

**Proposed New Pa.Rs.Crim.P. 595 and 596; Amendments to Pa.Rs.Crim.P. 113, 119, 504, 510, 540, 571, and 578; and revision of the *Comment* to Pa.R.Crim.P. 570**

*INTRODUCTION*

*The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rules of Criminal Procedure 595 and 596; amend Rules of Criminal Procedure 113, 119, 504, 510, 540, 571, and 578; and approve the revision of the Comment to Rule of Criminal Procedure 570. The proposed rule changes establish the procedures for the transfer of cases from criminal proceedings to juvenile proceedings. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.*

*The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 text of the proposed rule changes precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.*

*We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,*

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***no later than Friday, September 10, 2010.***

*July 21, 2010*

*BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:*

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*Risa Vetri Ferman, Chair*

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*Anne T. Panfil  
Counsel*

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*Jeffrey M. Wasileski  
Counsel*

RULE 113. CRIMINAL CASE FILE AND DOCKET ENTRIES.

(A) The clerk of courts shall maintain the criminal case file for the court of common pleas. The criminal case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records, papers, orders, and copies shall not be taken from the custody of the clerk or court without order of the court. Upon request, the clerk shall provide copies at reasonable cost.

(B) The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the criminal case file and of all proceedings in the case.

(C) The docket entries shall include at a minimum the following information:

(1) the defendant's name;

(2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, and the date of any withdrawal of appearance;

(3) notations concerning all papers filed with the clerk, including all court notices, appearances, pleas, motions, orders, verdicts, findings and judgments, and sentencing, briefly showing the nature and title, if any, of each paper filed, writ issued, plea entered, and motion made, and the substance of each order or judgment of the court and of the returns showing execution of process;

(4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;

(5) a notation of every judicial proceeding, continuance, and disposition;

**(6) a notation if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302;**

**[6] (7)** the location of exhibits made part of the record during the proceedings;  
and

**[(7)] (8)** all other information required by Rules 114 and 576.

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

The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings. The clerk of courts is required to make docket entries at the time the information is made known to the clerk, and the practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas at any stage of a criminal case.

The requirement in paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. See *also* Rule 576(B)(4) concerning certificates of service.

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

Paragraph (C)(4) recognizes that occasional disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus pretrial motions (Rule 578), motions for a mistrial (Rule 605), motions for changes in bail (Rule 529), and oral motions for extraordinary relief (Rule 704(B)).

NOTE: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004 [.] ; amended \_\_\_\_\_, 2010, effective \_\_\_\_\_, 2010.

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**COMMITTEE EXPLANATORY REPORTS:**

**Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).**

**Report explaining the proposed amendment adding new paragraph (6) concerning defendants under the age of 18 published for comment at 40 Pa.B. \_\_\_\_\_ ( \_\_\_\_\_, 2010).**

RULE 119. USE OF TWO-WAY SIMULTANEOUS AUDIO-VISUAL COMMUNICATION  
IN CRIMINAL PROCEEDINGS.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

(1) preliminary hearings;

(2) proceedings pursuant to Rule 569(A)(2)(b);

**(3) proceedings pursuant to Rule 595;**

**[(3)] (4)** trials;

**[(4)] (5)** sentencing hearings;

**[(5)] (6)** parole, probation, and intermediate punishment revocation hearings;  
and

**[(6)] (7)** any proceeding in which the defendant has a constitutional or statutory right to be physically present.

(B) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

(C) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

COMMENT: This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. See, e.g., Rule 602 *Comment*. Negotiated guilty pleas when the defendant has agreed to the sentence,

probation revocation hearings, and hearings held pursuant to Rule 908(C) and the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq.*, are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, bench warrant hearings, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

Within the meaning of this rule, counsel is present when physically with the defendant or with the judicial officer conducting the criminal proceeding.

This rule does not apply to preliminary arraignments (Rule 540), arraignments (Rule 571), or to search warrant (Rule 203) and arrest warrant (Chapter 5 Part B(3)) procedures.

This rule is not intended to preclude the use of advanced communication technology for the preservation of testimony as permitted by Rules 500 and 501.

See Rule 542 for the procedures governing preliminary hearings.

See Chapter 6 for the procedures governing trials.

See Chapter 7 for the procedures governing sentencing hearings.

See Rule 708 for the procedures governing revocation of probation, intermediate punishment, and parole.

The paragraph (A)(5) reference to revocation hearings addresses *Gagnon II*-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual

communication in hearings to determine probable cause (*Gagnon I*).

NOTE: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and *Comment* revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006; *Comment* revised May 4, 2009, effective August 1, 2009 [.] ; **amended \_\_\_\_\_, 2010, effective \_\_\_\_\_ 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

***Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B. 830 (August 30, 2003).***

***Final Report explaining the June 30, 2005 renumbering of Rule 118 as Rule 119 and the revision of the second paragraph of the Comment published at 35 Pa.B 3901 (July 16, 2005).***

***Final Report explaining the January 27, 2006 amendments adding Rule 569 proceedings as a proceeding for which ACT may not be used published with the Court's Order at 36 Pa.B. 694 (February 11, 2006).***

***Final Report explaining the May 4, 2009 revision to the Comment adding PCRA hearings as a proceeding to which the defendant may consent to be held using ACT published with the Court's Order at 39 Pa.B. 2434 (May 16, 2009).***

***Report explaining the proposed amendment to paragraph (A) adding proceedings under Rule 595 as a proceeding for which ACT may not be used published for comment at 40 Pa.B. ( \_\_\_\_\_, 2010).***

#### RULE 504. CONTENTS OF COMPLAINT.

Every complaint shall contain:

- (1) the name of the affiant;
- (2) the name and address of the defendant, or if unknown, a description of the defendant as nearly as may be;
- (3) a direct accusation to the best of the affiant's knowledge, or information and belief, that the defendant violated the penal laws of the Commonwealth of Pennsylvania;
- (4) the date when the offense is alleged to have been committed; provided, however:
  - (a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
  - (b) if the date or day of the week is an essential element of the offense charged, such date or day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6)
  - (a) in a court case, a summary of the facts sufficient to advise the defendant of the nature of the offense charged, but neither the evidence nor the statute allegedly violated need be cited in the complaint. However, a citation of the statute allegedly violated, by itself, shall not be sufficient for compliance with this subsection; or
  - (b) in a summary case, a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) a statement that the acts of the defendant were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- (8) a notation if criminal laboratory services are requested in the case;

