

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed Amendments to Pa.R.Crim.P. 113

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 113 to clarify that the criminal case records in both the magisterial district courts and the courts of common pleas are generally available to the public with certain specified exceptions. 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 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 text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; and 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, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Friday, April 1, 2011.

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. **Public Access to Criminal Case File.**

* * * * *

(B) The magisterial district judge shall maintain the criminal case file for the magisterial district court for all summary and court case proceedings before the magisterial district judge. The criminal case file shall contain all original records, papers, orders filed in the case, and copies of all court notices.

(C) All criminal case files in court cases or summary cases are open to the public, except that any of the following information contained in the criminal file shall not be available to the public:

- (1) information sealed pursuant to a court order;
- (2) information to which access is restricted by federal law, state law, or state court rules or policies;
- (3) information containing the complete social security numbers or financial information such as financial institution account numbers, credit card account numbers, or debit card numbers;
- (4) notes, drafts, e-mails, deliberative materials, and work product of judges, court staff, and judicial agencies contained in the criminal case file, unless otherwise required by law to be accessible to the public; and
- (5) the address, telephone numbers, and other contact information of victims, witnesses, and jurors.

(D) The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the criminal case file and of all proceedings in the case.

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

* * * * *

Comment

This rule defines the obligation for the preparation and maintenance of the criminal case file in both magisterial district courts and courts of common pleas.

Paragraph (C) codifies the long-standing presumption, based in constitutional and common law, of the openness of criminal case records. Additionally, paragraph (C) restricts public access to certain specified information.

Parties to a criminal case should be aware that any documents filed in a magisterial district court or court of common pleas are considered public documents and accessible by the public from the time of filing, unless sealed by court order or otherwise restricted by statute, rule, or policy.

For limitations on public access to proceedings and records of investigating Grand Juries, see Rules 228, 229, and 230.

For limitations on public access to preserved testimony, see Rule 500.

For limitations on public access to the records of a bail agency, see Rule 530.

For limitations on public access to mental health examinations of the defendant, see Rule 569.

For limitations on public access to records associated with the juries, see Rules 630, Rule 632, and 644.

For limitations on public access to pre-sentencing and related reports, see Rule 703.

For limitations on public access to unexecuted search warrants, see Rule 212.

For limitation on public access to the identify of a child victim of sexual or physical abuse, see 42 Pa.C.S. § 5988.

For the procedures for obtaining access by the public to the criminal case records of the magisterial district judges, see also the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, 204 Pa. Code § 213.1 *et seq.*

For the procedures for obtaining access by the public to the electronic case records of the Unified Judicial System, including additional restrictions on access to certain forms of electronic records, see also the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*, 204 Pa. Code § 213.71.

The Administrative Office of the Pennsylvania Courts has available a Confidential Information form in which confidential information, such as social security numbers or financial information, may be maintained and which is used primarily for purposes of data entry into the various court computer systems. The Confidential Information form is maintained as a separate sheet that is not part of the court case record and is not available to the public. See the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, 204 Pa. Code §§ 213.1 *et seq.*

[This rule] Paragraph (E) sets forth the mandatory contents of the list of docket entries in proceedings before the court of common pleas and the criminal case files. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings. The clerk of courts is required to make docket entries at the time the information is made known to the clerk, and the practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

[This rule applies to all proceedings in the court of common pleas at any stage of a criminal case.]

For the obligation of the magisterial district judge to prepare and forward to the court of common pleas a transcript of the proceedings before the magisterial district judge, see Rule 135.

The requirement for the magisterial district judge to maintain docket entries was abolished in 1985. However see the Comment to Rule 135 for the expectation that a docket will be maintained to assist in the preparation of the transcript.

The requirement in paragraph [(C)(2)] (E)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. See also Rule 576(B)(4) concerning certificates of service.

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

Paragraph [(C)(4)] (E)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus pretrial motions (Rule 578), motions for a mistrial (Rule 605), motions for changes in bail (Rule 529), and oral motions for extraordinary relief (Rule 704(B)).

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 2, 2004, effective July 1, 2004; amended , 2011, effective , 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Report explaining the proposed amendment regarding public access criminal case records published at 41 Pa.B. 1009 (February 26, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P. 113

Public Access to Criminal Case Records

The Supreme Court of Pennsylvania approved a policy on public access to paper records in the magisterial district courts on January 23, 2010. This policy was intended to complement the Court's policy on public access to electronic records that was adopted in 2007.¹ On January 27, 2010, the Chief Justice wrote to the Chairs of the Criminal Procedural Rules Committee and Minor Court Rules Committee asking that the Committees review the new policy and recommend any appropriate rule changes. The Chief Justice, in particular, drew the Committees' attention to Section 213.7 of the policy that provides that parties and their attorneys refrain from including certain confidential information in all documents and exhibits filed with the court.

