

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

### Order Amending Rules 490 and 490.1 of the Pennsylvania Rules of Criminal Procedure; No. 510 Criminal Procedural Rules Doc.

#### Order

##### *Per Curiam*

*And Now*, this 1st day of March, 2019, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at See 48 Pa.B. 1930 (April 7, 2018), and a Final Report to be published with this Order:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Criminal Procedure 490 and 490.1 are amended, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2019.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART H. Summary Case Expungement Procedures Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

#### (A) PETITION FOR EXPUNGEMENT

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 **and 18 Pa.C.S. § 9123(a)** for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief.

The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

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

#### (B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

#### (C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

### Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

**This rule was amended in 2019 to clarify that the procedures under this rule are to be used for summary convictions for offenses committed when the defendant is under 18 years of age. This would include any summary conviction that also has been certified to juvenile court pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. In such cases, two expungement petitions would need to be filed: one would be filed pursuant to Pa.R.J.C.P. 170 to expunge the record of the juvenile proceeding and the second would be filed pursuant to Pa.R.Crim.P. 490 to expunge the underlying summary conviction.**

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

**Official Note:** Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016; **amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. 7442 (November 26, 2016).

**Final Report explaining the March 1, 2019 amendment regarding expungement of summary offenses when the defendant is under 18 years of age published with the Court's Order at 49 Pa.B. 1121 (March 16, 2019).**

**Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases; Expungement Order.**

(A) PETITION FOR EXPUNGEMENT

(1) An individual who satisfies the requirements of 24 P.S. § 13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, and the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an

unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another department of education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

(4) A copy of the petition shall be served on the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant concurrently with filing.

#### (B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the school, the affiant, or the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The school's, affiant's, or attorney for the Commonwealth's consent or objection shall be filed with the issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the school, the affiant, or the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the issuing authority shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the petitioner, the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant shall be afforded an opportunity to be heard. Following the hearing, the issuing authority promptly shall enter an order granting or denying the petition.

(4) If the issuing authority grants the petition for expungement, the issuing authority shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the school, the affiant, or the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the issuing authority denies the petition for expungement, the issuing authority shall enter an order denying the petition and stating the reasons for the denial.

(6) The issuing authority shall issue the order granting or denying the petition in writing, with copies to the school, the affiant, or the attorney for the Commonwealth, and shall make the order a part of the docket.

#### (C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The issuing authority shall serve a certified copy of the order to the school from which the petitioner had been found to be truant, the Pennsylvania Department of Transportation and to each criminal justice agency identified in the order.

#### Comment

This rule, adopted in 2018, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

As provided by statute, expungement petitions in truancy cases may be filed in a magisterial district court, a court of common pleas, or the Philadelphia Municipal Court. *See* 24 P.S. § 13-1333.2. The use of the term "issuing authority" in this rule is intended to encompass all of these courts.

Although magisterial district courts are not courts of record, provisions requiring certain occurrences, such as the entry of the expungement order, to be made "on the record" may be accomplished in the magisterial district court by documentation of these occurrences in the case record and the case docket. *See* Rule 135.

Paragraph (A)(4) provides for service of the petition upon the affiant or the attorney for the Commonwealth and the school from which the petitioner had been found to be truant. This is to provide an opportunity to challenge the petition and the facts supporting the petition.

*See* Rule 490 for the procedures for expungement of summary cases other than truancy, **including those cases in which a summary case has resulted in the filing of a delinquency or dependency petition in juvenile court as a result of a failure to comply with the summary case sentence.** *See also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania

Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms-for-the-public>.

“Petition,” as used in this rule, is a “motion” for purposes of Rules 575, 576, and 577. The term “petition” is used in recognition that motion practice usually is not conducted in magisterial district courts and that the expungement procedure under this rule is an exception to this general concept.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

**Official Note:** Adopted December 20, 2018, effective April 1, 2018; **Comment revised March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining new Rule 490.1 regarding procedures for expungement in truancy cases published with the Court’s Order at 49 Pa.B. 196 (January 12, 2019).

**Final Report explaining the March 1, 2019 Comment revision regarding procedures for expungement in non-truancy cases published with the Court’s Order at 49 Pa.B. 1121 (March 16, 2019).**

## FINAL REPORT<sup>1</sup>

### *Amendment of Rules 490 and 490.1*

#### **Summary Expungement for Defendants under the Age of 18**

On March 1, 2019, effective July 1, 2019, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 490 (Procedure for Obtaining Expungement of Summary Cases; Expungement Order) and 490.1 (Procedure for Obtaining Expungement of Truancy Cases; Expungement Order) to clarify the procedures for the expungement of summary cases for defendants under the age of 18 in two circumstances: (1) expungement under 18 Pa.C.S. § 9123(a); and (2) the expungement of summary convictions and delinquency adjudications that result from a failure to comply with the sentence on the underlying summary convictions. These amendments have adopted in conjunction with amendments to Pa.R.J.C.P. 170 and 172.

The Criminal Procedural Rules Committee and the Juvenile Court Procedural Rules Committee, by means of a joint subcommittee, explored rule changes to address two issues regarding the expungement of summary offenses when the defendant is under 18 years old: (1) expungement under 18 Pa.C.S. § 9123(a); and (2) the expungement of summary convictions and delinquency adjudications that result from a failure to comply with the sentence on the underlying summary convictions.