(9) a notation that the defendant has or has not been fingerprinted;

**(10) a notation if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302;**

**(11) a notation if the defendant is under the age of 18 at the time the complaint is filed whether the defendant's parents, guardian, or other custodian have been notified of the charge(s);**

**[(10)] (12)** a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

**[(11)] (13)** a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

**[(12)] (14)** the signature of the affiant and the date of the execution of the complaint.

COMMENT: This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth - Local Option), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. See *Commonwealth v. Cauffman*, 541 Pa. 299, 662 A.2d 1050 (1995) and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (1973), vacated and

remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301-1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa.Super. 166, 418 A.2d 664 (1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the magisterial district judge, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 that requires a defendant to be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

**Paragraph (10) requires the law enforcement officer who issues a complaint to indicate on the complaint if the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.**

**If the defendant is under the age of 18 when the complaint is filed, paragraph (11) requires the law enforcement officer to indicate on the complaint whether the defendant's parents, guardian, or other custodian were notified.**

**Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.**

NOTE: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and *Comment* revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised March 9, 2006, effective September 1, 2006; amended July 10, 2008, effective February 1, 2009 [.] ; **amended . 2010, effective , 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the July 25, 1994 amendment published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).**

**Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the March 9, 2006 Comment revision published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).**

**Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**Report explaining the proposed amendment adding new paragraphs (10) and (11) concerning defendants under the age of 18 published for comment at 40 Pa.B. \_\_\_\_\_ (\_\_\_\_\_, 2010).**

RULE 510. CONTENTS OF SUMMONS; NOTICE OF PRELIMINARY HEARING.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place and on the date and at the time stated on the summons. The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

(1) of the right to secure counsel of the defendant's choice and, for those who are without financial resources, of the right to assigned counsel in accordance with Rule 122;

(2) that bail will be set at the preliminary hearing; and

(3) that if the defendant fails to appear on the date, and at the time and place specified on the summons, the case will proceed in the defendant's absence, and a bench warrant will be issued for the defendant's arrest.

(C) The following items shall be attached to the summons:

(1) a copy of the complaint; and

(2) an order directing the defendant to submit to fingerprinting in all cases in which the defendant has not been fingerprinted, except cases initiated by private complaint.

**(D) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant's parents, guardian, or other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall send a copy of the summons to the parents, guardian, or other custodian.**

COMMENT: For the summons procedures in non-summary cases in the Municipal Court of Philadelphia, see Rule 1003(C).

When a case proceeds by summons, the issuing authority also must issue an order requiring the defendant to submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest.

Paragraph (C)(2), added in 2008, requires that the fingerprint order be sent to the defendant with the summons. The purpose of this change is to ensure that the fingerprinting process in summons cases is completed. See the Criminal History Record Information Act, 18 Pa.C.S. § 9112.

The requirement in paragraph (C)(2) that a fingerprint order be attached to the summons does not apply to cases that have been initiated by private complaint or cases in which the defendant has been processed for fingerprinting and other identification procedures prior to being released pursuant to Rule 519.

If a defendant has not complied with the fingerprint order by the time of the preliminary hearing, the issuing authority must make compliance a condition of release on bail.

**Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.**

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 109.

NOTE: Original Rule 109 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended

September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009 [.] ; amended \_\_\_\_\_, 2010, effective \_\_\_\_\_, 2010.

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Final Report explaining the May 1, 2007 amendments to paragraph (B)(3) published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).**

**Final Report explaining the July 10, 2008 amendments to paragraph (C) concerning the fingerprint order published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**Report explaining the proposed amendments adding new paragraph (B) concerning notice to parents, guardian, or other custodian when defendant under the age of 18 published for comment at 40 Pa.B. ( \_\_\_\_\_, 2010).**

RULE 540. PRELIMINARY ARRAIGNMENT.

(A) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

**(B) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant’s parents, guardian, or other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall notify them.**

**[(B)] (C)** At the preliminary arraignment, a copy of the complaint accepted for filing pursuant to Rule 508 shall be given to the defendant.

**[(C)] (D)** If the defendant was arrested with a warrant, the issuing authority shall provide the defendant with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant shall be given copies no later than the first business day after the preliminary arraignment.

**[(D)] (E)** If the defendant was arrested without a warrant pursuant to Rule 519, unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

**[(E)] (F)** The issuing authority shall not question the defendant about the offense(s) charged but shall read the complaint to the defendant. The issuing authority shall also inform the defendant:

- (1) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;
- (2) of the right to have a preliminary hearing; and
- (3) if the offense is bailable, the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

**[(F)] (G)** Unless the preliminary hearing is waived by a defendant who is represented by counsel the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not be less than 3 nor more than 10 days after the preliminary arraignment, unless:

(a) extended for cause shown; or

(b) the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

(2) give the defendant notice, orally and in writing,

(a) of the date, time, and place of the preliminary hearing, and

(b) that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest.

**[(G)] (H)** After the preliminary arraignment, if the defendant is detained, the defendant shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail as provided by law.

**[(H)] (I)** If a monetary condition of bail is set, the issuing authority shall accept payment of the monetary condition, as provided in Rule 528, at any time prior to the return of the docket transcript to the court of common pleas.

COMMENT: A preliminary arraignment as provided in this rule bears no relationship to arraignment in criminal courts of record. See Rule 571.

Within the meaning of Rule 540, counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (A), the issuing authority has discretion to order that a defendant appear in person for the arraignment.

Under paragraph (A), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning *venue* when proceedings are conducted using advanced communication technology.

Paragraph ~~[(C)]~~ (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See *also* Rules 513(A), 208(A), and 1003.

Paragraph ~~[(C)]~~ (D) includes a narrow exception **[which]** **that** permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (**[Pa.]** 1987).

When a defendant has not been promptly released from custody after a warrantless arrest, the defendant must be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. See Rule 519(A).

