THE COURTS

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CH. 69]

Amendments to the Internal Operating Procedures of the Commonwealth Court of Pennsylvania; No. 126 Misc. Docket No. 3

Order

Now, this 20th day of June, 2023, it is *Ordered* that the Internal Operating Procedures of the Commonwealth Court of Pennsylvania are hereby amended in the following form. These amendments shall be effective immediately upon publication in the *Pennsylvania Bulletin*.

By the Court

RENÉE COHN JUBELIRER,
President Judge

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 69. INTERNAL OPERATING PROCEDURES OF THE COMMONWEALTH COURT OF PENNSYLVANIA

APPELLATE JURISDICTION

§ 69.256. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections, **concur in result only** or concurring opinions, the opinion-writing Judge shall not file the opinion but shall notify the President Judge to list the case for consideration at the next judicial conference. **[For purposes of this subsection the notation "concur in result only" shall not be considered in the foregoing combination.]** If, pursuant to vote after judicial conference consideration, a majority of all of the Judges, as well as a majority of the Judges who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed. Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with § 69.254, the President Judge shall list the case for **[reargument]** **consideration** before the Court en banc.

* * * * *

[Pa.B. Doc. No. 23-883. Filed for public inspection July 7, 2023, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 5 AND 7]

Proposed Amendment of Pa.R.Crim.P. 122; Rescission of Pa.R.Crim.P. 520—529 and Replacement with Pa.R.Crim.P. 520.1—520.19; Adoption of Pa.R.Crim.P. 708.1, and Renumbering and Amendment of Pa.R.Crim.P. 708.

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the proposed amendment of Pa.R.Crim.P. 122 (Appointment of Counsel); rescission of Pa.R.Crim.P. 520—529 and replacement with Pa.R.Crim.P. 520.1—520.19 governing bail proceedings; adoption of Pa.R.Crim.P. 708.1 (Violation of Probation or Parole: Notice, Detainer, *Gagnon* I Hearing, Disposition, and Swift Sanction Program), and renumbering and amendment of Pa.R.Crim.P. 708 (Violation of Probation or Parole: *Gagnon* II Hearing and Disposition), for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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:

Joshua M. Yohe, Counsel
Criminal Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by Friday, September 8, 2023. 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

STEFANIE J. SALAVANTIS,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART B. Counsel

(*Editor's Note*: Rule 122 as printed in 234 Pa. Code reads "Official Note" rather than "Note.")

Rule 122. Appointment of Counsel.

[(A)] **(a)** Counsel shall be appointed:

(1) 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;

(2) in all court cases, prior to the preliminary hearing to all defendants who are without financial resources **[or],** who are otherwise unable to employ counsel**, or as required by rule**;

(3) in all cases, by the court, on its own motion, when the interests of justice require it.

[(B)] **(b)** When counsel is appointed,

(1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

(2) **unless otherwise provided in these rules,** the appointment shall be effective until final judgment, including any proceedings upon direct appeal.

[(C)] **(c)** A motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons.

Comment**:**

This rule is designed to implement the decisions of *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and *Coleman v. Alabama*, 399 U.S. 1 (1970), that no defendant in a summary case be sentenced to imprisonment unless the defendant was represented at trial by counsel, and that every defendant in a court case has counsel starting no later than the preliminary hearing stage.

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) and *Scott v. Illinois*, 440 U.S. 367 (1979). See Rule 454 (Trial in Summary Cases) concerning the right to counsel at a summary trial.

Appointment of counsel can be waived if such waiver is knowing, intelligent, and voluntary. *See Faretta v. California*, 422 U.S. 806 (1975). Concerning the appointment of standby counsel for the defendant who elects to proceed *pro se*, see Rule 121.

In both summary and court cases, the appointment of counsel to represent indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be appointed to represent indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, **[paragraph (A)(1)]** **subdivision (a)(1)** requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be appointed to represent indigent defendants. It is expected that the issuing authorities in most instances will be guided by their experience with the particular offense with which defendants are charged. This is the procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft 1968) and cited in the United States Supreme Court's opinion in *Argersinger*, *supra*. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, **[paragraph (A)(2)]** **subdivision (a)(2)** requires counsel to be appointed at least in time to represent the defendant at the preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the *Coleman* requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings that would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been appointed prior to the preliminary hearing stage of the proceedings, *e.g.*, counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for appointed counsel. In such cases**,** it is expected that the defendant's right to appointed counsel will be effectuated at the earliest appropriate time.

Counsel must be appointed for a defendant, regardless of financial resources, for a hearing to review bail conditions pursuant to Rule 520.15 or impose pretrial detention pursuant to Rule 520.16. *See* Rule 520.5.

An attorney may not be appointed to represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

[Paragraph (A)(3)] **Subdivision (a)(3)** retains in the issuing authority or judge the power to appoint counsel regardless of indigency or other factors when, in the issuing authority's or judge's opinion, the interests of justice require it.

Pursuant to **[paragraph (B)(2)]** **subdivision (b)(2)** counsel retains his or her appointment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the **[note]** **commentary** following that rule. If the decision is made to file a petition, counsel must carry through with that decision. *See Commonwealth v. Liebel*, **[573 Pa. 375,]** 825 A.2d 630 (**Pa.** 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). *See also Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001). **The scope and term of counsel's representation may also be limited by rule. For example, see Rule 520.5(d) that provides for limited**

representation for initial bail determination, review of bail conditions, and pretrial detention.

See *Commonwealth v. Alberta*, **[601 Pa. 473,]** 974 A.2d 1158 (**Pa.** 2009)**[, in which the Court stated that]** (“**[[a]ppointed]** **Appointed** counsel who has complied with *Anders [v. California*, 386 U.S. 738 (1967),*]* and is permitted to withdraw discharges the direct appeal obligations of counsel. Once counsel is granted leave to withdraw per *Anders*, a necessary consequence of that decision is that the right to appointed counsel is at an end.”**).**

For suspension of Acts of Assembly, see Rule 1101.

[***Note*****:**

Rule 318 adopted November 29, 1972, effective 10 days hence, replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 1, 2005; Comment revised February 26, 2010, effective April 1, 2010.

Committee Explanatory Reports**:**

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

Final Report explaining the March 12, 2004 editorial amendment to paragraph (C)(3), and the Comment revision concerning duration of counsel’s obligation, published with the Court’s Order at 34 Pa.B. 1671 (March 27, 2004).

Final Report explaining the March 26, 2004 Comment revision concerning *Alabama v. Shelton* published with the Court’s Order at 34 Pa.B. 1929 (April 10, 2004).

Final Report explaining the April 28, 2005 changes concerning the contents of the appointment order published with the Court’s Order at 35 Pa.B. 2855 (May 14, 2005).

Final Report explaining the February 26, 2010 revision of the Comment adding a citation to Commonwealth v. Alberta published at 40 Pa.B. 1396 (March 13, 2010).]

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C. Bail

The following text is entirely new.

(*Editor’s Note*: Rules 520—529 of the Rules of Criminal Procedure, which appear in 234 Pa. Code pages 5-24.11 to 5-39, serial pages (407915) to (407916), (312439) to (312440), (395665) to (395666), (382199) to (382200), (312441) to (312443), (335941) to (335942), (376049) to (376050) and (409865) to (409867) are proposed to be rescinded and replaced with the following proposed new rules, which are printed in regular type to enhance readability.)

Introduction

In accordance with Section 5702 of the Judicial Code, 42 Pa.C.S. § 5702, which provides that “all matters relating to the fixing, posting, forfeiting, exoneration, and distribution of bail and recognizances shall be governed by general rules,” the rules in this subchapter govern the bail determination procedures for the release of a defendant from custody pending the full and final disposition of the defendant’s case. In 202 ___ , Pa.R.Crim.P. 520—529 were rescinded and replaced with Pa.R.Crim.P. 520.1—520.19 effective _____ _____ , 202 ___ .

The goal of the bail determination procedures is for the least number of people being detained, through timely release at the earliest stage, as is necessary to reasonably ensure appearance for court and the safety of the community, including the victim.

All defendants will receive a determination of bail eligibility. Unless the defendant is charged with a disqualifying offense, the process begins with an individualized assessment of release factors to determine whether a defendant is bailable. After considering these factors, the bail authority shall make a determination of the least restrictive necessary and available conditions to reasonably assure the purpose of bail, if any. The purpose of this determination is not to impose punishment. A defendant may not be eligible for bail following a detention hearing. “When the Commonwealth seeks to deny bail, the quality of its evidence must be such that it persuades the bail court that it is substantially more likely than not that the accused is nonbailable, which is just to say that the proof is evident or the presumption great.” *Commonwealth v. Talley*, 265 A.3d 485, 524-25 (Pa. 2021).

Rule 520.1. Purpose of Bail.

(a) *Purpose.* The purpose of bail is to release timely a defendant at the earliest stage with any conditions to reasonably assure:

(1) the defendant’s appearance for court; and

(2) the safety of the community, including the victim, from harm by the defendant.

(b) *Detention.* A defendant shall not be detained unless no available condition or combination of conditions can fulfill the purpose of bail.

(c) *Agreements.* A bail authority shall accept no agreement of the parties concerning bail conditions unless the bail authority is satisfied the agreement is consistent with the purpose of bail.

Comment:

Article I, § 14 of the Pennsylvania Constitution states: “All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.” *See also Commonwealth v. Talley*, 265 A.3d 485, 525 (Pa. 2021) (“[W]e hold that when the Commonwealth seeks to deny bail due to the alleged safety risk the accused poses to ‘any person and the community,’ those qualitative standards demand that the Commonwealth demonstrates that it is substantially more likely than not that (1) the accused will harm someone if he is released and (2) there is no condition of bail within the court’s power that reasonably can prevent the defendant from inflicting that harm.”).

A defendant charged with a capital offense or an offense having a maximum sentence of life imprisonment is not bailable regardless of any available condition. *See also* Rule 520.16.

Rule 520.2. Bail Determination Before Verdict.

(a) Bail before verdict shall be determined in all cases.

(b) A defendant may be admitted to bail on any day and at any time.

(c) Unless otherwise provided by rule, the initial determination of bail shall occur:

(1) At the preliminary arraignment when the bail authority does not temporarily detain the defendant pending a detention hearing pursuant to Rule 520.16; or

(2) At the preliminary hearing when a defendant does not receive a preliminary arraignment.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 520.

For the minor judiciary's authority to set bail, see the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1143(a)(1), and 1515(a)(4).

See Pa.R.J.C.P. 396, which provides that, at the conclusion of a transfer hearing, the juvenile court judge is to determine bail pursuant to these bail rules for a juvenile whose case is ordered transferred to criminal proceedings.

Rule 117(C) requires the president judge to ensure coverage is provided to satisfy the requirements of subdivision (b).

For the initial determination of bail otherwise provided by rule, see Rule 517 (Procedure in Court Cases When Warrant of Arrest is Executed Outside of Judicial District of Issuance).

For the release by the arresting officer of a defendant arrested without a warrant, see Pa.R.Crim.P. 519(B). A preliminary arraignment shall be afforded without unnecessary delay. *See* Pa.R.Crim.P. 519(A). It is best practice to hold the preliminary arraignment within 24 hours of arrest to minimize the period of detention before the initial determination of bail. *See also Commonwealth v. Yandamuri*, 159 A.3d 503, 529 (Pa. 2017) (recognizing abrogation of the bright-line rule of inadmissibility of statements made more than six hours after arrest in favor of a totality-of-the-circumstances approach, although "unnecessary delay between arrest and arraignment remains a factor to consider in the voluntariness analysis"); *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (defendant may not be detained without a judicial determination of probable cause no less than 48 hours after arrest).

Rule 520.3. Bail Determination After Finding of Guilt.

(a) *Before Sentencing.*

(1) *Capital and Life Imprisonment Cases.* When a defendant is found guilty of an offense, which is punishable by death or life imprisonment, the defendant shall be detained.

(2) *Other Cases.*

(i) The defendant shall have the same right to bail after verdict and before the imposition of sentence as the defendant had before verdict when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district cannot exceed three years.

(ii) Except as provided in subdivision (a)(1), when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district can exceed three years, the defendant shall have the same right to bail as before verdict unless the judge makes a finding that no condition of bail will reasonably assure the purpose of bail, as provided in Rule 520.1. The judge may revoke bail or detain the defendant based upon such a finding.

