

RULES OF JUVENILE COURT PROCEDURE

DELINQUENCY MATTERS

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RULE 100. SCOPE OF RULES

- A. These rules shall govern delinquency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to domestic relations proceedings and dependency proceedings.

- B. Each of the courts exercising juvenile jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, may adopt local rules of procedure in accordance with Rule 121.

COMMENT

The Pennsylvania Rules of Juvenile Court Procedure are split into two categories: delinquency matters and dependency matters. All delinquency matters are governed by Chapters One through Ten (Rules 100 - 1099). All dependency matters are governed by Chapters Eleven through Twenty (Rules 1100 - 2099).

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Juvenile Court. See 42 Pa.C.S. §§ 6321 and 6302. These rules do not govern summary offense proceedings unless: 1) the summary offense(s) was committed with a delinquent act, as defined by 42 Pa.C.S. § 6302, during the same episode or transaction, as provided in 42 Pa.C.S. § 6303(a)(5), and has been properly alleged in a delinquency petition; or 2) a juvenile has failed to comply with a lawful sentence imposed for the summary offense(s), as provided in 42 Pa.C.S. § 6302.

Unless specifically provided in these rules, the Pennsylvania Rules of Civil Procedure and the Pennsylvania Rules of Criminal Procedure do not apply to delinquency proceedings commenced pursuant to Rule 200 and 42 Pa.C.S. § 6301 *et seq.*

The Rules of Criminal Procedure apply in cases involving juveniles in summary and court cases, as defined by Pa.R.Crim.P. 103, to the extent that the Juvenile Act does not apply to these proceedings. See, e.g., Pa.R.Crim.P. 100 and 400. See also 42 Pa.C.S. §§ 6302 and 6303.

Each judicial district may promulgate local rules that follow the requirements of Rule 121 and Pa.R.J.A. 103.

Official Note: Rule 100 adopted April 1, 2005, effective October 1, 2005. Amended May, 12, 2008, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 100 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008).

RULE 101. PURPOSE AND CONSTRUCTION

- A. These rules are intended to provide for the just determination of every delinquency proceeding.
- B. These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.
- C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).
- D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

Official Note: Rule 101 adopted April 1, 2005, effective October 1, 2005.

RULE 102. CITING THE JUVENILE COURT PROCEDURAL RULES

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

COMMENT

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts ... if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

Official Note: Rule 102 adopted April 1, 2005, effective October 1, 2005.

RULE 105. SEARCH WARRANTS

The Pennsylvania Rules of Criminal Procedure, Rules 200 through 211, shall apply to search warrants in juvenile delinquency matters.

Official Note: Rule 105 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 105 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

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RULE 120. DEFINITIONS

ADULT is any person, other than a juvenile, eighteen years old or older.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title. A party to the proceedings shall not function as the clerk of courts.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not

limited to, copies reproduced by a photocopier, transmission using facsimile equipment, or by scanning into and printing out of a computer.

COUNTY AGENCY is the county children and youth social service agency established pursuant to the County Institution District Law, 62 P.S. § 2305 (1937), or established by the county commissioners in the judicial districts where the County Institution District Law was abolished, 16 P.S. §§ 2161 and 2168, and supervised by the Department of Public Welfare pursuant to the Public Welfare Code, 62 P.S. § 901 *et seq.*

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are permitted to hear cases under these rules and magisterial district judges when issuing an arrest warrant pursuant to Rule 210. Juvenile Court shall have the same meaning as Court.

DESTROY or DESTRUCTION is to erase permanently or the process of permanent erasure of an item leaving no trace or indication that it ever existed.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care. Detention facility shall not include any county jail or state prison.

DISPOSITION is a final determination made by the court after an adjudication of delinquency or any determination that ceases juvenile court action on a case.

EDUCATIONAL DECISION MAKER is a responsible adult appointed by the court to make decisions regarding a juvenile's education when the juvenile has no guardian or the court has limited the guardian's right to make such decisions for the juvenile. The educational decision maker acts as the juvenile's representative concerning all matters regarding education unless the court specifically limits the authority of the educational decision maker.

EXPUNGE or EXPUNGEMENT is to erase legally or the process of legal erasure of the juvenile record or the sealing of the record making it permanently unavailable to the public but where some information may be retained only by a juvenile justice agency for limited purposes as provided in Rule 173.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

HEALTH CARE is care related to any medical need including physical, mental, and dental health. This term is used in the broadest sense to include any type of health need.

INSPECTION is the official examination of a document or evidence as authorized by Rules 160 and 161.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

INTELLIGENCE INFORMATION is information concerning the habits, practices, characteristics, possessions, associations, or financial status of any juvenile compiled in an effort to anticipate, prevent, monitor, investigate, or prosecute delinquent activity.

INVESTIGATIVE INFORMATION is the information assembled as result of the performance of any inquiry, formal or informal, into delinquent activity or an allegation of a delinquent act and may include *modus operandi* information.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, an arraignment court magistrate, or a Magisterial District Judge.

JUDGE is a judge of the Court of Common Pleas.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have, upon or after the juvenile's tenth birthday, committed a delinquent act before reaching eighteen years of age or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.

JUVENILE JUSTICE AGENCY is any court, including the minor judiciary, or any other governmental agency specifically authorized to perform the administration of juvenile justice as its function. Juvenile justice agencies include, but are not limited to, organized State and municipal police departments, probation agencies, district or prosecuting attorneys, the Juvenile Court Judges' Commission, the Administrative Office of Pennsylvania Courts, or any such persons, agencies, or departments as determined by the court to be juvenile justice agencies.

JUVENILE PROBATION FILES are those records formally maintained by the juvenile probation office and its officers, including, but not limited to, copies of information contained in the official juvenile court record; social studies; school records and reports; health evaluations, screenings, assessments, records, and reports, including psychological and psychiatric evaluations and reports, drug and alcohol testing, evaluations, and reports; placement reports and documents; employment records; and probation reports.

JUVENILE PROBATION OFFICER is a person who has been appointed by the court or employed by a county's juvenile probation office, and who has been properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195, the Juvenile Act, and the Child Protective Services Law.

JUVENILE RECORD is the information collected and retained by juvenile justice agencies concerning juveniles, and arising from the initiation of delinquency proceedings, consisting of identifiable descriptions, dates and notations of arrest, written allegations, petitions, other formal charging documents, official court records, and any dispositions arising from those records. The juvenile record does not include intelligence information or investigative information that is maintained separately by law enforcement agencies.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

MINOR is any person, other than a juvenile, under the age of eighteen.

OFFICIAL COURT RECORD is the juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation, or program description, to receive delinquent juveniles or which otherwise provides treatment to juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities,

group homes, after-school programs, and day programs, whether secure or non-secure. Placement facility shall not include any county jail or state prison.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

SERVICE PROVIDER is any entity that provides services to juveniles pursuant to a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*

SOCIAL STUDY is a pre-dispositional report, which summarizes important information concerning the juvenile to aid the court in determining the disposition.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

COMMENT

A party to the proceedings is not to function as the clerk of courts. Because the clerk of courts maintains the official court record, this person is to remain neutral and unbiased by having no personal connection to the proceedings.

"Clerk of courts" is the person given the power under state law or local practice to maintain the official court record. See Rule 166 for additional responsibilities of the clerk of courts.

The county institution districts, as used in the definition of "county agency," in counties of the fourth, fifth, sixth, seventh, and eighth classes were abolished pursuant to 16 P.S. § 2161. It is the county commissioners' duties in the counties of those classes to provide the children and youth social service agency with the necessary services for the agency to provide care for the child. See 16 P.S. § 2168.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187. See Rule 210 for the power of magisterial district judges to issue arrest warrants.

"Destroy" and "expunge" do not have the same meaning. "Destroy" is to erase *permanently*, whereas "expunge" is to erase *legally* or seal the record. Unless authorized by rule or otherwise provided by law, no person is to have access to expunged items. Only in extraordinary circumstances would a record be opened by court order, such as to retrieve specific information not clarified or documented

correctly pursuant to Rule 173. However, specific information from juvenile records could be retained for limited purposes. See Rule 173 and its *Comment*.

“Detention facility” is not to include any county jail, state prison, penal institution, or other facility used primarily to detain adults who have not been released on bail and who are alleged to have committed a criminal offense. However, nothing in this rule precludes the use of a county jail or state prison for minors when criminal proceedings have been commenced. For example, a minor may be detained in a county jail for a direct-file case when it is alleged a criminal offense has been committed.

The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

An “educational decision maker” is to be appointed by court order. The scope of the appointment is limited to decisions regarding the juvenile’s education. The educational decision maker acts as the juvenile’s spokesperson on all matters regarding education unless the court specifically limits the authority of the educational decision maker. The educational decision maker holds educational and privacy rights as the juvenile’s guardian for purposes of 20 U.S.C. § 1232g and 34 C.F.R. § 99.3. See also Rule 147(C) for the duties and responsibilities of an educational decision maker.

“Health care” includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treatment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the juvenile.

The term “intelligence information” may include information on prescribing, dispensing, selling, obtaining, or using a controlled substance as defined in Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 *et seq.*

The term “judge” refers to a judge of the Court of Common Pleas, including senior judges when they are properly certified. It does not include masters or magisterial district judges. Magisterial district judges, however, are included within the definition of “court” when they have the power to issue *arrest warrants* pursuant to Rule 210. See discussion *supra* under definition of “court.” Arrest warrants are distinguished from bench warrants pursuant to Rules 140 and 141. Only judges of the Court of Common Pleas may issue bench warrants if the juvenile: 1) fails to appear at a hearing; or 2) absconds from the court’s supervision.

A “juvenile” must be at least ten years old and must not have reached the age of eighteen at the time of the commission of a delinquent act for a delinquency petition to be filed. If a child is under the age of ten at the time of the commission of a delinquent act, a dependency petition may be filed pursuant to Pa.R.J.C.P. 1100 *et seq.* and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* “Juvenile” not only includes any person who is at least ten years of age and under twenty-one years of age if the commission of the alleged delinquent act occurred prior to the juvenile’s eighteenth birthday, but also includes any person who is under the juvenile court’s jurisdiction until termination of court supervision pursuant to Rules 631 and 632, which is to end no later than the juvenile’s twenty-first birthday.

A “juvenile probation officer” is an officer of the court. “Properly commissioned” as used in the definition of a juvenile probation officer includes the swearing in under oath or affirmation and receipt of a document, certificate, or order of the court memorializing the authority conferred upon the juvenile probation officer by the court.

A properly commissioned juvenile probation officer is vested with all the powers and duties set forth in 42 Pa.C.S. § 6304, and the power to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to Rule 195. See also 23 Pa.C.S. § 6315.

“Juvenile records,” as used in these Rules, do not include investigative and intelligence information kept separately by law enforcement agencies or the attorney for the Commonwealth. Those documents kept separately by law enforcement agencies are not subject to Rules 170 and 172. See 18 Pa.C.S. §§ 9105 & 9106. See also Rule 173 for retention of specific information from juvenile records.

Neither the definition of “law enforcement officer” nor the definition of “police officer” gives the power of arrest to any person who is not otherwise given that power by law.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation files unless they are made a part of the official court record by being filed with the clerk of courts.

A “petition” and a “written allegation” are two separate documents and serve two distinct functions. A “written allegation” is the document that initiates juvenile delinquency proceedings. Usually, the “written allegation” will be submitted by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a “probable cause affidavit,” “complaint,” “police paper,” “charge form,” “allegation of delinquency,” or the like. Once this document is submitted, a preliminary determination of the juvenile court’s jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

“Placement facility” is not to include any county jail, state prison, penal institution, or other facility used primarily for the execution of sentences of adults convicted of a crime. See 42 Pa.C.S. § 6352(b) for disposition of a delinquent juvenile.

A “pre-dispositional report” or “social study” includes, but is not limited to, the compilation of the juvenile’s family history and demographics; school record and educational issues; job history; talents and extra-curricular activities; prior delinquency or dependency involvement with the court; health care issues; psychological or psychiatric history, examinations, and reports; drug and alcohol examinations, treatments, and reports; needs regarding disability; and any other relevant information concerning the juvenile to help the court understand any issues relating to the juvenile.

The definition of “proceeding” includes all formal stages when a written allegation has been submitted, including all subsequent proceedings until supervision is terminated pursuant to Rules 631 or 632. A hearing on a motion alleging probation violations is one of these subsequent stages. See Rule 612 for revocation of probation.

For definition of “delinquent act,” see 42 Pa.C.S. § 6302.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended September 7, 2011, effective immediately. Amended September 20, 2011, effective November 1, 2011. Amended May 21, 2012, effective August 1, 2012. Amended June 24, 2013, effective January 1, 2014. Amended June 28, 2013, effective immediately. Amended March 10, 2014, effective immediately. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 2839 (June 4, 2011). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 41 Pa.B. 5062 (September 24, 2011). Final Report explaining the amendments to Rule 120 with the Court’s Order at 41 Pa.B. 5355 (October 8,

2011). Final Report explaining the amendments to Rule 120 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012). Final Report explaining the amendments to Rule 120 published with the Court's Order at 43 Pa.B. 3941 (July 13, 2013). Final Report explaining the amendments to Rule 120 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013). Final Report explaining the amendments to Rule 120 published with the Court's Order at 44 Pa.B. 1868 (March 29, 2014). Final Report explaining the amendments to Rule 120 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

RULE 121. LOCAL RULES

A. **Definition of Local Rule.** For the purpose of this rule, the term, "local rule" shall include every rule, administrative order, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas to govern juvenile delinquency practice and procedure.

B. Vacated Local Rules and Repromulgation.

- 1) All local rules promulgated before October 1, 2005 were vacated at the time of the adoption of these Rules.
- 2) All local rules not published on the Unified Judicial System (UJS) Portal by June 1, 2010 shall be vacated.
- 3) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure after submission under paragraph (D).

C. **Corresponding numbers.** Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. Submission to Committee.

- 1) All proposed local delinquency rules and proposed amendments to local delinquency rules shall be submitted in writing to the Juvenile Court Procedural Rules Committee for the Committee to review.
- 2) The adopting court shall not proceed with the proposed local rule or amendment until the adopting court receives written notification from the Committee that the proposed local rule or amendment is not inconsistent with any general rule of the Supreme Court.

E. **Vacating and Suspending Local Rules.** Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

- 1) The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.
- 2) The Juvenile Court Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.

F. **Publication of Local Rules.** All local rules shall be published on the UJS Portal maintained by the Administrative Office of Pennsylvania Courts and in the *Pennsylvania Bulletin* to be effective and enforceable.

- 1) The adopting court shall publish every local rule on the UJS Portal.
 - a) *Current Rules.* All current local rules promulgated before March 1, 2010 shall be published on the UJS Portal by June 1, 2010 to be effective and enforceable.
 - b) *New Rules.* All new local rules that have been submitted to the Committee pursuant to paragraph (D)(1) shall be published on the UJS Portal no later than ninety days after receiving written notification from the Committee under paragraph (D)(2).
 - c) *Vacating Rules.* If local rules are not published by these time requirements, they shall be vacated pursuant to paragraph (B)(2).
- 2) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.
- 3) The adopting court shall submit the following items to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*:
 - a) two certified copies of the local rule;
 - b) a copy of the local rule on a computer diskette, CD-ROM, or electronic copy that complies with the requirements of 1 *Pa.Code* § 13.11(b) - (f); and
 - c) a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, providing that the local rule is not inconsistent with the Pennsylvania Rules of Juvenile Court Procedure.
- 4) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule on the UJS Portal and in the *Pennsylvania Bulletin*.

G. **Filing with AOPC.** Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall:

- 1) file one certified copy of the local rule with the Administrative Office of Pennsylvania Courts; and

- 2) publish a copy of the local rule on the UJS Portal at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

H. Public inspection.

- 1) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts.
- 2) Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

I. Mandatory Acceptance of Filing.

- 1) No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule.
- 2) No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule.
- 3) In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the party to comply with the local rule.

COMMENT

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation is not to determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B)(1) vacated all current local rules on October 1, 2005, the original effective date of this rule. Paragraph (B)(2) vacated all local rules not published on the UJS Portal by June 1, 2010. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C) and meeting the appropriate filing requirements under paragraphs (F) & (G).

To simplify the use of local rules, local juvenile delinquency procedural rules are required to be given numbers that are keyed to the number of the general juvenile delinquency procedural rules to which the local rules correspond pursuant to paragraph (C). This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile delinquency procedural rule.

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in paragraphs (F) and (G), the adopting court must submit all proposed local delinquency rules or rule amendments to the Juvenile Court Procedural Rules Committee for review.

The 2008 amendments emphasize that the adopting authority is to comply with all the provisions of this rule before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (F) requires the local rule to be published on the UJS Portal and in the *Pennsylvania Bulletin* to be effective.

Pursuant to the 2010 amendments under paragraph (F)(1), all current local rules are to be published on the UJS Portal by June 1, 2010 to be effective and enforceable. If they are not published by this time, they are vacated and may be repromulgated if the procedures of this Rule are followed. All new local rules promulgated after March 1, 2010 are to be published on the UJS Portal no later than ninety days after receiving written notification from the Committee that the proposed rule or amendment is not inconsistent with any general rule of the Supreme Court of Pennsylvania.