Under paragraph ~~[(D)]~~ (E), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph ~~[(F)]~~ (G)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without good cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present,

the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

**Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.**

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

**See Rule 595 for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.**

NOTE: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005 [.] ; **amended**  
**, 2010, effective 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the provisions of the new Rule 140 published at 22 Pa.B. 6 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).**

**Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2591 (May 25, 2002).**

**Final Report explaining the August 24, 2004 amendments concerning notice that the case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Report explaining proposed amendments concerning defendants under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (ii), or (iii) for comment at 40 Pa.B. ( , 2010).**

## RULE 570. PRETRIAL CONFERENCE.

(A) At any time after the filing of an information, upon motion, or upon its own motion, the court may order the attorney for the Commonwealth and the defense attorney or the *pro se* defendant to appear before it for a conference in open court, unless agreed by the defendant to be in chambers, to consider:

- (1) the terms and procedures for pretrial discovery and inspection;
- (2) the simplification or stipulation of factual issues, including admissibility of evidence;
- (3) the qualification of exhibits as evidence to avoid unnecessary delay;
- (4) the number of witnesses who are to give testimony of a cumulative nature;
- (5) the defenses of alibi and insanity, as to which appropriate rulings may be made; and
- (6) such other matters as may aid in the disposition of the proceeding.

(B) The parties shall have the right to record an objection to rulings of the court during the conference.

(C) The court shall place on the record the agreements or objections made by the parties and rulings made by the court as to any of the matters considered in the pretrial conference. Such order shall control the subsequent proceedings unless modified at trial to prevent injustice.

COMMENT: The following are suggested topics for the pretrial conference. The list is meant only to be suggestive and by no means exhaustive of the possible subjects for consideration.

- (1) All motions including those for pretrial discovery and inspection, and for a bill of particulars.
- (2) The establishing of the time and place of the offense charged and the *corpus delecti*.
- (3) The qualifying of pictures, documents, confessions, records, or the like as evidence.

- (4) The obtaining of admissions of fact.
- (5) Pleas to various counts in the information(s) and whether the jury should be informed of such pleas.
- (6) The *nolle prosequi* or other disposition of some counts of the information(s).
- (7) All objections or defenses which are capable of determination before trial.
- (8) Whether a defense of alibi, or insanity, or diminished responsibility resulting from other mental infirmity, or other defenses will be raised at the trial.
- (9) The determination of the suppression or return of evidence.
- (10) Whether there shall be any severance as to defendants or as to information(s) or counts thereof.
- (11) The number of counsel who are to participate and examine witnesses.
- (12) The order or procedure when there is more than one defendant.
- (13) The length and number of addresses of counsel.
- (14) The number of challenges of jurors.
- (15) The procedure of *voir dire*, if pertinent.

The 1978 addition of the phrase "or a *pro se* defendant" in paragraph (A), and the deletion of paragraph (d), were made pursuant to the decision of the United States Supreme Court in *Faretta v. California*, 422 U.S. 806 (1975).

**See Rule 595 for the requirements for a mandatory prehearing conference following the arraignment in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and**

**charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.**

NOTE: Rule 311 adopted June 30, 1964, effective January 1, 1965; amended February 15, 1974, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended August 12, 1993, effective September 1, 1993; renumbered Rule 570 March 1, 2000, effective April 1, 2001 [.] ; **Comment revised \_\_\_\_\_, 2010, effective \_\_\_\_\_, 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. 1478 (March 18, 2000).**

**Report explaining proposed Comment revision cross-referencing proposed new Rule 595 concerning requests for transfer from criminal proceedings to juvenile proceedings published for comment at 40 Pa.B. \_\_\_\_\_ ( \_\_\_\_\_, 2010).**

RULE 571. ARRAIGNMENT.

(A) Except as otherwise provided in paragraph (D), arraignment shall be in such form and manner as provided by local court rule. Notice of arraignment shall be given to the defendant as provided in Rule 114 or by first class mail. Unless otherwise provided by local court rule, or postponed by the court for cause shown, arraignment shall take place no later than 10 days after the information has been filed.

(B) In the discretion of the court, the arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When the counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the arraignment.

(C) At arraignment, the defendant shall be advised of:

- (1) the right to be represented by counsel;
- (2) the nature of the charges contained in the information; and
- (3) the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, **a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322**, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 562, a copy thereof shall be provided.

(D) A defendant may waive appearance at arraignment if the following requirements are met:

- (1) the defendant is represented by counsel of record and counsel concurs in the waiver; and
- (2) the defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment that acknowledges the defendant:
  - (a) understands the nature of the charges;
  - (b) understands the rights and requirements contained in paragraph (C) of this rule; and
  - (c) waives his or her right to appear for arraignment.

COMMENT: The main purposes of arraignment are: to ensure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Although the specific form of the arraignment is not prescribed by this rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.

Concerning the waiver of counsel, see Rule 121.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 543.

Under paragraph (A), in addition to other instances of "cause shown" for delaying the arraignment, the arraignment may be delayed when the defendant is unavailable for arraignment within the 10-day period after the information is filed.

Within the meaning of paragraph (B), counsel is present when physically with the defendant or with the judicial officer presiding over the arraignment.

Under paragraph (B), the court has discretion to order that a defendant appear in person for the arraignment.

Under paragraph (B), two-way simultaneous audio-visual communication is a form of advanced communication technology.

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

**See Rule 595 for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.**

NOTE: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; *Comment* revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005 ; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007 **[.] amended 2010, effective 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).**

**Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the November 17, 2000 amendments concerning a defendant's waiver of appearance at arraignment published with the Court's Order at 30 Pa.B. 6184 (December 2, 2000).**

**Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).**

**Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 2, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).**

**Final Report explaining the August 24, 2004 addition of paragraph (E) and the correlative Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Final Report explaining the May 1, 2007 deletion of paragraph (E) and the correlative Comment provisions published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).**

**Report explaining proposed amendments concerning requests for transfer from criminal proceedings to juvenile proceedings published for comment at 40 Pa.B. ( , 2010).**

RULE 578. OMNIBUS PRETRIAL MOTION FOR RELIEF.

Unless otherwise required in the interests of justice, all pretrial requests for relief shall be included in one omnibus motion.

COMMENT: Types of relief appropriate for the omnibus pretrial motions include the following requests:

- (1) for continuance;
- (2) for severance and joinder or consolidation;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to quash an information;
- (6) for change of venue or venire;
- (7) to disqualify a judge;
- (8) for appointment of investigator; **[and]**
- (9) for pretrial conference **[.] ; and**
- (10) for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322.**

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

NOTE: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; *Comment* revised October 25, 1990, effective January 1, 1991; *Comment* revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and *Comment* revised March 1, 2000, effective April 1, 2001 **[.] ; Comment revised \_\_\_\_\_, 2010, effective \_\_\_\_\_, 2010.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the October 25, 1990 Rule 306 Comment revision published at 12 Pa.B. 1696 (March 24, 1990).**

**Report explaining the August 12, 1993 Comment revision published at 22 Pa.B. 3826 (July 25, 1992).**

**Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).**

**Report explaining the proposed Comment revision adding motions for transfer published for comment at 40 Pa.B. ( \_\_\_\_\_, 2010).**

[This is a new rule.]