The Committee reviewed the rules implications of the new policy at length. First, we noted that the only Rules of Criminal Procedure that requires any of the information listed in Section 213.7 are Rules 490 and 790 regarding the contents of expungement orders. The Committee concluded that no rule change was needed to address this particular question since expungement orders effectively are confidential and the use of this information in identifying cases for expungement still is needed.

The Committee also debated whether the general policy was sufficient and ultimately concluded that the bench and bar would benefit if the Criminal Rules specifically described the general parameters of public access to criminal case records. The Committee's belief in the necessity of such a rule is based on a recognition that

¹ There is currently no policy statement regarding the paper records of the court of common pleas.

there are a greater number of constitutionally-based issues that arise in criminal cases thus necessitating greater clarity in public accessibility. The Committee observed that criminal case records also have a greater potential for harm coming from disclosure, such as potential violence against witnesses or the invasion of the privacy of accused. Additionally, while the Administrative Office of the Pennsylvania Courts has gone to great efforts to publicize the Court's public access policies, the Criminal Procedural Rules are more familiar and accessible to members of the bench and bar and others working within the criminal justice system.

The first question was the placement of such a general rule. The Committee intends that the rule have a broader application than the Court's public access policies and be applicable to criminal records in both magisterial district courts and the common pleas courts and that it should be applicable to records regardless of whether they are in electronic form or traditional paper form. The Committee concluded that Rule 113 (Criminal Case File and Docket Entries) was the most logical placement for this amendment. Incorporating the new provisions into Rule 113 requires considerable modification because currently Rule 113 addresses only the record-keeping responsibilities of the clerk of courts and does not address that function in the magisterial district court.

The proposed amendments would add a new paragraph (B) to Rule 113 that would provide a statement of the duties of the magisterial district court judges to maintain the criminal case records in their courts along with cross-references in the Comment to the transcript rules. The language mirrors that contained in paragraph (A) regarding the duties of the clerks of courts. These amendments are not intended to impose any new duty upon the magisterial district judges.

Proposed new paragraph (C) would address the issue of public access. The approach the Committee decided upon was to have a broad statement of the general public accessibility of criminal case records but include what portions of the record would be excluded from this general provision. The Committee believes that the rule language itself should be relatively general and the exclusions not exhaustively listed where other provisions, in either rule or statute, provide for confidentiality.

The Committee had a lengthy discussion of what to include in the rule itself regarding exclusions. The Committee noted that the underlying concept of the Criminal Procedures Rules has been that the rules were designed to apply to the traditional view of the case record as the paper record. The Committee also noted that the exclusions from public access in the Court's MDJ Paper Records Policy are more limited than those contained in the Electronic Records Policy. Furthermore, the Committee did not intend for the rule to conflict with either of the Court's Public Access Policies but rather should compliment the policies while providing "criminal case-specific" guidance. Accordingly, the exclusions from public access contained in proposed paragraph (C) are based on, and compatible with, the exclusions contained in the Court's MDJ Paper Records Policy and are applicable to the courts of common pleas records as well. Although the focus of the language in the text of the rule is on the exclusions in the Paper Records Policy, a cross-reference to both public access policies would be added to the Comment. The cross-reference to the Electronic Records Policy would be included to alert the public that addi-

tional administrative restrictions are placed on access to court records when they are sought in an electronic format.

The exclusions listed in paragraph (C)(1) through (C)(4) are based on the exclusions set forth in Section 213.7 of the MDJ Paper Records Policy. These include any information sealed pursuant to a court order and any work product of judges or court staff contained in the criminal case file, unless otherwise required by law to be accessible to the public. Also is the provision that excludes social security numbers and financial information, such as financial institution account numbers, credit card account numbers, or debit card numbers, from any documents or exhibits filed with the issuing authority.

Paragraph (C) would also contain the exclusion from public access of any information to which access is restricted by federal law, state law, or state court rules or policies. This would permit the provisions existing currently within the Criminal Rules that limit public access to certain records to remain in force without the need to be listed exhaustively in Rule 113(C). For example, paragraph (C) of Rule 530 (Duties and Powers of A Bail Agency) provides that information obtained from or concerning the defendant by a bail agency shall not be disclosed except to the parties to the criminal case and may be used only for purposes relating to the defendant's bail or a presentence report about the defendant, or in a prosecution based on the falsity of the information, or for impeachment purposes to the extent permitted by law. Similarly, paragraphs (A)(5) and (B)(5) of Rule 500 (Preservation of Testimony After Institution of Criminal Proceedings) state that preserved testimony shall not be filed of record until it is offered into evidence at trial or other proceeding. Rule 703 (Disclosure of Pre-Sentence Reports) provides for the confidentiality of all pre-sentencing and related reports. Rule 212 provides limitations on access to pre-execution search warrants, and the Committee continues to work on the question of public access to arrest warrants. Cross-references to these exclusions as well as to other exclusions set forth in the Criminal Rules would be added to the Comment.