There are two statutes that permit the expungement of summary convictions. The first statute, 18 Pa.C.S. § 9122(b)(3)(i), generally applies without reference to the

age of the defendant and requires the defendant to be free from arrest or prosecution for five years. This statute also contains a provision for the expungement of underage drinking convictions when the defendant is 20 years or older, provided the violation occurred when the defendant was at least 18 years old.

The second statute, 18 Pa.C.S. § 9123(a), applies to “juvenile records” and permits the expungement of a conviction for a summary offense if the defendant is 18 years or older and six months have elapsed after satisfying the sentence. The statute also contains a provision for the expungement of underage drinking convictions when the defendant is 18 years or older, provided the violation occurred when the defendant was under 18 years old.

Prior to this amendment, Pa.R.Crim.P. 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) cited to Section 9122 and not Section 9123(a). Summary offenses are specifically excluded from the Juvenile Act and Pa.R.J.C.P. 170 (Motion to Expunge or Destroy Records) did not recognize Section 9123(a) as it pertains to summary convictions when the defendant is under 18 years of age.

The Committees did not see merit in establishing two different procedures to expunge the same conviction in the magisterial district (“MDJ”) court based on the age of the defendant. Therefore, Pa.R.Crim.P. 490 has been amended to include reference to 18 Pa.C.S. § 9123(a) so that these expungements proceed in accordance with the Criminal Rules. A cross-reference to Rule 490 has been added to the Comment to Pa.R.J.C.P. 170.

The other issue that the Committees examined was what procedures should be used to expunge both the summary conviction and the juvenile record when the conviction is certified pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1 provide that a delinquency petition may be filed in a case where a juvenile has failed to comply with the sentence arising from a summary conviction. The question was whether a petition pursuant to Pa.R.Crim.P. 490 needed to be filed to expunge the summary conviction and another petition pursuant to Pa.R.J.C.P. 170 needed to be filed to expunge the certification and any subsequent juvenile court record.

The Committees recognize that requiring an expungement petition in the criminal court for the summary offense and another expungement petition in the juvenile court may be burdensome. However, it was observed that eligibility for expungement of the MDJ record and the juvenile record are so different that one court should not expunge both records. For example, a curfew violation may result in a summary conviction and fine. If the minor fails to comply with the sentence (*i.e.*, pay the fine), then the matter may be certified to the juvenile court. A majority of these types of certifications result in an informal adjustment, consent decree, or entry into a diversion program rather than a petition being filed. Consequently, the minor would be entitled to expungement of the juvenile record pursuant to 18 Pa.C.S. § 9123(a)(2) six months after completing the program. However, the underlying summary offense could not be expunged until the defendant was at least 18 years of age. See 18 Pa.C.S. §§ 9123(2.1), (2.2). The minor could be eligible for expungement of the juvenile record before being eligible for expungement of the summary conviction. Accordingly, the Committees agreed to recommend a two-petition procedure. The Comment to Pa.R.Crim.P. 490 has been revised to inform readers of the dual tracks for the expungement of certified failure to comply cases and the underlying summary offense.

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

Finally, a cross-reference to the Rule 490 procedures for expungement of summary cases other than truancy has been added to the Comment to Rule 490.1 Procedure for Obtaining Expungement of Truancy Cases; Expungement Order).

[Pa.B. Doc. No. 19-358. Filed for public inspection March 15, 2019, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

### Proposed Amendment of Pa.Rs.Crim.P. 403, 407— 409, 411—414, 422—424, 454, 456 and 470

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 403 (Contents of Citation), Rule 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas—Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation—Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas—Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Summons), 423 (Not Guilty Pleas—Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 456 (Default Procedures: Restitution, Fines, and Costs), 470 (Procedures Related to License Suspension after Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs) 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. This supplemental proposal resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report.

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 and underlined; 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, May 3, 2019. 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*

BRIAN W. PERRY,  
*Chair*

## Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES

#### PART B. Citation Procedures

##### Rule 403. Contents of Citation.

(A) Every citation shall contain:

(1) the name and address of the organization, and badge number, if any, of the law enforcement officer;

(2) the name and address of the defendant;

(3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

(4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(10) a certification that the citation complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within [ **10** ] **30** days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea [ **and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial** ], **providing a current mailing address and telephone number, and**

**(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law, or**

**(b) forwarding as collateral for appearance at trial the sum of \$50 if the fine and costs are not specific on the citation, or**

**(c) certifying in writing that they do not have the financial means to deposit the amount of collateral specified in the citation, or \$50 when no amount is specified;** or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require **[. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea ]**; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation, **or when a payment plan is necessary**, or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3); or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

(3) that all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial *de novo*.

#### Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the magisterial

district judge that, in addition to any fines, restitution, or costs, the magisterial district judge may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine.

Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

**Official Note:** Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

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

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Amendments regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

**Report explaining the proposed amendments regarding responses in writing asserting an inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART B(1). Procedures When Citation Is Issued to Defendant**

**Rule 407. Pleas in Response to Citation.**

Within [ 10 ] 30 days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

**Comment**

For the consequences of failure to respond as provided in this rule, see Rules 430 and 431.

To notify the issuing authority of the plea, the defendant should sign and return the citation. When a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See Rule 403(B)(5).