**RULE 595. PROCEDURES FOR TRANSFER FROM CRIMINAL PROCEEDINGS TO JUVENILE PROCEEDINGS PURSUANT TO 42 PA.C.S. § 6322.**

(A) The motion requesting the transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 shall be filed within 30 days after arraignment unless opportunity did not exist; the defendant, the defendant's attorney, or the attorney for the Commonwealth was not aware of the grounds for the motion; or the time for filing has been extended by the judge for cause shown. The motion shall be filed with the clerk of courts. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing.

(B) In all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the judge shall hold a prehearing conference not later than 35 days after the arraignment.

(1) The defendant, the defendant's attorney, and the attorney for the Commonwealth shall be present at the prehearing conference.

(2) At the prehearing conference, the judge shall determine whether the defendant has filed a motion requesting the transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, or is requesting additional time to file a motion for transfer, or does not intend to file a motion.

(a) If the defendant is requesting additional time to file the motion for transfer and the judge agrees to the request, the judge shall set the date by which the motion for transfer shall be filed.

(b) When the defendant has filed a motion, the judge shall determine whether the motion for transfer is ready to be heard. If the parties agree the motion for transfer is ready to be heard, the judge shall schedule the hearing on the motion for transfer to be held no later than 30 days after the prehearing conference.

(c) If the defendant does not intend to file a motion for transfer, the case shall proceed as a court case under the Rules of Criminal Procedure.

- (3) At the prehearing conference, the judge and parties may consider:
- (a) the simplification or stipulation of factual issues, including admissibility of evidence;
  - (b) the qualification of exhibits as evidence to avoid unnecessary delay;
  - (c) the number of witnesses who are to give testimony of a cumulative nature; and
  - (d) such other matters as may aid in the disposition of the motion.

(4) The parties shall have the right to record an objection to rulings of the judge during the prehearing conference.

(5) The judge shall place on the record the agreements or objections made by the parties and rulings made by the judge as to any of the matters considered in the prehearing conference. Such order shall control the subsequent proceedings unless modified at the hearing on the motion to prevent injustice.

(C) If the judge at the prehearing conference determines the motion for transfer is not ready to be heard, the judge shall schedule status hearings no later than every 60 days after the prehearing conference until the motion for transfer is ready to be heard. At the status hearing, the parties shall advise the judge of the status of all matters pertinent to whether the motion for transfer is ready to be heard.

(D) When the judge determines the motion for transfer is ready to be heard, the judge shall schedule the hearing on the motion for transfer to be held no later than 30 days after the determination. Notice of the hearing date shall be given to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

(E) At the conclusion of the hearing, but in no case longer than 20 days after the conclusion of the hearing, the judge shall announce the decision in open court. The judge shall enter an order granting or denying the motion for transfer, and set forth in writing or orally on the record the findings of fact and conclusions of law.

(F) If the judge does not render a decision within 20 days of the conclusion of the hearing, the motion for transfer shall be denied by operation of law. The clerk of courts immediately shall enter an order on behalf of the judge.

(G) If the judge grants the motion,

(1) the judge immediately shall order the transfer of the case from criminal proceedings to juvenile proceedings and the case shall proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act.

(2) The judge shall order the defendant to be taken to the juvenile probation office.

(H) If the judge denies the motion for transfer or the clerk of courts enters an order denying the motion for transfer on behalf of the judge, the case shall proceed as a court case under the Rules of Criminal Procedure.

(I) The clerk of courts shall serve copies of the order granting or denying the motion for transfer to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

COMMENT: For the procedures concerning the pretrial place of detention of the defendant who was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, see Rule 596.

Paragraph (B) mandates a prehearing conference in all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense, was charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, and therefore may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322. *Cf.* Rule 570 (pretrial conference discretionary with judge).

The parties may request an order from the judge for the release of records or other materials relevant to the defendant's motion for transfer, for the appointment of experts, for the examination of the defendant, for a report from the juvenile probation office, or for any other aids necessary to the disposition of the motion for transfer. The request, if authorized by law, may be made *ex parte*.

Pursuant to 42 Pa.C.S. § 6322(a) of the Juvenile Act, at the hearing on the motion for transfer, the burden of proof is on the defendant "to establish by a preponderance of the evidence that the transfer will serve the public interest."

Paragraph (E) is derived from the 42 Pa.C.S. § 6322(b) of the Juvenile Act. The judge, when making his or her findings of fact and conclusions of law, must comply with the Juvenile Act's requirement that the judge "make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order."

Paragraph (F) also is derived from the requirements of 42 Pa.C.S. § 6322(a) of the Juvenile Act, that "the defendant's petition to transfer the case shall be denied by operation of law" in any case in which the judge "does not make its finding within 20 days of the hearing on the petition to transfer the case."

When the judge grants a motion to transfer, paragraph (G) requires that the case immediately be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act, and the criminal court no longer has jurisdiction over the case.

When the defendant is taken to the juvenile probation office following the granting of a transfer motion as required in paragraph (G)(2), the juvenile probation office should determine, for example, whether there should be a detention hearing or whether the defendant should be released to the custody of his or her parent, guardian, custodian, or other person legally responsible for him or her. *See, also*, 42 Pa.C.S. § 6322(d).

For the procedures for motions and answers, and filing and service of motions and answers, see Rules of Criminal Procedure 575 and 576.

Nothing in this rule gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a defendant to have his or her parents, guardian, or other custodian present.

NOTE: Adopted \_\_\_\_\_, effective \_\_\_\_\_.

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the proposed new rule published for comment at  
40 Pa.B. ( , 2010).**

[This is a new rule.]

RULE 596. PLACE OF DETENTION DURING PROCEDURES FOR TRANSFER FROM CRIMINAL PROCEEDINGS TO JUVENILE PROCEEDINGS PURSUANT TO 42 PA.C.S. § 6322.

