RULE 1120. DEFINITIONS

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CHILD is a person who**:**

1) is under the age of eighteen **[who] and** is the subject of the dependency petition**[,or who]; or**

2) is under the age of twenty-one; and

a) was adjudicated dependent before reaching the age of eighteen**; [years and who, while engaged in a course of instruction or treatment, requests]**

b) has requested the court to retain jurisdiction**; and**

c) who remains under the jurisdiction of the court or for whom jurisdiction has been resumed as a dependent child because the court has determined that the child [until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years]is one of the following:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or remove barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed above in (2)(c)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child.

* * *

COMMENT

In 2013, the definition of "child" was expanded to include those children who have requested the court to resume jurisdiction after juvenile court supervision had been previously terminated. This rule change followed the changes to the definition of "child" in the Juvenile Act pursuant to Act of July 5, 2012 (P.L. 880, No. 91). *See* 42 Pa.C.S. § 6302.

The county agency is a party to the proceeding and should not function as the "Clerk of Courts."

The definition of "**[c]C**lerk of **[c]C**ourts" should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official court record and docket regardless of the person's official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

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Official Note:

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Amended October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1150. ATTORNEYS – APPEARANCES AND WITHDRAWALS

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COMMENT

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<u>*See* the *Comment* to Rule 1634 for assisting children in filing resumption of jurisdiction motions. It is best practice for the court to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel in the re-opened case. If there are extenuating circumstances preventing the attorney from representing the child, the attorney should make this known at the time of the filing of the motion for resumption of jurisdiction so the court can assign a new attorney.</u>

Official Note:

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<u>Amended October 21, 2013, effective December 1, 2013.</u>

Committee Explanatory Reports:

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<u>Final Report explaining the amendments to Rule 1150 published with the Court's Order at 43 Pa.B. - (November 2, 2013).</u>

RULE 1151. ASSIGNMENT OF GUARDIAN *AD LITEM* & COUNSEL

* * *

B. **Counsel for child.** The court shall appoint legal counsel for a child:

1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

* * *

d) * * *; **[or]**

* * *

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634; or

* * *

COMMENT

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. *See* Rule 1800. *See also* Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel.

Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

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Official Note:

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Amended October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1151 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1200. COMMENCING PROCEEDINGS

Dependency proceedings within a judicial district shall be commenced by:

1) the filing of a dependency petition;

2) the submission of an emergency custody application;

3) the taking of the child into protective custody pursuant to a court order or statutory authority;

4) the court accepting jurisdiction of a resident child from another state; **[or]**

5) the court accepting supervision of child pursuant to another state's order**; or**

6) the filing of a motion for resumption of jurisdiction pursuant to Rule 1634.

COMMENT

* * *

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

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

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

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

Official Note:

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Amended October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1200 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

CHAPTER 16
POST-DISPOSITIONAL PROCEDURES

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PART (B)(2)
PERMANENCY HEARING

1607. Regular Scheduling of Permanency Hearings
1608. Permanency Hearing
1609. Permanency Hearing Orders
1610. Permanency Hearing for Children Over Eighteen
1611. Permanency Hearing Orders for Children Over Eighteen

PART (C)
[TERMINATION &]POST-DISPOSITIONAL PROCEDURES

1613. (RESERVED)[Termination of Court Supervision]
1616. **[Post-Dispositional Procedures; Appeals]** (RESERVED)

PART (D)
CESSATION OR RESUMPTION OF COURT SUPERVISION OR JURISDICTION

1631. Termination of Court Supervision.
1634. Motion for Resumption of Jurisdiction.
1635. Hearing on Motion for Resumption of Jurisdiction.

RULE 1608. PERMANENCY HEARING

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COMMENT

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<u>*See* Rule 1610 for permanency hearing for children over the age of eighteen.</u>

Official Note:

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<u>Amended October 21, 2013, effective December 1, 2013.</u>

Committee Explanatory Reports:

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<u>Final Report explaining the amendments to Rule 1608 published with the Court's Order at 43 Pa.B. - (November 2, 2013).</u>

RULE 1609. PERMANENCY HEARING ORDERS

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COMMENT

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***See* Rule 1611 for permanency hearing orders for children over the age of eighteen.**

Official Note:

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Amended October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1609 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1610. PERMANENCY HEARING FOR CHILDREN OVER EIGHTEEN

(This is an entirely new rule.)

A. **Purpose and timing of hearing.** For every case for children over the age of eighteen, the court shall conduct a permanency hearing at least every six months for purposes of determining:

1) whether the child continues to meet the definition of child under Rule 1120 and has requested the court to retain dependency jurisdiction;

2) whether the transition plan of the child is consistent with Rule 1631 (E)(2);

3) the date by which the goal of permanency for the child might be achieved; and

4) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

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

C. **Evidence.** Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

D. **Court's findings.** At the permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1611.

COMMENT

See 42 Pa.C.S. §§ 6341, 6351.