(b) *After Sentencing.*

(1) When the sentence imposed includes imprisonment of less than two years, the defendant shall have the same right to bail as before verdict, unless the judge, pursuant to subdivision (d), modifies the bail order.

(2) Except as provided in subdivision (a)(1), when the sentence imposed includes imprisonment of two years or more, the defendant shall not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

(3) When the defendant is released on bail after sentencing, the judge shall require as a condition of release that the defendant either file a post-sentence motion and perfect an appeal or, when no post-sentence motion is filed, perfect an appeal within the time permitted by law.

(c) *Reasons for Revoking Bail or Detention.* Whenever bail is revoked or the defendant detained under this rule, the judge shall state on the record the reasons for this decision.

(d) *Modification of Bail Order After Verdict or After Sentencing.*

(1) When a defendant is eligible for release on bail after verdict or after sentencing pursuant to this rule, the conditions of the existing bail order may be modified by a judge of the court of common pleas, upon the judge's own motion or upon motion of counsel for either party with notice to opposing counsel, in open court on the record when all parties are present.

(2) The decision whether to change the type of release on bail or what conditions of release to impose shall be based on the judge's evaluation of the information about the defendant as it relates to the release factors set forth in Rule 520.6. The judge shall also consider whether there is an increased likelihood of the defendant's fleeing the jurisdiction or whether the defendant is a danger to any other person or to the community.

(3) The judge may change the type of release on bail and conditions, as appropriate.

(e) *Municipal Court.* Bail after a finding of guilt in the Philadelphia Municipal Court shall be governed by the rules set forth in Chapter 10.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 521.

For post-sentence procedures generally, see Rules 704 and 720. For additional procedures in cases in which a sentence of death or life imprisonment has been imposed, see Rules 810 and 811. "Life imprisonment cases" include those cases where the defendant is subject to a potential sentence of life imprisonment due to prior convictions.

For purposes of this rule, "verdict" includes a plea of guilty or *nolo contendere* that is accepted by the judge.

Whenever the trial judge sets bail after sentencing pending appeal, subdivision (b)(3) requires that a condition of release be that the defendant perfect a timely appeal. However, the trial judge cannot, as part of that condition, require that the defendant perfect the appeal in less time than that allowed by law.

Unless bail is revoked, the bail bond is valid until full and final disposition of the case. *See* Rule 534. The Rule 534 Comment points out that the bail bond is valid through all avenues of direct appeal in the Pennsylvania courts, but not through any collateral attack.

Rule 520.4. Detention of Witnesses.

(a) *Timing and Application.* After a defendant has been arrested for any offense, upon application of the attorney for the Commonwealth or defense counsel, and subject to the provisions of this chapter, a court may determine bail for any material witness named in the application. The application shall be supported by an affidavit setting forth adequate cause for the court to conclude that the witness will fail to appear when required if not held in custody or released on bail. The application shall also identify the proceeding for which the witness's presence is required. If the court grants the application, then the court shall issue process to bring any named witnesses before it for the purpose of determining bail.

(b) *Detention.* If the material witness is unable to satisfy the conditions of release after having been given immediate and reasonable opportunity to do so, the court shall order the witness detained, provided that at any time thereafter and prior to the term of court for which the witness is being held, the court shall release the witness when the witness satisfies the conditions of release. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be preserved, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the witness's testimony can be preserved.

(c) *Further Application.* Upon application, a court may release a witness from detention with or without conditions or grant other appropriate relief.

(d) *Minors.* If process has been issued pursuant to subdivision (a) for a material witness who is under the age of 18 years, the procedures provided in Rule 151 shall apply.

(e) *Rescission and Release.* At the conclusion of the criminal proceeding for which process has been issued, any process for a witness to appear pursuant to subdivision (a) shall be rescinded. To eliminate unnecessary detention, the court must supervise the detention of any persons held as material witnesses. Any witness detained pursuant to subdivision (b) shall be released when the witness's presence is no longer necessary.

(f) *Status Conference.* The court shall conduct a status conference no less than every 10 days while the witness remains detained under this rule. The purpose of the status conference is to determine the necessity of continuing to detain the witness.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 522.

This rule does not permit a witness to be detained prior to the arrest of the defendant, since an arrest might never take place and the witness could be held indefinitely.

See Pa.R.Crim.P. 500 and 501 (Preservation of testimony).

Pursuant to subdivision (c), a witness may be released conditioned upon the witness' written agreement to appear as required. *See* Pa.R.Crim.P. 520.8.

This rule does not affect the compensation and expenses of witnesses under the Judicial Code, 42 Pa.C.S. § 5903, or the provisions of the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. *See* 42 Pa.C.S. §§ 5963(c) and 5964(b) relating to bail.

In determining bail for a material witness pursuant to this rule, the court should consider all available conditions pursuant to Rules 520.8—520.11. When a material witness' presence is required, the court should impose the least restrictive means of assuring the witness' presence.

Rule 520.5. Counsel.

(a) *Bail Determination.* A defendant may be represented by counsel at the initial bail determination.

(b) *Review of Conditions.* If a defendant remains in detention 48 hours following an initial bail determination, the defendant shall be eligible for the appointment of counsel regardless of the defendant's financial resources for the review of conditions.

(c) *Detention.* When a defendant is detained for detention hearing pursuant to Rule 520.16, the defendant shall be eligible for the appointment of counsel regardless of the defendant's financial resources for the detention hearing.

(d) *Limited Representation.* Counsel may represent a defendant for the limited purpose of the initial bail determination, review of conditions, or a detention hearing.

Comment:

A defendant may be represented at the initial bail determination. If a judicial district elects to have a representative from the Public Defender's Office at the preliminary arraignment, the bail authority shall appoint the Public Defender, regardless of the defendant's financial resources, to represent the defendant for the purpose of a bail determination, except when the defendant requests to proceed *pro se*, the defendant has private counsel, or the Public Defender asserts a conflict of interest.

In the absence of private counsel, counsel will be appointed to represent the defendant for the review of conditions or detention hearing. The process for identifying defendants remaining in detention and requiring the appointment of counsel is a matter of local practice, subject to the time requirement for condition review pursuant to Rules 520.15. For the responsibility of pretrial services for identifying such defendants, see Rule 520.18(f).

To permit prompt bail determinations, the appointment of counsel should not operate to delay review of conditions or a detention hearing.

For privately retained counsel, the extent of counsel's representation should be set forth in the entry of appearance. For appointed counsel, the extent of counsel's representation should set forth in the order of appointment or by local rule adopted pursuant to Rule 105 and Pa.R.J.A. 103(d).

Rule 520.6. Release Factors.

(a) *Factors.* In determining whether a defendant is bailable and what, if any, conditions to impose consistent

with Rule 520.1, the bail authority shall consider all available relevant information, including, but not limited to:

(1) Personal Information:

(i) the family ties of the defendant;

(ii) the defendant's employment status and history; and

(iii) the length of residence in the community.

(2) Current Charge:

(i) the nature and circumstances of the crime charged;

(ii) whether a firearm or other deadly weapon was involved;

(iii) the possibility and duration of statutorily mandated imprisonment;

(iv) whether the crime charged was committed against a victim with intent to hinder prosecution; and

(v) the victim's immediate risk of substantial physical harm.

(3) Prior Criminal History:

(i) record of convictions, relevant criminal history, and final civil protection orders against the defendant;

(ii) custody status at time of offense;

(iii) history of compliance with court-ordered probation, parole, and prior bail conditions; and

(iv) record of appearances at court proceedings or of flight to avoid prosecution or willful failure to appear at court proceedings.

(4) Pre-Trial Risk Assessment, if available.

(5) Whether the prosecution has provided notice seeking pretrial detention pursuant to Rule 520.16.

(b) *Non-Cooperation.* A defendant's decision neither to admit culpability nor to assist in an investigation shall not be a reason to impose additional or more restrictive conditions of bail on the defendant.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 523.

To the extent that a pre-trial risk assessment may reflect some of these factors, such as prior criminal history, the bail authority should not assign additional weight to those factors absent compelling reasons for doing so.

When deciding whether to release a defendant on bail and what conditions of release to impose, the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the defendant is a nonresident. Generally, the graver an offense involving danger to a person, including those allegedly committed with a firearm, the greater the potential risk to the community upon release. Further, the more severe a potential sentence, the greater the risk of non-appearance.

"Custody status" includes a defendant released on bail, probation, or parole. When a defendant who has been released on bail and awaiting trial is arrested on a second or subsequent charge, the bail authority may consider that factor in conjunction with other release criteria in determining bail for the new charge. For alleged technical violations of a condition of county probation or parole, see Rule 708.1.

"Civil protection orders" are orders issued pursuant to 23 Pa.C.S. § 6108 (Relief) and 42 Pa.C.S. § 62A07 (Relief).

The bail authority may weigh the evidence against the defendant insofar as probable cause exists to believe that the defendant committed the acts charged, but no farther regardless of the sufficiency of the evidence.

When the prosecution has provided notice seeking pretrial detention, a detention hearing may be scheduled. See Rule 520.16 for detention hearing.

Rule 520.7. Bail Determination.

Any bail conditions beyond release with general conditions shall be imposed only upon a finding that they are necessary to satisfy the purpose of bail as provided in Rule 520.1.

Comment:

The least restrictive bail determination is release subject to general conditions. Progressively stricter determinations include release on nominal bail with general conditions, release with non-monetary special conditions, and release with monetary conditions. The most restrictive determination is that the defendant is not eligible for bail and is detained.

In making a bail determination consistent with this rule, a bail authority should first determine if releasing the defendant subject to general conditions, *see* Pa.R.Crim.P. 520.8 (Determination: Release with General Conditions), satisfies the purpose of bail. If general conditions are insufficient, the bail authority should consider releasing the defendant subject to both general conditions and nominal bail. *See* Pa.R.Crim.P. 520.9 (Determination: Release on Nominal Bail with General Conditions). If this combination of conditions is insufficient to satisfy the purpose of bail, the bail authority should consider releasing the defendant subject to both general conditions and any non-monetary special conditions necessary to fulfill the purpose of bail. *See* Pa.R.Crim.P. 520.10 (Determination: Release with Non-Monetary Special Conditions). In imposing any non-monetary special conditions, the bail authority should only impose non-monetary special conditions that are individualized to the defendant. *See* Pa.R.Crim.P. 520.10(b). If releasing the defendant subject to general conditions and non-monetary special conditions will not satisfy the purpose of bail, the bail authority should then consider imposing a monetary condition. *See* Pa.R.Crim.P. 520.11 (Determination: Release with Monetary Conditions). Finally, if no available condition or combination of conditions other than detention will reasonably assure that a defendant's release is consistent with the purpose of bail, the defendant should be detained pursuant to Rule 520.16 (Detention).

Rule 520.8. Determination: Release with General Conditions.

(a) *General Conditions.* In every case in which a defendant is released on bail, the general conditions of the bail bond shall be that the defendant will:

(1) appear at all times required until full and final disposition of the case;

(2) obey all further orders of the bail authority;

(3) give written notice to those identified on the bail bond of any change of address within 48 hours of the date of the change;

(4) neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or

victims) or 18 Pa.C.S. § 4953 (relating to retaliation against witnesses or victims); and

(5) refrain from criminal activity.

(b) *Bond.* The bail authority shall set forth in the bail bond all conditions of release imposed pursuant to this rule.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 526.

All the conditions of the bail bond set forth in subdivision (a) must be imposed in every criminal case in which a defendant is released on bail. If a defendant fails to comply with any of the conditions of the bail bond in subdivision (a), the defendant's bail may be modified or revoked. For additional sanctions for failing to appear in a criminal case when required, see 18 Pa.C.S. § 5124.

Rule 520.9. Determination: Release on Nominal Bail with General Conditions.

A defendant may be released on a nominal bail and subject to general conditions upon the defendant's depositing $1.00 with the bail authority and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 524(C)(4).

Nominal bail may be used as an alternative when it is desirable to have a surety. It may be used when the bail authority believes the defendant poses a risk for non-appearance due to transience or a residence outside of Pennsylvania. The purpose of the surety is to facilitate interstate apprehension of any defendant who absconds by allowing the nominal surety the right to arrest the defendant without the necessity of extradition proceedings. *See, e.g., Frisbie v. Collins*, 342 U.S. 519 (1952). A bail agency may be the nominal bail surety, as well as private individuals or acceptable organizations. In all cases, the surety on nominal bail incurs no financial liability for the defendant's failure to appear for court.

Rule 520.10. Determination: Release with Non-Monetary Special Conditions.