Proposed paragraph (C)(5) is based on the Electronic Records Policy and precludes personal contact information for victims, witnesses, and jurors from public access. This exclusion is not contained in the Paper Records Policy. The Committee believes the potential danger of harassment, intimidation, or worse, justifies the additional restriction on public access to the paper records in criminal cases.

The Committee also discussed the prospect that information contained in motions the results of which would be confidential might be considered publicly accessible. For example, a request for a mental health examination might contain information that should not be public. Although the proposal does not include a provision in the rule extending confidentiality to such filings, the Comment includes cautionary language reiterating that anything contained in a filed document would be accessible to the public and the filing party should seek a sealing order to maintain the confidentiality of the motion. Additionally, language would be added to the Comment referencing the practice of using the AOPC's Confidential Information Form that would be prepared when information necessary for case entry in the courts' computer systems should not be released to the public. If there is a requirement for

this information to be provided to the courts, such as a defendant's complete social security number, then it must be contained in a separate form that is not to be disclosed to the public.

[Pa.B. Doc. No. 11-322. Filed for public inspection February 25, 2011, 9:00 a.m.]

[234 PA. CODE CH. 7]

Proposed Amendments to Pa.R.Crim.P. 708 and Revision of the Comment to Pa.R.Crim.P. 701

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 708 and approve the revision of the Comment to Rule of Criminal Procedure 701 to make clear that a defendant at the time of sentencing in probation, intermediate punishment, or parole violation cases also may plead guilty to other offenses the defendant has committed within the jurisdiction of the sentencing court. The Committee also is proposing the revision of the Comments to Rules 701 and 708 to alert the bench and bar to the requirements of the Crime Victims Act in the context of guilty pleas to multiple offenses. 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,

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 Criminal Procedural Rules Committee
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no later than Friday, April 1, 2011.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
 CHAPTER 7. POST-TRIAL PROCEDURES IN
 COURT CASES**

PART A. Sentencing Procedures

Rule 701. Pleas of Guilty to Multiple Offenses.

* * * * *

Comment

The objective of this rule is to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time.

This rule applies when a defendant is to be sentenced following a finding that the defendant violated his or her probation, intermediate punishment, or parole. See Rule 708(D) for the sentencing procedures in probation, intermediate punishment, or parole violation cases.

When a defendant is permitted to plead guilty to multiple offenses as provided in paragraph (A), if any of the other offenses involves a victim, the sentencing proceeding must be delayed to afford the Commonwealth adequate time to contact the victim(s), and to give the victim(s) an opportunity to offer prior comment on the sentencing or to submit a written and oral victim impact statement. See the Crime Victims Act, 18 P. S. 11.201(5).

Official Note: Rule 1402 adopted July 23, 1973, effective 90 days hence; renumbered Rule 701 and amended March 1, 2000, effective April 1, 2001; **Comment revised , 2011, effective , 2011.**

Committee Explanatory Reports:

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 revision of the Comment concerning probation violation cases and the Crime Victims Act published at 41 Pa.B. 1012 (February 26, 2011).

Rule 708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.

* * * * *

(C) Before the imposition of sentence,

(1) the defendant may plead guilty to other offenses that the defendant committed within the jurisdiction of the sentencing court.

(2) When such pleas are accepted, the court shall sentence the defendant for all the offenses.

(D) Sentencing Procedures

* * * * *

[(D)] (E) Motion to Modify Sentence

A motion to modify a sentence imposed after a revocation shall be filed within 10 days of the date of imposition. The filing of a motion to modify sentence will not toll the 30-day appeal period.

Comment

* * * * *

The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in this rule. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates*, 452 Pa. 102, 305 A.2d 701 ([Pa.] 1973).

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole, but applies only to the defendants who can be paroled by a judge. See 61 P.S. § 314. See also *Georgevich v. Court of Common Pleas of Allegheny County*, 510 Pa. 285, 507 A.2d 812 ([Pa.] 1986).

This rule was amended in 1996 to include sentences of intermediate punishment. See 42 Pa.C.S. §§ 763 and 9773. Rules 704, 720, and 721 do not apply to revocation cases.

The objective of the procedures enumerated in paragraph (C) is to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time. See Rule 701.

