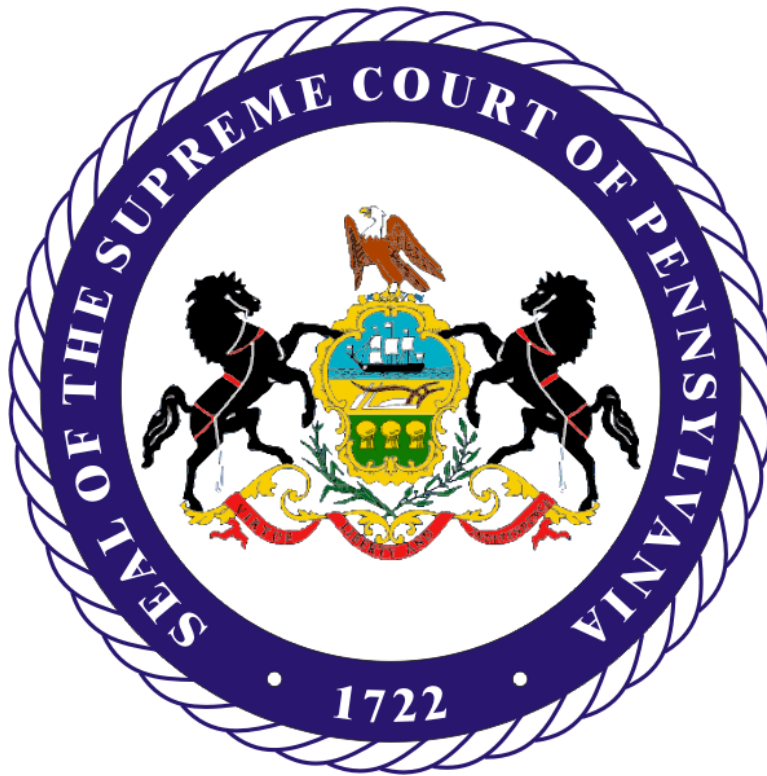


PENNSYLVANIA MAGISTERIAL DISTRICT JUDGE BENCH BOOK



**Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts
*Revised January 2024***

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. JURISDICTION AND VENUE.....	3
A. INTRODUCTION	3
B. JURISDICTION	4
Checklist 2-1: MDJ Jurisdiction	4
C. VENUE	7
1. Civil Venue	7
Checklist 2-2: Venue (Civil)	7
2. Criminal Venue	9
Checklist 2-3: Venue (Criminal).....	9
III. CRIMINAL: GENERALLY	14
A. INTRODUCTION	14
B. BUSINESS OF THE COURTS	14
Checklist 3-1: Business of the Courts	14
C. COUNSEL	24
Checklist 3-2: Counsel	24
D. SEARCH WARRANTS	28
Checklist 3-3: Search Warrants	28
E. EXTRADITION AND INTER-COUNTY DETENTION	35
1. Extradition	35
Checklist 3-4: Extradition Procedure	36
2. Inter-County Detention	38
Checklist 3-5: Inter-County Detention Procedures	39
F. JUVENILE DELINQUENCY ARREST WARRANTS	41
Checklist 3-6: Delinquency Arrest Warrant Procedure	41
IV. CRIMINAL: SUMMARY OFFENSES	43
A. INTRODUCTION	43
B. INSTITUTING SUMMARY CRIMINAL PROCEEDINGS	43
1. Institution of Proceedings: Direct Issuance of Citation	44

Checklist 4-1: Direct Issuance of Citation.....	44
2. Institution of Proceedings: Filing of Citation with the MDJ	50
Checklist 4-2: Filing of Citation with the MDJ	51
3. Institution of Proceedings: Filing of a Summary Complaint by a Private Citizen.....	56
Checklist 4-3: Filing of a Complaint by a Private Citizen	56
4. Institution of Proceedings: Arrest Without a Warrant	59
Checklist 4-4: Arrest Without a Warrant	59
C. GENERAL PROCEDURES IN SUMMARY CASES	63
Checklist 4-5: General Summary Criminal Procedures	63
D. APPEAL PROCEDURE IN SUMMARY CRIMINAL CASES.....	84
Checklist 4-6: Appeal and Stay	84
E. MISCELLANEOUS SUMMARY ISSUES.....	87
1. Truancy Cases	87
Checklist 4-7: Truancy	87
2. Summary Arrest Warrants.....	90
Checklist 4-8: Arrest by Warrant.....	90
3. Bench Warrant Procedures in Summary Cases	95
Checklist 4-9: Summary Bench Warrants.....	95
4. Expungement: Summary Convictions Generally	98
5. Expungement: Truancy Convictions	98
Checklist 4-10: Expungement of Truancy Conviction.....	98
V. CRIMINAL: COURT CASES.....	101
A. INTRODUCTION	101
B. INSTITUTING COURT CASE PROCEEDINGS.....	101
1. Institution of Proceedings: Complaint.....	101
Checklist 5-1: Complaint Procedures	102
a. Summons Procedures	107
Checklist 5-2: Summons Procedures.....	107
b. Arrest Warrant Procedures	109
Checklist 5-3: Arrest Warrant Procedures	109
2. Institution of Proceedings: Arrest Without a Warrant	116
Checklist 5-4: Arrest Without a Warrant	116
C. BAIL	118
1. Bail: Generally.....	118
Checklist 5-5: Bail, generally	119
2. Bail: Release Procedures	120
Checklist 5-6: Bail: Release Procedures	120
3. Procedures for Violation of Bail Conditions: Revocation of Release and Forfeiture/Bail Pieces/Exoneration of Surety	133

Checklist 5-7: Procedure for Violation of Bail Conditions	133
D. PRELIMINARY ARRAIGNMENT	135
Checklist 5-8: Preliminary Arraignment Procedures	135
E. PRELIMINARY HEARING	138
1. Preliminary Hearing Procedures	138
Checklist 5-9: Preliminary Hearing Procedures	138
2. Procedure Following Arrest on a Bench Warrant	149
Checklist 5-10: Bench Warrant Procedures in Court Cases	150
F. GUILTY PLEAS BEFORE MDJS IN COURT CASES	152
Checklist 5-11: Guilty Pleas in Court Cases	153
G. JUVENILES CHARGED AS ADULTS: PRETRIAL DETENTION	156
VI. CIVIL ACTIONS	157
A. INTRODUCTION	157
B. RECORD AND TRANSCRIPT	157
Checklist 6-1: Record and Transcript	157
C. COSTS	158
1. Generally	158
Checklist 6-2: Costs, Generally	158
2. <i>In Forma Pauperis</i> (IFP) Status for Persons Unable to Pay Costs	158
Checklist 6-3: Costs – IFP Status	158
D. COMPLAINT	159
1. Complaint Contents and Procedure	159
Checklist 6-4: Venue/Complaint Contents and Procedure	159
2. Service of the Complaint and Cross-Complaint	164
Checklist 6-5: Service of Complaint and Cross-Complaint	164
E. HEARING PROCEDURE	169
1. Continuances and Withdrawal of Complaint Prior to Hearing	169
Checklist 6-6: Continuances; Withdrawal of Complaint	169
2. Conduct of the Hearing	170
Checklist 6-7: Conduct of the Hearing	170
3. Decision and Damages	173
Checklist 6-8: Decision and Damages	173
F. REVIEW: APPEAL/SUPERSEDEAS/CERTIORARI/STATEMENT OF OBJECTION	176
1. Procedure for Filing an Appeal	176
Checklist 6-9: Procedure for Filing an Appeal	176
2. Supersedeas (Stay)	177

Checklist 6-10: Supersedeas (Stay) Procedure	177
3. Writ of Certiorari	177
Checklist 6-11: Writ of Certiorari	177
4. Statement of Objection	179
Checklist 6-12: Statement of Objection	179
G. EXECUTION.....	181
Checklist 6-13: Execution	181
H. MISCELLANEOUS	191
1. Bankruptcy Stay	191
Checklist 6-14: Bankruptcy Stay	191
2. Settlement	194
Checklist 6-15: Settlement	194
3. Automated Work Zone Speed Enforcement System (AWZSES) Violation Appeals	195
Checklist 6-16: AWZSES Violation Appeals	195
4. School Bus Side Stop Signal Arm Enforcement System (SSSAES) Violations	196
VII. LANDLORD/TENANT	197
A. INTRODUCTION	197
B. RECORD AND TRANSCRIPT	198
Checklist 7-1: Record and Transcript	198
C. NOTICE TO QUIT	198
Checklist 7-2: Notice to Quit Requirements	198
D. COSTS	201
Checklist 7-3: Costs, Generally	201
E. COMPLAINT	201
1. Complaint Contents and Procedure	202
Checklist 7-4: Complaint Contents and Procedure	202
2. Service of the Complaint	204
Checklist 7-5: Service of the Complaint	204
3. Service of the Cross-Complaint	204
Checklist 7-6: Service of the Cross-Complaint	204
F. HEARING PROCEDURE	205
1. Continuances	205
Checklist 7-7: Continuances	205
2. Conduct of the Hearing	206
Checklist 7-8: Conduct of the Hearing	206
3. Disputes Over Title to the Property	210
Checklist 7-9: Disputes Over Title to the Property	210
4. Decision and Damages	211

Checklist 7-10: Decision and Damages	211
G. APPEALS & SUPERSEDEAS; WRIT OF CERTIORARI	213
1. Procedure for Filing an Appeal	213
Checklist 7-11: Procedure for Filing an Appeal	213
2. Supersedeas (Stay)	215
Checklist 7-12: Supersedeas (Stay) Procedure	215
3. Writ of Certiorari	217
Checklist 7-13: Writ of Certiorari	217
H. EXECUTION.....	220
1. Order for Possession.....	220
Checklist 7-14: Order for Possession Procedure	220
2. Forcible Entry and Ejectment	224
Checklist 7-15: Forcible Entry and Ejectment	224
3. Execution by Levy/Garnishment.....	224
Checklist 7-16: Execution by Levy/Garnishment.....	224
I. MISCELLANEOUS ISSUES.....	225
1. Manufactured Homes.....	225
Checklist 7-17: Manufactured Homes	226
2. Abandonment and Surrender of Premises	233
Checklist 7-18: Abandonment and Surrender.....	233
3. Implied Warranty of Habitability	233
Checklist 7-19: Implied Warranty of Habitability	233
4. Covenant of Quiet Enjoyment	235
Checklist 7-20: Covenant of Quiet Enjoyment	235
5. Security Deposit.....	236
Checklist 7-21: Security Deposit.....	237
6. Plain Language Act.....	238
Checklist 7-22: Plain Language Act	238
7. Bankruptcy Stay.....	240
Checklist 7-23: Bankruptcy Stay	240
8. Disposition of Abandoned Personal Property	242
Checklist 7-24: Disposition of Abandoned Personal Property	242
VIII. PROTECTION FROM ABUSE ORDERS	244
A. INTRODUCTION	244
B. PFA EMERGENCY ORDERS: JURISDICTION, VENUE, AND STANDING TO SEEK RELIEF.....	245
Checklist 8-1: Jurisdiction, Venue, and Standing	245
C. PFA EMERGENCY ORDERS: COMMENCEMENT OF PROCEEDINGS	247
Checklist 8-2: Commencement of Proceedings	247

