THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1915]

Proposed Amendment of Pa.R.C.P. Nos. 1915.3 and 1915.3-2

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1915.3 and 1915.3-2, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

All communications in reference to the proposal should be received by November 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Domestic Relations Procedural Rules Committee

DAVID J. SLESNICK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by subdivision (c), an action shall be commenced by filing a verified complaint substantially in the form provided by **[Rule] Pa.R.C.P. No.** 1915.15(a).

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by **[Rule 1915.15(b)] Pa.R.C.P. No. 1915.15(c)**.

***Official Note*: [See § 5430(d) of the Uniform Child Custody Jurisdiction and Enforcement Act,]** 23 Pa.C.S. § 5430(d), relating to costs and expenses for appearance of parties and child, and 23 Pa.C.S. § 5471, relating to intrastate application of the Uniform Child Custody Jurisdiction and Enforcement Act.

(c) A claim for custody which is joined with an action of divorce shall be asserted in the complaint or a subsequent petition, which shall be substantially in the form provided by **[Rule] Pa.R.C.P. No.** 1915.15(a).

***Official Note*: [Rule] Pa.R.C.P. No.** 1920.13(b) provides that claims which may be joined with an action of divorce shall be raised by the complaint or a subsequent petition.

(d) If the mother of the child is not married and the child has no legal or presumptive father, then a putative father initiating an action for custody must file a claim of paternity pursuant to 23 Pa.C.S. § 5103 and attach a copy to the complaint in the custody action.

***Official Note*:** If a putative father is uncertain of paternity, the correct procedure is to commence a civil action for paternity pursuant to the procedures set forth at **[Rule] Pa.R.C.P. No.** 1930.6.

(e) A grandparent**,** who is not *in loco parentis* to the child and is seeking physical and/or legal custody of a grandchild pursuant to 23 Pa.C.S. § 5323**,** must plead**[, in paragraph 9 of the complaint set forth at Rule 1915.15(a),]** facts establishing standing under **[§ 5324(3)] 23 Pa.C.S. § 5324(3) in paragraph 9 of the complaint set forth in Pa.R.C.P. No. 1915.15(a)**. A grandparent or great-grandparent seeking partial physical custody or supervised physical custody must plead**[, in paragraph 9 of the complaint,]** facts establishing standing pursuant to 23 Pa.C.S. § 5325 **in paragraph 9 of the complaint set forth in Pa.R.C.P. No. 1915.15(a)**.

(f) An unemancipated minor parent may commence, maintain or defend an action for custody of the minor parent's child without the requirement of the appointment of a guardian for the minor parent.

(g) Prior to the initial in-person custody proceeding as set forth in Pa.R.C.P. No. 1915.4(a), whether the action has been commenced by a complaint or petition, the court shall ascertain if the child, who is the subject of the custody action, has a court active juvenile case or is otherwise involved with a child protective services agency.

(1) If the court determines the child is the subject of an active juvenile case, the court shall:

i. enter an order temporarily staying further custody proceedings for 30 days; and

ii. refer the custody action to the presiding juvenile judge for further consideration by the juvenile court.

(2) Upon expiration of the 30-day stay, the plaintiff/petitioner in the custody action may petition the custody court to schedule the initial in-person custody proceeding or the court on its own motion may issue a scheduling order, unless the juvenile court issues an order relative to the custody action.

***Official Note*: *See* 23 Pa.C.S. §§ 5329.1 and 6340(a)(5.1) and 42 Pa.C.S. § 6307(a)(4.1). Notwithstanding the court's inquiry under this subdivision, additional information may be necessary to fulfill the court's obligation under 23 Pa.C.S. § 5328(a)(2.1) as to the parties, their household members, and the child.**

Rule 1915.3-2. Criminal Record or Abuse History.

(a) *Criminal Record or Abuse History Verification.* A party must file and serve with the complaint, **[any] a** petition for modification, **[any] a** counterclaim, **[any] a** petition for contempt or **[any] a** count for custody in a divorce complaint or counterclaim**,** a verification regarding any criminal record or abuse history of that party and anyone living in that party's household. The verification shall be substantially in the form set forth in subdivision (c) **[below]**. The party must attach a blank verification form to a complaint, counterclaim**,** or petition served upon the other party. Although the party served need not file a responsive pleading pursuant to **[Rule] Pa.R.C.P. No.** 1915.5, he or she must file with the court a verification regarding his or her own criminal record or abuse history and that of anyone living in his or her household on or before the initial in-person contact with the court (including, but not limited to, a conference with a conference officer or judge or conciliation, depending upon the procedure in the judicial district) but not later than 30 days after service of the complaint or petition. A party's failure to file a Criminal Record or Abuse History Verification may result in sanctions against that party. **[Both] The** parties shall file and serve updated verifications five days prior to trial.

(b) *Initial Evaluation*. At the initial in-person contact with the court, the judge, conference officer, conciliator or other appointed individual shall perform an initial evaluation to determine whether the existence of a criminal or abuse history of either party or a party's household member poses a threat to the child and whether counseling is necessary. The initial evaluation required by 23 Pa.C.S. § 5329(c) shall not be conducted by a mental health professional. After the initial evaluation, the court may order further evaluation or counseling by a mental health professional if the court determines it is necessary. Consistent with the best interests of the child, the court may enter a temporary custody order on behalf of a party with a criminal history or a party with a household member who has a criminal history, pending the party's or household member's evaluation and/or counseling.

***Official Note*:** The court shall consider evidence of **a** criminal record or abusive history**, and the verification required by subdivision (c)** presented by the parties. **[There is no obligation for the court to conduct an independent investigation of the criminal record or abusive history of either party or members of their household.]** The court should not consider ARD or other diversionary programs. When determining whether a party or household member requires further evaluation or counseling, or whether a party or household member poses a threat to a child, the court should give consideration to the severity of the offense, the age of the offense, whether the victim of the offense was a child or family member and whether the offense involved violence.

(c) *Verification*. The verification regarding criminal **record** or abuse history shall be substantially in the following form:

(Caption)
CRIMINAL RECORD/ABUSE HISTORY VERIFICATION

I _____, hereby swear or affirm, subject to penalties of law including 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities that:

1. Unless indicated by my checking the box next to **[a crime below] a listed crime or offense**, neither I nor **[any other] a** member of my household **[have] has** been convicted **[or],** pled guilty **[or],** pled no contest**,** or was adjudicated delinquent where the record is publicly available pursuant to the Juvenile Act, 42 Pa.C.S. § 6307**,** to any of the following crimes **or offenses** in Pennsylvania or a substantially equivalent crime **or offense** in **[any other jurisdiction] another state**, including pending charges:

Check all that apply	*Crime*	*Self*	*Other household member*	*Date of conviction, guilty plea, no contest plea or pending charges*	*Sentence*
	* * * * *				
☐	23 Pa.C.S. § 6114 (relating to contempt for violation of protection order or agreement)	☐	☐	_____	_____
☐	**42 Pa.C.S. § 62A14 (relating to contempt for violation of protection order or agreement)**	☐	☐	_____	_____
☐	Driving under the influence of drugs or alcohol	☐	☐	_____	_____

Check all that apply	*Crime*	*Self*	*Other household member*	*Date of conviction, guilty plea, no contest plea or pending charges*	*Sentence*
☐	Manufacture, sale, delivery, holding, offering for sale or possession of any controlled substance or other drug or device	☐	☐	_____	_____

[2. Unless indicated by my checking the box next to an item below, neither I nor any other member of my household have a history of violent or abusive conduct, or involvement with a Children & Youth agency, including the following:

Check all that apply		***Self***	***Other household member***	***Date***
☐	**A finding of abuse by a Children & Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction**	☐	☐	_____
☐	**Abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar statute in another jurisdiction**	☐	☐	_____
☐	**Involvement with a Children & Youth Agency or similar agency in Pennsylvania or another jurisdiction. Where?: _____**	☐	☐	_____
☐	**Other: _____**	☐	☐	_____ **]**

2. Unless I have checked a box next to one of the following statements, none of the statements is true with regard to a member of my household, a child of mine, or me.

Check all that apply		***Self***	***A household member***	***Child***
☐	**Involvement with a Children & Youth Agency in Pennsylvania or similar agency in another state.**	☐	☐	☐
☐	**A finding of abuse by a Children & Youth Agency in Pennsylvania or similar agency in another state. Where?: _____**	☐	☐	☐
☐	**An adjudication of dependency or delinquency under the Juvenile Act in Pennsylvania or similar law in another state. Is the case active? _____**	☐	☐	☐
☐	**A history of abusive conduct as defined under the Protection from Abuse Act in Pennsylvania or similar law in another state.**	☐	☐	☐
☐	**A history of sexual violence or intimidation as defined under the Protection of Victims of Sexual Violence and Intimidation Act in Pennsylvania or similar law in another state.**	☐	☐	☐

3. Please list any evaluation, counseling or other treatment received following conviction or finding of abuse: _____

4. If any conviction above applies to a household member, not a party, state that person's name, date of birth and relationship to the child. _____

5. If you are aware that the other party or members of the other party's household has or have a criminal record/abuse history, please explain: _____

_____

I verify that the information above is true and correct to the best of my knowledge, information or belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

_____
Signature

_____
Printed Name

_____

PUBLICATION REPORT
Recommendation 154

The Domestic Relations Procedural Rules Committee ("DRPRC") is proposing an amendment to Pa.R.C.P. No. 1915.3, Commencement of Action. Complaint. Order, and Pa.R.C.P. No. 1915.3-2, Criminal Record or Abuse History. Act 107 of 2013 ("Act") became effective on January 1, 2014 and mandated a custody court consider child abuse and the involvement of a party or child with a child protective services agency when making a child custody determination under 23 Pa.C.S. §§ 5321—5340. The Act further required the Department of Public Welfare, now the Department of Human Services, local county children and youth social services agencies, and the courts of common pleas to cooperate in the determination of a child custody order.