(a) *Necessity.* When general conditions are insufficient, a defendant may be released subject to both general conditions and any non-monetary special conditions necessary to fulfill the purpose of bail as provided in Rule 520.1.

(b) *Special Conditions.* Non-monetary special conditions, individualized to the defendant, may include, but are not limited to, the following:

(1) remaining in the custody of a designated person;

(2) maintaining employment, or, if unemployed, actively seeking employment;

(3) maintaining or commencing an educational program;

(4) abiding by specified restrictions on personal associations, place of abode, or travel;

(5) reporting on a regular basis to a designated law enforcement agency, or other agency, or pretrial services program;

(6) complying with a specified curfew;

(7) refraining from possessing a firearm, destructive device, or other dangerous weapon;

(8) refraining from the use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription;

(9) submission to a medical, psychological, psychiatric, or substance use disorder assessment and comply with all treatment recommendations;

(10) compliance with any existing treatment plan or service plan;

(11) a protective order pursuant to 18 Pa.C.S. § 4954 when a potential risk of witness or victim intimidation is present;

(12) no contact by the defendant with the victim or any witness;

(13) refraining from entering the residence or household of the victim and the victim's place of employment when there is a potential risk of danger to the victim in a domestic violence case pursuant to 18 Pa.C.S. § 2711(c)(2);

(14) returning to custody of the person designated in subdivision (b)(1) for specified hours following release for employment, schooling, or other limited purposes;

(15) being placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device; or

(16) satisfying any other condition that is necessary to reasonably assure the purpose of bail, as provided in Rule 520.1.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 527.

The bail authority may determine that, in addition to general conditions, it is necessary to impose non-monetary special conditions on release to reasonably assure the safety of the community and the defendant's appearance. The special conditions should be tailored to the specific risks posed by the defendant's release. The bail authority should clearly state on the bail bond all special conditions of release in specific detail. The availability of pretrial services among judicial districts may vary some conditions.

The bail authority should consider any reasonable suggestions for non-monetary special conditions of release on bail in an effort to establish the most suitable and least restrictive conditions necessary for a particular defendant. It would be appropriate in some circumstances for the defendant and counsel to offer suggestions about types of conditions that would help the defendant appear and comply with the conditions of the bail bond.

The following are a few examples of conditions that might be imposed to address specific situations. In some circumstances, a combination of such conditions might also be considered. This is not intended to be an exhaustive list of appropriate conditions.

When the defendant poses a risk of non-appearance, the bail authority could require that the defendant report by phone or in person at specified times to pretrial services, or that the defendant be supervised by pretrial services. Pretrial services may maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court. It might also be helpful to require that the defendant maintain employment or continue an educational program.

When the defendant is known to have an alcohol or a drug problem, the bail authority could require the defendant to submit to drug or alcohol screening, avail to cessation or rehabilitative services as recommended by the screening, and refrain from the use of alcoholic beverages or illegal drugs.

When the defendant has a recent or substantial history of failing to comply with less restrictive conditions of the bail bond, the bail authority might limit travel, restrict the defendant to his or her residence or supervised housing, or place the defendant on electronic monitoring.

There may be cases when the relationship between the defendant and another person is such that the bail authority might require that the defendant refrain from contact with that other person.

When a case proceeds by summons, the issuing authority must require that the defendant submit to required administrative processing and identification procedures, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, which ordinarily occur following an arrest. Rule 510(C)(2) requires an order directing the defendant to be fingerprinted be issued with the summons. If the defendant has not completed fingerprinting by the date of the preliminary hearing, completion of these processing procedures must be made a condition of release.

Rule 520.11. Determination: Release with Monetary Conditions.

(a) *Necessity.* When general conditions and non-monetary special conditions or combination of conditions are insufficient, a bail authority may, in addition to general conditions and non-monetary special conditions or combination of conditions, impose a monetary condition on a defendant's release to satisfy the purpose of bail, as provided in Rule 520.1.

(b) *Securitization.* A monetary condition may be secured or unsecured.

(c) *Deposit.* The bail authority may require a monetary condition to be secured by either the entire amount or a deposit of a sum of money not to exceed 10% of the full amount of the monetary condition if the bail authority determines that such a deposit is sufficient to ensure the defendant's compliance with non-monetary conditions.

(d) *Amount.* The amount of security required for the monetary condition, whether the entire amount or a percentage, shall be reasonably attainable by the defendant.

(1) A financial disclosure form, verified by the defendant, setting forth a defendant's income, expenses, assets, and debts shall be completed whenever the imposition of a monetary condition is deemed necessary.

(2) The bail authority shall consider the information contained on the form when determining the amount of a monetary condition and the defendant's ability to satisfy that condition.

(e) *Source.* The bail authority may inquire as to the defendant's source of security for a monetary condition.

(f) *Risk.* The amount of a monetary condition shall be reasonably correlated with the defendant's risk.

(g) *Bail Schedule.* The use of a bail schedule is not permitted to determine the amount of a monetary bail condition. The determination shall be based upon the defendant's ability to pay.

(h) *Not in Lieu of Detention.* A secured monetary condition shall never be imposed for the purpose of detaining a defendant until trial.

(i) *Written Reason.* The bail authority shall indicate in writing the specific risk that the monetary bail condition is intended to mitigate.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 528.

The use of a monetary bail condition is permitted only when non-monetary conditions cannot reasonably assure a defendant's release consistent with the purpose of bail. A monetary condition may be used in conjunction with non-monetary special conditions. A monetary condition is intended to incentivize a defendant's willingness to comply with non-monetary conditions by subjecting the amount of the monetary condition to forfeiture. The strength of the incentive, as represented by the amount of a monetary condition, should bear a reasonable relationship with the defendant's risk, which is based, in part, on the severity of the charge. Whether a monetary condition is secured or unsecured is relevant to forfeiture, not incentive.

Release on an unsecured monetary condition requires the defendant's written agreement to be liable for a fixed sum of money if the defendant fails to comply with the non-monetary special conditions, as well as general conditions. No money or other form of security is required to be deposited for an unsecured monetary condition. Release may be revoked for a defendant who fails to satisfy a liability arising from non-compliance.

"Reasonably attainable" in subdivision (d) should include not only consideration of the amount of the security, but also include the timeliness in which the security can be attained by the defendant.

A monetary condition shall not be imposed on a defendant unable to satisfy the condition at any amount. *See* Pa. Const. art. 1, § 13 (excessive bail shall not be required). Under that circumstance, the defendant may be released with sufficient non-monetary special conditions or scheduled for a detention hearing.

When a defendant is charged with a violation of The Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-101 *et seq.*, the bail authority shall inquire as to the source of currency, bonds, realty, or other property used to secure the monetary condition. *See* 42 Pa.C.S. § 5761. Further, for any charge, when the surety is a third party, the security may only be forfeited for a failure of the defendant to appear at a scheduled court proceeding. *See* Rule 536(A)(2)(a). Third party sureties are not liable for a defendant's new criminal act or other violations of conditions.

For permitted forms of security and related procedures, see Rule 520.14.

Rule 520.12. Statement of Reasons.

Other than release with general conditions or a release on nominal bail, the bail authority shall provide a recorded or written contemporaneous statement of reasons for any bail determination.

Comment:

The bail authority should identify the specific factors and supporting information relied upon for the determination. This statement is intended to assist in expediting review, if required, and modification of the determination, if warranted. *See* Pa.R.Crim.P. 520.15 (Condition Review).

Rule 520.13. Bail Bond.

(a) *Written Agreement.* A bail bond is a document whereby the defendant agrees to comply with all the imposed conditions of the bail while at liberty after being released on bail.

(b) *Timing.* At the time the bail is set, the bail authority shall

(1) have the bail bond prepared; and

(2) sign the bail bond verifying the imposed conditions.

(c) *Conditions.* The bail bond shall set forth the determination of bail, including the general conditions set forth in Rule 520.8, any other conditions ordered by the bail authority, the consequences of failing to comply with all the conditions of the bail bond, and to whom the defendant shall provide written notice of any change of address as required by Rule 520.8(a)(3).

(d) *Defendant's Signature.* The defendant shall not be released until he or she signs the bail bond.

(e) *Other Signatures.* To be released, the defendant shall sign the bail bond. Sureties shall also sign the bond when a monetary condition has been imposed. The official who releases the defendant also shall sign the bail bond witnessing the defendant's signature.

(f) *Incarceration.* If the defendant is unwilling to agree to comply with all the imposed conditions of the bail at the time bail is set, then the bail authority shall incarcerate the defendant. The unexecuted bail bond and the other necessary paperwork shall accompany the defendant to the place of incarceration.

(g) *Recording.* After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 525.

Subdivision (g) requires the court official who accepts a deposit of bail and has the defendant sign the bail bond to include the original of the bail bond in the record of the case. *See* Rule 535(A) for the other contents of the record in the context of the bail deposit.

For some of the consequences when a defendant fails to appear or fails to comply as required, see the Crimes Code, 18 Pa.C.S. § 5124. *See also* Pa.R.Crim.P. 536.

Rule 520.14. Secured Monetary Conditions—Security; Recording; Liability.

(a) *Security.* One or a combination of the following forms of security shall be accepted to satisfy a monetary condition:

(1) Cash or when permitted by the local court a cash equivalent.

(2) Bearer bonds of the United States Government, of the Commonwealth of Pennsylvania, or of any political subdivision of the Commonwealth, in the full amount of the monetary condition, provided that the defendant or the surety files with the bearer bond a sworn schedule that shall verify the value and marketability of such bonds, and that shall be approved by the bail authority.

(3) Realty located anywhere within the Commonwealth, including realty of the defendant, as long as the actual net value is at least equal to the full amount of the monetary condition. The actual net value of the property may be established by considering, for example, the cost, encumbrances, and assessed value, or another valuation formula provided by statute, ordinance, or local rule of court. Realty held in joint tenancy or tenancy by the entirety may be accepted provided all joint tenants or tenants by the entirety execute the bond.

(4) Realty located anywhere outside of the Commonwealth but within the United States, provided that the person(s) posting such realty shall comply with all reasonable conditions designed to perfect the lien of the county in which the prosecution is pending.

(5) The surety bond of a professional bondsman licensed under the Judicial Code, 42 Pa.C.S. §§ 5741—5749, or of a surety company authorized to do business in the Commonwealth of Pennsylvania.

(b) *Recording.* The bail authority shall record on the bail bond the amount of the monetary condition imposed and the form of security that is posted by the defendant or by an individual acting on behalf of the defendant or acting as a surety for the defendant.

(c) *Liability of Depositor.* Except as limited in Rule 531, the defendant or another person may deposit the cash percentage of the bail. If the defendant posts the money, the defendant shall sign the bond, thereby becoming his or her own surety, and is liable for the full amount of bail if he or she fails to appear or to comply. When a person other than the defendant deposits the cash percentage of the bail, the clerk of courts or issuing authority shall explain and provide written notice to that person that:

(1) if the person agrees to act as a surety and signs the bail bond with the defendant, the person shall be liable for the full amount of bail if the defendant fails to appear; or

(2) if the person does not wish to be liable for the full amount of bail, the person shall be permitted to deposit the money for the defendant to post and will relinquish the right to make a subsequent claim for the return of the money pursuant to these rules. In this case, the defendant would be deemed the depositor, and only the defendant would sign the bond and be liable for the full amount of bail.

(3) Pursuant to Rule 535(E), if the bail was deposited by or on behalf of the defendant and the defendant is the named depositor, the amount otherwise returnable to the defendant may be used to pay and satisfy any outstanding restitution, fees, fines, and costs owed by the defendant as a result of a sentence imposed in the court case for which the deposit is being made.

Comment:

This rule was adopted in 20 ___ and is derived, in part, from prior Rule 528(D)—(F).

When the bail authority authorizes the deposit of a percentage of the cash bail, the defendant may satisfy the monetary condition by depositing, or having an individual acting as a surety on behalf of the defendant deposit, the full amount of the monetary condition. Additionally, there may be cases when a defendant does not have the cash to satisfy a monetary condition, but has some other form of security, such as realty. In such a case, the defendant must be permitted to execute a bail bond for the full amount of the monetary condition and deposit one of the forms or a combination of the forms set forth in paragraph (A) as security.

If a percentage of the cash bail is accepted pursuant to these rules, when the funds are returned at the conclusion of the defendant's bail period, the court or bail

agency may retain as a fee an amount reasonably related to the cost of administering the cash bail program. *See Schilb v. Kuebel*, 404 U.S. 357 (1971).