(A) Except as provided in paragraph (B), a defendant who is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 shall be detained in the county jail unless released on bail.

(B) A defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 and has not been released on bail, may file a motion requesting that he or she be detained in a secure detention facility.

(1) If the attorney for the Commonwealth consents to the motion requesting detention in a secure detention facility, the judge may order that the defendant be detained in a secure detention facility until:

(a) the defendant is released on bail; or

(b) there is a disposition of the motion for transfer, or it is determined the defendant is not filing a motion for transfer.

(2) In no event may the defendant be detained in a secure detention facility after the defendant’s 18<sup>th</sup> birthday.

(C) If the judge orders the defendant to be detained in a secure detention facility and subsequently denies the defendant’s motion for transfer, or determines that the defendant is not filing a motion, or determines that the defendant has reached his or her 18<sup>th</sup> birthday, the judge promptly shall order the defendant’s transfer to the county jail.

(D) If the defendant’s motion for transfer is granted, the judge shall order the defendant to be taken to the juvenile probation office pursuant to Rule 595(G)(2).

COMMENT: As provided in paragraph (B), a defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, with the consent of the attorney for the Commonwealth, may be transferred to a secure detention

facility during the pendency of proceedings under this rule. As used in this rule, "secure detention facility" is a facility approved by the Department of Public Welfare to provide secure detention as defined in 55 Pa. Code § 3800.5 and does not include shelter care.

Nothing in paragraph (B) is intended to preclude detention in a secure detention facility of an individual older than 18 years of age who is otherwise subject to proceedings under the Juvenile Act.

Nothing in this rule is intended to restrict or enlarge the defendant's opportunity to address bail.

NOTE: Adopted \_\_\_\_\_, effective \_\_\_\_\_.

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the proposed new rule published for comment at 40 Pa.B. (\_\_\_\_\_, 2010).**

## REPORT

*Proposed New Pa.Rs.Crim.P. 595 and 596; Amendments to Pa.Rs.Crim.P. 113, 119, 504, 510, 540, 571, and 578 ; and revision of the Comment to Pa.R.Crim.P. 570*

### PROCEDURES FOR TRANSFER FROM CRIMINAL PROCEEDINGS TO JUVENILE PROCEEDINGS PURSUANT TO 42 PA.C.S. § 6322.

#### I. BACKGROUND

The Committee, in conjunction with the Juvenile Court Procedural Rules Committee,<sup>1</sup> is planning to propose to the Supreme Court new Rules of Criminal Procedure 595 (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322) and 596 (Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322); and correlative amendments to Rules 113, 119, 504, 510, 540, 570, 571, and 578 that would establish new procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

In June 2009, the Committee was asked to participate in a Joint Ad Hoc Subcommittee that was exploring procedures for transferring “direct file” cases<sup>2</sup> from

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<sup>1</sup> The Juvenile Court Procedural Rules Committee proposal is for new Pa.R.J.C.P. 337 (Filing of Petition After Case Has Been Transferred from Criminal Proceedings).

<sup>2</sup> A “direct file” case is one in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “juvenile act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 so the case is considered a court case and proceeds as any other court case. For purposes of this *Report*, we will use the term “direct file” when we are referring to these cases.

criminal proceedings to juvenile proceedings as permitted by statute.<sup>3</sup> The other participants included members and staff from the Juvenile Court Judges Commission (JCJC), the Juvenile Court Procedural Rules Committee, and the Appellate Court Procedural Rules Committee. The Joint Ad Hoc Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees.

Prior to the formation of the Joint Ad Hoc Subcommittee, JCJC formed a working group to develop best practices in de-certification proceedings to address issues such as detention of these "direct file" defendants, and the long delays in some cases before it is determined whether a case should be transferred. The JCJC's recommendations for best practices provided the starting point that the Joint Ad Hoc Subcommittee used in developing the rule proposals.

## **II. INTRODUCTION**

In developing the proposed new Criminal Rules and the correlative rule changes, the Joint Ad Hoc Subcommittee agreed that, generally, the procedures for instituting a direct file case and the progression of that case should be pursuant to the Criminal Rules. In addition, the members determined that the procedures for requesting the transfer of these cases would not formally come into play until after the case is held for court. As explained more fully below in the discussion of the rules, procedurally, the direct file cases would be instituted by the filing of the complaint or an arrest without a warrant as provided in Pa.R.Crim.P. 502, and move through the preliminary hearing (Pa.R.Crim.P. 542), and the filing of an information (Pa.R.Crim.P. 560), to the "formal" arraignment (Pa.R.Crim.P. 571) in the same manner as any other court case under the Criminal Rules. In addition, if a motion for transfer of criminal proceedings to juvenile proceedings is going to be filed, the motion must be filed as part of the omnibus pretrial motion as provided in Pa.R.Crim.P. 578.

The Joint Ad Hoc Subcommittee determined that, following the arraignment, the direct file cases would vary procedurally from court cases by proceeding to a mandatory

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<sup>3</sup> See, 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings).

prehearing conference following the arraignment to determine whether a motion for transfer has been or will be filed. In those cases in which a motion has been filed but is not ready to be heard, the next procedural step would be mandatory status conferences. Finally, once the motion for transfer is ready to be heard, there would be a hearing on the motion. If the motion is granted, the case would be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act. If the motion is not granted, the case would continue to proceed as a court case under the Criminal Rules.

The Joint Ad Hoc Subcommittee noted that, although direct file cases would proceed in the same manner as all other court cases under the Criminal Rules, these cases should be flagged as direct file cases at the time the case is instituted and, if the case is held for court, the case should be flagged in the docket entries. This notice will alert the participants and court to the nature of the case. In addition, the members agreed that the proposed changes should not prohibit earlier determinations of whether a direct file defendant's case should be transferred. The members noted, for example, in some judicial districts a determination is made as early as the preliminary hearing when the parties agree at the preliminary hearing that the case should be in Juvenile Court and the attorney for the Commonwealth withdraws the charges and re-files a petition in Juvenile Court.

In developing this proposal, the Joint Ad Hoc Subcommittee also addressed the issue of whether a defendant in a direct file case may be detained pretrial in a secure detention facility rather than the county jail when the defendant is unable to post bail. The members, acknowledging that there is no uniform statewide practice, ultimately agreed that there should be a separate motion procedure for determining the question of the place of pretrial detention.