The Act amended not only Title 23 as it relates to child custody, but also the Child Protective Services Law, 23 Pa.C.S. §§ 6301—6375, and the Juvenile Act, 42 Pa.C.S. §§ 6301—6375. As the Act amended the domestic relations law and juvenile law, a subcommittee of members of the DRPRC and the Juvenile Court Procedural Rules Committee met to discuss the interplay between the Act, the two bodies of procedural rules, and the local practice in the courts of common pleas. The subcommittee identified two key issues: (1) how to resolve concurrent pending actions for child custody and dependency; and (2) communicating resolution of terminated dependency cases in the context of a custody order.

Regarding the first issue, frequently custody cases are initiated or requests for modification of existing custody orders are made when a child is removed from a home by a county children and youth social services agency. These contemporaneous custody and dependency cases may be problematic with respect to court resources, the parties' ability to defend or prosecute both actions, and possibly inconsistent results due to a number of factors, including legal representation, expert witness availability, and other third party testimony.

The Rules Committees believe the domestic relations judge and the juvenile court judge are in the best position to determine how a case should proceed. Therefore, the DRPRC is proposing an amendment to Pa.R.C.P. No. 1915.3 requiring the court to ascertain prior to the initial custody proceeding whether the subject child or children of the custody action have a court active juvenile case or is otherwise involved with a child protective services agency. If the court determines an active juvenile case is pending, the rule would permit the domestic relations judge to temporarily stay a custody proceeding for 30 days and refer the case to the juvenile judge for review and appropriate action, including consolidation. In the event the juvenile judge takes no action, the temporary stay is terminated automatically and the custody case may proceed as usual.

In addition, the DRPRC is proposing the Criminal Record/Abuse History form in Pa.R.C.P. No. 1915.3-2 be amended to include additional party disclosures regarding sexual violence and intimidation. Paragraph 2 of the form document has been revised to include clarifying the disclosures related to juvenile court and child protective services involvement by the parties and child.

In conjunction with these proposed amendments, the Juvenile Court Procedural Rules Committee is proposing amendments to the dependency rules to provide for a resolution of the second key issue: communicating the result of the terminated dependency action by way of a custody order. Proposed amendments to Pa.R.J.C.P. 1515 and 1631 propose that the dependency court generate a custody order when court supervision is terminated that would be filed in the prothonotary's office and served on the parties to the dependency action. In the event a party believes a modification of the custody order is necessary in the future, the action can proceed through the domestic relations court.

The DRPRC invites comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1245. Filed for public inspection July 22, 2016, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Amendment of Pa.Rs.Crim.P. 531 and 536

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 531 (Qualifications of Surety.) and of Rule 536 (Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, September 16, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee

CHARLES A. EHRLICH,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(2). General Procedures in All Bail Cases

Rule 531. Qualifications of Surety.

* * * * *

Comment

Paragraph (A)(2) is intended to require that ownership of realty anywhere within the Commonwealth qualifies a person to act as a surety in any judicial district in the Commonwealth. Local procedure may not require as an "additional requirement" that realty must be located within the county before it may be posted to satisfy a monetary condition of release.

"Professional bondsman," as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5749, includes any person who, within a 30-day period, becomes a surety or indemnifies a surety pursuant to these rules in three or more matters not arising under the same transaction, whether or not the person charges a fee or receives compensation. *See* 42 Pa.C.S. § 5741.

"Surety," as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5749, includes a person who pledges security, whether or not for compensation, in exchange for the release from custody of a person charged with a crime prior to adjudication. *See* 42 Pa.C.S. § 5741.

Under paragraph (A)(5), either the defendant or another person, such as a relative or neighbor, may deposit the percentage cash bail. If the defendant deposits the money, he or she signs the bond, thereby becoming a surety and liable for the full amount of the monetary condition if a condition of the bail bond is violated. If someone other than the defendant deposits the money and co-signs the bond with the defendant, that person becomes a surety for the defendant and is liable for the full amount of the monetary condition if a condition of the bail bond is violated. There may be cases in which the other person does not co-sign the bond, but merely deposits the money on behalf of the defendant. In such cases, that person would not be a surety and would not be liable for the full amount of the monetary condition.

Paragraph (B) is not intended to preclude an attorney, or the spouse or employee of an attorney, from being a surety as long as the defendant is not the attorney's client or a client of the attorney's office.

"Immediate family," as used in paragraph (C), is intended to include only grandparents, parents, spouses, siblings, children, grandchildren, stepchildren, and like relatives-in-law.

***Official Note*: Former Rule 4011 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 534. Present Rule 4011 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 531 and amended March 1, 2000, effective April 1, 2001; Comment revised , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Report explaining the revision to the Comment regarding the statutory definition of "surety" published for comment at 46 Pa.B. 3937 (July 23, 2016).

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) SANCTIONS

* * * * *

(2) *Forfeiture*

(a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing. **When the surety is a third party, the cash or other security may be ordered forfeited only when the condition of the bail bond violated is that the defendant has failed to appear for a scheduled court proceeding.**

(b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.

(c) The forfeiture shall not be executed until **[20] 90** days after notice of the forfeiture order.

(d) The bail authority may direct that a forfeiture be set aside or remitted **as provided by law or** if justice does not require the full enforcement of the forfeiture order.

* * * * *

(C) EXONERATION

(1) A bail authority, **[in his or her discretion, may] as provided by law, shall** exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.

(2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.

Comment

This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. *See generally* Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121—9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. *See also* the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and former paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). For the procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph (D) of Rule 543 (Disposition of Case at Preliminary Hearing).

Nothing in this rule is intended to preclude the issuance and service of the notice of revocation of release under paragraph (A)(1) and the notice of forfeiture of security under paragraph (A)(2) to be performed simultaneously.

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.

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a magisterial district judge. *See* Rules 543 and 529.

This rule was amended in 2016 following the enactment of Section 5747.1 of the Judicial Code, 42 Pa.C.S. § 5747.1, that limits the grounds for which bail might be forfeited by a third party surety to the defendant's failure to appear for a court proceeding. For all other violations of the conditions of bail, all other remedies remain available, including but not limited to, forfeiture by the defendant when he or she is the surety, revocation of bail, modification of bail, and indirect criminal contempt.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic **[20-day] 90-day** stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

"Conditions of the bail bond" as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

Section 5747.1(b)(5) of the Judicial Code requires the bail authority to grant specific remittances to sureties if the defendant is produced within specified time periods. See 42 Pa.C.S. § 5747.1(b)(5). Otherwise, remittance or exoneration of the surety is within the discretion of the bail authority.

***Official Note*:** Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; Comment revised May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009**; amended , 2016, effective , 2016**.

Committee Explanatory Reports:

* * * * *

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).

Report explaining the proposed amendments necessitated by statutory changes related to bail forfeitures published for comment at 46 Pa.B. 3937 July 23, 2016).

Proposed Amendments of Pa.Rs.Crim.P. 531 and 536
Bail Forfeitures

For some time, the Committee had been discussing bail forfeitures. Initially, this was as a result of the Pa. Supreme Court's opinion in *Commonwealth v. Hann*, 81 A.3d 57 (2013). This case was used by the Court to clarify that a "totality of the circumstances" analysis be used when a bail authority is faced with a request for the forfeiture of the bail bond. Specifically, the Court held that forfeiture could be awarded for the violation of non-monetary conditions of bail and that there need be no showing of financial loss to the Commonwealth. Initially, the Committee was considering adding a cross-reference to *Hann* to the bail rules, but also was examining whether the rules should provide some type of hearing procedure in which the analysis required under *Hann* could be conducted.

While the Committee was considering this issue, the Legislature enacted Act 16 of 2015 that is intended to provide uniformity to the regulation of professional bail bondsmen in Pennsylvania. The Governor signed the Act into law on July 2, 2015. Much of the Act deals with licensing and regulation of professional bail bondsmen. However, there are provisions in the Act that affect the forfeiture provisions of Rule 536 and some of these provisions were explicitly enacted to modify the provision in *Hann*. In particular, the Act creates new 42 Pa.C.S. § 5747.1 that provides procedures for bail forfeiture. Several of the provisions of new Section 5747.1 differ from the existing bail forfeiture procedures contained in Rule 536.

The Committee discussed whether aspects of the Act unconstitutionally impinged on the Court's exclusive procedural rule-making authority. Prior to this Act, the Legislature had deferred most aspects relating to bail to the Court's rulemaking authority in 42 Pa.C.S. § 5702 that states:

§ 5702. Bail to be governed by general rules

Except as otherwise provided by this title and the laws relating to the regulation of surety companies, all matters relating to the fixing, posting, forfeiting, exoneration and distribution of bail and recognizances shall be governed by general rules.