**Official Note:** Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411—414 and 421—424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001; **amended** \_\_\_\_\_, **2019, effective** \_\_\_\_\_, **2019.**

*Committee Explanatory Reports:*

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 408. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number,** and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ If ] (b) if the fine and costs are not specified, [ the defendant shall forward ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; or

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended** \_\_\_\_\_, **2019, effective** \_\_\_\_\_, **2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 409. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

**(a) the fine and costs are not specified in the citation [ or ];**

**(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) [ . ]; or**

**(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[ must ] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or **[ , in cases in which the defendant may be sentenced to intermediate punishment, ]** the issuing authority may delay the proceedings **(a) pending confirmation of the defendant's ability to pay, and (b) in cases in which the defendant may be sentenced to intermediate punishment, pending confirmation** of the defendant's eligibility for intermediate punishment **[ ; and ]**.

(5) **[ provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

**Comment**

The rule **[ was amended in 2007 to make ] makes** it clear **[ (1) ]** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment, **[ and (2) in ] or (2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is



under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

In determining whether a defendant is without the financial means immediately to pay the fine, costs, and restitution, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

**Official Note:** Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

## PART B(2). Procedures When Citation Filed

### Rule 411. Procedures Following Filing of Citation—Issuance of Summons.

(A) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within [ 10 ] 30 days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

(B) A copy of the citation shall be served with the summons, except in cases charging parking violations when the parking violation information is electronically filed.

(C) In cases charging parking violations in which the parking violation information is electronically filed, the summons shall also include:

- (1) the date, time, and location of the parking violation;
- (2) a description of the vehicle and the license number; and
- (3) a description of the parking violation.

#### Comment

No fine or costs should be specified in the summons in cases in which the issuing authority determines that there is a likelihood of imprisonment.

This rule facilitates the electronic transmission of parking violation information by (1) eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 401(A), and (2) requiring additional information be added to the summons. See Rule 401 (Proceedings in Summary Cases Charging Parking Violations). However, nothing in this rule or Rule 401 is intended to preclude a municipality from continuing to have its officers prepare a citation in addition to electronically transmitting the parking violation information.

**Official Note:** Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 431. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and Comment revised March 1, 2000, effective April 1, 2001; amended \_\_\_\_\_, 2003, effective \_\_\_\_\_, 2003; **amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

#### Committee Explanatory Reports:

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 1996).

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

Final Report explaining the February 6, 2003 amendments concerning electronic transmission of citation and parking violation information published with the Court's Order at 33 Pa.B. 973 (February, 22, 2003).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

### Rule 412. Pleas in Response to Summons.

Within [ 10 ] 30 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

#### Comment

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

**Official Note:** Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

#### Committee Explanatory Reports:

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 413. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number, and**

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ **If** ] (b) if the fine and costs are not specified, [ **the defendant shall forward** ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; **or**

(c) **certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.**

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ **It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452.** ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985,

effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended , 2019, effective , 2019.**

**Committee Explanatory Reports:**

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 414. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the summons [ **or** ];

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)[ . ]; **or**

(c) **the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant [ **must** ] **shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally

before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation **of the defendant's ability to pay or** of the defendant's eligibility for intermediate punishment[; and ].

(5) [ **provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

The rule [ **was amended in 2007 to make** ] makes it clear [ (1) ] that a defendant may not enter a guilty plea by mail (1) to an offense that carries a mandatory sentence of imprisonment, [ **and (2) in** ] or (2) **when the defendant is without the financial means immediately to pay the fine and costs. In** those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate

punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

- (a) mortgage or rent,
- (b) loans,
- (c) utilities,
- (d) cost of health insurance,
- (e) cost of uninsured health care,
- (f) cost of transportation, including car payments,
- (g) costs of dependent care,
- (h) spousal/child support,
- (i) utilities, including the cost of cell or other telephone service,
- (j) food,
- (k) other expenses.

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

*See* Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

**Official Note:** Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART C. Procedures in Summary Cases When Complaint Filed**

**Rule 422. Pleas in Response to Summons.**

Within [ 10 ] **30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

**Comment**

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. *See* Rule 403(B)(5).

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

**Official Note:** Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 423. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ If ] (b) if the fine and costs are not specified, [ the defendant shall forward ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; or

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the affiant of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and

amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; amended , 2019, effective , 2019.

**Committee Explanatory Reports:**

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 424. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the summons [ or ];

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)[ . ]; or

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant [ must ] shall sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain,

and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation **of the defendant's ability to pay or of the defendant's eligibility for intermediate punishment[; and ]**.

(5) **[ provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

The rule [ was amended in 2007 to make ] makes it clear [ (1) ] that a defendant may not enter a guilty plea by mail (1) to an offense that carries a mandatory sentence of imprisonment, [ and (2) in ] or (2) when **the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary vio-

lations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

**(a) mortgage or rent,**

- (b) loans,
- (c) utilities,
- (d) cost of health insurance,
- (e) cost of uninsured health care,
- (f) cost of transportation, including car payments,
- (g) costs of dependent care,
- (h) spousal/child support,
- (i) utilities, including the cost of cell or other telephone service,
- (j) food,
- (k) other expenses.

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

*See* Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

***Official Note:*** Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended** , **2019**, **effective** , **2019**.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART E. General Procedures in Summary Cases**

**Rule 454. Trial in Summary Cases.**

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel, or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.



(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, except as provided in paragraph (E).

