

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the Rules of Juvenile Court Procedure. The Rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth.

The following explanatory *Report* highlights the history of the Committee, the process of rule-drafting, and the Committee's considerations in formulating the Rules of Juvenile Court Procedure. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the Rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Report*.

EXPLANATORY REPORT

HISTORY OF THE COMMITTEE

The amendments to the Juvenile Act, 42 Pa.C.S § 6301, *et seq.*, passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. The juvenile court as a result must balance: 1) the needs of the victim, 2) community safety and protection, and 3) the accountability of the juvenile. Because the Juvenile Act now provides for the "automatic" transfer to adult court for prosecution for serious offenses, open proceedings in juvenile court, the extension of juvenile pre-adjudicatory detention, and the Victim's Bill of Rights has been extended to juvenile proceedings, there was an imperative need for the creation and ongoing review of statewide rules of procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee (hereinafter "Committee") on January 22, 2001. This nine-member advisory Committee to the Court, drawn from members of the bench and bar across Pennsylvania, was charged with the responsibility for conducting a formal review of procedural practice in juvenile court and with developing a comprehensive set of statewide rules for the Court's consideration.¹

On March 29, 2003, the Committee published its proposed recommendation for public comment.² After receiving comment, the Committee met to discuss the comments and issues raised. The Committee then revised its recommendation that it subsequently sent to the Court.

The following rules were adopted by the Supreme Court of Pennsylvania on April 1, 2005. The Rules will be effective October 1, 2005 with the exception of the Masters' Rules, Chapter One, Part D (Rules 185 - 192) which will be effective April 1, 2006.

PROCESS OF RULE-DRAFTING

¹ The Court's responsibility for prescribing general rules governing practice and procedure, and the conduct of all courts and magisterial district judges is derived from PA. CONST. art. V § 10(c) and the Judicial Code, 42 Pa.C.S. §1722.

² 33 Pa.B. 1581 (March 29, 2003).

The Committee surveyed local practices across this Commonwealth by speaking with judges, masters, law enforcement officials, juvenile probation officers, court administrators, district attorneys, public defenders, and private defense attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301, *et seq.*, the Pennsylvania Rules of Criminal Procedure, the Juvenile Court Judges' Commission Juvenile Court Standards, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and disposition of juveniles.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "written allegation" to describe the document that is completed by a law enforcement officer when an act of delinquency is committed.³ When juvenile courts are automated, common language will be even more important.

THE RULES GENERALLY

The Committee has presented the rules in an order that tracks the juvenile system from beginning to end. Chapter One sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Two deals with the commencement of proceedings and the procedures when a juvenile is arrested and detained in a detention facility. Chapter Three provides for the procedures on venue and jurisdiction, intake and informal adjustment, the filing of a petition, discovery, motions, summons and notices, consent decree, preservation of testimony and evidence, and transfer for criminal prosecution. Chapter Four sets forth the adjudicatory hearing procedures. Chapter Five provides for the procedures for the dispositional hearing. Finally, post-dispositional procedures, including modifications, reviews, and appeals are provided for in Chapter Six.

In these rules, the Committee has proposed several terms of general application. We use the term "juvenile" to describe a child in the juvenile court delinquency process. The Committee considered "child," "minor," "delinquent," and "juvenile" as appropriate terms. After careful thought and consideration, the Committee chose "juvenile," reasoning the intent is not to presume the person to be a delinquent or an innocent child, so the least controversial term is "juvenile." In fact, the name of the court is "juvenile court" and the probation officers are called "juvenile probation officers."

³ This document has been commonly labeled "probable cause affidavit," "complaint," "police papers," "charge form," or "allegation of delinquency" and is already submitted in most judicial districts.

The Committee uses the term “attorney for the Commonwealth” instead of district attorney because occasionally, the Attorney General’s office is involved in delinquency cases. When the Committee is referring to the elected District Attorney, we use the term “District Attorney,” and when referring to the District Attorney’s staff or the Attorney General’s staff, we use the term “attorney for the Commonwealth.”

The Committee uses the term “guardian” throughout the rules to describe “parent,” “guardian,” “custodian,” “foster parent,” “temporary guardian,” or any other person having custody of the juvenile to simplify what we call the many individuals who serve as this interested adult.

Finally, there are some additional procedural areas the Committee believes may necessitate statewide procedural rules. We have reserved consideration of these areas for later discussion, and possible adoption and promulgation by the Supreme Court. Rules that may be developed at a later date include, for example, Rule 129 (Open Proceedings), Rule 384 (DNA Testing), Rule 520 (Transfer of Disposition and Supervision of Juvenile to Another State), Rule 521 (Disposition and Supervision of a Juvenile Received from Another State), Rule 616 (Post-Dispositional Procedures; Appeals), and Rule 617 (Release of Juvenile Pending Appeal).

The following discussion explains the rationale of the Committee when drafting the Rules, but does not discuss every rule because those rules not discussed have evident meaning or are explained sufficiently in the *Comments*.

CHAPTER ONE

The general provisions are Rules 100 – 105. Business of courts is covered in Part A, Rules 120 – 135. Part B addresses counsel, Rules 150 – 152. Records are covered in Part C, Rules 160 – 172. Part D addresses masters in Rules 185 – 192.