When a defendant is permitted to plead guilty to multiple offenses as provided in paragraph (C), if any of the other offenses involves a victim, the sentencing proceeding must be delayed to afford the Commonwealth adequate time to contact the victim(s), and to give the victim(s) an opportunity to offer prior comment on the sentencing or to submit a written and oral victim impact statement. See the Crime Victims Act, 18 P. S. 11.201(5).

Issues properly preserved at the sentencing proceeding need not, but may, be raised again in a motion to modify sentence in order to preserve them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790, 791-2, n. 1 ([Pa. Super.] 1995). As a general rule, the motion to modify sentence under paragraph [(D)] (E) gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 ([Pa.] 1989) (sentencing court can, *sua sponte*, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 ([Pa.] 1970) (inherent power of the court to correct obvious and patent mistakes).

Under this rule, the mere filing of a motion to modify sentence does not affect the running of the 30-day period for filing a timely notice of appeal. Any appeal must be filed within the 30-day appeal period unless the sentencing judge within 30 days of the imposition of sentence expressly grants reconsideration or vacates the sentence. See *Commonwealth v. Coleman*, 721 A.2d 798, 799, fn. 2 (Pa. Super. 1998). See also Pa.R.A.P. 1701(b)(3).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph [(D)] (E), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or [reimposed] re-imposed.

Official Note: Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992; amended September 26, 1996, effective January 1, 1997; Comment revised August 22, 1997, effective January 1, 1998; renumbered Rule 708 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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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).

Final Report explaining the February 26, 2002 amendments concerning the 30-day appeal period published with the Court's Order at 32 Pa.B. 1394 (March 16, 2002).

Report explaining the proposed amendments to paragraph (C) concerning multiple guilty pleas and the Comment concerning the Crime Victims Act published at 41 Pa.B. 1012 (February 26, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P. 708 and Revision of the Comment to Pa.R.Crim.P. 701

Pleas of Guilty to Multiple Offenses; Crime Victims Act

The Committee undertook a review of Rules 701 (Pleas of Guilty to Multiple Offenses) and 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) after receiving inquiries asking whether a defendant who is being sentenced for a probation, intermediate punishment, or parole violation would be able to plead guilty to other offenses pursuant to Rule 701.

Rule 701 permits a defendant, before the imposition of sentence, to plead guilty to other offenses the defendant has committed that are within the jurisdiction of the sentencing court. The Rule 701 Comment explains the objective of this rule is "to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time."

When Rule 701 was adopted in 1973,¹ the Committee observed that the rule reflects sound sentencing policy, noting that this is consistent with the positions of the American Bar Association, the Pennsylvania Bar Association, and the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals.

The benefits of this policy are stated in the *ABA Standards for Criminal Justice*, Chapter 14—Pleas of Guilty, Standard 14.1.2 (1999) Commentary

Allowing for consolidated guilty pleas enables a defendant to be sentenced simultaneously on all charges that he or she is facing in that government's courts. This reduces the governmental resources that must be devoted to the cases, while also allowing the defendant to take full advantage of any concurrent sentencing options that may be available. By pleading to all offenses simultaneously, the defendant can complete his or her sentence without facing these additional charges, and can avoid the risk of having a detainer filed against the defendant on these other charges while serving his or her sentence.

Rule 708(C) (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) provides sentencing procedures comparable to paragraph (C) of Rule 704 (Procedure at Time of Sentencing). The Committee reasoned that the provisions of Rule 701 should apply to sentencing proceedings following trials and probation, intermediate punishment, or parole violations since the sentencing proceeding in a probation violation case is comparable to a sentencing proceeding following a trial. They also believe the same reasons articulated in support of permitting pleas to multiple offenses after trial apply equally well to sentencing in probation, intermediate punishment, and parole violation cases. Furthermore, the members noted that this practice already is occurring in a

¹ Rule 701, originally numbered Rule 1402, was renumbered Rule 701 in 2000 as part of comprehensive renumbering and reorganization of the Rules.

number of judicial districts. However, because there appears to be confusion among some members of the bench and bar, the members agreed it makes sense to add some clarifying language to the Rule 701 Comment and to Rule 708. Accordingly, the Rule 701 Comment would be revised by the addition of a new paragraph that states that Rule 701 applies in sentencing proceedings under Rule 708. Rule 708 would be amended by adding a new paragraph (C) that incorporates the procedures in Rule 701 for a defendant to plead guilty to other offenses the defendant has committed within the jurisdiction of the sentencing court.

