

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

**PART A(1). COMMENCING PROCEEDINGS**

- Rule 1200. Commencing Proceedings.
- 1201. Procedures for Protective Medical Custody.
- 1202. Procedures for Protective Custody by a Police Officer, Juvenile Probation Officer, and County Agency.

**PART A(2). ELECTRONIC FILING AND SERVICE OF LEGAL PAPERS**

- Rule 1205. Electronic Filing and Service of Legal Papers.

**PART B. EMERGENCY CUSTODY**

- 1210. Order for Protective Custody.

**PART C. SHELTER CARE**

- 1240. Shelter Care Application.
- 1241. Notification of Shelter Care Hearing.
- 1242. Shelter Care Hearing.
- 1243. Shelter Care Rehearings.

**PART A. COMMENCING PROCEEDINGS**

**Rule 1200. Commencing Proceedings.**

Dependency proceedings within a judicial district shall be commenced by:

- 1) the filing of a dependency petition;
- 2) the submission of an emergency custody application;
- 3) the taking of the child into protective custody pursuant to a court order or statutory authority;
- 4) the court accepting jurisdiction of a resident child from another state;
- 5) the court accepting supervision of child pursuant to another state's order; or
- 6) the filing of a motion for resumption of jurisdiction pursuant to Rule 1634.

**Comment**

*See* 42 Pa.C.S. §§ 6321, 6324, 23 Pa.C.S. §§ 6315, 6369, 62 P.S. § 761.

If a county agency has custody of a child under a voluntary placement agreement and custody will exceed thirty days, dependency proceedings are to be commenced by the filing of a petition by the thirtieth day. A dependency petition is to be filed if a guardian requests return of the child and the county agency refuses to return the child. A dependency petition is to be filed at the time of refusal of return by the county agency. See 55 Pa. Code § 3130.65 for provisions on voluntary agreements.

For procedures on protective medical custody, see Rule 1201. For procedures on protective custody by police and the county agency, see Rule 1202.

For proceedings that have already been commenced in another judicial district, see Rule 1302 for inter-county transfer of the case.

For resumption of jurisdiction, see Rules 1634 and 1635 & 42 Pa.C.S. §§ 6302 and 6351(j).

The clerk of courts and the county agency should have form motions available for children who want to file for resumption of juvenile court jurisdiction. These forms are available at <http://www.pacourts.us/Forms/dependency.htm>.

The clerk of courts or county agency is to assist any child who requests assistance in completing the form and the clerk of courts is to accept all filings for resumption of juvenile court jurisdiction regardless of whether the motions meet the standard for legal filings or there are objections by other parties. This is to ensure these children have easy access to the court. *See also* Rule 1126.

**Official Note:** Rule 1200 adopted August 21, 2006, effective February 1, 2007. Amended October 21, 2013, effective December 1, 2013.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1200 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1200 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

**Source**

The provisions of this Rule 1200 amended October 21, 2013, effective December 1, 2013, 43 Pa.B. 6658. Immediately preceding text appears at serial pages (357341) to (357342).

**Rule 1201. Procedures for Protective Medical Custody.**

When a physician examining or treating a child, a director, or a person specifically designated in writing by the director, of any hospital or other medical institution takes a child into custody pursuant to Rule 1200, the following provisions shall apply:

- a) *Notice.*
  - 1) The person taking the child into custody shall notify the guardian and the county agency of:
    - a) the whereabouts of the child, unless disclosure is prohibited by court order; and
    - b) the reasons for taking the child into custody.
  - 2) Notice may be oral. The notice shall be reduced to writing within twenty-four hours.
    - b) *Duration of custody.* No child may be held in protective custody in a hospital or other medical institution for more than twenty-four hours unless the appropriate county agency is immediately notified that the child has been taken into custody and the county agency obtains an order permitting the child to be held in custody for a longer period. The president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

**Comment**

Notice to the county agency under paragraph (A) is to insure that appropriate proceedings are commenced. Notice may be oral but is to be reduced to writing within twenty-four hours.