GENERAL PROVISIONS

RULE 105 – SEARCH WARRANTS

After careful thought and consideration, the Committee concluded that police officers should follow the same procedure for obtaining and executing search warrants whether the person or place being searched relates to a case that may involve an adult or juvenile offender. To simplify this procedure and keep the standards uniform, and because law enforcement officers are familiar with these procedures, the Committee has deferred to the Pennsylvania Rules of Criminal Procedure for the search warrant procedures.

PART A – BUSINESS OF COURTS

RULE 121 – LOCAL RULES

Rule 121 requires all local rules be vacated on October 1, 2005, the time this rule becomes effective, so the Court and Committee are able to regulate and monitor local rules to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.), and to ensure that local practices do not inhibit the statewide practice of law. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repromulgate their rules after rekeying the rule numbers. See paragraph (B)&(C)(2) and *Comment*.

Paragraph (D) requires the adopting court to comply with provisions (1) - (5). Under paragraph (D)(4), the court is to file a copy with the Juvenile Court Procedural Rules Committee. The Committee's mailing address is: Juvenile Court Procedural Rules Committee, Supreme Court of Pennsylvania, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055. The insertion of RE: Local Rules would be helpful to the Committee when sorting.

RULE 122 – CONTINUANCES

The Committee discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. See paragraph (B) and *Comment*.

RULE 123 - SUBPOENAS

This rule provides for the contents of the subpoena, service of the subpoena, duration of the subpoena and bench warrants. If the court does issue a bench warrant, a contempt hearing should be the next hearing.

A subpoena may be served via first class mail; however, this mailing alone is not *prima facie* evidence of service of the subpoena. A new subpoena should be sent via registered or certified mail, or in-person delivery.

RULE 124 - SUMMONS AND NOTICE

Rule 800 suspends 42 Pa.C.S. § 6335(c) to the extent that it is inconsistent with this rule, which provides that a summoned person shall fail to appear for a hearing and the court finds sufficient notice was given to issue a bench warrant. It is not sufficient to find the juvenile may

abscond or may not attend or be brought to a hearing. Detaining a juvenile is restrictive of the juvenile's liberty and it can not be done on conjecture and hearsay.

RULE 126 - DEFECTS IN FORM, CONTENT, OR PROCEDURE

A case shall not be dismissed because of a defect. The defect shall be raised prior to the adjudicatory hearing and it may not be prejudicial to the rights of the juvenile. A written allegation or petition may be amended to cure a defect. See Rule 334 for amendment of the petition. A new written allegation or new petition may be filed or process may be reissued to alleviate any defects. See Rule 336.

RULE 127 - RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS

The Committee felt it was extremely important to ensure all proceedings are properly recorded, including those proceedings by masters. 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. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). At a minimum, there should be a tape recording of the proceeding that can be transcribed, although a court stenographer is the preferred method of recording a proceeding.

RULE 128 – PROCEEDINGS *IN ABSENTIA*

The issue of whether a juvenile may be adjudicated *in absentia* generated a great deal of debate. Our surveys of the judicial districts revealed that in most cases, the juvenile is present for the proceedings. There are a few instances in which the juvenile would not be present, such as, fleeing from the courtroom to avoid prosecution. The Committee agreed that there may be times when it is appropriate to adjudicate a juvenile *in absentia*, but was concerned that, by providing for this, any time a juvenile did not appear at a hearing, the juvenile could be adjudicated *in absentia*. To safeguard against this possibility, the rule makes it clear that *in absentia* adjudications may only be conducted in those few cases where the juvenile willfully fails to appear or absconds. The rule also provides for the *in absentia* adjudication only in the discretion of the juvenile court judge, and that the judge can chose never to adjudicate a juvenile in his or her absence.

RULE 131 – GUARDIAN'S PRESENCE

Rule 131 provides that the guardian may accompany the juvenile to any proceeding. This rule also permits a guardian's presence to be ordered when the guardian does not accompany the juvenile to the hearing. Under the Juvenile Act, in addition to ordering the guardian's presence, the court may order the guardian to participate in the treatment, supervision, or rehabilitation of the juvenile, including, but not limited to, community service, restitution, counseling, treatment, and education programs. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

RULE 132 – VICTIM'S PRESENCE

Section 6336(d) of the Juvenile Act provides for "parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding." 42 Pa.C.S. § 6336(d). The Victim's Bill of Rights, 18 P.S. § 11.201, provides that victims of crime have the right to be accompanied to all juvenile proceedings by a family member, a victim advocate or other person providing assistance or support. Reading these statutes together, the Committee concluded that the court is to determine who is present for the victim's assistance and who has a proper interest. The court should limit the number of persons attending to those that are there specifically for support.

PART B – COUNSEL

RULE 150 – ATTORNEY -- APPEARANCES AND WITHDRAWALS

This rule addresses how appearances and withdrawals are entered. The Committee discussed at length the issue of duration of counsel.

From its surveys, the Committee learned that, in some counties, a juvenile does not have an attorney at the dispositional review hearing or the review is continued because counsel is not present.