D. PFA EMERGENCY ORDERS: HEARING PROCEDURE.....	248
Checklist 8-3: Hearing Procedure.....	248
E. PFA EMERGENCY ORDERS: FINDINGS AND PROTECTION ORDERS	249
Checklist 8-4: Findings and Protection Orders	249
F. EMERGENCY PROCEEDINGS UNDER THE OLDER ADULTS PROTECTIVE SERVICES ACT (OAPSA)	251
Checklist 8-5: Emergency Order under the OAPSA	251
G. EMERGENCY PROCEEDINGS UNDER THE ADULT PROTECTIVE SERVICES ACT (APSA).....	252
Checklist 8-6: Emergency Order Under the APSA	253
H. EMERGENCY RELIEF UNDER THE PROTECTION OF VICTIMS OF SEXUAL VIOLENCE OR INTIMIDATION ACT (PVSVI).....	254
Checklist 8-7: Emergency Relief Under the PVSVI Act	254
IX. CONTEMPT POWERS OF MAGISTERIAL DISTRICT JUDGES.....	256
A. INTRODUCTION	256
B. SCOPE OF CONTEMPT POWERS AND PUNISHMENT	256
Checklist 9-1: Scope of Contempt Powers and Punishment	256
C. PROCEDURE FOR A FINDING OF CONTEMPT.....	258
Checklist 9-2: Procedure for Contempt Finding.....	258
D. PROCEDURE FOR DEFAULTS IN PAYMENT OF FINES IMPOSED AS PUNISHMENT FOR CONTEMPT	265
Checklist 9-3: Default Procedure	265
X. EVIDENCE	267
A. INTRODUCTION	267
B. GENERAL EVIDENTIARY PRINCIPLES.....	267
Checklist 10-1: General Evidentiary Principles.....	267
C. RELEVANCY	271
Checklist 10-2: Relevancy and its Limits	271
D. PRIVILEGES	278
Checklist 10-3: Privileges	278
E. WITNESSES	284
1. Competency of Witnesses	284
Checklist 10-4: Competency	285
2. Procedure for Witness Interrogation and Evidence Presentation.....	287
Checklist 10-5: Procedure for Witness Interrogation and Evidence Presentation	287

3.	Impeachment or Support of Witness Credibility	292
	Checklist 10-6: Impeachment/Support of Witness	292
4.	Opinions and Expert Testimony	296
	Checklist 10-7: Opinion and Expert Testimony	296
F.	HEARSAY	299
1.	Hearsay Generally Not Admissible	299
2.	Exceptions to the Inadmissibility of Hearsay	299
	Checklist 10-8: Hearsay Exceptions.....	299
G.	AUTHENTICATION AND IDENTIFICATION	308
	Checklist 10-9: Authentication and Identification	309
H.	CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS	315
	Checklist 10-10: Content of Writings, Recordings, and Photographs	315
I.	TABLE OF OBJECTIONS.....	318
XI.	MISCELLANEOUS.....	320
A.	OATHS AND AFFIRMATIONS	320
1.	Introduction.....	320
2.	Judicial Oaths/Affirmations	320
	Checklist 11-1: Judicial Oath/Affirmation	320
3.	Oaths/Affirmations of Office for Local Officials.....	322
	Checklist 11-2: Oaths/Affirmations of Office	322
B.	MARRIAGE CEREMONY	323
1.	Introduction.....	323
2.	Marriage Ceremony.....	323
	Checklist 11-3: Marriage Ceremony.....	323
C.	INTERPRETERS	326
	Checklist 11-4: Court Interpreters	327
D.	OFFICIAL SEAL AND FACSIMILE SEAL.....	328
E.	SELF-SERVICE STORAGE FACILITIES	328
	Checklist 11-5: Self-Service Storage Facilities	328
XII.	GLOSSARY	332

I. **INTRODUCTION**

The Unified Judicial System’s magisterial district courts are among the busiest in the state with a diverse caseload. The *Magisterial District Judge Bench Book* is structured as a practical reference guide covering the broad range of legal issues encountered by magisterial district judges (MDJs).

This bench book is the latest link in a chain of publications designed to help frontline judiciary that stretches at least as far back to the advent of the printing press. One author noted that as early as the 1500s, English printers were publishing quick-study guides designed to turn country gentlemen into justices of the peace.¹ Although the country gentleman has long since been replaced by a diverse, educated, democratically elected pool of judges, due to the ever-expanding, increasingly complex jurisdiction of the magisterial district courts, the need for guidance remains.

Staff from the Administrative Office of the Pennsylvania Courts (AOPC), with guidance from the Special Court Judges Association’s Publications Committee, created this bench book. Its content has been reviewed by the Association's leadership team and by the members of the Publications Committee.

The bench book contains the procedures for handling the various case types heard in the magisterial district courts. Each chapter is comprised of explanatory text about a specific case type and a detailed checklist(s) of the procedures to be followed by MDJs. The checklist(s) are located on the left side of the page, and the statutory authorities are listed on the right side. Some

¹ Stephen Budiansky, *Her Majesty's Spymaster: Elizabeth I, Sir Francis Walsingham, and the Birth of Modern Espionage* (New York: Viking, 2005), 49.

rules and statutes are quoted verbatim while others are paraphrased. Also on the right side are explanatory notes, which are intended to provide additional background or guidance.

Included in the bench book are sample procedures, colloquies, and oaths. These sample procedures are suggestions only. The bench book also provides the procedures governing the appointment of court interpreters, and a glossary of terms.

This bench book, while providing authoritative information, is intended to be used in conjunction with the applicable statutes, case law, and procedural rules governing proceedings before MDJs. A perceived conflict between the information contained in the bench book and any constitutional provision, statute, or rule of procedure should be resolved in favor of the provision, statute, or rule.

Points of view expressed herein are those of the authors, and do not necessarily represent any official position, policy, or view of the Pennsylvania judiciary, nor should they be considered legal advice. Although every effort has been made to ensure the accuracy of the information contained herein, the AOPC does not assume any liability for errors or omissions.

This bench book is current as of January 2024. Its contents will be updated periodically. Readers are encouraged to regularly check the *Magisterial District Judge Bench Book* posted on the Minor Judiciary Education Board extranet site to ensure that you are consulting the most current version.

II. JURISDICTION AND VENUE

A. INTRODUCTION

1. Jurisdiction

There are two types of jurisdiction: jurisdiction over subject matter and jurisdiction over persons. *McGinley v. Scott*, 164 A.2d 424, 427 (Pa. 1960). Personal jurisdiction is the power of a court to render judgment against a party. *Bancorp Group, Inc. v. Pirgos, Inc.*, 744 A.2d 791, 792 (Pa. Super. 2000). The courts of Pennsylvania may exercise personal jurisdiction over: individuals present or domiciled in Pennsylvania at the time process is served; corporations incorporated or qualified as a foreign corporation under Pennsylvania law or that conduct a continuous or systematic part of their business in Pennsylvania; or partnerships and similar entities that are formed or qualify as foreign entities under Pennsylvania law or that conduct a continuous or systematic part of their business in Pennsylvania. 42 Pa.C.S. § 5301. In addition, individuals, corporations, partnerships, and similar entities may consent to jurisdiction. *Id.* The courts of Pennsylvania may, under certain circumstances, exercise jurisdiction over persons outside of Pennsylvania through the state's "long arm" statute, 42 Pa.C.S. § 5322.

Jurisdiction over the person is normally acquired by the court's process upon him/her within the territorial limits of its authority. *McGinley*, at 428. The process of the magisterial district judge (MDJ) shall extend beyond his/her magisterial district to the extent prescribed by general rule. 42 Pa.C.S. § 1515(b). Methods of obtaining personal jurisdiction in particular proceedings by process are discussed in the specific sections dealing with those proceedings. Concepts of personal jurisdiction beyond process are outside the scope of this bench book.

Subject matter jurisdiction relates to the authority of a court to hear and decide controversies of the general nature of the matter at issue and is conferred upon MDJ courts by statute in 42 Pa.C.S. § 1515. Subject matter jurisdiction may "never attach nor be acquired by consent or waiver of the parties." *McGinley*, 428. Subject matter jurisdiction is the type of jurisdiction discussed in this section.

2. Venue

Venue is the right of a party to have an action brought and heard in a particular judicial district or locality and is related to the convenience of the litigants. *Commonwealth v. Bethea*, 828 A.2d 1066, 1072 & 1074 (Pa. 2003); *McGinley*, 164 A.2d at 428. Unlike subject matter jurisdiction, venue may be waived. *Id.* Venue is primarily a procedural matter prescribed by the rules of court and it assumes the existence of jurisdiction. *Bethea*, 828 A.2d at 1074.

B. JURISDICTION

Except as prescribed by general rule adopted pursuant to 42 Pa.C.S. § 503 (reassignment of matters), MDJs shall have jurisdiction over: summary offenses; landlord-tenant matters within the jurisdictional limits of an MDJ court; civil monetary claims not in excess of \$12,000; preliminary arraignments, bail and warrants in criminal cases; certain driving under the influence matters; limited third degree misdemeanors; offenses under the Game and Fish Code; and any other matter where statute gives an MDJ jurisdiction. 42 Pa.C.S. § 1515(a). These categories are discussed in more detail in Checklist 2-1 below.

Checklist 2-1: MDJ Jurisdiction	Authority/Notes
☐ 1. Summary offenses , except those that arise from the same episode or transaction involving a delinquent act for which a petition alleging delinquency has been filed under the Juvenile Act (42 Pa.C.S. § 6301 <i>et seq.</i>).	42 Pa.C.S. § 1515(a)(1).
☐ 2. Landlord-tenant matters that are stated to be within the jurisdiction of an MDJ by the Landlord and Tenant Act of 1951 (68 P.S. § 250.101).	42 Pa.C.S. § 1515(a)(2).
☐ 3. Civil claims , except claims against a Commonwealth party, where the amount demanded does not exceed \$12,000.00, exclusive of interest and costs for the following types of cases:	42 Pa.C.S. § 1515(a)(3). <u>Note:</u> A "commonwealth party" is defined as "[a] Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment." 42 Pa.C.S. § 8501.
☐ a. In assumpsit, except cases of real contract where title to the real estate may be in question;	42 Pa.C.S. § 1515(a)(3)(i).

