

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES**PART A. VENUE**

- Rule
300. Venue.
302. Inter-County Transfer.

PART B. INTAKE AND INFORMAL ADJUSTMENT

310. Pre-Intake Duties, Scheduling, and Notice.
311. Intake Conference.
312. Informal Adjustment.
313. Detention from Intake.

PART C. PETITION

330. Petition: Filing, Contents, Function.
331. Service of Petition.
332. Multiple Offenses in Petition.
333. Separate Petitions.
334. Amendment of Petition.
335. Withdrawal of Petition.
336. Re-Filing of the Petition After Withdrawal or Dismissal.
337. Filing of Petition after Case has been Transferred from Criminal Proceedings.

PART D. PROCEDURES FOLLOWING FILING OF PETITION

340. Pre-Adjudicatory Discovery and Inspection.
341. Notice of Alibi Defense.

PART D(1). MOTION PROCEDURES

344. Motions and Answers.
345. Filing and Service.
346. Omnibus Motion for Relief.
347. Time for Omnibus Motion and Service.
348. Disposition of Omnibus Motions.
350. Suppression of Evidence.
351. Adjudicatory Hearing on Separate Petitions.
352. Separate Adjudicatory Hearings for Offenses or Juveniles.
353. Motion for Return of Property.

**PART D(2). ADJUDICATORY SUMMONS AND NOTICE
PROCEDURES**

- 360. Summons and Notice.
- 362. Requirements of the Summons.
- 363. Service of Summons and Notice.
- 364. Failure to Appear on the Summons.

PART E. CONSENT DECREE

- 370. Consent Decree.
- 371. Objection to Consent Decree.
- 373. Conditions of Consent Decree.

PART F. PRESERVATION OF TESTIMONY AND EVIDENCE

- 380. Preservation of Testimony After Commencement of Proceedings.
- 381. Preservation of Testimony by Video Recording.
- 384. DNA Testing (Reserved).

PART G. TRANSFER FOR CRIMINAL PROSECUTION

- 390. Notice of Request for Transfer to Criminal Proceedings.
- 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.
- 394. Transfer Hearing.
- 395. Procedure to Initiate Criminal Information.
- 396. Bail.

PART A. VENUE

Rule 300. Venue.

- A. *Generally.* A delinquency proceeding shall be commenced in:
 - 1) the county in which the delinquent act was allegedly committed; or
 - 2) the juvenile's county of residence.
- B. *Change of venue.* The juvenile may file a motion for change of venue if there is substantial prejudice to the juvenile. The court shall decide the motion.
- C. *Transmission of all records.* If there is a change of venue pursuant to paragraph (B):
 - 1) the transferring court shall transfer certified copies of all documents, reports, and summaries in the juvenile's official court record to the receiving court; and
 - 2) The juvenile probation office of the transferring court shall transfer its juvenile probation files to the juvenile probation office where venue has been transferred.

Official Note: Rule 300 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 21, 2012, effective August 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 300 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 300 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 300 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Source

The provisions of this Rule 300 amended December 24, 2009, effective immediately, 40 Pa.B. 222; amended May 21, 2012, effective August 1, 2012, 42 Pa.B. 3203. Immediately preceding text appears at serial pages (347596) and (357769).

Rule 302. Inter-County Transfer.

A. *Adjudication of Delinquency.* When the court proceeds to an adjudicatory hearing for non-resident juveniles, it shall hear evidence on the petition pursuant to Rule 406 or accept an admission pursuant to Rule 407 and shall rule on the offenses in accordance with Rule 408. The court may transfer the case to the juvenile's county of residence for a hearing to determine if the juvenile is in need of treatment, rehabilitation, or supervision pursuant to Rule 409 and if the court finds the juvenile to be in need of treatment, rehabilitation, or supervision, the receiving court shall proceed under Chapter Five.

B. *Courtesy Supervision.*

1) The court may transfer supervision of the juvenile to the juvenile's county of residence after:

- a) a consent decree is entered; or
- b) a dispositional order is entered; and

2) The county providing courtesy supervision may, with cause, withdraw supervision at any time and return the matter for further action to the county which entered the dispositional order.

C. *Transmission of all records.* If the case is transferred pursuant to paragraph (A) or (B):

- 1) the transferring court shall transfer certified copies of all documents, reports, and summaries in the juvenile's official court record to the receiving court;
- 2) the juvenile probation office of the transferring court shall transfer its juvenile probation files to the juvenile probation office where jurisdiction has been transferred.

Comment

The purpose of allowing transfer of disposition and supervision of the juvenile to the juvenile's county of residence is to allow probation to supervise the juvenile closely. Supervision is difficult if the juvenile lives in another county.

Under paragraph (B), this rule also may apply if the juvenile moves to a different county in this Commonwealth at some stage in the proceedings.

When the case is being transferred under paragraph (A), the transferring court should enter a finding of the amount of restitution owed and to whom it should be paid, if ordered. A restitution order should be included in the dispositional order, if applicable, under paragraph (B).

Official Note: Rule 302 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 21, 2012, effective August 1, 2012.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 302 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 302 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Source

The provisions of this Rule 302 amended December 24, 2009, effective immediately, 40 Pa.B. 222; amended May 21, 2012, effective August 1, 2012, 42 Pa.B. 3203. Immediately preceding text appears at serial pages (357769) to (357770).

PART B. INTAKE AND INFORMAL ADJUSTMENT

Rule 310. Pre-Intake Duties, Scheduling, and Notice.

A. *Juvenile probation officer duties.* After a written allegation is submitted, the juvenile probation officer shall gather pertinent information to determine whether:

- 1) the allegations are within the jurisdiction of the juvenile court; and
- 2) it is appropriate to schedule an intake conference.

B. *Scheduling.* Intake conferences shall be scheduled within a reasonable time after submission of the written allegation.

C. *Notice.* The juvenile probation officer shall make all reasonable efforts to provide actual notice of the intake conference to the juvenile and the juvenile's guardian.

Comment

If the juvenile probation officer has exhausted all methods of communication with the juvenile's guardian, the juvenile probation officer may proceed with the intake conference without the presence of the guardian. If the juvenile is detained at the intake conference without the presence of a guardian, the juvenile probation officer is to notify the guardian of the detention of the juvenile immediately. *See* Rule 313(B).

