

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 5 AND 10]

Order Adopting New Rules 595, 596, 597 and 598, Amending Rules 113, 119, 540 and 571, and Revising the Comments to Rules 117, 514, 515, 543, 570, 578 and 1003 of the Rules of Criminal Procedure; No. 416 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 31st day of July, 2012, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 4636 (August 14, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 997), and a Final Report to be published with this *Order*:

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

(1) new Pennsylvania Rules of Criminal Procedure 595, 596, 597, and 598 are adopted;

(2) Pennsylvania Rules of Criminal Procedure 113, 119, 540, and 571 are amended; and

(3) the Comments to Pennsylvania Rules of Criminal Procedure 117, 514, 515, 543, 570, 578, and 1003 are revised,

all in the following form. This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 1, 2012.

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.

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

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

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

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

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Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt

occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; amended July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 amendment adding new paragraph (6) concerning defendants under the age of 18 published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

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Comment

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By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources of the judicial districts.

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The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule [540(C)] 540(E).

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Official Note: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 June 30, 2005, effective August 1, 2006. New Rule 117 adopted June 30, 2005, effective August 1, 2006; **Comment revised July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(E) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

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

- (1) preliminary hearings;
- (2) proceedings pursuant to Rule 569(A)(2)(b);
- (3) proceedings pursuant to Rules 595 and 597;
- (4) trials;

[(4)] (5) sentencing hearings;

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

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

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Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006; Comment revised May 4, 2009, effective August 1, 2009; amended July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 amendment to paragraph (A) adding proceedings under Rule 595 and 597 as a proceedings for which ACT may not be used published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 514. Duplicate and Reissued Warrants of Arrest.

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Comment

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Under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as a duplicate or reissued arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant for purposes of execution under Rule 515. Nothing in this rule, however, is intended to curtail the Rule [540(C)] 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant at the preliminary arraignment. See Rule 513 (Requirements for Issuance).

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Official Note: Original Rule 113 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 113 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 121 September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 514 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; **Comment revised July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(D) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 515. Execution of Arrest Warrant.

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Comment

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For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced

communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule [540(C)] 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant. See Rule 513 (Requirements for Issuance).

Paragraph (C) abolishes the traditional practice known as "NEI" or "no est inventus" as being no longer necessary.

Official Note: Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended February 12, 2010, effective April 1, 2010; **Comment revised July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. [4325] 4342 (August 27, 1994).

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 May 10, 2002 Comment revision concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2582 (May 25, 2002).

Final Report explaining the February 12, 2010 changes adding new paragraph (C) and the Comment revision published with the Court's Order at 40 Pa.B. [1068] 1071 (February 27, 2010).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(D) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

(A) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

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

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

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

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

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

- (1) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;
- (2) of the right to have a preliminary hearing; and
- (3) if the offense is bailable, the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

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

- (1) fix a day and hour for a preliminary hearing which shall not be less than 3 nor more than 10 days after the preliminary arraignment, unless:
 - (a) extended for cause shown; or
 - (b) the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and
- (2) give the defendant notice, orally and in writing,
 - (a) of the date, time, and place of the preliminary hearing, and
 - (b) that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest.

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

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

Comment

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

Paragraph [(C)] (D) includes a narrow exception [**which**] that permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on

the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

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

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

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

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

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

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

See Chapter 5, Part H, Rules 595, 596, 597, and 598, for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; **amended July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

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Final Report explaining July 31, 2012 amendments concerning defendants under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (ii), or (iii) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 543. Disposition of Case at Preliminary Hearing.

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Comment
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When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule [540(F)(2)] 540(G)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

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Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended February 12, 2010, effective April 1, 2010; amended January 27, 2011, effective in 30 days; Comment revised July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

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Final Report explaining the February 12, 2010 [amendments] amendment adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (B) concerning prima facie case published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(F)(2) to Rule 540(G)(2) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

PART G. Procedures Following Filing of Information

Rule 570. Pretrial Conference.

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Comment

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

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

Official Note: Rule 311 adopted June 30, 1964, effective January 1, 1965; amended February 15, 1974, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended August 12, 1993, effective September 1, 1993; renumbered Rule 570 March 1, 2000, effective April 1, 2001; Comment revised July 31, 2012, effective November 1, 2012.

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 July 31, 2012 Comment revision cross-referencing proposed new Rule 595 concerning requests for transfer from criminal proceedings to juvenile proceedings published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 571. Arraignment.

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

- (1) the right to be represented by counsel;
(2) the nature of the charges contained in the information; and

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

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 562, a copy thereof shall be provided.

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Comment

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

See Rule 596 for the procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in

which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302. See also Rules 595 (mandatory status conference), 597 (procedures when motion filed), and 598 (place of detention).

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended July 31, 2012, effective 2012.**

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 amendments concerning requests for transfer from criminal proceedings to juvenile proceedings published with the Court’s Order at 42 Pa.B. 5340 (August 18, 2012).

PART G1. Motion Procedures

Rule 578. Omnibus Pretrial Motion for Relief.

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Comment

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

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(8) for appointment of investigator; [and]

(9) for pretrial conference[.]; and

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

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

Official Note: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised

October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised July 31, 2012, effective November 1, 2012.**

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 July 31, 2012 Comment revision adding motions for transfer published with the Court’s Order at 42 Pa.B. 5340 (August 18, 2012).

PART I. Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings

Rule	
595.	Mandatory Status Conference.
596.	Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.
597.	Procedures Following the Filing of a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.
598.	Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.

(Editor’s Note: Rules 595—598 are new and printed in regular type to enhance readability.)

Rule 595. Mandatory Status Conference.

(A) In all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the judge shall hold a status conference.

(1) The status conference shall be held no later than 40 days after the arraignment.

(2) The defendant, the defendant’s attorney, and the attorney for the Commonwealth shall be present at the status conference.

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

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

(2) When the defendant has filed a motion, the judge shall determine whether the motion for transfer is ready to be heard and the case shall proceed as provided in Rule 597.

(3) If the defendant is not going to file a motion for transfer or the judge denies the defendant’s request for additional time to file a motion, the case shall continue to proceed as a court case under the Rules of Criminal Procedure.

Comment

This rule mandates a status conference in all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense, was charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, and therefore may seek transfer from

criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322. *Cf.* Rule 570 (pretrial conference discretionary with judge).

See Rule 596 for the procedures for filing a motion requesting transfer from criminal proceedings to juvenile proceedings.

See Rule 597 for the procedures after a motion for transfer has been filed.

See Rule 598 for the procedures concerning the pretrial place of detention of the defendant who was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302. See also 42 Pa.C.S. § 6327(c.1).

At the status conference, in addition to determining whether a motion for transfer has been or will be filed,

(1) the judge and parties may consider matters related to the conduct of the hearing including the simplification or stipulation of factual issues, including admissibility of evidence; the qualification of exhibits as evidence to avoid unnecessary delay; the number of witnesses who are to give testimony of a cumulative nature; and such other matters as may aid in the disposition of the motion.

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

(3) The parties have the right to record an objection to rulings of the judge during the status conference.

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

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

As used in this rule, “judge” means judge of the court of common pleas.

Official Note: Adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court’s Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 596. Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.

A request for the transfer from criminal proceedings to juvenile proceedings in a case in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 shall be made in the form of a motion.

(1) Any motion under this rule shall be filed after the preliminary hearing but not later than 30 days after arraignment.

(2) The motion shall be filed with the clerk of courts.

(3) A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing.