In re A.M., 766 A.2d 1263 (Pa. Super. Ct. 2001), *In re Gault*, 387 U.S. 1 (1967), and 42 Pa.C.S. § 6337 provide for the right to counsel at any and all delinquency proceedings. A dispositional review hearing is a delinquency proceeding and the juvenile has the right to counsel at such proceedings. The practice in a minority of counties of not having counsel present is in violation of statutory and case law.

The Committee discussed these divergent practices of no counsel at dispositional review hearings and concluded the interests of the juvenile are better served if the same attorney stays in the case through the dispositional reviews because counsel would be familiar with the juvenile and the history of the case.

In juvenile proceedings, a juvenile is sent to a placement facility with no specific time limits except to finish the program. There are different types of facilities and different expected times of normal completion of a specific type of program. For example, one residential facility program may take a juvenile who is doing well about a year to complete. In that same residential facility, a juvenile who is misbehaving or not performing, may take four years to complete the program. A dispositional review hearing tracks the juvenile performance in the placement and the court makes a decision at that hearing to keep the juvenile in the facility, transfer the juvenile to another placement or send the juvenile home. There are so many variables in this decision and restrictions of a juvenile's liberties that it is absolutely essential for juveniles to be represented at these hearings. When a juvenile is removed from the home, these hearings are required to be held every six months. See Rule 610 (Dispositional and Commitment Review).

Because attorneys are failing to show for such an important hearing, this rule provides a mechanism to put the onus on the attorney to withdraw. It additionally puts the court on notice when withdrawal of counsel is requested. If there is no withdrawal, the attorney is expected to be present for the hearing. The *Comment* provides that the court may need to appoint counsel if there has been a withdrawal. If the juvenile has not had a dispositional hearing or is in placement, the court will appoint new counsel. If the juvenile is on probation, the court may wait to appoint counsel if and until the juvenile violates probation.

RULE 151 – ASSIGNMENT OF COUNSEL

The Committee discussed in detail whether every juvenile is in fact indigent. Local practices varied across the Commonwealth with a majority of judicial districts assigning counsel in every case. The phrase “without financial resources or otherwise unable to employ counsel” used in this rule covers every juvenile that needs counsel. The Committee understands that in some situations, the guardian and the juvenile would have a conflict of interest, and the guardian should not be relied upon to employ counsel in those situations, or the guardian has not obtained an attorney for the juvenile. If a juvenile needs counsel, the court must assign counsel.

The Public Defender Act was suspended in this rule to anticipate conflict of interest cases or other instances where the Public Defender could not represent the juvenile. For example, if there are two juvenile conspirators who have a conflict of interest, the Public Defender may only represent one juvenile and conflict counsel must be appointed for the other juvenile.

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign “private” counsel for the juvenile. This rule does not say

that the juvenile is entitled to a Public Defender. As a practical matter, the county may choose to have all juveniles represented by the Public Defender's Office because it is more cost effective than private counsel.

RULE 152 – WAIVER OF COUNSEL

From our survey of local practices, we found that in most cases, the juvenile has counsel present although waiver of counsel is permitted. The Committee debated whether waiver of counsel should be permitted. The Committee is concerned about the juvenile's comprehension of the consequences of waiving the right to counsel so an extensive colloquy was built into the *Comment*. In order for the juvenile to waive the right to counsel knowingly, intelligently, and voluntarily, the court is to look at several factors when conducting this colloquy.

The Committee debated whether an age restriction was appropriate. After discussion, we felt that this was a factor that could not be evenly weighed for every juvenile, but have included it as one factor the court should consider because the court is in the best position to determine what is appropriate in each case with a specific juvenile.

This rule does not mandate the appointment of stand-by counsel, because, in most cases, the court will appoint stand-by counsel when it is appropriate.

PART C – RECORDS

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

RULE 160 - INSPECTION OF JUVENILE FILES/RECORDS

There are two sets of files for every juvenile in the system, the docket file and the probation file. The general public cannot assess either set of files. The docket file is maintained by the clerk of courts with limited filed documents. The probation file records many confidential matters and is maintained by the juvenile probation office. This rule is taken from the Juvenile Act, 42 Pa.C.S. § 6307 and it limits access to both set of files.

In addition to limiting access to these files, the clerk of courts' offices throughout this Commonwealth maintain separate files for juvenile and adults, understanding the confidentiality of juvenile records.

Section 6352.1 of the Juvenile Act allows for treatment records to be released to the court, county agency, or probation upon consent or court order, notwithstanding other provisions of law. This section of the Act authorizes limited access of records to specific parties.

RULE 163 - RELEASE OF INFORMATION TO SCHOOL

Any information received by the school pursuant to this rule shall be kept confidential and used by school officials in the ordinary administration

of their duties and school operation. This information shall not be released to the general public or third parties unless the court has entered an order to that effect.

This information shall be kept separately from the juvenile's official school record.

PART (C)(2) – MAINTAINING RECORDS

RULE 166 - MAINTAINING RECORDS IN THE CLERK OF COURTS

This rule provides for the contents and maintenance of records in the clerk of courts' office. Rule 160 governs who may review and copy these records.