To the extent practicable, the judge or master who presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearings for the same child. In resumption of jurisdiction cases, to the extent practicable, the judge or master who presided over the original case should preside over the re-opened case.

Pursuant to paragraph (A), courts are to conduct a permanency hearing every six months. Courts are strongly encouraged to conduct more frequent permanency hearings, such as every three months, when possible.

A three-month hearing or conference is considered best practice for dependency cases and is highly recommended. The court should not wait until six months has elapsed to determine if the transition plan is progressing. Time to achieve permanency is critical in dependency cases. In order to seek reimbursement under Title IV-E of the Social Security Act, 42 U.S.C. § 601 *et seq.*, a full permanency hearing is to be conducted every six months.

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional and/or more frequent intermittent review hearings or status conferences, which address specific issues based on the circumstances of the case, and which assist the court in ensuring timely transition.

See 42 U.S.C. § 675 (5)(A)-(H) for development of a transition plan.

See Rule 1128 regarding presence at proceedings and Rule 1136 regarding *ex parte* communications.

When the court has resumed jurisdiction pursuant to Rule 1635, the court is to schedule regular permanency hearings. The county agency is to develop a new transition plan for the child.

Official Note: Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1610 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1611. PERMANENCY HEARING ORDERS FOR CHILDREN OVER EIGHTEEN

(This is an entirely new rule.)

A. **Court order.** After every permanency hearing for children over the age of eighteen, the court shall issue a written order, which provides whether the transition plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. **Determinations made.** The court's order shall reflect the determinations made pursuant to Rule 1610(D).

C. **Orders concerning education.** The court's order shall address the stability and appropriateness of the child's education, if applicable, including whether an educational decision maker is appropriate.

D. **Orders concerning health care and disability.**

1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and

2) The court's orders may authorize evaluations and treatment.

COMMENT

When issuing a permanency order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). See *In re S.J.,* 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (C), the court's order is to address the child's educational stability, including the right to an educational decision maker. The intent of this paragraph is to ensure that the inquiry regarding the appointment of an educational decision maker is considered. Federal and state law requires educational decision makers until the age of twenty-one if an educational decision maker is necessary. *See Comment* to Rule 1609(D) and 34 C.F.R. §300.320(c).

Pursuant to paragraph (D), the court's order is to address the child's needs concerning health care and disability. *See Comment* to Rule 1609(E).

Official Note: Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1611 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

Rule 1613. [Termination of Court Supervision]<u>(RESERVED)</u>

<u>Comment: This rule was renumbered from Rule 1613 to Rule 1631 on October 21, 2013. See Rule 1631.</u>

PART (D)
CESSATION OR RESUMPTION OF COURT SUPERVISION OR JURISDICTION

1631. Termination of Court Supervision.
1634. Motion for Resumption of Jurisdiction.
1635. Hearing on Motion for Resumption of Jurisdiction.

RULE [1613]1631. TERMINATION OF COURT SUPERVISION

* * *

B. **Ready, willing, and able parent.** When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that parent and the court order shall have the effect and be docketed as a decision entered pursuant to **the** Pa.R.C.P.

* * *

E. **Children eighteen years of age or older.**

1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to **[termination]the child turning eighteen years of age**.

2) Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. **The county agency shall provide t[T]**he transition plan **to the court and the plan** shall, at a minimum, include:

* * *

g) verification that all vital identification documents and records have been provided to the child; **[and]**

h) a description of any other needed support services**; and**

i) notice to the child that the child can request resumption of juvenile court jurisdiction until the child turns twenty-one years of age if specific conditions are met.

* * *

COMMENT

* * *

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). *See* paragraph (B). **Paragraph (B) does not apply to resumption of jurisdiction cases.**

* * *

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

If the court has resumed jurisdiction pursuant to Rule 1635, a new transition plan is to be developed for the child. Before the court can terminate supervision, the requirements of paragraph (E) are to be followed. In no case is a juvenile over twenty-one to remain under juvenile court supervision. *See* Rule 1635(E). *See also* Rule 1635(E) for termination of juvenile court jurisdiction if the court denies the motion for resumption of jurisdiction.

Official Note:

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Amended October 21, 2013 and renumbered from Rule 1613 to Rule 1631, effective December 1, 2013.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1631 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1634. MOTION FOR RESUMPTION OF JURISDICTION.

(This is an entirely new rule.)

A. **Venue.** A motion to resume jurisdiction shall be filed with the court that terminated court supervision of the child pursuant to Rule 1631.

B. **Contents.** The motion for resumption of jurisdiction shall aver:

1) dependency jurisdiction was previously terminated:

a) within ninety days prior to the child's eighteenth birthday; or

b) on or after the child's eighteenth birthday; and

2) the child:

a) is under twenty-one years of age;

b) was adjudicated dependent prior to turning eighteen years of age;

c) has requested the court to resume jurisdiction; and

d) is:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed in paragraphs (B)(2)(d)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

3) whether the child would like his or her guardian or other interested adult involved in the court proceedings;

4) that a verification has been signed by the child attesting the above requirements have been met; and

5) whether an expedited hearing for placement and services is being requested due to the child's current living arrangement.