Comment

The rule establishes the latest time for filing a motion requesting transfer from criminal to juvenile proceedings by requiring that any motion must be filed no later than 30 days after the arraignment. However, as with omnibus pretrial motions, the judge may extend the time for filing for cause shown. Contemplated within the concept of “cause shown” is, for example, a finding by the court that discovery has not been completed, or that contested motions for discovery or for a bill of particulars are pending.

By permitting the motion to be filed at any time after the preliminary hearing, this rule encompasses what is the practice in a number of judicial districts and recognizes the importance of prompt determinations in these cases. Furthermore, nothing in this rule is intended to preclude judicial districts by local rule from imposing a shorter period of time after the preliminary hearing within which the motion must be filed.

For the general requirements concerning the filing and service of motions, notices, and other documents by parties, see Rule 576.

Official Note: Adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court’s Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 597. Procedures Following the Filing of a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.

(A) If the judge at the status conference conducted pursuant to Rule 595 determines the motion for transfer is not ready to be heard, the judge shall schedule additional status conferences no later than every 60 days after the first status conference until the motion for transfer is ready to be heard. At the status conference, the parties shall advise the judge of the status of all matters pertinent to whether the motion for transfer is ready to be heard.

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

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

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

(E) If the judge grants the motion,

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

Juvenile Court Procedure and the Juvenile Act, except as provided in paragraph (E)(3).

(2) The judge shall order the defendant to be taken forthwith to the juvenile probation office, except as provided in paragraph (E)(3).

(3) If, within 30 days of the judge's order transferring the case from criminal proceedings to juvenile proceedings, the attorney for the Commonwealth files a notice of appeal from the order, the judge shall:

(a) stay the juvenile proceedings pending disposition of the appeal; and

(b) review the defendant's bail status and may release the defendant conditioned upon the defendant being detained in a secure detention facility pursuant to Rule 598.

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

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

Comment

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

Nothing in this rule is intended to preclude the practice in some judicial districts of notifying the juvenile probation office when a motion requesting transfer is filed or of the date of the hearing on the motion.

Pursuant to 42 Pa.C.S. § 6322(a) of the Juvenile Act, at the hearing on the motion for transfer, the burden of proof is on the defendant "to establish by a preponderance of the evidence that the transfer will serve the public interest."

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

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

When the judge grants a motion to transfer, paragraph (E)(2) requires that the case immediately be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act, and the criminal court no longer has jurisdiction over the case. However, because the transfer order is immediately appealable by the Commonwealth, *Commonwealth v. Johnson*, 542 Pa. 568, 669 A.2d 315 (1995), an appeal by the Commonwealth would preclude the transfer of the case and

proceedings pursuant to the Rules of Juvenile Court Procedure. *See*, 42 Pa.C.S. § 6322(d).

When the defendant is taken to the juvenile probation office following the granting of a transfer motion as required in paragraph (E)(2), the juvenile probation officer will determine, pursuant to 42 Pa.C.S. § 6325, whether the defendant should be detained or placed in shelter care or released to the custody of his or her parent, guardian, custodian, or other person legally responsible for him or her. *See, also*, 42 Pa.C.S. § 6322(d).

Paragraph (E)(3) recognizes the right of the Commonwealth to appeal the transfer order. If the Commonwealth files a notice of appeal, the judge will stay the juvenile proceedings and review the bail status of the defendant, considering whether the defendant should be detained in a secure detention facility during the stay. Pursuant to the rule, the judge may release the defendant from custody in an adult jail conditioned upon the defendant being detained in a secure detention facility. *See* Rule 524(C)(2) that permits a judge to release a defendant on nonmonetary conditions.

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

As used in this rule, "judge" means judge of the court of common pleas.

Official Note: Adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 598. Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.

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

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

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

(a) the defendant is released on bail; or

(b) the judge determines that the defendant is not seeking transfer of the case pursuant to 42 Pa.C.S. § 6322; or

(c) the judge denies the motion for transfer filed pursuant to 42 Pa.C.S. § 6322.

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

(a) the judge has granted the motion to transfer filed pursuant to 42 Pa.C.S. § 6322; or

(b) the juvenile court has issued an order for the defendant's secure detention in a separate delinquency case.

(3) If the attorney for the Commonwealth files a notice of appeal from the judge's order transferring the case from criminal proceedings to juvenile proceedings pursuant to Rule 597, the judge may order the release of the defendant conditioned upon the defendant being detained in a secure detention facility pending the disposition of the appeal.

(C) After the defendant has been detained in a secure detention facility pursuant to the judge's order issued as provided in paragraph (B), the judge promptly shall order the defendant's transfer to the county jail if:

(1) the judge denies the defendant's motion to transfer;

(2) the judge determines that the defendant is not filing a motion to transfer or is no longer seeking transfer; or

(3) the judge determines that the defendant has reached his or her 18th birthday and a juvenile court has not ordered the defendant to be detained in the secure detention facility in a separate delinquency case.

(D) Except as provided in Rule 597(E)(3), if the defendant's motion for transfer is granted, the judge shall order the defendant to be taken to the juvenile probation office pursuant to Rule 595(G)(2).

Comment

As provided in paragraph (B), a defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, with the consent of the attorney for the Commonwealth, may be transferred to a secure detention facility during the pendency of proceedings under this rule. *See also* 42 Pa.C.S. § 6327(c.1).

As used in this rule, "secure detention facility" is a facility approved by the Department of Public Welfare to provide secure detention of alleged and adjudicated delinquent children, see 55 Pa. Code § 3800.5, and does not include shelter care.

Nothing in this rule is intended to restrict or enlarge the defendant's eligibility for release on bail or ability to post bail. If the Commonwealth files a notice of appeal of the judge's order transferring the case from criminal proceedings to juvenile proceedings, the judge must review the defendant's bail status and may release the defendant conditioned upon the defendant being detained in a secure detention facility. *See* Rule 597(E)(3). *See also* Rule 524(C)(2) that permits a judge to release a defendant on nonmonetary conditions.

As used in this rule, "judge" means judge of the court of common pleas. Neither Philadelphia Municipal Court judges nor magisterial district judges are permitted to order a defendant who may seek or is seeking transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 to be detained in a secure detention facility.

Official Note: Adopted July 31, 2012 effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

PART A. Philadelphia Municipal Court Procedures

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

* * * * *

Comment

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Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule [540(B)] 540(C). *See also* Rules 208(A) and 513(A).

* * * * *

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; **Comment revised July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

* * * * *

Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (E) concerning hearsay published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(B) to Rule 540(C) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

FINAL REPORT¹

New Pa.Rs.Crim.P. 595, 596, 597, and 598; Amendments to Pa.Rs.Crim.P. 113, 119, 540, and 571; and Revision of the Comments to Pa.Rs.Crim.P. 117, 514, 515, 543, 570, 578, and 1003

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

On July 31, 2012, effective November 1, 2012, upon the recommendation of the Criminal Procedural Rules Com-

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

mittee, the Supreme Court adopted new Rules of Criminal Procedure 596, 596, 597, and 598, amended Rules of Criminal Procedure 113, 119, 540, and 571, and approved the revision of the Comments to Rules of Criminal Procedure 117, 514, 515, 543, 570, 578, and 1003. These new rules and correlative rule changes establish new procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

At the same time, the Court adopted the recommendation of the Juvenile Court Procedural Rules Committee for correlative changes to the Rules of Juvenile Court Procedurals. These changes include new Pa.R.J.C.P. 337 (Filing of Petition After Case Has Been Transferred from Criminal Proceedings) and amendments to Pa.Rs.J.C.P. 200 (Commencing Proceedings) and 404 (Prompt Adjudicatory Hearing).