RULE 167 - FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

The Committee tried to anticipate the advances in technology by providing, as one method of service, service by facsimile transmission or other electronic means, if requested. See paragraph (B)(3).

PART (C)(3) – EXPUNGING OR DESTROYING RECORDS

The Committee considered including provisions on which cases may be expunged but, after extensive discussion, felt 18 Pa.C.S. § 9123 covered this area sufficiently.

RULE 170 – EXPUNGING OR DESTROYING JUVENILE COURT RECORDS

This rule sets forth the minimal contents of a motion to expunge a juvenile record. Although there may be situations when the date of birth is unknown, it is helpful in identifying the individual whose record is sought to be expunged. The motion should contain as much information as possible to help identify the record to be expunged. If the police department, probation office, or another agency does not have the proper information, the record sought to be expunged may not actually be expunged for lack of sufficient identifying information.

PART D – MASTERS

The Rules of Juvenile Court Procedure were adopted on April 1, 2005. The Rules are effective October 1, 2005, except for Chapter One, Part D (Masters), which is effective April 1, 2006. Because some counties will have to change their practice regarding the use of masters for specific classes of cases, this section was given a later effective date.

RULE 185 – APPOINTMENT TO CASES

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice under paragraph (B).

RULE 187 – AUTHORITY OF MASTER

A major issue for the Committee concerned whether masters should be limited on the types of cases they should hear. After several discussions, eliciting public comment, reviewing case law and the Juvenile Act, reviewing current court practices and reviewing the Juvenile Court Judges' Commission Juvenile Court Standards, the Committee felt that masters should hear only misdemeanors for preliminary, pre-adjudicatory, adjudicatory or dispositional hearings, and that the juvenile court judge should hear the more serious offenses and all felonies. In misdemeanor and felony cases, masters may hear detention hearings, detention review hearings, shelter-care hearings, uncontested dispositional review hearings or uncontested probation revocation hearings.

This Rule restricts the authority of masters. Section 6305 of the Juvenile Act has been suspended to the extent that masters can hear only certain cases or class of cases under this Rule.

The Committee received a significant number of comments from the bench, bar, and public concerning this rule when this rule was published for Comment on March 29, 2003.⁴ Two major underlying concerns from the Comments were the availability of judicial resources and the experience of the masters.

The Committee additionally received Comments asking the Committee to consider further restricting the master's authority.

The Committee took every Comment received into consideration and finally concluded that judges are elected by the public to hear cases and set forth "judgments." Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges' primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the "judgments" with the judges' rubber-stamped order. The additional practice in a few counties of masters issuing orders is in violation of these Rules and statutory and case law. The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.

⁴ 33 Pa.B. 1581 (March 29, 2003).

Paragraph (C) provides that at every hearing before the master, the juvenile should be informed of the right to a hearing before the judge. We included this provision here because we thought it made more sense to have a general requirement in one rule that applies across the board rather than including similar language in each rule for a specific hearing. See 42 Pa.C.S. § 6305(b).

RULE 191 – MASTER’S FINDINGS AND RECOMMENDATION TO THE JUDGE

Paragraph (B) requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the majority of local practices across the Commonwealth. This requirement will assist the attorney for the Commonwealth and the juvenile’s attorney if they appeal the master’s decision under Rule 192.

Because the master only submits a recommendation to the judge, the judge must enter a final order. The findings of the master are not final and binding until there is a court order. Under paragraph (C), the judge may: 1) accept the recommendation and enter an order; 2) reject the recommendation and enter an order with a different disposition of the case; 3) send the recommendation back to the master for more specific findings; or 4) schedule a rehearing on the matter.

When a judge rejects a master’s recommendation by modifying a factual determination, a rehearing is to be scheduled. 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.

RULE 192 - CHALLENGE TO MASTER’S RECOMMENDATION

A master’s recommendation is subject to approval of the judge. See *supra* Rules 187, 191. Parties may object to the master’s recommendation and ask for a rehearing. This rule sets forth the procedures on how to challenge a recommendation.

A judge does not have to grant a rehearing. If the judge does grant the rehearing, it needs to be done within seven days to ensure the case is processed through the system in a timely manner and to comply with the time restrictions of these rules.

CHAPTER TWO

Part A, Rule 200 provides for the commencement of proceedings. Arrest Procedures are covered in Part B, Rules 210 – 221. For written allegation procedures, see Part C, Rules 231 – 233. Part D provides for pre-adjudicatory detention in Rules 240 – 243.

PART A – COMMENCING PROCEEDINGS

RULE 200 – COMMENCING PROCEEDINGS

Rule 200 provides the methods of commencing proceedings in a case involving a juvenile. This rule deviates from the Juvenile Act in that the submission of a written allegation commences proceedings instead of the filing of a petition. See 42 Pa.C.S. § 6321(a)(3). The Committee developed this new terminology to clarify that commencing a proceeding does not necessarily imply formal court action; there are several steps in the processing of juvenile cases before a petition is ever filed. Thus, the written allegation procedures reflect what occurs in actual practice whereby a case is processed before a petition is ever filed. Under this rule, once a written allegation has been submitted, the juvenile probation officer must determine if the allegations are within the jurisdiction of the juvenile court and if it is appropriate to schedule an intake conference to determine if the case can be resolved by informal court action, such as, informal adjustment, or if formal court action is necessary by the filing of a petition. See Rules 310 – 312. Under the Juvenile Act, once a petition is filed, informal adjustment is precluded.