**(E) In determining the amount of the discretionary fine, if any, or discretionary costs, if any, that is to be imposed and the payment schedule, if any, the issuing authority shall consider the defendant's ability to pay. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

[ (E) ] (F) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

[ (F) ] (G) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due[ . ];

**[ If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due. ]**

(2) advise the defendant of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the *de novo* trial or the appeal may be dismissed;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

**(5) If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited**

**from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph [ (F)(2)(b) ] (G)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth, or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Under paragraph [ (F)(2)(a) ] (G)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph [ (F)(3) ] (G)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460—462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S.

§ 1106(c). *See also* 18 Pa.C.S. § 1106(c)(2)(iii), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. *See* 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Certain costs are mandatory and must be imposed. *See, e.g.*, Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

**In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

**(a) mortgage or rent,**

**(b) loans,**

**(c) utilities,**

**(d) cost of health insurance,**

**(e) cost of uninsured health care,**

**(f) cost of transportation, including car payments,**

**(g) costs of dependent care,**

**(h) spousal/child support,**

**(i) utilities, including the cost of cell or other telephone service,**

**(j) food,**

**(k) other expenses.**

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

Paragraph [ (E) ] (F) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

*See* Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

For the procedures concerning sentences that include restitution in court cases, *see* Rule 705.1.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. *See* Rule 456(A).

***Official Note:*** Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016; amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.

*Committee Explanatory Reports:*

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

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

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 amendments to paragraph (F) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments related to determining the defendant's ability to pay case assessments published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 456. Default Procedures: Restitution, Fines, and Costs.**

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the

defendant should not be imprisoned for nonpayment as provided by law, a **bench** warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.

(1) If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.

(2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

(1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority **[ may ] shall** order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law. **The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

(ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

The order shall also state the reason(s) why a sentence was deemed appropriate and the facts that support a determination that the defendant has the ability to pay as ordered.

(4) A sentence of imprisonment or probation shall not be imposed if the right to counsel was not afforded at the hearing. Counsel shall be appointed as provided in Rule 122(A)(1).

(E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

**(F) UNCOLLECTABLE RESTITUTION, FINE, AND COSTS**

(1) If, after a period of two years following sentencing, in which the defendant defaults upon the payment of restitution, fine, and costs due as ordered, the issuing authority determines that the defendant does not have the ability to pay, the issuing authority may notify the defendant, any victim, and the affiant, or the attorney for the Commonwealth in person or by first class mail that, unless within 10 days of the date of the notice any victim, the affiant, or the attorney for the Commonwealth objects, the issuing authority may issue an order declaring the payments uncollectable due to the defendant's inability to pay.

(2) The order may be issued only after a hearing at which the defendant is present and represented by counsel.

(3) Service of the notice of the hearing held pursuant to paragraph (F)(2) shall be by first class mail.

(4) notice of the hearing also shall be made on the victim, affiant, and attorney for the Commonwealth who shall be permitted to object to the issuance of the order.

(5) When an order has been issued pursuant to paragraph (F)(1), no further action shall be taken to collect the amount owed by the defendant, including:

(a) the scheduling of a default hearing pursuant to paragraph (A);

(b) the issuance of the notice pursuant to paragraph (B);

(c) issuance of a bench warrant for the defendant's arrest;

(d) referral of the case to a collections agency;

(e) contempt proceedings for failure to pay;

(f) issuance of a notice of default to the Pennsylvania Department of Transportation pursuant to Rule 470.

(6) The order shall be served on the defendant and the victim, affiant, or attorney for the Commonwealth.

(7) If the defendant later becomes able pay, the issuing authority, after notice to the defendant and the victim, affiant, and attorney for the Commonwealth and an opportunity to be heard, may rescind the order and proceed with efforts to obtain payment from the defendant on the money owed.

**Comment**

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

**In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some**

factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

Under paragraph (D)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded [ at trial ] at the default hearing. See Rule 122(A)(1) ("Counsel shall be appointed. . . in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed. . ."). See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also [ Rules ] Rule 121 [ and 122 ] (dealing with [ appearance or ] waiver of counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph (E), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court's Order at 45 Pa.B. 2045 (April 25, 2015).

**Report explaining the proposed amendment concerning factors to be considered when determining a defendant's ability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART G. Special Procedures in Summary Cases  
Under the Vehicle Code**

**Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.**

(A) When a defendant fails to comply with the [ 10-day ] **30-day** response period set forth in Rules 407, 412, and 422, [ and 456, ] the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be sus-

pending if, **within 15 days of the date of the notice**, the defendant fails to respond to the citation or summons or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs [ **within 15 days of the date of the notice** ].

**(B) When a defendant defaults on the payment of fines, costs, or restitution as ordered, the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be suspended if, within 15 days of the date of the notice, the defendant fails to pay all fines, costs, and restitution imposed, or enter into an agreement to make installment payments for fines, costs, and restitution and the issuing authority finds that the defendant has the financial ability to pay.**

[ (B) ] (C) Service of the notice required in [ paragraph ] paragraphs (A) and (B) shall be by first class mail, and a copy shall be made part of the record.