During the Committee's consideration of Rules 701 and 708, some members observed that neither rule specifically recognizes the provisions of the Crime Victims Act, 18 P. S. § 11.201(5), which requires, *inter alia*, that victims be given an opportunity to offer comment about the defendant's sentence prior to the sentencing. Without some accommodation for delay in sentencing in Rules 701 and 708, the case could run afoul of the Crime Victims Act. The Committee concluded adding a reference to the Crime Victims Act in the Comments to both Rules 701 and 708 would ensure that the bench and bar is aware of their responsibilities under the Crime Victims Act. The proposed new Comment provisions would make it clear that the sentencing proceeding must be delayed when there is a victim for any of the other offenses to which the defendant is pleading guilty. The Comment explains the delay is necessary to afford the Commonwealth adequate time to contact the victim and give the victim an opportunity to offer input as required by the Crime Victims Act, and includes a citation to the Act.

[Pa.B. Doc. No. 11-323. Filed for public inspection February 25, 2011, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Amendments to Rule 152

The Juvenile Court Procedural Rules Committee is planning to recommend modifications to Rule 152 to the Supreme Court of Pennsylvania.

The Committee has debated the issue of waiver of counsel since its inception as a committee in 2001. The unfortunate circumstances that came to light in Luzerne County brought this subject to the forefront more recently. The Committee then re-opened its debate on the important issue of waiver of counsel, which is complex in nature and has potential implications on the juvenile's constitutional rights.

The Committee is soliciting public input on the following proposal. The Committee is reserving its Report until after public comment has been received.

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
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Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635.

All comments shall be received no later than April 27, 2011. No deadline extensions will be granted.

*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 B. COUNSEL

Rule 152. Waiver of Counsel.

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

1) **the waiver is knowingly, intelligently, and voluntarily made; and] if:**

1) **the attorney for the Commonwealth or the juvenile probation officer is not seeking overnight placement outside of the home as a case disposition;**

2) **the petitioned offense(s) is not murder, any other felony, or enumerated first-degree misdemeanor that affects a future prior record score; and**

3) **the court conducts [a] an on the record colloquy with the juvenile [on the record] and determines that the waiver is knowingly, intelligently, and voluntarily made.**

B. *Colloquy of the juvenile.* In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made pursuant to paragraph (A)(3), the court, on the record, shall ask the juvenile questions to elicit:

1) **the reasons why the juvenile wants to waive counsel;**

2) **information regarding the juvenile's:**

a) **age;**

b) **maturity;**

c) **education;**

d) **mental health issues, if any; and**

e) **any current alcohol or drug issues that may impair the juvenile's decision-making skills;**

3) **the juvenile's understanding of the:**

a) **right to an attorney, including the provisions of Rule 151;**

b) **juvenile's role when proceeding *pro se*;**

c) **allegations in the petition against the juvenile;**

d) possible consequences if the juvenile is found delinquent; and

4) the juvenile's opportunity to consult with the juvenile's guardian and an attorney.

C. *Stand-by counsel.* The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

[C. *Notice and*] D. *Applicability, revocation, and notice of waiver.* [If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time.]

1) At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

2) **Revocation of waiver.** The juvenile may revoke the waiver of counsel at any time.

3) Where the juvenile has waived counsel and the case has proceeded to adjudication and disposition, and the court at the dispositional hearing declines to accept the Commonwealth's and/or juvenile probation officer's recommendation that disposition not include overnight placement outside of the home, or the Commonwealth or juvenile probation officer seeks overnight placement outside of the home, upon the juvenile's written or on the record oral request, the juvenile shall be awarded new adjudicatory and dispositional hearings before a different judge and with counsel. The court should notify the juvenile of the availability of this relief prior to entering the dispositional order.

4) If at a modification or revocation proceeding, or whenever the Commonwealth, juvenile probation officer, or the court seeks a change in the dispositional order that could result in overnight placement outside of the home, in accord with paragraph (A)(1), the juvenile may not waive counsel.

Comment

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

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

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

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

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

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

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

objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;

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

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

Because of the ramifications of a juvenile record, it is important that every safeguard is taken to ensure that all constitutional and procedural guarantees and rights are preserved. Juveniles should not feel pressured to waive counsel or be the subject of any proactive pursuit for obtaining a waiver.

Therefore, the court may not allow the juvenile to waive counsel when: 1) the attorney for the Commonwealth or the juvenile probation officer is seeking overnight placement outside of the home as a case disposition; or 2) the offense(s) petitioned is a felony or one of the enumerated first-degree misdemeanors, including, as enumerated in 204 Pa. Code § 303.7, the following: a) Possessing Instruments of Crime; b) Prohibited Offensive Weapons; c) Use or Possession of Electric or Electronic Incapacitation Device; d) Possession of a Weapon on School Property; e) Possession of a Firearm or other Dangerous Weapon in Court Facility; f) Violations of the Pennsylvania Uniform Firearm Act; g) Involuntary Manslaughter (child victim); h) Luring a Child into a Vehicle; i) Indecent Assault (Complainant less than 13 years of age); j) Indecent Exposure (persons present are less than age 16); k) Endangering the Welfare of Children; l) Dealing in Infant Children; m) Corruption of Minors (of a sexual nature); n) Unlawful Contact or Communication with a Minor; and o) Driving Under the Influence (2nd and subsequent offense); and p) Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance (except for a first lifetime conviction or adjudication).