The Juvenile Act provides that the taking into custody is a method for commencing proceedings. See 42 Pa.C.S. § 6321(a)(2.1). The Juvenile Act provides five methods of taking into custody. See 42 Pa.C.S. § 6324. This rule incorporates the commencement of proceedings for taking into custody pursuant to the laws of arrest only. See 42 Pa.C.S. § 6324 (2). The other provisions of taking into custody under 42 Pa.C.S. § 6324 (1), (3), and (4) provide for the taking into custody of dependent children; therefore were omitted from this rule. The Committee understands that these provisions may also apply to delinquent children; however, the taking into custody for those reasons alone should not commence **delinquency** proceedings.

Proceedings have already been commenced for juveniles who have violated their probation; therefore, Rule 605 provides for detaining juveniles for violations of probation under 42 Pa.C.S. § 6324 (5).

In addition, proceedings have already been “commenced” for juveniles under this rule in paragraphs (3), (4), and (5); however, this is the method for commencing those proceedings in juvenile court in delinquency proceedings within a judicial district.

PART B – ARREST PROCEDURES IN DELINQUENCY CASES

RULES 210 – 220

The Committee agreed that the requirements for requesting and executing an arrest warrant in cases involving a juvenile should apply in

the same manner as they apply for adults except that the guardian of the juvenile should be notified as to the juvenile's whereabouts. Additionally, because there is no bail in juvenile cases, the juvenile may be released to the care of a guardian, may come before the juvenile court, or may be sent to a juvenile detention facility.

RULE 210 - ARREST WARRANTS

Our surveys revealed that in some judicial districts, the attorney for the Commonwealth has to approve applications for arrest warrants. This practice is often different from the practice for adult offenders because a minor is involved and the attorney for the Commonwealth wants to ensure the allegations warrant detention in the case. This rule provides that the District Attorney may require applications to be approved by an attorney for the Commonwealth if the District Attorney files a certification with the Court pursuant to Rule 231. The certification shall specify which cases or classes of cases shall be submitted by the police officer to an attorney for the Commonwealth.

RULE 212 – DUPLICATE AND ALIAS WARRANTS OF ARREST

The Committee agreed that the courts could assess costs of the warrant; however, we realized that the juvenile might not have the resources to pay this fee. The court will have to evaluate each case independently, and may consider whether there is a court program to allow the juvenile to earn money, whether the juvenile is employed, whether the guardian should be held responsible, and other similar factors in deciding whether and how much of the costs to access.

PART C – WRITTEN ALLEGATION PROCEDURES

RULE 231 – WRITTEN ALLEGATIONS

Submission of a written allegation is not a new procedure. A written allegation is the document submitted to the juvenile probation office by the law enforcement officer, and in a rare case, by a private citizen, which alleges a juvenile has committed an act of delinquency.

In several counties, the District Attorneys are currently requiring the allegation to be approved by their office. To allow this practice to remain and also to keep law enforcement apprised of this requirement, paragraph (B) requires the District Attorney to file a certification, stating which cases should be submitted to their office for prior approval, with the court of common pleas in their judicial district. All law enforcement officials in the judicial district should be notified of this requirement.

The Committee discussed if the juvenile probation office should receive a copy of the written allegation whether or not it was approved.

Because there may be instances when it is necessary for the probation office to know about a case, the Committee agreed that the juvenile probation officer should receive a copy of the written allegation, even when there might not be sufficient grounds for the allegation of delinquency because the act could be a violation of the juvenile's probation. See paragraphs (C) and (D).

RULE 232 – CONTENTS OF WRITTEN ALLEGATION

The Committee found from its surveys that several counties transform their written allegation into the delinquency petition. To help facilitate this common practice, the Committee tracked the requirements of the written allegation closely with the contents of the petition. *Compare* Rule 232 with Rule 330 (C). Two additional requirements are mandated for the petition. See Rule 330 (C)(12)-(13).

RULE 233 – APPROVAL OF PRIVATE WRITTEN ALLEGATION

Consistent with the provisions of 42 Pa.C.S. § 6334, the rules allow any person to commence a juvenile proceeding by filing a written allegation; however, pursuant to Rule 330(B) only the attorney for the Commonwealth or the juvenile probation officer may file a petition. The Committee believes that when the person filing a document alleging a juvenile committed a delinquent act is a private citizen, they should follow the same process and proceedings as probation officers and law enforcement officers; private citizens should not be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of this change is not to preclude informal court action in cases submitted by private citizens. The purpose of the Juvenile Act is achieved by providing an avenue for the private citizen to submit a written allegation and appeal a disapproval of the written allegation to the court. If the court overrules the disapproval, the court may order the juvenile probation officer or an attorney for the Commonwealth to proceed with the case in the same manner as any other case. See *Comment* to this rule.