As a result, the bail rules contain some elements that might be more substantive than purely procedural. Additionally, Section 5702 contains the prefatory phrase, "Except as otherwise provided in this title . . ." that reserves the right of the Legislature to act in these areas so long as it does not interfere with the Court's constitutional rulemaking authority. Ultimately, the Committee concluded that some of the provisions in Act 16 related to forfeiture, particularly the grounds for which forfeiture may be ordered, did not impinge on the Court's rulemaking authority and represented the Legislature exercising the right reserved in this area to act on the substantive aspects of bail that it had left to the Court under § 5702. The Committee discussed which specific aspects of the Act might constitute procedural conflicts and those that were of a substantive nature and represented a "taking back" by the Legislature of authority over certain aspects of bail. The Committee concluded that, while some aspects of new Section 5747.1 are procedural in nature, many of the provisions of Section 5747.1 address substantive aspects of bail forfeiture and, therefore, fall within the Legislature's authority.

With regard to those portions of the Act that raise potential procedural conflicts, the Committee recognized that the Court has not always exercised the right to suspend statutes that impinged on the Court's constitutional rulemaking authority. The Committee therefore examined the areas of potential conflict to determine if rule changes could be made that would reconcile the bail rules with the Act. The Committee initially identified five areas where there are differences between Section 5747.1 and the forfeiture procedures contained in Rule 536.

First, Rule 536 treats revocation of bail and forfeiture of surety as separate decisions and provides for two separate actions to notify the defendant of these actions. Rule 536(A)(1) provides that, upon violation of a bail condition, the bail authority may issue a bench warrant for the defendant and may issue an order to the surety to provide an explanation as to why the defendant's release should not be revoked. Paragraph (A)(2) contemplates that a separate notice of forfeiture be provided to the defendant and the surety with 20 days to respond. Section 5747.1(a) provides that, upon a defendant's failure to appear for a proceeding, the bail authority may issue a notice of bail revocation that shall also serve as a notice of the intent to forfeit the bail. Ninety days after the service of this notice of revocation, the revocation shall become a judgment of forfeiture.

In examining whether Rule 536 should be changed to reflect the statutory procedure, the Committee concluded that the procedure in Section 5747.1(a), *i.e.* having the notice of bail revocation act as the notice of intent to forfeit, is problematic since not every bail revocation will involve forfeiture. The Committee strongly believes that some additional notice must be provided to the defendant and the surety that forfeiture as well as revocation was being sought.

The Committee is therefore proposing to retain the notice provisions of Rule 536 but the Comment would be revised to state that the two notices may be served simultaneously. These two notices could be combined in a single document and therefore would be an effectuation of the Act from a procedural stand-point, providing appropriate, complete notice to the defendant and the surety.

The second potential conflict, related to the foregoing, is that Rule 536(A)(2)(c) provides 20 days from the service of the notice of forfeiture before the forfeiture order is finalized. Section 5747.1(b)(1) provides that the notice of revocation will become a judgment of forfeiture 90 days after the revocation order, presumably allowing the surety time in which to respond to the forfeiture action. After reviewing the practice in other jurisdictions, the Committee concluded that an increase to the time limit to respond to a notice of forfeiture would not be unreasonable. Therefore the time for a response to the notice of forfeiture would be increased to 90 days in paragraph (A)(2)(c) of Rule 536.

The third potential conflict concerns the provisions in Rule 536(A)(1)(a) that permit forfeiture for violation of any bail condition. Paragraph (b)(6) of Section 5747.1 specifically limits the forfeiture exposure of third party sureties to the situation where the defendant has failed to appear and provides that any violation of "performance conditions by a defendant other than appearance" shall be treated as an indirect criminal contempt.

The Committee first examined whether this limitation on the grounds for which the bail bond may be forfeited is procedural or substantive. The Committee ultimately concluded that the definition of the grounds for forfeiture represent a regulation of the right of a surety to the recovery of the pledged property and therefore is substantive in nature, falling within the authority of the Legislature to define. Therefore, a second sentence would be added to Rule 536(A)(2)(a) stating the limitation when the surety is a third party. Language would be added to the Comment that further details this limitation.

Fourth, Section 5747.1(a) states that service of the notice to the surety must be by certified mail, return receipt requested while Rule 536 requires that the notice of forfeiture be served either personally or by both first class and certified mail at the defendant's and the surety's last known addresses. The Committee concluded that there is not a conflict here between the service provisions of the rule and the statute since the rule simply adds another procedural step for further assurance that service has been made.

Fifth, Rule 536(C) provides broad discretion to the courts to provide exoneration and remittance to a surety. Section 5747.1(b)(5) provides very specific relief for third party sureties that the bail authority is required to grant in certain circumstances. For example, if the defendant is returned between the 91st day and 6 months after the issuance of the forfeiture order, the surety is entitled to recover the full amount of the forfeited bail. If the defendant is returned between 6 months and 1 year, the surety is entitled to 80% of the forfeited bail and 50% if the defendant is returned between 1 and 2 years.

The Committee considered whether these provisions are procedural or substantive and concluded that these provisions are substantive. Rather than incorporate these specific provisions into the rule, the Committee is proposing to remove the terminology regarding the bail authorities' discretion and use the term "as provided by law" in paragraphs (A)(2)(d) and (C)(1) as well as adding a cross-reference to the statute in the Comment. The phrase "in a timely manner" currently contained in paragraph (C)(1) now would be referring back to the time provisions within Section 5747.1(b)(5).

The Committee is also proposing a revision to the Comment to Rule 531 (Qualifications of Surety). Since the Act now includes a definition of surety, the Committee believes it would be helpful to include a cross-reference to the statutory definition in the Rule 531 Comment.

[Pa.B. Doc. No. 16-1246. Filed for public inspection July 22, 2016, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Revision of Comment to Pa.R.J.C.P. 152

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the revision of the Comment to Pa.R.J.C.P. 152 concerning the waiver of counsel by a juvenile for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court
Procedural Rules Committee

KERITH STRANO TAYLOR, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 152. Waiver of Counsel.

A. *Waiver requirements.* A juvenile who has attained the age of fourteen may **only** waive the right to counsel if:

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

2) the court conducts a colloquy with the juvenile on the record; and

3) the proceeding for which waiver is sought is not one of the following:

a) detention hearing pursuant to Rule 242;

b) transfer hearing pursuant to Rule 394;

c) adjudicatory hearing pursuant to Rule 406, including the acceptance of an admission pursuant to Rule 407;

d) dispositional hearing pursuant to Rule 512; or

e) a hearing to modify or revoke probation pursuant to Rule 612.

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

C. *Notice and revocation of waiver.* If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

Comment

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

In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made, the court, on the record, is to ask the juvenile questions to elicit: 1) the reasons why the juvenile wants to waive counsel; 2) information regarding the juvenile's: a) age; b) maturity; c) education; d) mental health issues, if any; and e) any current alcohol or drug issues that may impair the juvenile's decision-making skills; 3) the juvenile's understanding of the: a) right to an attorney, including the provisions of Rule 151; b) juvenile's role when proceeding *pro se*; c) allegations in the petition against the juvenile; **and** d) possible consequences if the juvenile is found delinquent; 4) whether the juvenile consulted with the juvenile's guardian; and 5) whether the juvenile consulted with an attorney.

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

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

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

Additionally, Rule 150(B) provides that once an appearance is entered or the court assigns counsel, counsel is to represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw. *See* Pa.R.J.C.P. 150(B).

[Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation.]

Pursuant to paragraph (C), if waiver of counsel is revoked, the court is to appoint counsel before proceeding.

***Official Note*:** Rule 152 adopted April 1, 2005, effective October 1, 2005. Amended January 11, 2012, effective March 1, 2012. **Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

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

Final Report explaining the amendments to Rule 152 published with the Court's Order at 42 Pa.B. 547 (January 28, 2012).

Final Report explaining the amendments to Rule 152 published with the Court's Order at Pa.B. (, 2016).

REPORT
Proposed Revision of Comment to Pa.R.J.C.P. 152

The Juvenile Court Procedural Rules Committee proposes to revise the Comment to Rule 152 to remove a statement suggesting a juvenile has a right to proceed *pro se*.

Rule 151 was substantially amended on May 16, 2011 to establish a presumption of indigency for juveniles. The purpose of this amendment was to assign counsel in every case in which the juvenile appears without counsel. On January 11, 2012, Rule 152 was amended to, *inter alia*, prohibit the waiver of counsel for certain proceedings. *See* Pa.R.J.C.P. 152(A)(3). Additionally, the Comment was revised to add:

> Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation.

Thereafter, the Juvenile Act was amended by Section 2 of the Act of April 9, 2012, P.L. 223, to prohibit the waiver counsel for the same proceedings identified in Rule 152(A)(3). *See* 42 Pa.C.S. § 6337.1(b)(3). The Act does not provide for an exception to the prohibition against waiver.

In light of this subsequent legislation, the Committee has reconsidered the Comment. Until such time the Court or the Legislature holds that a juvenile has a right to proceed *pro se*, the Committee believes that suggesting so in a Comment is beyond procedural and may lend to confusion. Therefore, the Committee proposes to recommend to the Supreme Court that the above-comment be deleted from the Comment.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1247. Filed for public inspection July 22, 2016, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 2 AND 12]

Proposed Amendment of Pa.R.J.C.P. 240, 242 and 1242

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.J.C.P. 240, 242, and 1242 concerning the detention and shelter care hearings for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court
Procedural Rules Committee

KERITH STRANO TAYLOR, Esq.,
Chair

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 D. PRE-ADJUDICATORY DETENTION

Rule 240. Detention of Juvenile.