☐ b. In trespass, including all forms of trespass and trespass on the case; or ☐ c. For fines and penalties by any government agency. Waiver of the portion of the claim over the jurisdictional limit. A plaintiff may waive a portion of his/her claim of more than \$12,000 so as to bring it within the monetary jurisdiction of an MDJ. Such waiver will, however, be revoked automatically if the defendant appeals the MDJ's final order or when the judgment is set aside on certiorari. ☐ 4. To preside at preliminary arraignments, fix and accept bail (except offenses under 18 Pa.C.S. §§ 2502 (murder) and 2503 (voluntary manslaughter)), and to issue warrants in all criminal proceedings. ☐ a. Preliminary hearings. An MDJ is empowered by rules of court to conduct preliminary hearings within his/her magisterial district in court cases (see Checklist 5-9 in Section V.). ☐ 5. Driving under the influence. Offenses under 75 Pa.C.S. § 3802, relating to driving under the influence of alcohol or controlled substances if: ☐ a. The offense is the first offense by the defendant under such provision in this Commonwealth;	42 Pa.C.S. § 1515(a)(3)(ii). 42 Pa.C.S. § 1515(a)(3)(iii). <u>Note:</u> A "government agency" is defined as "[a]ny Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority." 42 Pa.C.S. § 102. 42 Pa.C.S. § 1515(a)(3). 42 Pa.C.S. § 1515(a)(4). <u>Note:</u> The fixing and accepting of bail in murder and voluntary manslaughter cases are to be performed only by a common pleas judge. <i>Id.</i> Pa.R.Crim.P. 131, 541-543. 42 Pa.C.S. § 1515(a)(5). <u>Note:</u> In conjunction with such charges, however, there may be mandatory evaluations or assessments that may make it impractical to accept such a plea if the defendant has not completed said evaluations and assessments prior to entering the plea. 42 Pa.C.S. § 1515(a)(5)(i). <u>Note:</u> As a practical matter, it may be unlikely that there would be a guilty plea to a first offense as in most cases
--	---

	these may be resolved by an ARD program.
☐ b. No personal injury (other than to the defendant) resulted from the offense;	42 Pa.C.S. § 1515(a)(5)(ii).
☐ c. The defendant pleads guilty;	42 Pa.C.S. § 1515(a)(5)(iii).
☐ d. No property damage in excess of \$500, other than to the defendant's property, resulted from the violation;	42 Pa.C.S. § 1515(a)(5)(iv).
☐ e. The defendant is not subject to the provisions of Chapter 63 (Juvenile Act); or	42 Pa.C.S. § 1515(a)(5)(v).
☐ f. The arresting authority shall cause to be transmitted a copy of the charge of any violation of 75 Pa.C.S. § 3802 to the office of the clerk of the court of common pleas within five (5) days after the preliminary arraignment.	42 Pa.C.S. § 1515(a)(5)(vi).
In determining if (a) through (f) are met, the MDJ shall rely on the certification of the arresting authority. The certification need not be in writing. Within ten (10) days of disposition, the MDJ shall certify his/her disposition to the office of the clerk of the court of common pleas in writing.	42 Pa.C.S. § 1515(a)(5).
☐ 6. Ignition interlock. Offenses under 75 Pa.C.S. § 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock).	42 Pa.C.S. § 1515(a)(5.1).
☐ 7. Third degree misdemeanors under Title 18 (Crimes and Offenses), Title 30 (Fish) and Title 35 (Health and Safety), but only if the following are met:	42 Pa.C.S. § 1515(a)(6)(i). <u>Note:</u> Third degree misdemeanor pleas under the Vehicle Code are not part of the acceptable pleas before an MDJ.
☐ a. The misdemeanor is not the result of a reduced charge;	42 Pa.C.S. § 1515(a)(6)(i)(A).
☐ b. Any personal injury or property damage is less than \$500;	42 Pa.C.S. § 1515(a)(6)(i)(B).
☐ c. The defendant pleads guilty; and	42 Pa.C.S. § 1515(a)(6)(i)(C).
☐ d. The defendant is not subject to the Juvenile Act (42 Pa.C.S. § 6301 <i>et seq.</i>).	42 Pa.C.S. § 1515(a)(6)(i)(D).

Exceptions. The following provisions of the Crimes Code (Title 18) are not part of an MDJ's misdemeanor jurisdiction: § 4303 (concealing the death of a child born out of wedlock); § 4321 (willful separation or non-support); and § 5103 (unlawfully listening into deliberations of a jury).	42 Pa.C.S. § 1515(a)(6)(ii).
☐ 8. Game and wildlife. All offenses arising under Title 34 (Game and Wildlife Code).	42 Pa.C.S. § 1515(a)(6.1).
☐ 9. Other matters where jurisdiction is vested in MDJs by statute.	42 Pa.C.S. § 1515(a)(7).

C. VENUE

Venue is a procedural matter generally prescribed by rules of court. *Bethea*, 828 A.2d at 1074; 42 Pa.C.S. § 1515(b). The Rules of Civil Procedure for MDJs set forth the principles of venue for civil matters. The Rules of Criminal Procedure delineate venue in the criminal context.

1. Civil Venue	
Checklist 2-2: Venue (Civil)	Authority/Notes
☐ 1. Venue ☐ a. Individuals. An action against an individual may only be brought in a magisterial district where: (a) the individual may be served; (b) the cause of action arose; or (c) a transaction or occurrence took place out of which the cause of action arose. ☐ b. Partnerships. An action against a partnership may only be brought in a magisterial district where: (1) the partnership regularly conducts business; (2) the cause of action arose; or (3) a transaction or occurrence took place out of which the cause of action arose. ☐ c. Corporations (except actions on insurance policies, <i>see</i> (d) below). An action against a corporation or similar entity may be brought only in a magisterial district where: (1) its registered office or principal place of business is located; (2) it regularly conducts business; (3) the cause of action arose; or (4) a transaction or	Pa.R.Civ.P.M.D.J. 302(A). Pa.R.Civ.P.M.D.J. 302(B). Pa.R.Civ.P.M.D.J. 302(C).

occurrence took place out of which the cause of action arose. ☐ d. Actions on insurance policies. An action upon an insurance policy against an insurance company, association, or exchange either incorporated or organized in Pennsylvania or doing business in Pennsylvania may be brought in a magisterial district: (1) designated in Pa.R.Civ.P.M.D.J. 302(C) (<i>see</i> (c) above); (2) where the insured property is located; or (3) where the plaintiff resides, in actions on policies of life, accident, health, disability, and livestock insurance, or fraternal benefit certificates. ☐ e. Unincorporated associations. An action against an unincorporated association may be brought only in a magisterial district where: (1) the association regularly conducts business or any association activity; (2) the cause of action arose; or (3) a transaction or occurrence took place out of which the cause of action arose. ☐ f. Political subdivision. An action against a political subdivision may be brought only in a magisterial district which is located-- in whole or in part-- in the political subdivision. ☐ g. Actions arising on boundaries. A transaction or occurrence which took place on a roadway, highway, railway or body of water designated as a boundary between magisterial districts shall be considered to have taken place in any of the MDJ districts so bounded. ☐ 2. Objection to venue and transfer. Either the MDJ or the defendant can raise improper venue at any time prior to the conclusion of the hearing. If the MDJ finds that venue is improper and there is a court of proper venue in Pennsylvania, the complaint shall not be dismissed but may be transferred to the court having proper venue.	Pa.R.Civ.P.M.D.J. 302(D). Pa.R.Civ.P.M.D.J. 302(E). Pa.R.Civ.P.M.D.J. 302(F). Pa.R.Civ.P.M.D.J. 302(G). Pa.R.Civ.P.M.D.J. 302(H). <u>Note:</u> When a case is transferred from one magisterial district to another under Rule 302(H) there are no costs for the transfer or additional filing costs. Comment to Pa.R.Civ.P.M.D.J. 302. There are no additional filing costs when a case is transferred from Philadelphia Municipal Court to an MDJ court. <i>Id.</i> There may, however, be additional service costs when a matter is transferred. <i>Id.</i>
---	---

	<u>Note:</u> MDJS Form 625 is the Transfer Notice form.
--	---

2. Criminal Venue

Checklist 2-3: Venue (Criminal)	Authority/Notes
☐ 1. Venue. All criminal proceedings in summary and court cases shall be brought before the MDJ for the magisterial district in which the offense is alleged to have occurred or before the MDJ temporarily assigned to serve that district, subject to the following exceptions: ☐ a. Location of offense unknown. If the specific place within a jurisdiction where the offense is alleged to have occurred is unknown, then the proceeding may be brought before any MDJ of any magisterial district within that judicial district. ☐ b. Offense occurs in more than one MDJ district. When charges arising from the same criminal episode occur in more than one magisterial district within the same judicial district, the criminal proceeding on all the charges should be before one MDJ in any one of the magisterial districts where the offenses occurred. The decision of where to bring charges in this situation is made initially by the law enforcement officers or the attorney for the Commonwealth. ☐ c. Offense occurs in more than one judicial district. When charges arising from the same criminal episode occur in more than one judicial district, the criminal proceeding on all charges may be brought before one MDJ in a magisterial district within any of the judicial districts in which the charges arising from the same criminal episode occurred. The decision of where to bring charges in this situation is made initially by the law	Pa.R.Crim.P. 130(A). <u>Note:</u> The rule uses the term "issuing authority," which is defined as "any public official having power and authority of a magistrate, a Philadelphia bail commissioner, or a magisterial district judge." Pa.R.Crim.P. 103. As this bench book is geared toward MDJs, that term alone is used herein. Pa.R.Crim.P. 130(A)(1). Pa.R.Crim.P. 130(A)(2). <u>Note:</u> a single criminal episode exists where the charges are logically and/or temporally related and share common issues of law and fact. <i>Commonwealth v. Hude</i>, 458 A.2d 177, 183 (Pa. 1983). Comment to Pa.R.Crim.P. 130. Pa.R.Crim.P. 130(A)(3). Comment to Pa.R.Crim.P. 130.