Official Note: Rule 310 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

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

Rule 311. Intake Conference.

A. *Generally.* The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. *Juvenile probation officer's duties.* Before proceeding with an intake conference, the juvenile probation officer shall:

- 1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and
- 2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and
- 3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. *Rescheduling.* If a juvenile fails to appear for an intake conference, the juvenile probation officer may attempt to reschedule the conference.

D. *Bench Warrants.*

- 1) If the juvenile fails to appear for an intake conference, the juvenile probation officer may notify the court that the juvenile has failed to appear for the conference.
- 2) If a judge finds that sufficient notice of the intake conference was given, the judge may issue a bench warrant. The judge may not find notice solely based on first-class mail service.
- 3) If a bench warrant is issued, the case shall proceed pursuant to Rules 140 and 240.

E. *Notice, motion, and hearing.*

- 1) The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference.
- 2) Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action.
- 3) The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. *See* 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Pursuant to paragraphs (C) and (D), if a juvenile fails to appear for an intake conference, juvenile probation officers should use their discretion in determining whether to reschedule the intake conference or ask the court to issue a bench warrant.

Pursuant to paragraph (D)(2), in determining sufficient notice, the judge may not find notice solely based on first-class mail service. *See also* Rule 140(A)(2) and its Comment.

Under paragraph (E), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend an intake conference. If the attorney for the Commonwealth objects pursuant to paragraph (E)(2), the court is to conduct a hearing on the motion. The attorney for the Commonwealth or its

designee is to notify the victim of the date, time, place, and purpose of the hearing conducted pursuant to paragraph (E)(3). The victim may be present at the hearing on the objections and is to be afforded the opportunity to submit an oral and/or written victim-impact statement. *See* Rule 132 and the Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005. Amended September 30, 2009, effective January 1, 2010. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 311 with the Court's Order at 39 Pa.B. 6029 (October 17, 2009).

Final Report explaining the amendments to Rule 311 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Source

The provisions of this Rule 311 amended September 30, 2009, effective January 1, 2010, 39 Pa.B. 6029; amended May 26, 2011, effective July 1, 2011, 41 Pa.B. 3180. Immediately preceding text appears at serial pages (347598) and (348305) to (348306).

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

- 1) an adjudication would not be in the best interest of the public and the juvenile;
- 2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and
- 3) the admitted facts bring the case within the jurisdiction of the court.

B. *Completion.*

- 1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.
- 2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

Pursuant to paragraph (A), informal adjustments may not occur after the filing of a petition. *See* Rule 800(12), which suspends 42 Pa.C.S. § 6323(a) only to the extent that it conflicts with this rule. *See also Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. *See* 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. *See* 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the dis-

cussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. *See* 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. The juvenile probation officer is to include the payment of restitution agreed to be owed to the victim as a condition of successful completion of an informal adjustment by a juvenile. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. *See* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005. Amended February 12, 2010, effective immediately. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 312 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Final Report explaining the amendments to Rule 312 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Source

The provisions of this Rule 312 amended February 12, 2010, effective immediately, 40 Pa.B. 1073; amended May 26, 2011, effective July 1, 2011, 41 Pa.B. 3180. Immediately preceding text appears at serial pages (348306) to (348307).

Rule 313. Detention from Intake.

A. *Detention.* If it is determined at an intake conference that a juvenile should be detained, the matter shall proceed pursuant to Rule 240.

B. *Notice to Guardian.* If a guardian is not present at the intake conference, the juvenile probation officer immediately shall notify the guardian of the juvenile's detention.

Comment

The provision concerning notification of a guardian in Rule 220 is to be followed.

Official Note: Rule 313 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

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

PART C. PETITION

Rule 330. Petition: Filing, Contents, Function.

A. *Certification.* The District Attorney of any county may require that an attorney for the Commonwealth shall file all petitions. If the District Attorney elects to require an attorney for the Commonwealth to file the petition, the District Attorney shall file a certification with the court of common pleas. The certification shall:

- 1) state that an attorney for the Commonwealth shall file petitions; and
- 2) specify any limitations on the filing or classes of petitions.

B. *Filings*. In every delinquency proceeding, the attorney for the Commonwealth or the juvenile probation officer shall file a petition with the clerk of courts if it has been determined that informal adjustment or another diversionary program is inappropriate.

C. *Petition Contents*. Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
 - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
 - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;
- 6) a) i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and
 - ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or
 - b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense.
- 7) the name and age of any conspirators, if known;
- 8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 9) a notation indicating whether the juvenile has or has not been fingerprinted and photographed;
- 10) a notation if criminal laboratory services are requested in the case;
- 11) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner'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;
- 12) the signature of the petitioner and the date of the execution of the petition;

- 13) the whereabouts of the juvenile and if taken into custody, the date and time thereof;
- 14) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative; and
- 15) an averment as to whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1.1)(ii) for limited public information.

Comment

Under paragraph (A), the District Attorney may file a certification with the court of common pleas stating that only an attorney for the Commonwealth may file a petition. If a certification has not been filed, then an attorney for the Commonwealth or a juvenile probation officer may file a petition.

A private citizen has the right to file a written allegation, not a petition. *See* Rule 800. The written allegation commences the proceedings in the juvenile system. *See* Rule 200. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas. *See* Comment to Rule 233.

Informal adjustment or other diversionary programs should be considered before a petition is filed. Once a petition is filed, informal adjustment is not permitted. *See* Comment to Rule 312 and *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

Petitions should be filed without unreasonable delay. *See Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

See 42 Pa.C.S. § 6308 for the taking of fingerprints and photographs pursuant to paragraph (C)(9).

The contents of a petition are the same as a written allegation except for the additional requirements in paragraphs (C)(6)(b), (13), and (15).

Pursuant to paragraph (15), the petitioner is to designate whether the allegations in the juvenile's petition make the case eligible for limited public information. *See* 42 Pa.C.S. § 6307(b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

Official Note: Rule 330 adopted April 1, 2005, effective October 1, 2005. Amended August 20, 2007, effective December 1, 2007. Amended January 23, 2009, effective March 1, 2009. Amended December 24, 2009, effective immediately. Amended February 13, 2019, effective June 28, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 330 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 330 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007).