Pursuant to 1 *Pa.Code* § 13.11(b) - (f), any documents that are submitted for publication must be accompanied by a diskette or CD-ROM formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect or in lieu of a diskette or CD-ROM, an electronic copy may be submitted to Legislative Reference Bureau at pabsupreme@palrb.us. The diskette, CD-ROM, or email cover sheet must be labeled with the court's name and address and the local rule's computer file name. In addition, a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, that the local rule is not inconsistent with the Rules of Juvenile Court Procedure is to be submitted.

Pursuant to paragraph (F)(3), an electronic copy is a document sent via email to the *Pennsylvania Bulletin*.

Although under paragraph (F)(4) a local rule is not to be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: <http://www.pacourts.us/T/SpecialCourts/LocalRules.htm>.

Paragraph (H) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The purpose of paragraph (I) is to: 1) require that all documents presented for filing are accepted by the clerk of court, *also see* Rule 345 (A)(2); and 2) prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (I) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (I), the court may impose a sanction for subsequent noncompliance either on the attorney or the juvenile if proceeding *pro se*, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 121 adopted April 1, 2005, effective October 1, 2005. Amended December 12, 2008, effective immediately. Amended January 11, 2010, effective March 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 121 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 121 published with the Court's Order at 38 Pa.B. 7080 (December 27, 2008). Final Report explaining the amendments to Rule 121 published with the Court's Order at 40 Pa.B. 518 (January 23, 2010).

RULE 122. CONTINUANCES

- A. **Generally.** In the interests of justice, the court may grant a continuance on its own motion or the motion of either party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.
- B. **Notice and rescheduling.** If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

COMMENT

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under paragraph (B), if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rule 344 and 345 for motion procedures.

Official Note: Rule 122 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 122 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 123. SUBPOENAS

A. **Contents.** A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

- 1) **Method of Service.** A subpoena shall be served upon a witness by:
 - a) in-person delivery;
 - b) registered or certified mail, return receipt requested, or
 - c) by first-class mail.
- 2) **Proof of Service.** The following shall be *prima facie* evidence of service of the subpoena:
 - a) A completed return receipt;
 - b) Hand signed receipt of personal delivery; or
 - c) Affidavit of in-person delivery signed by a process server.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

E. **Parental notification.**

- 1) **Generally.** If a witness is a minor, the witness's guardian shall be:
 - a) notified that the minor has been subpoenaed; and
 - b) provided with a copy of the subpoena.

- 2) **Exception.** Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

COMMENT

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa. Super. 36, 519 A.2d 978 (1987) for punishing juveniles for contempt.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

Official Note: Rule 123 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008. Amended May 12, 2008, effective immediately. Amended September 16, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 123 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 123 published with the Court's Order at 39 Pa.B. 5544 (September 26, 2009).

RULE 124. SUMMONS AND NOTICE

A) Requirements of the summons. The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B) Method of Service. Summons or notice shall be served:

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

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

COMMENT

See Rules 360(A), 500(A), and 600(A) for service of the guardian for a proceeding. Nothing in these rules gives the guardians of juveniles legal standing in the matter being heard by the court or creates a right for juveniles to have their guardians present. See 42 Pa.C.S. § 6310(e). See Rule 140 for procedures on bench warrants.

Official Note: Rule 124 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 124 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 124 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

RULE 125. HABEAS CORPUS

- A. The petition for writ of *habeas corpus* challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered.
- B. The clerk of courts shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive.

COMMENT

See Rules 344 and 345 for motion procedures.
See *In re Crouse*, 4 Whart. 9 (Pa. 1839).

Official Note: Rule 125 adopted April 1, 2005, effective October 1, 2005.

RULE 126. DEFECTS IN FORM, CONTENT, OR PROCEDURE

A juvenile shall not be discharged, nor shall a case be dismissed, because of a defect in the form or content of the petition, written allegation, or warrant, or a defect in the procedures of these rules, unless the juvenile raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of the juvenile.

COMMENT

Nothing in this rule prevents the amendment of a written allegation or petition or the filing of a new written allegation, a new petition, or the reissuance of process.

See Rule 334 for amendment of a petition.

Official Note: Rule 126 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 126 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 127. RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS

- A. **Recording.** There shall be a recording of all juvenile delinquency proceedings, including proceedings conducted by masters, except as provided in Rule 242(B)(2).
- B. **Transcribing.** Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.
- C. **Modifying.** At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

COMMENT

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. See, e.g., Pa.R.A.P. 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). No substantive change in law is intended by this rule; rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Under Rule 800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that proceedings are to be recorded, except as provided in Rule 242(B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all juvenile delinquency proceedings and to ensure all proceedings are recorded, including proceedings before masters, with the exception of detention hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

Official Note: Rule 127 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 127 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 128. PRESENCE AT PROCEEDINGS

A. **General Rule.** The juvenile shall be present at all proceedings unless the exceptions of paragraph (B) apply.

B. Exceptions.

- 1) **Absence from proceedings.** The court may proceed with a hearing in the absence of the juvenile if the court finds that the juvenile was properly subpoenaed or summoned to appear and has willfully failed to attend, and the juvenile's attorney is present.
- 2) **Exclusion from proceedings.** The juvenile may be excluded from a proceeding only for good cause shown. If the juvenile is so excluded, the juvenile's attorney shall be present.

C. **Advanced Communication Technology.** A juvenile may appear utilizing advanced communication technology pursuant to Rule 129.

D. **Order appearance.** The court may order the guardian to bring the juvenile and to attend the proceeding.

COMMENT

The court has discretion whether to proceed if the court finds that the juvenile received proper notice of the hearing and has willfully failed to appear.

Pursuant to paragraph (B)(2), a juvenile may be excluded only for good cause shown. For example, a juvenile may be removed from the courtroom after repeated warnings for disruptive behavior.

Requiring the juvenile's attorney to be present protects the juvenile's interest if the proceeding is conducted in the juvenile's absence. However, unless good cause is shown, a juvenile should appear in court.

Cf. Commonwealth v. Ford, 650 A.2d 433 (Pa. 1994); *Commonwealth v. Sullens*, 619 A.2d 1349 (Pa. 1992).

Nothing in these rules creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1.

Official Note: Rule 128 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 128 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 128 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Rule 129. APPEARANCE BY ADVANCED COMMUNICATION TECHNOLOGY

A. Generally.

- 1) The juvenile or a witness may appear at a proceeding by utilizing advanced communication technology pursuant to Rule 140, 141, 242, 394, 406, 512, and 610.
- 2) At a minimum, the juvenile shall appear in person at least once a year.

B. Counsel.

- 1) The juvenile shall be permitted to confer with counsel before entering into an agreement to appear utilizing advanced communication technology.
- 2) The juvenile shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

COMMENT

Paragraph (A) requires that every juvenile is to appear in person at least once a year. This includes juveniles who are not removed from their homes but who are under the court's supervision.

This rule is not intended to compel the use of advanced communication technology but rather permit appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or is otherwise in a remote location. See Rules 140, 141, 242, 394, 406, 512, and 610 for specific requirements for the use of advanced communication technology.

Additionally, special care is to be taken when utilizing advanced communication technology to prevent disclosure of sensitive information to unauthorized persons or entities and to prevent a breach of confidentiality between the juvenile and the juvenile's attorney.

Pursuant to paragraph (B)(1), the juvenile is to be permitted to confer with counsel prior to agreeing to a proceeding utilizing advanced communication technology. Pursuant to paragraph (B)(2), the juvenile is permitted to confer with counsel privately prior to and during the proceedings. The juvenile is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Official Note: Rule 129 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 129 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Rule 130. COURT FEES PROHIBITED FOR ADVANCED COMMUNICATION TECHNOLOGY

The court shall not impose any fees upon the juvenile or witness for utilizing advanced communication technology.

COMMENT

See March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

Official Note: Rule 130 adopted April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 130 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

RULE 131. GUARDIAN' S PRESENCE

The court may, when the court determines that it is in the best interest of the juvenile, order a guardian of a juvenile to be present at and to bring the juvenile to any proceeding. The court shall insure timely notice of the proceeding to the guardian.

COMMENT

Nothing in these rules gives the guardian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 131 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 131 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 132. VICTIM'S PRESENCE

The victim, counsel for the victim, and other persons accompanying a victim for his or her assistance shall be permitted to attend the proceedings, except as provided in Rule 311.

COMMENT

See 42 Pa.C.S. § 6336(d) and 18 P.S. § 11.201 *et seq.*

The court has discretion to maintain confidentiality of mental health, medical, or juvenile institutional documents or juvenile probation reports. See 42 Pa.C.S. § 6336(f).

Official Note: Rule 132 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 132 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 135. CAPTIONS

All court documents and orders shall contain a caption that includes the following:

- 1) “In the interest of (the juvenile’s name);”
- 2) the juvenile's case docket number; and
- 3) the name of the court.

Official Note: Rule 135 adopted April 1, 2005, effective October 1, 2005.

RULE 136. EX PARTE COMMUNICATION

- A) Unless otherwise authorized by law, no person shall communicate with the court in any way regarding matters pending before the court unless all parties:
- 1) are present or have been copied if the communication is written or in electronic form; or
 - 2) have waived their presence or right to receive the communication.
- B) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

COMMENT

No *ex parte* communications with the court are to occur. Communications should include all parties, such as the filing of a motion, or conducting a conference or a hearing.

Attorneys are bound by the Rules of Professional Conduct. See Rules of Professional Conduct Rule 3.5(b). Judges are bound by the Code of Judicial Conduct. See Code of Judicial Conduct Canon 3(A)(4).

Attorneys and judges understand the impropriety of *ex parte* communications regarding matters pending before the court but many participants, such as probation officers and service providers, are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented.

Administrative matters are not considered *ex parte* communications.

Official Note: Rule 136 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 136 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

RULE 137. PUBLIC DISCUSSION BY COURT PERSONNEL OF PENDING MATTERS

All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Official Note: Rule 130 adopted April 1, 2005, effective October 1, 2005. Renumbered Rule 137 and amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the renumbering of 130 to 137 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

RULE 139. USE OF RESTRAINTS ON THE JUVENILE

Restraints shall be removed prior to the commencement of a proceeding unless the court determines on the record, after providing the juvenile an opportunity to be heard, that they are necessary to prevent:

- 1) physical harm to the juvenile or another person;
- 2) disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- 3) the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

COMMENT

The use of any restraints, such as handcuffs, chains, shackles, irons, or straitjackets, is highly discouraged. The routine use of restraints on juveniles is a practice contrary to the philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. Therefore, restraints should not be used in most instances. However, there are some circumstances when juveniles need to be restrained to protect themselves and others and to maintain security in the courtroom. See 42 Pa.C.S. § 6301 for purposes of the Juvenile Act.

Official Note: Rule 139 adopted April 26, 2011, effective June 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 139 published with the Court's Order at 41 Pa.B. 41 Pa.B. 2413 (May 14, 2011).

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR AT HEARINGS

A. Issuance of warrant.

- 1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.
- 2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Juvenile.

1) Where to take the juvenile.

- a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge or master designated by the President Judge to hear bench warrants.
- b) If the juvenile is not brought before a judge or master, the juvenile shall be released unless:
 - i) the warrant specifically orders detention of the juvenile; or
 - ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.
- c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) Prompt hearing.

- a) If a juvenile is detained, the juvenile shall be brought before the judge who issued the warrant, a judge or master designated by the President Judge to hear bench warrants, or an out-of-county judge or master pursuant to paragraph (C)(4) within seventy-two hours.
- b) If the juvenile is not brought before a judge or master within this time, the juvenile shall be released.

- 3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.
- 4) *Out-of-county custody.*
 - a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
 - b) Arrangements to transport the juvenile shall be made immediately.
 - c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge or master of the county where the juvenile is found.
 - d) The judge or master will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order or recommend that arrangements be made to transport the juvenile to the county of issuance.
- 5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

D. Witnesses.

- 1) *Where to take the witness.*
 - a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge or master designated by the President Judge to hear bench warrants.
 - b) If the witness is not brought before a judge or master, the witness shall be released unless the warrant specifically orders detention of the witness.
 - c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order or the master may recommend detention of the witness pending a hearing.
 - 1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.
 - 2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

- a) If a witness is detained pursuant to paragraph (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge or master by the next business day.
- b) If the witness is not brought before a judge or master within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

- a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
- b) The witness shall be taken without unnecessary delay and within the next business day to a judge or master of the county where the witness is found.
- c) The judge or master will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.
- d) Arrangements to transport the witness shall be made immediately.
- e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.
 - i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.
 - ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.
- f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

- g) If the time requirements of this paragraph are not met, the witness shall be released.

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

F. Return & execution of the warrant for juveniles and witnesses.

- 1) The bench warrant shall be executed without unnecessary delay.
- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear bench warrants.
- 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
- 4) Upon the return of the warrant, the judge shall vacate the bench warrant.
- 5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

COMMENT

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to paragraph (C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. See paragraph (C) for alleged delinquents and paragraph (D) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of that county to hear bench warrants. This provision allows the judge or master the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to be brought immediately before the court for the hearing. However, pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, or there are circumstances apparent at the time of the surrender or apprehension that merit detention of the juvenile, the juvenile may be detained without having to be brought before the judge or master until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility.

Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph (C)(2)(b).

At the seventy-two hour hearing, the judge or master may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Under paragraphs (C)(2) and (C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240(C).

Pursuant to paragraph (C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of that county to hear bench warrants. This provision allows the judge or master the discretion to postpone a hearing, for example, an adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to be brought immediately before the court for the hearing. However, pursuant to paragraph (D)(1)(b), if the judge or master is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. See paragraph (D)(2)(b).

At the hearing pursuant to paragraph (D)(2)(a), the judge or master may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or master has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge or master by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the court by the next business day. See paragraph (D)(4)(f).

Pursuant to paragraph (F)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (F)(3).

Pursuant to paragraph (F)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (F)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

If there is a bench warrant issued, masters may hear cases in which the petition alleges only misdemeanors. See Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to paragraph (C)(2)(a) or the hearing for witnesses pursuant to paragraph (D)(2)(a) is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.

Pursuant to Rule 191, the master is to submit his or her findings and recommendation to the court. In bench warrant cases, the master should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. See Rule 191(C).

If the findings and recommendation are not taken immediately to the judge, the master is to submit the recommendation within one business day. See Rule 191(B).

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008. Amended September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011. Amended September 20, 2011, effective November 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 140 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 140 with the Court's Order at 39 Pa.B. 6029 (October 17, 2009). Final Report explaining the amendments to Rule 140 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 140 with the Court's Order at 41 Pa.B. 5355 (October 8, 2011).

RULE 141 . BENCH WARRANTS FOR ABSCONDERS

- A. Issuance of warrant.** The juvenile probation officer shall immediately notify the court upon notification or recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.
- B. Entry of warrant information.** Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.
- C. Where to take the juvenile.** The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).
- D. Prompt hearing.**
- 1) The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.
 - 2) A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.
- E. Time requirements.** The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.
- F. Notification of guardian.** When the juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.
- G. Return & execution of the warrant.**
- 1) The bench warrant shall be executed without unnecessary delay.
 - 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.
 - 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
 - 4) Upon the return of the warrant, the judge shall vacate the bench warrant.
 - 5) Once the warrant is vacated, the court shall order the probation officer or other court designee to remove or request that a law enforcement officer remove the warrant from all appropriate registries.

COMMENT

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify the juvenile probation officer or another court designee to enter or request that a law enforcement officer enter the bench warrant in all appropriate registries, such as JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant. If a juvenile is taken into custody pursuant to the bench warrant in a county other than the county of issuance, the juvenile is to be transported back to the county of issuance prior to the seventy-two-hour detention hearing mandated pursuant to paragraph (D)(1).

Pursuant to paragraphs (D)(1) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. See, e.g., Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

Pursuant to paragraph (G)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (G)(3).

Pursuant to paragraph (G)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (G)(5), once the warrant is vacated, the juvenile probation officer or other court designee is to remove the warrant or request that a law enforcement officer remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

Official Note: Rule 141 adopted September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 141 published with the Court's Order at 39 Pa.B. 6029 (October 17, 2009). Final Report explaining the amendments to Rule 141 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

PART B(1)
EDUCATION AND HEALTH OF JUVENILE

147. Educational decision maker

RULE 147. EDUCATIONAL DECISION MAKER.

A. **Generally.** At any proceeding or upon motion, the court shall appoint an educational decision maker for the juvenile if it determines that:

- 1) the juvenile has no guardian; or
- 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the juvenile's best interest to limit the guardian's right to make decisions regarding the juvenile's education.