I. Introduction

In June 2009, the Juvenile Court Judges Commission (JCJC) formed a working group of its members to develop best practices in direct file cases² to address issues such as detention of the direct file defendants and the long delays in some cases before it is determined whether a case should be transferred. After the JCJC’s working group issued its report, a Joint *Ad Hoc* Subcommittee was formed to explore the feasibility of incorporating these best practices and other procedures that responded to the issues identified by the working group into the Court’s procedural rules. The *Ad Hoc* Joint Subcommittee’s participants included members and staff from JCJC, the Criminal Procedural Rules Committee, the Juvenile Court Procedural Rules Committee, and the Appellate Court Procedural Rules Committee.

Surveys of the statewide practice in the area of direct file cases revealed that currently there is little uniformity in the statewide local procedures for handling transfer requests, and that many of these cases are handled by individuals who do not have a great deal of experience with the Juvenile Act. In some of these cases, there are inordinate delays in the filing of a transfer motion, in conducting the hearings, and in disposing of the motions. In view of the lack of uniformity, the delay issues, and the JCJC’s suggested best practices, the Joint *Ad Hoc* Subcommittee agreed there is a need for statewide uniform rules that provide detailed procedures governing transfer of proceedings.

From a review of the current local practices, the members noted that direct file cases are instituted by filing a criminal complaint, and thereafter the cases follow the Criminal Rules governing all court cases.³ Ordinarily, the procedures for requesting the transfer of these cases do not occur until after the preliminary hearing or after the arraignment. The Committee agreed that this practice should be incorporated into the proposed rule changes. Accordingly, as explained more fully below in the discussion of the rules, procedurally, the direct file cases would be instituted by the filing of the

complaint or an arrest without a warrant as provided in Pa.R.Crim.P. 502, and proceed according to the Criminal Rules through the preliminary hearing (Pa.R.Crim.P. 542)⁴ and the filing of an information (Pa.R.Crim.P. 560), to the “formal” arraignment (Pa.R.Crim.P. 571) in the same manner as any other court case. The members also agreed that the changes should not prohibit earlier determinations of whether a direct file defendant’s case should be transferred. The members noted, for example, in some judicial districts a determination is made as early as the preliminary hearing when the parties agree at the preliminary hearing that the case should be in Juvenile Court and the attorney for the Commonwealth withdraws the charges and re-files a petition in Juvenile Court.

If a motion for transfer of criminal proceedings to juvenile proceedings is going to be filed, the motion ordinarily would be filed as part of the omnibus pretrial motion as provided in Pa.R.Crim.P. 578. However, the new procedures do not preclude an earlier filing of the motion in the appropriate case. *See* discussion of new Rule 596 below.

The new procedures vary procedurally from other court cases by requiring the direct file cases to proceed to a mandatory status conference at which the judge will determine whether a motion for transfer has been or will be filed. *See* discussion of new Rule 595 below. In those cases in which a motion has been filed but is not ready to be heard, the next procedural step would be additional status conferences. These status conferences ensure that a direct file case will continue to move forward by placing the responsibility with the judge to monitor the status of these cases. The Committee understands that the status conferences add to the workload of the judges. However, because these types of cases are relatively infrequent, the members do not believe the requirement will be onerous. Furthermore, by having the judge monitor the cases and set specific timeframes for the filing of the motion, for the status conferences, and for the hearing, the new procedures will promote judicial economy and administrative efficiency.

When the judge determines the motion for transfer is ready to be heard, the judge is required to set the time for the hearing on the motion. *See* discussion of new Rule 597 below. If the motion is granted, the case is transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act. If the motion is not granted, the case continues to proceed as a court case under the Criminal Rules.

As an additional monitoring mechanism, when the direct file cases are held for court, the rules require that these cases be flagged by the clerk of courts as direct file cases in the docket entries. This notice will alert the participants and court to the nature of the case at the earliest point. *See* discussion of amendments to Rule 113 below.

In developing this proposal, the Joint *Ad Hoc* Subcommittee also addressed the issue of whether a defendant in a direct file case may be detained pretrial in a secure detention facility rather than the county jail when the defendant is unable to post bail. The members, acknowledging that there is no uniform statewide practice, ultimately agreed that there should be a separate motion procedure for determining the question of the place of pretrial detention. *See* discussion of new Rule 598 below.

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

³ “Court Case” is defined in Rule 103 as a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.

⁴ In judicial districts that have resumed using the indicting grand jury, in cases in which witness intimidation has occurred, is occurring, or is likely to occur, the attorney for the Commonwealth may have moved to have the case proceed by indicting grand jury instead of the preliminary hearing. *See* Pa.Rs.Crim.P. 556 through 556.12.

II. Discussion of Rules

RULE 113 (Criminal Case File and Docket Entries)

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

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

As explained in the discussion of new Rule 595, the defendant will be required to appear in person for the mandatory status conference. In addition, the defendant is required to appear for the hearing on a motion for transfer under Rule 597. The Committee believes, because the defendants in direct file cases are under 18 years of age, it is essential that these defendants be present in person at the status conference and hearing to ensure they fully comprehend the proceedings.

Rule 119 provides for the use of two-way simultaneous audio-visual communications in many criminal proceedings. The rule specifically prohibits the use of two-way simultaneous audio-visual communications for those proceedings at which a defendant has a right to be physically present. Accordingly, Rule 119 has been amended to include the status conference under Rule 595 and the hearing under Rule 597 as two of the proceedings that are exceptions to conducting the proceeding using two-way simultaneous audio-visual communications.

RULE 540 (Preliminary Arraignment)

During the Committee's discussions about the new procedures, the Committee agreed it is important in a direct file case, when the defendant has been arrested, that the defendant's parents, guardian, or other custodian be informed of the arrest. Although the police may inform the parents, guardian, or other custodian at the time of arrest,⁵ this does not occur in all cases. To ensure that there is notice to defendant's parents, guardian, or other custodian, the Committee determined that the issuing authority should be required at the time of the preliminary arraignment to determine whether defendant's parents, guardian, or other custodian have been notified of the charges. New paragraph (B) sets forth this requirement, and further requires that, if they have not been notified, the issuing authority must notify the parents at the time of the preliminary arraignment. The Committee also agreed to leave the method of notice to the discretion of the issuing authority rather than mandate, for example, a form of notice or that the issuing authority be required to make a notation on the docket transcript.

In considering the requirement that the defendant's parents, guardian, or other custodian be notified, the Committee agreed the notice would not give the defendant's parents, guardian, or other custodian standing in these direct file cases. Rather, the defendant's parents, guardian, or other custodian is being notified solely to alert them to the charges against their child. To make this clear, the Rule 540 Comment has been revised using language similar to the language in the Juvenile Court

Procedural Rule 131 Comment that provides "[n]othing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present."

In addition, the Rule 540 Comment includes a reference to new Rules 595, 596, 597, and 598 to alert the bench and bar at this early stage in the proceedings to the special procedures for transfer from criminal proceedings to juvenile proceedings in direct file cases. The Committee is aware that frequently the attorneys handling direct file cases may be experienced criminal law practitioners but are not as knowledgeable about the procedures related to juveniles. Providing for this early reference to the new rules will be an aide to the attorneys, as well as alert the court systems to these direct file cases.

RULE 570 (Pretrial Conference)

As explained more fully in the discussion below about new Rule 595, the new rule requires that no later than 40 days after the arraignment there must be a mandatory status conference in the direct file cases. Although this status conference is similar to the Rule 570 pretrial conference, it is mandatory, rather than discretionary; addresses issues that relate specifically to direct file cases; and may occur before the case is held for court. Because the mandatory status conference is new to the Criminal Rules, a cross-reference to new Rule 595 has been added to the Rule 570 Comment to alert the bench and bar to the new mandatory status conference procedures.