Final Report explaining the amendments to Rule 330 published with the Court's Order at 39 Pa.B. 676 (February 7, 2009).

Final Report explaining the amendments to Rule 330 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 330 published with the Court's Order at 49 Pa.B. 916 (March 2, 2019).

Source

The provisions of this Rule 330 amended August 21, 2007, effective December 1, 2007, 37 Pa.B. 4866; amended January 23, 2009, effective March 1, 2009, 39 Pa.B. 676; amended December 24, 2009, effective immediately, 40 Pa.B. 222; amended February 13, 2019, effective June 28, 2019, 49 Pa.B. 916. Immediately preceding text appears at serial pages (357773) to (357776).

Rule 331. Service of Petition.

A. *Copy.* Upon the filing of a petition, a copy of the petition shall be served promptly upon the juvenile, the juvenile's guardian, the juvenile's attorney, the attorney for the Commonwealth, and the juvenile probation officer.

B. *Service to juvenile and guardian.* The service of the petition to the juvenile and the juvenile's guardian shall be by first-class mail or delivered in-person.

C. *Service to attorneys and juvenile probation officer.* The service of the petition to the juvenile's attorney, attorney for the Commonwealth, and juvenile probation officer shall be by first-class mail or delivered in-person unless all individuals otherwise agree upon an alternative method.

Comment

The purpose of paragraph (A) is to insure the juvenile and the juvenile's attorney have notice of the allegations to prepare the case adequately. If the juvenile is detained, service is to follow immediately after the filing of the petition. *See* Rule 242(D) for the twenty-four hour filing requirement.

Alternative methods of service that may be utilized under paragraph (C) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

Official Note: Rule 331 adopted April 1, 2005, effective October 1, 2005.

Rule 332. Multiple Offenses in Petition.

A. *Different incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from different delinquent episodes, one petition may be filed. However, each incident shall be described separately in conformity with the requirements of Rule 330(C)(4)—(6).

B. *Same incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from the same delinquent episode, a single petition shall be filed.

Comment

The purpose of paragraph (A) is to permit one petition for multiple offenses arising from different delinquent episodes. The offenses are to be stated with particularity to inform the juvenile of the allegations. *See* Rule 330(C)(4) through (6) for specific requirements.

Under paragraph (B), a single petition is to be submitted for offenses arising from the same delinquent episode.

Official Note: Rule 332 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 332 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 333. Separate Petitions.

When more than one juvenile is alleged to have participated in the commission of an offense, a separate petition for each juvenile shall be filed.

Comment

If there are conspirators to any of the alleged offenses, the names and ages, if known, of all conspirators are to be referenced in the petition. *See* Rule 330(C)(7).

Hearings on the petitions may be consolidated for such further action as may be required by Rule 351.

Official Note: Rule 333 adopted April 1, 2005, effective October 1, 2005.

Rule 334. Amendment of Petition.**A. Amendment.**

1) The court shall allow a petition to be amended when there is a defect in:

- a) form;
- b) the description of the offense;
- c) the description of any person or property; or
- d) the date alleged.

2) The court shall not allow a petition to be amended if the petition alleges a different set of events or offenses, where the elements or defenses are materially different from the elements or defenses to the offense originally petitioned.

B. Continuance. Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

Comment

For continuances, *see* Rule 122.

Official Note: Rule 334 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 334 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 335. Withdrawal of Petition.

The attorney for the Commonwealth may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

Comment

See Rule 345 for the procedures on filings and service.

Official Note: Rule 335 adopted April 1, 2005, effective October 1, 2005.

Rule 336. Re-Filing of the Petition After Withdrawal or Dismissal.

A. *Re-filing.* The attorney for the Commonwealth may re-file a petition after the petition has been withdrawn pursuant to Rule 335 or dismissed by the court.

B. *Motion for dismissal.* The court may entertain a motion by the juvenile to dismiss the re-filed petition.

Comment

A juvenile may be rearrested after the allegations have been dismissed prior to jeopardy attaching if the statute of limitations has not expired. *Cf. Commonwealth v. Revtai*, 532 A.2d 1 (Pa. 1987). The petition should be dismissed upon a finding that the attorney for the Commonwealth acted to harass the juvenile, the offenses are beyond the statute of limitations, or there is some other prejudice to the juvenile. *See Commonwealth v. Chermansky*, 552 A.2d 1128 (Pa. Super. Ct. 1989). *See also Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997).

If a petition is re-filed, the procedures of Rule 330 are to be followed. It may be necessary to have a detention hearing under the procedures of Rule 240(C).

Official Note: Rule 336 adopted April 1, 2005, effective October 1, 2005.

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

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

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

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

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

- 1) the juvenile's date of birth;
- 2) the names and ages of any conspirators, if known;
- 3) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1.1)(ii) for limited public information; and
- 5) the transfer order, including, a statement which provides:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought in juvenile court; and
 - b) the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile.

Comment

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

When a juvenile is transferred from a criminal proceeding to a juvenile proceeding, a new petition may be filed but is not necessary if the criminal complaint is converted into a petition when supplemented with the information as provided in paragraph (C). The petition is to be filed with the clerk of courts and the case is to proceed as any other juvenile case following the Rules of Juvenile Court Procedure.

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

Official Note: Rule 337 adopted July 31, 2012, effective November 1, 2012. Amended February 13, 2019, effective June 28, 2019.

Committee Explanatory Reports:

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

Final Report explaining the amendments to Rule 337 published with the Court's Order at 49 Pa.B. 916 (March 2, 2019).

Source

The provisions of this Rule 337 adopted July 31, 2012, effective November 1, 2012, 42 Pa.B. 5350; amended February 13, 2019, effective June 28, 2019, 49 Pa.B. 916. Immediately preceding text appears at serial pages (363626) to (363627).