PART D – PRE-ADJUDICATORY DETENTION

RULE 240 – DETENTION OF JUVENILE

If the juvenile is detained and the attorney for the Commonwealth is seeking transfer of the case to criminal proceedings, the attorney for the Commonwealth must file notice of intent to transfer within the ten-day period as provided for in Rules 391 and 404. See *infra* Rule 391.

RULE 242 – DETENTION HEARING

Rule 242 requires that the petition be filed within twenty-four hours of the detention **hearing**. Although this is a change from the statutory requirement that a petition be filed within twenty-four hours of the juvenile's detention, the Committee believes this change is vital so that informal adjustment or other informal court action will not be precluded. See *Comment* to this rule.

RULE 243 – DETENTION REHEARINGS

The Committee has required that a guardian submit an affidavit alleging he or she was not notified of the hearing. Paragraph (A) is designed to limit the number of rehearings by the court but allow the guardian to be heard if requested.

CHAPTER THREE

Chapter Three addresses the pre-adjudicatory procedures. Part A encompasses venue and inter-county transfer in Rules 300 – 302. Part B addresses intake and informal adjustment, Rules 310 – 313. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 330 – 336. For procedures following the filing of a petition, see Part D, Rules 340 – 364, including discovery, motions, filing, service, summons, and notice. Consent decree procedures can be found in Part E, Rules 370 – 373. Part F, Rules 380 – 384 includes provisions on preservation of testimony and evidence. Finally, Part G addresses procedures for transfer to criminal prosecution from delinquency proceedings in Rules 390 – 396.

PART A – VENUE

RULE 300 - VENUE

There was substantial debate over this rule and whether a proceeding should be commenced in the juvenile's residential county, rather than only the county where the allegation occurred. The Juvenile Act provides for the commencement of proceedings in the county where the allegation occurred or the juvenile's residential county. See 42 Pa.C.S. § 6321(b). Notwithstanding the statutory provisions, our surveys revealed that in most cases, the proceedings are commenced in the county where the allegation occurred. The Committee ultimately decided to follow the statute, but added a procedure that allows a motion for change of venue if there was a hardship on the juvenile recognizing that the court is in the best position to decide this issue and to be able to look at all the pertinent factors, including hardship.

PART B – INTAKE AND INFORMAL ADJUSTMENT

RULES 310 – 313

These rules lay out the informal court process. If a case is informally adjusted, no formal court action is sought and the case is dismissed. If it is determined that formal court action would be in the best interest of the public and the juvenile, a petition should be filed.

RULE 311 – INTAKE CONFERENCE

During the surveys and Committee discussions, it was noted that the Victim's Bill of Rights does not give victims the right to participate in an intake proceeding; however, it gives the victims the right to comment on "disposition." If cases are being dismissed, informally adjusted or diverted, the victims should have the opportunity to give their opinion on the "disposition" of the case. To ensure compliance with this provision of the Victim's Bill of Rights, this Rule affords the victim the opportunity to offer prior comment to the disposition of the case if informal adjustment or an alternative resolution of the case is being considered. In addition, this rule provides the attorney for the Commonwealth with notice of the outcome of an intake conference, *i.e.* informal adjustment. If the attorney for the Commonwealth feels the victim is aggrieved by the decision of the juvenile probation officer, the attorney for the Commonwealth may file a motion for review by the court.

Under paragraph (C), the juvenile probation officer is to notify the attorney for the Commonwealth of the decision resulting from the intake conference. If the decision is to file a petition, the filing of the petition qualifies as notice to the attorney for the Commonwealth. In those judicial districts where the District Attorney requires petitions to be filed by an attorney for the Commonwealth, the juvenile probation officer shall forward the necessary information to the attorney for the Commonwealth for processing of the case.

If the juvenile probation officer is recommending informal court action and the attorney for the Commonwealth disagrees with the decision, the attorney for the Commonwealth is to consult with the juvenile probation officer before any motion requesting review by the court is filed.

RULE 312 – INFORMAL ADJUSTMENT

Informal adjustment is informal court action and an alternative to filing a petition and proceeding with the case in the court process. A victim is to be afforded the opportunity to offer prior comment before the case is informally adjusted. *See supra* Rule 311. *See also Comment.*

PART C – PETITION

RULE 330 – PETITION: FILING, CONTENTS, FUNCTION

In the majority of judicial districts, the attorney for the Commonwealth or the juvenile probation officer files the petition. After extensive discussion, the Committee agreed to follow these local practices to the extent that the District Attorney of each county may chose to have the petition filed by an attorney for the Commonwealth by filing a certification with the court of common pleas.

A private citizen may not file a delinquency petition. A petition shall be filed by the attorney for the Commonwealth or the juvenile probation officer. A private citizen may initiate proceedings by the filing of a written allegation. For further discussion, see *supra* Rule 233.

The filing of a petition represents that the case is inappropriate for informal adjustment or other diversionary programs. See paragraph (B) and *Comment*.

Paragraphs two, three, twelve and thirteen incorporate the provisions of Section 6334 of the Juvenile Act. Paragraphs four through eight set forth the allegations of delinquency with particularity, including names of conspirators. In addition to the Juvenile Act, compliance with due process standards requires that the petition set forth the allegation with particularity. *In re Gault*, 387 U.S. 1 (1967). Paragraphs one, ten and eleven are essential because the petition is the official charging document and must be signed. Paragraph nine encompasses the statutory requirement that the law enforcement officer or the attorney for the Commonwealth note that laboratory services have been requested. 42 Pa.C.S. § 1725.3 This rule closely tracks the contents of the written allegation. See *supra* Rule 232.