RULE 571 (Arraignment)

After reviewing the procedural flow of a court case from the time of arrest or issuance of a summons, the Committee agreed that, as with other pretrial motions, the arraignment is the point in the proceedings when a direct file defendant formally should be advised of the right to file a motion for transfer from criminal proceedings to juvenile proceedings. Rule 571(C)(3) has been amended by adding a motion requesting transfer from criminal proceedings to juvenile proceedings to the examples of motions that are to be filed after the arraignment. In addition, cross-references to the new rules governing the transfer proceedings have been added to the Rule 571 Comment.

RULE 578 (Omnibus Pretrial Motion for Relief)

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

PROPOSED NEW RULES GOVERNING TRANSFER FROM CRIMINAL TO JUVENILE PROCEEDINGS: IN GENERAL

The published version of the proposal for new procedures governing the transfer of criminal proceedings to juvenile proceedings set forth all the procedures, except the place of detention procedure, in one rule, proposed new Rule 595. In response to several publication responses and concerns raised by several members, the Committee agreed the new procedures would be clearer and easier to understand if the procedures for the

⁵ The Juvenile Act requires that police notify the parents when the defendant, who is a juvenile, is taken into custody. See 42 Pa.C.S. § 6326.

mandatory status conference, the motion, the hearing and disposition, and detention were presented in four separate rules. In addition, because the mandatory status conference is a new concept to the Criminal Rules that will occur whether or not a motion for transfer has been filed, the Committee concluded the new mandatory status conference rule should be the first rule in the new section.

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

In discussing what to call the new procedures, the Committee considered using “decertification procedures,” “direct file procedures,” and “procedures governing transfer from criminal court to juvenile court.” After thoroughly vetting all this terminology and recognizing that not all judicial districts have distinct criminal or juvenile courts, the members finally determined that, to more accurately represent the nature of the new procedures, the new procedures should be referred to as “procedures for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322.”

NEW RULE 595 (Mandatory Status Conference)

New Rule 595 sets forth the procedures for the mandatory status conference.⁶ The status conference must be conducted in every case in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with the direct file offenses enumerated in 42 Pa.C.S. § 6322(2)(i), (ii), and (iii). This requirement was added so the judge assigned to the direct file case will be monitoring the case early in the proceedings. Having the parties and judge participate in the mandatory status conference should reduce the delays that have been a problem in the past and should provide for efficient administration of the case. At the same time, the judge will be able to ensure that the direct file defendant’s rights are protected.

The published version of Rule 595 referred to this conference as a “prehearing conference.” However, after considering the publication responses and some members’ suggestions that, because the purpose of conference is more akin to a status conference than it is to a pretrial conference, the procedure should be called “status conference,” this change in terminology was made.

Paragraph (A)(1) sets forth the time for the mandatory status conference. The members agreed the conference must be held in every direct file case, whether or not a transfer motion has been filed. The members also agreed the time for the status conference should be tied to the time of the arraignment and to the filing of the omnibus pretrial motion. Under the Criminal Rules, the omnibus pretrial motion must be filed within 30 days of the arraignment. In the published version of the proposal, the Committee had proposed that the time for conducting the status conference should be no later than 35 days after

arraignment, reasoning that the additional five days provided the courts adequate time for scheduling purposes and for the defendant to file the transfer motion as part of the omnibus pretrial motion. On reconsideration, after reviewing the publication responses and some concerns raised by a few members that 35 days was not sufficient time to schedule the status conference, the time was extended to be no later than 40 days after the arraignment to provide the judges with an additional five days for scheduling purposes. The Committee considered setting the time for the hearing to be as long as 60 days after the arraignment but concluded 40 days was sufficient without unnecessarily delaying the process. Nothing in this rule, however, would prevent the judge from scheduling the status conference earlier, particularly when a transfer motion is filed earlier in the process.

Paragraph (A)(2) addresses the defendant’s presence at the mandatory status conference. The Committee initially considered permitting the defendant to waive his or her presence with the consent of the defendant’s attorney and the judge. Upon further reflection, the members concluded the status conference in the context of a request for transfer from criminal proceedings to juvenile proceedings is a critical stage in the proceedings. In these cases, it is important that the defendant be involved in making the decision whether to file a motion rather than permitting the defendant’s attorney to make the decision for the defendant. In view of these considerations, Rule 595(A)(2) and Rule 119 make the defendant’s presence in person at the status conference mandatory. The defendant’s attorney and the attorney for the Commonwealth also are required to be present at the prehearing conference.

Paragraph (B) sets forth the procedures the judge is to follow at the mandatory status conference. The status conference provides the forum for the judge to determine whether the defendant has filed a motion requesting transfer, is requesting additional time to file the motion, or has decided not to file the motion. The status conference also is the stage in the proceedings from which the remaining proceedings related to the request for transfer will flow. Accordingly, the new paragraphs (B)(1), (B)(2), and (B)(3) enumerate what the judge is to do once the judge ascertains whether a motion has been filed, will be filed, or will not be filed.

If the defendant is requesting additional time and judge agrees, the judge is required to set a date for filing the motion, paragraph (B)(1). The judge has the responsibility to move these cases along in a timely manner based on the information provided by the defendant. Accordingly, the judge is given the discretion to set the time when the motion must be filed.

If the motion for transfer has been filed, the judge must determine if the motion is ready to proceed, paragraph (B)(2). The procedures to follow when a motion has been filed are set forth in new Rule 597. As explained in the discussion of Rule 597, if the parties agree the motion is ready to be heard, the judge is required to set the date for the hearing. If the motion is not ready to be heard, the judge is required set up additional status conferences.

If the defendant indicates he or she is not going to file a motion, the case will continue to proceed as any other criminal case under the Criminal Rules, paragraph (B)(3). During the post-publication discussions of this provision, the Committee considered the Rule 600 implications. The members wanted to make it clear that a direct file case is proceeding under the Criminal Rules unless the case is transferred to juvenile proceedings. The procedures governing direct file cases related to transfer motions do not

⁶ The procedures in new Rule 595 incorporate the provisions that originally were published as Rule 595(B).

take the case outside the Criminal Rules. Accordingly, the published version this paragraph has been modified by adding “continue to” before “proceed” in paragraph (B)(3).

The Rule 595 Comment emphasizes that the status conference in the rule is mandatory and therefore is different from the Rule 570 pretrial conference, and elaborates on the judge’s responsibilities at the mandatory status conference. During the Committee’s discussions of the reasons for having a status conference, the members noted that delays in the direct file proceedings often are caused by the parties not receiving necessary information about the defendant in a timely manner or at all. The members believe that having the judge issue orders for the necessary information will help to reduce the delays, but agreed this did not need to be required in the rule. To emphasize this point, included in the Comment is the suggestion to the parties that they may request that the judge issue an order for the release of records or other materials relevant to the defendant’s motion, for the appointment of experts, for the examination of the defendant, and any other aids necessary to the disposition of the motion. In addition, the provision makes it clear that these requests, if authorized by law, may be made *ex parte*.

During the discussions about the status conference, the role of the juvenile probation office in these proceedings also was discussed. Although the members agreed the rules should not require the juvenile probation office to have a role at this stage in the proceedings, they thought the parties could request that the probation office prepare a report if the defendant has had contact with the juvenile justice system. Accordingly, the suggested list of things the parties may request the judge to order enumerated in the Comment includes “a report from the juvenile probation office.”