A child taken into protective custody is to be placed during the protective custody in an appropriate medical facility, foster home, or other appropriate facility approved by the Department of Public Welfare for this purpose.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of: 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless discl-

sure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian when protective custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

*See In re J.R.W.*, 428 Pa. Super. 597, 631 A.2d 1019 (1993) and 23 Pa.C.S. § 6315.

**Official Note:** Rule 1201 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1201 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

**Rule 1202. Procedures for Protective Custody by a Police Officer, Juvenile Probation Officer, and County Agency.**

A. *Protective custody.*

1) *No court order.*

a) A police officer or a juvenile probation officer may take a child into protective custody pursuant to Rule 1200 if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from the surroundings and removal is necessary.

b) Without unnecessary delay, but no more than twenty-four hours after a child is taken into custody, an application for a protective custody order shall be made to provide temporary emergency supervision of a child pending a hearing pursuant to Rule 1242. The president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

2) *Court order.*

a) A police officer, juvenile probation officers or county agency may obtain a protective custody order removing a child from the home pursuant to Rule 1210 if the court finds that remaining in the home is contrary to the welfare and the best interests of the child.

b) Pursuant to 23 Pa.C.S. § 6315 and after a court order, the county agency shall take the child into protective custody for protection from abuse. No county agency may take custody of the child without judicial authorization based on the merits of the situation.

B. *Notice.*

1) In all cases, the person taking the child into custody immediately shall notify the guardian and the county agency of:

a) the whereabouts of the child, unless disclosure is prohibited by court order; and

b) the reasons for taking the child into custody.

2) *Notice may be oral.* The notice shall be reduced to writing within twenty-four hours.

C. *Placement.* A child shall be placed in an appropriate shelter care facility or receive other appropriate care pending a shelter care hearing pursuant to Rule 1242.

#### Comment

A properly commissioned juvenile probation officer has the authority to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to Rule 195. *See also* 23 Pa.C.S. § 6315.

Under paragraph (A)(1)(a) & (A)(2)(a), the police officer's or juvenile probation officer's duty is to protect the child and remove the child safely. A police officer or juvenile probation officer may bring the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's or juvenile probation officer's duty is to take a child into protective custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his or her surroundings, and that protective custody is necessary, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child when necessary. Only a police officer or juvenile probation officer may take custody of the child without a court order. *See* Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides that law enforcement officers may take a child into custody.

Paragraph (B) is to ensure that if the guardian is not present when the child is removed, the guardian knows the whereabouts of the child and the reasons the child is taken into custody. If the person removing the child is not a caseworker, the county agency is to be notified to commence proceedings in juvenile court.

Under paragraph (C), a child taken into protective custody is to be placed during the protective custody in an appropriate shelter care facility or receive other appropriate care.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of: 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian when protective custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

*See* 42 Pa.C.S. §§ 6324 & 6326 and 23 Pa.C.S. § 6369.

**Official Note:** Rule 1202 adopted August 21, 2006, effective February 1, 2007. Amended May 20, 2011, effective July 1, 2011.

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1202 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1202 published with the Court's Order at 41 Pa.B. 2839 (June 4, 2011).

#### Source

The provisions of this Rule 1202 amended May 20, 2011, effective July 1, 2011, 41 Pa.B. 2839. Immediately preceding text appears at serial pages (326065) to (326066).

**Part A(2) ELECTRONIC FILING AND SERVICE  
OF LEGAL PAPERS**

**Rule 1205. Electronic Filing and Service of Legal Papers.**

A. *Authorization.* The president judge of a judicial district by local rule promulgated pursuant to Rule 1121 and Rule of Judicial Administration 103 may authorize electronic filing of legal papers with the clerk of courts in cases in dependency proceedings through the statewide electronic filing system as provided in this rule.

B. *Local Rule.*

1) The local rule required under this rule shall include the following provisions:

a) subject to the provisions in paragraph (B)(2), a statement that the electronic filing system is permissive and specify the legal papers subject to the rule, but in no case shall legal papers prohibited from being filed electronically by this rule be permitted to be filed electronically;

b) a provision for the procedures to ensure that any party who declines to participate in the 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 system, at a minimum, shall be able to file legal papers in a physical paper format and be served legal papers in a physical format which were electronically filed;

c) any additional provisions as the court may deem necessary to provide a full and complete procedure for the use of the system within the judicial district; and

d) a notation that the Administrative Office of Pennsylvania Courts and the judicial district have agreed upon an implementation plan for PACFile in the judicial district.