Pursuant to subdivision (c), written notice is required be given to the person posting the bail, especially a third party, of the possible consequences if the defendant receives a sentence that includes restitution, a fine, fees, and costs. *See also* Rule 535 for the procedures for retaining bail money for satisfaction of outstanding restitution, fines, fees, and costs.

The defendant must be permitted to substitute the form(s) of security deposited as provided in Rule 532.

The method of valuation when realty is offered to satisfy the monetary condition pursuant to subdivisions (a)(3) and (a)(4) is determined at the local level. If no satisfactory basis exists for valuing particular tracts of offered realty, especially tracts located in remote areas, acceptance of that realty is not required by this rule.

Rule 520.15. Condition Review.

If a defendant remains incarcerated after 48 hours following the initial bail determination because the defendant has not satisfied a bail condition, then a review of conditions shall be conducted by a judge of the court of common pleas or by a judge of the Philadelphia Municipal Court no longer than five days after the initial bail determination, subject to:

(a) The defendant shall be appointed counsel for the condition review.

(b) The judge shall reconsider whether the initially imposed condition is the least restrictive bail condition reasonably calculated to meet the purpose of bail, as provided in Rule 520.1.

(c) The defendant, defendant's counsel, and the Commonwealth may appear via audio-visual communication technology.

(d) The parties may present additional information to the judge for reconsideration of the initial determination.

(e) Upon review, a judge may modify the bail order establishing the initial bail determination.

Comment:

This rule is applicable to defendants who are able to be released subject to conditions. Condition review proceedings are intended to afford defendants detained due to an unsatisfied bail condition an expedited review of the initial bail determination. Nothing in this rule is intended to prevent a judicial district from conducting a review prior to the five-day threshold. Jail staff or pretrial services should identify defendants remaining in detention after the initial determination. While time is of the essence, the failure to conduct a review within the time specified in subdivision (a) shall not operate to release the defendant.

At a review of conditions, any information from any source that will aid the judge in conducting the review, including testimony from witnesses, may be presented.

Rule 520.12 requires the bail authority to provide "a recorded or written contemporaneous statement of reasons for any bail determination." This requirement also applies to a judge's determination pursuant to this rule, whether or not bail is modified.

See Rule 520.5 for right to counsel. The Commonwealth may, but is not required to, appear.

An unsatisfied bail condition does not mean that the condition is not reasonably calculated to meet the purpose of bail. This review is to consider whether a less restrictive condition may be available that will meet the purpose of bail.

Further modification of a bail order modified subject to this rule or modification of a bail order not subject to this rule shall proceed in accordance with Rule 520.17.

Rule 520.16. Detention.

(a) *Permitted Bases for Detention.* All defendants shall be released subject to conditions except when proof is evident and presumption is great of:

(1) *Offense.* Capital offenses or for offenses for which the maximum sentence is life imprisonment; or

(2) *No Condition.* No available condition or combination of conditions other than detention will reasonably assure that a defendant's release is consistent with the purpose of bail, as provided in Rule 520.1.

(b) *Offense Basis.*

(1) *Temporary Detention.* A defendant charged with a qualifying offense pursuant to subdivision (a)(1) shall be ordered temporarily detained at the defendant's first appearance until a detention hearing can be held before a judge of the court of common pleas or a judge of the Philadelphia Municipal Court.

(2) *Detention Hearing.* A detention hearing before a judge of the court of common pleas or a judge of the Philadelphia Municipal Court shall be scheduled to occur within 72 hours of the defendant's first appearance.

(c) *No Condition Basis.* At a defendant's first appearance, a bail authority may, *sua sponte*, and shall, when requested by the Commonwealth, inquire and determine whether no available condition or combination of conditions exist other than detention pursuant to subdivision (a)(2).

(1) *Bail Authority Notice.* A bail authority, possessing a reasonable belief that no available condition or combination of conditions may exist other than detention, shall give notice of such to the defendant and the prosecution at the time of the defendant's first appearance. Notice shall include the initial reason(s) for seeking detention.

(2) *Commonwealth Notice and Request.* The Commonwealth may give notice, either orally or in writing, no later than the time of the defendant's first appearance that it requests the bail authority inquire and determine that no available condition or combination of conditions may exist other than detention and shall set forth the basis for the request. Notice shall include the initial reason(s) for seeking detention.

(3) *Temporary Detention.* Upon such notice, the bail authority shall permit the defendant or defendant's counsel and the Commonwealth to address the court on the issue. If, after argument, upon a sufficient showing that no condition or combination of conditions will assure the purposes of bail, a bail authority shall order the temporary detention of the defendant until a detention hearing can be held.

(4) *Scheduling.* A detention hearing before a judge of the court of common pleas or a judge of the Philadelphia Municipal Court shall be scheduled to occur within 48 hours of the defendant's first appearance. The parties may seek a single three-day continuance of the hearing for cause or by agreement.

(5) *Defendant's Statements.* Any statement made by the defendant after notice is given by a bail authority or the Commonwealth for the purpose of securing release during the first appearance shall not be admissible against the defendant in any criminal proceeding or at trial except for the purpose of impeachment, nor shall any evidence derived from that statement be admissible.

(d) *Counsel.* The defendant shall be appointed counsel for the detention hearing.

(e) *No Default.* The failure to conduct a detention hearing in the time prescribed by this rule shall not result in the defendant's release.

(f) *Written Reason.* The bail authority shall indicate in writing the reason(s) for detaining a defendant following the hearing.

(g) *Subsequent Review.*

(1) *Offense Basis.* A defendant ordered detained on the basis of a charged offense following a detention hearing may seek review of that order pursuant to Pa.R.A.P. 1762.

(2) *No Condition Basis.* A defendant ordered detained on the basis of no available condition following a detention hearing may seek modification of the order pursuant to Rule 520.17(c) by motion to a judge of the court of common pleas.

Comment:

For permitted bases of detention, see Pa. Const. art. 1, § 14. Detention may also subsequently be sought through a modification of the bail order pursuant to Rule 520.17.

The temporary detention permitted by subdivisions (b) or (c) is to allow the scheduling of a detention hearing, appointment of counsel for the defendant, and the consultation and preparation of the defendant and defendant's counsel. Nothing in this rule is intended to delay the issuing authority from addressing other matters scheduled to occur at a defendant's first appearance. *See generally County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (requiring probable cause determination for detention within 48 hours of arrest); Pa.R.Crim.P. 540(E) (requiring determination of probable cause when defendant is arrested without a warrant; otherwise, defendant shall not be detained).

Murder of the first or second degree, 18 Pa.C.S. § 2502(a)-(b), murder of an unborn child of the first or second degree, 18 Pa.C.S. § 2604(a)-(b), and murder of a law enforcement officer of the first or second degree, 18 Pa.C.S. § 2507(a)-(b), are offenses subject to subdivision (a)(1). *See* 18 Pa.C.S. §§ 1102(a)-(b) & 1102.1(a), (c). Given the gravity of the underlying charges and potential for life imprisonment, the defendant's initial bail determination is to be made by a judge of the court of common pleas. *See also* 42 Pa.C.S. § 1515(a)(4) (requiring bail determination for certain offenses, including murder, to be performed by a judge of the court of common pleas).

Regarding subdivision (c), "when the Commonwealth seeks to deny bail due to the alleged safety risk the accused poses to 'any person and the community,' those qualitative standards demand that the Commonwealth demonstrates that it is substantially more likely than not that (1) the accused will harm someone if he is released and (2) there is no condition of bail within the court's power that reasonably can prevent the defendant from inflicting that harm." *Commonwealth v. Talley*, 265 A.3d 485, 525 (Pa. 2021). More generally, "[w]hen the Commonwealth seeks to deny bail, the quality of the evidence must be such that it persuades the bail court that it is substantially more likely than not that the accused is nonbailable[.]" *Id.* 524-25.

Rule 520.17. Modification of Bail Order Prior to Verdict.

(a) *Permitted Modification.* A bail order may be modified at any time before the preliminary hearing by:

(1) The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority *sua sponte*, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard; or

(2) A bail authority sitting by designation and pursuant to Rule 520.15.

(b) *Issuing Authority.* A bail order may be modified by an issuing authority at the preliminary hearing.

(c) *Judge.* The existing bail order may be modified by a judge of the court of common pleas:

(1) at any time prior to verdict upon motion of counsel for either party with notice to opposing counsel and after a hearing on the motion; or

(2) at trial or at a pretrial hearing in open court on the record when all parties are present.

(d) *Further Modification.* Once bail has been set or modified by a judge of the court of common pleas, it shall not be modified except:

(1) by a judge of a court of superior jurisdiction, or

(2) by the same judge or by another judge of the court of common pleas either at trial or after notice to the parties and a hearing.

(e) *Explanation.* When bail is modified pursuant to this rule, the modification shall be explained to the defendant and stated in writing or on the record by the issuing authority or the judge.

Comment:

This rule is derived, in part, from prior Rule 529.

In making a decision whether to modify a bail order, the issuing authority or judge should evaluate the information about the defendant as it relates to the bail factors and conditions.

In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas judge may under this rule. *See* Pa.R.Crim.P. 1011.

Once bail has been modified by a common pleas judge, only the common pleas judge subsequently may modify bail, even in cases that are pending before a magisterial district judge. *See* Pa.R.Crim.P. 543 and 536.

Pursuant to this rule, the motion, notice, and hearing requirements in subdivisions (c) and (d) must be followed in all cases before a common pleas judge may modify a bail order unless the modification is made on the record in open court when all parties are present either at a pretrial hearing, such as a suppression hearing, or during trial.

See Pa.R.A.P. 1610 for the procedures to obtain appellate court review of an order of a judge of the court of common pleas granting or denying release or modifying the conditions of release.

Rule 520.18. Responsibilities of Pretrial Services.

A president judge may establish pretrial services, and subject to the supervision of the president judge or designee, such services shall include one or more of the following:

(a) Advising the president judge on the feasibility of adopting and maintaining a validated risk assessment tool and recommendation matrix.

(b) Preparing and disseminating pretrial risk assessments, if adopted.

(c) Reminding every defendant on release at least once of an upcoming court appearance within 48 hours of the scheduled appearance.

(d) Establishing capacity for telephonic and in-person reporting of defendants on release when reporting is a condition of release.

(e) Identifying and referring defendants with mental health and alcohol/substance abuse issues posing an immediate risk to the defendant for appropriate services.

(f) Identifying, monitoring, and reporting any defendants remaining in detention 48 hours after the initial bail determination.

Comment:

The provision of pretrial services is a best practice, but not a requirement. While limitations may be placed on the range of available pretrial services due to resource constraints, this rule imposes minimum responsibilities for the provision of those services.

In subdivision (c), reminders may include telephone calls, email, or text messaging. Depending on the method of communication, additional contact information may need to be collected at the time of the initial bail determination.

Providers of pretrial services should be encouraged to affiliate with a professional organization such as the Pennsylvania Pretrial Services Association to exchange information, participate in educational programs, and share best practices.

Rule 520.19. Pretrial Risk Assessment Tool Parameters.

A president judge may authorize the adoption and use of a pretrial risk assessment tool by local rule, subject to these parameters:

(a) When a pretrial risk assessment tool is used, the pretrial risk assessment shall be conducted prior to the preliminary arraignment or, when a preliminary arraignment is not held, the preliminary hearing.

(b) At a minimum, the pretrial risk assessment tool shall determine a risk of failure to appear and new criminal activity to a reasonable degree of statistical certainty.

(c) The pretrial risk assessment tool shall be statistically validated prior to adoption and at an established interval thereafter. Validation reports, as well as the data upon which the report is based, including, but not limited to, sufficient data to permit evaluation of the tool across racial and gender groups, shall be made public.

(d) A report of aggregate outcomes of pretrial risk shall be made public at least annually following adoption of a pretrial risk assessment tool.

(e) The person, department, or agency responsible for completing the assessment shall be designated by local order or rule.

(f) The bail authority, defendant, defendant's counsel if known, and the Commonwealth shall receive the pretrial risk assessment report and bail recommendation. Reports for individual defendants shall not be publically accessible.

(g) A bail recommendation based upon a pretrial risk assessment tool shall be clearly marked as advisory of release and bail conditions.

(h) A bail recommendation based upon a pretrial risk assessment tool shall not be the sole determinate for making a bail determination.

Comment:

For local procedural rulemaking, see Rule 105 and Pa.R.J.A. 103(d).