### **III. DISCUSSION OF RULE DRAFTS**

#### **RULE 113 (Criminal Case File and Docket Entries)**

Rule 113 (Criminal Case File And Docket Entries) requires the clerk of courts to maintain the criminal case file and to maintain a list of docket entries, and requires

certain information to be maintained in the list of docket entries. Under this proposal, Rule 113(C) would be amended to require the clerk of courts to make a specific notation in the docket entries when the case is a direct file case. Having this information on the docket would provide early notice to the judges, court staff, and attorneys that this may be a case in which transfer to juvenile proceedings should be considered.

### **RULE 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings)**

As explained in the discussion of proposed new Rule 595, the defendant will be required to appear in person for the mandatory prehearing conference. Because Rule 119 provides for the use of two-way simultaneous audio-visual communications in many criminal proceedings with exceptions, Rule 119 would be amended to include the prehearing conference under Rule 595 as one of the proceedings that is an exception to conducting the proceeding using two-way simultaneous audio-visual communications.

### **RULE 504 (Contents of Complaint)**

In summary cases, when the defendant is under the age of 18, the parents must be notified when the defendant receives a citation.<sup>4</sup> To ensure the issuing authority knows whether the police have notified the parents, Rule 403 (Contents of the Citation) includes a requirement that the law enforcement officer indicate on the citation whether the parents were notified. However, there is no comparable statutory or rule notice provision for court cases.

During the discussion about adding such a provision to the Criminal Rules for court case, the Committee agreed there are two purposes to be accomplished in “direct file” cases. First, it is important to flag that the defendant was under 18 at the time the excluded offense was committed for purposes of alerting the judges, court staff, and attorneys. Second, it is important to alert the magisterial district judge whether the defendant's parents, guardian, or other custodian were notified at the time the

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<sup>4</sup> See 42 Pa.C.S. § 1522 concerning parental notification in certain summary cases involving juveniles.

complaint was filed. In view of these distinct considerations, Rule 504 would be amended by the addition of new paragraphs (10) and (11) to require the police to note on the complaint that the case is a “direct file” case and whether the defendant's parents, guardian, or other custodian have been notified of the case.

In considering the requirement that the defendant's parents, guardian, or other custodian be notified, the Committee agreed the notice would not give the defendant's parents, guardian, or other custodian standing in these “direct file” cases. Rather, the defendant's parents, guardian, or other custodian are being notified solely to alert them to the charges against their child. To make this clear, the Rule 504 *Comment* would be revised. The Committee agreed to use language similar to the language in the Juvenile Court Procedural Rule 131 *Comment*, which provides “[n]othing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present.”

#### **RULE 510 (Contents of Summons; Notice of Preliminary Hearing)**

During the discussions about the proposed changes to Rule 504 concerning the requirement that the police make a notation on the complaint whether the defendant's parents, guardian, or other custodian have been notified if the defendant was under 18 at the time the complaint is filed, the members recognized that, realistically, at this point in the process, the police rarely will have notified the defendant's parents, guardian, or other custodian. Since the goal is to have the defendant's parents, guardian, or other custodian be notified of the case, the notification of the defendant's parents, guardian, or other custodian is more likely to occur when the defendant is arrested or when the summons is issued. In view of this consideration, in addition to the proposed new notice provision in Rule 504, a new paragraph (D) would be added to Rule 510 requiring, in cases in which a summons is being issued, that the issuing authority determine whether the defendant's parents, guardian, or other custodian have been notified at the time the summons is issued. If the defendant's parents, guardian, or other custodian have not been notified, then the issuing authority is required to send a copy of the summons to the defendant's parents, guardian, or other custodian. The

*Comment* includes the provision about the defendant's parents, guardian, or other custodian not having standing in the proceedings discussed above.

#### **RULE 540 (Preliminary Arraignment)**

A new paragraph (B) would be added to Rule 540 for the same reasons discussed above with regard to Rule 510(D). In a “direct file” case, when the defendant has been arrested, the issuing authority would be required at the time of the preliminary arraignment to determine whether defendant's parents, guardian, or other custodian have been notified of the charges. If they have not been notified, the issuing authority would be required to notify the parents at the time of the preliminary arraignment. The *Comment* also includes the same provision about the parents not having standing in the proceedings.

In addition, the Rule 540 *Comment* includes a reference to proposed new Rule 595 to alert the bench and bar at this early stage in the proceedings to the special procedures for transfer from criminal proceedings to juvenile proceedings in “direct file” cases. The Committee agreed this early reference to proposed new Rule 595 is necessary because frequently there are attorneys who are new to the criminal and juvenile systems and not as knowledgeable about the procedures.

#### **RULE 570 (Pretrial Conference)**

As explained more fully in the discussion below about proposed new Rule 595, the new rule will require that after the arraignment there should be a mandatory prehearing conference in the “direct file” cases. Although this prehearing conference is procedurally comparable to the Rule 570 pretrial conference, it is mandatory, rather than discretionary, and addresses issues that relate specifically to “direct file” cases. To alert the bench and bar to the new mandatory prehearing conference procedures, a cross-reference to new Rule 595 has been added to the Rule 570 *Comment*.

#### **RULE 571 (Arraignment)**

After reviewing the procedural flow of a criminal case from the time of arrest or issuance of a summons, the Committee agreed that the arraignment is the point in the

proceedings when a “direct file” defendant formally should be advised of the right to file a motion for transfer from criminal proceedings to juvenile proceedings. To accomplish this, Rule 571(C)(3) would be amended by adding a motion requesting transfer from criminal proceedings to juvenile proceedings to the example of motions that are to be filed after the arraignment. In addition, a cross-reference to new Rule 595 for the procedures for transfer of proceedings would be added to the Rule 571 *Comment*.

#### **RULE 578 (Omnibus Pretrial Motion for Relief)**

Consistent with the decisions made with regard to the procedural framework of the “direct file” cases, as explained above, the motion for transfer from criminal proceedings to juvenile proceedings should be treated in the same manner as all other motions that are part of the omnibus pretrial motion. To make this clear, the transfer motion would be added to the list of the types of requests that are to be in the omnibus pretrial motion set forth in the *Comment* to Rule 578.