In other cases, the court may allow waiver of counsel if it is knowingly, intelligently, and voluntarily made. However, there are an overwhelming number of articles, research, and statistics that conclude most juveniles, especially those under the age of fourteen, may not have the capacity to understand fully the waiver of a constitutional right. For these reasons, the court is to explore thoroughly the capacity of the juvenile to make a knowing, intelligent, and voluntary waiver to ensure the juvenile does understand the implications of giving up the right to an attorney and is competent to proceed *pro se*.

As provided in paragraph (B), the court is to conduct a colloquy with the juvenile. The court is encouraged to use plain and developmentally appropriate language that the juvenile can understand. There is to be a dialogue between the court and the juvenile. This dialogue should not be limited to questions from the court that can be answered "yes" or "no," but should attempt to elicit responses from the juvenile to help the court ascertain the competency and maturity of the juvenile in determining if the waiver is knowingly, intelligently, and voluntarily made. A juvenile's knowledge of the law should not be confused with competency or the ability to make an informed decision.

Pursuant to paragraph (B), the first question that the court is to ask the juvenile is why the juvenile wants to waive counsel. Juveniles have many misperceptions about their right to counsel, the role of counsel, and the consequences and future ramifications of a delinquency adjudication. The judge can dispel those misperceptions. For example, if the juvenile states that he did not obtain an attorney because his parents will not pay for or cannot afford an attorney, the court can inform the juvenile that the court will provide an attorney. Another example could be that if the juvenile states that she does not need an attorney because it is only a juvenile offense, the court can explain the complexity of the proceedings, the consequences and future ramifications of a delinquency adjudication, and that it might be helpful to the juvenile to have an attorney. If, at any time, the juvenile requests an attorney or the court believes the waiver is not knowingly, intelligently, and voluntarily made, the court shall appoint counsel pursuant to Rule 151.

After the court has determined why the juvenile wants to waive counsel, the following types of questions should be asked: 1) Did you have the opportunity to talk with a lawyer about your desire to waive your right to a lawyer and what was the outcome of that consultation? 2) What do you understand about your right to have a lawyer? 3) What would you be required to do when acting as your own lawyer? 4) What is the nature of the allegations petitioned against you and what are the elements of each of those allegations? 5) What are the possible dispositions or fines that the court may impose if you are found delinquent? 6) What ramifications will a delinquency adjudication have in your future? 7) Are your guardians present with you, have you had the opportunity to consult with them about your decision to waive the right to counsel, and what are their concerns?

When discussing a question about acting as your own lawyer, the court is to address the following: 1) the requirements to know when to make motions, make objections, enter evidence, and raise possible defenses; 2) understanding the Rules of Juvenile Court Procedure, statutory authority, and case law; 3) knowing the burden of proof and upon whom it is imposed; and 4) knowing how to preserve issues for appeal.

When discussing a question concerning possible dispositions or fines, the court is to address the following: 1) depending upon subsequent conduct, the juvenile may be detained in a placement facility even if the juvenile is originally placed on probation or in a day treatment program; 2) the court has jurisdiction over the juvenile until the juvenile is twenty-one years of age; 3) the juvenile's driving privileges may be suspended or will be suspended in the future; and 4) the juvenile may be expelled from school.

When discussing a question concerning the possible ramifications of a delinquency adjudication, the court is to address the following: 1) the juvenile may have difficulty in obtaining a job, enlisting in military service, or getting accepted into college; 2) juvenile records are not automatically expunged when the juvenile becomes an adult; and 3) that the juvenile's eligibility for public benefits and housing

may be affected; 4) the juvenile may not be able to carry a firearm in the future; and 5) the juvenile may not be able to serve as a juror.

From the totality of all the information received, the court is to determine if the waiver is knowingly, intelligently, and voluntarily made pursuant to paragraph (A)(3). The court, on the record, is to state its findings and conclusion that formed the basis of its determination.

If it is determined that the juvenile has not knowingly, intelligently, and voluntarily waived counsel, the court immediately is to appoint counsel for the juvenile. If it is determined that the juvenile has made a knowing, intelligent and voluntary waiver, the court may appoint stand-by counsel for all proceedings provided in paragraph (C).