A. *Detention requirements.* If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:

1) examine the written allegation;

2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and

3) release the juvenile, unless it appears that the juvenile's detention is warranted.

B. *Filing of petition.* The release of the juvenile shall not prevent the subsequent filing of a petition.

C. *Prompt hearing.* If the juvenile is not released, a detention hearing shall be held no later than seventy-two hours after the juvenile is placed in detention. **Neither the juvenile nor the juvenile's attorney shall be permitted to waive the detention hearing.**

D. *Time restrictions.* Except as provided in paragraphs (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:

a) evidence material to the case is unavailable;

b) due diligence to obtain such evidence has been exercised;

c) there are reasonable grounds to believe that such evidence will be available at a later date; and

d) the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

a) delay caused by the unavailability of the juvenile or the juvenile's attorney;

b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or

c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

If a juvenile is detained, the guardian should be notified immediately. *See* Rules 220 (Procedures in Cases Commenced by Arrest Without Warrant) and 313(B) (Taking into Custody from Intake) for notification of the guardian.

Nothing in paragraph (C) is intended to preclude the use of stipulations or agreements among the parties, subject to court review and approval at the detention hearing.

Under paragraph (D)(2), if the juvenile causes delay, the juvenile may continue to be held in detention. The additional period of detention should not exceed ten days. The court may continue such detention for successive ten-day intervals if the juvenile caused the delay. The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code § 200.101 *et seq.* (2003).

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. *See* Rule 120 and its Comment for definition of "detention facility."

***Official Note*: Rule 240 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately. Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 240 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 240 published with the Court's Order at 43 Pa.B. 3938 (July 13, 2013).

Final Report explaining the amendments to Rule 240 published with the Court's Order at Pa.B. (, 2016).

Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;

2) inform the juvenile of the right to counsel and to retain private counsel or to be assigned counsel; and

3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.*

a) The hearing shall be conducted in an informal but orderly manner.

b) The attorney for the Commonwealth shall:

i) attend the hearing; and

ii) present such evidence as the Commonwealth deems necessary to support the written allegation and the need for detention.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.*

a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.

b) The juvenile's attorney, the juvenile, if the juvenile has waived counsel pursuant to Rule 152, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) *Juvenile's rights.* The juvenile shall be present at the detention hearing and the juvenile's attorney **[or the juvenile, if the juvenile has waived counsel pursuant to Rule 152,]** may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

5) *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

C. *Findings.* The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile;

2) detention of the juvenile is warranted; and

3) there are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

E. *Court's order.* At the conclusion of the detention hearing, the court shall enter a written order setting forth its findings pursuant to paragraph (C).

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

An additional determination is required in paragraph (C)(3) although this is not a third stage of the detention hearing. It is important that the court address any special needs of the juvenile while the juvenile is in detention. The juvenile's attorney, the juvenile probation officer, or detention staff is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. Special needs may include needs for special education, remedial services, health care, and disability. If the court determines a juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

When addressing the juvenile's needs concerning health care and disability, the court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq*.

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness**,** which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. *See* 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. *See* Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. *See* Rule 330 for petition requirements, Rule 331 for service of the petition, and Rule 363 for time of service.

The victim may be present at the hearing. *See* Rule 132 and 18 P.S. § 11.201 *et seq.* Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

***Official Note*: Rule 242 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 242 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

Final Report explaining the amendments to Rule 242 published with the Court's Order at Pa.B. (, 2016).

Subpart B. DEPENDENCY MATTERS

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART C. SHELTER CARE

Rule 1242. Shelter Care Hearing.

A. *Informing of rights.* Upon commencement of the hearing, the court shall ensure that:

1) a copy of the shelter care application is provided to the parties; and

2) all parties are informed of the right to counsel.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied

upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

4) *Advanced communication technology.* Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

C. *Findings.* The court shall determine whether:

1) there are sufficient facts in support of the shelter care application;

2) the county agency has reasonably engaged in family finding;

3) custody of the child is warranted after consideration of the following factors:

a) remaining in the home would be contrary to the welfare and best interests of the child;

b) reasonable efforts were made by the county agency to prevent the child's placement;

c) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and

d) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;

4) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; and

5) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in shelter care.

D. *Prompt hearing.* The court shall conduct a hearing within seventy-two hours of taking the child into protective custody. **The parties shall not be permitted to waive the shelter care hearing.**

E. *Court order.* At the conclusion of the shelter care hearing, the court shall enter a written order setting forth:

1) its findings pursuant to paragraph (C);

2) any conditions placed upon any party;

3) any orders regarding family finding pursuant to Rule 1149;

4) any orders for placement or temporary care of the child;

5) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;

6) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and

7) any orders of visitation.

Comment

Pursuant to paragraph (B)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Pursuant to paragraph (C), the court is to make a determination that the evidence presented with the shelter care application under Rule 1240 is supported by sufficient facts. After this determination, the court is to determine whether the custody of the child is warranted by requiring a finding that: 1) remaining in the home would be contrary to the health and welfare of the child; 2) reasonable efforts were made by the county agency to prevent the placement of the child; 3) the child was placed in the least restrictive placement available; and 4) if the child was taken into emergency placement without services being offered, the lack of efforts by the county agency was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.

Family finding is to be initiated prior to the shelter care hearing. *See* Comment to Rule 1149 as to level of reasonableness.

Pursuant to paragraph (C)(2), the court is to make a determination whether the county agency has reasonably engaged or is to engage in family finding in the case. The county agency will be required to report its diligent family finding efforts at subsequent hearings. *See* Rule 1149 for requirements of family finding. *See also* Rules 1408(2), 1512(D)(1)(h), 1514(A)(4), 1608(D)(1)(h), and 1610(D) and their Comments for the court's findings as to the county agency's satisfaction of the family finding requirements and Rules 1210(D), 1409(C) and 1609(D) and Comments to Rules 1408, 1409, 1512, 1514, 1515, 1608, 1609, 1610, and 1611 on the court's orders.

Pursuant to paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing. **Nothing in paragraph (D) is intended to preclude the use of stipulations or agreements among the parties, subject to court review and approval at the shelter care hearing.**

See 42 Pa.C.S. § 6332.

Pursuant to paragraph (E), the court is to enter a written order. It is important that the court address any special needs of the child while the child is in shelter care. The child's attorney or the county agency is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. These needs may include a child's educational stability, needs concerning early intervention, remedial services, health care, and disability. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 1147.

The court's order should address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*; 4) the educational services necessary to support the

child's transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

When addressing the child's health and disability needs, the court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq*.

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

***Official Note*: Rule 1242 adopted August 21, 2006, effective February 1, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1242 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1242 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 1242 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1242 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Final Report explaining the amendments to Rule 1242 published with the Court's Order at Pa.B. (, 2016).

REPORT
Proposed Amendment of Pa.R.J.C.P. 240, 242, and 1242

The Juvenile Court Procedural Rules Committee proposes to amend Rules 240 and 1242 to preclude waiver of either a detention hearing or a shelter care hearing. The Committee further proposes amendment of Rule 242 to remove a cross-reference to Rule 152.

The Committee received a request to address a situation in a county where a waiver form was being used for detention hearings. The Committee reviewed Rule 242 and concluded that a detention hearing requires the court to determine whether:

- There is probable cause that a delinquent act was committed by the juvenile;
- Detention of the juvenile is warranted; and
- There are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

Pa.R.J.C.P. 242(C).

The Committee recognizes there may instances when a detention hearing might need to be continued or delayed, as permitted by the rules. Additionally, there may be circumstances when probable cause is uncontested or detention is warranted. However, the Committee believes that any stipulations or agreements among the parties about these circumstances should be entered onto the record at the hearing with a colloquy of the juvenile as to whether the stipulation or agreement is knowing, intelligent, and voluntary before the court accepts the stipulation or agreement. Such measures appear warranted as a procedural safeguard for the juvenile. The Committee also observes that ACT is available for these hearings, which should lessen the burden of being physically present. *See* Pa.R.J.C.P. 129(A).

Similarly, the Committee does not believe that shelter care hearings should be waived. This procedural step in dependency proceedings is sometimes the first time when the parties appear together before the court and involving substantial rights and critical findings. Therefore, the Committee proposes to amend the text of Rule 1242(D) to preclude waiver of a shelter care hearing.

Finally, proposes a corollary amendment to Rule 242(B)(4) to remove the reference to a juvenile's waiver of counsel pursuant to Rule 152. Per Rule 152(A)(3)(a), a juvenile may not waive counsel for a detention hearing.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1248. Filed for public inspection July 22, 2016, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 5 AND 6]

Proposed Amendment of Pa.R.J.C.P. 512, 610 and 612

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.J.C.P. 512, 610, and 612 governing post-dispositional rights for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court
Procedural Rules Committee

KERITH STRANO TAYLOR, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

A. *Manner of* **[** ***hearing*** **]** ***Hearing***. The court shall conduct the dispositional hearing in an **[informal but]** orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence from both parties and the juvenile probation officer that is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to be heard.

3) *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or the witness only if the parties consent.

4) *Prosecutor's presence.* The attorney for the Commonwealth shall attend the hearing.