This rule is not intended to prohibit the use of risk assessment tools after a defendant's preliminary arraignment or preliminary hearing. Nor is this rule intended to prohibit the defendant or the Commonwealth from asking for a reassessment on a motion to modify bail.

Pursuant to subdivision (b), a judicial district is not restricted in the use of a pretrial risk assessment for only determining a risk of failure to appear and new criminal activity. A judicial district may also use a pretrial risk assessment tool to determine the risk of domestic violence and new violent criminal activity, provided the tool satisfies the other parameters set forth in this rule.

Prior to implementation of a pretrial risk assessment tool, the judicial district should establish a baseline for the rate of pretrial failure in the category of nonappearance and new criminal activity. This baseline then can be compared to the incidence of pretrial failure after implementation. The requirement of subdivision (d) is intended to report annually the rate of pretrial failure. Such reports can be helpful in determining whether the use of a pretrial risk assessment tool has affected the historical rate of pretrial failure.

Reports generated by pretrial risk assessment tools may contain confidential information about a defendant that is necessary for the bail authority to make an informed bail determination. Pursuant to subdivision (f), those reports are available to the parties, but not publically accessible. However, the recommended bail determination and any conditions based upon the report are publically accessible, provided the recommendation is separate from the report.

As set forth in subdivision (g), a bail recommendation based upon a pretrial risk assessment tool is advisory. Per subdivision (h), the recommendation is intended to inform the bail authority, not dictate an outcome.

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

(*Editor's Note*: The following rule is rescinded, amended and renumbered as Rule 708.2.)

Rule 708. **[Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition]** **[Rescinded and Renumbered]**.

[(A) A written request for revocation shall be filed with the clerk of courts.

(B) Whenever a defendant has been sentenced to probation or intermediate punishment, or placed on parole, the judge shall not revoke such probation, intermediate punishment, or parole as allowed by law unless there has been:

(1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and

(2) a finding of record that the defendant violated a condition of probation, intermediate punishment, or parole.

(C) Before the imposition of sentence,

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

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

(D) Sentencing Procedures

(1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.

(2) The judge shall state on the record the reasons for the sentence imposed.

(3) The judge shall advise the defendant on the record:

(a) of the right to file a motion to modify sentence and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal; and

(b) of the rights, if the defendant is indigent, to proceed in forma pauperis and to proceed with assigned counsel as provided in Rule 122.

(4) The judge shall require that a record of the sentencing proceeding be made and preserved so that it can be transcribed as needed. The record shall include:

(a) the record of any stipulation made at a presentence conference; and

(b) a verbatim account of the entire sentencing proceeding.

(E) Motion to Modify Sentence

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

Comment

This rule addresses *Gagnon* II revocation hearings only, and not the procedures for determining probable cause (Gagnon I). *See Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

Paragraph (A) requires that the *Gagnon* II proceeding be initiated by a written request for revocation filed with the clerk of courts.

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

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

This rule was amended in 1996 to include sentences of intermediate punishment. *See* 42 Pa.C.S. §§ 9763 and 9773. Rules 704, 720, and 721 do not apply to revocation cases.

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

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

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

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

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

Official Note

Former Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992; amended September 26, 1996, effective January 1, 1997; Comment revised August 22, 1997, effective January 1, 1998; renumbered Rule 708 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; amended March 15, 2013, effective May 1, 2013.

***Committee Explanatory Reports*:**

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Final Report explaining the March 15, 2013 amendments to paragraph (C) concerning multiple guilty pleas and the Comment concerning the Crime Victims Act published at 43 Pa.B. 1705 (March 30, 2013).]

The following text is entirely new.

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

Rule 708.1. Violation of Probation or Parole: Notice, Detainer, *Gagnon* I Hearing, Disposition, and Swift Sanction Program.

(a) *Technical Violation.* Upon belief that the defendant has violated a technical condition of probation or parole, the authority supervising the defendant may:

(1) serve a written notice upon the defendant containing a time and location for the defendant's appearance before the supervising judge for a revocation hearing under Rule 708.2;

(2) arrest the defendant in those judicial districts that have established a program pursuant to 42 Pa.C.S. § 9771.1; or

(3) lodge a detainer subject to subdivision (c).

(b) *New Criminal Charge.* Following institution of a new criminal charge against the defendant, the authority supervising the defendant may:

(1) serve written notice for a hearing pursuant to subdivision (a)(1); or

(2) lodge a detainer subject to subdivision (c) if:

(i) the defendant requests; or

(ii) the defendant is not detained on the new criminal charge pursuant to Rule 520.16; and

(iii) the supervising authority believes the defendant has committed a technical violation beyond the fact of the new criminal charge.

(c) *Detainer.* Unless a defendant requests, a detainer shall not be lodged unless the supervising authority believes the alleged conduct resulting in the technical violation creates an ongoing risk to the public's safety, including the victim, or of non-appearance at the revocation hearing. In all other cases, the supervising authority shall serve written notice for a hearing pursuant to subdivision (a)(1).

(d) *Gagnon I Hearing.* Unless a defendant has requested a detainer pursuant to subdivision (b)(2)(i), a defendant subject to a detainer for a technical violation pursuant to subdivision (a)(3) or (b)(2) shall be brought before the sentencing judge or other designated judge or authority no later than five days after being detained in the county issuing the detainer for a hearing to determine whether probable cause exists to believe that a violation of a specific condition has been committed and if the defendant can be released on any available condition. If hearing is not held within this time period, the detainer shall expire by operation of law.

(e) *Disposition.* Upon a judicial finding of the existence of such probable cause under subdivision (d), the authority supervising the defendant may file a request to revoke probation or parole pursuant to Rule 708.2(A).

(f) *Swift Sanction Program.* A defendant arrested pursuant to subdivision (a)(2) may proceed in accordance with 42 Pa.C.S. § 9771.1 and local rule.

Comment:

This rule addresses the lodging and review of detainers, and the "*Gagnon* I" procedures for determining probable cause, see *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) and *Morrissey v. Brewer*, 408 U.S. 471 (1972).

Nothing in this rule is intended to prohibit a defendant from withdrawing a request for a detainer to be issued.

Factors when evaluating risk pursuant to subdivision (c) include, but are not limited to, the seriousness of the alleged violation, such as a new criminal charge involving the use of a weapon or physical assault, and the defendant's compliance history while under supervision, including reporting.

At the hearing pursuant to subdivision (d), if probable cause exists, the issue is not whether the defendant should be released on the new charge—that is determined by the bail authority. Rather, the question is whether the defendant should continue to be detained, consistent with subdivision (c), until such time as a revocation hearing can be conducted.

(*Editor's Note*: Rule 708 as printed in 234 Pa. Code reads "Official Note" rather than "Note.")

Rule 708**.2**. Violation of Probation**[, Intermediate Punishment,]** or Parole: ***Gagnon* II** Hearing and Disposition.

[(A)] **(a) *Revocation Request.*** A written request for revocation shall be filed with the clerk of courts.

[(B)] **(b) *Record Hearing.*** Whenever a defendant has been sentenced to probation or placed on parole, the judge shall not revoke such probation or parole as allowed by law unless there has been:

(1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and

(2) a finding of record that the defendant violated a condition of probation or parole.

[(C)] **(c) *Plea.*** Before the imposition of sentence,

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

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

[(D)] **(d)** *Sentencing Procedures*.

(1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement **[in]** **on** his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.

(2) The judge shall state on the record the reasons for the sentence imposed.

(3) The judge shall advise the defendant on the record:

[(a)] **(i)** of the right to file a motion to modify sentence and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal; and

[(b)] **(ii)** of the rights, if the defendant is indigent**[, to proceed *in forma pauperis* and]** to proceed with assigned counsel as provided in Rule 122 **Appointment of Counsel)**.

(4) The judge shall require that a record of the sentencing proceeding be made and preserved so that it can be transcribed as needed. The record shall include:

[(a)] **(i)** the record of any stipulation made at a pre-sentence conference; and

[(b)] **(ii)** a verbatim account of the entire sentencing proceeding.

[(E)] **(e)** *Motion to Modify Sentence.* motion to modify a sentence imposed after a revocation shall be filed within **[10]** **ten** days of the date of imposition. The filing of a motion to modify sentence will not toll the 30-day appeal period.

Comment:

This rule addresses *Gagnon* II revocation hearings **[only, and not the procedures for determining probable cause (*Gagnon* I)]**. *See Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

[Paragraph (A)] **Subdivision (a)** requires that the *Gagnon* II proceeding be initiated by a written request for revocation filed with the clerk of courts.

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

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole but applies only to the defendants who can be paroled by a judge. *See* **[61 P.S. § 314]** **42 Pa.C.S. § 9775 (Parole without board supervision)**. *See also Georgevich v. Court of Common Pleas of Allegheny County*, **[510 Pa. 285,]** 507 A.2d 812 (**Pa.** 1986).

[This rule was amended in 1996 to include sentences of intermediate punishment. *See* 42 Pa.C.S. §§ 9763 and 9773.] Rules 704, 720, and 721 do not apply to revocation cases.

The objective of the procedures enumerated in **[paragraph (C)]** **subdivision (c)** is to enable the court to sentence the defendant on all outstanding charges within the jurisdiction of the sentencing court at one time. *See* **[Rule]** **Pa.R.Crim.P.** 701.

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

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

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

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

[*Note*: Former Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment revised November 1, 1991, effective January 1, 1992; amended

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SUPREME COURT OF PENNSYLVANIA CRIMINAL PROCEDURAL RULES COMMITTEE

REPUBLICATION REPORT

Proposed Amendment of Pa.R.Crim.P. 122; Rescission of Pa.R.Crim.P. 520—529 and Replacement with Pa.R.Crim.P. 520.1—520.19; Adoption of Pa.R.Crim.P. 708.1, and Renumbering and Amendment of Pa.R.Crim.P. 708.

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court a set of statewide procedural rules governing bail proceedings and technical violations of county probation and parole.

Beginning in 2018, a workgroup was formed to review criminal pretrial detention practice in Pennsylvania. The workgroup identified the goal of the pretrial process as detaining the least number of people—through timely release at the earliest stage of the proceedings—as is necessary to reasonably ensure both the safety of the community and that defendants appear for court.

A set of proposed rules developed by the workgroup was submitted to the Criminal Procedural Rules Committee for consideration, and, after some revisions, those rules were published for comment. *See* 52 Pa.B. 205 (January 8, 2022). The Committee received 74 responses, both from organizations and individuals. With the benefit of those comments, the Committee is proposing a number of revisions. While only rules that have been revised from the prior publication are discussed below, all of the rules comprising the January 8, 2022, proposal, except for Rule 1003, are being republished with this report.[1]

[1] Stylistic amendments have also been made to conform to the recently adopted Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

The Committee invites all comments, concerns, and suggestions.

Proposal Wide Revisions

Numerous commenters disapproved of the purpose of bail including reasonably assuring "the protection of the defendant from immediate risk of substantial physical self-harm" and reasonably assuring "the integrity of the judicial system." See Proposed Rule 502.1(A)(3) and (A)(4) as previously published. As noted by the commenters, neither is cited as a purpose of bail in *Commonwealth v. Talley*, 265 A.3d 485 (Pa. 2021) or in Article I, § 14 of the Pennsylvania Constitution. Moreover, incarcerating a defendant due to a risk of self-harm may violate the Mental Health Procedures Act. *See* 50 P.S. §§ 7301 and 7302. Consequently, the Committee has removed from the Introduction and from Rules 520.1, 520.3, 520.6, 520.10, and 708.1, and the accompanying commentary, any reference to either protecting the defendant from self-harm or assuring the integrity of the judicial system. The Committee has also removed "a likelihood of the destruction of evidence" as a release factor from Rule 520.6 as also unrelated to the purpose of bail.

Part C: *Bail—Introduction*

The Committee revised the Introduction to cite *Commonwealth v. Talley*, 265 A.3d 485 (Pa. 2021), which was decided after the proposed new rules and amendments were originally drafted. The following quote from *Talley* has been included in to the Introduction: "When the Commonwealth seeks to deny bail, the quality of its evidence must be such that it persuades the bail court that it is substantially more likely than not that the accused is nonbailable, which is just to say that the proof is evident or the presumption great." The Committee concluded that a seminal decision such as *Talley* should be cited as earlier as possible in the rules governing bail.