B. **Notice of hearings.** The educational decision maker shall receive notice of all proceedings.

C. **Duties and responsibilities.** The educational decision maker shall:

- 1) make appropriate inquiries and take appropriate actions to ensure that:
 - a) issues concerning school discipline matters are addressed;
 - b) the juvenile is receiving appropriate education that will allow the juvenile to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;
 - c) the juvenile, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the juvenile turns fourteen;
 - d) the juvenile approaching discharge from a delinquency placement will be promptly enrolled in an appropriate program of instruction that addresses the juvenile's educational needs; and
 - e) any other educational matters, as appropriate in the juvenile's best interest, are addressed.
- 2) address the juvenile's educational needs by:
 - a) meeting with the juvenile at least once and as often as necessary to make decisions regarding education that are in the juvenile's best interests;

- b) participating in special education and other meetings, and making decisions regarding all matters affecting the juvenile's educational needs in a manner consistent with the juvenile's best interests;
- c) making any specific recommendations to the court relating to:
 - i) the timeliness and appropriateness of the juvenile's educational placement; and
 - ii) services necessary to address the juvenile's educational needs;
- d) appearing and testifying at court hearings when necessary; and
- e) having knowledge and skills that ensure adequate representation of the juvenile.

COMMENT

A juvenile is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for juveniles who are adjudicated delinquent, may be returning from delinquency placements, and may not have a parent available and able to perform this function. An educational decision maker's responsibilities may include, but are not limited to: ensuring that the juvenile is promptly enrolled in an appropriate educational program while in placement and upon discharge; see 42 Pa.C.S. § 6301(b)(2) and 55 Pa. Code § 3130.87; ensuring educational stability as applicable pursuant to 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; facilitating access to a full range of school programs; advocating for the juvenile in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a juvenile eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. See 24 P.S. §§ 13-1371, 13-1372 and 20 U.S.C. § 1400 *et seq.* See paragraphs (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a juvenile who is also adjudicated dependent is to review Rule 1147 for additional information concerning educational laws and entitlements applicable to children in dependent care.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (*e.g.*, foster parent, relative with whom the juvenile lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the juvenile's education and who is acting in the juvenile's best interest regarding all educational matters. See Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding the juvenile's education only to the extent necessary to protect the juvenile's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the juvenile; and 2) can consent to or prohibit the release of information from the juvenile's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educational decision maker appointed by the court should be familiar with a juvenile's educational rights or is to agree to be trained regarding these issues.

If the juvenile is or may be eligible for special education, an educational decision maker is to be appointed in accordance with the standards and procedures set forth in federal and state laws concerning special education. See IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a juvenile. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the juvenile. 34 C.F.R. § 300.519(c), (d)(2)(i).

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that "provide for the care, protection, safety, and wholesome mental and physical development of children." 42 Pa.C.S. § 6301 (b)(1.1). The IDEA also requires that each juvenile who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. See IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

Official Note: Rule 147 adopted April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 147 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

PART B(2)
COUNSEL

- 150. Attorney -- Appearances and Withdrawals
- 151. Assignment of Counsel
- 152. Waiver of Counsel

RULE 150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

A. Appearances.

- 1) Counsel for the juvenile shall file an entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth and the juvenile probation office.
 - a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.
 - b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.
- 2) When counsel is appointed pursuant to Rule 151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

B. Duration. Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw pursuant to paragraph (C).

C. Withdrawals.

- 1) Upon motion, counsel shall be permitted to withdraw only:
 - a) by order of the court for good cause shown; or
 - b) if new counsel has entered an appearance in accordance with paragraph (A).
- 2) A motion to withdraw shall be:
 - a) filed with the clerk of courts, and a copy concurrently served on the attorney for the Commonwealth and the juvenile; or

- b) made orally on the record in open court in the presence of the juvenile.

COMMENT

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the juvenile reaches the age of twenty-one. See 42 Pa.C.S. §§ 6302, 6352.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation are met, as provided for in Pa.R.P.C. 1.16.

Under paragraph (C)(1)(b), because the attorney for the Commonwealth and the juvenile probation officer will be on notice of the identity of the new attorney, they should comply with the discovery requirements of Rule 340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent the juvenile, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the juvenile, particularly concerning time limits.

See also Rule 631 for termination of court supervision.

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed for juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

For admission *pro hac vice*, see Pa.B.A.R. 301.

Official Note: Rule 150 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective April 1, 2008. Amended December 9, 2013, effective February 10, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 150 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 150 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008). Final Report explaining the amendments to Rule 150 published with the Court's Order at 43 Pa.B. 7547 (December 28, 2013).

RULE 151. ASSIGNMENT OF COUNSEL

All juveniles are presumed indigent. If a juvenile appears at any hearing without counsel, the court shall appoint counsel for the juvenile prior to the commencement of the hearing.

COMMENT

Although this rule contemplates a presumption of indigency which may be rebutted, the guardian's income and resources are not to be utilized. There is an inherent risk that the legal protections afforded juveniles could be eroded by making legal representation dependent upon the limited financial resources of their guardians, particularly where guardians have an income just above the poverty guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the juvenile's opportunity to have counsel. There is also a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than upon the juvenile as the law requires. The juvenile is the client.

Generally pursuant to this rule, the court is to assign counsel in every case in which the juvenile has appeared without counsel. However, the court may give the juvenile a reasonable opportunity to retain a private attorney of the juvenile's choosing if the juvenile so desires.

Counsel may be present at an intake conference or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. *See* Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005. Amended May 16, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 151 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

RULE 152. WAIVER OF COUNSEL

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

- 1) the waiver is knowingly, intelligently, and voluntarily made; and
- 2) the court conducts a colloquy with the juvenile on the record; and
- 3) the proceeding for which waiver is sought is not one of the following:
 - a) detention hearing pursuant to Rule 242;
 - b) transfer hearing pursuant to Rule 394;
 - c) adjudicatory hearing pursuant to Rule 406, including the acceptance of an admission pursuant to Rule 407;
 - d) dispositional hearing pursuant to Rule 512; or
 - e) a hearing to modify or revoke probation pursuant to Rule 612.

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

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

COMMENT

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

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

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

This rule is not meant to preclude the guardian's presence at any hearing. Indeed, the presence and active participation of a guardian should be welcomed. During the colloquy which is the subject of this rule, the court should feel free to elicit information from the guardian. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interest of the juvenile. When conducting the colloquy, the court

should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

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

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

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

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

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 152 published with the Court's Order at 42 Pa.B. 547 (January 28, 2012).

**PART C
RECORDS**

**PART C(1)
ACCESS TO JUVENILE RECORDS**

- 160. Inspecting, Copying, and Disseminating the Official Court Record
- 161. Inspecting, Copying, and Disseminating Juvenile Probation Files
- 163. Release of Information to School

RULE 160. INSPECTING, COPYING, AND DISSEMINATING THE OFFICIAL COURT RECORD

A. **Inspecting.** The official court record is only open to inspection by:

- 1) the judges, masters, juvenile probation officers, and staff of the court;
- 2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except at the discretion of the court;
- 3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;
- 4) a court, its probation officers, other officials or professional staff, and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;
- 5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;
- 6) the Administrative Office of Pennsylvania Courts;
- 7) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties;
- 8) officials of the Department of Corrections, a state correctional institution, or other penal institution to which an individual, who was previously adjudicated delinquent in a proceeding under the Juvenile Act, has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

- 9) a parole board, court, or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;
- 10) the State Sexual Offenders Assessment Board for use in completing assessments; and
- 11) with leave of court, any other person, agency, or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

B. **Copying.** Any person, agency, or department permitted to inspect the record pursuant to paragraph (A) may copy or be provided with a copy of the record.

C. **Disseminating.** Unauthorized dissemination of any information contained in the official court record to a person, agency, or department not permitted to inspect or copy the record pursuant to this rule may result in a finding of contempt of court.

D. **Public availability.** Upon request, a public document shall be created by the clerk of courts if the case is designated eligible for public inspection pursuant to Rule 330 or 515.

1) For cases deemed eligible pursuant to Rule 330, the public document shall contain only the following information:

- a) the juvenile's name;
- b) the juvenile's age;
- c) the juvenile's address; and
- d) the offenses alleged in the juvenile's petition.

2) For cases deemed eligible pursuant to Rule 515, the public document shall contain only the following information:

- a) the juvenile's name;
- b) the juvenile's age;
- c) the juvenile's address;
- d) the offenses alleged in the juvenile's petition;

- e) the adjudication on each allegation; and
- f) the disposition of the case.

COMMENT

Pursuant to paragraph (A)(11), the court may order that any person, agency, or department receive a copy of all or portions of the record. The court order is to state: 1) the specific information the person, agency or department may receive; 2) that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and 3) that any dissemination of the information received is a violation of the court order.

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

See Rule 120 for definition of the "official court record."

This rule is meant to include the contents of the official court record as described in Rule 166.

When delinquency proceedings are commenced pursuant to Rule 200(4), the entire criminal court file is to be transferred with the case to juvenile court. This criminal case file is now the juvenile court file, which is the official court record, and the disclosure requirements of this rule apply.

Paragraph (C) protects the juvenile from dissemination of information contained in the official court record to unauthorized sources. Nothing in this rule is intended to preclude the juvenile or the juvenile's attorney from discussing the case with others, such as, local newspaper reporters. However, specific information concerning the victim should not be disseminated by the juvenile or the juvenile's attorney.

Under paragraph (D), there is one document for each eligible case that is open for public inspection. The public document should be clearly marked for employees of the clerks of courts' office as the only document available for inspection by the general public. All other information contained in the official court record is not open for public inspection but only open to inspection to the persons enumerated in paragraph (A).

See Rule 330 for designation of public availability status in the juvenile petition. See Rule 515 for designation of public availability status in the dispositional order.

Official Note: Rule 160 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately. Amended August 20, 2007, effective December 1, 2007. Amended May 12, 2008, effective immediately. Amended December 24, 2009, effective immediately. Amended May 21, 2012, effective August 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 160 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 160 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 160 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007). Final Report explaining the amendments to Rule 160 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 160 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 160 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

RULE 161. INSPECTING, COPYING, AND DISSEMINATING JUVENILE PROBATION FILES

A. Inspecting and copying. Except as provided in paragraph (C), juvenile probation files shall be open to inspection and/or copying only by:

- 1) the juvenile's attorney;
- 2) the attorney for the Commonwealth;
- 3) the State Sexual Offenders Assessment Board;
- 4) the Juvenile Court Judges' Commission; or
- 5) any other person, agency, or department by order of court.

B. Electronic records.

- 1) Records which are maintained electronically by juvenile probation offices shall be subject to inspection and/or copying only pursuant to court order.
- 2) Each juvenile probation office shall create a document which describes the information that is maintained by the juvenile probation office concerning each juvenile. This document shall be open to inspection and copying pursuant to paragraph (A).

C. Contents of order. The order shall:

- 1) specify who shall be permitted to inspect the record or any portion of the record;
- 2) specify who shall be permitted to copy the record;
- 3) state that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and
- 4) state that dissemination of any information received is a violation of the court order.

D. Disseminating.

- 1) The juvenile probation office has discretion to disseminate portions of its files to the juvenile, service providers, placement facilities, and courts and courts' professional staff of other jurisdictions when facilitating placement, the delivery of services, treatment, or transfer of the case to, or supervision by another jurisdiction consistent with applicable Federal or state law.

- 2) Unauthorized dissemination of any information contained in the juvenile probation file to a person, agency, or department not permitted to inspect or copy the file pursuant to this rule may result in a finding of contempt of court.

COMMENT

Documents contained in the juvenile probation files are not a part of the official court record unless the juvenile probation office officially files the documents in the official court record. Those documents placed in the official court record are governed by Rule 160 and 42 Pa.C.S. § 6307.

The notes of a juvenile probation officer, which describe the officer's impressions or personal observations but which are not included in a report to the court or other report, are not considered a component of a juvenile probation file that is open to inspection or copying under paragraph (A).

Nothing in this rule is intended to preclude the juvenile probation office from sharing information in its file with the juvenile.

Official Note: Rule 161 adopted May 21, 2012, effective August 1, 2012. Amended August 23, 2012, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 161 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012). Final Report explaining the amendments to Rule 161 published with the Court's Order at 42 Pa.B. 5734 (September 8, 2012).

RULE 163. RELEASE OF INFORMATION TO SCHOOL

A. **Generally.** Upon finding a juvenile to be a delinquent, the court shall, through the juvenile probation office, provide the following information to the building principal or his or her designee of any public, private, or parochial school in which the juvenile is enrolled:

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;
- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. **Notice to school.** In addition to the information provided in paragraph (A), the juvenile probation office shall provide notice of the following information:

- 1) a statement informing the building principal or his or her designee that information received under this rule:
 - a) shall be maintained separately from the juvenile's official school record;
 - b) is for the limited purposes of:
 - i) protecting school personnel and students; and
 - ii) arranging for appropriate counseling and education for the juvenile;
 - c) may not be used for school disciplinary decisions concerning the juvenile unless:
 - i) the juvenile was under the supervision of the board of directors at the time of the incident;
 - ii) the act or acts that were substantiated by the court took place on or within 1,500 feet of the school property; and
 - iii) the school has complied with all other statutory, regulatory, and constitutional provisions relative to the imposition of school discipline; and
 - d) shall be shared with the juvenile's teachers.

- 2) a statement informing the building principal or his or her designee of the requirement to:
 - a) maintain a log of all school district employees, or building principals or their designees from other school districts, to whom this information was subsequently provided when a juvenile was transferred to another school; and
 - b) provide a copy of the notice as listed in paragraph (B)(1) to the new school.

C. Additional information.

- 1) If the juvenile is adjudicated delinquent of a felony offense, the court, through the juvenile probation office, shall provide to the building principal or his or her designee relevant information regarding the juvenile contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history, and the supervision plan of the juvenile.
- 2) The court or the juvenile probation office shall have the authority to share any additional information regarding the juvenile under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile.

D. Acknowledgement of notice and information. The building principal or his or her designee shall provide written acknowledgement to the juvenile probation office of the receipt of, and the requirements and restrictions pertaining to, the information provided under this rule.

E. Transfers to other schools.

- 1) Any information provided to and maintained by the building principal or his or her designee under this rule shall be transferred to the building principal or his or her designee of any public, private, or parochial school to which the juvenile transfers enrollment.
- 2) When this information is transferred to an official from another school district, the building principal or his or her designee shall include a copy of the notice initially provided by the juvenile probation office pursuant to paragraph (B).
- 3) The building principal or his or her designee shall maintain a log of all individuals from other school districts to whom this information is subsequently provided, and shall inform the juvenile probation office upon providing this information to officials from other school districts.

F. **Maintained separately.** Any information provided to the building principal or his or her designee under this rule shall be maintained separately from the juvenile's official school record.

G. **Dissemination.** Unauthorized dissemination of any information contained in the school record to any unauthorized person, agency, or department may result in a finding of contempt of court.

COMMENT

Pursuant to paragraph (B), the juvenile probation office is required to provide notice to the building principal or his or her designee for maintaining court records separately from official school records. Some school districts have established local policies relating to the receipt of this information that requires the information to be provided to a school district official other than a building principal. That individual should be regarded as the building principal's designee with respect to the provisions of this rule.

The delinquency information in the school record is to be used only by school officials and is not to be released to the general public or third parties unless ordered by the court. In addition, information sent to the school may not be used for disciplinary purposes against the juvenile. The juvenile probation office should send a notice to the school when it sends information to the school concerning the findings of the court. The notice should state that any information received by the school should not be used against the juvenile for disciplinary reasons, including suspensions and expulsions. See 42 Pa.C.S. § 6341(b.1)(4).

The requirements in paragraph (B) are derived from 42 Pa.C.S. § 6341(b.1)(4), 24 P.S. § 5-510; *D.O.F. v. Lewisburg Area School District*, 868 A.2d 28 (Pa. Commw. Ct. 2004) (holding schools do not have the authority to discipline students, even for actions on school property, if they are not currently under school supervision); and *Hoke ex rel. Reidenback v. Elizabethtown Area School District*, 833 A.2d 304 (Pa. Commw. Ct. 2003).

For further dissemination and usage in school, see 42 Pa.C.S. § 6341(b.1).

In paragraph (D), nothing is intended by this rule to preclude acknowledgement by electronic means.

Pursuant to paragraph (F), information provided by the court is to be kept and maintained separately from the juvenile's official school record. If the court has ordered a record to be expunged, the court, concurrently, is to order the destruction of the information provided to the school by the court, including information subsequently provided to another school. The terms "expunged" and "destruction" should not be confused in this *Comment*. Because the school does not fall within any category for retention of information pursuant to Rule 173, there is no reason for the school to maintain its information. Therefore, the school is to destroy all information received from the court.

Official note: Rule 163 adopted April 1, 2005, effective October 1, 2005. Amended May 21, 2012, effective August 1, 2012. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 163 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012). Final Report explaining the amendments to Rule 163 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

PART C(2)
MAINTAINING RECORDS

- 165. Design of Forms
- 166. Maintaining Records in the Clerk of Courts
- 167. Filings and Service of Court Orders and Notices

RULE 165. DESIGN OF FORMS

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

COMMENT

The purpose of the unified judicial system can be further achieved by creating uniform forms to implement a particular rule.

Official Note: Rule 165 adopted April 1, 2005, effective October 1, 2005.