B. *Recording.* The dispositional hearing shall be recorded.

C. **[** ***Duties of the court.*** **The court shall determine on the record that the juvenile has been advised of the following:]** ***Colloquy and Inquiry of Post-Dispositional Rights.***

1) After entering disposition on the record, the court shall ensure that an attorney has reviewed the post-dispositional rights colloquy with the juvenile pursuant to paragraph (C)(2) and conduct an independent inquiry to determine whether the juvenile understands:

[1)] a) the right to file a post-dispositional motion;

[2)] b) the right to file an appeal;

[3)] c) the time limits for a post-dispositional motion and appeal;

[4)] d) the right to counsel to prepare the motion and appeal;

[5)] e) the time limits within which the post-dispositional motion shall be decided; and

[6)] f) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

2) The colloquy referenced in paragraph (c)(1) shall be:

a) in writing;

b) reviewed and completed with the juvenile by an attorney;

c) submitted to and reviewed by the court; and

d) substantially in the following form:

POST-DISPOSITIONAL RIGHTS COLLOQUY

In re : _____ JD _____
(Juvenile) :
: Delinquent Act(s): _____
: _____
: _____
: _____

POST-DISPOSITIONAL RIGHTS COLLOQUY

1) You can disagree with the court's decisions. You have the right to file a motion. It must be in writing. It must be done in 10 days from today. You can ask your lawyer to file a motion to:

a) ask the court to change or review its decision finding you delinquent;

b) ask the court to change or review its decision to place you in a program or on probation; or

c) ask the court to change or review its decision to make you to do things on probation (such as paying money, doing community service, taking drug tests, etc.).

In other words, you can ask the court to change or review any decision that it has made in your case in which you do not agree.

Do you understand this? _____

2) You have the right to have a lawyer help you file your motion. If your lawyer (who is helping you today) cannot or will not file the motion for you, the court will appoint a new lawyer to help you.

Do you understand this? _____

3) Here's what could happen, if you file a motion:

a) the court could disagree with the motion without having a hearing;

b) the court could agree with the motion without having a hearing; or

c) the court could hold a hearing and then agree or disagree with the motion.

Do you understand this? _____

4) If the court disagrees with your motion, you have the right to ask a higher court to look at your case. The higher court would decide if the juvenile

court made any mistakes or abused its responsibility when it disagreed with your motion. This is called taking an appeal.

Do you understand this? _____

5) You must file your request or appeal in writing. You have 30 days from when the court disagrees with your motion to file it.

Do you understand this? _____

6) You have the right to have a lawyer to help you with your appeal. If your lawyer (who is helping you today) cannot or will not file your appeal for you, the court will appoint a new lawyer to help you.

Do you understand this? _____

7) You may decide that you would like to take an appeal but do not wish to file a motion. You may do this if you talked about it during your case. This is called taking a direct appeal. In your direct appeal, you may ask the higher court to decide if the juvenile court was right or wrong in finding you guilty (including what the juvenile judge was or was not allowed to hear) or if the juvenile court made any mistakes or abused its responsibility in anything that the court ordered as your consequences.

Do you understand this? _____

8) If you wish to take a direct appeal (without filing a motion first) you must file your appeal within 30 days from today (or 30 days from the day that the court decides your consequences).

Do you understand this? _____

9) If you admitted to any of the charges, you can only ask the higher court to look at the following issues:

a) if your admission was voluntary (You made your own decision to admit to a charge. No one forced you to do this. You understood what you were doing, including the consequences.);

b) if the court was the correct court to hear your case (the court had the authority over your case); or

c) if the court abused its responsibility or made any mistakes in the things that were ordered as your consequences.

Do you understand this? _____

10) It is important that you remember that you have certain time periods to file a motion or an appeal. These are the time periods:

a) You must file your motion within 10 days from today (or the date that the court decides your consequences).

b) You have 30 days from the date that the court disagreed with your motion to file your appeal with the higher court.

c) If you do not file a motion, you must file your appeal to the higher court within 30 days from today.

Do you understand this? _____

I promise that I have read this whole form or someone has read this form to me. I understand it. The signature below and on each page of this form are mine.

_____

Juvenile

_____

Date

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has told me that he or she understands this form.

_____

Lawyer for Juvenile

_____

Date

D. *Court's* **[** ***findings*** **]** ***Findings***. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

1) its disposition;

2) the reasons for its disposition;

3) the terms, conditions, and limitations of the disposition; and

4) if the juvenile is removed from the home:

a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile, and

b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare;

5) whether any evaluations, tests, counseling, or treatments are necessary;

6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and

7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

Comment

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq*.

Under paragraph (A)(2), prior to deciding disposition, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses.

Before deciding disposition, the court may hear oral argument from the parties' attorneys.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

Pursuant to paragraph **[(C)] (C)(1)**, the court is to **[advise the juvenile of his or her appellate rights orally in the courtroom on the record. The court is to]** explain the right to retain private counsel or be appointed counsel for **a post-dispositional motion or** an appeal if a juvenile is without counsel. *See* 42 Pa.C.S. § 6337; *see also* Rule 150(B) for duration of counsel and Rule 151 for assignment of counsel.

Pursuant to paragraph (C)(2), the post-dispositional rights colloquy should be substantially in this form. The statements contained are the minimum; a judicial district may choose to add requirements to its form. Any addition to the required form is considered a local rule and the procedures of Rule 121 are to be followed if a judicial district chooses to make additions.

The post-dispositional rights form can be downloaded from the Supreme Court's webpage at http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms. The form is also available in Spanish.

Pursuant to paragraph (D), when the court has determined the juvenile is in need of treatment, supervision, and rehabilitation, the court is to place its findings and conclusions of law on the record by announcing them orally in the courtroom, followed by written order. The court is to consider the following factors: a) the protection of the community; b) the treatment needs of the juvenile; c) the supervision needs of the juvenile; d) the development of competencies to enable the juvenile to become a responsible and productive member of the community; e) accountability for the offense(s) committed; and f) any other factors that the court deems appropriate.

Nothing in this rule is intended to preclude the court from further explaining its findings in the dispositional order pursuant to Rule 515.

Pursuant to paragraph (D)(4), when out-of-home placement is necessary, the court is to explain why the placement is the least restrictive type of placement that is consistent with the protection of the public and the rehabilitation needs of the child. *See* 42 Pa.C.S. § 6352. **The court should also explain to the juvenile the availability of review of the out-of-home placement pursuant to Pa.R.A.P. 1770.**

Pursuant to paragraph (D)(6), the court should address the juvenile's educational needs. The court's order should address the right to: 1) an educational decision maker pursuant to Rule 147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special education or remedial services, 24 P.S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*

The court should also address the juvenile's needs concerning health care and disability. The court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

See Rule 127 for recording and transcribing of proceedings.

See Rule 136 for *ex parte* communications.

***Official Note*:** Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 16, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. **Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

Final Report explaining the amendments to Rule 512 published with the Court's Order at Pa.B. (, 2016).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS AND REVIEWS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional review hearing.* The court shall review its disposition and conduct dispositional review hearings for the purpose of ensuring that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.

1) In all cases, the court shall conduct dispositional review hearings at least every six months.

2) In all cases, the juvenile shall appear in person at least once a year.

3) The court may schedule a review hearing at any time.

B. *Change in* **[*dispositional order*]** ***Dispositional Order***. Whenever there is a request for a change in the

dispositional order, other than a motion to revoke probation as provided in Rule 612, notice and an opportunity to be heard shall be given to the parties and the victim.

1) The juvenile may be detained pending a court hearing.

2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.

3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.

4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

D. *Post-Dispositional Rights.* A colloquy and inquiry of post-dispositional rights shall be conducted when a juvenile is aggrieved by a change in the dispositional order.

Comment

At any hearing, if it is determined that the juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

Under paragraph (A), the court is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. *See* Rule 800.

When conducting a dispositional review hearing, the court is to ensure that the disposition continues to provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community.

Nothing in this rule prohibits the juvenile from requesting an earlier review hearing. The juvenile may file a motion requesting a hearing when there is a need for change in treatment or services.

Additionally, nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Under paragraph (B), the attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the review hearing. Prior to ordering the change in the dispositional order, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

If a juvenile is detained or placed, the juvenile is to be placed in a detention facility or placement facility, which does not include a county jail or state prison. *See* Rule 120 and its Comment for definitions of "detention facility" and "placement facility."

For the colloquy and inquiry of post-dispositional rights, see Rule 512(C). If a change in disposition results in an out-of-home placement, then the court should also explain to the juvenile the availability of review of the out-of-home placement pursuant to Pa.R.A.P. 1770.

***Official Note*: Rule 610 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended June 28, 2013, effective immediately. Amended , 2015, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 610 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

Final Report explaining the amendments to Rule 610 published with the Court's Order at Pa.B. (, 2016).

Rule 612. Modification or Revocation of Probation.

A. *Filing.* A motion to modify or revoke probation shall be filed in accordance with Rule 345.

B. *Time of Hearing on the Motion.*

1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.

2) If the juvenile is not detained, the hearing on the motion shall be held promptly.

C. *Modification.* If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.

D. *Advanced Communication Technology.* A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

E. *Post-Dispositional Rights.* A colloquy and inquiry of post-dispositional rights shall be conducted when a juvenile is aggrieved by a change in the dispositional order.