Rule 520.1. Purpose of Bail

The Committee has revised the Comment to this rule to cite *Talley* at the conclusion of the first paragraph of the Comment. As the Comment quotes Article I, § 14 of the Pennsylvania Constitution, which includes the standard "the proof is evident or presumption great," reference to *Talley* will provide appropriate guidance to the reader regarding this longstanding standard. *See* Constitution of Pennsylvania, September 28, 1776, Plan or Frame of Government for the Commonwealth or State of Pennsylvania, Section 28 ("All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or presumption great.").

Rule 520.2. Bail Determination Before Verdict

A commenter suggested amending subdivision (c)(1) of this rule to read: "At the preliminary arraignment when the bail authority does not temporarily detain the defendant pending a detention hearing. . ." According to the commenter, denoting a detention ordered at a preliminary arraignment as "temporary" comports with the distinction between a "temporary detention" and "detention," as those terms are used in Proposed Rule 520.16 (Detention). The Committee agreed to the clarification, and subdivision (c)(1) has been revised.

Rule 520.4. Detention of Witnesses

To help prevent a witness from being unnecessarily detained, a subdivision (f) has been added to this rule: "(f) Status Conference. The court shall conduct a status conference no less than every 10 days while the witness remains detained under this rule. The purpose of the status conference is to determine the necessity of continu-

ing to detain the witness." Requiring a status conference every 10 days will also help avoid a witness becoming "lost," *i.e.*, mistakenly detained beyond any need for their testimony, while also motivating the preservation of the witness's testimony when possible.

Rule 520.6. Release Factors

To be more consistent with an individualized approach to determining bail, a commenter suggested subdivision (a)(2) (Personal Information) should instead be subdivision (a)(1). The Committee agreed. The subdivisions have been reordered as follows: (a)(1) Personal Information, (a)(2) Current Charge, and (a)(3) Prior Criminal History.

Subdivision (A)(1)(e) of this rule as previously published has been removed. That subdivision read: "likelihood of witness intimidation or destruction of evidence by the defendant." The Committee concluded that witness intimidation was encompassed by the safety of the community consideration, *see* Rule 520.1(a)(2), and that preventing destruction of evidence was not a proper purpose of bail.

A commenter recommended that the rule retain "employment history," *see* Pa.R.Crim.P. 523(A)(2), as a factor. As previously published, Proposed Rule 520.6(A)(2)(b), now subdivision (a)(1)(ii), would require the bail authority to consider the defendant's "employment." Consideration of a defendant's employment history was not retained over concern that a defendant's unemployment is often involuntary and, therefore, should not be weighed against the defendant. However, the Committee recognizes that employment history can give a fuller picture of a defendant for a bail authority to consider. For example, a defendant may be currently unemployed after having worked for the same employer for 15 years. Additionally, a potential unintended consequence of the previously proposed change—removing "history"—could be that judges will interpret the amendment as indicating that employment history should no longer be considered. Thus, the Committee has revised subdivision (a)(1)(ii) to include "status and history."

A commenter expressed concern about subdivision (a)(3)(i), which replaced "prior criminal record," which is currently found in Pa.R.Crim.P. 523(A)(8), with "record of convictions." Limiting subdivision (a)(3)(i) of the proposed rule to convictions avoids potential disparities that might result from the inclusion of arrests, which often reflect how communities are policed rather than differences in criminal involvement. A compromise considered by the Committee was to require the bail authority to consider convictions while leaving consideration of a defendant's criminal history discretionary. Whether the number of times a defendant has been arrested is indicative of a risk of future arrest or flight was also debated. As a middle ground, the Committee has revised subdivision (a)(3)(i) to include "relevant criminal history." Subdivision (a)(3)(i) has also been revised to include "final civil protection orders against the defendant," which could be particularly relevant in domestic violence cases. In full, the subdivision now reads: "record of convictions, relevant criminal history, and final civil protection orders against the defendant." A corollary amendment to the Comment advises that civil protection orders are protection from abuse orders, 23 Pa.C.S. § 6108, and protection of victims of sexual violence and intimidation orders, 42 Pa.C.S. § 62A07.

Rule 520.7. Bail Determination

A commenter suggested rewriting this rule to read: "The determination, including any special conditions, shall be imposed by the bail authority following a finding that they are needed to satisfy the purpose of bail." A concern was also raised over the difficulty of defining "least restrictive." That phrase, as previously proposed, was intended to address the practice of "over-conditioning." To provide clarification, it was suggested that the Comment should explain the required progression of bail determinations as reflected in Proposed Rules 520.10(a) and 520.11(a) and in the Comment to this rule a previously published.

While not choosing to adopt the language suggested, the Committee recognizes the concern raised and has revised the rule to read: "Any bail conditions beyond release with general conditions shall be imposed only upon a finding that they are necessary to satisfy the purpose of bail as provided in Rule 520.1." The rule has also been retitled "Bail Determination," and the Comment has been revised to provide a detailed description of the bail determination process.

Rule 520.8. Determination: Release with General Conditions

As previously published, subdivision (a)(3) of Proposed Rule 520.8 would require a defendant to give notice to the District Attorney of any address change. This subdivision was borrowed from Pa.R.Crim.P. 526(A)(3). A commenter would remove this requirement, noting that a defendant should not have to provide any statement to the attorney for the Commonwealth. A further suggestion was made to move the notification requirement to subdivision (b) (Bond).

Recognizing the inappropriateness of requiring a defendant to contact the attorney for the Commonwealth, the Committee has revised subdivision (a)(3) to inform a defendant that they are required to provide notice to "those identified on the bail bond." Subdivision (c) of Proposed Rule 520.13 (Bail Bond) has been revised to require the bail bond to identify those to whom the defendant must provide written notice of any change of address as now required by this rule. This generality allows each county freedom to designate to whom notification must be provided.

Rule 520.10. Determination: Release with Non-Monetary Special Conditions

"When the proof is evident and the presumption is great" has been removed from this rule as inconsistent with *Talley. See Talley*, 265 A.2d at 525 ("The 'proof is evident or presumption great' standard does not govern a bail court's discretion in setting the amount of bail."). After concluding that the above language should be removed from subdivision (a), the Committee rewrote subdivision (a) to provide:

> When general conditions are insufficient, a defendant may be released subject to both general conditions and any non-monetary special conditions necessary to fulfill the purpose of bail as provided in Rule 520.1.

Thus, rather than repeating the purpose of bail in this subdivision, the subdivision simply refers the reader to Rule 520.1.

A commenter advised that "drug or alcohol dependency assessment" in subdivision (b)(9) should be replaced with either "substance use disorder assessment" or "substance abuse assessment" to reflect current usage. The Committee agreed and opted for the former.

Another commenter recommended amending this rule to remind the bail authority that conditions need to be tailored to the particular defendant. In response, the

Committee has revised subdivision (b) to read: "Non-monetary special conditions, individualized to the defendant, may include, but are not limited to, the following[.]"

Lastly, a commenter suggested including "witness" in subdivision (b)(12), which, as originally proposed, read: "no contact by the defendant with the victim." The Committee agreed. This subdivision has been revised to conclude, "or any witness."

Rule 520.11. Determination: Release with Monetary Conditions

Uncertainty over the meaning of "verified" as used in subdivision (d)(1) was expressed by a commenter. The commenter questioned whether verification of the financial disclosure form required an independent third-party verification of facts or just a statement offered under penalty of unsworn falsification, *see* 18 Pa.C.S. § 4904 (Unsworn falsification to authorities), or something else. To clarify who is verifying the information on the form, the Committee has revised this subdivision to begin: "A financial disclosure form, verified by the defendant. . ."

As previously proposed, subdivision (h) read: "A secured monetary condition shall never be imposed for the sole purpose of detaining a defendant until trial." The Committee has chosen to revise this subdivision to omit "sole." Modifying "purpose" by "sole" implied that detention may be one of several reasons for imposing a secure monetary condition, so long as it is not the only reason. In the Committee's view, detention is not a proper purpose, whether the only purpose or one among many, of a secured monetary condition.

According to a commenter, the last sentence of the penultimate paragraph of the Comment as previously published conflicts with current law. The contested commentary states: "a secured monetary condition should not be imposed to mitigate any other risk other than a failure to appear." This commenter read the above as reducing the purpose of bail to one purpose, ensuring the defendant's appearance. However, the above sentence begins with the clarification: "unless a defendant is the depositor." Thus, the limitation expressed only applies when the defendant is *not* the depositor. Moreover, the penultimate sentence of that paragraph clarifies that "[t]hird part[y] sureties are not liable for a defendant's new criminal act or other violations of conditions." In other words, a third-party surety's obligation is to protect against non-appearance. *See* 42 Pa.C.S. § 5747.1(b)(6) ("No third-party surety shall be responsible to render payment on a forfeited undertaking if the revocation of bail is sought for failure of the defendant to comply with the conditions of the defendant's release other than appearance."). Nonetheless, to avoid any potential confusion, the last sentence of the penultimate paragraph of the Comment, "Therefore, unless a defendant is the depositor, a secured monetary condition should not be imposed to mitigate any other risk other than a failure to appear," has been removed. That paragraph now concludes: "Third party sureties are not liable for a defendant's new criminal act or other violations of conditions."

Several commenters suggested that subdivision (a) should refer to the imposition of general conditions, and the Committee agreed. Accordingly, subdivision (a) has been revised to read:

> When general conditions and non-monetary special conditions or combination of conditions are insufficient, a bail authority may, in addition to general conditions and non-monetary special conditions or combination of conditions, impose a monetary condition on a defendant's release to satisfy the purpose of bail, as provided in Rule 520.1.

Additionally, as seen above, "non-monetary special conditions" would be replaced with "non-monetary special conditions or combination of conditions."

Rule 520.13. Bail Bond

As noted previously, subdivision (c) of this rule has been revised to require the bail bond to identify those to whom the defendant must provide written notice of any change of address as required by Rule 520.8(a)(3).

To avoid confusion with "detention" as provided for in Rule 520.16, see below, subdivision (f) of this rule has been revised by replacing "detention" with "incarceration" and "detain" with "incarcerate."

Rule 520.15. Condition Review

Some commenters noted that increasing the time between the initial bail determination and a review hearing pursuant to this rule might ease the burden on county resources and result in more conditions being satisfied and more defendants being released without the need for a hearing. It was suggested that expanding the time beyond 72 hours would allow counties to designate a day of the week to conduct all review hearings. Conversely, any timeframe shorter than a week would likely result in review hearings being held daily. The Committee is now proposing that review hearings be held within five days of the initial determination. This timeframe would permit counties to conduct such hearings once a week and provide adequate time for victims to arrange to be present at the review hearing. *See* 18 P.S. § 11.201(2.1)(iii) (providing victims with the right to offer comment regarding a defendant's bail conditions at any proceeding where bail conditions may be modified). The Committee has also removed the language regarding the exclusion of non-business days to encourage counties to conduct hearings prior to the expiration of five days rather than after the expiration of five days when the fifth day falls on a non-business day. (For example, if hearings are regularly scheduled for Friday, but Friday would be the fourth day after a defendant's initial bail determination, that defendant should have his or her hearing on the fourth day rather than waiting an additional week.)

A commenter asked whether a condition review hearing would accommodate witnesses and whether it would be of record. The uncertainty likely resulted from the use of the term "information", *see* Proposed Rule 520.15(d), rather than "evidence." The Committee has revised the Comment to explain: "At a review of conditions, any information from any source that will aid the judge in conducting the review, including testimony from witnesses, may be presented."

The use of "detained" in this rule was questioned by some commenters. It was suggested that the use of "detained" should be limited to Proposed Rule 520.16 (Detention). The Committee agreed. "Detained" has been replaced with "incarcerated" in this rule. This revision is also consistent with the revisions made to Proposed Rule 520.13 discussed above.

A commenter suggested this rule should make clear that a reviewing judge must provide a written or recorded statement of reasons for any determination made pursuant to this rule. In response, the Committee has revised the Comment to instruct the reader that: "Rule 520.12 requires the bail authority to provide 'a recorded or written contemporaneous statement of reasons for any

bail determination.' This requirement also applies to a judge's determination pursuant to this rule, whether or not bail is modified."

The Committee has also revised this rule to require a review of conditions to be conducted by a judge of the court of common pleas or by a judge of the Philadelphia Municipal Court. As previously proposed, a review of conditions would be conducted by the bail authority. The bail authority could either be the original bail authority or another judge sitting as a bail authority as designated by the president judge. According to a commenter, confusion could arise over whether a magisterial district judge would have the authority to modify bail at the defendant's preliminary hearing, *see* Proposed Rule 520.17(b), if bail had been previously modified by a common pleas judge sitting by designation as a bail authority. In other words, would the restriction on further modification contained in Proposed Rule 520.17(d) apply when a common pleas judge sits as a bail authority rather than as a common pleas judge. By requiring a review of conditions to be conducted by either a judge of the court of common pleas or a judge of the Philadelphia Municipal Court, and removing the authority of a president judge to designate a judge to sit as a bail authority, the scenario potentially resulting in confusion can no longer occur.