RULE 166. MAINTAINING RECORDS IN THE CLERK OF COURTS

- A. **Generally.** The juvenile court file is the official court record and shall contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. These records shall be maintained by the clerk of courts and shall not be taken from the custody of the clerk of courts without order of the court.
- B. **Docket entries.** The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the official court record and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.
- C. **Contents of docket entries.** The docket entries shall include, at a minimum, the following information:
- 1) the juvenile's name, last known address, date of birth, if known;
 - 2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance(s), and the date of any withdrawal of appearance(s);
 - 3) notations concerning all papers filed with the clerk, including all court notices, appearances, admissions, motions, orders, findings and adjudications, and dispositions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;
 - 4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;
 - 5) a notation of every judicial proceeding, continuance, and disposition;
 - 6) the location of exhibits made part of the record during the proceedings;
 - 7)
 - a) the date of receipt in the clerk's office of the order or court notice;
 - b) the date appearing on the order or court notice; and
 - c) the date and manner of service of the order or court notice; and
 - 8) all other information required by Rule 345.

COMMENT

This rule sets forth the mandatory contents of the list of docket entries and the official court record. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a juvenile case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the delinquency case.

This rule is not intended to include items contained in the juvenile probation files.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any juvenile in the case. The requirement also ensures that attorneys are served as required by Rules 167 and 345. See also Rule 345(C) concerning certificates of service.

In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(2) is to include the facsimile number or electronic address.

Paragraph (C)(4) recognizes that occasionally resolution of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus motions as provided in Rule 346.

Official Note: Rule 166 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 166 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 166 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 166 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

RULE 167. FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

A. Filings.

- 1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.
- 2) All orders and court notices shall be filed in the official court record.

B. Service.

- 1) A copy of any order or court notice shall be served promptly on the attorney for the Commonwealth, the juvenile's attorney, the juvenile, the juvenile probation officer, and any other person, service provider, or agency listed in the court order.
- 2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court administrator or other court designee.

3) Methods of service. Service shall be:

a) **[in writing]** by:

- i) personal delivery to the party's attorney or the juvenile;
- ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;
- iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;
- iv) sending a copy to the juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement;
- v) sending a copy by facsimile transmission or other electronic means if the party's attorney or the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or
- vi) delivery to the party's attorney or the juvenile by carrier service;
or

b) orally in open court on the record.

C. Unified Practice. Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

COMMENT

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the juvenile, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 167 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 167 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

PART C(3)

EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, AND PHOTOGRAPHS

- 170. Motion to Expunge or Destroy Records
- 172. Order to Expunge or Destroy
- 173. Retention of Specific Information From Juvenile Records

RULE 170. MOTION TO EXPUNGE OR DESTROY RECORDS

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

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

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

- 1) the name of the juvenile;
- 2) the date of birth of the juvenile, if known;

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

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

D. **Answer.**

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

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

- 1) the type of offense;
- 2) the individual's age, history of employment, history of academic or vocational training, delinquent or criminal activity, and drug or alcohol issues;
- 3) adverse consequences that the individual may suffer if the records are not expunged; and
- 4) whether retention of the record is required for purposes of public safety.

F. **Inter-county transfer cases.**

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

- 2) A motion regarding the records of a juvenile whose disposition did not involve an adjudication of delinquency shall be filed in the county in which the disposition occurred.
- 3) The court entering an order to expunge or destroy records shall direct the order to any other court possessing records pertaining to the case.

COMMENT

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

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

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

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

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

Rule 173 provides for the retention of certain information that is crucial for: 1) determining compliance with the order to expunge; 2) determining eligibility in a court program, determining the grading or penalty of an offense, or for other purposes as provided by law; 3) maintaining statistical and research information; 4) maintaining intelligence and investigative information; and 5) financial audits.

The new procedures instituted with the changes of 201- require one procedure for expunging or destroying records, fingerprints, and photographs. One order will go to the appropriate agencies and departments as required by Rule 172 and will help those agencies become more efficient in the manner in which items are destroyed or expunged.

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

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

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

Pursuant to paragraph (E)(3), the court is to consider adverse consequences that an individual may suffer if the records are not expunged. Adverse consequences are discussed in The Pennsylvania

Collateral Consequences Checklist instituted by Pennsylvania Juvenile Indigent Defense Action Network in conjunction with the initiative the Models for Change System Reform in Juvenile Justice. This checklist may be assessed on the Supreme Court's website at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>.

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

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

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 170 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

RULE 172. ORDER TO EXPUNGE OR DESTROY

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

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

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

COMMENT

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

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

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

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

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 172 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 172 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

RULE 173. RETENTION OF SPECIFIC INFORMATION FROM JUVENILE RECORDS

A. Maintenance of specific information.

- 1) All information retained according to this rule shall be confidential. This information is not eligible for inspection pursuant to Rule 160.
- 2) If any information maintained according to this rule is disseminated to any unauthorized person, agency, department, or office, the person disseminating the information shall be held in contempt of court.

B. Compliance with expungement order. The court or juvenile probation office shall maintain the following information in a separate document, file, or database for the purpose of determining compliance with an expungement order:

- 1) a list of juvenile names;
- 2) identifying information, such as date of birth;
- 3) the case docket number;
- 4) a copy of the order to expunge; and
- 5) any compliance letters sent pursuant to Rule 172(A)(4).

C. Eligibility for court program, the grading or penalty of an offense, or for other purposes as provided by law. The court, juvenile probation office, or the attorney for the Commonwealth shall maintain the following information in a separate document, file, or database for determining eligibility for a court program, the grading or penalty of an offense, or for other purposes as provided by law:

- 1) a list of juvenile names;
- 2) identifying information, such as date of birth;
- 3) the case docket number;
- 4) a list of the delinquent acts alleged or petitioned;
- 5) a list of the delinquent acts found, if applicable; and
- 6) the disposition of the case.

D. Statistical and research purposes. The juvenile probation office, the Juvenile Court Judges' Commission, and the Administrative Office of Pennsylvania Courts

may maintain the following information in a separate document, file, or database for statistical and research purposes:

- 1) demographic information;
- 2) a list of the delinquent acts alleged or petitioned;
- 3) a list of the delinquent acts found, if applicable;
- 4) the disposition of the case; and
- 5) any recidivism information.

E. Intelligence and investigative information. Law enforcement agencies and the attorney for the Commonwealth may maintain the following information in a separate document, file, or database for intelligence and investigative purposes:

- 1) a list of juvenile names;
- 2) identifying information, such as date of birth;
- 3) intelligence information; and
- 4) investigative information.

F. Financial audits. The juvenile probation office, placement facilities, service providers, and the county agency shall maintain the necessary information in a separate document, file, or database for financial audits, which may include, but is not limited to:

- 1) the number of juveniles sent to a placement facility;
- 2) the amount of money paid for the court-ordered service; and
- 3) the dates of service.

COMMENT

As used throughout this rule, a separate document, file, or database is to be interpreted as a creation of a new document, file, or database when the original document or file has been expunged pursuant to a court order under Rule 172. This rule provides for the retention of *information* for specific reasons. Original *records* will be expunged but specific *information* contained within those records will be extracted and placed into a new document, file, or database. Only the specific items listed in this rule may be maintained by the specified individuals and entities. All remaining information is to be expunged.

There are several legitimate reasons for retaining specific information relating to a case. As provided in paragraph (A)(1), all information retained according to this rule is to be kept confidential and is not subject to inspection pursuant to Rule 160. If any person does not maintain confidentiality of information, that person is to be held in contempt of court. See paragraph (A)(2). However, entities may share information retained pursuant to this rule if the reasons for sharing the information is consistent with this rule and confidentiality is maintained.

Paragraph (B) provides for the maintenance of compliance letters for expunging records. The court may access the document, file, or database to ensure that a court order to expunge a particular record has been followed. This may also be helpful when a juvenile may inquire as to whether the court order was followed.

Paragraph (C) allows specific information concerning a juvenile to be maintained to determine the juvenile's eligibility for a future court program, the grading or penalty of a new offense, and for other purposes as provided by law. There are instances when the grading or penalty for a new offense is greater because of prior offense(s), for example, retail theft, theft by vehicle, library theft, and driving under the influence of alcohol or other controlled substance. However, offenses cannot be used in a subsequent proceeding unless specifically authorized by law.

Paragraph (D) provides for the retention of specific information for statistical and research purposes. A juvenile's name may not be associated with this information. Demographics, however, may be retained. Aggregate data compiled under this paragraph also may be shared with other persons as statistical and research records only.

Pursuant to paragraph (E), only law enforcement agencies and the attorney for the Commonwealth may retain intelligence and investigative information.

Paragraph (F) provides for the retention of specific information for financial audits. This is important to provide records of service.

Official Note: Rule 173 adopted July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 173 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**PART D
MASTERS**

- 182. Qualifications of Master
- 185. Appointment to Cases
- 187. Authority of Master
- 190. Admissions Before Master
- 191. Master's Findings and Recommendation to the Judge
- 192. Challenge to Master's Recommendation

RULE 182. QUALIFICATIONS OF MASTER

A. Education, Experience, and Training. To be eligible to be appointed as a master to preside over cases governed by the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, an individual shall:

- 1) be a member, in good standing, of the bar of this Commonwealth;
- 2) have been licensed to practice law for at least five consecutive years; and
- 3) have completed six hours of instruction, approved by the Pennsylvania Continuing Legal Education Board prior to hearing cases, which specifically addresses all of the following topics:
 - a) the Juvenile Act;
 - b) the Pennsylvania Rules of Juvenile Court Procedure;
 - c) the penal laws of Pennsylvania;
 - d) the Child Protective Services Law;
 - e) evidence rules and methodology;
 - f) child and adolescent development; and
 - g) the collateral consequences of an adjudication of delinquency.

B. Continuing Education. A master shall complete six hours of instruction from a course(s) designed by the Juvenile Court Judges' Commission, in juvenile delinquency law, policy, or related social science research every two years from the initial appointment as master.

C. Compliance.

- 1) A master shall sign an affidavit attesting that he or she has met the requirements of this rule.
- 2) Prior to appointment as a master, the affidavit shall be sent to the President Judge or his or her designee of each judicial district where the attorney is seeking appointment as a master.
- 3) After submission of the initial affidavit pursuant to paragraph (C)(2), masters shall submit a new affidavit every two years attesting that the continuing education requirements of paragraph (B) have been met.

COMMENT

Pursuant to paragraphs (A)(1) & (2), masters are to be in good standing and have at least five consecutive years of experience as an attorney. It is best practice to have at least two years of experience in juvenile law.

Pursuant to paragraph (A)(3), the initial training program(s) is to be approved by the Pennsylvania Continuing Legal Education Board (Board). The program may be one course or multiple courses with at least six hours of instruction, equivalent to at least six CLE credits. When the Board is approving courses designed to address the requirements of this rule, it should consult with the Juvenile Court Judges' Commission to ensure proper course requirements are being met. Additionally, for this initial training course(s), training already provided by the Juvenile Court Judges' Commission or the Office of Children and Families in the Courts may meet the requirements of this Rule.

For continuing education under paragraph (B), masters are to attend six hours of instruction from a course or multiple courses designed by the Juvenile Court Judges' Commission. This is to ensure uniform training among masters.

These requirements are additional requirements to the Pa.R.C.L.E. because they mandate specific training in juvenile delinquency law. However, the credit hours received do count towards the total maximum required under Pa.R.C.L.E. 105.

Pursuant to paragraph (C), a master is to certify to the court that the requirements of this rule have been met prior to the appointment as master, and submit new affidavits every two years thereafter.

Official Note: Rule 182 adopted September 11, 2014, effective October 1, 2016.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 182 published with the Court's Order at 44 Pa.B. 6087 (September 27, 2014).

RULE 185. APPOINTMENT TO CASES

- A. **Appointment.** If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear designated juvenile delinquency matters.
- B. **Prohibited practice.** Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over juvenile matters.

Official Note: Rule 185 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 185 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 187. AUTHORITY OF MASTER

A. Cases to be heard by Master. A master shall have the authority to preside over only the following:

- 1) detention hearings, detention review hearings, or shelter-care hearings;
- 2) discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- 3) any hearing in which the petition alleges only misdemeanors; and
- 4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. No authority. A master shall not have the authority to:

- 1) conduct transfer hearings pursuant to Rule 394;
- 2) issue warrants; and
- 3) hear requests for writs of *habeas corpus*.

C. Right to hearing before judge. Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the master, the case shall proceed before the judge.

COMMENT

A master's authority is limited under paragraph (A) to specifically those types of cases provided. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (B)(2), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), see 42 Pa.C.S. § 6305(b).
See Rule 127 for recording of proceedings before a master.

Official Note: Rule 187 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 187 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 190. ADMISSIONS BEFORE MASTER

A. **Types of cases.** A master may accept an admission to any misdemeanor.

B. **Requirements.** The admission requirements of Rule 407 shall be followed.

Official Note: Rule 190 adopted April 1, 2005, effective April 1, 2006.

RULE 191. MASTER'S FINDINGS AND RECOMMENDATION TO THE JUDGE

- A. **Announcement of Findings and Recommendation.** At the conclusion of the hearing, the master shall announce in open court on the record, the master's findings and recommendation to the judge.
- B. **Submission of Papers and Contents of Recommendation.** Within one business day, the master shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge.
- C. **Judicial Action.** The judge shall by order:
- 1) accept the recommendation;
 - 2) reject the recommendation and issue an order with a different disposition;
 - 3) send the recommendation back to the master for more specific findings; or
 - 4) schedule a rehearing under Rule 192 within seven days.

COMMENT

The juvenile court may promulgate a form for masters to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983). The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

Official Note: Rule 191 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 191 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 192. CHALLENGE TO MASTER'S RECOMMENDATION

- A. **Time limitation.** A party may challenge the master's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation. The motion shall request a rehearing by the judge and aver reasons for the challenge.
- B. **Rehearing.** The judge shall act on the challenge within seven days of the date of the motion. The detention status of the juvenile will remain the same pending the rehearing unless otherwise ordered by the judge.

COMMENT

Under paragraph (A), the petition for a rehearing may be oral or written.

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the petition. If the judge does grant a hearing, it should be held within seven days of the date of the challenge.

The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Official Note: Rule 192 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 192 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Part (D)(2)
Juvenile Probation Officers

Rule 195. Powers, Duties, and Training of a Juvenile Probation Officer

A. Powers and Duties of a Juvenile Probation Officer. Subject to any limitation imposed by the court, a juvenile probation officer shall:

- 1) take children, juveniles, and minors into custody pursuant to:
 - a) the Juvenile Act, 42 Pa.C.S. §§ 6304 and 6324;
 - b) the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6301 *et seq.*;
 - c) a bench warrant as set forth in Rules 140, 141, and 1140; or
 - d) Rule 1202;
- 2) authorize detention or shelter care for a juvenile, and the shelter care of a child, pursuant to 42 Pa.C.S. §§ 6304, 6325, or 6331;
- 3) receive and examine written allegations unless the District Attorney has elected to receive and approve all written allegations pursuant to Rule 231(B);
- 4) make appropriate referrals for informal adjustment, consent decree, or other diversionary programs;
- 5) file petitions if diversionary programs are not appropriate unless the District Attorney has elected to file all petitions pursuant to Rule 330(A);
- 6) make investigations, reports, including social studies pursuant to Rule 513, and recommendations to the court;
- 7) make appropriate referrals to private and public agencies, psychological or psychiatric providers, drug and alcohol facilities or programs, or any other necessary treatments or programs;
- 8) communicate to the court and parties, and facilitate any special needs, including health and education, of the juvenile;
- 9) supervise and assist a juvenile placed on probation or a child under the court's protective supervision or care;
- 10) search the person and property of juveniles pursuant to 42 Pa.C.S. § 6304(a.1);

- 11) regularly oversee and visit juveniles in placement facilities;
- 12) report suspected child abuse pursuant to 23 Pa.C.S. § 6311; and
- 13) perform any other functions as designated by the court.

B. Limitations on powers and duties. The President Judge of each judicial district may limit the power and duties of its juvenile probation officers by local rule.

C. Training. No later than January 1, 2012 or within 180 days after being appointed or employed, a juvenile probation officer shall be trained on:

- 1) the Juvenile Act;
- 2) the Pennsylvania Rules of Juvenile Court Procedure;
- 3) the Child Protective Services Law (CPSL); and
- 4) any local procedures.

COMMENT

Pursuant to paragraph (A)(1), a juvenile probation officer has the authority to take children, juveniles, and minors into custody pursuant to the Juvenile Act, the CPSL, a bench warrant, or Rule 1202. 23 Pa.C.S. § 6301 *et seq.* and 42 Pa.C.S. § 6301 *et seq.*

When a juvenile is under the court's supervision, the juvenile probation officer may take a juvenile into custody pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1) through (5), and bench warrants as set forth in Rules 140, 141, and 1140.

When a child, juvenile, or minor is not under the court's supervision, the juvenile probation officer, as a duly authorized officer, may take a child, juvenile, or minor into custody pursuant to the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6315 and the Juvenile Act, 42 Pa.C.S. §§ 6304 (a)(3) and (5) and 6324(1), (3), and (4).