[ (C) ] (D) If the defendant does not respond by the fifteenth day, the issuing authority shall so notify the Pennsylvania Department of Transportation. The notice shall be sent by electronic transmission in the form prescribed by the Pennsylvania Department of Transportation. The issuing authority shall print out and sign a copy of the notice, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

**(E) If the defendant responds by the fifteenth day, and fails to pay all fines, costs, and restitution imposed, or fails to enter into an agreement to make installment payments for fines, costs, and restitution, a notice issued pursuant to paragraph (B) shall be sent to the Pennsylvania Department of Transportation only if the issuing authority first has held a hearing pursuant to Rule 456(C) and determined that the defendant has the financial ability to pay. The notice shall not be sent during the pendency of any appeal from that hearing.**

[ (D) ] (F) If the defendant responds to the citation or summons or pays all fines and costs imposed or enters into an agreement to make installment payments for the fines and costs imposed after notice has been sent pursuant to paragraph [ (C) ] (D), the issuing authority shall so notify the Pennsylvania Department of Transportation and request the withdrawal of the defendant's license suspension. The notice and request shall be sent by electronic transmission. The issuing authority shall print out and sign a copy of the notice and request, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

[ (E) ] (G) Upon request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of any notices or any request form required by this rule.

**Comment**

This rule was adopted in 1993, and amended in 2011, to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. *See, e.g.*, paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). **This rule was amended in 2019 to clarify that, in cases involving**

default on the payment of fines and costs, or restitution, the 15-day notice of the license suspension may be sent at the time of default and not subsequent to the expiration of the 10-day bench warrant notice under Rules 430(B)(3)(b) and 456(B).

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

This rule is not intended to address the admissibility of evidence. See the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 *et seq.* concerning the Rules of Evidence for documents.

Under paragraph [ (E) ] (G), the issuing authority is required to provide a certified copy of the report, but only if the request is made within the period that the issuing authority is required to retain the records.

Electronic transmissions are to be made from the Magisterial District Judge System or other computer system used by issuing authorities.

**Official Note:** Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011; **amended** , 2019, **effective** , 2019.

*Committee Explanatory Reports:*

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 2811 (June 19, 1993).

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

Final Report explaining the February 18, 2011 amendments to paragraphs (A) and (D) adding failure to pay fines and costs published with the Court's Order at 41 Pa.B. 1168 (March 5, 2011).

**Report explaining the proposed amendments to paragraphs (A) regarding the timing of the notice of suspension for failure to pay fines and costs published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

#### SUPPLEMENTAL REPORT

*Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470*

#### INCARCERATION OF THE INDIGENT FOR FAILURE TO PAY IN SUMMARY CASES

The Criminal Procedural Rules Committee originally published for comment a package of proposed rules changes intended to provide for the more equitable enforcement of monetary assessments imposed in summary cases on those without the financial ability to pay.<sup>1</sup> After studying the numerous publication responses, the Committee is considering revisions to the proposal. As these changes constitute significant changes to the original proposal, the Committee is publishing this Supplemental Report seeking comment on the changes to the proposal.

The core of the proposal as published remains the same.<sup>2</sup> The original proposal's rules changes fell into three main areas:

(1) increasing the amount of time a defendant has to respond to a citation from the current 10 days to 30 days;

(2) permitting a defendant who wishes to plead not guilty but who cannot afford to post collateral to assert the inability to pay when responding in writing to the citation;

<sup>1</sup> See 48 Pa.B. 496 (January 20, 2018) and <http://www.pacourts.us/assets/uploads/Resources/Documents/Publication%20Report%20Indigent%20Incarceration%20for%20Failure%20to%20Pay%20in%20Summaries%20-%2020006720.pdf?cb=bd09e>.

<sup>2</sup> See the Committee's explanatory Report for the explanation of the development and the core aspects of the proposal.

(3) providing guidance to the issuing authority regarding the factors to be considered when assessing a defendant's ability to pay at time of sentencing and default.

The changes the Committee is considering in this supplemental proposal address several of the issues raised in the publication responses. Briefly, these changes include:

- the creation of a procedure for an administrative hold on collection actions where the issuing authority has determined that the defendant does not have an ability to pay on an extended basis;
- strengthening the statement in the rules regarding right to counsel at payment determination hearings;
- precluding the practice of setting minimum payment amounts regardless of the individual defendant's ability to pay;
- clarifying that the Rule 470 notice to the Pennsylvania Department of Transportation ("PennDOT") regarding suspension of the defendant's driver's license for failure to pay would only be issued after an ability to pay determination had been made;
- developing with the Administrative Office of Pennsylvania Courts a form that may be used by the issuing authority in determining a defendant's ability to pay, that would include in the Comment to various rules a listing of the types of information to be solicited in this form.

A number of the publication responses included a request for a procedure that would permit some form of forbearance when a defendant clearly lacks the ability to pay and will likely be in that situation in the long term. It was noted that a great deal of time and effort was being exerted in collection and attempted enforcement of owed case assessments when a defendant is known to lack the financial resources to be able to pay. These commenters suggested some means of administratively closing a case in that situation. However, the Committee was concerned that this would have amounted to a modification of the sentencing order for which there is no statutory authority.<sup>3</sup>

Due to these concerns about the statutory preclusion on modifying a sentence more than 30 days after imposition, the Committee preferred a procedure for placing an "administrative hold" on collection efforts. Under the proposed procedure, a new paragraph (F) would be added to Rule 456 (Default Procedures: Restitution, Fines, and Costs) that would provide this "administrative hold" procedure. This procedure may be utilized only after two years of attempts at collection have failed and it is determined that the defendant is unable to pay. Paragraph (F) would include a list of collection actions that would be precluded, including the issuance of arrest warrants and notification to Pennsylvania Department of Transportation regarding license suspension.