#### **NEW RULE 595 (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322)**

Determining the placement of a new rule providing the procedures for requesting transfer from criminal proceedings to juvenile proceedings was difficult. However, once it was determined that these cases would proceed according to the Criminal Rules until after the arraignment, the members agreed the new rule should fall somewhere in the rules after Rule 571. To make the rule “fit” without renumbering all the rules in Chapter 5 Parts F and G, the Committee is proposing that the new rules governing transfer of proceedings be at the end of Chapter 5 (Pretrial Procedures in Court Cases) as a separate new Part H (Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings).

In discussing the title to the proposed new rule, the Committee considered using “decertification procedures,” “direct file procedures,” and “transfer from criminal court to juvenile court.” After thoroughly vetting all this terminology and recognizing that not all judicial districts have distinct criminal or juvenile courts, the members finally determined that, to more accurately represent the nature of the procedures set forth in the proposed

new rule, the title should read “Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.” The members also agreed that this phrase should be used throughout the rule.

### **Paragraph (A)**

After considering a number of options with regard to the filing of the motion for transfer,<sup>5</sup> the members concluded that a motion requesting transfer should be filed in the same manner as the any other motion in a criminal case that is subject to the omnibus pretrial motion procedures. Paragraph (A) incorporates the provisions from paragraph (A) of Rule 579 (Time for Omnibus Pretrial Motion and Service). The motion for transfer must be filed within 30 days of the arraignment, unless the opportunity to file did not exist, or the parties were not aware of the grounds for the motion, or the time for filing was extended by the judge.

Paragraph (A) also requires that the motion be filed with the clerk of courts and a copy of the motion be served on the attorney for the Commonwealth concurrently with filing.

### **Paragraph (B)**

Paragraph (B) sets forth the procedures for the mandatory prehearing conference. The prehearing conference must be conducted in every case in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with the direct file offenses enumerated in 42 Pa.C.S. § 6322(2)(i), (ii), and (iii).

The issues concerning the time when the prehearing conference should be held, whether the defendant should be required to be present at the prehearing conference, and what would occur at the prehearing conference were discussed at length. Concerning the time for the prehearing conference, the consensus was that the prehearing conference must be held no later than 35 days after the arraignment. The

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<sup>5</sup> The Committee agreed to use “motion” instead of “petition” to be consistent with the Criminal Rules. See Rule 575.

members reasoned that the time for the prehearing conference should be tied to the time for the arraignment and the time for filing omnibus pretrial motions. Setting the outside limit for the prehearing conference at 35 days after the arraignment provides adequate time for the defendant to file a motion for transfer as part of the omnibus pretrial motion.

Paragraph (B)(1) addresses the defendant's presence at the prehearing conference. The Committee initially considered permitting the defendant to waive his or her presence with the consent of the defendant's attorney and the judge. Upon further reflection, the members concluded the prehearing conference in the context of a request for transfer from criminal proceedings to juvenile proceedings is a critical stage in the proceedings. In these cases, it is important that the defendant be involved in making the decision whether to file a motion rather than permitting the defendant's attorney to make the decision for the defendant. In view of these considerations, Rule 595(B)(1) and Rule 119 make the defendant's presence in person at the prehearing conference mandatory. The defendant's attorney and the attorney for the Commonwealth also are required to be present at the prehearing conference.

Paragraph (B)(2) sets forth the procedures the judge is to follow at the prehearing conference. The prehearing conference provides the forum for the judge to determine whether the defendant has filed a motion requesting transfer, is requesting additional time to file the motion, or has decided not to file the motion. The prehearing conference also is the stage in the proceedings from which the remaining proceedings related to the request for transfer will flow. Accordingly, the proposed new paragraph (B)(2)(a), (b), and (c) enumerate what the judge is to do once the judge ascertains whether a motion has been filed, or will be filed, or will not be filed.

If the defendant is requesting additional time and judge agrees, the judge is required to set a date for filing the motion, paragraph (B)(2)(a). The judge has the responsibility to move these cases along in a timely manner based on the information provided by the defendant. Accordingly, the judge is given the discretion to set the time when the motion must be filed.

If the motion for transfer has been filed, the judge must determine if the motion is ready to proceed, paragraph (B)(2)(b). If the parties agree the motion is ready to be heard, the judge is required to set the date for the hearing. Although it is left to the discretion of the judge to determine the date for the hearing, the hearing must be held no later than 30 days after the pretrial conference. If the motion is not ready to be heard, pursuant to paragraph (C), the judge is required set up status conferences.

If the defendant indicates he or she is not going to file a motion, the case will proceed as any other criminal case under the Criminal Rules, subparagraph (B)(2)(c).

Paragraphs (B)(3), (B)(4), and (B)(5) are taken from Rule 570 (Pretrial Conference). As with the Rule 570 pretrial conference, at the prehearing conference, the parties should consider such things as the simplification or stipulation of factual issues, the qualification of exhibits, the number of witnesses giving testimony of a cumulative nature, and such other matters that may aid the disposition of the motion. In addition, the parties should have the right to object to rulings by the judge, and the judge should be required to make a record of the agreements or objections of the parties and of any other rulings made during the prehearing conference.

### **Paragraph (C)**

As noted above, paragraph (C) provides, in cases in which the judge determines the motion is not ready to be heard, that the judge is required to schedule status conferences. The status conferences provide a tool to assist the judge in moving the case along. The judge has the discretion for when to schedule the status conferences, but the dates have to be within the timeframe of “no later than every 60 days after the prehearing conference.” This timeframe permits the judge to schedule the status conferences for shorter periods of time in the appropriate cases. The judge must conduct status conferences until the motion is ready to be heard.

At the status conferences, the parties are required to advise the judge of the status of all matters pertinent to whether the motion is ready to be heard.

### **Paragraph (D)**

Paragraph (D) sets forth the requirements for the judge to schedule the hearing. The hearing must be held no later than 30 days after the motion is ready to be heard. Notice of the hearing date is to be given to the defendant, defendant's attorney, and the attorney for the Commonwealth. The Committee did not think it necessary to set forth what the hearing procedures should be so the rule is silent in this regard.

### **Paragraphs (E) and (F)**

Paragraph (E) and paragraph (F) incorporate the provisions from 42 Pa.C.S. § 6322 that require a decision within 20 days after the hearing, paragraph (E), and require the clerk of courts to enter an order on behalf of the judge denying the motion by operation of law if the judge does not decide the motion within 20 days, paragraph (F).