PART D. PROCEDURES FOLLOWING FILING OF PETITION**Rule 340. Pre-Adjudicatory Discovery and Inspection.**

A. *Informal.* Before either party can seek any disclosure or discovery under these rules, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the adjudicatory hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. *Mandatory disclosure by the Commonwealth.* In all cases, on request by the juvenile's attorney or the juvenile, if unrepresented, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the juvenile's attorney or the juvenile, if unrepresented, to inspect and copy or photograph such items.

- 1) Any evidence favorable to the juvenile that is material either to adjudication or to disposition, and is within the possession or control of the attorney for the Commonwealth;

- 2) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;
- 3) the circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification;
- 4) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth;
- 5) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and
- 6) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

C. *Discretionary*. Upon motion of the attorney for the Commonwealth, the juvenile's attorney, or the juvenile, if unrepresented, for pre-adjudicatory discovery, the court may order, subject to the juvenile's right against self-incrimination, any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

D. *Continuing Duty to Disclose*. If, prior to or during the adjudicatory hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

E. *Remedy*. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the juvenile, or it may enter such other order as it deems just under the circumstances.

F. *Protective orders*. Upon a sufficient showing, the court may, at any time, order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

G. *Work Product*. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the juvenile's attorney, or members of their legal staffs.

Comment

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a general dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, *see* Rule 344.

For provisions under paragraph (B)(2), *see Commonwealth v. Burke*, 781 A.2d 1136 (Pa. 2001).

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P. S. § 5720 as being inconsistent with this Rule only insofar as the section may delay disclosure to the juvenile seeking discovery under paragraph (B)(6).

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case: 1) the names and contact information of eyewitnesses; 2) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses; 3) all written and recorded statements, and substantially verbatim oral statements, made by the juvenile, and by conspirators or accomplices, whether such individuals have been charged or not; and 4) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case.

Any evidence or material requested cannot interfere with the juvenile's right against self-incrimination.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at the adjudicatory hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a juvenile by means of the juvenile's person being in some way exhibited to a witness for the purpose of an identification: *e.g.*, a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, etc. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U. S. 293 (1967) and *United States v. Wade*, 388 U. S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the juvenile to seek suppression of such evidence.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the juvenile, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the *Brady* rule, it is to be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files, including juvenile probation files. *See* Rules 160 and 161.

Official Note: Rule 340 adopted April 1, 2005, effective October 1, 2005. Amended May 21, 2012, effective August 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 340 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 340 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Source

The provisions of this Rule 340 amended May 21, 2012, effective August 1, 2012, 42 Pa.B. 3203. Immediately preceding text appears at serial pages (310596) to (310599).

Rule 341. Notice of Alibi Defense.

A. *Notice by the juvenile's attorney or juvenile, if unrepresented.* A juvenile who intends to offer the defense of alibi at the adjudicatory hearing shall, at least two days prior to the adjudicatory hearing, give the attorney for the Commonwealth notice of the intention to claim such defense. Such notice shall include specific information as to the place or places where the juvenile claims to have been at the time of the alleged offense and the names and contact information of witnesses whom the juvenile intends to call in support of such claim.

B. *Failure to Give Notice.* If the juvenile fails to give notice of an alibi defense as required by this rule, or omits any witness from such notice, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the juvenile for the purpose of proving the defense, except testimony by the juvenile, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

C. *Impeachment.* A juvenile may testify concerning an alibi notwithstanding that the juvenile has not given notice, but if the juvenile has given notice and testifies concerning his or her presence at the time of the offense at a place or time different from that given in the notice, the juvenile may be cross-examined concerning such notice.

D. *Disclosure of Reciprocal Witnesses.* Prior to the adjudicatory hearing, the attorney for the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, the names and contact information, that have not been previously disclosed, of all persons the Commonwealth intends to call as witnesses to disprove or discredit the juvenile's claim of alibi.

E. *Failure to Supply Reciprocal Notice.* If the attorney for the Commonwealth fails to disclose a list of its witnesses as required by this rule, or omits any witness, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, or may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

Official Note: Rule 341 adopted April 1, 2005, effective October 1, 2005.

PART D(1). MOTION PROCEDURES**Rule 344. Motions and Answers.**

A. *Generally.* All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

B. *Represented juvenile.* If counsel represents a juvenile, the attorney shall make or file all motions and answers.

C. *Requirements for motions.* All motions shall comply with the following requirements:

1) The person making the motion shall sign a written motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

4) If the motion is written, a certificate of service as required by Rule 345(C) shall be included.

D. *Requirements for answers.* All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:

1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.

4) If the answer is written, a certificate of service as required by Rule 345(C) shall be included.

E. *Alternative relief.* Any motion may request such alternative relief as may be appropriate.

F. *Waiver of relief.* The failure, in any motion, to state a type of relief or order, or a ground, shall constitute a waiver of such relief, order, or ground.

Comment

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in juvenile court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. *See* Rule 345(B) for service of documents and Rule 345(C) for certificates of service.

Official Note: Rule 344 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 344 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 345. Filing and Service.**A. Filings.**

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of Courts' Duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by Represented Juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the official court record or make a docket entry, but shall forward it promptly to the juvenile's attorney.

4) *Method of Filing.* Filing may be accomplished by:

- a) personal delivery to the clerk of courts;
- b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing; or
- c) in a judicial district that permits electronic filing pursuant to Rule 205, as provided in Rule 205(E).

B. Service.

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.

2) *Method of Service to Parties.* Service on the parties shall be:

- a) by personal delivery of a copy to a party's attorney, or, if unrepresented, the party;
- b) by mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office;
- c) in a judicial district that maintains in the courthouse assigned boxes for counsel to receive service, by leaving a copy for the attorney in the attorney's box;

- d) by sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement; or
- e) as provided in Rule 205(D)(2) and (H)(1) in a judicial district that permits electronic filing pursuant to Rule 205.

C. *Proof of Service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and resolution.

Under paragraph (B), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

For the procedures for electronic filing and service as a local option, see Rule 205.

For service of petitions, see Rule 331.

Official Note: Rule 345 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended December 12, 2019, effective June 1, 2020.

Committee Explanatory Reports:

Final Report explaining the amendment to Rule 345 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 345 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 345 published with the Court's Order at 49 Pa.B. 7573 (December 28, 2019).