2) Any judicial district that authorized electronic filing for a period of two years thereafter may amend their local rule, subject to the requirements of Rule 1121 and Rule of Judicial Administration 103, to make participation in electronic filing mandatory.

C. *Definitions.* As used in this rule, the following words shall have the following meanings:

“electronic filing,” the electronic submission of legal papers by means other than facsimile transmission and the acceptance of the document by the clerk of courts;

“filing party,” an attorney or other person or entity who files a legal paper by means of electronic filing;

“legal paper,” a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, copies of exhibits, and attachments, but excluding:

1) submissions filed ex parte as authorized by law; and

2) exhibits offered into evidence, whether or not admitted, in a court proceeding.

“original document,” a legal paper filed electronically shall be deemed the original document, but copies of exhibits electronically filed do not constitute the original of the exhibit for evidentiary purposes; and

“the system,” the PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, is the exclusive system for electronic filing.

*D. Participation.*

1) The system shall permit attorneys, parties proceeding without counsel, and non-attorney persons or entities with standing to participate in a proceeding to file electronically.

a) In order to participate in the system, an attorney shall establish an account in the system by procedures established by the Administrative Office of Pennsylvania Courts.

b) A non-attorney shall be permitted to utilize the system through an authorization process established by the Administrative Office of Pennsylvania Courts.

2) Establishment of an account by an attorney or authorization of a non-attorney in the system, to the extent so authorized by the Administrative Office of Pennsylvania Courts pursuant to paragraph (D)(1), shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed on the system in any judicial district that permits electronic filing.

3) An attorney or non-attorney participating in the system is permitted to file a legal paper either in an electronic format or in a physical paper format. Service upon an attorney or non-attorney participating in the system shall be done electronically.

*E. Filing.*

1) When a legal paper is to be electronically filed, it may be submitted to the system at the Unified Judicial System web portal at <http://ujportal.pacourts.us>, in accordance with this rule, any local rule adopted pursuant to this rule, and any filing instructions as may be otherwise provided at the web portal site.

2) Electronic filings may be submitted at any time, except during times of periodic maintenance. The electronic submission must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day.

3) The time and date on which a legal paper is submitted to the system shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been submitted.

4) The time and date on which the legal paper is accepted by the clerk of courts office also shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been accepted.

5) A legal paper shall be considered filed upon submission of the legal paper to the system and acceptance of the filing by the clerk of courts. If the clerk of courts determines that the requirements for filing have been met, the time and date of filing shall be the time and date that the legal paper was submitted to the system. If the clerk of courts finds that the requirements for filing are not met, the clerk may reject the filing.

6) A filing party shall be responsible for any delay, disruption, and interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of the system's website.

7) The system shall attribute the filing of an electronic legal paper to the party whose account is used to log onto the system and file the legal paper.

8) Legal papers shall be presented for filing in portable document format (".pdf").

9) All legal papers electronically filed shall be maintained and retained by the clerk of courts in an electronic format. Neither the clerk of courts nor the court is required to maintain in a physical paper format any legal paper filed electronically as provided in this rule.

10) Any legal paper submitted for filing to the clerk of courts in a physical paper 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 legal paper in a physical paper format to .pdf and add it to the system. However, those submissions that are excluded from the definition of "legal paper" under paragraph (C) shall not be converted and added to the system.

11) No legal paper that complies with the Pennsylvania Rules of Juvenile Court Procedure shall be refused for filing by the clerk of courts or the electronic filing system based upon a requirement of a local rule or local administrative procedure or practice pertaining to the electronic filing of legal papers.

F. *Signature.*

1) Except as provided in paragraph (F)(3), an electronic signature of the filer as provided for in the system is permitted on electronic filings in the following form: */s/ John L. Doe.*

2) The electronic filing of a motion or answer that includes an electronic signature constitutes a certification pursuant to Pa.R.J.C.P. 1344(C)(1) that the filing party or attorney has filed the motion in good faith.