enforcement officers or the attorney for the Commonwealth. ☐ d. Summary vehicle offenses occurring on the Pennsylvania Turnpike. When an arrest is made without a warrant for any summary offense under the Vehicle Code (75 Pa.C.S. § 101 <i>et seq.</i>) that occurred on the Pennsylvania Turnpike system or any controlled/limited access highway of the system or highway, or any other highway of the Commonwealth, the defendant shall be taken and the proceeding brought either: where the offense allegedly occurred; or before the MDJ in any other magisterial district, which, in the arresting officer's judgment, is most convenient to the place of arrest without regard to any magisterial or judicial district boundary line. ☐ e. Offenses occurring near MDJ district boundaries. When the offense allegedly occurs within 100 yards of the boundary of two or more magisterial districts in the same judicial district, the proceeding may be brought in either/any of the magisterial districts without regard to the boundary lines of any county. ☐ f. Venue designated by president judge for certain classes of offenses. When the president judge designates a magisterial district or location in that district in which certain classes of offenses, which occurred in other specified magisterial districts, may be heard. Advanced communication technology site (ACT). Venue is not altered when an MDJ conducts a proceeding from an advanced communication technology site outside the MDJ's magisterial district or judicial district. ☐ 2. Transfer of proceedings in court cases.	Pa.R.Crim.P. 130(A)(4). Pa.R.Crim.P. 130(A)(5). Pa.R.Crim.P. 130(A)(6). Comment to Pa.R.Crim.P. 130. <u>Note:</u> An "advanced communication technology site" is "any approved location within Pennsylvania designated by the president judge, or the president judge's designee, with advanced communication technology equipment that is available for parties in a criminal matter to communicate with others in physically separate locations as provided in these rules." Pa.R.Crim.P. 103.
--	---

☐ a. Charges arising from a single criminal episode occurring in more than one <u>judicial district</u>. ☐ i. If charges are filed in more than one judicial district. Prior to the completion of the preliminary hearing, when charges arising from a single criminal episode that occurred in more than one judicial district are filed in more than one judicial district, and once a written agreement by the attorneys for the Commonwealth is filed with the MDJ, the proceedings shall be transferred to the magisterial district in the judicial district selected by the attorneys for the Commonwealth. ☐ ii. If charges are filed in one judicial district. Prior to the completion of the preliminary hearing, when charges arising from a single criminal episode that occurred in more than one judicial district are filed in one judicial district, once a written agreement by the attorneys for the Commonwealth is filed with the MDJ, the proceedings shall be transferred to the magisterial district in the judicial district selected by the attorneys for the Commonwealth. ☐ b. Charges arising from a single criminal episode occurring in more than one <u>magisterial district</u> within the same judicial district. ☐ i. If charges are filed in more than one MDJ district. Prior to the completion of the preliminary hearing, when charges arising from a single criminal episode that occurred in more than one magisterial district are filed in more than one magisterial district, the proceedings may be transferred to the magisterial district selected by the attorney for the Commonwealth; or	Pa.R.Crim.P. 130(B)(1)(a). Pa.R.Crim.P. 130(B)(1)(a)(i). Pa.R.Crim.P. 130(B)(1)(a)(ii). Pa.R.Crim.P. 130(B)(1)(b). Pa.R.Crim.P. 130(B)(1)(b)(i). <u>Note:</u> Observe that in this situation there is no requirement of a written agreement because only one district attorney's office is involved.
---	---

☐ ii. If charges are filed in one MDJ district. Prior to the completion of the preliminary hearing, when charges arising from a single criminal episode that occurred in more than one magisterial district are filed in one magisterial district, the proceedings may be transferred to another magisterial district selected by the attorney for the Commonwealth.	Pa.R.Crim.P. 130(B)(1)(b)(ii). <u>Note:</u> Observe that in this situation there is no requirement of a written agreement because only one district attorney's office is involved.
☐ c. MDJ's responsibilities upon transfer. If proceedings are being transferred, the transferring MDJ shall promptly transmit to the MDJ to whom the matter is being transferred a certified copy of all docket entries, together with all original papers filed; a copy of the bail bond and any deposits in satisfaction of a monetary condition of bail; and a bill of any costs accrued that have not been collected prior to the transfer.	Pa.R.Crim.P. 130(B)(2).
☐ 3. Challenge to transfer. A challenge to a transfer of proceedings under Pa.R.Crim.P. 130(B) is considered to be an objection to venue under Pa.R.Crim.P. 134, which is discussed in Checklist 2-3(4) below.	Comment to Pa.R.Crim.P. 134.
☐ 4. Objections to venue.	
☐ a. Where they must be raised. Objections to venue between magisterial districts shall be raised in the court of common pleas of the judicial district in which the proceeding has been brought.	Pa.R.Crim.P. 134(A).
☐ b. When they must be raised. Objections to venue between magisterial districts shall be raised before the completion of the preliminary hearing for court cases, or before completion of the summary trial for summary offenses. Otherwise, they will be deemed to have been waived.	Pa.R.Crim.P. 134(A).
☐ c. Standard for decision. No objection as to venue shall be allowed unless substantial prejudice will result if the proceeding is allowed to continue before the MDJ before whom it has been brought.	Pa.R.Crim.P. 134(B).

☐ d. No dismissal for improper venue. No criminal proceeding may be dismissed for improper venue between magisterial districts. If an objection is allowed, the court of common pleas shall order that the matter be transferred to the MDJ of the proper magisterial district.	Pa.R.Crim.P. 134(C).
---	----------------------

III. **CRIMINAL: GENERALLY**

A. **INTRODUCTION**

The criminal offenses that an MDJ handles are divided into two broad categories: summary offenses (discussed in Section IV) and non-summary offenses, also referred to as court cases (discussed in Section V). Summary offenses are those that are designated as such under the Crimes Code or other statute, or that carry a potential term of imprisonment of not more than ninety (90) days. 18 Pa.C.S. § 106(c); Pa.R.Crim.P. 103. Court cases consist of murder (first, second, or third degree), felonies, and misdemeanors. 18 Pa.C.S. § 106(b); Pa.R.Crim.P. 103. This section discusses general criminal topics that may arise in either summary or court cases.

CAVEAT: The following section is based primarily upon the general rules of court, case law and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that also affect these procedures. The MDJ should familiarize him/herself with any such rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103(d)(2).

B. **BUSINESS OF THE COURTS**

This section examines the rules related to the general business of the court that may apply in either the summary or court case context. Topics include continuances, subpoenas, publicity, the case file and transcript, and similar topics. In addition to the rules themselves, the comments and explanatory reports may provide valuable information about the reasoning behind the rules. Although the comments and explanatory reports are not binding authority, courts may look to them for guidance.

Checklist 3-1: Business of the Courts	Authority/Notes
☐ 1. Continuances. In the interest of justice, an MDJ may grant a continuance either upon motion of a party or upon the MDJ's own motion. The MDJ shall record on the transcript the moving party and the MDJ's reasons for granting or denying the continuance.	Pa.R.Crim.P. 106(A) & (B). <u>Note:</u> The contents of the transcript in a criminal case before an MDJ are discussed in Checklist 3-1(7).

A defendant's motion for a continuance shall be made no later than forty-eight (48) hours before the time set for the proceeding. A later motion shall be entertained only if the opportunity for making it did not previously exist, the defendant was not aware of the grounds for the motion, or the interests of justice require it. When the continuance is granted, notice of the new date, time, and location shall be served on the parties.	Pa.R.Crim.P. 106(D). Pa.R.Crim.P. 106(E).
☐ 2. Subpoena contents. A subpoena in a criminal case shall order the witness named therein to appear before the court at the date, time, and place specified, and to bring any items identified or described in the subpoena. The subpoena shall also state on whose behalf the witness is called to testify and the identity, address, and phone number of the attorney, if any, who applied for the subpoena.	Pa.R.Crim.P. 107.
☐ 3. Discharge due to defects in form, content, or procedure. A defendant shall not be discharged nor a case dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures prescribed by the Rules of Criminal Procedure, unless the defendant raises the defect before the conclusion of the trial (in a summary case) or before the conclusion of the preliminary hearing (in a court case) and the defect is prejudicial to the defendant's rights.	Pa.R.Crim.P. 109. <u>Note:</u> A complaint, citation, summons, or warrant may be amended at any time to remedy any defect in form or content that is not prejudicial to the defendant's rights. Comment to Pa.R.Crim.P. 109. The prejudice to the defendant "must be beyond the inherent prejudice of being subject to criminal prosecution." <i>Commonwealth v. Zook</i>, 615 A.2d 1, 6 (Pa. 1992). The amendment is not prejudicial if the defendant has adequate notice of his/her alleged criminal conduct and adequate time to prepare for trial. <i>Commonwealth v. Slick</i>, 639 A.2d 482, 489 (Pa. Super. 1994), <i>appeal denied</i>, 649 A.2d 671 (Pa. 1994).
Any defect raised shall be specifically described on the docket. If the MDJ finds the defect to be prejudicial in a summary case, he/she shall record the decision on the docket as "discharge of the defendant" or "dismissal of the case" instead of "not guilty."	Comment to Pa.R.Crim.P. 109; <i>see also</i> Pa.R.Crim.P. 135 (discussed in Checklist 3-1(7) below).
☐ 4. Public discussion of pending or imminent criminal litigation by court personnel. All court personnel are	Pa.R.Crim.P. 111.

prohibited from disclosing to any person, without court permission, information relating to a pending criminal case that is not part of the public record of the court. Specifically prohibited is disclosure of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public. ☐ 5. Public comment by MDJ. MDJs shall abstain from making a public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in their court or in any court or make a nonpublic statement that might substantially interfere with a fair trial or hearing. The MDJ shall require their staff to do so as well. MDJs are permitted to make public statements in the course of their official duties and to explain the court's procedures for public information. ☐ 6. Publicity, broadcasting, and recording of proceedings. ☐ a. The MDJ shall: ☐ i. Prohibit the taking of photographs, video, or motion pictures of any judicial proceedings in the hearing room or courtroom or its environs during the judicial proceedings; and ☐ ii. Prohibit the transmission of communications by telephone, radio, television, or advanced communication technology from the hearing room or courtroom or its environs during the progress of, or in connection with, any judicial proceedings, whether or not the court is actually in session. ☐ b. The MDJ may allow: The taking of photographs, or radio or television broadcasting, or broadcasting by advanced communication technology, of judicial proceedings such as the swearing-in of public officials which may be conducted in the hearing room or courtroom.	Pa.R.S.C.M.D.J. 2.10. Pa.R.Crim.P. 112. Pa.R.Crim.P. 112(A)(1). <u>Note:</u> The "environs" of the hearing room or courtroom are the area immediately surrounding the entrances and exits to the hearing room or courtroom. Pa.R.Crim.P. 112(A). Pa.R.Crim.P. 112(A)(2). <u>Note:</u> Nothing in Rule 112 is meant to prohibit the use of advanced communication technology for the purposes of conducting court proceedings. Comment to Pa.R.Crim. P. 112. Pa.R.Crim.P. 112(B).
--	---

☐ c. Recording of proceedings. The MDJ, attorney for the Commonwealth, the affiant, or the defendant may cause a recording to be made of the proceedings as an aid to the preparation of the written record for subsequent use in the case, but such a recording shall not be publicly displayed or disseminated in any manner except in a court during a trial or hearing. Unlawful use of audio or video device in court. It is unlawful for a person, in any manner and for any purpose, to use or operate a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility without the approval of the court or presiding judicial officer or except as provided by rules of court. "Judicial facility" means a courtroom, hearing room or judicial chambers used by the court to conduct trials or hearings or any other court-related business or any other room made available to interview witnesses. A first offense is a second degree misdemeanor and a second or subsequent offense is a first degree misdemeanor.	Pa.R.Crim.P. 112(D). <u>Note:</u> "Affiant" is defined as "any responsible person capable of taking an oath who signs, swears to, affirms, or, when permitted by these rules, verifies a complaint and appreciates the nature and quality of that person's act." Pa.R.Crim.P. 103. 18 Pa.C.S. § 5103.1.
☐ d. Remedies for violation of this rule. If it appears to the MDJ that a violation of Rule 112 has resulted in substantial prejudice to the defendant, the MDJ--upon application of the attorney for the Commonwealth or the defendant--may: ☐ i. Quash the proceedings at the preliminary hearing and order another preliminary hearing to be held before the same MDJ at a subsequent time without additional costs being taxed; ☐ ii. Discharge the defendant on nominal bail (if in custody) or continue bail (if at liberty), pending further proceedings; ☐ iii. Order all costs of the MDJ forfeited in the original proceedings; or	Pa.R.Crim.P. 112(E). Pa.R.Crim.P. 112(E)(1). Pa.R.Crim.P. 112(E)(2). Pa.R.Crim.P. 112(E)(3).