RULE 332 - MULTIPLE OFFENSES IN PETITION

This rule provides for the allowance of one petition for multiple offenses if each offense is set forth with clarity that ensures the juvenile is aware of the offenses alleged. This reflects the current practice in a majority of the counties.

RULE 334 - AMENDMENT OF PETITION

Amendments to a petition may be made if they do not allege a different set of events or offenses, which may implicate double jeopardy issues. This rule allows the Commonwealth to make amendments if they have failed to cross their t's and dot their i's. This is important in juvenile cases because non-attorneys, juvenile probation officers, file most of the petitions in juvenile court.

PART D – PROCEDURES FOLLOWING FILING OF PETITION

RULE 340 – PRE-ADJUDICATORY DISCOVERY AND INSPECTION

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information to the opposing party without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made.

RULES 344 – MOTIONS AND ANSWERS

Rule 344 provides for motions and answers to be made either orally or in writing. Because of the time constraints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

RULE 352 - SEPARATE ADJUDICATORY HEARINGS FOR OFFENSES OR JUVENILES

A hearing may be bifurcated if a juvenile is prejudiced.

RULE 353 - MOTION FOR RETURN OF PROPERTY

This rule provides the procedures for a hearing on a motion for return of property. As noted by the Committee's *Comment*, nothing prohibits a more appropriate court from hearing this motion. As revealed in our surveys, a few counties have a designated motions' court that hears these types of motions. For judicial economy, a juvenile court judge may incorporate this hearing into another hearing before the court, such as, the dispositional hearing.

PART E – CONSENT DECREE

RULE 370 – CONSENT DECREE

The Committee discussed whether there should be rule procedures mandating requirements for consent decrees. We looked at whether the juvenile was a first time offender, whether specific charges would be prohibited from a consent decree disposition, whether the juvenile had to accept responsibility for the delinquent acts alleged, and some other minor issues. Ultimately, the Committee decided that the juvenile court is in the best position to look at each case independently and to decide if the case is appropriate for consent decree.

The Committee noted that 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). This is explained in the *Comment*.

PART F – PRESERVATION OF TESTIMONY AND EVIDENCE

RULES 380 – 384

These rules provide for preservation of testimony and evidence. Masters may preside over these cases if they involve only misdemeanors. See Rule 187.

PART G – TRANSFER FOR CRIMINAL PROSECUTION

RULE 390 – NOTICE OF REQUEST FOR TRANSFER TO CRIMINAL PROCEEDINGS

The Committee noted and discussed that the Juvenile Act gives the juvenile the right to request transfer to criminal proceedings. For several reasons, the Committee was apprehensive about letting a fourteen year old make an inappropriate decision that could affect the rest of the juvenile's life. Because of this concern, the Committee explains in the *Comment* that the court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should make an inquiry to determine if the request has been knowingly, intelligently, and voluntarily made.

In most cases, a notice for request of transfer to criminal proceedings should be filed prior to the first scheduled adjudicatory hearing. An exception was created in paragraph (B) to allow a continuance of the first scheduled adjudicatory hearing to further investigate and determine, based on new information or circumstances, whether transfer is appropriate. The filing of the request must occur prior to the commencement of the adjudicatory hearing because jeopardy attaches once the hearing is commenced.

RULE 391 – TIME RESTRICTIONS FOR DETENTION OF JUVENILES SCHEDULED FOR TRANSFER HEARING

Local practices revealed that preparing for a transfer hearing can be a lengthy process and should not be handled quickly for the sake of swiftness over the welfare of the public or juvenile. Transfer social studies including psychological reports must be prepared. Taking these points into consideration, the Committee agreed the rule should provide that the juvenile may be detained for ten days and up to or on the tenth day, the attorney for the Commonwealth may file a notice of intent to transfer. The ten days allows the attorney for the Commonwealth to consult with the

juvenile probation officer and other pertinent persons regarding transfer of the juvenile. The juvenile should normally have a transfer hearing within ten days of the filing of the notice of intent to transfer. However, the juvenile may be detained for one additional ten-day period if the requirements of paragraph (B)(1) are met. Thus, a juvenile may be detained for up to thirty days for a transfer hearing. If the juvenile requests a continuance under paragraph (B)(2), the juvenile may be detained longer than thirty days in ten-day intervals.

RULE 394 – TRANSFER HEARING

This rule requires a transfer hearing in all cases when a notice of request for transfer is filed.

Under paragraph (A), if the attorney for the Commonwealth does not meet the three-day requirement and the case has to be continued, the continuance would be counted against the Commonwealth.

When the transfer hearing is conducted following the juvenile's request for transfer, the court must make separate findings pursuant to paragraph (B) although the findings may have been conceded by the juvenile when requesting transfer.