Source

The provisions of this Rule 345 amended August 7, 2009, effective immediately, 39 Pa.B. 4743; amended December 24, 2009, effective immediately, 40 Pa.B. 222; amended December 12, 2019, effective June 1, 2020, 49 Pa.B. 7573. Immediately preceding text appears at serial pages (347605) to (347606).

Rule 346. Omnibus Motion for Relief.

Unless otherwise required in the interests of justice, all pre-adjudicatory requests for relief shall be included in one omnibus motion filed prior to the adjudicatory hearing.

Comment

Types of relief appropriate for the omnibus motion include the following requests:

- (1) for continuance;
- (2) for separate or joint adjudicatory hearings;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to dismiss a petition;
- (6) to disqualify a judge;
- (7) for appointment of investigator; and
- (8) for pre-adjudicatory hearing conference.

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

For instances when the court is to recuse itself, *see* Code of Judicial Conduct. Recusal is necessary when there is bias, prejudice, improper influence, or appearance of impropriety. *Commonwealth v. Benchoff*, 700 A.2d 1289 (Pa. Super. Ct. 1997).

Official Note: Rule 346 adopted April 1, 2005, effective October 1, 2005.

Rule 347. Time for Omnibus Motion and Service.

A. *Time.* An omnibus motion shall be made as soon as practical but can be made at any time prior to the calling of the first witness at the adjudicatory hearing.

B. *Service.* If the omnibus motion is written, copies shall be served in accordance with Rule 345.

Comment

For general requirements concerning the filing and service of motions and answers, *see* Rule 345.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P. S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 347 adopted April 1, 2005, effective October 1, 2005.

Rule 348. Determination of Omnibus Motions.

Unless otherwise provided in these rules, all omnibus motions shall be determined before the adjudicatory hearing. If necessary for the determination of the omnibus motion, the court may postpone the adjudicatory hearing.

Official Note: Rule 348 adopted April 1, 2005, effective October 1, 2005; amended July 28, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendment to Rule 348 published with the Court's Order at 39 Pa.B. 4748 (August 8, 2009).

Source

The provisions of this Rule 348 amended August 7, 2009, effective August 8, 2009, 39 Pa.B. 4743. Immediately preceding text appears at serial page (310603).

Rule 350. Suppression of Evidence.

A. *Motion by attorney or juvenile, if unrepresented.* The juvenile's attorney or the juvenile, if unrepresented, may make a motion to the court to suppress evidence. The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the supporting facts and events.

B. *Timeliness.* Unless the opportunity did not previously exist, or the interests of justice otherwise require, a motion to suppress shall be contained in the omnibus motion set forth in Rule 346. If a timely motion is not made, the issue of suppression of such evidence shall be deemed to be waived.

C. *Findings.* At the conclusion of the hearing, the court shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the juvenile's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

D. *Decision final and binding.* If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at the adjudicatory hearing, except upon a showing of evidence that was unavailable, but nothing in this rule shall prevent a juvenile from opposing such evidence at the adjudicatory hearing upon any ground except its suppressibility.

Comment

This rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the juvenile's rights. This rule extends its coverage to specific provisions in violation of the fourth, fifth, and sixth amendments of the Constitution of the United States and Article I, §§ 8 & 9 of the Pennsylvania Constitution. *In re R.H.*, 791 A.2d 331 (Pa. 2002), *Commonwealth v. Scott*, 369 A.2d 809 (Pa. Super. Ct. 1976); *In re Cowell*, 364 A.2d 718 (Pa. Super. Ct. 1976). See *In re Gault*, 387 U. S. 1 (1967).

In all cases, the burden of production is upon the Commonwealth. See *In re Betrand*, 303 A.2d 486 (Pa. 1973); *In re Stoutzenberger*, 344 A.2d 668 (Pa. Super. Ct. 1975), citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968).

Under paragraph (B), if a motion to suppress is not timely made, it is deemed waived. *In re Cox*, 402 A.2d 534 (Pa. Super. Ct. 1979). See *Commonwealth v. Spriggs*, 344 A.2d 880 (Pa. 1975); *Commonwealth v. Wylie*, 344 A.2d 491 (Pa. 1975).

With regard to the recording and transcribing of the evidence adduced at the proceeding, see Rule 127.

All motions to suppress are to comply with the provisions of Rules 344 and 345.

To join this motion with a motion for return of property, see *Comment* to Rule 353.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P. S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 350 adopted April 1, 2005, effective October 1, 2005.

Rule 351. Adjudicatory Hearing on Separate Petitions.

A. *Standards.* An adjudicatory hearing may be held for:

- 1) offenses alleged in separate petitions if the evidence of each of the offenses would be admissible in a separate adjudicatory hearing for the other;
- 2) offenses alleged in separate petitions if the offenses alleged are based on the same act or transaction;

3) juveniles alleged in separate petitions if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions.

B. Procedure.

1) Oral or written notice that offenses or juveniles alleged in separate petitions will be heard together shall be given to the juvenile's attorney or the juvenile, if unrepresented, prior to the adjudicatory hearing. If the notice is written, a copy of the notice shall be filed with the clerk of courts.

2) When notice has not been given under paragraph (B)(1), any party may move to consolidate the adjudicatory hearing for separate petitions. The motion ordinarily shall be included in an omnibus motion.

Comment

Under the scheme set forth in this rule, it can be assumed that offenses alleged in the same petition will be heard together. *See* Rule 332. Similarly, offenses or juveniles will be heard together if notice is given pursuant to (B)(1) of this rule. In these situations, the court may order separate hearings either

when the standards in paragraph (A) are not met or pursuant to Rule 352. Absent notice pursuant to paragraph (B)(1), a motion for consolidation is required under paragraph (B)(2). A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 352.

Paragraph (A)(1) is based upon statutory and case law that, ordinarily, if all offenses arising from the same episode are not heard together, subsequent prosecution on any such offense not already heard may be barred. *In re Huff*, 582 A.2d 1093 (Pa. Super. Ct. 1990), citing *Commonwealth v. Campana*, 304 A.2d 432, *vacated and remanded*, 414 U. S. 808 (1973), addendum opinion on remand, 314 A.2d 854 (Pa. 1974).