C. **Service.** A copy of the motion shall be served upon:

1) the county agency;

2) the attorney for the county agency;

3) the child;

4) the child's attorney; and

5) the guardian or other interested adult if the child requesting resumption of jurisdiction would like the guardian or other interested adult involved in the case as averred in paragraph (B)(3).

COMMENT

A motion to resume jurisdiction can be filed by the child, county agency, or attorney for the child. At the request of the child, if the county agency or previous attorney is approached by the child concerning the court reopening the child's case, the county agency or attorney is to assist the child in the filing of the motion.

Pursuant to paragraph (A), the motion is to be filed in the county that terminated juvenile court jurisdiction. If the juvenile has moved to another county, the juvenile may request the court to transfer jurisdiction pursuant to Rule 1302 at any time after the filing of the motion to resume jurisdiction, including prior to the hearing on the motion. *See* Rules 1302 and 1635.

If the child does not have an attorney at the time of the filing of the motion, the court is to assign legal counsel pursuant to Rule 1151 and immediately order service of the motion to resume jurisdiction on the child's attorney. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel. *See* Rule 1151.

If the child is the party filing the motion, the President Judge of each judicial district is to designate a person to serve the other parties for the child. If the county agency or attorney is filing the motion, they should serve the other parties.

If the child has averred that the child desires the involvement of a guardian or other interested adult in their case, this person is to be served with the motion and given notice of any subsequent hearings if the court orders such involvement. Notice does not confer standing upon the guardian or other interested adult . *See* Rule 1635(B)(5) and *Comment.*

See 42 Pa.C.S. §§ 6302 & 6351(j).

See also Rule 1300 for change of venue and Rule 1302 for inter-county transfer of the case.

Official Note: Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1634 published with the Court's Order at 43 Pa.B. - (November 2, 2013).

RULE 1635. HEARING ON MOTION FOR RESUMPTION OF JURISDICTION.

(This is an entirely new rule.)

A. **Time for hearing.** Within thirty days of receiving a motion for resumption of jurisdiction, the court shall conduct a hearing to determine whether it will resume juvenile court jurisdiction.

B. **Notice.** Notice of the date, time, place, and purpose of the hearing shall be given to:

1) the county agency;

2) the attorney for the county agency;

3) the child;

4) the child's attorney;

5) any other persons, including the guardian or other interested adult, as directed by the court.

C. **Hearing.** At the hearing, the court shall state its findings and conclusions of law on the record in open court as to whether:

1) dependency jurisdiction was previously terminated:

a) within ninety days prior to the child's eighteenth birthday; or

b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and

2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:

a) is under twenty-one years of age;

b) was adjudicated dependent prior to turning eighteen years of age;

c) has requested the court to resume jurisdiction; and

d) is:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed in paragraphs (C)(2)(d)(i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

3) reasonable efforts were made by the county agency to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable;

4) it will exercise jurisdiction pursuant to 42 Pa.C.S. § 6351(j) because it is best suited to the protection and physical, mental, and moral welfare of the child;

5) a guardian or other interested adult should be involved in the child's case;

6) there are any health or educational needs of the child; and

7) the county agency has developed an appropriate transition plan.

D. **Orders.**

1) After a hearing, the court shall enter an order granting or denying the motion to resume juvenile court jurisdiction.

2) If the court resumes jurisdiction, the court shall order:

a) that resumption of jurisdiction is best suited to the protection and physical, mental, and moral welfare of the child;

b) any findings as to the transition plan for the child;

c) regular scheduling of permanency hearings pursuant to Rule 1608;

d) any designations of custody and/or placement of the child; and

e) any evaluations, tests, or treatments for the health and educational needs of the child.

E. **Termination of court supervision in resumption cases.**

1) Once ~~a~~ the goals in the transition plan have been accomplished for a child which, at a minimum, includes the requirements pursuant to Rule 1631(E)(2), or the child has refused to cooperate with the plan, a party may move for termination of court supervision pursuant to Rule 1631.

2) In no event shall a child remain under juvenile court supervision once the child has turned twenty-one years of age.

F. **Advanced Communication Technology.** The provisions of Rule 1129 shall apply to this proceeding.

COMMENT

The court may decide whether a guardian or other interested adult will participate in the child's case. The court is to consider the preferences of the child when making an order for participation. *See* Rule 1634(B)(3) for notation of child's preference and 42 Pa.C.S. § 6310 for guardian involvement. Notice or invitation to participate does not confer standing upon the guardian or other interested adult. *See* 42 Pa.C.S. §§ 6302 & 6351(j).

A master may conduct these hearings. *See* Rule 1187.

Official Note: Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

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