Comment

A juvenile should be afforded due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer,* 408 U.S. 471 (1972). A juvenile's probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

If a juvenile is over the age of eighteen, under the age of twenty-one, and is alleged to have violated the terms of probation, the juvenile, if detained, is to be placed in a detention facility. *See* Rule 120 and its Comment for definitions of "detention facility," which does not include a county jail or state prison, and "juvenile," which includes a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

For the use of advanced communication technology, see Rule 129.

For the colloquy and inquiry of post-dispositional rights, see Rule 512(C). If a change in disposition results in an out-of-home placement, then the court should also explain to the juvenile the availability of review of the out-of-home placement pursuant to Pa.R.A.P. 1770.

***Official Note*:** Rule 612 adopted April 1, 2005, effective October 1, 2005. Amended March 5, 2013, effective immediately. Amended June 28, 2013, effective immediately. **Amended , 2015, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 612 published with the Court's Order at 43 Pa.B. 1551 (March 23, 2013).

Final Report explaining the amendments to Rule 612 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

Final Report explaining the amendments to Rule 612 published with the Court's Order at Pa.B. (, 2016).

REPORT
Proposed Amendment of Pa.R.J.C.P. 512, 610, and 612

The Juvenile Court Procedural Rules Committee proposes to amend Rule 512 to require that, after entering disposition, counsel should review a colloquy of post-dispositional rights with the juvenile. Additionally, the court would ensure that the colloquy has been conducted and that the juvenile understands his or her post-dispositional rights. The Committee also proposes to amend Rules 610 and 612 to require a similar requirement when there is a change in disposition that aggrieves the juvenile.

As background, the Committee reviewed Rule 512(C) to consider whether the rule should contain explicit information about a juvenile's post-dispositional rights. In doing so, the Committee was guided by prior rulemaking concerning the use of a written admission colloquy in Rule 407(C). The Committee believed that conveying information about post-dispositional rights was crucial to the efficient administration of justice and would serve to reduce instances where a juvenile might later seek to exercise those rights vis-á-vis a motion for *nunc pro tunc* relief, claiming insufficient notice of such rights. Therefore, the Committee proposes to amend Rule 512(C) to require a colloquy and inquiry like that of the admission process concerning post-dispositional rights.

The Committee examined forms used in three counties to inform juveniles of their post-dispositional rights. Aspects of these forms were incorporated into this proposal with an attempt to modify the language to make it more age-appropriate to juveniles.

Like the admission form, the proposed form in Rule 512(C) is intended as the minimum information to be provided to a juvenile. A judicial district may add to the form pursuant to local rulemaking. *See* Pa.R.J.C.P. 121. Further, a Spanish language version of the form would be made available online.

The text of Rules 610 and 612 is likewise proposed to be revised to a colloquy and inquiry requirement. The Comments to Rule 512, 610, and 612 would be further revised to reference Pa.R.A.P. 1770 when disposition results in an out-of-home placement.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1249. Filed for public inspection July 22, 2016, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CH. 13]

Proposed Amendment of Pa.R.J.C.P. 1320 and 1321

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.J.C.P. 1320 and 1321 concerning private dependency petitions for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by September 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objec-

tions; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court
Procedural Rules Committee

KERITH STRANO TAYLOR, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 13. PRE-ADJUDICATORY PROCEDURES

PART B. APPLICATION FOR PRIVATE PETITION

Rule 1320. Application to File a Private Petition.

[A.] *Application contents.* Any person, other than the county agency, may present an application to file a private petition with the court. The application shall include the following information:

1) the name of the person applying for a petition;

2) the name of the alleged dependent child;

3) the relationship of the person presenting this application to the child and to any other parties;

4) if known, the following:

a) the date of birth and address of the child;

b) the name and address of the child's guardian, or the name and address of the nearest adult relative;

c) if a child is Native American, the child's Native American history or affiliation with a tribe;

d) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;

5) a concise statement of facts in support of the allegations for which the application for a petition has been filed;

6) a statement that the applying person has reported the circumstances underlying this application to the county agency or a reason for not having reported the circumstances underlying the application;

7) a verification by the person making the application that the facts set forth in the application are true and correct to the person's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

8) the signature of the person and the date of the execution of the application for a petition.

Comment

[Rule 1330 requires that the county agency file a petition.] Any person, other than the county agency, **[is to] shall first** file an application to file a petition under this Rule. Rule 1800 suspends 42 Pa.C.S. § 6334**[, which provides any person may file a petition] to the extent it is inconsistent with this Rule**.

See Rule 1321 for hearing on application **[and finding that a petition is to be filed by the county agent]**.

***Official Note*: Rule 1320 adopted August 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1320 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

Final Report explaining the amendments to Rule 1320 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008).

Final Report explaining the amendments to Rule 1320 published with the Court's Order at Pa.B. (, 2016).

Rule 1321. Hearing on Application for Private Petition.

A. *Hearing.* The court shall conduct a hearing within fourteen days of the presentation of the application for a petition to determine:

1) if there are sufficient facts alleged to support a petition of dependency; and

2) whether the person applying for the petition is a proper party to the proceedings.

B. *Findings.*

1) If the court finds sufficient facts to support a petition of dependency, **then the applicant may file** a petition **[may be filed]** pursuant to Rule 1330.

2) If the court finds the person making the application for a petition is a proper party to the proceedings, **then** the person shall be afforded all rights and privileges given to a party pursuant to law.

C. *Joinder*. Following grant of an application under this rule, the county agency shall be joined as party in any further proceedings upon filing and service of a private petition pursuant to Rules 1330 and 1331.

Comment

Under paragraph (A), at a hearing, the court is to determine if: 1) there are sufficient facts alleged to support a petition of dependency; and 2) the applying person is a proper party to the proceedings. A petition of dependency may go forward whether or not the applying person is determined to be a party to the proceedings.

If a child is in custody, the hearing under paragraph (A) may be combined with the shelter care hearing pursuant to Rule 1242.

***Official Note*: Rule 1321 adopted August 21, 2006, effective February 1, 2007. Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1321 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1321 published with the Court's Order at Pa.B. (, 2016).

REPORT
Proposed Amendment of Pa.R.J.C.P. 1320 and 1321

The Juvenile Court Procedural Rules Committee proposes to amend Rules 1320 and 1321 to clarify the procedures for private dependency petitions. Pursuant to Rule 1320, any person other than a county agency may

present an application to the court to file a private dependency petition with the court. If the court finds sufficient facts to support a petition, then a petition may be filed pursuant to Rule 1330. Pa.R.J.C.P. 1321(B)(1).

A question was raised about who files the petition after the court has approved the application: Is it the county agency or the private party who filed the application? The rule is silent on this point. The Comment to Rule 1320 suggests that the agency files petitions after the application has been approved while the title to the rule suggests that private petitions are permissible.

The Committee favors revision of the Comment to Rule 1320 to clarify that a private party must first file an application before proceeding with a private petition. The first sentence of the Comment, which states "Rule 1330 requires that the county agency file a petition." would be struck because it is believed this sentence is creating the confusion.

The Committee discussed when the county agency should be made a party to the proceedings. One option is upon approval of the application and another option is upon adjudication of the dependency petition. While it was noted that an agency might voluntarily file a petition if the application is granted, the Committee was reluctant to endorse a rule that would compel the county agency to file and litigate the petition

Therefore, the Committee proposes an addition to Rule 1321 stating: "If the court finds specific facts for dependency, then the applicant may file a dependency petition." This addition is intended to clarify that the applicant may proceed with the filing of a private petition—a conclusion supported by Rule 1331 (requiring a copy of the petition to be served on the county agency and its attorney), which contemplates the filing of petitions by private parties.

Notwithstanding the pursuit of a dependency adjudication by a private party, the Committee believes that the county agency should be a party to the proceeding. Accordingly, the Committee proposes adding language to Rule 1321 that would join the county agency as a party upon the filing and service of a dependency petition. This provision would appear as new paragraph (C).

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1250. Filed for public inspection July 22, 2016, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 15 AND 16]

Proposed Amendment of Pa.R.J.C.P. 1515 and 1631

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.J.C.P. 1515 and 1631 governing custody orders for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by November 1, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court
Procedural Rules Committee

KERITH STRANO TAYLOR, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1515. Dispositional Order.

A. *Generally.* When the court enters a disposition, the court shall issue a written order, which provides that the disposition is best suited to the safety, protection, and physical, mental, and moral welfare of the child. The order shall include:

1) any findings pursuant to Rules 1512(D) and 1514;

2) the date of the order; and

3) the signature and printed name of the judge entering the order.

B. *Transfer of custody.* If the court **[decides to transfer] transfers legal and physical** custody of the child to a person or agency found to be qualified to provide care, shelter, and supervision of the child, **then** the dispositional order shall include:

1) the name and address of such person or agency, unless the court determines disclosure is inappropriate;

2) the **conditions and** limitations **[of the order, including the type of custody granted] on custody**; and

3) any **remaining rights and duties of the parents or guardian, including** visitation rights.

C. *Order Affecting Custody.* If the court orders a transfer of custody pursuant to paragraph (B), the order shall operate to supersede any existing custody order, and should so state in the order.

[C.] D. *Guardian.* **[The] If the court permits the child to remain with the parents or guardian, then the** dispositional order shall include any conditions**[,**

limitations, restrictions, and obligations imposed upon the guardian] and limitations on the child's legal and physical custody as is necessary for the protection of the child.