Official Note: Rule 351 adopted April 1, 2005, effective October 1, 2005.

Rule 352. Separate Adjudicatory Hearings for Offenses or Juveniles.

The court may order separate adjudicatory hearings for offenses or juveniles, or provide other appropriate relief, if it appears that offenses or juveniles being heard together may prejudice any party.

Comment

This rule provides the procedure whereby the court may, because of prejudice to a party, order separate adjudicatory hearings for offenses or juveniles that otherwise would be properly heard together under Rule 351. A juvenile may also request separate adjudicatory hearings for offenses or juveniles on the ground that hearing them together would be improper under Rule 351.

Under Rule 346 (Omnibus Motion for Relief), any request for separate adjudicatory hearings ordinarily is to be made in an omnibus motion or it is considered waived.

Official Note: Rule 352 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 352 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 353. Motion for Return of Property.

A. *Return for lawful possession.* A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to its lawful possession. Such motion shall be filed in writing and served pursuant to Rule 345.

B. *Hearing.* The court hearing such motion shall receive evidence on any issue of fact necessary for its decision. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

C. *Joint motion.* A motion to suppress evidence under Rule 350 may be joined with a motion under this rule.

Comment

A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 350. However, if the time and effect of a motion brought under the instant rule would be, in the view of the court hearing the motion, substantially the same as a motion for suppression of evidence, the court may dispose of the motion in accordance with Rule 350.

Nothing in this rule is intended to prohibit the court from directing a more appropriate court to hear these motions. For example, a judicial district may have a motions court or specially designed court that hears all motions, including juvenile cases.

Pursuant to Rule 100, only motions for return of property derived from juvenile delinquency cases are appropriate for the juvenile court.

Official Note: Rule 353 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 353 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

Rule 360. Summons and Notice.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the adjudicatory hearing.

B. *Notice.* Notice of the adjudicatory hearing shall be given to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney;
- 3) the juvenile probation office; and
- 4) the victim.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335.

The guardian's failure to appear should not prevent the adjudicatory hearing from proceeding.

The attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the adjudicatory hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333.

Official Note: Rule 360 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 360 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 360 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Source

The provisions of this Rule 360 amended February 26, 2008, effective June 1, 2008, 38 Pa.B. 1142; amended May 26, 2011, effective July 1, 2011, 41 Pa.B. 3180. Immediately preceding text appears at serial page (332730).

Rule 362. Requirements of the Summons.

The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the juvenile of the juvenile's right to counsel, retain private counsel or be appointed counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest;
- 5) include a copy of the juvenile petition; and
- 6) include an order directing the juvenile to submit to fingerprinting and photographing by, or arranged by, the law enforcement agency that submitted the written allegation in all cases in which the juvenile has not previously been fingerprinted or photographed.

Comment

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a).

See 42 Pa.C.S. § 6308 for the taking of fingerprints and photographs.

Official Note: Rule 362 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 362 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 362 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

Source

The provisions of this Rule 362 amended December 24, 2009, effective immediately, 40 Pa.B. 222. Immediately preceding text appears at serial page (332731).

Rule 363. Service of Summons and Notice.

A. *Method of Service.* The summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

B. *Time of Service.*

- 1) *Juvenile detained.* If the juvenile is detained, the summons or notice shall be served no less than seven days prior to the adjudicatory hearing.
- 2) *Juvenile not detained.* If the juvenile is not detained, the summons or notice shall be served no less than fourteen days prior to the adjudicatory hearing.

Comment

Pursuant to Rule 360, the juvenile and the juvenile's guardian should be served a summons, and the attorney for the Commonwealth, the juvenile's attorney, and the juvenile probation officer should receive notice.

Official Note: Rule 363 adopted April 1, 2005, effective October 1, 2005.

Rule 364. Failure to Appear on the Summons.

If any summoned person fails to appear for the adjudicatory hearing and the judge finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

Comment

See Rule 140 for issuance of a bench warrant.

Official Note: Rule 364 adopted April 1, 2005, effective October 1, 2005; amended February 26, 2008, effective June 1, 2008.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 364 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Source

The provisions of this Rule 364 amended February 26, 2008, effective June 1, 2008, 38 Pa.B. 1142. Immediately preceding text appears at serial page (310607).

PART E. CONSENT DECREE**Rule 370. Consent Decree.****A. Agreement.**

1) At any time after the filing of a petition and before the entry of an adjudication order, the court may, upon agreement of the attorney for the Commonwealth and the juvenile suspend the proceedings, and continue the juvenile under supervision in the juvenile's home, under terms and conditions negotiated with the juvenile probation office.

2) The order of the court continuing the juvenile under supervision shall be known as a consent decree.

B. Explanation of conditions. The court shall explain on the record or in writing:

1) the terms, conditions, and duration of the consent decree pursuant to Rule 373; and

2) the consequences for violating the conditions of the consent decree, which include the petition under which the juvenile was continued under supervision may, in the discretion of the attorney for the Commonwealth following consultation with the juvenile probation officer, be reinstated, and the juvenile held accountable as if the consent decree had never been entered if:

- a) prior to discharge by the juvenile probation officer or expiration of the consent decree, there is a filing of a new petition against the juvenile; or
- b) the juvenile otherwise fails to fulfill express terms and conditions of the decree.

Comment

See 42 Pa.C.S. § 6340.

A consent decree is a device for placing an allegedly delinquent juvenile under supervision of the juvenile probation office prior to, and as an alternative to, adjudication, thus avoiding potential stigma attached to an adjudication of delinquency. *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981).

Before placing the juvenile on consent decree, the victim(s) of the offense should be consulted. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Under this rule, it is expected that the attorney for the Commonwealth should consult with the juvenile probation officer before revoking the consent decree. The consent decree should only be revoked if the juvenile fails to meet the conditions of the program or new allegations have been filed against the juvenile.

If a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Commonwealth v. Szebin*, 785 A.2d 103 (Pa. Super. Ct. 2001). In *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981), the Supreme Court viewed a consent decree in the same fashion as Accelerated Rehabilitative Disposition. See also *In re John W.*, 446 A.2d 621 (Pa. Super. Ct. 1982).