RULES 395 - 396 – PROCEDURE TO INITIATE CRIMINAL INFORMATION AND BAIL

These rules provide that the Rules of Criminal Procedure apply to the transferred juvenile, and set forth the steps necessary to initiate the criminal prosecution.

CHAPTER FOUR

Chapter Four addresses the procedures related to the adjudicatory hearing.

RULE 404 – PROMPT ADJUDICATORY HEARING

The Committee discussed whether there should be a time limitation for having a hearing for non-detained juveniles. Our survey found that most juveniles are having hearings within six months. The Committee felt that this practice is reasonable; therefore, set no specific time limitation in the rule, other than a "reasonable time."

RULES 406 – 409

These rules separate the stages of proceedings heard by the court. These stages may be consolidated into one hearing by the court as long as everyone is clear that the stages are separate and distinct. Rule 406 governs the adjudicatory hearing. Rule 407 provides for admissions. See

infra Rule 407. After the court has held an adjudicatory hearing or accepted an admission, the court is to rule on the offenses, stating with particularity the gradings and counts of each offense. Once the court has ruled on the offenses or entered its findings, the court is to determine if the juvenile is in need of treatment, supervision or rehabilitation.

RULE 407 – ADMISSIONS

This rule reflects current local practices. There are procedures in some form in every judicial district that permit the court to allow the juvenile to acknowledge the facts, adjudication, or disposition rather than holding an adjudicatory hearing.

It is important for the court to assess that the juvenile's admission is knowingly, intelligently, and voluntarily made. As stated in the *Comment*, the court may utilize a written form to ascertain the necessary information. The court then must ask questions on the record to insure the juvenile's understanding of the form and the juvenile's agreement with the statements made.

CHAPTER FIVE

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notice in Rule 500. Rules 510 – 516 are covered in Part B addressing the dispositional hearing, aids in the disposition, and the court order. Part C is reserved for inter-state transfer of disposition.

PART B – DISPOSITIONAL HEARING AND AIDS

RULE 512 – DISPOSITIONAL HEARING

The "one judge - one juvenile" philosophy that is sweeping our country was discussed by the Committee. We agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, the *Comment* points out that, if and when practicable, the same judge or master should hear all cases involving the same juvenile.

RULE 513 – AIDS IN DISPOSITION

Our survey of local practices revealed that social studies or summaries are being prepared in two-thirds of the cases. Although the rule leaves the decision whether to have a social study prepared to the discretion of the court, in serious cases, the court should order the preparation of the study.

RULE 515 – DISPOSITIONAL ORDER

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding. See *Comment*.

From the Committee's surveys, we found that the courts' dispositional orders are not always clear concerning restitution. We therefore, included in paragraph (B), specific requirements concerning restitution.

In establishing the appropriate disposition, the court may exercise discretion within the limits of the Juvenile Act. *In re Frey*, 375 A.2d 118 (Pa. Super. Ct. 1977). The Legislature intended to give juvenile courts broad discretion in designing remedies to aid in the reformation of juvenile offenders. *Commonwealth v. Russman*, 378 A.2d 459 (Pa. Super. Ct. 1977). Section 6310 of the Juvenile Act gives the court the power to order the guardians to participate in the disposition of the case for the juvenile through community service, restitution, counseling, treatment and education programs, as well as, other treatments. Paragraph (C) of this rule requires the court to include in its dispositional order any obligation imposed by the court upon the guardian. The guardians should receive a copy of the dispositional order for their obligation. See Rule 516.

CHAPTER SIX

This chapter provides for the post-dispositional procedures, including modifications, reviews, and appeals. Part A, Rule 600 provides for the summons and notice of the commitment review, dispositional review, and probation revocation hearings. Part B provides for modifications of the dispositional order, violation of probation, dispositional and commitment reviews, termination of court supervision, and appeals.

PART B – MODIFICATIONS, REVIEWS, AND APPEALS

RULE 605 – DETAINING JUVENILE FOR MODIFICATION OF THE DISPOSITIONAL ORDER OR VIOLATION OF PROBATION

The Committee felt that if a juvenile is detained for modification of the dispositional order or violations of probation, Chapter Two procedures should apply. The Committee's intent is that a hearing should be held within ten days unless the requirements of Rule 240(D) are met. Notice of the detention hearing is to be given to specified persons as provided in Rule 241, the juvenile should be informed of rights under Rule 242(A), the manner of hearing provisions of Rule 242(B) are to be followed, and the

court is to find probable cause for modification of the dispositional order or violations of probation and that detention is warranted under Rule 242(C).

RULE 610 – DISPOSITIONAL AND COMMITMENT REVIEWS

With advancement in technology, several judicial districts are now equipped with advanced communication technology. Reviewing cases by this method is widely accepted and has been used often in this Commonwealth. The Committee wanted to allow this technology to be used but ensure that due process of law was afforded to each party. The requirements of paragraph (C) will ensure the juvenile's ability to communicate with counsel as if they were at the same location.

RULE 613 – TERMINATION OF COURT SUPERVISION

The current practice of terminating supervision of the juvenile when restitution, fines, and costs are still outstanding is inconsistent with this rule and the Juvenile Act, 42 Pa.C.S. § 6352. Courts may change **how** they supervise juveniles in these situations but the case must be administratively kept open.