The role of stand-by counsel is to: 1) offer legal advice on all issues; 2) step in to represent the juvenile for any issue that the juvenile requests assistance; and 3) take over representation if the court determines at any point that the juvenile is unable to adequately continue representation.

Paragraph (D)(3) of this rule recognizes that a juvenile may waive counsel in reliance upon the Commonwealth's and/or juvenile probation officer's assertion that neither is seeking overnight placement outside of the home as a case disposition, but the court at a dispositional hearing may reject such recommendations and order that the juvenile be removed to overnight placement outside of the home. Under such circumstances, the juvenile is to be permitted to revoke the waiver of counsel and to proceed to a new adjudicatory and dispositional hearing before a different judge and with counsel. However, there are potential double jeopardy implications to awarding the juvenile a new proceeding after completion of the adjudication of delinquency. For this reason, the rule explicitly requires that the juvenile request such relief on the record through oral or written motion. The rule's intent is to ensure that when the juvenile affirmatively requests a new adjudicatory and dispositional hearing, the juvenile waives any right to assert double jeopardy.

This rule is not meant to preclude the guardian's presence at any hearing. **Indeed, the presence and active participation of a guardian should be welcomed. During the colloquy which is the subject of this rule, the court should feel free to elicit information from the guardian.** As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best [interests] interest of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as, the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

[Pa.B. Doc. No. 11-324. Filed for public inspection February 25, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CARBON COUNTY

Preliminary Arraignment—Policy and Procedures; No. CP-13-AD-000002-2011

Administrative Order No. 6-2011

And Now, this 14th day of February, 2011, in order to create systematic procedures for preliminary arraignments during normal business hours and outside normal business hours utilizing video conferencing as indicated, it is hereby

Ordered and Decreed, that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas *Adopts* the following policy and procedures for Preliminary Arraignment for every adult person arrested.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File one (1) certified copy of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies, one (1) computer diskette and a copy of the written notification received from the Criminal Procedural Rules Committee with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this Administrative Order on the Unified Judicial System's website at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
4. Forward one (1) copy for publication in the *Carbon County Law Journal*.
5. Forward one (1) copy to the Carbon County Law Library.
6. Keep continuously available for public inspection copies of the Order in the Clerk of Courts' Office.

By the Court

ROGER N. NANOVIC,
President Judge

Carbon County Arrest and Central Booking Policy and Procedures

1. Preliminary Arraignment Procedures
 - A. During Normal Office Hours

1. If the criminal complaint is completed so that the defendant may be arraigned by the Magisterial District Judge (MDJ) during their normal operating hours of 8:30 A.M. to 12:00 noon and 1:00 PM to 4:30 PM Monday through Friday, exclusive of holidays, the arresting officer shall proceed to the office of the MDJ who issued the warrant or within whose jurisdiction the offense occurred for preliminary arraignment.

B. Outside Normal Business Hours

1. If the defendant cannot be arraigned during the MDJ's normal operating hours, the police officer shall contact the on-call MDJ through the Communications Center (Comm. Center) to conduct a preliminary arraignment. The arresting officer shall contact the Comm. Center by telephone to request an arraignment as follows:

- a. Upon the arrest of a defendant pursuant to a warrant, and
- b. After the completion of the criminal complaint when an "on-view" arrest occurs which requires an immediate preliminary arraignment.

2. An information sheet for a public defender should be given to the defendant. The MDJ will go over this form with the defendant.

3. The arresting officer shall conduct a video after-hours arraignment from their police station unless the Magisterial District Judge requests an in court arraignment or the arrest occurs within the same municipality as the Magisterial District Court. Prior to the arraignment the arresting officer shall fax the following paperwork to the MDJ location:

- a. Criminal complaint and probable cause affidavit;
- b. Victim Notification form;
- c. Police information for MDJ to set bail form;
- d. Detainers; and
- e. CLEAN rap sheet.

4. When the MDJ is ready for the arraignment to begin, he will notify the police officer and fax any necessary paperwork back.

5. The police officer will then utilize the on-screen video arraignment connection from the police department and the MDJ will announce the beginning of the proceedings before the court and to the defendant.

6. It is the duty and obligation of the police officer to assure that the defendant being arraigned can clearly see and hear the actions of the Magisterial District court before him/her and be sure that all background noises are to a minimum. The MDJ will also confirm same.

7. Upon completion of the arraignment, the police officer shall speak to the MDJ and be notified of the disposition of the defendant. (Bail, ROR or incarceration) The MDJ will also notify the defendant of his/her disposition.