Nothing in this rule prohibits the entry of a consent decree after there has been an admission pursuant to Rule 407 or after there has been a ruling on the offenses pursuant to Rule 408. See also Comment to Rule 408.

Official Note: Rule 370 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 370 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 370 published with Court's Order at 44 Pa.B. 5447 (August 16, 2014).

Source

The provisions of this Rule 370 amended July 28, 2014, effective September 29, 2014, 44 Pa.B. 5447. Immediately preceding text appears at serial pages (357298) and (347609).

Rule 371. Objection to Consent Decree.

When the juvenile or the attorney for the Commonwealth objects to a consent decree, the court shall proceed to findings, adjudication, and disposition.

Comment

A consent decree may not be used unless the attorney for the Commonwealth consents and the juvenile agrees to accept the conditions required by the court. If the attorney for the Commonwealth objects to a consent decree or the juvenile refuses to accept the conditions required by the court, the court is to proceed to findings, adjudication, and disposition. *In re Bosket*, 590 A.2d 774 (Pa. Super. Ct. 1991). See also 42 Pa.C.S. § 6340(b).

See Rule 401 for the findings that are to be made in the juvenile delinquency process.

See also Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Official Note: Rule 371 adopted April 1, 2005, effective October 1, 2005.

Rule 373. Conditions of Consent Decree.

A. *Terms and conditions.* The court may place upon the juvenile any reasonable conditions that are consistent with the protection of the public interest. The conditions of the consent decree shall provide a balanced attention to:

- 1) the protection of the community;

- 2) the juvenile's accountability for the offenses committed; and
- 3) the development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community.

B. *Duration of consent decree.* A consent decree shall remain in force for no more than six months as agreed upon unless the juvenile is discharged sooner upon motion. Upon motion, the court may:

- 1) discharge the juvenile at an earlier time; or
- 2) extend the time period not to exceed an additional six months.

Comment

If the juvenile fails to accept the conditions required by the court pursuant to paragraph (A), the case should proceed to findings, adjudication, and disposition. *See* Comment to Rule 371.

Nothing in this rule is intended to prevent the juvenile probation officer from being the movant for consent decree. For rule on motions, *see* Rule 344.

Paragraph (B) requires a motion to be filed for early dismissal from consent decree. The procedures of Rule 344 are to be followed to ensure all parties are properly notified of the request and appropriate objections can be made. Rule 800 suspends 42 Pa.C.S. § 6340(c) only to the extent that there is an additional requirement that a motion is to be filed. *See* Rule 800.

Official Note: Rule 373 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 373 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006).

Source

The provisions of this Rule 373 amended December 30, 2005, effective immediately, 36 Pa.B. 186. Immediately preceding text appears at serial page (310609).

PART F. PRESERVATION OF TESTIMONY AND EVIDENCE

Rule 380. Preservation of Testimony After Commencement of Proceedings.

A. *By Court Order.*

1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

2) The court shall state on the record the grounds on which the order is based.

3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

4) The testimony shall be taken in the presence of the court, the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless otherwise ordered.

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

B. *By Agreement of the Parties.*

1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney.

2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

3) The testimony shall be taken in the presence of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless they otherwise agree.

4) The agreement shall be filed with the clerk of courts pursuant to Rule 345(A).

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

Comment

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 381.

Commencement of proceedings includes any action after the submission of a written allegation. *See* Rule 200 (Commencement of Proceedings).

This rule does not address the admissibility of the preserved testimony. The court is to decide all questions of admissibility. *See* Pa.R.E. 104(a); *see also*, 42 Pa.C.S. § 5917.

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or is elderly, frail, or demonstrates the symptoms of mental infirmity or dementia, or may become incompetent to testify for any other legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the juvenile's attorney, the juvenile, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the attorney for the Commonwealth, the juvenile, and the juvenile's attorney to determine among themselves whether the court should be present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the juvenile from waiving his or her presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to the other party. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see Pa.R.J.A. Nos. 4001—4016.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections for time of the adjudicatory hearing.

Paragraphs (A)(5) and (B)(5) are intended to guard against pre-adjudicatory hearing disclosure of potentially prejudicial matters.

For the definition of “court,” see Rule 120.

Official Note: Rule 380 adopted April 1, 2005, effective October 1, 2005. Amended November 16, 2016, effective January 1, 2017.

Committee Explanatory Reports:

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

Final Report explaining the amendment to Rule 380 published with the Court’s Order at 46 Pa.B. 7526 (December 3, 2016).

Source

The provisions of this Rule 380 amended November 16, 2016, effective January 1, 2017, 46 Pa.B. 7526. Immediately preceding text appears at serial pages (326031) to (326032) and (310611).

Rule 381. Preservation of Testimony by Video Recording.

A. When the testimony of a witness is taken and preserved pursuant to Rule 380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.

B. The following technical requirements shall be made part of the court order required by Rule 380(A) or the written agreement provided in Rule 380(B):

- 1) The video recording shall begin with a statement on camera that includes:
 - a) the operator’s name and business address;
 - b) the name and address of the operator’s employer;
 - c) the date, time, and place of the video recording;
 - d) the caption of the case;
 - e) the name of the witness;
 - f) the party on whose behalf the witness is testifying; and
 - g) the nature of the judicial proceedings for which the testimony is intended.
- 2) The court and the persons shall identify themselves on camera.
- 3) The witness shall be sworn on camera.
- 4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera.

- 5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s).
- 6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera.
- 7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony.
- 8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record.
- 9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding.
- 10) The original video recording shall not be altered.

Comment

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the persons.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the persons may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 380. It is not intended to affect other rules governing recording devices.

Official Note: Rule 381 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

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

Rule 384. DNA Testing (Reserved).**PART G. TRANSFER FOR CRIMINAL PROSECUTION****Rule 390. Notice of Request for Transfer to Criminal Proceedings.**

A. *General rule.* After a petition is filed but before the first scheduled adjudicatory hearing, any notice of a request for transfer to criminal proceedings pursuant to 42 Pa.C.S. § 6355 shall be filed and served on:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation office; and
- 5) the attorney for the Commonwealth.