Comment

See 42 Pa.C.S. §§ 6310, 6351.

When issuing a dispositional order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. **[Ct.]** 2006) (citing *In re Tameka M.*, **[525 Pa. 348,]** 580 A.2d 750 (**Pa.** 1990)), for issues addressing a child's mental and moral welfare.

When making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c), and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1608, 1609, 1610, and 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P.S. § 1301 *et seq*. *See also* Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1608, 1609, 1610, and 1611. 45 C.F.R. § 1356.21 provides a specific foster care provider may not be placed in a court order to be in compliance with and receive funding through the Federal Financial Participation.

As the dispositional order reflects what is best suited for the child, *supra*, the dependency court's order regarding custody pursuant to paragraph (B) supersedes any existing custody order under Title 23.

Dispositional orders should comport in substantial form and content to the model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see http://www.pacourts.us/forms/dependency-forms.

See In re Tameka M., **[525 Pa. 348,]** 580 A.2d 750 (**Pa.** 1990).

The transfer of legal and physical custody vests the custodian with the authority to determine the nature and treatment of the child for ordinary medical care. *See* 42 Pa.C.S. § 6357. For predispositional examination and treatment of a child, see Rule 1145. For non-emergent, non-routine care not already included in an approved treatment plan, the custodian should seek parental consent or receive prior court authorization when consent cannot be obtained.

***Official Note*:** Rule 1515 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015. **Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1515 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1515 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1515 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Final Report explaining the amendments to Rule 1515 published with the Court's Order at Pa.B. (, 2016).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART D. CESSATION OR RESUMPTION OF COURT SUPERVISION OR JURISDICTION

Rule 1631. Termination of Court Supervision.

A. *Concluding Supervision.* Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;

2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;

3) the child **is under eighteen years of age and** has been placed with a ready, willing, and able parent who was not previously identified by the county agency;

4) the child has been adopted and services from the county agency are no longer needed;

5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;

6) the child has been placed in the physical and legal custody of a fit and willing relative and services from the county agency are no longer needed;

7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed and a hearing has been held pursuant to paragraph (E) for a child who is age eighteen or older;

8) the child has been adjudicated delinquent and services from the county agency are no longer needed because all dependency issues have been resolved;

9) the child has been emancipated by the court;

10) the child is eighteen years of age or older and a hearing has been held pursuant to paragraph (E);

11) the child has died;

12) a court in another county of this Commonwealth has accepted jurisdiction; or

13) a court in another state has accepted jurisdiction.

B. **[*Ready, willing, and able parent.* When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that parent and the court order shall have the effect and be docketed as a decision entered pursuant to the Pa.R.C.P.] *Order Transferring or Affecting Custody.* When the court terminates supervision pursuant to paragraph (A) and the termination order includes a**

provision that transfers custody of the child or otherwise affects a previously entered custody order pursuant to 23 Pa.C.S. §§ 5321—5340, or similar law, the court shall:

1) prepare a separate custody order specifying the legal and physical custody of the child and vacating any previous custody order for the child; and

2) file the custody order with the prothonotary for the judicial district in which the termination order is filed.

Prior to filing the custody order with the prothonotary, the court shall ascertain whether an active custody case for the child exists within its judicial district and, if so, the court shall utilize the caption and docket number for the custody order. The court shall ensure that any parties to the custody case not also party to the dependency action are served with the order. Otherwise, the court shall separately caption the custody order with the party obtaining custody of the child as the plaintiff and the other dependency parties as the defendants.

C. *Objection.* Any party may object to a motion under paragraph (A) and request a hearing.

D. *Hearing.* If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

E. *Children* **[** ***eighteen years of age or older*** **]** ***Eighteen Years of Age or Older***.

1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to the child turning eighteen years of age.

2) Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The county agency shall provide the transition plan to the court and the plan shall, at a minimum, include:

a) the specific plans for housing;

b) a description of the child's source of income;

c) the specific plans for pursuing educational or vocational training goals;

d) the child's employment goals and whether the child is employed;

e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

g) verification that all vital identification documents and records have been provided to the child;

h) a description of any other needed support services; and

i) notice to the child that the child can request resumption of juvenile court jurisdiction until the child turns twenty-one years of age if specific conditions are met.

3) At the hearing, the court shall review the transition plan for the child. If the court is not satisfied that the requirements of paragraph (E)(2) have been met, a subsequent hearing shall be scheduled.

4) The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted.

F. *Cessation of* **[** ***services*** **]** ***Services***. When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

Comment

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515.

For guidelines under paragraph (A), see 42 Pa.C.S. §§ 6301(b) & 6351(f.1).

A child under eighteen years of age whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 757 A.2d 849 (Pa. 2000). When services from the county agency are no longer necessary pursuant to paragraph (A)(3) because the court has determined that the child is not dependent because a non-custodial parent has been found by the court to be able and available, the court should enter an order awarding custody to that parent pursuant to paragraph (B). For children eighteen years of age and older, see paragraph (E).

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, **[422 Pa. Super. 439,]** 619 A.2d 758 (**Pa. Super.** 1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued solely because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the court is to ensure that the county agency and the juvenile probation office have collaborated to ensure appropriate services are in place.

For procedures on emancipation pursuant to paragraph (A)(9), see *Berks County Children and Youth Services v. Rowan*, **[428 Pa. Super. 448,]** 631 A.2d 615 (**Pa. Super.** 1993). *See also*, 22 Pa. Code § 11.11, 55 Pa. Code § 145.62.

Pursuant to paragraph (A)(10), a child who was adjudicated dependent prior to reaching the age of eighteen and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, may remain in the course of instruction or treatment until the age of twenty-one. 42 Pa.C.S. § 6302. *See also*, 55 Pa. Code §§ 3103.5 & 3130.87; *In re S.J.*, 906 A.2d 547 (Pa. Super. **[Ct.]** 2006).

The court may not terminate jurisdiction solely because the dependent child is a runaway. *In re Deanna S.*, **[422 Pa. Super. 439,]** 619 A.2d 758 (**Pa. Super.** 1993).

[A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). *See* paragraph (B). Paragraph (B) does not apply to resumption of jurisdiction cases.

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a] A court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. ***See*** 42 Pa.C.S. § 6351(a)(2.1). *See also Justin S.,* **[375 Pa.Super. 88,]** 543 A.2d 1192 (**Pa. Super.** 1988). **In determining permanent legal custody, the dependency court must consider the child's "safety, protection and physical, mental, and moral welfare," see 42 Pa.C.S. § 6351(a); the dependency court is not required to address the factors set forth in 23 Pa.C.S. § 5328(a)(1)—(16). Any fees associated with the filing of the custody order pursuant to paragraph (B) should be waived unless the court determines that the custodian has the financial means to pay the filing fees.**

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. *See* 42 U.S.C. § 675 (5)(A)—(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

If the court has resumed jurisdiction pursuant to Rule 1635, a new transition plan is to be developed for the child. Before the court can terminate supervision, the requirements of paragraph (E) are to be followed. In no case is a juvenile over twenty-one to remain under juvenile court supervision. *See* Rule 1635(E). *See also* Rule 1635(E) for termination of juvenile court jurisdiction if the court denies the motion for resumption of jurisdiction.

***Official Note*:** Rule 1613 adopted August, 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013 and renumbered from Rule 1613 to Rule 1631, effective December 1, 2013. **Amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1613 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 39 Pa.B. 4887 (August 15, 2009).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 41 Pa.B. 2430 (May 14, 2011).

Final Report explaining the amendments to Rule 1631 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Final Report explaining the amendments to Rule 1631 published with the Court's Order at Pa.B. (, 2016).

REPORT

Proposed Amendment of Pa.R.J.C.P. 1515 and 1631

The Juvenile Court Procedural Rules Committee proposes to amend Rules 1515 and 1631 to establish procedures for orders affecting or transferring custody. This proposal is part of a joint recommendation with the Domestic Relations Procedural Rules Committee to develop reciprocating rules for when a custody petition is filed during a dependency proceeding.

The Committee observes that a transfer of custody to the previously non-custodial parent or a non-parent frequently closes dependency cases. With dependency dockets inaccessible to the public, problems have been noted in proving custody by a non-custodial parent or third party. Often the party from whom the child has been removed has a custody order obtained prior to the dependency action indicating they are the custodial parent.

The Committee has considered means and methods of transferring relevant custody determinations by the dependency court to the prothonotary's office to be filed on a custody docket. The Committee believes that the procedural rules should provide a framework for this process, but all judicial districts should retain discretion on how this would be accomplished locally.

Therefore, to establish a process for transferring information from dependency orders to the custody docket, Pa.R.J.C.P. 1631 is proposed to be amended by re-writing subdivision B to incorporate all the enumerated reasons for terminating services under subdivision A and providing a mechanism for docketing custody provisions of the termination order onto the custody dockets. Moreover, Pa.R.J.C.P. 1515 would be amended to specifically provide that transfer of custody in a dependency matter would operate to supersede any existing custody order. Additionally, the Committee proposes to clarify the language of Pa.R.J.C.P. 1515 as it relates to orders affecting or transferring custody.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 16-1251. Filed for public inspection July 22, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTOUR COUNTY

Petition of the Township of Mahoning and the Township of Mahoning Vacancy Board; Case No. 200 of 2016

Appearances:

Ryan M. Tira, Esquire, Attorney for Petitioner

July 5, 2016. James, J.