8. The MDJ will fax back the necessary paperwork as follows:

- a. In the event of incarceration:
 1. Signed criminal complaint;
 2. Signed probable cause affidavit;
 3. Notice of preliminary hearing;
 4. Commitment;
 5. Release of Prisoner;
 6. Bail conditions;
 7. Bail bond;
 8. Surety; and
 9. Related Forms.
- b. In the event of bail release:
 1. Signed criminal complaint;

2. Signed probable cause affidavit;
3. Notice of preliminary hearing;
4. Bail bond;
5. Surety; and
6. Related Forms

9. Bail bond must be signed by the defendant. The form must be faxed back to the arraignment MDJ. A copy is made for the arraignment folder.

10. Surety information page will be signed by the defendant in the event of unsecured bail. This form must be faxed back to the arraignment MDJ. A copy is made for the arraignment folder.

11. The defendant shall receive a copy of all paperwork.

12. A copy of all paperwork shall be placed in the arraignment folder and given to the Magisterial District Court for distribution.

13. All original documents are to be placed in the arraignment folder and delivered by the police officer.

14. In the event of incarceration, a copy of the commitment, bail information, surety information, police criminal complaint and probable cause affidavit as well as victim notification form and any other detainers received from CLEAN shall be made for the commitment folder.

15. The arresting police department shall receive a copy of the arrest warrant, criminal complaint, probable cause affidavit, notice of preliminary arraignment, notice of preliminary hearing, clean rap sheet, victim notification form, commitment, detainer, release of prisoner, bail conditions, bail bond, and surety information page.

16. The arraignment folder will have an "arraignment folder checklist" stapled to the inside of the folder and shall include a copy of the following paperwork: criminal complaint, probable cause affidavit, notice of preliminary arraignment, notice of preliminary hearing, detainers, victim notification form, clean rap sheet original, commitment, release of prisoner, bail conditions, bail bond, and surety information page.

17. The police officer will be responsible to fax all pertinent paperwork back to the MDJ. The MDJ's office will be responsible for making copies and distributing the paperwork to the proper persons. Booking center files will be kept and maintained by the Carbon County Correctional Facility.

18. Once the preliminary arraignment is completed by the MDJ, the defendant shall be provided with the opportunity to post bail with the office of the MDJ or the Carbon County Correctional Facility. The defendant's opportunity to post bail prior to being incarcerated shall be a reasonable time determined by the MDJ.

19. If the defendant posts bail, he/she shall be released immediately and provided with the following information:

a. If the defendant posts bail, the MDJ shall verbally advise the defendant of the requirement to appear at the Carbon County Correctional Facility or Pennsylvania State Police Barracks prior to his/her preliminary hearing for fingerprinting.

b. The MDJ shall also issue a fingerprint order, AOPC Form 405-05, which shall order the defendant to call the Carbon County Correctional Facility or appear at the Pennsylvania State Police Barracks for electronic fingerprinting and photos.

c. A receipt for bail shall be issued to the defendant or bail poster.

d. Arresting officer shall remain with the defendant until the bail is posted at the MDJ office.

20. If the defendant was arraigned at the MDJ's office or by video-arraignment procedures and fails to post bail, the arresting officer shall transport the defendant to the Carbon County Correctional Facility for booking.

Preliminary Hearings

A. Prior to the commencement of the preliminary hearing, the defendant must be processed through Livescan/CPIN.

B. If the defendant appears at the preliminary hearing after having failed to be processed through Livescan/CPIN as he/she was advised to do at the preliminary arraignment, the MDJ shall have the following options:

1. Require that the defendant submit to Livescan/CPIN processing prior to the commencement of the preliminary hearing at the Magisterial District Court; or

2. Continue the preliminary hearing and order the defendant to be processed through Livescan/CPIN at a specific time and date prior to the continued preliminary hearing.

3. Conduct the preliminary hearing and set bail conditions to ensure compliance with Livescan/CPIN processing prior to the next scheduled Common Pleas Court event.

C. Each defendant shall be assessed a fee of \$100.00 for Livescan/CPIN processing as required by 42 Pa.C.S.A. 1725.5 unless the defendant prepays the Livescan/CPIN processing fee of \$75.00.

[Pa.B. Doc. No. 11-325. Filed for public inspection February 25, 2011, 9:00 a.m.]

MONTGOMERY COUNTY

Administrative Order 2011—Mediator Compensation Pursuant to Local Rule of Civil Procedure *1940.8; AD 41-2011

Order

And Now, this 27th day of January, 2011, pursuant to Montgomery County Local Rule of Civil Procedure *1940.8, the Court hereby establishes the rate of mediator compensation for the Court's custody mediation orientation session at two hundred dollars (\$200.00). This rate shall be effective March 1, 2011, and shall remain in effect until further Order of this Court.

By the Court

RICHARD J. HODGSON,
President Judge

[Pa.B. Doc. No. 11-326. Filed for public inspection February 25, 2011, 9:00 a.m.]