B. *Exception.* If, after the first scheduled adjudicatory hearing but prior to the commencement of the adjudicatory hearing, there is a change in circumstances, a request for transfer to criminal proceedings may be filed and served in accordance with paragraph (A).

Comment

The Juvenile Act gives the juvenile the opportunity to petition the court for transfer to criminal proceeding as reflected in this rule. *See* 42 Pa.C.S. § 6355(c). The court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should inquire if the petition has been knowingly, intelligently, and voluntarily made.

The allegations requested to be transferred are to be classified as “delinquent acts”, pursuant to 42 Pa.C.S. § 6302 (definition of “delinquent acts”) and are to comply with the requirements as set forth in 42 Pa.C.S. § 6355 (Transfer to Criminal Proceedings). Any offense excluded from the definition of “delinquent acts,” paragraph (2) of the definition of “delinquent act” in 42 Pa.C.S. § 6302, should originate in criminal proceedings and may be transferred to delinquency proceedings, if so determined by the court. *See* 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings). For juveniles charged in criminal proceedings, the Rules of Criminal Procedure are applicable. *See* also Rule 100 on Scope of Rules. Also, any juvenile previously found guilty in criminal proceedings, for any charge other than a summary offense, should be charged in criminal proceedings for all subsequent offenses. *See* paragraph (2)(v) of the definition of “delinquent act” in 42 Pa.C.S. § 6302 and 42 Pa.C.S. § 6355(d).

The court should conduct a transfer hearing no sooner than three days after the notice of request for transfer to criminal proceedings is served unless the time requirement is waived. *See* Rule 394(A).

Under paragraph (A), it is anticipated that most notices of requests for transfer will be filed prior to the first scheduled adjudicatory hearing. However, under paragraph (B), it is noted that there may be changed circumstances, in which a notice for request of transfer may be filed at a later date but before the commencement of the adjudicatory hearing.

The attorney for the Commonwealth should notify the victim of any request for transfer. *See* Victim's Bill of Rights, 18 P.S. § 11.213.

Official Note: Rule 390 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 390 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.

A. *Generally.* The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing.

B. *Time Restrictions.* If the transfer hearing is not held within 10 days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

Comment

The filing of a request for transfer to criminal proceedings resets the 10-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within 10 days of the filing of a request for transfer to criminal proceedings, not 10 days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). *See* Rule 800.

Official Note: Rule 391 adopted April 1, 2005, effective October 1, 2005. Amended November 30, 2021, effective April 1, 2022.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 391 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 391 published with the Courts' Order at 51 Pa.B. 7629 (December 11, 2021).

Source

The provisions of this Rule 391 amended November 30, 2021, effective April 1, 2022, 51 Pa.B. 7629. Immediately preceding text appears at serial pages (384791) to (384792).

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. *Advanced communication technology.*

1) *Juvenile.* A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile only if the parties consent.

2) *Witness.* A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of a witness unless good cause is shown otherwise.

C. *Burden of proof.* Unless the provisions of 42 Pa.C.S. § 6355(g)(1) and (2) apply, the attorney for the Commonwealth shall have the burden of establishing:

- 1) a *prima facie* case that the juvenile committed a felony delinquent act; and
- 2) by a preponderance of the evidence that the public interest is served by transfer of the case to criminal proceedings.

D. *Findings.*

- 1) *Transfer.* At the hearing, the court shall transfer the case to the division or a judge assigned to conduct criminal proceedings if the court finds:
 - a) the juvenile is fourteen years old or older at the time of the alleged delinquent act;
 - b) notice has been given pursuant to Rule 390;
 - c) the Commonwealth has met its burden of proof pursuant to paragraph (C); and
 - d) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill.
- 2) *No Transfer.* If the required findings of paragraph (D)(1) have not been met, the court shall schedule an adjudicatory hearing pursuant to Rule 404.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the “*prima facie* phase.” The court is to determine whether the Commonwealth has established a *prima facie* showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a *prima facie* showing of evidence is found, the court proceeds to the second phase, known as the “public interest phase.” During the “public interest phase,” the court is to determine what is in the public’s interest.

In determining public interest, the court is to consider the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile’s culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years

of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a *prima facie* case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of “delinquent act” in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. *See* 42 Pa.C.S. § 6355 and Rule 800 for suspension of a portion of § 6355(g).

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. Amended November 21, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 394 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 394 published with the Court’s Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 394 published with the Court’s Order at 42 Pa.B. 4909 (August 4, 2012).

Source

The provisions of this Rule 394 amended April 21, 2011, effective July 1, 2011, 41 Pa.B. 2319; amended July 18, 2012, effective October 1, 2012, 42 Pa.B. 4909; amended November 21, 2014, effective immediately, 44 Pa.B. 7641. Immediately preceding text appears at serial pages (363281) to (363282).

Rule 395. Procedure to Initiate Criminal Information.

After the court orders the case transferred pursuant to Rule 394, these Rules no longer apply and the case shall be governed by the Pennsylvania Rules of Criminal Procedure. The attorney for the Commonwealth may file an information in accordance with Pa.R.Crim.P. 565.

Comment

The transfer hearing serves as the preliminary hearing, therefore, the attorney for the Commonwealth may file the criminal information after the issuance of the transfer order. *See* Pa.R.Crim.P. 565 for presentation of an information without the preliminary hearing.

For any procedural questions concerning a juvenile whom has been transferred to criminal proceedings, *see* the Pennsylvania Rules of Criminal Procedure.

Official Note: Rule 395 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 395 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 396. Bail.

If transfer to criminal proceedings is ordered at the conclusion of the transfer hearing, the juvenile court judge shall determine bail for the juvenile. The bail rules in the Pennsylvania Rules of Criminal Procedure shall apply.

Comment

See Pa.R.Crim.P. 520 through 536.

If the juvenile cannot post bail, the judge may issue a commitment order so the juvenile may be detained in a jail or the judge may continue the juvenile’s detention as a juvenile pending trial. *See* 42 Pa.C.S. § 6327(d).

237 Rule 396

JUVENILE RULES

Official Note: Rule 396 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 396 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

[Next page is 4-1.]