A properly commissioned juvenile probation officer is vested with all the powers and duties as set forth in 42 Pa.C.S. § 6304 and the power to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to paragraph (B).

The President Judge may adopt a local rule, pursuant to the procedures of Rule 121, limiting the authority granted by the commission to juvenile probation officers. In determining whether to limit the authority of juvenile probation officers, the President Judge should consider the training and experience necessary to perform the various duties as provided in this rule. For example, the President Judge may choose to prohibit juvenile probation officers from taking a child into protective custody who is believed to be in imminent danger from his or her surroundings, but who is not under the court's supervision as a delinquent or dependent child. See 42 Pa.C.S. § 6324.

In situations when a juvenile probation officer takes a child into protective custody who is in imminent danger from his or her surroundings pursuant to 42 Pa.C.S. § 6325, 23 Pa.C.S. § 6315, and Rule 1202, the juvenile probation officer should take the appropriate steps to ensure the child's safety, immediately contact the county agency, and document for the county agency the circumstances which necessitated protective custody. See Rule 1202 and its *Comment*.

The juvenile probation officer may also supervise or assist a child placed in his or her protective supervision or care by the court. See 42 Pa.C.S. § 6304.

Pursuant to paragraph (A)(3), the juvenile probation officer is to receive written allegations from local law enforcement agencies to determine if a case may proceed to juvenile court. However, pursuant

to Rule 231(B), the District Attorney of any county may require initial receipt and approval of written allegations before a delinquency proceeding may be commenced. See Rule 231(B).

Pursuant to paragraph (A)(6) and (7), the juvenile probation officer is to prepare reports compiling the juvenile's information for the court and make the necessary referrals to programs supported by a need revealed during the investigation.

Pursuant to paragraph (A)(8), the juvenile probation officer is to communicate the information to all parties before approaching the court. See Rule 136 for *ex parte* communication.

Pursuant to paragraph (A)(11), the juvenile probation officer is to oversee all juveniles ordered to placement facilities. Juvenile probation officers should visit all juveniles in placement facilities on a regular basis to determine if: 1) the juvenile is receiving the appropriate treatment; and 2) the facility is meeting the needs of the child. The Juvenile Court Judges' Commission Standards Governing Aftercare Services recommend that all juveniles be visited on a monthly basis. The juvenile probation officer is to report any irregularities or controversies to the court and all parties as soon as they are made known to the juvenile probation officer.

Pursuant to paragraph (A)(13), a juvenile probation officer may perform any other function designated by the court to carry out the purposes of the Juvenile Act.

Pursuant to paragraph (C), the juvenile probation officer is to be trained in the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the CPSL, and any local procedures. The training is to occur within 180 days of the juvenile probation officer's appointment or employment. It is best practice for juvenile probation officers to receive training within the first ninety days of employment. It is also best practice that juvenile probation officers receive specialized training and educational updates on a continuing basis.

Specialized training for juvenile probation officers should include delinquency and dependency procedures and areas that address their duties as officers of the court.

Official Note: Rule 195 adopted May 20, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 195 published with the Court's Order at 41 Pa.B. 2839 (June 4, 2011).

**CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES,
WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION**

**PART A
COMMENCING PROCEEDINGS**

200. Commencing Proceedings

**PART B
ARREST PROCEDURES IN DELINQUENCY CASES**

(a) Arrest Warrants

210. Arrest Warrants
211. Requirements for Issuance
212. Duplicate and Alias Warrants of Arrest
213. Execution of Arrest Warrant

(b) Arrests Without Warrant

220. Procedure in Cases Commenced by Arrest Without Warrant
221. Temporary Detention In Police Lock-Up

**PART C
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**PART D
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240. Detention of Juvenile
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**PART A
COMMENCING PROCEEDINGS**

RULE 200. COMMENCING PROCEEDINGS

Juvenile delinquency proceedings within a judicial district shall be commenced by:

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
 - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
 - b) upon probable cause when the offense is a felony; or
 - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;
- 3) the filing of a certification with the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense;
- 4) transfer of a case from a criminal proceeding pursuant to Pa.R.Crim.P. 597 and 42 Pa.C.S. § 6322;
- 5) the court accepting jurisdiction of a resident juvenile from another state; or
- 6) the court accepting supervision of a juvenile pursuant to another state's order.

COMMENT

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. This procedure departs from the Juvenile Act, which provides that the filing of a petition commences a proceeding. Rule 800 suspends 42 Pa.C.S. § 6321 only to the extent that it is inconsistent with the procedures of this rule. Petitions filed by any person circumvent the juvenile probation's office ability to divert the case through informal adjustment as provided in 42 Pa.C.S. § 6323. Probation officers may "receive and examine complaints and charges of delinquency ... of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," see Rule 120.

The Juvenile Act provides that "a child may be taken into custody ... pursuant to the laws of arrest." 42 Pa.C.S. § 6324. Paragraph (2) states the laws of arrest without a warrant in Pennsylvania. See Pa.R.Crim.P. 502.

A proceeding may be commenced pursuant to paragraph (3) by filing a certification that attests that the juvenile has failed to comply with a lawful sentence imposed for a summary offense, bypassing the need for a written allegation pursuant to Rule 231.

Under paragraph (4), when a case is transferred from a criminal proceeding pursuant to 42 Pa.C.S. § 6322 to juvenile court, the entire case file is to be transferred. The case file is governed by the disclosure requirements of Rule 160. See Rule 337 for the filing of petition after case has been transferred from a criminal proceeding. See Rule 404 for prompt adjudicatory hearing.

Paragraph (5) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (6) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

For procedures for when the juvenile is alleged to have violated probation, see Rule 612.

For inter-county transfer of juveniles, see Rule 302.

Official Note: Rule 200 adopted April 1, 2005, effective October 1, 2005. Amended March 23, 2007, effective August 1, 2007. Amended May 12, 2008, effective immediately. Amended January 23, 2009, effective March 1, 2009. Amended July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 200 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 200 published with the Court's Order at 37 Pa.B. 1485 (April 7, 2007). Final Report explaining the amendments to Rule 200 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 200 published with the Court's Order at 39 Pa.B. 676 (February 7, 2009). Final Report explaining the amendments to Rule 200 published with the Court's Order at 42 Pa.B. 5350 (August 18, 2012).

**PART B
ARREST PROCEDURES IN DELINQUENCY CASES**

(a) Arrest Warrants

- 210. Arrest Warrants
- 211. Requirements for Issuance
- 212. Duplicate and Alias Warrants of Arrest
- 213. Execution of Arrest Warrant

(b) Arrests Without Warrant

- 220. Procedure in Cases Commenced by Arrest Without Warrant
- 221. Temporary Detention In Police Lock-Up

RULE 210. ARREST WARRANTS

- A. **Application.** An application for an arrest warrant shall be made by submitting a written allegation supported by a probable cause affidavit with the president judge or any issuing authority designated by the president judge of each judicial district. The president judge shall ensure twenty-four hour availability of a designated issuing authority.
- B. **Approval of Commonwealth.** When a certification is filed by the District Attorney pursuant to Rule 231, no application for an arrest warrant shall be submitted to the issuing authority unless an attorney for the Commonwealth has approved the application.
- C. **Arrest procedures.** When a juvenile is arrested pursuant to a warrant, the case shall proceed in the same manner as a warrantless arrest in accordance with Rule 220.
- D. **Transmission of file.** If a magisterial district judge issues an arrest warrant for a juvenile pursuant to paragraph (A), the magisterial district judge shall forward the juvenile case file to the clerk of courts immediately or no later than the next business day.
- E. **Return of arrest warrant.** Once the arrest warrant has been executed, it shall be returned to the juvenile probation office. The juvenile probation office shall, immediately and no later than the next business day, notify the magisterial district judge that the warrant has been executed.
- F. **Case closed by magisterial district judge.** Once a magisterial district judge has been notified that the arrest warrant has been executed pursuant to paragraph (E),

the magisterial district judge shall mark the arrest warrant as served and close the case.

COMMENT

For the contents of a written allegation, see Rule 232. See <http://www.pacourts.us/Forms/Default.htm> for a copy of the written allegation form. For the requirements of the issuance of an arrest warrant, see Rule 211. The arrest warrant form may be accessed by a judge in the Magisterial District Judge System (MDJS) or the Common Pleas Criminal Court Case Management System (CPCMS).

Under paragraph (A), the president judge of each judicial district may designate a juvenile court judge, another common pleas judge, or other issuing authorities to receive applications for arrest warrants. The president judge also is to designate an issuing authority to receive applications after normal business hours and on holidays. For the definition of “issuing authority,” see Rule 120.

When issuing an arrest warrant, a magisterial district judge is included in the definition of court pursuant to Rule 120, and as such, the magisterial district judge is to maintain the confidentiality of records as required by Rule 160. For access to court records, see Rule 160.

Paragraph (A) provides that a magisterial district judge may order the juvenile to be taken into custody pursuant to the laws of arrest. Pursuant to the Juvenile Act, 42 Pa.C.S. § 6303(b), a district judge of the minor judiciary may not detain a juvenile. This rule allows a magisterial district judge to issue an arrest warrant, which may lead to detention in limited circumstances. See Rule 800 (8).

Paragraph (D) provides that if the president judge of a judicial district has appointed a magisterial district judge to accept applications for arrest warrants and the magisterial district judge issues an arrest warrant for the juvenile, the magisterial district judge is to send the juvenile case file, including the written allegation supported by a probable cause affidavit, a copy of the arrest warrant, and any other information contained in the juvenile file, to the clerk of courts. For definition of clerk of courts, see Rule 120.

Paragraph (E) provides that the return of the arrest warrant is to be made with the juvenile probation office. The juvenile probation office immediately is to notify the magisterial district judge of the execution of the arrest warrant so the arrest warrant may be marked as executed in their computer system. This is extremely important so the juvenile does not get rearrested on the same warrant.

Official Note: Rule 210 adopted April 1, 2005, effective October 1, 2005. Amended March 23, 2007, effective August 1, 2007. Amended December 3, 2007, effective immediately. Amended July 16, 2012, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 210 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 210 published with the Court’s Order at 37 Pa.B. 1485 (April 7, 2007). Final Report explaining the amendments to Rule 210 published with the Court’s Order at 37 Pa.B. 6743 (December 22, 2007).

RULE 211. REQUIREMENTS FOR ISSUANCE

- A. **Probable Cause.** No arrest warrants shall be issued but upon probable cause, supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.
- B. **Evidence.** At any proceeding on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant, other than the affidavits provided for in paragraph (A).

COMMENT

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to the issuance of a warrant. All affidavits in support of an application for an arrest warrant should be sworn to before the issuing authority prior to the issuance of the warrant.

This rule carries over to the arrest warrant, the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. See Pa.R.Crim.P. 203.

For a discussion of the requirements of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, 369 A.2d 362 (Pa. Super. Ct. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

Official Note: Rule 211 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

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

RULE 212. DUPLICATE AND ALIAS WARRANTS OF ARREST

- A. **Duplicates.** When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be assessed only for one such warrant and only one service fee may be charged.
- B. **Alias.** After service and execution of an original or duplicate warrant, an alias warrant may be issued if the purpose for which the original or duplicate has been issued has not been accomplished.

Official Note: Rule 212 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 212 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 213. EXECUTION OF ARREST WARRANT

A. A warrant of arrest may be executed at any place within the Commonwealth.

B. A police officer shall execute a warrant of arrest.

COMMENT

For the definition of “police officer,” see Rule 120.

Official Note: Rule 213 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

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

(b) Arrests Without Warrant

RULE 220. PROCEDURE IN CASES COMMENCED BY ARREST WITHOUT WARRANT

A. The person arresting a juvenile shall promptly:

1) notify the juvenile's guardian of:

- a) the arrest of the juvenile;
- b) the reason for the arrest; and
- c) the juvenile's whereabouts; and

2) either:

- a) release the juvenile to his or her guardian upon the guardian's promise to bring the juvenile before the court when requested by the court, unless detention of the juvenile is warranted; or
- b) deliver the juvenile before the court or to a detention facility designated by the court; or
- c) deliver the juvenile to a medical facility if the juvenile is believed to be suffering from a physical condition or illness that requires prompt treatment.

B. In all cases, the person arresting the juvenile promptly shall submit the written allegation, as required by Rule 231(A)(2).

COMMENT

The juvenile probation officer can accept juveniles for the court as described in paragraph (A)(2)(b).

The release of the juvenile does not eliminate the requirement of submission of a written allegation. For the general procedures governing written allegations, see Chapter Two, Part (C).

See 42 Pa.C.S. § 6326.

See 42 Pa.C.S. § 6308 for the taking of fingerprints and photographs by law enforcement officers. The arresting officer is to ensure that the fingerprints and photographs are forwarded to the central repository as required by the Pennsylvania State Police. 42 Pa.C.S. § 6309(c).

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

Official Note: Rule 220 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter Two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 220 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 220 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

RULE 221. TEMPORARY DETENTION IN POLICE LOCK-UP

A. **Secure detention.** A juvenile under arrest may be held securely in a police lock-up or other facility that houses an adult lock-up only under the following conditions:

- 1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the juvenile to a guardian, juvenile court, or detention facility;
- 2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (A)(1), but in no case may such holding exceed six hours; and
- 3) if so held, the juvenile shall be separated by sight and sound from incarcerated adult offenders and shall be under the continuous visual supervision of law enforcement officials or facility staff.

A juvenile shall be deemed to be held securely only when physically detained, confined in a locked room or cell, or when secured to a cuffing rail or other stationary object within the facility.

B. **Non-secure detention.** Notwithstanding other provisions of law, a juvenile may be held in non-secure custody in a building or facility that houses an adult lock-up only under the following conditions:

- 1) the area where the juvenile is held is an unlocked multi-purpose area that is not designated or used as a secure detention area or is not part of a secure detention area; or, if the area is a secure booking or similar area, it is used only for processing purposes;
- 2) the juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- 3) the area is limited to providing non-secure custody only long enough for the purposes of identification, investigation, processing or release to guardians or for arranging transfer to another agency or appropriate facility; and
- 4) the juvenile shall be under continuous visual supervision by a law enforcement officer or other facility staff during the period of non-secure custody.

COMMENT

This rule reflects certain provisions of § 6326 of the Juvenile Act. 42 Pa.C.S. § 6326.

The terms “police lock-up” and “adult lock-up” as used in this rule do not include a county jail or state prison. If detained, a juvenile is not to be held in a county jail or state prison. The use of a temporary holding cell at the local or state police station or courthouse is permissible if the requirements of this rule have been met.

Official Note: Rule 221 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 221 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

PART C
WRITTEN ALLEGATION PROCEDURES

- 231. Written Allegation
- 232. Contents of Written Allegation
- 233. Approval of Private Written Allegation

RULE 231. WRITTEN ALLEGATION

A. **Submission.** In every delinquency case, the law enforcement officer shall submit a written allegation to the juvenile probation office.

- 1) **Juvenile not under arrest.** When a juvenile is not under arrest, a written allegation shall be submitted to the juvenile probation office and a copy shall be forwarded to the attorney for the Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).
- 2) **Juvenile under arrest.** When a juvenile is under arrest, a written allegation shall be submitted promptly to the court or detention facility, and copies shall be immediately forwarded to the juvenile probation office and the attorney for the Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

B. **Approval by the District Attorney.** The District Attorney of any county may require initial receipt and approval of written allegations by an attorney for the Commonwealth before a delinquency proceeding is commenced.

- 1) **Certification.** If the District Attorney elects to require initial receipt and approval of written allegations in his or her county, the District Attorney shall file a certification with the court of common pleas. The certification shall specifically state the classes, grading, or types of cases that the police officer shall submit to the attorney for the Commonwealth.
- 2) **Timeliness.** All written allegations shall be approved or disapproved without unreasonable delay. An attorney for the Commonwealth shall be available at all times for this purpose unless the District Attorney has specified otherwise in the certification pursuant to (B)(1).

C. **Procedures Following the Attorney for the Commonwealth's Approval.**

- 1) **Juvenile not under arrest.** If a juvenile is not under arrest and an attorney for the Commonwealth approves the written allegation, notice of the approval and a copy of the written allegation shall be forwarded immediately to the juvenile probation office.

- 2) **Juvenile under arrest.** If a juvenile is under arrest, the written allegation shall be submitted to the attorney for the Commonwealth and approved prior to taking the juvenile to a detention facility. If the written allegation is approved, it shall be submitted promptly to the court or detention facility. A copy of the notice of the approval and the written allegation shall be forwarded to the juvenile probation office.

D. Attorney for the Commonwealth's Disapproval. If the written allegation has been disapproved for prosecution, it shall nevertheless be transmitted to the juvenile probation office with notice of the disapproval. If the juvenile is in custody, the juvenile shall be released immediately unless there are other grounds for the juvenile's detention.

COMMENT

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

See Rules 210 (Arrest Warrants) and 220 (Procedures in Cases Commenced by Arrest Without Warrant) for the procedures on submitting written allegations for arrests.