Opinion

History of Matter

On May 18, 2016, Mahoning Township Supervisor, David Barron, submitted his written resignation as supervisor, effective May 19, 2016. The procedure to fill the supervisor vacancy is governed by 53 P.S. § 65407:

> If the electors of any township fail to choose a supervisor, tax collector or auditor, or if any person elected to any office fails to serve in the office, or if a vacancy occurs in the office by death, resignation, removal from the township or otherwise, the board of supervisors may appoint a successor who is an elector of the township and has resided in that township continuously for at least one year prior to their appointment, and, upon their failure to make the

appointment within thirty days after the vacancy occurs, the vacancy shall be filled within fifteen additional days be the vacancy board. The vacancy board shall consist of the board of supervisors and one elector of the township, who shall be appointed by the board of supervisors at the board's first meeting each calendar year or as soon after that as practical and who shall act as chairman of the vacancy board. If the vacancy board fails to fill the position within fifteen days, the chairman shall, or if there is a vacancy in the chairmanship the remaining members of the vacancy board shall, petition the court of common pleas to fill the vacancy. If two or more vacancies in the office of supervisor occur on a three-member board or three or more vacancies on a five-member board, the court of common pleas shall fill the vacancies upon presentation of petition signed by not less than fifteen electors of the township. The successor so appointed shall hold the office until the first Monday in January after the municipal election which occurs more than sixty days after the vacancy occurs, at which election an eligible person shall be elected for the unexpired term.

The successor supervisor, if and when appointed, will hold the office pursuant to the statute until the first Monday after the first municipal election occurring more than sixty (60) days after the vacancy occurs. Thus, the election for the remainder of the term will be during the 2017 election cycle. The newly elected supervisor will serve until January 2018.

The two remaining supervisors were unable to agree upon a person to fill the vacancy. The same two supervisors comprise the Vacancy Board, which also could not agree upon a successor to fill the vacancy. Thus, pursuant to the statute, Mahoning Township and the Mahoning Township Vacancy Board filed a petition requesting the court to make an appointment to fill the vacancy.

This court set a hearing date and directed that the notice of hearing be published in two newspapers of general circulation. The court further requested that any persons interested in applying for the vacancy provide this court with a letter of interest and a resume.

The court received letters of interest and resumes from three individuals, all former supervisors: Christine DeLong, Ron Miller, and Kenneth Woodruff. A hearing was held on June 27, 2016, in the main courtroom of the Montour County Courthouse. The hearing was essentially a job interview. Interested citizens in the courtroom were provided with forms to make written signed comments on or before Friday, July 1, 2016. The court entertained opening and closing comments by the applicants and asked numerous questions in a panel style setting.

The remaining two supervisors were asked a few questions by the court concerning the status of the township, and a few members of the courtroom audience made observations and comments. No one was denied an opportunity to speak. The court has received about sixty-eight (68) comments by interested persons.[1] The court is now in a position to select an applicant.

Discussion

There is virtually no guidance in the statute as to the criteria that a court must use to select among various applicants for a supervisor vacancy. There is scant case law. However, a common pleas court weighed in on the issue:

"The Legislature, while imposing upon the court the duty of making such appointments, never provided any standards or guidelines to be followed in making the appointment, other than that HN1 the appointee must be a registered voter of the municipality. The long-standing policy of this court has been that in making such appointments the appointee should be a member of the same political party as the person whose position is to be filled. This principle approximates as closely as possible the will of the electorate of the community. We believe that this policy which has guided the Judges of this court in the past is a wise one." (Italics supplied.)

I

Independence Township Supervisor, 50 Pa.D.&.C.2d 464,465 (C.C.P. Beaver 1970), citing *In re Township Commissioner Vacancy*, 28 Beaver 179 (1968).

The *Independence Township Supervisor* court further said:

This same policy was expressed by the late Judge McCreary and former Judge Sohn of this court in petition to Fill Aliquippa School Board Vacancy, 21 Beaver 241 (1960), as follows:

"The stability of, and the confidence of the public in our legal system, make it imperative that judges be consistent, fair and impartial in all matters coming before the courts. In matters such as this, we should consider the will of the electorate if it has been indicated. In deciding the issue presently before the court, we are not without precedent. *In re Petition for Appointment of School Director for the School District of the Borough of Midland, Pennsylvania*, 132 March Term, 1950, our court indicated that we should 'take into consideration, as an important factor, the wishes of the people as a whole in the municipality where the vacancy occurs, all other factors being equal.'"

Id.

As the court suggested at the hearing/interview, the court is very hesitant to supplant the will of the voters. Supervisors should be elected, not appointed. However, several interested parties and officials suggested that without a decision on certain matters for the next eighteen (18) months, township as well as county projects could be negatively impacted. Thus, this court will make an appointment taking into account the qualifications of the candidates and their answers to the interview questions.

In the case at bar, all three applicants had supervisor experience. The court notes that all three candidates expressed a willingness and desire to be open-minded regarding issues facing the township and to working with the other supervisors in the best interest of the township. Importantly, since this appointment is for an interim position until the voters select a new supervisor, all three applicants indicated that they would "refrain from making any major changes to the municipal structure or significant personnel changes (unless deemed immedi-

[1] The written comments were signed and almost all were without invective or accusation. This court realizes that letters may have been prompted by candidates, but that is only natural and expected. All three candidates received a number of letters of support and praise. The court is hesitant to put too much weight on the letters of support. However, the great weight of the letters confirmed this court's initial impression after the courtroom interview. The court must address the concerns of one letter writer which questions the court's effort to be totally transparent. That writer wondered how the press only had an application from one candidate. One candidate filed the resume with the prothonotary. However, this court gave all three resumes to the press reporter for his review at his request before the hearing/interview. That same letter complained that one of the vocal Mahoning Township citizens was present at the hearing in an official capacity and that it created a bad visual message. This court agrees that the visuals may have been bad. However, this court literally cannot see, from the bench, the people sitting below the bench and does not recall noticing anyone in particular. The visual may have been questionable from the audience, but the reality was inconsequential.

ately absolutely necessary) until after the next elected supervisor takes office." That position seems democratically important since it would be the newly elected supervisor, in conjunction with the other elected supervisors, who would be making major decisions. Thus, the will of the electorate would be reflected by the governance of elected officials, not by the courts.

The three applicants were asked whether they would run for office after this appointed term ends. Mr. Woodruff is the only one who said he would not run.

The court questioned whether a Republican should be appointed since a Republican is being replaced. All three agreed that party should not play a role in this selection process. The court notes that traditionally party continuity has been considered when filling elected vacancies, and the courts have recognized this as a consideration in determining the will of the people. However, under all of the circumstances here, party affiliation is of minimal consideration and is not a tipping point.

The three applicants gave good answers, in varying degrees, to the many questions the court posed. However, some answers were needlessly contentious. All three applicants have a long history of service to the citizens of Mahoning Township. All three applicants are qualified in varying degrees to serve as a township supervisor.

After consideration of the applicants' qualifications and background and the answers each gave, and their comments to the court, the court finds that Kenneth Woodruff shall be appointed as supervisor of Mahoning Township to fill the vacancy presently existing. He pledged that he would manage the township in the best interest of all the people The court has specifically taken into consideration Mr. Woodruff's qualifications and background, the answers he provided to the court, and the fact that he stated that he will not seek election for this vacancy.

By the Court

THOMAS ARTHUR JAMES, Jr.,
President Judge

Petition of the Township of Mahoning and the Township of Mahoning Vacancy Board; Case No. 200 of 2016

Order

And Now, this 5th day of July, 2016, after hearing/interviews held concerning the Petition of the Township of Mahoning and the Township of Mahoning Vacancy Board, the Court appoints Kenneth Woodruff as Supervisor of Mahoning Township to fill the vacant position until the first Monday in January after the 2017 municipal election, at which election an eligible person shall be elected for the unexpired term.

By the Court

THOMAS ARTHUR JAMES, Jr.,
President Judge

[Pa.B. Doc. No. 16-1252. Filed for public inspection July 22, 2016, 9:00 a.m.]

YORK COUNTY

Amendment of Local Rules of Judicial Administration; 2016-MI-000437-55; CP-67-AD-18-2016

Administrative Order Amending York County Local Rules of Judicial Administration

And Now, this 6th day of July, 2016, it is *Ordered* that York County Local Rule of Judicial Administration 702 is hereby amended as follows, effective September 1, 2016.

The District Court Administrator shall publish this order as may be required.

By the Court

JOSEPH C. ADAMS,
President Judge

702. Assignments of Judges of the Court of Common Pleas.

* * * * *

(B) Procedure for periodic rotation of judicial assignments:

* * * * *

[(5) Judges with assignments which include juvenile delinquencies or juvenile dependencies shall maintain those duties for a minimum of three (3) years, but may elect to designate other judicial assignments not inconsistent with those duties, nor disruptive of another judge's assignments.

(6)] **(5)** Regardless of the assignments noted above, a judge who has been assigned to a complex matter, including PCRA matters, appeals of complex civil matters, and complex juvenile matters, shall retain assignment to that matter until the conclusion of all proceedings associated with that matter.

* * * * *

[Pa.B. Doc. No. 16-1253. Filed for public inspection July 22, 2016, 9:00 a.m.]