Rule 520.16. Detention

In reviewing this rule, the Committee concluded that *Talley* should be cited regarding detention when "[n]o available condition or combination of conditions other than detention will reasonably assure that a defendant's release is consistent with the purpose of bail[.]" Proposed Rule 520.16(a)(2). Thus, the Committee has revised the Comment to this rule to include the following:

> Regarding subdivision (c), "when the Commonwealth seeks to deny bail due to the alleged safety risk the accused poses to 'any person and the community,' those qualitative standards demand that the Commonwealth demonstrates that it is substantially more likely than not that (1) the accused will harm someone if he is released and (2) there is no condition of bail within the court's power that reasonably can prevent the defendant from inflicting that harm." *Commonwealth v. Talley*, 265 A.3d 485, 525 (Pa. 2021). More generally, "[w]hen the Commonwealth seeks to deny bail, the quality of the evidence must be such that it persuades the bail court that it is substantially more likely than not that the accused is nonbailable[.]" *Id.* 524-25.

For clarity, subdivision (c)(4) has been revised to begin: "A detention hearing before a judge of the court of common pleas or a judge of the Philadelphia Municipal Court shall be scheduled to occur within 48 hours of the defendant's first appearance."

Rule 520.18. Responsibilities of Pretrial Services

A commenter expressed concerned that adoption of this rule could result in the elimination of or need for significant modification of current pretrial services. To avoid disrupting existing pretrial services, which may not be able to undertake all of the obligations mandated by the previously published version of this rule, the Committee has revised this rule to require such services to "include one or more of the following[.]" With this revision, counties will have more flexibility in devising their pretrial services and will not need to consider forgoing pretrial services entirely because they cannot manage or afford to provide all of the services required by subdivisions (a) through (f).

Rule 520.19. Pretrial Risk Assessment Tool Parameters

A commenter proposed prohibiting the use of risk assessment tools unless 1) the factors that are used to calculate risk are transparent and 2) data on the tool is made publically available so that experts can determine whether the tool is racially and ethnically neutral. A concern was also raised regarding due process and a defendant's ability to challenge a recommendation resulting from a risk assessment tool if the data relied on to create the algorithm are not public. Another commenter suggested removing from subdivision (c) the requirement that periodic validation demonstrate race and gender neutrality. Although misuse of information made public was a concern, the Committee concluded that the importance of transparency outweighed the possibility of publically available data being misused.

With this in mind, the Committee has revised subdivision (c) to remove the 70% minimum level of predictability requirement, to insert a requirement that data be made available to the public to assess gender and race neutrality, to remove the requirement of demonstrating racial and gender neutrality,[2] and to require data used for validation to be made public. In balance the removal of the 70% minimum level of predictability, subdivision (c) has been revised to conclude: "to a reasonable degree of statistical certainty."

As previously published, subdivision (a) of this rule would have required a pretrial risk assessment to be conducted in all criminal cases prior to the preliminary arraignment or, when no preliminary arraignment is held, prior to the preliminary hearing. Some commenters were concerned that a county incapable of conducting an assessment in every criminal case, but capable of conducting an assessment in some cases, would be barred by the rule from doing so. Commenters also expressed concern regarding subdivision (a)'s requirement that a risk assessment be conducted prior to the preliminary arraignment when a preliminary arraignment will be held. These commenters contended that this requirement was not feasible without additional funding. Yet, the purpose of a pretrial risk assessment is to aid a bail authority in setting bail, which is most frequently set at the preliminary arraignment, and thus, a risk assessment tool's usefulness is significantly diminished when not used prior to the preliminary arraignment.

To accommodate those counties unable to conduct assessments in all cases, and to provide some flexibility in the rule, the Committee has revised the Comment to clarify that risk assessment tools may be used at a later time and that nothing in this rule prohibits a defendant or the Commonwealth from asking for a reassessment with the filing of a motion to modify bail. The Committee has also removed "in all criminal cases" from subdivision (a) and revised that subdivision to begin: "[w]hen a pretrial risk assessment tool is used." With these revisions, a jurisdiction would be permitted to use a risk assessment tool in a subset of all criminal cases.

The use of terms like "high, medium, and low" to characterize a defendant's risk was criticized by some commenters. Some commenters suggested using percentages instead. As previously published, subdivision (E) of this rule would have required risk of pretrial failure to be classified as high, moderate, and low. Notably, these classifications—high, moderate, and low—do not necessar-

[2] As one commenter contended, "[t]he requirement of 'racial and gender neutrality,' however, is a chimera. There is no such thing: if the base rates of the predicted outcome differ across race or gender lines in the relevant group of defendants, it is mathematically impossible for risk estimates to be 'neutral' across race/gender lines by every metric."

ily correspond to percentages in an obvious way. As the Committee discussed at length, high risk could, depending on the underlying data, indicate a 10% chance of failure. Generally, a 10% chance of failure is not viewed as a high risk of failure, and thus the use of "high" as a classification could be misleading. The Committee concluded that the designer of a risk assessment tool should determine how to classify levels of risk for their tool rather than having such classification dictated by rule.

In addition to dictating classifications, subdivision (E) as previously published would have required risk classifications to be described to users in terms of success. But as the rule will no longer dictate how risk will be classified, the rule will also no longer dictate how classifications—chosen by the designer of a tool—should be presented to the user. Thus, previously published subdivision (E) has been removed in its entirety.

Rule 708.1. Violation of Probation or Parole: Notice, Detainer, Gagnon I Hearing, Disposition, and Swift Sanction Program

As previously published, subdivision (D), now subdivision (d), of this rule would have required a *Gagnon* I hearing to be conducted within 14 days after the alleged violator had been detained. A commenter proposed shortening that timeframe to no later than 72 hours. As noted by several commenters, the longer an alleged violator remains detained the more likely the alleged violator will suffer negative consequences, such as losing a job, losing an apartment, or a pet dying. Beyond such tangible losses, an alleged violator with mental health issues would likely suffer significant trauma if held for 14 days before having a *Gagnon* I hearing. The Committee was concerned, however, that 72 hours may not be sufficient time for those involved to properly prepare for a hearing. Thus, as a compromise, the Committee has reduced the timeframe for conducting a *Gagnon* I hearing from 14 days to five days after an alleged violator has been detained

In response to another commenter, the Committee has revised subdivision (c) to include "including the victim" after "ongoing risk to the public's safety."

A commenter questioned how the timeframe for conducting a *Gagnon* I hearing would be calculated if an alleged violator has multiple detainers from multiple counties. To address this concern, the Committee has revised subdivision (d) to read: "a defendant subject to a detainer for a technical violation pursuant to subdivision (a)(3) or (b)(2) shall be brought before the sentencing judge or other designated judge or authority no later than five days after being detained in the county issuing the detainer for a hearing. . ."

To emphasize the voluntariness of a defendant's request for a detainer pursuant to subdivision (b)(2)(i), the Committee has revised the Comment to advise: "Nothing in this rule is intended to prohibit a defendant from withdrawing a request for a detainer to be issued."

A commenter suggested that subdivision (a)(2) should be amended by inserting "in those judicial districts that have established a program." With this amendment, the subdivision would read: "arrest the defendant in those judicial districts that have established a program pursuant to 42 Pa.C.S. § 9771.1." This recommendation was made in order to clarify that the sanctions provided for in subdivision (g) of § 9771.1 are only available to judicial districts that have established a program pursuant to § 9771.1(a). The Committee accepted this recommendation, and subdivision (a)(2) has been revised accordingly.

To reflect current case law, the Committee has revised subdivision (d) to require a violation to be of a specific condition: "to determine whether probable cause exists to believe that a violation of a specific condition has been committed. . ." *Commonwealth v. Foster*, 654 A.3d 1240 (Pa. 2019) ("[A] court may find a defendant in violation of probation only if the defendant has violated one of the "specific conditions" of probation. . .").

Lastly, the first paragraph of the Comment has been revised to include a citation to *Morrissey v. Brewer*, 408 U.S. 471 (1972), which requires a state to choose an "independent decisionmaker" to determine if "reasonable cause exists to believe that conditions of parole have been violated." *Morrissey*, 408 U.S. at 486.

[Pa.B. Doc. No. 23-884. Filed for public inspection July 7, 2023, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DELAWARE COUNTY

Rule 1915.11-1 Parenting Coordination; No. 2022-003777

Administrative Order

And Now, this 14th day of June, 2023, it is hereby *Ordered* and *Decreed* that the following Rule 1915.11-1 regarding Appointment of Parenting Coordination is hereby adopted and effective 20 days after publication in the *Pennsylvania Bulletin*.

By the Court

LINDA A. CARTISANO,
President Judge

Rule 1915.11-1. Parenting Coordination.

I. *Appointment of a Parenting Coordinator*

A. Parties may make a request to the Family Section Trial Judge for the appointment of a Parenting Coordinator.

B. Said request may be made by written Petition for Special Relief or by oral motion.

C. The Family Section Trial Judge may on its motion make a request to the Family Section Liaison Judge for the appointment of a Parenting Coordinator.

D. The Family Section Liaison Judge shall maintain a roster of approved parent coordinators and shall select a Parenting Coordinator from same. Whenever appropriate, selection will be on a rotating basis.

E. All Parenting Coordinator appointment requests shall be referred in writing by the Family Section Trial Judge to the Family Section Liaison Judge through form as set forth by the Family Section Liaison Judge.

i. Both the parties and the Family Section Trial Judge may recommend three specific Parenting Coordinators, in the order of their preference, however selection shall be at the discretion of the Family Section Liaison Judge.

F. Upon assignment, the Family Section Liaison Judge shall issue an Order for Parenting Coordinator pursuant to Pa.R.C.P. 1915.22 which shall be distributed to all parties and made an Order of the Court.

G. The Family Section Liaison Judge shall assign one (1) pro-bono appointment to each Parenting Coordinator for every two (2) fee-generating appointments in Delaware County.

II. *Approved Parent Coordinators*

A. An attorney or mental health professional seeking to be included on the Delaware County Court's roster of qualified individuals to serve as a Parenting Coordinator shall submit an affidavit to the Family Section Liaison Judge or his/her designee together with the following:

i. An affidavit attesting the applicant has qualifications found in Pa.R.C.P. 1915.11-1;

ii. An acknowledgment that the applicant has read the Association of Family and Conciliation Courts (AFCC) Parenting Coordinator guidelines and the American Psychological Association (APA) Parenting Guidelines respectively found at www.afccnet.org and www.apa.org.

iii. An acknowledgment that for every two (2) fee generating Parenting Coordination assignments, each Parent Coordinator must accept one pro bono assignment, up to 12 hours per pro bono case.

III. *Parenting Coordinator Recommendations*

A. Parenting Coordinators shall file their Summary and Recommendations pursuant to Pa.R.C.P. 1915.23 with the Office of Judicial Support within two (2) business days after the last communication with the parties on the issues in accordance with Pa.R.C.P. 1915.11-1(f)(2) and promptly forward a copy of same via regular mail and email to the parties and the Family Section Trial Judge.

B. Parenting Coordinator shall state the manner of service of the Summary and Recommendations to the parties.

C. Parenting Coordinator shall include the rationale for their Recommendations in the Summary.

D. *Objections to Parenting Coordinator's Recommendation(s) and Petition for a Record Hearing*

i. A party objecting to the Recommendations must file with the Office of Judicial Support an original and copy of their Objections and a Petition for a Record Hearing before the Court within five (5) days of service of the Summary and Recommendations together with Proof of Service upon all parties and the Parenting Coordinator.

E. The Office of Judicial Support shall promptly forward the original Objections and Petition to the Court Administrator's Office for assignment to the parties' Family Section Trial Judge to promptly schedule a record hearing.

F. *Court Review of Parenting Coordinator's Recommendations*

i. If no objections to the Parenting Coordinator's Recommendations are filed with the Office of Judicial Support within five (5) days of service of the Summary and Recommendation, the Family Section Trial Judge assigned to the case shall review the Recommendation in accordance with the time set forth in Pa.R.C.P. 1915.11-1(f)(4) and pursuant to Pa.R.C.P. 1915.23.