☐ iv. Adopt any, all, or a combination of the foregoing remedies as the nature of the case requires in the interests of justice.	Pa.R.Crim.P. 112(E)(4).
☐ 7. Transcript of proceedings before an MDJ. Since MDJ courts are not courts of record, a written verbatim transcript of the proceedings is not required.	Pa.R.Crim.P. 115. <u>Note:</u> Pursuant to Pa.R.Crim.P. 112(D) (Checklist 3-1(6)(c) above), the Commonwealth, affiant, or defendant may cause a verbatim recording to be made. In addition, some judicial districts may make recordings of proceedings before MDJs.
Within the context of criminal proceedings before an MDJ, the term "transcript" refers to the case information that the MDJ shall prepare and forward to the court of common pleas when an appeal is taken in summary cases or the defendant is held for court in court cases.	Pa.R.Crim.P. 135(A). <u>Note:</u> An accurate docket must be maintained as this is essential for the preparation of all the necessary transcript information. Comment to Pa.R.Crim.P. 135.
The transcript shall contain the following, where applicable:	<u>Note:</u> MDJS Form 1200 is the Docket Transcript form.
☐ i. The date and place of the hearings;	Pa.R.Crim.P. 135(B)(1).
☐ ii. The names and addresses of the prosecutor, defendant and witnesses;	Pa.R.Crim.P. 135(B)(2).
☐ iii. The names and office addresses of counsel in the proceeding;	Pa.R.Crim.P. 135(B)(3).
☐ iv. The charge(s) against the defendant as set forth in the complaint;	Pa.R.Crim.P. 135(B)(4).
☐ v. The date of issuance of any citation, summons, or arrest warrant and the return of service thereon;	Pa.R.Crim.P. 135(B)(5).
☐ vi. A statement whether the parties and witnesses were sworn and which of these persons testified;	Pa.R.Crim.P. 135(B)(6).
☐ vii. When the defendant is held for court, the amount of bail set;	Pa.R.Crim.P. 135(B)(7).

☐ viii. The nature of the bail posted and the name and address of the corporate or individual surety; ☐ ix. A notation that the defendant has or has not been fingerprinted; ☐ x. A specific description of any defect properly raised pursuant to Pa.R.Crim.P. 109 (see Checklist 3-1(3) above); ☐ xi. A notation that the defendant was advised of the right to apply for the assignment of counsel; ☐ xii. The defendant's plea of guilty/not guilty, the decision that was rendered and the date thereof, and the judgment of sentence and place of confinement, if any; and ☐ xiii. Any other information required by the rules to be in the MDJ's transcript.	Pa.R.Crim.P. 135(B)(8). Pa.R.Crim.P. 135(B)(9). <u>Note:</u> MDJS Form 405 is the Fingerprint Order form. Pa.R.Crim.P. 135(B)(10). Pa.R.Crim.P. 135(B)(11). Pa.R.Crim.P. 135(B)(12). Pa.R.Crim.P. 135(B)(13).
☐ 8. Two-way simultaneous audio-visual communication in criminal proceedings. An MDJ may use two-way simultaneous audio-visual communication at any criminal proceeding except: ☐ i. Preliminary hearings; ☐ ii. Proceedings pursuant to Pa.R.Crim.P. 569(A)(2)(b) (relating to the examination of a defendant by a mental health expert); ☐ iii. Proceedings under Pa.R.Crim.P. 595 and 597 (relating to proceedings for transfer from juvenile to criminal court);	Pa.R.Crim.P. 119(A). <u>Note:</u> Two-way simultaneous audio-visual communication is a type of advanced communication technology, which is defined as "any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail." Pa.R.Crim.P. 103. Pa.R.Crim.P. 119(A)(1). Pa.R.Crim.P. 119(A)(2). Pa.R.Crim.P. 119(A)(3).

☐ iv. Trials; ☐ v. Sentencing hearings; ☐ vi. Parole, probation, and intermediate punishment revocation hearings; and ☐ vii. Any proceeding in which the defendant has a constitutional or statutory right to be physically present. Defendant's consent. A defendant may, however, consent to have any of the aforementioned proceeding conducted using two-way simultaneous audio-visual communication. Communication with counsel. When counsel is present, the defendant shall be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding. No fee allowed. When a criminal proceeding is conducted using two-way simultaneous audio-visual communication, no fee shall be imposed upon the defendant for its use. ☐ 9. Location of proceedings before MDJs. ☐ a. Generally. An MDJ shall have jurisdiction and authority to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials within the magisterial district to which he/she was elected or appointed. ☐ b. Location of preliminary arraignments. All preliminary arraignments shall be held in the MDJ's established office, a night court, or other facility located within the Commonwealth designated by the president judge or his/her designee.	Pa.R.Crim.P. 119(A)(4). Pa.R.Crim.P. 119(A)(5). Pa.R.Crim.P. 119(A)(6). Pa.R.Crim.P. 119(A)(7). Pa.R.Crim.P. 119(B). <u>Note:</u> "Nothing in [Rule 119] 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." Comment to Pa.R.Crim.P. 119. Pa.R.Crim.P. 119(C). Pa.R.Crim.P. 118. Pa.R.Crim.P. 131(A). Pa.R.Crim.P. 131(A)(1).
--	---

An exception to the foregoing requirement exists for preliminary arraignments conducted by advanced communication technology. Such preliminary arraignments may be conducted from any site within the Commonwealth designated by the president judge or his/her designee.	Pa.R.Crim.P. 131(A)(2). <u>Note:</u> "Advanced communication technology" is defined as "any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail." Pa.R.Crim.P. 103.
☐ c. Hearings and summary trials. Hearings and summary trials generally shall be held publicly at the MDJ's established office. The president judge or his/her designee may order that a hearing or trial be held in another, more suitable, location within the judicial district for reasons of emergency, security, size, or in the interests of justice.	Pa.R.Crim.P. 131(A)(3). <u>Note:</u> There may be exceptions to a hearing being open to the public, e.g., summary trials or hearings involving minors.
☐ d. Complaints, warrants, bail, etc. An MDJ may receive complaints, issue warrants, set and receive bail, and issue commitments to jail from any location within the judicial district or from an advanced communication technology site within the Commonwealth.	Pa.R.Crim.P. 131(A)(4).
☐ e. Central Courts. Central Courts are magisterial district courts established by the president judge pursuant to Pa.R.Crim.P. 131(B) for preliminary hearings or summary trials in all cases, or a certain class of cases, to be held in a central location or locations within the judicial district at specified times. If local conditions require, the president judge may establish procedures for preliminary hearings or summary trials in all cases, or a certain class of cases, to be held in a central location. The procedures shall provide either for the transfer of the case or of the MDJ to the designated central location as the needs of justice and efficient administration require.	Pa.R.Crim.P. 131(B). <u>Note:</u> In December 2022, Pa.R.Crim.P. 131(B) was amended to require that the creation of any new Central Court be approved by the Supreme Court and to provide procedures and standards for petitions to create such courts.
☐ 10. Temporary assignment of MDJs. The president judge may temporarily assign one or more MDJs from one magisterial district to serve one or more other	Pa.R.Crim.P. 132(A)(1)-(4).

magisterial districts when the assignment is needed: to ensure adequate coverage pursuant to Pa.R.Crim.P. 117; to ensure fair and impartial proceedings; to conduct a preliminary hearing pursuant to Pa.R.Crim.P. 544(B) (preliminary hearing before a different MDJ following re-filing of the complaint); or otherwise for the efficient administration of justice. ☐ a. Notice. When a temporary assignment is made, a notice of assignment shall be filed with the clerk of courts where it shall be available for inspection by police agencies or other interested persons. ☐ b. Motion for temporary assignment. The following motion procedure applies to situations governed by Pa.R.Crim.P. 132(A)(2) and (3) and is not intended to apply to any of the other situations in which president judges make temporary assignments of MDJs; in such situations the president judge may make temporary assignments on his/her own without any motion, notice, response, or hearing. ☐ i. A motion for temporary assignment may be filed on the grounds that it is needed to ensure fair and impartial proceedings. In this situation, reasonable notice and opportunity to respond shall be provided to the parties. ☐ ii. A motion for temporary assignment of an MDJ to conduct a preliminary hearing shall be filed by the attorney for the Commonwealth following re-filing of the complaint pursuant to Pa.R.Crim.P. 544(B).	Pa.R.Crim.P. 132(B). Comment to Pa.R.Crim.P. 132. Pa.R.Crim.P. 132(C). <u>Note:</u> The president judge may order a response and schedule a hearing; however, he/she is not required to conduct "a formal hearing . . . beyond the narrow context of a motion for temporary assignment of [an MDJ] to insure fair and impartial proceedings predicated on allegations which impugn the character or competence of the assigned [MDJ] and which seek the recusal of the assigned [MDJ]." Comment to Pa.R.Crim.P. 132, quoting <i>Commonwealth v. Allem</i>, 532 A.2d 845 (1987). Pa.R.Crim.P. 132(D). <u>Note:</u> Rule 544(B) governs situations where the attorney for the Commonwealth seeks to have the preliminary hearing on the re-filed charges heard before a different MDJ.
--	--