The Comment also explains that, at the status conference, the parties may consider other matters related to the hearing, such as the simplification or stipulation of factual issues, the qualification of exhibits, the number of witnesses giving testimony of a cumulative nature, and such other matters that may aid the disposition of the motion. In addition, the parties have the right to object to rulings made by the judge at the status conference, and the judge is required to make a record of the agreements or objections of the parties and of any other rulings made during the status conference. These provisions have been moved from the text of the published version of Rule 595(B)(3), (B)(4), and (B)(5) to the Comment.

Another question raised in the publication responses concerned the judges authorized to handle the direct file cases, in particular whether a magisterial district judge could address transfer requests or place of detention if these issues are raised at the preliminary hearing. The Committee agreed this was not the intention of the rules and added language to the Rule 595 Comment that explains that only common pleas court judges are authorized to handle these transfer cases. Comparable provisions have been added to Rules 597 and 598.

The Comment also includes cross-references to the three other new rules in the new section to alert the members of the bench and bar that they need to look at all four rules when dealing with direct file cases.

NEW RULE 596 (Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings)

This is the new rule governing the motion requesting

transfer.⁷ After considering a number of options with regard to the procedures for requesting transfer, the members concluded that the request should be made in the form of a motion.⁸ The motion must be filed in the same manner as any other motion in a criminal case that is subject to the omnibus pretrial motion procedures, must be filed with the clerk of courts, and a copy of the motion must be served on the attorney for the Commonwealth concurrently with filing.

The published version of the motion procedures proposed that the motion for transfer had to be filed within 30 days of the arraignment. The Committee reconsidered this provision in view of the publication responses suggesting that the published language could be misconstrued as not permitting a motion to be filed at an earlier stage in the proceedings. Because the Committee intended to have the new procedures accommodate current practices that permit early filing of the request for transfer, the published version has been modified to provide that the motion for transfer may be filed at any time after the preliminary hearing, but not later than 30 days after arraignment. These provisions are elaborated in the Comment. The Comment also clarifies that the judicial districts may enact local rules that require a shorter time within which the motion must be filed.⁹

The 30-day time provision for filing the omnibus pretrial motion in the published version also included the exception to the 30-day time period language that is in Rule 579. The Rule 579 provision provides that the omnibus pretrial motion must be filed within 30 days of arraignment “unless opportunity did not exist; the defendant, the defendant’s attorney, or the attorney for the Commonwealth was not aware of the grounds for the motion; or the time for filing has been extended by the judge for cause shown.” During the post-publication review, the members agreed this “unless” clause is unnecessary in the text of the new rule and more appropriately belongs in the Comment.

RULE 597. (Procedures Following the Filing of a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings)

This is the new rule governing the procedures after a motion is filed.¹⁰ Paragraph (A) provides, in cases in which the judge determines the motion is not ready to be heard, that the judge is required to schedule additional status conferences. These additional status conferences provide a mechanism to aid the judge in moving the case along. The judge has the discretion for when to schedule the additional status conferences, but the dates have to be within the timeframe of “no later than every 60 days after the first status conference.” This timeframe permits the judge to schedule the additional status conferences at shorter periods in the appropriate cases. The judge must conduct status conferences until the motion is ready to be heard. At these additional status conferences, the parties are required to advise the judge of the status of all matters pertinent to whether the motion is ready to be heard.

Paragraph (B) sets forth the requirements for the judge to schedule the hearing once the judge determines the

⁷ The procedures in new Rule 596 incorporate the provisions that originally were published as Rule 595(A).

⁸ The Committee agreed to use “motion” instead of “petition” to be consistent with the Criminal Rules. See Rule 575.

⁹ The judicial districts that have implemented local rules providing for a shorter time for filing have been successful in the fair and expeditious disposition of transfer motions utilizing shorter times for filing that include liberal granting of extensions when necessary.

¹⁰ The procedures in new Rule 597 incorporate the provisions that originally were published as Rule 595(C)-(H).

motion for transfer is ready to be heard. Although it is left to the discretion of the judge to determine the actual date for the hearing, the hearing must be held no later than 30 days after the status conference. Notice of the hearing date is to be given to the defendant, defendant's attorney, and the attorney for the Commonwealth. The Committee did not think it necessary to set forth what the hearing procedures should be so the rule is silent in this regard.

Paragraph (C) and paragraph (D) incorporate the provisions from 42 Pa.C.S. § 6322 that require a decision by the judge within 20 days after the hearing, paragraph (C), and require the clerk of courts to enter an order on behalf of the judge denying the motion by operation of law if the judge does not decide the motion within 20 days, paragraph (D).

The issue of whether the judge should be required to make his or her findings in open court was discussed at length. The members noted that 42 Pa.C.S. § 6322(b) merely provides, *inter alia*, "the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order." The members believe that the transfer proceeding is a critical proceeding and the defendant and counsel should be in court when the judge issues his or her decision. Accordingly, new Rule 597(C) requires the judge to announce the decision in open court at the conclusion of the hearing with all the parties present. If the judge delays making the decision, the judge still must announce the decision in open court with all the parties present. Paragraph (C) also requires the judge to enter an order granting or denying the motion and to set forth the findings of fact and conclusions of law orally on the record or in writing. The findings of fact and conclusions of law are important for the record in the event of an appeal.

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

One issue debated at length concerns the treatment of the defendant when a transfer is ordered. The members noted that the transfer proceedings are conducted in criminal court and, frequently, the judges are not as familiar with the proceedings for juveniles, particularly with regard to placement. In view of this, and because the juvenile probation office, as the intake office for juveniles, is in the best position to expeditiously assess the case and determine where the defendant should be placed and what should happen next in the case, new Rule 597(E)(2) requires the judge to order the defendant to be taken forthwith to the juvenile probation office. The Committee included the term "forthwith" to emphasize the importance of promptly transporting the defendant to the juvenile probation office so the juvenile proceedings may be initiated without delay.

The Committee, in proposing this provision, noted that 42 Pa.C.S. § 6322(d) provides:

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

Two potential issues about the interplay between Section 6322(d) and Rule 597 were considered. The first issue relates to the provision in Section 6322(d) that "the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent . . ." and the provision of Rule 597(E)(2) that requires the judge to "order the defendant to be taken forthwith to the juvenile probation office." The Committee reasoned this new provision in Rule 597(E)(2) is consistent with this statutory provision because the rule provision merely sets the stage for the juvenile probation office to implement the "next step" and that includes the procedures set forth in Section 6322(d).

The second issue, raised following publication of the proposal, concerns the provision of Section 6322(d) "[w]here review of the transfer order is not sought or where the transfer order is upheld . . ." and the provision in Rule 597 (E) that requires the judge to immediately order the transfer of the case when the judge grants the motion. The concern about the interplay between these two provisions is that they are inconsistent because the statute provides for a delay for the taking of an appeal before a case is sent to the probation office and the rule does not provide specifically for a such delay, but rather provides for the immediate transfer of the case and for the defendant to be taken forthwith to the probation office.

After considerable debate about these provisions, the consensus was that the statute does not require any delay but rather recognizes that there would be a stay in the proceedings in the event an appeal is filed. Analogizing the order to transfer proceedings to a ruling suppressing evidence in a criminal case in which the attorney for the Commonwealth has a right to appeal, and assuming the transfer order "substantially handicaps" the prosecution, the case is not delayed, unless and until the attorney for the Commonwealth files the notice of appeal. To clarify this, the Rule 597 Comment has been revised to include a citation to *Commonwealth v. Johnson*, 542 Pa. 568, 669 A.2d 315 (1995), for this principle as it applies to decertification orders. This revision acknowledges the Commonwealth's right to appeal in these cases, without encouraging or discouraging the use of the appeal.