Once an issuing authority believes that the defendant may be unable to pay, a hearing on the question would be held at which the defendant must be present. Notice of the hearing would be sent to the victim, affiant, and, if applicable, the attorney for the Commonwealth to provide the opportunity to object. If, at the end of the hearing, the issuing authority determines that the defendant has been and will be chronically unable to pay, an order would be issued placing on hold any efforts to collect the case assessments. If the issuing authority later determines that the defendant becomes able to pay, the order may be lifted.

<sup>3</sup> A court order may not be modified by the presiding judge more than 30 days after it had been entered. 42 Pa.C.S. § 5505.

The hold on further collection efforts does not operate to decrease or limit a defendant's financial obligation toward various stakeholders, including restitution owed to victims. The intent of the hold is to serve as a recognition that, after two years, such efforts serve no purpose when a court determines a defendant does not have the ability to pay even minimal periodic amounts. The Committee invites feedback on this aspect of the proposal to better understand stakeholder concerns.

Another suggestion received from the publication comments was to strengthen the statement on a defendant's right to counsel at the default hearings by moving the statement of this right from the Rule 456 Comment into the text of the rule. This suggestion has been incorporated into the proposal as a new paragraph (D)(4) in Rule 456. The Comment language regarding right to counsel would be retained to emphasize the point.

The Committee also received reports of the practice in some counties or among some judges to require certain minimum monthly payments in all cases. The Committee agreed that this practice should be proscribed. This proscription has been included in a new paragraph (G)(5) in Rule 454 that addresses the establishment of installment payment plans. A similar provision has been added to other rules dealing with sentencing, *i.e.*, Rules 409, 414, and 424. It has also been added to Rule 456, as part of the provisions dealing with modified installment plans.

It also was suggested that the rules should provide for a hearing on a defendant's ability to pay before his or her driver's license could be suspended. The Committee agreed to include this provision in the proposal. However, the situation when a defendant refuses to participate in this hearing should not be a means of halting the license suspension process. To clarify these procedures, Rule 470 has been slightly reorganized. Paragraph (A) would address the situation when a notice of license suspension is being issued because the defendant has failed to respond to a citation or summons. A new paragraph (B) would address the situation when a defendant fails to pay summary case assessments and would include the requirement that a determination of the defendant's ability to pay must be made prior to notice being sent to PennDOT. Paragraph (D) would retain the rule's current provision regarding a defendant's failure to respond to the notice of license suspension. A new paragraph (E) would provide that, when a defendant does respond to the notice of license suspension, before notifying PennDOT that the defendant's license should be suspended, the issuing authority must determine that the defendant is able to pay but does not.

There were a number of publication responses suggesting that the rule should contain presumptions of an inability to pay when the defendant's income is at a certain level. The Committee believes that such a standard would be arbitrary given the wide geographical and economic differences between areas of the Commonwealth and between the circumstances of each individual defendant. The Committee concluded that such presumptions would unduly hamper an equitable and individualize determination of a defendant's ability to pay. However, to assist in making this determination, the original proposal included Comment language contained in the various rules related to sentencing and default suggesting factors to be considered. In this revised proposal, the Committee is proposing further detail to these provisions. If the Court adopts this proposal, the Committee would anticipate the development of forms by the Administrative Office of Pennsylvania Courts that would elicit from the



defendant information regarding the defendant's financial situation that would assist in the ability to pay determination. To assist in the development of these forms, the Comments to the rules would contain, in addition to the general factors to be considered in making the ability to pay determination, specific information about the defendant's financial situation.

There were a few suggestions made in publication responses that the Committee declined to adopt. These included reiterations of the proposal to eliminate the requirement to post collateral in not guilty pleas by mail. As the Committee had discussed in its original development of the proposal, the retention of the general requirement for posting collateral but permitting an assertion of financial inability to post collateral represented an appropriate compromise on this question. Therefore, no change to the original proposal in this regard was made.

There were also objections to the increase in the time for responding to a summary citation from 10 to 30 days. The consensus of the Committee was that the increase was a reasonable change that will provide defendants without sufficient liquidity more time to raise assessment money and so may reduce the number of not guilty pleas. No change to the original proposal has been made in this regard.

[Pa.B. Doc. No. 19-359. Filed for public inspection March 15, 2019, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [ 237 PA. CODE CH. 1 ]

#### Order Amending Rules 170 and 172 of the Pennsylvania Rules of Juvenile Court Procedure; No. 793 Supreme Court Rules Doc.

#### Order

*Per Curiam*

And Now, this 1st day of March, 2019, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 47 Pa.B. 938 (February 18, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Juvenile Court Procedure 170 and 172 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on July 1, 2019.

#### Annex A

### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 1. GENERAL PROVISIONS

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

#### Rule 170. Motion to Expunge or Destroy Records.

A. *Motion*. Upon motion, or *sua sponte*, expungement proceedings may be commenced:

- 1) if a written allegation is not approved for prosecution;
- 2) if the petition is dismissed by the court;
- 3) in consent decree and informal adjustment cases:
  - a) when six months have elapsed since the final discharge of the juvenile from supervision; and
  - b) if no proceeding seeking adjudication or conviction is pending;
- 4) when a juvenile has been discharged from court supervision pursuant to Rule 631:
  - a) five years have elapsed;
  - b) the juvenile has not been convicted or adjudicated delinquent for a felony or misdemeanor;
  - c) no court proceeding is pending seeking such conviction or adjudication; and
  - d) the delinquent act is not an act precluded from expungement pursuant to 18 Pa.C.S. § 9123(a.1); or
- 5) when the attorney for the Commonwealth consents to the expungement.