☐ c. Powers of a temporarily assigned MDJ. When an MDJ is temporarily assigned to serve in another magisterial district he/she shall--during the period of assignment--have the same jurisdiction and authority as an MDJ elected and qualified to serve in such magisterial district. An MDJ on temporary assignment in another MDJ district may exercise jurisdiction in both his/her home magisterial district and the magisterial district to which the MDJ has been temporarily assigned.	Pa.R.Crim.P. 133(A). Pa.R.Crim.P. 133(B).
☐ 11. Body cameras in court. ☐ a. Generally. Officers of law enforcement agencies, sheriffs and deputy sheriffs, and judicial security officers (Officers) may wear body cameras and operate them as permitted by state or local court rule, and as may be further authorized under the policies of the Officer's agency unless (1) the wearing and operation of body cameras is expressly prohibited by local rule or court order; or (2) another provision of Pa.R.J.A. 1910(C) prohibits wearing or operation of body cameras. ☐ b. Court proceedings. Generally, a body camera cannot be activated in a courtroom during judicial proceedings except when an Officer, in his or her professional opinion, determines that there is an actual or imminent emergency situation warranting activation in the ordinary course of his or her her duties. In such a situation, the Officer may activate the body camera until such time as in his or her professional judgment the emergency situation has concluded. Notification. If an Officer activates a body camera in an emergency situation, he or she must verbally notify the presiding judge at the first reasonable opportunity after activation. In addition, within one business day of the incident, the Officer or his or her supervisor shall provide the presiding judge a written report of the circumstances surrounding activation, including times of activation/deactivation and an	Pa.R.J.A. 1910(C)(1). Pa.R.J.A. 1910(C)(2). Pa.R.J.A. 1910(C)(3).

explanation of the Officer's actions. The presiding judge shall promptly share the activation report with district court administration. The report shall also be provided to the Officer's law enforcement agency. Release of recording. A body camera recording made in a courtroom during a judicial proceeding may not be released to anyone outside the court and the Officer's law enforcement agency without the express written consent of the president judge of the court. Use and dissemination of a recording made pursuant to Pa.R.J.A. 1910(C) in connection with law enforcement activity also requires express written approval of the president judge of the court.	Pa.R.J.A. 1910(C)(4).
---	-----------------------

C. COUNSEL

A criminal defendant has a right to counsel in court cases and in all summary cases where there is a likelihood of a sentence of imprisonment being imposed. *Alabama v. Shelton*, 535 U.S. 654, 674 (2002); *Scott v. Illinois*, 440 U.S. 367 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 37-38 (1972); Pa.R.Crim.P. 122. The right to counsel also applies to prosecutions for violations of municipal ordinances where there is a likelihood of imprisonment. *Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. 1983). This right may be waived if the correct procedures are followed. *Id.*; Pa.R.Crim.P. 121. Counsel may also be appointed if the defendant lacks the financial resources to retain his/her own counsel. Pa.R.Crim.P. 122 & 123. The procedures for waiver, appointment, and assignment of counsel are discussed in Checklist 3-2 below.

Checklist 3-2: Counsel	Authority/Notes
☐ 1. Waiver of counsel. A defendant may waive his/her right to be represented by counsel in the following manner.	Pa.R.Crim.P. 121(A)(1).
☐ a. Waiver procedure before an MDJ. When a defendant in a summary case (if there is a right	Pa.R.Crim.P. 121(B).

to counsel) or in a preliminary hearing in a court case seeks to waive his/her right to counsel, the MDJ shall ascertain from the defendant whether the waiver is knowing, voluntary, and intelligent. The waiver shall also be in writing: ☐ i. Signed by the defendant, with a representation that the defendant was told of his/her right to be represented by counsel and to have an attorney appointed if the defendant could not afford one, and that the defendant chooses to act as his/her own attorney at the hearing or trial; and ☐ ii. Signed by the MDJ, with a certification that the waiver was made knowingly, voluntarily, and intelligently. ☐ b. Waiver colloquy. To ensure that the waiver is knowing, voluntary, and intelligent, the MDJ shall, at a minimum, elicit the following: ☐ i. That the defendant understands that he/she has the right to be represented by counsel and to have free counsel appointed, if he/she is indigent. ☐ ii. That the defendant understands the nature of the charges against him/her and the elements of each of those charges. ☐ iii. That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged. ☐ iv. That the defendant understands that if he/she waives the right to counsel, he/she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules. ☐ v. That the defendant understands that there are possible defenses to these	<u>Note:</u> MDJS Form 606 is the Waiver of Counsel form. Pa.R.Crim.P. 121(B)(1). Pa.R.Crim.P. 121(B)(2). Pa.R.Crim.P. 121(A)(2). Pa.R.Crim.P. 121(A)(2)(a). Pa.R.Crim.P. 121(A)(2)(b). Pa.R.Crim.P. 121(A)(2)(c). <u>Note:</u> The permissible range of sentences are set forth in 18 Pa.C.S. § 106(b). Pa.R.Crim.P. 121(A)(2)(d). Pa.R.Crim.P. 121(A)(2)(e).
--	---

charges which counsel might be aware of, and if these defenses are not raised at trial they may be permanently lost. ☐ vi. That the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely raised, may be lost permanently; and that if errors occur and are not timely objected to or otherwise timely raised by the defendant, these errors may be lost permanently. Who is to conduct the colloquy? The MDJ may permit the attorney for the Commonwealth or the defendant's attorney to conduct the waiver colloquy; however, the MDJ shall be present during the colloquy. ☐ c. Standby counsel. When the defendant's waiver of counsel is accepted, standby counsel may be appointed. Standby counsel shall attend the proceedings and be available to the defendant for consultation and advice. ☐ 2. Appointment of counsel. ☐ a. When counsel shall be appointed. Counsel shall be appointed: ☐ i. In all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed; ☐ ii. In all court cases, prior to the preliminary hearing, to all defendants who are without financial resources or	Pa.R.Crim.P. 121(A)(2)(f). Pa.R.Crim.P. 121(A)(3). Pa.R.Crim.P. 121(D). <u>Note:</u> It is not required that standby counsel be appointed. Such an appointment would probably be rare in the MDJ context. Pa.R.Crim.P. 122(A)(1). <u>Note:</u> Thus, the MDJ in a summary case should make a pretrial determination, based on his/her experience with the particular offense, as to whether a jail sentence would be likely in the event of a finding of guilt. If in doubt, the MDJ can ask the attorney for the Commonwealth if he/she intends to recommend a jail sentence in the event of conviction. Comment to Pa.R.Crim.P. 122. Pa.R.Crim.P. 122(A)(2).
--	---

who are otherwise unable to employ counsel; or ☐ iii. In all cases, by the MDJ, on his/her own motion, when the interests of justice require. ☐ b. Procedure when counsel is appointed. When counsel is appointed: ☐ i. The MDJ shall enter an order indicating the name, address, and phone number of appointed counsel, which shall be served on the defendant, appointed counsel, the previous attorney (if any), and the attorney for the Commonwealth; and ☐ ii. The appointment shall be effective until final judgment, including any proceedings on direct appeal. ☐ c. Motion for change of appointed counsel. A motion for change of appointed counsel made by the defendant shall not be granted except for substantial reasons. To satisfy this standard, the defendant must show that he/she has an irreconcilable difference that precludes counsel from representing him/her. ☐ d. Choice of appointed counsel. Even though an indigent defendant may be entitled to appointed counsel, he/she is not entitled free counsel of his/her own choosing. ☐ 3. Application for assignment of counsel in court cases. A defendant requesting assignment of counsel in a court case shall file a signed and verified application for assignment of counsel setting forth the facts showing	Pa.R.Crim.P. 122(A)(3); Comment to Pa.R.Crim.P. 122. Pa.R.Crim.P. 122(B). <u>Note:</u> Individual judicial districts may have procedures for appointment of counsel at the MDJ level. The MDJ should determine if any such local procedures exist and follow them. As a practical matter this may usually consist of referring the defendant to the public defender's office for a determination of eligibility. Pa.R.Crim.P. 122(B)(1). Pa.R.Crim.P. 122(B)(2). Pa.R.Crim.P. 122(C). <i>Commonwealth v. Wright</i>, 961 A.2d 119, 134 (Pa. 2008). <i>Commonwealth v. Chumley</i>, 394 A.2d 497, 507 (Pa. 1978), <i>cert. denied</i>, 440 U.S. 966 (1979). Pa.R.Crim.P. 123.
---	--

he/she is without financial resources or is otherwise unable to employ counsel.	
---	--

D. SEARCH WARRANTS

A search warrant may be issued by an MDJ within the judicial district where the person or property to be searched is located. Pa.R.Crim.P. 200. In addition, an MDJ assigned to another judicial district as part of a regional administrative unit may issue a search warrant for the assigned judicial district. Pa.R.J.A. 701(E)(1) (stating that MDJs assigned to a judicial district other than their own shall exercise the same power and authority as an MDJ of the judicial district to which they have been assigned). The following checklist details the procedures for issuing and serving a search warrant.

Checklist 3-3: Search Warrants	Authority/Notes
☐ 1. Purpose of the warrant. A search warrant may be issued to search for and seize: ☐ a. Contraband, the fruits of a crime, or things otherwise criminally possessed; or ☐ b. Property that is or has been used as the means of committing a criminal offense; or ☐ c. Property that constitutes evidence of the commission of a criminal offense.	Pa.R.Crim.P. 201. Pa.R.Crim.P. 201(1). Pa.R.Crim.P. 201(2). Pa.R.Crim.P. 201(3).
☐ 2. Approval of search warrant applications by an attorney for the Commonwealth (a/k/a local option). The district attorney may require that search warrant applications be pre-approved by an attorney for the Commonwealth. If the district attorney elects to require such approval, he/she shall file a certification with the court of common pleas specifying the circumstances under which search warrant applications shall require prior approval, and the court of common pleas shall promulgate a local rule to that effect.	Pa.R.Crim.P. 202(A)-(B).
☐ 3. Requirements for issuance of a search warrant.	