The issue of whether the judge should be required to make his or her findings in open court was discussed at length. The members noted that 42 Pa.C.S. § 6322(b) merely provides, *inter alia*, "the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order." The members believe that the transfer proceeding is a critical proceeding and the defendant and counsel should be in court when the judge issues his or her decision. Accordingly, proposed new Rule 595(E) requires that the judge announce the decision in open court with all the parties present at the conclusion of the hearing. If the judge delays making the decision, the judge still must announce the decision in open court with all the parties present. Paragraph (E) also requires the judge to enter an order granting or denying the motion and to set forth the findings of fact and conclusions of law orally on the record or in writing. The findings of fact and conclusions of law are important for the record in the event of an appeal.

### **Paragraph (G)**

Paragraph (G) sets forth the procedures when the judge grants the motion. Once the motion is granted, the judge is required to order the transfer of the case from

criminal proceedings to juvenile proceedings. Once the transfer is ordered, the case will then proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act.

One issue that the Joint Ad Hoc Subcommittee spent a great deal of time considering concerns the treatment of the defendant when a transfer is ordered. The members noted that the transfer proceedings are conducted in criminal court and, frequently, the judges are not as familiar with the proceedings for juveniles, particularly with regard to placement. In view of this, and because the juvenile probation office, as the intake office for juveniles, is in the best position to expeditiously assess the case and determine where the defendant should be placed and what should happen next in the case, proposed Rule 595(G)(2) requires the judge to order the defendant to be taken to the juvenile probation office. Although 42 Pa.C.S. § 6322(d) provides:

[w]here review of the transfer order is not sought or where the transfer order is upheld the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the court at a time to be designated,

the proposed new provisions in Rule 595(G)(2) and statute are not inconsistent because the rule provision merely sets the stage for the juvenile probation office to implement the “next step” and that includes the procedures set forth in Section 6322(d).

### **Paragraph (H)**

Paragraph (H) addresses the procedures when the judge denies the motion for transfer or the clerk of courts enters an order on behalf of the judge denying the motion by operation of law. In these circumstances, the case will proceed as a court case under the Rules of Criminal Procedure.

### **Paragraph (I)**

Paragraph (I) sets forth the requirement that the clerk of courts serve the order granting or denying the motion on the parties.

### **Rule 595 Comment**

The first paragraph of the *Comment* cross-references proposed new Rule 596 that addresses the place of detention of a defendant in a “direct file” case. Proposed new Rule 596 is discussed more fully below.

The second paragraph of the *Comment* emphasizes that the prehearing conference in the rule is mandatory and therefore is different from the Rule 570 pretrial conference.

The third paragraph of the *Comment* addresses the difficulties the parties encountered in these transfer cases. The provision suggests to the parties that they may request that the judge issue an order for the release of records or other materials relevant to the defendant’s motion, for the appointment of experts, for the examination of the defendant, and any other aids necessary to the disposition of the motion. In addition, the provision makes it clear that these requests, if authorized by law, may be made *ex parte*.

During the discussions about the prehearing conference, the role of the juvenile probation office in these proceedings was discussed. Although the members agreed the rules should not require juvenile probation office to have a role, they thought the parties could request that probation prepare a report. Accordingly, the suggested list of things the parties may request the judge to order includes “a report from the juvenile probation office.”

The next three paragraphs include cross-references to the correlative provisions of 42 Pa.C.S. § 6322, and explain the interplay between these provisions and proposed new Rule 595. In addition, the third paragraph references the statutorily established burden of proof in these cases.

The sixth paragraph of the *Comment* makes it clear that once the judge grants a motion for transfer and has the defendant taken to the juvenile probation office, the criminal court no longer has jurisdiction over the case.

The seventh paragraph of the *Comment* elaborates on the interplay between Rule 595(G) and 42 Pa.C.S. § 6322(d) discussed above.

The ninth paragraph sets forth the provision that the defendant's parents, guardian, or other custodian are not given standing in the matter nor do the rule provisions create a right for the defendant to have his guardian present.

**NEW RULE 596 ( Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322)**

The issue of whether a defendant under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (2)(ii), or (2)(iii) may be detained pretrial in a secure detention facility rather than in a county jail when the defendant is unable to make or ineligible for bail was debated at length. After researching this matter, the members concluded the new transfer procedures should include provisions for the detention of the "direct file" defendants in a secure detention facility.

Proposed new Rule 596 would provide, with the consent of the attorney for the Commonwealth, that the judge may transfer the defendant to a secure detention facility. Because the defendants in the direct file cases are charged with serious crimes including murder, if the defendant is going to be detained in other than the county jail, the facility must be a secure detention facility. To make this clear, the first paragraph of the *Comment* includes the following definition of "secure detention facility" as the term is used in the new rule:

As used in this rule, "secure detention facility" is a facility approved by the Department of Public Welfare to provide secure detention as defined in 55 *Pa. Code* § 3800.5.

Proposed new Rule 596 sets forth the procedures related to the place of pretrial detention in "direct file" cases when the defendant is not released on bail. Paragraph (A) provides the "norm" with regard to pretrial detention. The defendant in a "direct file" case is to be detained in the county jail unless released on bail except as provided in paragraph (B).

Paragraph (B) provides the exception to detention in the county jail. The defendant may file a motion requesting to be detained in a secure detention facility pending disposition of a motion for transfer. If the attorney for the Commonwealth

consents, the judge may order that the defendant be detained in a secure detention facility. If the judge orders a defendant to be detained in a secure detention facility, this place of pretrial detention has clear limitations. Specifically,

(1) when the defendant is granted bail, he or she is released from detention;

(2) if the judge denies the motion for transfer or the judge determines the defendant is not filing a motion for transfer, then the judge must order the defendant transferred to the county jail because the case will proceed as a criminal court case;

(3) if the defendant turns 18 while in the secure detention facility before the motion is disposed, the judge must order the defendant transferred to the county jail because the defendant is no longer a child; and

(4) if the judge grants the motion for transfer, then the judge must order that the defendant be taken to the probation office so that office will be able to promptly process the case as provided by the Juvenile Court Procedural Rules and the Juvenile Act.

These four scenarios are addressed on paragraphs (B)(1), (B)(2), (C), and (D).

The *Comment* clarifies that the detention facility provisions of new Rule 596 do not preclude detention in a secure facility of an individual older than 18 who is otherwise subject to proceedings under the Juvenile Act. The *Comment* also notes that the provisions of the new rule are not intended to restrict or enlarge the defendant's opportunity to address bail.