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

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

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

#### D. *Answer*.

- 1) The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.
- 2) If objections to the motion are not made within thirty days of the filing of the motion, they shall be deemed waived.

E. *Court's [response to the motion] Response to the Motion*. The court shall conduct a hearing or grant or deny the motion after giving consideration to the following factors:

- 1) the type of offense;
- 2) the individual's age, history of employment, history of academic or vocational training, delinquent or criminal activity, and drug or alcohol issues;

3) adverse consequences that the individual may suffer if the records are not expunged; and

4) whether retention of the record is required for purposes of public safety.

**F. [ *Inter-county transfer cases* ] Inter-County Transfer Cases.**

1) A motion to expunge or destroy records shall be filed in the county in which the adjudication of delinquency was entered.

2) A motion regarding the records of a juvenile whose disposition did not involve an adjudication of delinquency shall be filed in the county in which the disposition occurred.

3) The court entering an order to expunge or destroy records shall direct the order to any other court possessing records pertaining to the case.

**Comment**

Paragraph (A) provides that [ **any party may file** ] a motion to expunge or destroy records, files, fingerprints, or photographs, or the court, *sua sponte*, may commence expungement proceedings.

Under paragraphs (A)(1) & (2), the written allegation or petition may be dismissed for several reasons, including, but not limited to, when: 1) a juvenile completes an informal adjustment or diversionary program; 2) the attorney for the Commonwealth declines to prosecute; 3) probable cause is not found at the detention hearing pursuant to Rule 242(C)(1); 4) there is no finding on the offenses pursuant to Rule 408(B); or 5) there is no finding of a need for treatment, supervision, and rehabilitation pursuant to Rule 409(A)(1). Expungement proceedings may be commenced upon these dismissals of the written allegation or the petition.

**For expungement of summary offenses heard by a magisterial district court or criminal court, see Pa.R.Crim.P. 490 and 490.1 (truancy). For eligibility for expungement, see 18 Pa.C.S. § 9123(a); 24 P.S. § 13-1333.3(h) (truancy).**

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

Pursuant to paragraph (B)(9), the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion, specifically citing which provision of paragraph (A) applies.

“Expunge” or “expungement” is defined by Rule 120, which means to erase legally, or the process of legal erasure of an item making it permanently not available to the public but where some information may be retained only for limited purposes by agencies or departments. *See* Rule 173. *See also* Comment to Rule 120.

Rule 173 provides for the retention of certain information that is crucial for: 1) determining compliance with the order to expunge; 2) determining eligibility in a court program, determining the grading or penalty of an offense, or for other purposes as provided by law; 3)

maintaining statistical and research information; 4) maintaining intelligence and investigative information; and 5) financial audits.

**[ The new procedures instituted with the changes of 2014 require one procedure for expunging or destroying records, fingerprints, and photographs. One order will go to the appropriate agencies and departments as required by Rule 172 and will help those agencies become more efficient in the manner in which items are destroyed or expunged. ]**

Pursuant to paragraph (D), the attorney for the Commonwealth is given an opportunity to respond to the motion. The attorney for the Commonwealth should specify its position on whether items should be expunged or destroyed. Expunged items remain available to law enforcement agencies and the attorney for the Commonwealth in limited circumstances, whereas destroyed items are permanently erased. The attorney for the Commonwealth should consent to expunging records unless the attorney for the Commonwealth demonstrates good cause for the retention of records. *See In re A.B.*, 987 A.2d 769 (Pa. Super. [ Ct. ] 2009).

The reasons for maintaining information pursuant to Rule 173 do not qualify as good cause against expunging records under this rule. Maintenance of specific information is different from the maintenance of the official court record or other official records of the juvenile probation office or a law enforcement agency. Pursuant to Rule 173, a separate document, file, or database is to be created. *See* Rule 173 and its Comment.

If the attorney for the Commonwealth objects to expunging or destroying the records, the court should conduct a hearing on the motion.

Pursuant to paragraph (E)(3), the court is to consider adverse consequences that an individual may suffer if the records are not expunged. Adverse consequences are discussed in The Pennsylvania Collateral Consequences Checklist instituted by Pennsylvania Juvenile Indigent Defense Action Network in conjunction with the initiative the Models for Change System Reform in Juvenile Justice. This checklist may be [ **assessed** ] **accessed** on the Supreme Court’s website at [ <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/> ] <http://www.pacourts.us/courts/supreme-court-committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>.

The attorney for the Commonwealth in the county in which a motion is filed in an inter-county transfer case pursuant to paragraph (F) should provide notice of the motion to, and communicate with, the attorney for the Commonwealth and the juvenile probation office in the county to which, or from which, the case was transferred.

Notwithstanding this rule, *see* 18 Pa.C.S. § 9123(a.1) for cases that are ineligible for expungement proceedings. *See also* 42 Pa.C.S. § 6341 for destruction of fingerprints and photographs.

