

## **INTRODUCTION**

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 242, 394, 406, 512, and 800 be adopted and prescribed. These proposed modifications address the role of the attorney for the Commonwealth in presenting cases.

The following *Explanatory Report* highlights the intent of this Rule. 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 Reports*.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at [juvenilerules@pacourts.us](mailto:juvenilerules@pacourts.us). Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Ave, Suite 6200  
P.O. Box 62635  
Harrisburg, PA 17106-2635.

**All comments shall be received no later than Tuesday, January 25, 2011.**

11/29/2010

BY THE JUVENILE COURT PROCEDURAL RULES  
COMMITTEE:

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Cynthia K. Stoltz, Esq., Chair

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Christine Riscili, Esq.  
Counsel

## **EXPLANATORY REPORT**

### **Background**

The Committee believes that the Rules need to clarify that the *prosecutor* must prosecute. Therefore, the following changes address the prosecutor's function, burden of proof, and presence at juvenile hearings.

### **RULE 242. DETENTION HEARING**

The proposed addition to this Rule provides that the attorney for the Commonwealth must present the evidence. The Juvenile Act provides that the attorney for the Commonwealth, at the request of the court, shall present the evidence in support of the petition. See 42 Pa.C.S. § 6336(b). Rule 800 suspends the Juvenile Act only by removing the "at the request of the court" language, making the prosecutor's presence mandatory.

It is the role of the prosecutor to put forth the evidence on behalf of the Commonwealth. This duty cannot be performed by a juvenile probation officer, master, judge, or any other person.

### **RULE 394. TRANSFER HEARING**

The proposed addition to this Rule clarifies who carries the burden of proof.

Unless the exceptions of 42 Pa.C.S. § 6355 (g)(1)&(2) apply, the attorney for the Commonwealth has the burden of establishing by a preponderance of evidence that: 1) there is a *prima facie* showing that the juvenile committed a felony delinquent act; 2) public interest is served by the transfer; and 3) the juvenile is not amenable to treatment, supervision, and rehabilitation as a juvenile.

If 42 Pa.C.S. § 6355 (g)(1)&(2) apply, the juvenile has the burden of establishing by a preponderance of evidence that: 1) public interest is served by adjudicating the juvenile in juvenile court; and 2) the juvenile is amenable to treatment, supervision, and rehabilitation in the juvenile system.

### **RULE 406. ADJUDICATORY HEARING**

The proposed additions to this Rule provide that the attorney for the Commonwealth must present the evidence in support of the petition and has the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s). See Rule 800 for suspension of the Juvenile Act by eliminating "at the request of the court" from 42 Pa.C.S. § 6336(b). The presence of the prosecutor at this hearing is mandatory.

### **RULE 512. DISPOSITIONAL HEARING**

The proposed additions to this Rule provide that the juvenile, the attorney for the Commonwealth, and the juvenile probation officer may submit evidence for the Court's consideration in determining the disposition of the juvenile. The victim's testimony may be presented through the attorney for the Commonwealth. The attorney for the Commonwealth may decide not to present evidence as to the disposition of the juvenile; however, the prosecutor must be present at this hearing.

#### **RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY**

The Juvenile Act requires that the attorney for the Commonwealth shall present evidence in support of the petition at the request of the court. The attorney for the Commonwealth should be present for every proceeding and present the evidence. The "at the request of the court" language is removed by this suspension.

As stated *infra*, it is not the role of any other person to perform this function, which has been the practice in some counties. Juvenile probation officers, masters, judges, and other persons should not usurp the role of the prosecutor. It is the attorney for the Commonwealth exclusively who represents the interests of this Commonwealth.



## **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 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 present evidence to support the written allegation.**

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.** 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. The juvenile's attorney, the juvenile, if unrepresented, 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 unrepresented, 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.

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

- 1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

**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.

#### **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.

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 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

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.

#### *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).

## **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. **Burden of proof. Unless the provisions of 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the attorney for the Commonwealth shall have the burden of establishing by a preponderance of the evidence that:**

**1) there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;**

**2) the public interest is served by transfer of the case to criminal proceedings; and**

**3) the juvenile is not amenable to treatment, supervision, or rehabilitation as a juvenile.**

**C. Findings.** At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) **the Commonwealth has met its burden of proof pursuant to paragraph (B); [there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;**

4) **there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors;]** and

[5]4) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill,

then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

### **COMMENT**

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the “*prima facie* phase.” The court should determine if there is 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 should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public’s interest.

In determining public interest, the court should balance 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 and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system 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.

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.

*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).

## **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 present evidence in support of the petition and 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. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

#### **COMMENT**

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

**Official Note:** Rule 406 adopted April 1, 2005, effective October 1, 2005.

#### *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).

## **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 make a statement.

B. **Recording.** The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

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.

### *COMMENT*

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

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.

**Official Note:** Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007.

*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. 2509 (June 2, 2007).

## **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 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, is suspended only insofar as the Act is inconsistent with Rule 242(B)(1)(b) which provides the district attorney shall present the evidence in support of the petition.**
- 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.
- [13]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.

[14]~~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.

[15]~~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.

[16]~~17~~)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, 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 when a juvenile is removed from the home.

#### 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.

**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.

#### *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).