

## FINAL REPORT<sup>1</sup>

*Revisions to the Comments to Pa.Rs.Crim.P. 409, 414, 424, 454, and 455*

### JUVENILES AND MANDATORY INCARCERATION IN SUMMARY CASES

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On July 17, 2013, effective August 17, 2013, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revisions to the *Comments* to Rules of Criminal Procedure 409, 414, 424, 454, and 455. The revisions clarify that a magisterial district judge (MDJ) may conduct the trial of a defendant who is under the age of 18 and is charged with a violation of 75 Pa.C.S. §1543(b) (driving under a DUI-related suspended license) but the sentence may not include incarceration.

The Committee examined a conflict between the Rule 454 *Comment* and provisions within the Juvenile Act regarding the handling of summary offenses for which there is a mandatory sentence of incarceration when the defendant is a juvenile. The particular *Comment* language in question states:

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§6302 and 6303.

This language was added as part of a package developed by the Committee that was adopted by the Court in 2004. The *Comment* language above addressed the provision in the Juvenile Act, 42 Pa.C.S. §6303(b) that states:

(b) Minor judiciary.--No child shall be detained, committed or sentenced to imprisonment by a magisterial district judge or a judge of the minor judiciary unless the child is charged with an act set forth in paragraph

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<sup>1</sup> The Committee's *Final 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 Committee's explanatory *Final Reports*.

(2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in section 6302 (relating to definitions).

42 Pa.C.S. §6302 excludes summary offenses from the definition of "delinquent act."

The language was added to the Rule 454 *Comment* to provide guidance to magisterial district judges (MDJs) on how to dispose of summary cases involving juveniles facing possible mandatory incarceration.<sup>2</sup> The Committee believed that sending these cases to the common pleas court created the least confusion while ensuring no juvenile would be sentenced to imprisonment by a member of the minor judiciary.

Shortly after these changes were adopted, the Legislature passed amendments to 75 Pa.C.S. §6303 (Rights and Liabilities of Minors), so that it now reads:

(a) Except as provided in subsection (b), any person over the age of 16 years charged with the violation of any provisions of this title constituting a summary offense shall have all the rights of an adult and may be prosecuted under the provisions of this title in the same manner as an adult.

(b) No person shall be sentenced to a term of imprisonment for a violation of any provisions of this title constituting a summary offense committed while the person was under the age of 18 years.

It came to the attention of the Committee that the practice in some counties in cases in which the defendant is a juvenile charged with violations of 75 Pa.C.S. §1543(b) is for magisterial district judges (MDJs) to hold the summary trial with the sentence for §1543(b) offenses being limited to fines only, and no sentence to incarceration being imposed.

The problem was brought to light because the recently redesigned Magisterial District Court System, relying on the language in the Rule 454 *Comment*, will not permit an MDJ to schedule the summary trial. However, when the MDJs have tried to transfer

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<sup>2</sup> The only summary offense for which there was then, and is now, a sentence of mandatory incarceration is driving under a DUI-related suspended license as provided in 75 Pa.C.S. §1543(b).

these cases to the common pleas juvenile court, the juvenile court has rejected these cases because, as noted above, the Juvenile Act excludes summary offenses from the definition of “delinquent acts” and summary cases are not within the jurisdiction of the juvenile court.

The Committee concluded that these cases should be heard before the MDJs. Since the mandatory sentence required by Section 1543(b) now cannot be imposed on a juvenile, there is no need for the case to be referred to the court of common pleas and it can be treated in the same manner as other summary charges against juveniles.

Therefore, the Rule 454 *Comment* has been revised to state that the magisterial district judge shall try the summary offense but that no incarceration could be awarded to a defendant under the age of 18. Although this question initially arose concerning Rule 454, identical language is contained in Rules 409, 414, 424, and 455. Similar changes have been made to the *Comments* to each of those rules.