3) Any motion that, pursuant to Rule 1344(C)(3), avers facts not of record and requiring a verification must be created in a physical paper form, have a physical signature placed on it, and then be converted into a .pdf before it may be electronically filed.

4) The original of a verified legal paper that is an electronic filing or is contained within an electronic filing shall be maintained by the electronic filer in either electronic or paper format and made available upon direction of the court or reasonable request of the signatory or opposing party.

G. *Official Court Record Form.* The court by local rule shall provide for the maintenance by the clerk of courts of an electronic file only, or of such electronic and physical paper format files as set forth in the local rule. Those legal papers that are not permitted to be electronically filed pursuant to paragraph (C) shall be maintained in a physical paper format only.

H. *Service.*

1) Upon the submission of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been submitted. This notification upon submission shall satisfy the service requirements of Rules 1167(B) and 1345(B) on any attorney or party who has established a system account.

2) Upon the acceptance by the clerk of courts office of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been accepted.

3) Service of electronic filings on any attorney or party who has not established a UJS web portal account or who is unable to file or receive legal papers electronically or otherwise unable to access the system shall be made by the procedures provided under Rules 1167(B) and 1345(B).

#### Comment

This rule permits as a local practice the electronic filing of legal papers. This rule does not require the implementation of electronic filing by a local court. To provide a uniform system for electronic filing, the Administrative Office of Pennsylvania Courts has developed the PACFile electronic filing system. This is the only authorized system for electronic filing of legal documents in dependency proceedings.

Paragraph (B) requires that a judicial district that desires to participate in the electronic filing system must adopt a local rule to that effect. As part of the initial “opting into” electronic filing, this local rule must provide that participation is voluntary. Once a judicial district has allowed electronic filing for two years, participation may be made mandatory. Paragraph (B)(1)(b) requires that all judicial districts in which electronic filing is allowed must make accommodations for those parties who are unable to participate. In no event shall access to the court filing be precluded solely on the basis of participation in the electronic filing system.

The UJS Portal contains other automated services beside PACFile. There may be circumstances when an attorney, who has registered as a user on another service of the UJS Portal, may have an established account that would be usable for PACFile. Any questions about the requirements of registration or accessibility to PACFile should be referred to the Administrative Office of Pennsylvania Courts.

The system permits a user to designate other users as proxies on individual cases. These proxies all receive notice of any filing in the case. It is anticipated that offices such as those of a county agency or advocate organization would be able to establish general user accounts with particular attorneys assigned and their supervisors or back-ups listed as proxies in individual cases.

An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney’s account.



The local rule required by this rule must conform to the requirements of Rule 1121 (Local Rules) and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules).

A file in physical paper format is not required by this rule. If the local rule requires a file in physical paper format, the requirement may extend to all cases or only to certain specified cases. For example, the court may require files in physical paper format for cases where an adjudicatory hearing has been scheduled while maintaining only electronic files for cases proceeding by informal adjustment or admission.

Upon submission of the electronic filing of a legal paper, the electronic filing system shall automatically send notice of the filing to all parties who have agreed to service by electronic transmission, see paragraph (D) (Participation). If the electronic filing system sends notice of such filing, the party filing the legal paper only need serve those parties who are not served by the electronic filing system. An e-mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

Service pursuant to paragraph (H) is not intended to satisfy the notice requirements necessary to obtain a bench warrant pursuant to Pa.R.J.C.P. 1140.

See Rule 1167(B) providing for the clerk of courts to serve orders and court notices by facsimile transmission or other means.

See Rule 1345(B) governing service of motions and any written answers, and any notices or documents for which filing is required by facsimile transmission or other means.

**Official Note:** Rule 205 adopted December 12, 2019, effective June 1, 2020.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1205 published with the Court's Order at 49 Pa.B. 7573 (December 28, 2019).

**Source**

The provisions of this Rule 1205 adopted December 12, 2019, effective June 1, 2020, 49 Pa.B. 7573.