IV. *Fees*

A. Parties who request the appointment of a Parenting Coordinator, or who are identified by the Court as benefiting from the appointment of a Parenting Coordinator, shall pay the Parenting Coordinator as follows:

i. His or her hourly rate which may be up to $300 per hour.

ii. Absent good cause, parties shall pay the initial retainer which shall not exceed the equivalent of five (5) hours at the parenting Coordinator's hourly rate.

iii. If a party has previously filed and been granted In Forma Pauperis status by the Court specifically for the appointment of a Parenting Coordinator, the Parenting Coordinator so appointed shall serve on a pro bono (no fee) basis, up to 12 hours.

iv. A Parenting Coordinator must accept one pro bono appointment for every two fee generating appointments.

v. Parent Coordinators are not funded by the County.

V. *Miscellaneous*

A. A Parenting Coordinator shall not be required to make a Recommendation to the Court, at their discretion, on every disputed issue raised by the parties.

B. The appointing Judge may reject a Recommendation from a Parenting Coordinator without a proceeding, at their discretion, if the disputed issue exceeds the authority set forth in Pa.R.C.P. 1915.11-1(f)(4).

C. Unless the parties consent and appropriate safety measures are in place to protect the participants, including the parenting coordinator and other third parties, a parenting coordinator shall not be appointed if:

i. The parties to the custody action have a protection from abuse order in effect;

ii. The court makes a finding that a party has been a victim of domestic violence perpetrated by a party to the custody action, either during the pendency of the custody action or within 36 months preceding the filing of the custody action; or

iii. The court makes a finding that a party to the custody action has been the victim of a personal injury crime, as defined in 23 Pa.C.S. 3103, which was perpetrated by a party to the custody action.

D. If a party objects to the appointment of a parenting coordinator based on an allegation that the party has been the victim of domestic violence perpetrated by a party to the custody action, the court shall have a hearing on the issue and may consider abuse occurring beyond the 36 months provided in subdivision (a)(2)(ii).

E. The length of appointment of a Parenting Coordinator shall be pursuant to Pa.R.C.P. 1915.11-1(a)(3) and Pa.R.C.P. 1915.11-1(a)(4).

F. Procedures and forms can be found on the County of Delaware and Delaware County Bar Association websites.

[Pa.B. Doc. No. 23-885. Filed for public inspection July 7, 2023, 9:00 a.m.]

Title 255—LOCAL COURT RULES

McKEAN COUNTY

Adoption of Local Rules of Criminal, Juvenile and Procedure; 13 AD 2023

Order of Court

And Now, this 26th day of June, 2023, it is *Hereby Ordered and Decreed* as follows:

1. The following McKean County Local Rules are *Hereby Adopted* pursuant to Pa.R.Crim.P. 576.1. and shall be effective thirty (30) days following this publication: July 26 2023.

2. The adopted Local Rules shall be disseminated and published in the following manner:

a. One (1) certified copy of the Local Rules shall be filed with the Administrative Office of the Pennsylvania Courts;

b. The adopted Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. A copy of the adopted Local Rules shall be published on the Unified Judicial System's website through the Pennsylvania Judiciary's Web Application Portal;

d. The adopted Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of McKean County, and upon request and payment of reasonable costs of reproduction and mailing, a copy shall be furnished to any requesting person;

e. The adopted Local Rules shall be published on the website for the County of McKean.

By the Court

JOHN H. PAVLOCK,
President Judge

MCKEAN COUNTY LOCAL RULE OF CRIMINAL PROCEDURE 576.1

Rule L-576.1. Electronic Filing and Service of Legal Papers.

(A) *General Scope and Purpose of this Rule*

The electronic filing of legal papers in the Court of Common Pleas, 48th Judicial District, is hereby authorized in accordance with Pa.R.Crim.P. 576.1 and this rule. The applicable general rules of court and court polices that implement the rules shall continue to apply to all filings regardless of the method of filing.

(B) Use of the electronic filing system is permissive and legal papers permitted and excluded from electronic filing are as defined in Pa.R.Crim.P. 576.1(C).

(C) The Administrative Office of Pennsylvania Courts has agreed upon the implementation plan for the use of PACFile in the 48th Judicial District as of August 14, 2023.

(D) The Clerk of Courts may maintain an electronic file only with approval from the Court, except for filings expressly excluded in Pa.R.Crim.P. 576.1(C) defining "legal paper." For excluded filings, the Clerk of Courts shall maintain a paper file numbered in accordance with the electronic file for the same case.

(E) *PACFile*

a. the exclusive system for electronic filing is the PACFile system, developed and administered by the Administrative Office of the Pennsylvania Courts and located on Pennsylvania's Unified Judicial System Web portal at: https://ujsportal.pacourts.us/PACFile.aspx.

b. pursuant to Pa.R.Crim.P. 576.1(D)(2), establishment of a PACFile account constitutes consent to participate in electronic filing, including accepting of service electronically of any document filed on the PACFile system in any judicial district that permits electronical filing.

c. any party who declines to participate in the electronic filing system, or who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the PACFile system, shall be permitted to file legal papers in a physical paper format and shall be served legal papers in a physical paper format by the Clerk of Courts and other parties, whether electronically filed or otherwise, as required by Pa.R.Crim.P. 576.

(F) *Legal Papers in a Paper Format*

Any legal paper submitted for filing to the Clerk of Courts in paper (or "hard-copy") format shall be accepted by the Clerk of Courts in that format and shall be retained by the Clerk of Courts as may be required by applicable rules of Court and record retention policies. The Clerk of Courts shall convert such hard-copy legal paper to .pdf and add it to the system, except those legal papers excluded from electronic filing pursuant to Pa.R.Crim.P. 576.1(C). Once converted to .pdf, the .pdf version of the legal paper shall be deemed and treated as the original legal paper and may be used by the parties and the Court for all purposes, including but not limited to, court hearings and trials in the Court of Common Pleas, 48th Judicial District.

(G) *Filing Fees*

Applicable filing fees shall be paid through procedures established by the Clerk of Courts and at the same time and in the same amount as required by statute, court rule or order, or published fee schedule.

(H) *Record on Appeal*

Electronically filed legal papers, and copies of legal papers filed in a paper format provided in subsection (F), shall become the record on appeal.

(I) *Confidential Information*

Counsel and unrepresented parties must adhere to the Public Access Policy of the Unified Judicial System of Pennsylvania and refrain from including confidential information in legal papers filed with the Clerk of Court whether filed electronically or in paper format.

(J) *Miscellaneous provisions*

The Clerk of Courts shall provide sufficient means to allow parties and the public to file and access legal papers as provided by this rule and as authorized by any applicable statutes, rules, or policy.

Order of Court

And Now, this 26th day of June, 2023, it is *Hereby Ordered and Decreed* as follows:

1. The following McKean County Local Rules are *Hereby Adopted* pursuant to Pa.R.J.C.P. 205 and Pa.R.J.C.P. 1205. and shall be effective thirty (30) days following this publication: July 26th 2023.

2. The adopted Local Rules shall be disseminated and published in the following manner:

a. One (1) certified copy of the Local Rules shall be filed with the Administrative Office of the Pennsylvania Courts;

b. The adopted Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. A copy of the adopted Local Rules shall be published on the Unified Judicial System's website through the Pennsylvania Judiciary's Web Application Portal;

d. The adopted Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of McKean County, and upon request and payment of reasonable costs of reproduction and mailing, a copy shall be furnished to any requesting person;

e. The adopted Local Rules shall be published on the website for the County of McKean.

By the Court

JOHN H. PAVLOCK,
President Judge

MCKEAN COUNTY LOCAL RULE OF JUVENILE COURT PROCEDURE 205

Rule 205. Electronic Filing and Service of Legal Papers.

(A) The Administrative Office of Pennsylvania Courts has agreed upon the implementation plan for the use of PACFile in the 48th Judicial District as of August 14, 2023.

(B) All parties represented by counsel and juvenile probation personnel are permitted to electronically file legal papers through PACFile with the clerk of courts, unless otherwise prohibited by Pa.R.J.C.P. 205(C), and for which PACFile has the technical capability to process. Legal papers that are exempt from filing by PACFile include:

a. Applications for search warrants;

b. Applications for arrest warrants;

c. Exhibits offered into evidence, whether admitted or not, in a proceeding before a common pleas judge or hearing officer; and

d. Submissions filed ex parte as authorized by law.

(C) Any party who is unable to participate in PACFile may file legal papers in a physical paper format with the clerk of courts, and shall be served legal papers in a physical paper format by the clerk of courts and other parties to the case. However, establishment of a PACFile account by a filing party shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed in PACFile.

(D) The clerk of courts shall maintain a physical paper file until the case is closed. Following closure, the clerk of courts may maintain an electronic file only after entering a docket notation that the electronic file is a complete and true copy of the physical file with the exception of those items identified in subsections (B)(a)—(d), which must be maintained in a physical paper format only in accordance with Pa.R.J.C.P. 205(C).

MCKEAN COUNTY LOCAL RULE OF JUVENILE COURT PROCEDURE 1205

Rule 1205. Electronic Filing and Service of Legal Papers.

(A) The Administrative Office of Pennsylvania Courts has agreed upon the implementation plan for the use of PACFile in the 48th Judicial District as of August 14, 2023.

(B) The system shall permit the following parties to electronically file legal papers through PACFile with the clerk of courts, unless otherwise prohibited by Pa.R.J.C.P. 1205(C), and for which PACFile has the technical capability to process: attorneys, parties proceeding without counsel, and non-attorney persons or entities with standing to participate in a proceeding. Legal papers that are exempt from filing by PACFile include:

a. Exhibits offered into evidence, whether admitted or not, in a proceeding before a common pleas judge or hearing officer; and

b. Submissions filed ex parte as authorized by law.

(C) Any party who is unable to participate in PACFile may file legal papers in a physical paper format with the clerk of courts, and shall be served legal papers in a physical paper format by the clerk of courts and other parties to the case. However, establishment of a PACFile account by a filing party shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed in PACFile.

(D) The clerk of courts shall maintain a physical paper file until the case is closed. Following closure, the clerk of courts may maintain an electronic file only after entering a docket notation that the electronic file is a complete and true copy of the physical file with the exception of those items identified in subsections (B)(a)-(b), which must be maintained in a physical paper format only in accordance with Pa.R.J.C.P. 1205(C).

[Pa.B. Doc. No. 23-886. Filed for public inspection July 7, 2023, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Rescinding Rule WC571 and Adopting New Rule WC571; No. 3 of 2023

Order

And Now, this 21st day of June, 2023, *It Is Hereby Ordered* that Westmoreland County Rule of Criminal Procedure WC571 is rescinded and new Rule WC571 is adopted. This change is effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CHRISTOPHER A. FELICIANI,
President Judge

Rule WC571. Arraignment.

(a) Notice of Arraignment date shall be provided at the preliminary hearing in person to the defendant, defense counsel, and the district attorney's office by the magisterial district judge when the case is bound over to the Court of Common Pleas. In the event that any of the aforementioned do not appear at the preliminary hearing, notice may be sent via first-class mail.

(b) Within three days (excluding the day of receipt) of receiving the official papers from the magisterial district judge, the clerk of courts shall send a copy of the official papers, including the notice of court arraignment, to the district attorney.

(c) The clerk of courts shall provide information concerning new cases to the criminal court administrator and to the district attorney as the cases are received. The form of the information forwarded shall be as required and agreed to between the appropriate offices.

(d) Arraignments shall be held in the courtroom of the judge assigned by the criminal court administrator. The district attorney and public defender shall assure that attorneys attend each scheduled arraignment.

(e) At arraignment the district attorney shall provide the defendant with a copy of the information and, where possible, discovery material mandated under Pa.R.Crim.P. 573(B)(1).

(f) A defendant may waive arraignment if he is represented by counsel by filing a Waiver of Arraignment Form with the Clerk of Courts and providing a copy of the Waiver to the Criminal Court Administrator's Office. An attorney who files a Waiver of Arraignment on behalf of a defendant enters an appearance by doing so.

Adopted December 16, 1993, effective April 1, 1994; Section (a) revised February 22, 1994, effective April 18, 1994; Sections (d) and (f) revised June 30, 1995, effective August 21, 1995. Revised and renumbered from WC303 May 10, 2001, effective July 2, 2001.

[Pa.B. Doc. No. 23-887. Filed for public inspection July 7, 2023, 9:00 a.m.]