Correlative to the discussions about the interplay between Section 6322(d) and Rule 597 concerns were articulated about the place of detention of the defendant following the granting of the motion for transfer during the 30-day time for appeal and the time during the appeal. Because these defendants are under the age of 18, the impact on them if they are detained in a county jail during the appeal process is profoundly negative. It was suggested that, if the defendant is detained in a secure detention facility pending the outcome of the appeal, the public interests and the defendant's interests are better served because of the access to age-appropriate educational opportunities and clinical assessments. In view of these considerations, Rule 597(E) and Rule 598(B)(3) and the Comments to these rules have been modified to address the placement issue by authorizing the judge to release the defendant on bail pending appeal and during appeal conditioned on being detained in a secure detention facility.

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

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

The first paragraph of the Comment provides the same suggestion to the parties that is in the Rule 595 Comment to the effect that they may request that the judge issue additional orders for information, examinations, or any other aids necessary to the disposition of the motion, and makes it clear that these requests, if authorized by law, may be made *ex parte*.

The second paragraph of the Comment addresses the issue of whether the juvenile probation officer should be present at the transfer hearing, an issue that was discussed both before and after publication. The Committee reaffirmed its earlier decision that the rule should not require the probation officer to be present since the proceeding is not a juvenile proceeding. However, the members agreed it would be helpful to the bench and bar if the Comment recognized that having the probation officer attend the transfer hearing is the practice in some judicial districts and makes it clear that the rule is not intended to change this practice.

The next three paragraphs include cross-references to the correlative provisions of 42 Pa.C.S. § 6322, and explain the interplay between these provisions and new Rule 597. In addition, the third paragraph references the statutorily established burden of proof in these cases.

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

The seventh paragraph of the Comment elaborates on the interplay between Rule 597(E) and 42 Pa.C.S. § 6322(d) discussed above.

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

NEW RULE 598 (Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322)

This is the new rule governing the procedures concerning place of detention in a direct file case.¹¹ The issue of whether a defendant under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (2)(ii), or (2)(iii) may be detained pretrial in a secure detention facility rather than in a county jail when the defendant is unable to make or ineligible for bail was debated at length. After researching this matter, the members concluded the new transfer rules should include provisions for the detention of the direct file defendants in a secure detention facility. The members noted that, although prior to recent statutory amendments to the Juvenile Act,¹² there was no provision for a direct file defendant to be detained in a secure detention facility in the Juvenile Act or elsewhere, some judges have ordered such placement. These judges reasoned, especially when the direct file defendant is very young, that prior to the determination whether to transfer proceedings, the secure detention facilities would be better suited for housing these young defendants. New Rule 598 provides the procedures for a direct file defen-

dant to be detained in a secure detention facility. Paragraph (A) provides the “norm” with regard to pretrial detention—the defendant in a direct file case is to be detained in the county jail unless released on bail.

Paragraph (B) provides the exceptions to the “norm” and permits a defendant who may seek or is seeking transfer and has not been released on bail to file a motion for detention in a secure detention facility. The Committee agreed that a direct file defendant should be eligible to be detained in a secure detention facility both when the defendant may seek transfer or already is seeking transfer. In other words, the defendant may request the change in the place of detention even before he or she has filed a motion requesting transfer of proceedings.

The Committee recognizes that ordinarily the defendant is going to want to seek a change of place of detention, and that any request should be in the form of a motion. The procedures for motions under Rules 575 and 576 would apply. The members also noted that in many of these cases, there may be discussions between the defendant, the attorney for the Commonwealth, and the judge concerning the place of the defendant's detention. However, the process still should be by motion by the defendant.

Paragraph (B)(1) requires the consent of the attorney for the Commonwealth before the judge may grant the motion, although some members argued that the judge should have discretion to place the defendant in secure detention even when the Commonwealth does not consent. This point also was raised in publication comments. The Committee reconsidered this requirement and agreed to maintain this provision as published.

Rule 598(B)(1) and (B)(2) includes limitations of the length of time a direct file defendant may be detained in the secure detention facility. Specifically,

- (1) when the defendant is granted bail, he or she is released from detention, except as provided in paragraph (B)(3);
- (2) if the judge denies the motion for transfer or the judge determines the defendant is not filing a motion for transfer, then the judge must order the defendant transferred to the county jail because the case will proceed as a criminal court case;
- (3) if the defendant turns 18 while in the secure detention facility before the motion is disposed, the judge must order the defendant transferred to the county jail because the defendant is no longer a child, unless the Juvenile Court has issued an order for the defendant's secure detention in a separate delinquency case; and
- (4) if the judge grants the motion for transfer, then the judge must order that the defendant be taken to the probation office so that office will be able to promptly process the case as provided by the Juvenile Court Procedural Rules and the Juvenile Act.

As explained above in the discussion of Rule 597 and the interplay with 42 Pa.C.S. § 6322(d), paragraph (B)(3) addresses the release of the defendant when the attorney for the Commonwealth files a notice of appeal from the judge's order transferring the case. In these cases, the judge has the discretion to release the defendant, but only if the release is conditioned upon the defendant being detained in a secure detention facility pending disposition of the appeal. This provision is further explained in the Comment.

¹¹ The procedures in proposed new Rule 598 incorporate the provisions that originally were published as Rule 596.

¹² See Act 98 of 2010 that amended the Juvenile Act to provide the same procedures for pretrial detention of these direct file defendants.

The Committee agreed to limit the place of detention in the direct file cases to a secure detention facility because the defendants in the direct file cases are charged with serious crimes including murder. The second paragraph of the Comment includes the following definition of “secure detention facility” as the term is used in the new rule:

As used in this rule, “secure detention facility” is a facility approved by the Department of Public Welfare to provide secure detention of alleged and adjudicated delinquent children, see 55 Pa. Code § 3800.5, and does not include shelter care.

The Comment also notes that the provisions of the new rule are not intended to restrict or enlarge the defendant’s opportunity to address bail.

RULES 117, 514, 515, 543, and 1003

The Comments to Rules 117, 514, 515, 543, and 1003, added to the package after publication, contain cross references to Rule 540. These cross-references have been revised to conform with the renumbering of the paragraphs in Rule 540 necessitated by the changes to Rule 540 in this package.

[Pa.B. Doc. No. 12-1589. Filed for public inspection August 17, 2012, 9:00 a.m.]

[234 PA. CODE CH. 9]

Order Amending Rules 907, 908 and 909 and Revising the Comment to Rule 910 of the Rules of Criminal Procedure; No. 415 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 27th day of July, 2012, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 4147 (July 24, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 995), and a Final Report to be published with this *Order*:

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

(1) Pennsylvania Rules of Criminal Procedure 907, 908, and 909 are amended; and

(2) the Comment to Pennsylvania Rule of Criminal Procedure 910 is revised, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective September 1, 2012.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS**

Rule 907. Disposition Without Hearing.

Except as provided in Rule 909 for death penalty cases,

* * * * *

(4) When the petition is dismissed without a hearing, the judge **promptly** shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final

order disposing of the petition and of the time **limits** within which the appeal must be [**taken**] **filed**. **The order shall be filed and served as provided in Rule 114.**

(5) When the petition is granted without a hearing, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.

Comment

* * * * *

When the disposition granting a petition reinstates a defendant’s direct appeal rights *nunc pro tunc*, the judge must advise the defendant by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

For the requirements for appointment of counsel on second and subsequent petitions, see Rule 904(B).

Relief may be granted without a hearing under paragraph (2) only after an answer has been filed either voluntarily or pursuant to court order.

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. See 42 Pa.C.S. § 9543(b) and Rule 908.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service’s return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Official Note: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 907 and amended March 1, 2000, effective April 1, 2001; Comment revised September 18, 2008, effective February 1, 2009; **amended July 27, 2012, effective September 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court’s Order at 27 Pa.B. 4305 (August 23, 1997).