**PART B. EMERGENCY CUSTODY****Rule 1210. Order for Protective Custody.**

A. *Application of order.* The application for a court order of protective custody may be orally made; however, the request shall be reduced to writing within twenty-four hours. The request shall set forth reasons for the need of protective custody.

B. *Finding of court.*

1) A child may be taken into protective custody by court order when the court determines that removal of the child is necessary for the welfare and best interests of the child.

2) At the time the court issues a protective custody order, the court shall inquire as to whether family finding efforts pursuant to Rule 1149 have been initiated by the county agency.

3) The order may initially be oral, provided that it is reduced to writing within twenty-four hours or the next court business day.

C. *Law enforcement.* The court may authorize a search of the premises by law enforcement or the county agency so that the premises may be entered into without authorization of the owner for the purpose of taking a child into protective custody.

D. *Contents of order.* The court order shall include:

- 1) the name of the child sought to be protected;
- 2) the date of birth of the child, if known;
- 3) the whereabouts of the child, if known;
- 4) the names and addresses of the guardians;
- 5) the reasons for taking the child into protective custody;
- 6) a finding whether reasonable efforts were made to prevent placement of the child;
- 7) a finding whether the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare and best interests of the child; and
- 8) findings and orders related to the requirements of Rule 1149 regarding family finding.

E. *Execution of order.* The court shall specify:

- 1) the limitations of the order;
- 2) the manner in which the order is to be executed; and
- 3) who shall execute the order.

**Comment**

See 42 Pa.C.S. § 6324 for statutory provisions concerning taking into custody.

For a discussion of the due process requirements for taking a child into emergency custody, see *Patterson v. Armstrong County Children and Youth Services*, 141 F. Supp. 2d 512 (W.D. Pa. 2001).

The court is to determine whether reasonable efforts, including services and family finding efforts, were made to prevent placement or in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family. 42 Pa.C.S. § 6332.

*See also In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365 (Pa. Super. Ct. 2005).

Pursuant to paragraph (D)(8), the county agency should be looking for family and kin as a resource to aid and assist the family to prevent removal of the child from the home. When removal of the child is necessary, placement with family and kin will help reduce the potential trauma of the removal from the home. *See* Rule 1149 regarding family finding requirements.

**Official Note:** Rule 1210 adopted August 21, 2006, effective February 1, 2007. Amended July 13, 2015, effective October 1, 2015.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1210 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1210 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

**Source**

The provisions of this Rule 1210 amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987. Immediately preceding text appears at serial pages (357345) to (357346).

**PART C. SHELTER CARE**

**Rule 1240. Shelter Care Application.**

A. *Filings.* A shelter care application may be oral or in writing. If oral, within twenty-four hours of exercising protective custody pursuant to Rule 1210, the county agency shall file a written shelter care application.

B. *Application contents.* Every shelter care application shall set forth:

- 1) the name of the applicant;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) the date that the child was taken into custody;
- 5) a concise statement of facts in support of the allegation of dependency;
- 6) a statement detailing family finding efforts and:
  - a) the reasonable efforts made to prevent placement; and
  - b) why there are no less restrictive alternatives available;
- 7) a verification by the applicant that the facts set forth in the petition are true and correct to the applicant's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

- 8) the signature of the applicant and the date of the execution of the application; and
- 9) the whereabouts of the child unless the county agency has determined it would pose a risk to the safety of the child or the guardian, or disclosure is prohibited by the court.

#### Comment

In lieu of a shelter care application, the county agency may file a petition as set forth in Rule 1330.

The primary focus of the shelter care application is to assert that protective custody is needed and the child should remain in the custody of the county agency. A shelter care hearing is to be held within seventy-two hours of taking the child into protective custody. *See* Rule 1242(D).

Pursuant to paragraph (B)(6), the application is to contain a statement detailing the reasonable efforts made to prevent placement and the specific reasons why there are no less restrictive alternatives available. This statement may include information such as: 1) the circumstances of the case; 2) family finding efforts made by the county agency; 3) contact with family members or other kin; 4) the child's educational, health care, and disability needs; and 5) any need for emergency actions.

*See* Rule 1149 regarding family finding requirements.

