R.C.P. No. 205.4(g)(1), with service of the required documents to be completed no later than the Friday preceding the date of presentation. Motions seeking sanctions in the form of dismissal of an action or any claim therein, or for a financial penalty levied against a party, must be served upon the party as well as upon his or her counsel.

(4) The presenting party must attach to the motion a certification of compliance with this rule setting forth the

date on which the motion was served on counsel, unrepresented parties, and represented parties against whom sanctions are sought, the manner of service, and that such service was made in compliance with the Rule of Civil Procedure under which it was effected.

(5) Prior to serving a motion and proposed order of court, the parties have an obligation to make a good faith effort to resolve their discovery dispute. The motion shall specifically identify what good faith efforts were made in an attempt to resolve the discovery dispute without court action, and shall include as attachments copies of any and all writings sent to respondent(s) which evidence such efforts. At least one such writing shall be sent by the movant to the respondent prior to filing a motion pursuant to this rule.

EXPLANATORY COMMENT: The purpose of this rule is to foster the use of Discovery Motions Court practice. At the hearing, the Motions Court Judge may in the judge's discretion determine that the matter is too complex to handle during Motions Court and issue an appropriate order referring the matter to the judge assigned to the said case. Sufficient notice and receipt of the motion or petition and proposed order of court is required by law and fundamental fairness. Counsel desiring to take advantage of Discovery Motions Court practice must be diligent in complying with the notice requirement.

Rule 208.2(e). Proof of Notice of Efforts to Resolve Discovery Disputes.

All motions filed pursuant to Bucks County Rule of Civil Procedure 4019(g)(1)(c) shall specifically allege what good faith efforts were made in an attempt to resolve the discovery dispute without court action, and shall include as attachments copies of any and all writings sent to respondent(s) which evidence such efforts.

This Order shall become effective October 1, 2010.

By the Court

SUSAN DEVLIN SCOTT,
President Judge

[Pa.B. Doc. No. 10-1578. Filed for public inspection August 27, 2010, 9:00 a.m.]

LACKAWANNA COUNTY

**Repeal and Adoption of Rules of Civil Procedure;
No. 94 CV 102**

Order

And Now, this 2nd day of August, 2010, it is hereby *Ordered and Decreed* that the following Lackawanna County Rules of Civil Procedure are amended as follows:

1. Lacka. Co. R.C.P. 214 is amended to include paragraph (d) as reflected in the following Rule. The amended language of Local Rule 214(d) appears in bold face for ease of reference;

2. New Lacka. Co. R.C.P. 2206 is adopted as reflected in the following Rule. The new language of Local Rule 2206 appears in bold face for ease of reference;

3. Pursuant to Pa. R.C.P. 239(c)(2)—(6), the following Local Rules shall be disseminated and published in the following manner:

(a) Seven (7) certified copies of the following Local Rules shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two (2) certified copies of the following Local Rules and a computer diskette containing the text of the attached Local Rules in Microsoft Word format and labeled with the court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One (1) certified copy of the attached Local Rules shall be filed with the Civil Procedural Rules Committee;

(d) The following Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division, and upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Judicial Records shall furnish to any requesting person a copy of the requested Local Rule(s); and

(e) A computer diskette containing the text of the following Local Rules in Microsoft Word format and labeled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association for publication on the web site of the Lackawanna Bar Association.

4. The following amendment to Lackawanna County R.C.P. 214 and the adoption of new Lackawanna County R.C.P. 2206 shall become effective thirty (30) days after the date of their publication in the *Pennsylvania Bulletin* pursuant to Pa. R.C.P. 239(d).

By the Court

CHESTER P. HARHUT,
President Judge

Rule 214. Listing Cases for Hearing or Trial.

(a) The Court Administrator shall assign a case for hearing or trial upon the filing of a Certificate of Readiness in the form attached to the Appendix of these Local Rules as Form 7. The Certificate of Readiness should identify the judge who has decided any case dispositive motion under Lacka. Co. R.C.P. 1028, 1034 or 1035.2, and whenever practicable, the Court Administrator shall assign the case for hearing or trial to the judge who has decided that case dispositive motion.

(b) No Certificate of Readiness may be filed until all discovery in the case has been completed and all depositions for use at trial have been scheduled or completed. Nor may a Certificate of Readiness be filed if any case dispositive motion is pending for disposition by the court. The filing of a Certificate of Readiness shall constitute a verification that no case dispositive motions are pending nor does any party or attorney contemplate filing such a case dispositive motion.

(c) No party or lawyer may file more than one Certificate of Readiness on any single day.

(d) At least fifteen (15) days prior to the filing of a Certificate of Readiness, the party or lawyer seeking to certify the case for trial must advise all counsel of record and self-represented parties of the intention to file a Certificate of Readiness. If no counsel or party objects to the filing of a Certificate of Readiness within that fifteen (15) day period, the Certificate of Readiness may be filed as provided by paragraphs (b) and (c) above. In the event that

an attorney or party objects to the filing of a Certificate of Readiness, and the attorney or party seeking to certify the case for trial believes that the objection is frivolous or being asserted for an improper purpose such as to unnecessarily delay the disposition of the litigation, the attorney or party seeking to certify the case for trial shall present a motion to the Motion Court judge pursuant to Lacka. Co. R.C.P. 208.3(a) requesting leave of court to file a Certificate of Readiness over the objection of the opposing party or counsel.

Rule 2206. Court Approval of Distribution of Proceeds.

Whenever any sum of money is to be paid to the plaintiff in settlement of claims or satisfaction of a verdict or judgment in an action for damages under the Wrongful Death Act, 42 Pa.C.S. § 8301, and the Survival Act, 42 Pa.C.S. § 8302, the plaintiff shall present a motion for approval of the proposed distribution of proceeds pursuant to the procedure set forth in Lacka. Co. R.C.P. 208.3(a). The motion shall include, *inter alia*, the proposed allocation of the proceeds between the wrongful death and survival claims and shall attach correspondence or some other form of documented communication from the Pennsylvania Department of Revenue confirming that it does not object to the proposed

apportionment of the proceeds between the wrongful death claim and the survival claim.

[Pa.B. Doc. No. 10-1579. Filed for public inspection August 27, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer to Inactive Status

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated, August 13, 2010, David I. Cornell was transferred to inactive status, effective immediately, pursuant to Rule 301(e), Pa.R.D.E. (relating to disabled attorneys) for an indefinite period and until further Order of the Supreme Court. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 10-1580. Filed for public inspection August 27, 2010, 9:00 a.m.]