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 September 18, 2008 revision of the Comment concerning the United States Postal Service’s return receipt electronic option published with the Court’s Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the July 27, 2012 amendments to paragraph (4) and the addition of paragraph (5) concerning orders and the proposed revision of the Comment concerning appeals *nunc pro tunc* published with the Court’s Order at 42 Pa.B. 5349 (August 18, 2012).

Rule 908. Hearing.

* * * * *

(D) Upon the conclusion of the hearing the judge shall [] :

(1) [] determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any [] ; [] .

[(2)] (1) **If the judge dismisses the petition, the judge promptly shall issue an order denying relief [or]. The order shall be filed and served as provided in Rule 114.**

(2) **If the judge grants the petition, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.**

(E) If the judge disposes of the case in open court **in the presence of the defendant** at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken. If the case is taken under advisement, **or when the defendant is not present in open court**, the judge, by certified mail, return receipt requested, shall advise the defendant of the right to appeal **from the final order disposing of the petition and of the time limits within which the appeal must be filed.**

Comment

The judge's power, under paragraph (A), to deny a hearing on a specific factual issue is intended to apply when an issue of fact already has been heard fully, but has never been determined. The judge need not rehear such an issue, but would be required to determine it under paragraph (D).

The 1997 amendment to paragraph (A)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. *See* 42 Pa.C.S. § 9543(b) [, as amended in 1995] .

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge, pursuant to paragraph (E), also must advise the defendant that a new notice of appeal must be filed within 30 days of the order reinstating the direct appeal rights.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

See also Rule 909 for procedures in death penalty cases.

Except as provided in Rule 902(E)(2) for first counseled petitions in death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. *See* 42 Pa.C.S. § 9545(d)(2).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Official Note: Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 and amended March

1, 2000, effective April 1, 2001; Comment revised September 18, 2008, effective February 1, 2009; **amended July 27, 2012, effective September 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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 September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the July 27, 2012 amendments to paragraphs (D) and (E) concerning orders and notice to the defendant, and the proposed revision of the Comment concerning appeals *nunc pro tunc* published with the Court's Order at 42 Pa.B. 5349 (August 18, 2012).

Rule 909. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition.

* * * * *

(B) *Hearing; Disposition*

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 906(E)(1) or (E)(2), or if no answer is filed as permitted in Rule 906(E)(2), within 20 days after the expiration of the time for answering, the judge shall review the petition, the Commonwealth's answer, if any, and other matters of record relating to the defendant's claim(s), and shall determine whether an evidentiary hearing is required.

(2) If the judge is satisfied from this review that there are no genuine issues concerning any material fact, the defendant is not entitled to post-conviction collateral relief, and no legitimate purpose would be served by any further proceedings,

(a) the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

(b) The defendant may respond to the proposed dismissal within 20 days of the date of the notice.

(c) No later than 90 days from the date of the notice, or from the date of the defendant's response, the judge shall **issue an order:**

(i) [**dismiss**] **dismissing** the petition [**and issue an order to that effect**] ;

(ii) [**grant**] **granting** the defendant leave to file an amended petition; or

(iii) [**order**] **ordering** that an evidentiary hearing be held on a date certain.

The order shall be filed and served as provided in Rule 114.

(3) If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The judge may, for good cause shown, grant

leave to continue the hearing. No more than 90 days after the conclusion of the evidentiary hearing, the judge shall dispose of the petition.

* * * * *

Comment

Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay. In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, 565 Pa. 1, 33-34, 771 A.2d 721, 740-741 (2001), provides that the separate stay application “must set forth: a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing a likelihood of prevailing on the merits.”

* * * * *

When the disposition reinstates a defendant’s direct appeal rights *nunc pro tunc*, the judge must advise the defendant either in person or by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

Official Note: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2002, effective July 1, 2002[, 32 Pa.B. 1173]; amended October 7, 2005, effective February 1, 2006; **amended July 27, 2012, effective September 1, 2012.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the July 27, 2012 amendments to paragraph (2)(c) concerning orders and the revision of the Comment concerning appeals *nunc pro tunc* published with the Court’s Order at 42 Pa.B. 5349 (August 18, 2012).

Rule 910. Appeal.

An order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal.

Comment

Disposition without a hearing under Rule 907(A) and (B), or under Rule 909(C)(3)(a), constitutes a final order under this rule. A partial disposition under Rule 907(C) is not a final order until the judge has fully disposed of all claims.

When the disposition reinstates a defendant’s direct appeal rights *nunc pro tunc*, a new notice of appeal must be filed within 30 days of the order.

Official Note: Previously Rule 1509, adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 and amended August 11, 1997, effective immediately; renumbered Rule 910 and Comment revised March 1, 2000,

effective April 1, 2001; **Comment revised July 27, 2012, effective September 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court’s Order at 27 Pa.B. 4305 (August 23, 1997).

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 July 27, 2012 Comment revision concerning appeal *nunc pro tunc* published with the Court’s Order at 42 Pa.B. 5349 (August 18, 2012).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 907, 908, and 909; and revision of the Comment to Pa.R.Crim.P. 910

Time to File Appeal *Nunc Pro Tunc*

On July 27, 2012, effective September 1, 2012, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rules of Criminal Procedure 907, 908, and 909 and approved the revision of the Comment to Pennsylvania Rule of Criminal Procedure 910.

I. Introduction

The Appellate Court Procedural Rules Committee, during discussions concerning appellate procedures in general, noted from case law and anecdotal information from its members that there is confusion about the procedures for proceeding with a direct appeal *nunc pro tunc*. Specifically, some defendants do not understand that they must file a new notice of appeal and that the time for filing is within 30 days of the order reinstating the direct appeal right. The Appellate Court Procedural Rules Committee asked the Criminal Procedural Rules Committee to consider clarifying this issue in the Criminal Rules when the reinstatement of appellate rights occurs in procedures under the Post Conviction Relief Act (PCRA).

The Committee reviewed the rules in Chapter 9 (Post-Conviction Collateral Relief Proceedings), noting that Rules 907, 908, and 909 require the judge to advise the defendant of his or her appeal rights following the disposition of the PCRA petition. The members initially thought the rules already provide adequate notice even for the reinstated appeal case following the granting of a PCRA petition. After further consideration, because there is confusion in practice, the members agreed it would be helpful if the rules included a clarification in this regard. However, because this clarification would address how to handle a particular type of case—appeals *nunc pro tunc*—that already is covered generally in the rule requirements that the judge advise the defendant of his or her right to appeal, the clarification should be in the Comments to the rules. Accordingly, the Comments to Rules 907, 908, and 909 have been revised to emphasize that, when appellate rights have been reinstated, the PCRA judge must advise the defendant that a new notice of appeal is required to be filed within 30 days of the order reinstating the direct appeal rights *nunc pro tunc*. In addition, because Rule 910 addresses appeals following a PCRA disposition, a comparable provision has been added to the Rule 910 Comment.

¹ The Committee’s Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee’s Comments or the contents of the Committee’s explanatory Final Reports.

During the Committee’s examination of Rules 907, 908, and 909, several members opined that the provisions concerning the issuing of orders following the disposition of a petition are incomplete because the rules do not explicitly require an order when the petition is granted nor do the rules require that the orders be filed. The Committee agreed the rules should be amended to clarify the procedures governing the issuing and filing of orders in PCRA cases to ensure there is no confusion about these procedures.