Under paragraphs (A)(2) and (C)(2), the police officer is to submit the written allegation promptly to the intake staff at the court or the detention facility.

As used in this rule, "District Attorney" is the District Attorney of each county. This rule gives the District Attorney of each county the option of requiring that written allegations and /or arrest warrant affidavits filed in that county by police officers have the prior approval of an attorney for the Commonwealth. Under the rule, the District Attorney may elect to require prior approval of written allegation, or arrest warrant affidavits (see Rule 210), or both. In addition, the District Attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the District Attorney may specify that prior approval will be required only if a felony is alleged, or that prior approval will be required for all cases.

Under paragraph (B), the District Attorney decides whether an attorney for the Commonwealth receives initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the court under paragraph (B)(1), any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure creates a new option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. To implement this procedure, Rule 800 suspends 42 Pa.C.S. § 6304, only to the extent that probation officers may have to seek approval of any attorney for the Commonwealth.

Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending allegations.

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

Official Note: Rule 231 adopted April 1, 2005, effective October 1, 2005. Amended June 28, 2013, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 231 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 231 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

RULE 232. CONTENTS OF WRITTEN ALLEGATION

Every written allegation shall contain:

- 1) the name of the person making the allegations;
- 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) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and
 - b) 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;
- 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 person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made is subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 12) the signature of the person making the allegation and the date of execution of the written allegation; and
- 13) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

COMMENT

This rule sets forth the required contents of all written allegations whether the person making the allegation is a law enforcement officer, a police officer, or a private citizen. See <http://www.pacourts.us/Forms/Default.htm> for a copy of the written allegation form that is to be submitted.

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

Official Note: Rule 232 adopted April 1, 2005, effective October 1, 2005. Amended December 3, 2007, effective immediately. Amended January 23, 2009, effective March 1, 2009. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 232 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 232 published with the Court's Order at 37 Pa.B. 6743 (December 22, 2007). Final Report explaining the amendments to Rule 232 published with the Court's Order at 39 Pa.B. 676 (February 7, 2009). Final Report explaining the amendments to Rule 232 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

RULE 233. APPROVAL OF PRIVATE WRITTEN ALLEGATIONS

A. **Submission of written allegation.** When the person making the allegation is not a law enforcement officer, the written allegation shall be submitted to the juvenile probation officer for approval, unless the District Attorney has elected to require initial receipt and approval under Rule 231(B). The juvenile probation officer or the attorney for the Commonwealth shall approve or disapprove the written allegation without unreasonable delay.

B. Requirements.

- 1) **Approval.** If the private written allegation is approved, the case shall proceed as any other written allegation under Rule 231(C) and (D).
- 2) **Disapproval.** If the written allegation is disapproved, the attorney for the Commonwealth or the juvenile probation officer shall state the reasons on the written allegation form and return it to the person making the allegation. The person making the allegation may file a motion for review of the disapproval by the court.

COMMENT

For the contents of a written allegation, see Rule 231.

In all cases where the affiant is not a law enforcement officer, the written allegation should be submitted for approval or disapproval by the juvenile probation officer or the attorney for the Commonwealth. Once the allegation is approved, the case should proceed as any other written allegation would proceed. See Rule 231.

When the person filing a document alleging a juvenile committed a delinquent act is a private citizen, he or she should follow the same process and proceedings as probation officers and law enforcement officers. Private citizens are not to be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of the Juvenile Act, 42 Pa.C.S. § 6334, is achieved by providing an avenue for the private citizen to commence a delinquency proceeding by submitting a written allegation. If the written allegation is disapproved, the private citizen has the right to challenge the decision by motion to the court of common pleas. If the court of common pleas overturns the decision of the attorney for the Commonwealth or the juvenile probation officer, the court should direct the attorney for the Commonwealth or the juvenile probation officer to approve the written allegation and proceed with the case in the same manner as any other case. This procedure ensures informal action is not precluded, such as, informal adjustment. Once a petition is filed, informal adjustment is not allowed. See *Comment* to Rule 312. In addition, Rule 800 suspends 42 Pa.C.S. § 6334 only to the extent that a private citizen may not submit a petition.

For motions and service, see Rules 344 and 345.

Official Note: Rule 233 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 233 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D
PRE-ADJUDICATORY DETENTION

- 240. Detention of Juvenile
- 241. Notice of Detention Hearing
- 242. Detention Hearing
- 243. Detention Rehearings

RULE 240. DETENTION OF JUVENILE

- A. **Detention requirements.** If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:
- 1) examine the written allegation;
 - 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
 - 3) release the juvenile, unless it appears that the juvenile's detention is warranted.
- B. **Filing of petition.** The release of the juvenile shall not prevent the subsequent filing of a petition.
- C. **Prompt hearing.** If the juvenile is not released, a detention hearing shall be held no later than seventy-two hours after the juvenile is placed in detention.
- D. **Time restrictions.** Except as provided in paragraphs (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.
- 1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:
 - a) evidence material to the case is unavailable;
 - b) due diligence to obtain such evidence has been exercised;
 - c) there are reasonable grounds to believe that such evidence will be available at a later date; and
 - d) the detention of the juvenile would be warranted.

- 2) A juvenile may be detained for successive ten-day intervals if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:
 - a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
 - b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
 - c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

COMMENT

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

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

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

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

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

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 240 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 240 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

RULE 241. NOTICE OF DETENTION HEARING

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth;
- 6) the victim; and
- 7) any other appropriate persons.

COMMENT

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

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

Any persons may be subpoenaed to appear for the detention hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 241 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

RULE 242. DETENTION HEARING

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

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to retain private counsel or to be assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. Manner of hearing.

1) **Conduct.**

- a) The hearing shall be conducted in an informal but orderly manner.
- b) The attorney for the Commonwealth shall:
 - i) attend the hearing; and
 - ii) present such evidence as the Commonwealth deems necessary to support the written allegation and the need for detention.

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

3) **Testimony and evidence.**

- a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.
- b) The juvenile's attorney, the juvenile, if the juvenile has waived counsel pursuant to Rule 152, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

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

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

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

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

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

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

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

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

COMMENT

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

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

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

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

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

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

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

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

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

RULE 243. DETENTION REHEARINGS

- A. **Mandatory Rehearing.** If the guardian submits an affidavit to the juvenile probation officer alleging that the guardian was not notified of the detention hearing and that the guardian did not appear or waive appearance at the detention hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.
- B. **Discretionary Rehearing.** The court may grant a rehearing upon request of the juvenile's attorney, the juvenile, if unrepresented, or the attorney for the Commonwealth, or on its own motion.
- C. **Forum.** The judge, who heard the original detention hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to a master.

COMMENT

See 42 Pa.C.S. § 6332(b).

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

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a master to hear the case.

Official Note: Rule 243 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 243 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

**CHAPTER 3
PRE-ADJUDICATORY PROCEDURES**

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PART A VENUE

- 300. Venue
- 302. Inter-County Transfer

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).

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).

**PART B
INTAKE AND INFORMAL ADJUSTMENT**

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

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) & (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).

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 discussions 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).

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

- 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

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)(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.

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).

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)(i) 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.

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).

PART D
PROCEDURES FOLLOWING FILING OF PETITION

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

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).

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

- 344. Motions and Answers
- 345. Filing and Service
- 346. Omnibus Motion for Relief
- 348. Time for Omnibus Motion and Service
- 348. Determination 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

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; or
 - 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.

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 by:
 - a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
 - b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

- c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or
- d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

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 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.

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).

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. 4743 (August 8, 2009).

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

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

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).

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 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).

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).

PART E
CONSENT DECREE

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

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 revisions of Rule 373 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

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)

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 the Pennsylvania Rules of Evidence. Also see, e.g., Judicial Code § 5917, 42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 421 A.2d 147 (Pa. 1980); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977).

"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 may become incompetent to testify for any 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 the Pa.R.J.A. Nos. 5000.1 – 5000.13.

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.

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 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

- 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

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 *a/so* 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 except for the time restrictions provided in paragraph (B) of this rule.
- B. **Time Restrictions.** If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).
- 1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines:
 - a) that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;
 - b) that due diligence to obtain such evidence or evaluation has been exercised;
 - c) that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and
 - d) that the detention of the juvenile would be warranted.
 - 2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:
 - a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
 - b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
 - c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

COMMENT

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within ten days of the filing of a request for transfer to criminal proceedings, not ten 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.

Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.

Official Note: Rule 391 adopted April 1, 2005, effective October 1, 2005.

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).

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).

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).

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).

CHAPTER 4 ADJUDICATORY HEARING

- 401. Introduction to Chapter Four
- 404. Prompt Adjudicatory Hearing
- 406. Adjudicatory Hearing
- 407. Admissions
- 408. Ruling on Offenses
- 409. Adjudication of Delinquency

RULE 401. INTRODUCTION TO CHAPTER FOUR

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, a determination for each case requires separate and distinct findings. First, the court is to hold an adjudicatory hearing, governed by Rule 406 or receive an admission from the juvenile of the allegations, governed by Rule 407. Second, after hearing the evidence or receiving an admission, the court is to rule on the offenses pursuant to Rule 408, stating with particularity the grading and counts of each offense. Third, after ruling on the offenses or entering its findings, the court is to determine if the juvenile is in need of treatment, supervision, or rehabilitation pursuant to Rule 409. After the court has made these findings and if the court finds that the juvenile is in need of treatment, supervision, or rehabilitation, the court is to hold a dispositional hearing as provided for in Rule 512 and is to enter a dispositional order pursuant to Rule 515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of Rules 406 through 409 are followed.

Official Note: Rule 401 adopted April 1, 2005, effective October 1, 2005.

RULE 404. PROMPT ADJUDICATORY HEARING

- A. **Detained juvenile.** If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.
- B. **Non-detained juvenile.** If the juvenile is not detained, the adjudicatory hearing shall be held within a reasonable time.
- C. **Juveniles transferred from criminal proceedings.** Notwithstanding the provisions of paragraphs (A) and (B), if a petition was filed pursuant to Rule 337, an adjudicatory hearing shall be held within ten days of the filing of the petition.

Official Note: Rule 404 adopted April 1, 2005, effective October 1, 2005. Amended July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 404 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 404 published with the Court's Order at 42 Pa.B. 5350 (August 18, 2012).

RULE 406. ADJUDICATORY HEARING

A. Manner of hearing.

- 1) The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.
- 2) The attorney for the Commonwealth shall:
 - a) attend the hearing; and
 - b) have the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s).

B. Recording. The adjudicatory hearing shall be recorded.

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

COMMENT

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

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

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 406 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 406 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 406 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 406 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 406 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

RULE 407. ADMISSIONS

A. **Admissions.** At any time after a petition is filed, the juvenile may tender an admission to some or all of the delinquent acts charged.

1) Requirements.

- a) Before the court can accept an admission, the court shall determine that the admission is knowingly, intelligently, and voluntarily made.
- b) As a part of this determination, the court shall ensure:
 - i) an attorney has reviewed and completed the admission colloquy with the juvenile pursuant to paragraph (C); and
 - ii) there is a factual basis for the admission.
- c) At the hearing, the court shall conduct an independent inquiry with the juvenile to determine:
 - i) whether the juvenile understands the nature of the allegations to which he or she is admitting and understands what it means to admit;
 - ii) whether the juvenile understands that he or she has the right to a hearing before the judge and understands what occurs at a hearing;
 - iii) whether the juvenile is aware of the dispositions that could be imposed and the consequences of an adjudication of delinquency that can result from an admission;
 - iv) whether the juvenile has any questions about the admission; and
 - v) whether there are any other concerns apparent to the court after such inquiry that should be answered.
- 2) **Agreements.** If the parties agree upon the terms of an admission, the tender shall be presented to the court.
- 3) **Court action.** If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) **Limitations on withdrawals.** An admission may be withdrawn prior to the court entering the dispositional order. After the court has entered the dispositional order, an admission can be withdrawn only upon a demonstration of manifest injustice.

B. **Incriminating statements.** An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*

C. **Written admission colloquy.** If a juvenile is making an admission, the colloquy shall be:

- 1) in writing;
- 2) reviewed and completed with the juvenile by an attorney;
- 3) submitted to and reviewed by the court; and
- 4) substantially in the following form:

ADMISSION FORM

**In re
(Juvenile)**

:
:
:
:
:
:
:

_____ **JD** _____

Delinquent Act(s): _____

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): _____

General Information:

1) What is your full name? _____

2) Do you have any other name or nickname? _____
If yes, state: _____

3) How old are you today? _____

4) What grade are you in? _____

5) Can you read, write, and understand English? _____

a) If you cannot read, has someone read this form to you? _____

If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

b) If you do not read English, have you been given a translator or a lawyer who speaks your language? _____

c) Did your translator or lawyer read this form to you and explain it? _____

If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

Knowing and Voluntary Admission:

- 6) Are you now a patient in a mental hospital or institution? _____
 - a) If yes, where? _____
 - b) Are you being treated for a mental illness (which is an illness that causes you to see a doctor for different behavior)? _____
 - c) If yes, what are you being treated for? _____
- 7) Have you taken any drugs or alcohol yesterday or today that do not make you think clearly? _____
If yes, specify type of drugs and/or alcohol: _____
- 8) Has anyone threatened or forced you to sign this form? _____
If yes, explain: _____
- 9) Have you been promised anything for this admission? _____
If yes, explain: _____

Understanding the Admission:

- 10) Has your lawyer told you what you did was against the law (delinquent act)?

- 11) By admitting what you did, do you understand that you are giving up:
 - a) the right to be presumed innocent, which means the judge does not think you broke the law until the D.A. (District Attorney) proves beyond a reasonable doubt that you broke the law (a reasonable doubt is a belief that it is very possible you did not break the law); _____
 - b) the right to a hearing by a fair judge, which means the judge will listen to what everyone has to say and look at all the evidence before deciding;

 - c) the right to remain silent and your silence cannot be held against you, which means you will not be punished for not speaking; _____
 - d) the right to be heard, which means you may tell the judge your side of the story if you want; _____
 - e) the right to face and cross-examine witnesses, which means you can ask all witnesses questions; _____
 - f) the right to present witnesses or evidence to help tell your side of the story, but you do not have to do anything; _____

- g) the right to challenge evidence against you, which means you tell the judge you disagree with something; _____
 - h) the right to make objections and ask for rulings, which means the judge decides if he or she should hear certain evidence; and _____
 - i) the right to have another court, which is an appellate court, review this judge's decision. _____
- 12) Do you understand if the judge accepts your admission and believes you need help ("treatment, rehabilitation, and supervision"), the judge may find you delinquent, which means that you broke the law and need help? _____

Possible Consequences of Adjudication of Delinquency:

- 13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old? _____
- 14) Are you aware that if you are admitting to _____

 that your driving license will be suspended now or in the future (which means you will not be able to drive)?
 (lawyer shall write acts on this line, cross off, or write n/a).
- 15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail.

- 16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers? _____
- 17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? _____

Admission Agreements:

- 18) Are you aware that the judge does not have to accept any agreement between you and the D.A.? _____ (write n/a if no agreement)

Appeals:

- 19) If you are found delinquent after this admission, you can have a higher court review your case for three reasons:
- a) Your admission was not knowingly, intelligently, and voluntarily made, which means you did not understand this admission or were forced to admit;

b) The court did not have jurisdiction, which means it was not the proper court to take your admission; or _____

c) The judge's disposition of the charge(s), which means what the judge is going to do with you (like a sentence in adult court), is more than the biggest punishment an adult would get for the same crime. _____

If you do not admit, do you understand you have other rights? _____

Lawyer's Representation and Opportunity to Speak with Guardian

20) Are you okay with what your lawyer did for you and how he or she explained everything? _____

21) Did you talk with your parent or guardian about admitting the charge(s)?

I promise that I have read this whole form or someone has read this form to me. I understand it. I am telling the truth. I am saying that I have done the things on page 1. I believe that this admission is best for me. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

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

LAWYER FOR JUVENILE

DATE

COMMENT

Under paragraph (A)(1), the court is to determine if the admission is knowingly, intelligently, and voluntarily made by asking questions to ascertain the juvenile's ability to comprehend the written colloquy and to make an admission.

The written colloquy serves as an aid for the court in making its determination that the admission is knowingly, intelligently, and voluntarily made and it does not supplant the court's responsibility to conduct a sufficient inquiry to support its determination pursuant to paragraph (A)(1).

Nothing in this rule prohibits the judge from reviewing the entire written colloquy with the juvenile on the record or asking more questions than required under paragraph (A)(1)(c).

The admission colloquy is similar to a guilty plea colloquy in criminal court; however, the juvenile court judge has special responsibilities under the Juvenile Act in providing a balanced attention to the protection of the community, the imposition of accountability for delinquent acts committed, and the development of competencies to enable juveniles to become responsible and productive members of the community. See 42 Pa.C.S. § 6301.

If the court finds an admission is not knowingly, intelligently, and voluntarily made, the case is to proceed to a hearing pursuant to Rule 406. The decision whether an admission is knowingly, intelligently, and voluntarily made is not appealable to another common pleas judge; therefore, the admission may not be presented to another judge once this determination has been made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

If the court does not accept an agreement or finds an admission not to be knowingly, intelligently, and voluntarily made, a motion for recusal of the judge may be appropriate for the adjudicatory hearing.