**Official Note:** Rule 1240 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended July 13, 2015, effective October 1, 2015.

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1240 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1240 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1240 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

#### Source

The provisions of this Rule 1240 amended April 29, 2011, effective July 1, 2011, 41 Pa.B. 2413; amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987. Immediately preceding text appears at serial pages (357346) to (357347).

### **Rule 1241. Notification of Shelter Care Hearing.**

A. *Generally.* The applicant for the shelter care hearing shall notify the following persons of the date, time, and place of the shelter care hearing:

- 1) the child;
- 2) the guardian(s) of the child;
- 3) the attorney for the child;
- 4) the attorney(s) for the guardian(s);
- 5) the attorney for the county agency;
- 6) the county agency; and
- 7) any other appropriate person.

B. *Counsel.* The guardian of the child shall be notified of the right to counsel immediately after a child is taken into protective custody and before a shelter care hearing.

**Comment**

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt to notify all parties is to be made. It is not sufficient to notify only one guardian. All guardians are to be notified. *See In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000).

The hearing may go forward if a guardian is not present. However, if a guardian has not been notified, a rehearing is to be ordered under Rule 1243 upon submission of an affidavit by the guardian.

The court is to direct the county agency to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. *See* 42 Pa.C.S. § 6336.1.

If a court appointed special advocate is involved in the case, the court appointed special advocate is to be notified as any other appropriate person pursuant to paragraph (A)(7).

**Official Note:** Rule 1241 adopted August 21, 2006, effective February 1, 2007.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1241 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

**Rule 1242. Shelter Care Hearing.**

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

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. *Manner of hearing.*

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

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

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

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

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

- 1) there are sufficient facts in support of the shelter care application;
- 2) the county agency has reasonably engaged in family finding;
- 3) custody of the child is warranted after consideration of the following factors:
  - a) remaining in the home would be contrary to the welfare and best interests of the child;

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

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

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

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

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

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

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

1) its findings pursuant to paragraph (C);

2) any conditions placed upon any party;

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

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

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

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

7) any orders of visitation.

**Comment:**

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

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

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

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

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

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

*See* 42 Pa.C.S. § 6332.

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

The court's order should address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. §§ 1400 *et seq.*; 4) the educational services necessary to support the child's transition to successful adulthood pursuant to 42 Pa.C.S. § 6351 if the child is 14 or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within 90 days.

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

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

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

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

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

#### Source

The provisions of this Rule 1242 amended April 21, 2011, effective July 1, 2011, 41 Pa.B. 2319; amended April 29, 2011, effective July 1, 2011, 41 Pa.B. 2413; amended July 13, 2015, effective October 1, 2015, 45 Pa.B. 3987; amended May 16, 2017, effective July 1, 2017, 47 Pa.B. 3078; amended March 22, 2023, effective October 1, 2023, 53 Pa.B. 1791. Immediately preceding text appears at serial pages (377970), (387265) to (387266) and (387425).

### Rule 1243. Shelter Care Rehearings.

A. *Mandatory Rehearing.* If the guardian submits an affidavit to the county agency alleging that the guardian was not notified of the shelter care hearing and that the guardian did not appear or waive appearance at the shelter care hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.



B. *Discretionary Rehearing.* The court may grant a rehearing upon request of a party or on its own motion.

C. *Forum.* The judge, who heard the original shelter care hearing or adopted the findings of the juvenile court hearing officer, shall hold the rehearing, unless the judge assigns the case to a juvenile court hearing officer.

**Comment**

*See* 42 Pa.C.S. § 6332(b).

Under paragraph (A), upon receiving an affidavit, the county agency is to schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a juvenile court hearing officer to hear the case.

**Official Note:** Rule 1243 adopted August 21, 2006, effective February 1, 2007. Amended April 6, 2017, effective September 1, 2017.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1243 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1243 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017).

**Source**

The provisions of this Rule 1243 amended April 6, 2017, effective September 1, 2017, 47 Pa.B. 2313. Immediately preceding text appears at serial page (387267).

[Next page is 13-1.]

12-12

(414848) No. 587 Oct. 23

*Copyright © 2023 Commonwealth of Pennsylvania*