II. Discussion of Rule Changes

Rule 907

Rule 907 sets forth the procedures for the disposition of a PCRA petition without a hearing. Paragraph (4) requires a judge to issue an order when the petition is dismissed. The paragraph has been amended to include the requirement that the judge act promptly and that the order be filed and served as provided in Rule 114. A new paragraph (5) sets forth the procedures when a petition is granted. This new paragraph conforms with the provisions in Rule 908(D)(2) with regard to issuing supplementary orders appropriate to the disposition of the cases.

The Comment includes the new language emphasizing the judge’s responsibility to advise the defendant to file a new notice of appeal when the disposition is the reinstatement of the defendant’s appellate rights and that the notice of appeal must be filed within 30 days of the order reinstating the appellate rights. Similar language is included in the Comments to Rules 908 and 909.

In addition, an explanatory paragraph is added to the Comment concerning the obligation of the clerk of courts to comply with the requirements in Rule 114 comparable to the paragraph in the Rule 909 Comment.

Rule 908

Rule 908 sets forth the procedures for the hearing on a PCRA petition. Paragraph (D) addresses what is to occur at the conclusion of the hearing. Paragraph (D) is restructured and amended to enumerate more clearly the judge’s responsibilities at the conclusion of the hearing. Current paragraph (D)(1) is moved into the introductory section of paragraph (D). The introductory section now reads:

Upon the conclusion of the hearing, the judge shall determine all material issues raised by the defendant’s petition and the Commonwealth’s answer, or by the Commonwealth’s motion to dismiss, if any.

Current paragraph (D)(2) is reorganized into two subparagraphs. New paragraph (D)(1) provides the procedures when the judge dismisses the petition and new paragraph (D)(2) provides the procedures when the judge grants the petition. In both situations, the judge is required to act promptly and the order must be filed and served as provided in Rule 114.

Paragraph (E) permits the judge to announce the decision in open court or to take the matter under advisement. The amendments emphasize the difference in the method of providing notice to the defendant of the appellate rights (1) when the decision is announced in open court with the defendant present and (2) when the defendant is not present, or when the matter is taken under advisement.

Rule 909

Rule 909 governs procedures specifically related to death penalty cases. Paragraph (B)(2)(c) sets forth the actions the judge must take following giving notice of an intention to dismiss the petition. The requirement that

the judge’s order be filed and served as provided in Rule 114 is added to paragraph (B)(2)(c).

Rule 910

Rule 910 provides that the orders under the PCRA rules granting, denying, dismissing, or otherwise finally disposing of the PCRA petition are final orders for purposes of appeal. The only change to Rule 910 is the addition to the Comment of the provision clarifying that when the disposition is the reinstatement of the defendant’s appellate rights, the new notice of appeal must be filed within 30 days of the order.

[Pa.B. Doc. No. 12-1590. Filed for public inspection August 17, 2012, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 2, 3 AND 4]

Order Amending Rules 200 and 404 and Adopting New Rule 337 of the Rules of Juvenile Court Procedure; No. 574 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 31st day of July, 2012, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 4646 (August 14, 2010), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 997, No. 2, August 20, 2010), and on the Supreme Court’s web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 200 and 404 and adoption of new Rule 337 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 1, 2012.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

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

PART A. COMMENCING PROCEEDINGS

Rule 200. Commencing Proceedings.

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

* * * * *

4) transfer of a case from a criminal proceeding pursuant to **Pa.R.Crim.P. 597** and 42 Pa.C.S. § 6322;

* * * * *

Comment

* * * * *

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

* * * * *

Official Note: Rule 200 adopted April 1, 2005, effective October 1, 2005. Amended March 23, 2007, effective August 1, 2007. Amended May 12, 2008, effective immediately. Amended January 23, 2009, effective March 1, 2009. **Amended July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 200 published with the Court's Order at 42 Pa.B. 5350 (August 18, 2012).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES PART C. PETITION

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

Rule 337. Filing of Petition after Case has been Transferred from Criminal Proceedings.

A. *Commencement of proceedings.* Pursuant to Rule 200(4), the transfer of a case from a criminal proceeding pursuant to Pa.R.Crim.P. 597 and 42 Pa.C.S. § 6322 commences juvenile court action.

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

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

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

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

a) it is in the best interest of the juvenile and the public that the proceedings be brought in juvenile court; and

b) the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile.

Comment

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

When a juvenile is transferred from a criminal proceeding to a juvenile proceeding, a new petition may be filed but is not necessary if the criminal complaint is converted into a petition when supplemented with the information

as provided in paragraph (C). The petition is to be filed with the clerk of courts and the case is to proceed as any other juvenile case following the Rules of Juvenile Court Procedure.

If the juvenile is detained, an adjudicatory hearing is to be held within ten days of the filing of the petition. *See also* Rule 404.

Official Note: Rule 337 adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 337 published with the Court's Order at 42 Pa.B. 5350 (August 18, 2012).

CHAPTER 4. ADJUDICATORY HEARING

Rule 404. Prompt Adjudicatory Hearing.

A. *Detained juvenile.* If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

B. *Non-detained juvenile.* If the juvenile is not detained, the adjudicatory hearing shall be held within a reasonable time.

C. *Juveniles transferred from criminal proceedings.* Notwithstanding the provisions of paragraphs (A) and (B), if a petition was filed pursuant to Rule 337, an adjudicatory hearing shall be held within ten days of the filing of the petition.

Official Note: Rule 404 adopted April 1, 2005, effective October 1, 2005. **Amended July 31, 2012, effective November 1, 2012.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 404 published with the Court's Order at 42 Pa.B. 5350 (August 18, 2012).

EXPLANATORY REPORT

July 2012

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 200 and 404 and new Rule 337 with this Recommendation. The changes are effective November 1, 2012.

Background

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

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

The majority of the recommendations affect the Rules of Criminal Procedure because procedures for these cases begin in criminal court. *See* adoption of new Pa.Rs.Crim.P. 595, 596, 597, and 598, and modifications to Pa.Rs.Crim.P. 113, 117, 119, 514, 515, 540, 543, 570, 571, 578, and 1003.

RULE 200—Commencing Proceedings

The citation to the new Pa.R.Crim.P. 597 was placed in paragraph (4) when transferring a case from a criminal proceeding to juvenile proceedings.

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

RULE 337—Filing of Petition after Case has been Transferred from Criminal Proceedings

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

RULE 404—Prompt Adjudicatory Hearing

This rule addition requires that a hearing shall be conducted within ten days of the filing of a petition when a juvenile was transferred from criminal proceedings to juvenile proceedings. See paragraph (C).

[Pa.B. Doc. No. 12-1591. Filed for public inspection August 17, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Kevin H. Main having been suspended from the practice of law in the State of New Jersey for a period of 3 months by Order of the Supreme Court of New Jersey dated September 26, 2011, the Supreme Court of Pennsylvania issued an Order dated August 1, 2012, suspending Kevin H. Main from the practice of law in this Commonwealth for a period of 3 months. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside 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. 12-1592. Filed for public inspection August 17, 2012, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Toan Quy Thai having been indefinitely suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security by Order of the Board of Immigration Appeals dated February 9, 2011, the Supreme Court of Pennsylvania issued an Order dated August 1, 2012, suspending Toan Quy Thai from the practice of law in this Commonwealth consistent with the Order of the Board of Immigration Appeals. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside 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. 12-1593. Filed for public inspection August 17, 2012, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Harry Tun having been suspended from the practice of law in the District of Columbia for a period of 1 year by Order of the District of Columbia Court of Appeals decided August 18, 2011, the Supreme Court of Pennsylvania issued an Order on August 1, 2012, suspending Harry Tun from the practice of law in this Commonwealth for a period of 1 year, to take effect on August 31, 2012. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside 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. 12-1594. Filed for public inspection August 17, 2012, 9:00 a.m.]