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

The colloquy uses several age-appropriate terms for the juvenile to understand; however, certain legal terms are contained in the form. It is expected that attorneys will explain this form until their clients understand.

Pursuant to paragraph (C)(4), the admission colloquy is to be substantially in this form. The questions set forth are the minimal standard. A judicial district may choose to add requirements to its admission colloquy. Any addition to the required colloquy is considered a local rule and the procedures of Rule 121 are to be followed if a judicial district chooses to make additions. See Rule 121.

Nothing in this rule precludes the court from entering a consent decree after the acceptance of an admission.

The admission colloquy can be downloaded from the Supreme Court's webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>. The admission form is also available in Spanish.

The Pennsylvania Juvenile Collateral Consequences checklist is also available on the Supreme Court's webpage.

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 407 published with the Courts' Order at 42 Pa.B. 664 (February 4, 2012).

RULE 408. RULING ON OFFENSES

- A. **Entered finding.** Within seven days of hearing the evidence on the petition or accepting an admission under Rule 407, the court shall enter a finding by specifying which, if any, offenses, including grading and counts, alleged in the petition were committed by the juvenile.
- B. **Did not commit acts.**
- 1) If the court finds the juvenile committed none of the alleged delinquent acts, the court shall dismiss the petition and release the juvenile, if detained, unless there are other grounds for the juvenile's detention.
 - 2) The court shall order, *sua sponte*, the expungement of the record and destruction of fingerprints and photographs related to the dismissed petition pursuant to 18 Pa.C.S. § 9123(a)(1), **42 Pa.C.S. § 6308**, and Rule **170(A)**.
 - 3) Absent cause shown, the court shall expunge or destroy the records, fingerprints, and photographs.
- C. **Committed act.** After an adjudicatory hearing, if the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409 or enter a consent decree pursuant to Rule 370.

COMMENT

Under paragraph (A), for any offense the court finds that the juvenile committed, the court is to specify the grading and count(s). See 42 Pa.C.S. § 6341(b). It is noted that some offenses have no specific grading, i.e., ungraded felony or misdemeanor of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 *et seq.*, or the ungraded delinquent act of failure to comply with a sentence for a summary offense, 42 Pa.C.S. § 6302 (definition of "delinquent act").

Pursuant to paragraph (B), if the court finds that the juvenile committed none of the alleged delinquent acts, the court, *sua sponte*, is to expunge or destroy the records, fingerprints, and photographs pursuant to Rule 170(A) and 18 Pa.C.S. § 9123(a)(1). Absent cause shown, the court is to expunge the records pursuant to Rule 172.

If the court does find that the juvenile committed at least one of the offenses petitioned, there is no expungement or destruction of records, fingerprints, or photographs.

In its order, the court is to specify the case reference number or other identifying number so the order only applies to the specified case. See *Comment* to Rule 170 for further definition of a reference number.

Paragraph (C) requires that there is to be an adjudicatory hearing before proceeding pursuant to Rule 409. This rule is not meant to preclude the entry of a consent decree after a finding on an offense pursuant to paragraph (C). If a consent decree is ordered, the court does not proceed under Rule 409.

If the court finds that the juvenile committed none of the alleged delinquent acts and dismisses the petition, the victim, if not present, shall be notified of the final outcome of the proceeding. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Official Note: Rule 408 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 26, 2011, effective July 1, 2011. Amended July 28, 2014, effective September 29, 2014.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 408 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 408 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 408 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 408 published with Court's Order at 44 Pa.B. 5447 (August 16, 2014).

RULE 409. ADJUDICATION OF DELINQUENCY

A. Adjudicating the juvenile delinquent. Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

1) *Not in need.* If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation, the court shall enter an order providing that:

- a) jurisdiction shall be terminated and the juvenile shall be released, if detained, unless there are other reasons for the juvenile's detention; and
- b) any fingerprints and photographs taken shall be destroyed.

2) *In need.*

- a) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.
- b) The court also shall order the law enforcement agency that submitted the written allegation:
 - i) to take, or cause to be taken, the fingerprints and photographs of the juvenile if not previously taken pursuant to this case, and
 - ii) to ensure that these records, including the case reference number, are forwarded to the central repository maintained by the Pennsylvania State Police.

B. Timing.

- 1) If the juvenile is in detention, the court shall make its finding within twenty days of the ruling on the offenses pursuant to Rule 408.
- 2) If the juvenile is not in detention, the court shall make its finding within sixty days of the ruling on the offenses pursuant to Rule 408.

C. Extending Time by Agreement. The time restrictions under paragraphs (B)(1) and (B)(2) may be extended if there is an agreement by both parties.

COMMENT

Under paragraph (A), absent evidence to the contrary, evidence of the commission of acts that constitute a felony is sufficient to sustain a finding that the juvenile is in need of treatment, supervision, or rehabilitation. See 42 Pa.C.S. § 6341(b).

If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation and the court enters an order terminating jurisdiction, the victim, if not present, shall be notified of the final outcome of the proceeding. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

This rule addresses adjudicating the juvenile delinquent or releasing the juvenile from the court's jurisdiction. This determination is different from finding the juvenile committed a delinquent act under Rule 408.

Pursuant to 42 Pa.C.S. § 6308(c)(3), all fingerprints and photographic records are to be destroyed upon order of the court if the juvenile is not adjudicated delinquent.

Pursuant to paragraph (A)(2)(b)(ii), a case reference number is to be included to help track this case. See *Comment* to Rule 170 for further description of a case reference number.

A report on the disposition is to be sent to the Juvenile Court Judges' Commission. See 42 Pa.C.S. § 6309(d).

For dispositional hearing procedures, see Chapter Five.

Official Note: Rule 409 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 409 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 409 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 409 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

**CHAPTER 5
DISPOSITIONAL HEARING**

**PART A
SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

500. Summons and Notice of the Dispositional Hearing

**PART B
DISPOSITIONAL HEARING AND AIDS**

510. Prompt Dispositional Hearing
512. Dispositional Hearing
513. Aids in Disposition
515. Dispositional Order
516. Service of the Dispositional Order

**PART C
(RESERVED)**

**PART D
INTER-STATE TRANSFER OF DISPOSITION**

530. Transfer of Disposition and Supervision of Juvenile to Another State
(RESERVED)
531. Disposition and Supervision of a Juvenile Received From Another State
(RESERVED)

PART A
SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule 500. Summons and Notice of the Dispositional Hearing

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

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

- 1) the attorney for the Commonwealth;
- 2) the victim;
- 3) the juvenile's attorney;
- 4) the juvenile probation office; and
- 5) the educational decision maker, if applicable.

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

COMMENT

Section 6335(a) of the Juvenile Act provides that the court shall 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(a).

The attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the dispositional 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. However, nothing in these rules requires the attendance of the victim unless subpoenaed.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 500 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 500 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

PART B
DISPOSITIONAL HEARING AND AIDS

- 510. Prompt Dispositional Hearing
- 512. Dispositional Hearing
- 513. Aids in Disposition
- 515. Dispositional Order
- 516. Service of the Dispositional Order

RULE 510. PROMPT DISPOSITIONAL HEARING

A. General rule.

- 1) **Juvenile is detained.** If the juvenile is detained, the dispositional hearing shall be held no later than twenty days after the ruling on the offenses under Rule 408.
- 2) **Juvenile not detained.** If the juvenile is not detained, the dispositional hearing shall be held no later than sixty days after ruling on the offenses pursuant to Rule 408.

B. Continuances. The dispositional hearing may be continued, if necessary. If the juvenile is detained, each continuance shall not exceed twenty days.

COMMENT

Under paragraph (B), if there is a continuance, the court should review the juvenile's case every twenty days until there is a final dispositional order.

Official Note: Rule 510 adopted April 1, 2005, effective October 1, 2005. Amended May 30, 2008, effective January 1, 2009.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 510 published with the Court's Order at 38 Pa.B. 3238 (June 14, 2008).

RULE 512. DISPOSITIONAL HEARING

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

- 1) **Evidence.** The court shall receive any oral or written evidence from both parties and the juvenile probation officer that is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the juvenile and the victim an opportunity to be heard.
- 3) **Advanced Communication Technology.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or the witness only if the parties consent.
- 4) **Prosecutor's presence.** The attorney for the Commonwealth shall attend the hearing.

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

C. **Duties of the court.** The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;
- 2) the right to file an appeal;
- 3) the time limits for a post-dispositional motion and appeal;
- 4) the right to counsel to prepare the motion and appeal;
- 5) the time limits within which the post-dispositional motion shall be decided;
and
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

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

- 1) its disposition;
- 2) the reasons for its disposition;

- 3) the terms, conditions, and limitations of the disposition; and
- 4) if the juvenile is removed from the home:
 - a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile, and
 - b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare;
- 5) whether any evaluations, tests, counseling, or treatments are necessary;
- 6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and
- 7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

COMMENT

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

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

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

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

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

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

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

Pursuant to paragraph (D)(4), when out-of-home placement is necessary, the court is to explain why the placement is the least restrictive type of placement that is consistent with the protection of the public and the rehabilitation needs of the child. See 42 Pa.C.S. § 6352.

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

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

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

See Rule 127 for recording and transcribing of proceedings.

See Rule 136 for *ex parte* communications.

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007). Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011). Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

RULE 513. AIDS IN DISPOSITION

A. Social Study.

- 1) The court may order the preparation of a social study in any case to aid in the decision for disposition.
- 2) If a social study is ordered, the study shall address any educational, health care, and disability needs of the juvenile.

B. Examinations. The court may order the juvenile to undergo health, psychological, psychiatric, drug and alcohol, or any other examination, as it deems appropriate to aid in the decision for disposition.

C. Victim-Impact Statement. The victim may submit a victim-impact statement to the court. If the victim has submitted a victim-impact statement, the court shall accept and consider the victim-impact statement in determining disposition.

COMMENT

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposition or need of treatment, supervision, or rehabilitation. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

Paragraph (C) addresses a statement submitted by the victim to the court. For the victim's opportunity to be heard, see Rule 512(A)(2). See also Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Official Note: Rule 513 adopted April 1, 2005, effective October 1, 2005. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 513 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 513 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

RULE 515. DISPOSITIONAL ORDER

A. **Generally.** When the court enters a disposition after an adjudication of delinquency pursuant to Rule 409(A)(2), the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) the court's findings pursuant to Rule 512(D);
- 2) a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307 (b)(1)(i) for limited public information;
- 3) a directive that the juvenile shall 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;
- 4) the date of the order; and
- 5) the signature and printed name of the judge entering the order.

B. **Restitution.** If restitution is ordered in a case, the dispositional order shall include:

- 1) a specific amount of restitution to be paid by the juvenile;
- 2) to whom the restitution shall be paid; and
- 3) a payment schedule, if so determined by the court.

C. **Guardian participation.** The dispositional order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

D. **Disposition reporting.** The court shall forward the case disposition to the Juvenile Court Judges' Commission, as required by the Commission.

COMMENT

Pursuant to paragraph (A)(2), the court is to determine if the case is eligible for limited public information under the requirements of 42 Pa.C.S. § 6307 (b)(1)(i). 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.

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. §§ 6308, 6309 & 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a

copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

Official Note: Rule 515 adopted April 1, 2005, effective October 1, 2005. Amended August 20, 2007, effective December 1, 2007. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 515 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007). Final Report explaining the amendment to Rule 515 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 515 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 515 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

RULE 516. SERVICE OF THE DISPOSITIONAL ORDER

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the attorney for the Commonwealth;
- 5) the juvenile probation officer;
- 6) any agency directed to provide treatment; and
- 7) any other person as ordered by the court.

Official Note: Rule 516 adopted April 1, 2005, effective October 1, 2005.

**PART C
(RESERVED)**

PART D
INTER-STATE TRANSFER OF DISPOSITION

- 530. Transfer of Disposition and Supervision of Juvenile to Another State
(RESERVED)
- 531. Disposition and Supervision of a Juvenile Received From Another State
(RESERVED)

**CHAPTER 6
POST-DISPOSITIONAL PROCEDURES**

**PART A
SUMMONS AND NOTICE**

600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing

**PART B
MODIFICATIONS AND REVIEWS**

605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation
610. Dispositional and Commitment Review
612. Modification or Revocation of Probation
616. Post-Dispositional Procedures; Appeals (RESERVED)
617. Release of Juvenile Pending Appeal (RESERVED)

**PART C
MOTIONS AND *NUNC PRO TUNC* RELIEF**

620. Post-Dispositional Motions
622. Motion for *Nunc Pro Tunc* Relief
625. Hearing and Findings on Motion for *Nunc Pro Tunc* Relief
628. Order of Court on Motion for *Nunc Pro Tunc* Relief

**PART D
CESSATION OF COURT JURISDICTION OR SUPERVISION**

630. Loss of Court Jurisdiction
631. Termination of Court Supervision
632. Early Termination of Court Supervision by Motion

**PART A
SUMMONS AND NOTICE**

**RULE 600. SUMMONS AND NOTICE OF THE COMMITMENT REVIEW,
DISPOSITIONAL REVIEW, AND PROBATION REVOCATION HEARING**

A. **Summons.** The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

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

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney;
- 3) the juvenile probation office;
- 4) the placement facility staff, if the juvenile is in placement; and
- 5) the educational decision maker, if applicable.

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

COMMENT

Section 6335(a) of the Juvenile Act provides that the court shall 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(a).

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

Any persons may be subpoenaed to appear for the hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 600 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the provisions of Rule 600 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

**PART B
MODIFICATIONS AND REVIEWS**

- 605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation
- 610. Dispositional and Commitment Review
- 612. Modification or Revocation of Probation
- 616. Post-Dispositional Procedures; Appeals (RESERVED)
- 617. Release of Juvenile Pending Appeal (RESERVED)

RULE 605. DETAINING JUVENILE FOR MODIFICATION OF THE DISPOSITIONAL ORDER OR VIOLATION OF PROBATION

- A. A juvenile may be detained for a modification of a dispositional order or a violation of probation by:
 - 1) the filing of a motion for modification of the dispositional order;
 - 2) the anticipated filing of a motion for modification of the dispositional order within twenty-four hours of the juvenile's detention; or
 - 3) the filing of a motion alleging probation violations.
- B. The court shall adhere to the detention, notice, time, and manner of hearing provisions of Rules 240, 241 and 242.

Official Note: Rule 605 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 605 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 610. DISPOSITIONAL AND COMMITMENT REVIEW

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

- 1) In all cases, the court shall conduct dispositional review hearings at least every six months.
- 2) In all cases, the juvenile shall appear in person at least once a year.
- 3) The court may schedule a review hearing at any time.

B. **Change in dispositional order.** Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, notice and an opportunity to be heard shall be given to the parties and the victim.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

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

COMMENT

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

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

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

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

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

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

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

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

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

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 610 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 610 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

RULE 612. MODIFICATION OR REVOCATION OF PROBATION

- A. **Filing.** A motion to modify or revoke probation shall be filed in accordance with Rule 345.
- B. **Time of Hearing on the Motion.**
- 1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.
 - 2) If the juvenile is not detained, the hearing on the motion shall be held promptly.
- C. **Modification.** If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.
- D. **Advanced Communication Technology.** A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

COMMENT

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

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

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

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

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

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 612 published with the Court's Order at 43 Pa.B. 1551 (March 23, 2013). Final Report explaining the amendments to Rule 612 published with the Court's Order at 43 Pa.B. 3839 (July 13, 2013).

RULE 616. POST-DISPOSITIONAL PROCEDURES; APPEAL (RESERVED)

RULE 617. RELEASE OF JUVENILE PENDING APPEAL (RESERVED)

PART C
MOTIONS AND *NUNC PRO TUNC* RELIEF

RULE 620. POST- DISPOSITIONAL MOTIONS

A. Optional Post-Dispositional Motion.

- 1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.
- 2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.

B. Timing.

- 1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the imposition of disposition.
- 2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed:
 - a) within thirty days of the entry of the order deciding the motion;
 - b) within thirty days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or
 - c) within thirty days of the entry of the order memorializing the withdrawal in cases in which a party withdraws the motion.
- 3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the imposition of disposition.

C. Court Action.

- 1) **Briefing Schedule and Argument.** Within ten days of the filing of the post-dispositional motion, the court shall:
 - a) determine if briefs, memoranda of law, or oral arguments are required; and
 - b) set a briefing schedule and dates for oral argument, if necessary.

- 2) **Failure to Set Schedule.** If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.
- 3) **Transcript.** If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments on the post-dispositional motion shall be delayed for transcript preparation.

D. Time Limits for Decision on Motion. The judge shall not vacate disposition pending the decision on the post-dispositional motion, but shall decide the motion as provided in this paragraph.

- 1) Except as provided in paragraph (D)(2), the judge shall decide the post-dispositional motion as soon as possible but within thirty days of the filing of the motion. If the judge fails to decide the motion within thirty days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.
- 2) Upon motion of a party within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.
- 3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall enter an order on behalf of the court, and, as provided pursuant to Rule 167, shall serve a copy of the order on each attorney and the juvenile, if unrepresented, that the post-dispositional motion is deemed denied. This order is not subject to reconsideration.
- 4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 167.
- 5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 167.