☐ a. Advanced communication technology. At the MDJ's discretion, advanced communication technology may be used to submit a search warrant application and affidavits(s) and to issue a search warrant. Immediately prior to submitting a search warrant application and affidavit to an MDJ using advanced communication technology, the affiant shall personally communicate with the MDJ in person, by telephone, or by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the MDJ shall verify the identity of the affiant, and orally administer the oath to the affiant. In any telephonic communication, if the MDJ has a concern regarding the identity of the affiant, he/she may require the affiant to communicate by a device allowing for two-way simultaneous audio-visual communication or may require the affiant to appear in person. ☐ b. Probable cause. No search warrant shall be issued except upon probable cause supported by one or more affidavits sworn/affirmed to before the MDJ in person or using advanced communication technology. The MDJ, in determining whether there is probable cause, shall not consider any evidence outside the affidavits. The MDJ's task is to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit--including the veracity and basis of knowledge of persons supplying hearsay-- there is a fair probability that contraband or evidence of a crime will be found in a particular place.	Pa.R.Crim.P. 203(A). <u>Note:</u> "Advanced communication technology" is defined as "any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail." Pa.R.Crim.P. 103. Pa.R.Crim.P. 203(C). <u>Note:</u> Verification requirements can include, but aren't limited to: a "call back" system where the MDJ would call the agency or department the affiant indicates is seeking the warrant; a "signature comparison" system; or an established password system. Comment to Pa.R.Crim.P. 203. Pa.R.Crim.P. 203(B). <u>Note:</u> The limitation that only the affidavits are to be considered in determining if probable cause is present also extends to hearings on motions to return evidence or motions to suppress evidence. Pa.R.Crim.P. 203(D). <i>Commonwealth v. Gray</i>, 503 A.2d 921, 925 (Pa. 1985).
---	--

Probable cause is demonstrated if the facts in the affidavit reasonably show that the items sought are connected to criminal activity and they will be found in the place to be searched at the time of the search.	<i>Commonwealth v. Davis</i>, 480 A.2d 1035, 1040 n.2 (Pa. Super. 1984).
Four corners rule. In determining if probable cause is present the MDJ "may not consider any evidence outside the four corners of the affidavit."	<i>Commonwealth v. Sharp</i>, 683 A.2d 1219, 1223 (Pa. Super. 1996).
☐ c. Nighttime search. No search warrant shall authorize a nighttime search (between 10:00 p.m. and 6:00 a.m.) unless the affidavits show additional reasonable cause for a nighttime search.	Pa.R.Crim.P. 203(E); 206(7).
☐ d. Anticipatory search warrant. A search warrant may be issued in anticipation of a future event as long as the warrant is based upon an affidavit showing probable cause that, at some future time, but not currently, certain evidence of a crime will be located at a specified place.	Pa.R.Crim.P. 203(F). <u>Note:</u> An anticipatory search warrant is one based on an affidavit showing probable cause that at some future time (but not presently) certain evidence of a crime will be located at a specified place. <i>Commonwealth v. Glass</i>, 754 A.2d 655, 656 (Pa. 2000).
☐ e. Application for search warrant. An application for a search warrant shall be supported by written affidavits signed and sworn to or affirmed before an MDJ. The affidavits shall:	Pa.R.Crim.P. 206. <u>Note:</u> MDJS Form 410A is the Search Warrant Application form.
☐ i. State the affiant's name and department, agency, or address;	Pa.R.Crim.P. 206(1).
☐ ii. Identify specifically the items or property to be searched for or seized;	Pa.R.Crim.P. 206(2).
☐ iii. Name or describe with particularity the person or place to be searched;	Pa.R.Crim.P. 206(3).
☐ iv. Identify the owner, occupant, or possessor of the place to be searched;	Pa.R.Crim.P. 206(4).
☐ v. Specify or describe the crime which has been or is being committed;	Pa.R.Crim.P. 206(5).
☐ vi. Specifically set forth:	Pa.R.Crim.P. 206(6).

(A) The facts and circumstances which form the basis of the affiant's conclusion that there is probable cause to believe that the items or property identified as evidence, fruits of crime, contraband are, or are expected to be, otherwise unlawfully possessed or subject to seizure. (B) That said items are, or are expected to be, located on the particular person or at the particular place described in the application; ☐ vii. If a nighttime search (between 10:00 p.m. and 6:00 a.m.) is requested, set forth additional reasonable cause for seeking permission to search at night; and ☐ viii. If the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Pa.R.Crim.P. 211, state the facts and circumstances which are alleged to establish good cause for sealing the affidavit(s). A request for a sealed search warrant shall be presented to a common pleas court judge or a justice or judge of an appellate court--it cannot be presented to an MDJ. ☐ ix. Certification that the application complies with the UJS Public Access Policy regarding confidential information and documents. ☐ f. Original and copy of warrant. When the search warrant is issued, the MDJ shall provide the original to the affiant and the MDJ shall retain a contemporaneously prepared copy.	<u>Note:</u> In the case of an anticipatory search warrant for a prospective event, there must also be a statement explaining how the affiant knows the items to be seized at a later time will be at the place specified. Comment to Pa.R.Crim.P. 206; <i>see also Commonwealth v. Coleman</i>, 830 A.2d 554 (Pa. 2003); <i>Commonwealth v. Glass</i>, 754 A.2d 655 (Pa. 2000). Pa.R.Crim.P. 206(7). Pa.R.Crim.P. 206(8). Pa.R.Crim.P. 211(b)(1). Pa.R.Crim.P. 206(9). Pa.R.Crim.P. 203(G). <u>Note:</u> If the warrant is issued using advance communication technology, the version delivered to the police officer is considered to be the original. Comment to Pa.R.Crim.P. 203.
--	---

☐ 4. Content of search warrant. A search warrant shall be signed by the MDJ and shall: ☐ a. Specify the date and time it was issued; ☐ b. Specifically identify the property to be seized; ☐ c. Name or describe with particularity the person or place to be searched; ☐ d. Direct that the search either be executed: ☐ i. Within a specified time period, not to exceed 2 days from the time of issuance, or ☐ ii. When the warrant is issued for a prospective event, only after the specified event occurs; ☐ e. Direct that the warrant be served in daytime unless otherwise authorized on the warrant; ☐ f. Designate the title of the judicial officer to whom the warrant shall be returned; and	Pa.R.Crim.P. 205. Pa.R.Crim.P. 205(1). Pa.R.Crim.P. 205(2). Pa.R.Crim.P. 205(3). Pa.R.Crim.P. 205(4)(a)-(b). <u>Note:</u> Two days is the outside limit; if the MDJ believes a lesser period is reasonable, he/she should specify such period on the warrant. Comment to Pa.R.Crim.P. 205. Pa.R.Crim.P. 205(5). <u>Note:</u> For purposes of the search warrant rules, the term "daytime" means the hours of 6:00 a.m. to 10:00 p.m. <i>Id.</i> A warrant for a nighttime search may also be served during the day. Comment to Pa.R.Crim.P. 205. Pa.R.Crim.P. 205(6). <u>Note:</u> This provision assumes the warrant will list the correct judicial officer to whom the warrant is to be returned. Comment to Pa.R.Crim.P. 205. In cases where the warrant is incorrectly returned to the issuing MDJ, he/she should forward it to the correct judicial officer who will administer the warrant and supporting documents as required under the rules. <i>Id.</i> Determining the correct judicial officer can be unclear in situations where the alleged crime is committed in one judicial district but the warrant is issued in another judicial district.
---	---

☐ g. Certify that the MDJ has found probable cause based upon the facts sworn to or affirmed before him/her by written affidavit(s) attached to the warrant. ☐ h. The warrant may authorize seizure of electronic storage media or electronically stored information and unless otherwise specified the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant refers to the seizure of the media/information and not to any later, off-site copying or review.	Pa.R.Crim.P. 205(7). Pa.R.Crim.P. 205(B). <u>Note:</u> Electronically stored information "includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. This definition is intended to cover all current types of computer-based information and to encompass future changes and developments. For purposes of this rule, the term 'seizure' includes the copying of material or information that is subject to the search warrant. This includes the copying of electronically stored information for later analysis. Comment to Pa.R.Crim.P. 205.
There is an additional warrant requirement under Pa.R.Crim.P. 205(8) that relates to sealed warrants. As previously mentioned, however, such warrants are not within the jurisdiction of an MDJ.	Pa.R.Crim.P. 211(B)(1).
☐ 5. Service and return of the search warrant. ☐ a. Who may serve the search warrant. A search warrant shall only be served by a law enforcement officer. ☐ b. Copy of warrant and receipt. If the law enforcement officer takes property pursuant to the search warrant, he/she shall leave a copy of the warrant and affidavit(s) and a receipt for the seized property. If no property is seized, the officer shall leave a copy of the warrant and affidavit(s). If no one is present during the	Pa.R.Crim.P. 204. <u>Note:</u> A "law enforcement officer" is defined as "any person who is by law given the power to enforce the law when acting within the scope of that person's employment." Pa.R.Crim.P. 103. Pa.R.Crim.P. 208(A)-(B).

search, the foregoing information shall be left at a conspicuous location. ☐ c. Return of warrant. The law enforcement officer executing the search warrant shall return it promptly after the search is complete along with the inventory (see below). Unexecuted search warrants shall be promptly returned to the MDJ once the time authorized for execution has expired. The affiant shall retain a copy of the unexecuted search warrant. ☐ d. Inventory of seized property. The law enforcement officer serving the warrant shall make an inventory of the items seized in the presence of the person from whom these items are taken, if feasible, or in the presence of at least one witness if not feasible. The officer shall sign the inventory and return it to, and file it with, the MDJ. Upon request, the MDJ to whom the return was made shall cause a copy of the inventory to be given to the applicant for the warrant and the person from whom the property was taken. ☐ e. Return of papers to clerk of courts. The judicial officer to whom the warrant was returned is required to file the search warrant, all supporting affidavit(s), and inventory with the clerk of the court of common pleas of the judicial district in which the property was seized. ☐ f. Public dissemination of search warrant information. The MDJ shall not allow public examination or dissemination of any search warrant or affidavit of probable cause until after the warrant has been executed. Unexecuted warrants. Unexecuted warrants and their associated affidavits are <u>not</u> public records and upon return to the MDJ shall be destroyed.	Pa.R.Crim.P. 209(A). <u>Note:</u> MDJ office staff would then docket it in the MDJS system. Pa.R.Crim.P. 209(B). <u>Note:</u> Unexecuted search warrants are not public records and shall not be included in the case file or docketed. Comment to Pa.R.Crim.P. 209. Pa.R.Crim.P. 209(C). Pa.R.Crim.P. 209(D). Pa.R.Crim.P. 210. <u>Note:</u> The practice in this regard may vary from county to county depending on the preference of the particular clerk of courts. Pa.R.Crim.P. 212(A). Pa.R.Crim.P. 212(B).
--	--

Juvenile warrants. Juvenile warrants are <u>not</u> available for public inspection.	Pa.R.Crim.P. 212(B); Pa.R.J.C.P. 105.
---	--

E. EXTRADITION AND INTER-COUNTY DETENTION

Extradition and inter-county detention are related terms that each involve persons apprehended in the judicial district who are charged with criminal offenses in another place. Extradition concerns persons apprehended in the judicial district who have been charged with crimes in another state, while inter-county detention concerns persons apprehended in the judicial district who are charged with crimes in another county.