**Official Note:** Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014. Amended February 12, 2015, effective immediately. **Amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

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

Final Report explaining the amendments to Rule 170 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 170 published with the Court's Order at 49 Pa.B. 1142 (March 16, 2019).**

**Rule 172. Order to Expunge or Destroy.**

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

- 1) all items contained in Rule 170(B);
- 2) a directive specifically identifying which items shall be expunged or destroyed, including all law enforcement records, juvenile probation files, official court records, other juvenile records, fingerprints, photographs, and any other information pertaining to the arrest;
- 3) a directive that the keeper of the juvenile records shall expunge or destroy such items;
- 4) a directive that each agency, department, or office, upon request, shall notify the court or its designee, in writing, of the action taken in response to the order to expunge or destroy;
- 5) a directive to a school building principal or his or her designee to destroy information received from the court pursuant to Rule 163;
- 6) the printed name and signature of the judge issuing the order; and
- 7) the date of the court order.

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

**Comment**

Pursuant to paragraph (A)(2), the court is to list specifically which items are to be expunged and which items are to be destroyed. Specific information retained pursuant to Rule 173 should be expunged but not destroyed. In most instances, the court should order that the fingerprints and photographs be destroyed and that the remaining records and documents be expunged.

Pursuant to paragraph (A)(4), an agency, department, or office may be requested to produce evidence of compliance with the court order to expunge. Non-compliance may result in a finding of contempt of court.

Pursuant to paragraph (A)(5), the school is to destroy all information received from the court. Because the school is required to store this information separately under Rule 163(F), destruction should not be difficult. See Rule 163 and its Comment. The court may also require the school to provide written notice of the action taken.

**Official Note:** Rule 172 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended July 28, 2014, effective September 29, 2014. **Amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

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

Final Report explaining the amendments to Rule 172 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 172 published with the Court's Order at 49 Pa.B. 1142 (March 16, 2019).**

**FINAL REPORT<sup>1</sup>**

**Amendment of Pa.R.J.C.P. 170 and 172**

On March 1, 2019, the Supreme Court amended Rule of Juvenile Court Procedure 170 to require the inclusion of additional information in a motion for expungement and Rule 172 to require the Pennsylvania State Police and the Juvenile Court Judges' Commission to be served a copy of the expungement order.

The Criminal History Record Information Act provides for the expungement of both written allegations and petitions in juvenile proceedings under certain circumstances. See 18 Pa.C.S. § 9123(a); see also Pa.R.J.C.P. 170(A). In juvenile court vernacular, crimes set forth in a written allegation are "allegations," whereas crimes set forth in a petition are "offenses." Previously, Rule 170(B)(4) concerning expungement motions only required the motion to contain allegations; it did not require the inclusion of offenses. Rule 170(B)(4) has been amended to add "or offenses."

Rule 170(B)(6) has been amended to require the inclusion of the "juvenile" to more accurately describe the offense tracking number. The commentary has also been revised to add the "juvenile" descriptor.

Within the Comment to Rule 170, the phrase, "any party may file," has been removed. The Committee recommended removing this phrase because it did not wish to imply that a non-party, such as a juvenile probation officer, is foreclosed from motioning for an expungement when, for example, a juvenile has been discharged from supervision following a consent decree or informal adjustment. Other non-substantive revisions to the Comment included the elimination of a paragraph of historical language explaining amendments in 2014.

The Pennsylvania State Police is required to maintain a statewide registry of juvenile history record information, fingerprints, and photographs. See 42 Pa.C.S. § 6309(b). Additionally, the Juvenile Court Judges' Commission's Information Technology Division collects, compiles, and publishes the juvenile court statistics. See 42 Pa.C.S. § 6373. Accordingly, information related to juvenile cases is shared with these entities. See 42 Pa.C.S. § 6309(c) & (d).

Rule 172 was amended to ensure that these entities maintain accurate information pertaining to juvenile records by requiring copies of expungement orders to be served upon those entities in every matter. The amendment to Rule 170(B)(6) requires the JOTN, if available, to be included in the expungement motion. By operation of Rule 172(A)(1), this information is also included in the expungement order to assist the entities in performing their functions.

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

As a result of a public comment, a joint committee of the Juvenile Court Procedural Rules Committee and the Criminal Procedural Rules Committee was formed to consider whether the Juvenile Rules or the Criminal Rules should govern the expungement procedures for summary offenses committed by a defendant under the age of 18. For reasons more fully discussed in the Final Report being filed with the amendments of Pa.R.Crim.P. 490 and 490.1, the Comment to Rule 170 is being revised to add:

For expungement of summary offenses heard by a magisterial district court or criminal court, see Pa.R.Crim.P. 490 and 490.1 (truancy). For eligibility for expungement, see 18 Pa.C.S. § 9123(a); 24 P.S. § 13-1333.3(h) (truancy).

The purpose of this reference is to direct readers to the Criminal Rules for procedures for the expungement of summary offenses, as well as reference the statutes establishing the eligibility for an expungement. The inclusion of "criminal court" is intended to reflect instances where more serious charges against a minor have been dismissed and the criminal court judge sits as a magisterial district court judge. The reference to the court where the record is located was believed to be more accurate than to the status of the jurist adjudicating the matter.

The amendments will become effective July 1, 2019.

[Pa.B. Doc. No. 19-360. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Sal Greenman having been suspended from the practice of law in New Jersey; the Supreme Court of Pennsylvania issued an Order dated February 27, 2019 suspending Sal Greenman from the practice of law in this Commonwealth for a period of one year, effective March 29, 2019. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,  
*Board Prothonotary*

[Pa.B. Doc. No. 19-361. Filed for public inspection March 15, 2019, 9:00 a.m.]

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