E. Contents of order. An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

- 1) the right to appeal;
- 2) the time limits within which the appeal shall be filed; and

3) the right to counsel in the preparation of the appeal.

F. After-discovered evidence. A motion for a new adjudication on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

COMMENT

The purpose of this rule is to promote the fair and prompt resolution of all issues relating to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for court review, and by setting reasonable but firm time limits within which the motion is to be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

For the definition of “disposition,” see Rule 120 and its *Comment*.

OPTIONAL POST- DISPOSITIONAL MOTION

See *In re Brandon Smith*, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion is to be filed within ten days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. See paragraph (D)(1).

TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion is to be filed within ten days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) are to be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile's direct appeal on all matters in that case is triggered by the judge's decision on the post-dispositional motion, the denial of the motion by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. See paragraph (B)(2).

If no timely post-dispositional motion is filed, the party's appeal period runs from the date disposition is imposed. See paragraph (B)(3).

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. See Rule 121(E).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony are to be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely resolution of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the adjudicatory hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-dispositional motion. When oral argument is heard on the post-dispositional motion, the juvenile need not be present.

DISPOSITION

Under paragraph (D), once a party makes a timely written post-dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing disposition pending decision on the post-dispositional motion.

Paragraph (D)(2) permits one 30-day extension of the 30-day time limit, for good cause shown, upon motion of a party. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, *sua sponte*, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that thirty days are required for a decision in most cases. The time limits for resolution of the post-dispositional motion are the outer limits. Easily resolvable issues, such as a modification of disposition or an admission challenge, should ordinarily be decided in a much shorter period of time.

If the judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision on the post-dispositional motion: the time limits imposed by paragraphs (D)(1) and (D)(2) continue to run from the date the post-dispositional motion was originally filed. The judge's reconsideration, therefore, is to be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. See Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977). See Pa.R.A.P. 341.

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This notice is intended to protect the party's right to appeal. The clerk of courts also is to comply with the filing, service, and docket entry requirements of Rule 167.

CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's withdrawal of a post-dispositional motion, contain written notice of the party's appeal rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at disposition and the resolution of the post-dispositional motion. *See also Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-dispositional motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the party notice of the information required by paragraph (E). *See Commonwealth v. Miller, supra*.

MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with particularity. Motions alleging insufficient evidence, for example, are to specify in what way the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence are to specify why the findings were against the weight of the evidence.

Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. *See* paragraph (A)(2).

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

Once a disposition has been modified or reimposed pursuant to a motion to modify disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify disposition in order to preserve an issue for appeal, as long as the issue was properly preserved at the time disposition was modified or reimposed.

Official Note: Rule 520 adopted May 17, 2007, effective August 20, 2007. Amended July 28, 2009, effective immediately. Amended January 11, 2010, effective March 1, 2010. Renumbered Rule 620 on February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 520 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007). Final Report explaining the amendment to Rule 520 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the renumbering of Rule 520 to 620 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

RULE 622. MOTION FOR *NUNC PRO TUNC* RELIEF

- A. **Timing.** A motion for *nunc pro tunc* relief shall be filed by the juvenile with the clerk of courts in the court in which the alleged error occurred as soon as possible but no later than sixty days after the date that the error was made known.
- B. **Counsel.** If alleged ineffective assistance of counsel is the basis for the motion, counsel is to withdraw pursuant to Rule 150(C) and the judge shall assign new counsel.
- C. **Contents of Motion.** A motion for relief under this rule shall include:
- 1) the name of the juvenile and case docket number;
 - 2) the location of the juvenile;
 - 3) the delinquent act(s) for which the juvenile was adjudicated delinquent;
 - 4) if ineffective assistance of counsel is alleged, the name of counsel who allegedly rendered ineffective assistance;
 - 5) the relief requested;
 - 6) a statement that one of the following requirements for the relief has been met:
 - a) there is a need for correction of an error to accurately reflect the court's findings; or
 - b) allegations that:
 - 1) the juvenile has been adjudicated delinquent and is under the court's supervision;
 - 2) there is a legitimate basis for the relief requested; and
 - 3) there are sufficient facts upon which to conclude the delay was justified and should be overlooked in the interest of justice;
 - 7) the facts supporting the grounds for relief and sufficient facts to support any delay in filing the motion for relief that:

- a) appear in the record, and the place in the record where they appear;
and
 - b) do not appear in the record, and an identification of any affidavits,
documents, and other evidence showing such facts;
- 8) whether the grounds for the relief requested were raised before, and if so, at what stage of the proceedings;
- 9) a verification that the facts set forth in the motion are true and correct to the best of the movant's personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 10) if applicable, any request for an evidentiary hearing, including:
- a) a signed certification by counsel as to each intended witness, stating the:
 - i) witness's name;
 - ii) witness's address;
 - iii) witness's date of birth; and
 - iv) the substance of the witness's testimony; and
 - b) any documents material to the witness's testimony, attached to the motion; and
- 11) if applicable, any request for discovery.

D. Answer.

- 1) The Commonwealth may answer the motion. If the Commonwealth chooses to respond to the motion, such response shall:
- a) be submitted within ten days of receipt of the motion; and
 - b) include a verification that the facts set forth in the answer are true and correct to the best of the attorney's personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

- 2) The court may order the Commonwealth to file an answer within a timeframe established by the court.

COMMENT

A motion for relief under this rule is to be filed with the clerk of courts in the court in which the alleged error occurred. Rule 120 defines “court” as the Court of Common Pleas. See Rule 120. Because the court has continual supervision over a juvenile until court supervision is terminated pursuant to Rules 631 or 632, the juvenile court is the appropriate forum for such a motion.

This process allows the juvenile court to accept late motions when there is a sufficient basis for the delay. See paragraph (C)(6) for requirement of the grounds for the motion. Because the court is providing relief *nunc pro tunc*, the requirements of 42 Pa.C.S. § 5505 do not apply. See *City of Philadelphia Police Dep’t v. Civil Service Comm’n of City of Philadelphia*, 702 A.2d 878 (Pa. Commw. Ct. 1997)(absent specific rule, only technical errors may be corrected after 30-day period); see also *Justice v. Justice*, 417 Pa. Super. 581, 612 A.2d 1354 (1992)(after a 30-day period the order can be opened or vacated if there is fraud or some other circumstance so grave or compelling as to constitute extraordinary cause which justifies intervention by the court); *Com., Dep’t of Transp., Bureau of Driver Licensing v. Duncan*, 144 Pa. Commw. 261, 601 A.2d 456 (1991)(after a 30-day period order can be opened or vacated upon extraordinary cause).

Pursuant to paragraph (A), the motion is to be filed as soon as possible but no later than sixty days after the date the error was made known or discovered. It is best practice to file the motion within thirty days.

Pursuant to paragraph (B), counsel is to remain in the case unless ineffective assistance of counsel is alleged. See Rule 150(B). If ineffective assistance of counsel is alleged, counsel is to withdraw and the court is to appoint new counsel. See Rule 150(C).

Pursuant to paragraphs (C)(6) & (7), the juvenile is to aver the basis for relief and allege facts to support the grounds for the relief upon which the court may conclude the delay was justified and should be overlooked in the interest of justice.

Second or subsequent motions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 633 A.2d 1098 (1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 (1988)). This standard is met if the juvenile can demonstrate either: 1) the proceedings resulting in the juvenile’s disposition were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or 2) the juvenile is innocent of the delinquent acts petitioned. See *Szuchon, supra*.

Official Note: Rule 622 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 622 published with the Court’s Order at 42 Pa.B. 1214 (March 10, 2012).

RULE 625. HEARING AND FINDINGS ON MOTION FOR *NUNC PRO TUNC* RELIEF

A. Hearing.

- 1) The judge may grant an evidentiary hearing to resolve material questions of fact.
- 2) The hearing shall be conducted as soon as possible but no later than thirty days after the filing of the motion for *nunc pro tunc* relief unless, upon good cause shown, the judge determines more time is necessary for investigation and preparation.

B. Grant with No Hearing. If sufficient facts exist in the record to warrant relief, the judge may grant the motion without a hearing. If the judge grants the motion, it shall be granted within thirty days of the filing of the motion unless an extension is granted.

C. Dismiss with No Hearing.

- 1) The judge shall give notice to the parties of the intention to dismiss the motion, stating the reasons for the dismissal in the notice upon conclusion that:
 - a) there are no genuine issues concerning any material fact;
 - b) the juvenile is not entitled to relief; or
 - c) no purpose would be served by any further proceedings.
- 2) The juvenile may respond to the proposed dismissal within twenty days of the date of the notice.
- 3) The judge thereafter shall order the motion dismissed, grant leave to file an amended motion, or direct that the proceedings continue.
- 4) The judge may dispose of only part of a motion without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

D. Findings. The judge shall:

- 1) state the findings and conclusions of law for all material issues raised:
 - a) on the record when there is a hearing; or

- b) in the order when there is no hearing; and
- 2) issue an order denying relief or granting a specific form of relief, and issue any supplementary orders or modification of dispositional orders appropriate to the proper disposition of the case.

E. Dismissed by Operation of Law. If the judge fails to decide the motion or grant an extension within thirty days:

- 1) the motion shall be deemed denied by operation of law and not subject to reconsideration; and
- 2) the clerk of courts shall forthwith:
 - a) enter an order on behalf of the court; and
 - b) as provided pursuant to Rule 167, shall serve a copy of the order on each attorney and the juvenile, if the juvenile has waived counsel, that the motion is deemed denied.

F. Appellate Rights.

- 1) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the juvenile on the record of the right to appeal from the final order disposing of the motion and of the time within which the appeal must be taken.
- 2) If the case is taken under advisement or the judge denies the motion without a hearing, the judge shall notify the juvenile of the right to appeal pursuant to Rule 628.

COMMENT

The judge is permitted, pursuant to paragraph (C), to summarily dismiss a motion in certain cases. To determine whether a summary dismissal is appropriate, the judge should review the motion, the answer, if any, and all other relevant information included in the record. If, after this review, the judge determines that the motion is patently frivolous and without support in the record, or that the facts alleged would not, if proven, entitle the juvenile to relief, or that there are no genuine issues of fact, the judge may dismiss the motion.

A summary dismissal would also be authorized under this rule if the judge determines that a previous motion involving the same issue or issues was filed and determined adversely to the juvenile. See *Comment* to Rule 622 for second or subsequent motions.

Additionally, relief may be granted without a hearing pursuant to paragraph (D)(2) after an answer has been filed.

Official Note: Rule 625 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 625 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

RULE 628. ORDER OF COURT ON MOTION FOR *NUNC PRO TUNC* RELIEF

A. Order by court. The court order shall:

- 1) state the judge's findings and conclusions of law;
- 2) provide for appropriate relief and supplementary orders or modifications of the dispositional order as to:
 - a) the detention of the juvenile;
 - b) whether a new adjudicatory hearing is granted;
 - c) correction of the adjudication of delinquency;
 - d) correction of the disposition;
 - e) termination of court supervision; and/or
 - f) other matters that are appropriate.
- 3) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

B. Order by clerk of courts for deemed denied by operation of law. When the clerk of courts has entered an order providing that the motion for *nunc pro tunc* relief is deemed denied by operation of law pursuant to Rule 625(E), the court order shall:

- 1) state that the motion is denied by operation of law pursuant to Rule 625(E);
and
- 2) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

Official Note: Rule 628 adopted February 23, 2012, effective April 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 628 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

PART D. CESSATION OF COURT JURISDICTION OR SUPERVISION

Rule 630. Loss of Court Jurisdiction

Rule 631. Termination of Court Supervision

Rule 632. Early Termination of Court Supervision by Motion

RULE 630. LOSS OF COURT JURISDICTION

When the juvenile has attained the age of twenty-one, the court shall enter an order terminating court supervision of the juvenile.

COMMENT

The Juvenile Court has jurisdiction of a delinquent child if the child is under twenty-one years and committed an act of delinquency prior to reaching the age of eighteen. See 42 Pa.C.S. §§ 6302 and 6303.

Official Note: Rule 630 adopted February 26, 2008, effective April 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 630 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008).

RULE 631. TERMINATION OF COURT SUPERVISION

- A. **Notice.** The juvenile probation officer shall promptly notify the court when the conditions of probation have been satisfied. The court shall decide if supervision should be terminated. The notice shall set forth:
- 1) The juvenile has completed the terms of the court's dispositional order;
 - 2) Restitution, fines, and costs have been paid in full; and
 - 3) The juvenile has not committed any new offenses in which a criminal proceeding or proceeding governed by the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, may be commenced.
- B. **Objection.** Any party may object to the notice under paragraph (A) and request a hearing. Such objection shall be made within thirty days of receipt of the notice; otherwise, objections are deemed waived.
- C. **Hearing.** If objections have been made under paragraph (B), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.
- D. **Termination.** When the requirements of paragraphs (A) through (C) have been met and the court is satisfied that the juvenile has carried out the terms of the dispositional order, the court may discharge the juvenile from its supervision.

COMMENT

For procedures on filing and service of the notice under paragraph (A), see Rule 345. For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352.

If the attorney for the Commonwealth objects pursuant to paragraph (B), 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 (C). The victim may be present at the hearing 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.*

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

For collection of restitution, see 42 Pa.C.S. § 9728.

See Rule 632 for early termination of court supervision by motion.

Official Note: Rule 613 adopted April 1, 2005, effective October 1, 2005. Renumbered Rule 631 and amended February 26, 2008, effective April 1, 2008. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 613 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the renumbering of 613 to 631 and amendments to Rule 631 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008). Final Report explaining the amendments to Rule 631 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

RULE 632. EARLY TERMINATION OF COURT SUPERVISION BY MOTION

A. **Motion.** Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.

B. **Notice.**

- 1) In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer.
- 2) The victim shall be provided notice of the motion for early termination of court supervision.

C. **Objection.**

- 1) A party or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.
- 2) Such objection shall be made within thirty days of the date of the motion; otherwise, objections are deemed waived.

D. **Court's determination.** The court shall:

- 1) rule on the motion and any objections without a hearing; or
- 2) schedule a hearing.

E. **Hearing.** If objections have been made pursuant to paragraph (C) and/or the court has determined a hearing is necessary, the court shall hold a hearing and give each party, the victim, and the juvenile probation officer an opportunity to be heard before the court enters its final order.

F. **Termination.** When the requirements of paragraphs (A) through (E) have been met and the court is satisfied that there are compelling reasons to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

COMMENT

If a party has moved for early termination of court supervision of a juvenile pursuant to paragraph (A) or the court has scheduled a hearing pursuant to paragraph (E), the attorney for the Commonwealth or its designee is to notify the victim of the motion for early termination and/or the date, time, place, and purpose of the hearing.

The victim may be present at the hearing 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.*

For the submission of victim-impact statements by victims of personal injury crimes prior to the release or transfer of a juvenile from a placement facility, see Victim's Bill of Rights, 18 P.S. § 11.201(8.1)(iii).

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

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See *also*, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008. Amended May 26, 2011, effective July 1, 2011.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008). Final Report explaining the amendments to Rule 632 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

CHAPTER 8 SUSPENSIONS

RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

- 1) The Act of November 21, 1990, P.L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, and 211.
- 2) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.
- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.
- 4) The Public Defender Act, Act of December 2, 1968, P.L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P.L. 830, No. 277, § 1, 16 P.S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.
- 5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.
- 6) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.
- 7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is

suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

- 8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.
- 9) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.
- 10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that juvenile probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.
- 11) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.
- 12) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(b), which provides that the district attorney, *upon request of the court*, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth, is suspended only insofar as the Act is inconsistent with Rules 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.
- 13) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged*

delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

- 14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.
- 15) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.
- 16) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1)&(2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.
- 17) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6355(g), which provides the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court *and* that a child is not amenable to treatment, supervision, or rehabilitation as a juvenile shall rest with the Commonwealth unless the exceptions of paragraphs (g)(1) and (2) apply, is suspended only insofar as the Act is inconsistent with Rule 394, which provides *only* the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.
- 18) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months when a juvenile is removed from the home, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See *also* Rule 102.

The partial suspension of 42 Pa.C.S. § 6355(g) in paragraph (17) is due to the redundancy of proving the juvenile is not amenable to treatment, supervision, and rehabilitation, which is a factor already considered by the court in 42 Pa.C.S. § 6355(a)(4)(iii)(G). Pursuant to 42 Pa.C.S. § 6355(a)(4)(iii)(G),

the court must find that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution while considering whether the juvenile is amenable to treatment, supervision, and rehabilitation among other enumerated factors. Because the court considers amenability to treatment, supervision, and rehabilitation as one of many enumerated factors, the court does not need to hear additional evidence later in the proceedings. As provided in 42 Pa.C.S. § 6355(a)(4)(iii)(G), the standard of proof is reasonable grounds.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010). Final Report explaining the amendments to Rule 800 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 800 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).