1. Extradition

Extradition is the process by which one state surrenders to another state an individual accused or convicted of a crime outside its territory and within the territorial jurisdiction of the other state upon demand. Black's Law Dictionary (11th ed. 2019). If the requesting state believes a fugitive is present in Pennsylvania, its executive authority (usually the governor) can issue a demand to the governor of Pennsylvania. 42 Pa.C.S. §§ 9123 & 9124. If the governor of Pennsylvania agrees that the fugitive should be surrendered to the requesting state, he/she may issue an arrest warrant (known as a governor's warrant). 42 Pa.C.S. § 9128. Persons arrested pursuant to a governor's warrant are to be brought before a court of record and thus are not within the MDJ's jurisdiction. 42 Pa.C.S. § 9131.

There are, however, situations where the fugitive may be brought before an MDJ. Both situations involve arrests made prior to a request for extradition from another state. 42 Pa.C.S. §§ 9134 (arrest pursuant to a fugitive warrant) & 9135 (arrest without a warrant). The procedures for handling these situations are discussed in Checklist 3-4 below.

Important: The information provided in Checklist 3-4 was derived from statute, but individual counties may have varying practices for handling extradition, and the MDJ should consult with the court administrator's office for the judicial district to determine what the local practice is in regard to extradition.

Checklist 3-4: Extradition Procedure	Authority/Notes
☐ 1. Arrest prior to requisition upon a fugitive warrant. An MDJ shall issue an arrest warrant for any person believed to be in the Commonwealth based either on the charge of any credible person under oath before the MDJ or upon a complaint and affidavit made before the MDJ. ☐ a. Charge. A charge shall allege that: ☐ i. The person either committed a crime in another state and (except as stated in 3-4(5) below) fled from justice; or ☐ ii. The person was convicted of a crime in another state and subsequently escaped from confinement or broke the terms of his/her bail, probation, or parole. ☐ b. Complaint and affidavit. A complaint and affidavit shall set forth, upon the affidavit of any credible person in another state, that: ☐ i. A crime has been committed in that state and the accused has been charged in that state with the crime and (except as stated in 3-4(5) below) has fled from justice; or ☐ ii. The accused was convicted of a crime in that state and subsequently escaped from confinement or broke the terms of his/her bail, probation or parole.	42 Pa.C.S. § 9134. <u>Note:</u> This statute is comprised of a single 288-word sentence that is a challenge to decipher. Nevertheless, upon close reading it appears to contemplate two modes of seeking a fugitive warrant: (1) a charge under oath before a judge/issuing authority; and (2) a complaint and affidavit made before a judge/issuing authority by a person in another state. 42 Pa.C.S. § 9134. <u>Note:</u> If a crime committed in Pennsylvania or another state intentionally results in a crime in the state seeking extradition, then the charge need not allege that the person fled from justice. 42 Pa.C.S. § 9127 (discussed in 3-4(5) below). 42 Pa.C.S. § 9134. <u>Note:</u> If a crime committed in Pennsylvania or another state intentionally results in a crime in the state seeking extradition, then the complaint and affidavit need not allege that the person fled from justice. 42 Pa.C.S. § 9127 (discussed in 3-4(5) below).

☐ c. Issuance of the fugitive warrant. If the criteria in Checklist 3-4(1)(a) or (b) are met, the MDJ shall issue an arrest warrant directed at any peace officer commanding him/her to apprehend the person named and bring him/her before the issuing MDJ or another judge or issuing authority who may be available in, or convenient of access to, the place of arrest to answer the charge or complaint and affidavit. A certified copy of the sworn charges or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. ☐ 2. Arrest without a warrant. A person may be arrested without a warrant upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term in excess of one year. Upon arrest, the person shall be taken before a judge or issuing authority with all practicable speed, and a complaint shall be made against him/her under oath setting forth the ground for arrest as in 42 Pa.C.S. § 9134 (see Checklist 3-4(1)). Thereafter, the person's answer shall be heard as if he/she was arrested on a warrant. ☐ 3. Commitment to await requisition. If, from the examination before the MDJ, it appears that the person held is in fact the person charged with having committed the crime alleged and (except as stated in Checklist 3-4(5) below) that he/she has fled from justice, the MDJ shall, by warrant reciting the accusation, commit the person to the county jail for such time specified in the warrant (but not to exceed thirty (30) days) as will enable the arrest of the accused to be made pursuant to a governor's warrant issued pursuant to the request of the executive authority of the requesting state, unless the accused posts bail (see Checklist 3-4(4)) or is legally discharged. At the preliminary arraignment, the MDJ is only required to determine that the person held appears to be the person charged in the other state; it is not required that the MDJ determine whether the identification is sufficient to support extradition, as this is a	42 Pa.C.S. § 9134. <u>Note:</u> A "peace officer" is defined as "[a]ny person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, [(j)whether that duty extends to all offenses or is limited to specific offenses[]]" or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency)' [and] . . . shall also include any member of any park police department in any county of the third class." 18 Pa.C.S. § 501. 42 Pa.C.S. § 9135. 42 Pa.C.S. § 9136. <u>Note:</u> If a crime committed in Pennsylvania or another state intentionally results in a crime in the state seeking extradition, then the MDJ need not determine that the person fled from justice. 42 Pa.C.S. § 9127 (discussed in 3-4(5) below). <i>Commonwealth ex rel. Lattimore v. Gedney</i>, 363 A.2d 786, 792-93 (Pa. Super. 1976).
---	---

determination to be made by the court of common pleas at a subsequent time. Notice to accused. As this is a preliminary arraignment, it is advisable that the MDJ advise the accused of the demand for his/her surrender and the charges against him/her and of his/her rights such as counsel, a preliminary hearing (except in cases presented to an indicting grand jury under Pa.R.Crim.P. 556.2, and bail. The accused should also be advised of his/her habeas corpus rights. ☐ 4. Bail. Unless the prisoner is charged with a capital offense or one punishable by life imprisonment under the laws of the state where it was committed, an MDJ may admit the prisoner to bail by bond and with sufficient sureties and in such sum as he/she deems proper upon the condition that the prisoner subsequently appear before the MDJ at a time specified in the bond and to surrender to be taken into custody upon a governor's warrant from the requesting state. Forfeiture of bail. If a prisoner released on bail fails to appear and surrender him/herself according to the conditions of the bond, the MDJ shall declare the bond forfeited and order his/her immediate arrest without warrant if he/she is still within Pennsylvania. Recovery may be had on the bond by the Commonwealth as in the case of other bonds given by the accused in criminal proceedings within this Commonwealth. ☐ 5. Extradition of persons not present in the demanding state at the time the crime is committed. The Governor of Pennsylvania may also surrender, upon demand of the executive authority of another state, any person in Pennsylvania charged in the other state with committing an act in Pennsylvania or in a third state intentionally resulting in a crime in the demanding state. The provisions of the Uniform Criminal Extradition Act (42 Pa.C.S. § 9121-9148) that are not otherwise consistent, shall apply even though the person was not in the demanding state at the time of the commission of the crime and has not fled from the demanding state.	<i>See e.g.,</i> 42 Pa.C.S. § 9131; Pa.R.Crim.P. 540(F). 42 Pa.C.S. § 9137. <u>Note:</u> Bail procedures in court cases are discussed in Section V(C)--specifically in Checklists 5-5, 5-6, and 5-7 of that section. 42 Pa.C.S. § 9139. 42 Pa.C.S. § 9127.
--	--

2. Inter-County Detention

Inter-county detention involves persons apprehended in one county of Pennsylvania who committed a crime in another county of Pennsylvania and fled, or were convicted of a crime in another county and subsequently escaped confinement or broke the terms of their bail, probation, or parole. 42 Pa.C.S. § 9161. Checklist 3-5 discusses the procedures for handling this situation.

Checklist 3-5: Inter-County Detention Procedures	Authority/Notes
☐ 1. Arrest prior to requisition upon a warrant. An MDJ shall issue an arrest warrant for any person believed to be in the Commonwealth based either on the charge of any credible person under oath before the MDJ or upon a complaint and affidavit made before the MDJ. ☐ a. Charge. A charge shall allege that: ☐ i. The person either committed a crime in any other county in Pennsylvania and fled from justice; or ☐ ii. The person was convicted of a crime in another county and subsequently escaped from confinement or broke the terms of his/her bail, probation, or parole. ☐ b. Complaint and affidavit. A complaint made before any judge or issuing authority in Pennsylvania setting forth in an affidavit of any credible person based on information received by computer check or other means of electronic communication, or upon the affidavit of a credible person from the charging county that: ☐ i. A crime has been committed there and the accused has been charged in that county with the crime and has fled from justice; or ☐ ii. The accused was convicted of a crime in the other county and subsequently escaped from confinement or broke the terms of his/her bail, probation or parole.	42 Pa.C.S. § 9161. 42 Pa.C.S. § 9161. 42 Pa.C.S. § 9161.

☐ c. Issuance of the fugitive warrant. If the criteria in Checklist 3-5(1)(a) or (b) are met, the MDJ shall issue an arrest warrant directed to any peace officer, commanding him/her to apprehend the person named and bring him/her before the issuing MDJ or another judge or issuing authority who may be available in, or have convenient access to, the place of arrest, to answer the charge or complaint and affidavit. A certified copy of the sworn charges or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.	42 Pa.C.S. § 9161. <u>Note:</u> A "peace officer" is defined as "[a]ny person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, [(j)whether that duty extends to all offenses or is limited to specific offenses[]], or any person on active [s]tate duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency) [and] shall also include any member of any park police department in any county of the third class." 18 Pa.C.S. § 501. 42 Pa.C.S. § 9161.
☐ 2. Arrest without a warrant. A person may be arrested without a warrant upon reasonable information that he/she stands charged in the courts of another county of this Commonwealth with a crime punishable by death or imprisonment for a term in excess of one year. Upon arrest, the person shall be taken before a judge or issuing authority with all practicable speed, and a complaint shall be made against him/her under oath setting forth the ground for arrest as in 42 Pa.C.S. § 9161 (Checklist 3-5(1)). Thereafter, the person's answer shall be heard as if he/she was arrested on a warrant pursuant to Pa.R.Crim.P. 517 (see Checklist 5-3(5)).	42 Pa.C.S. § 9162. <u>Note:</u> The procedure following arrest are the same as set forth in Checklist 5-3(5).
☐ 3. Commitment to await requisition. If, from the examination before the MDJ, it appears that the person held is in fact the person charged with having committed the crime alleged and that he/she has fled from justice, the MDJ shall, by warrant reciting the accusation, commit the person to the county jail for such time specified in the warrant (not to exceed five (5) days) as will enable the arrest of the accused to be made pursuant to a warrant of the charging county, unless the accused posts bail (see Checklist 3-5(4)) or is legally discharged.	42 Pa.C.S. § 9163.
☐ 4. Bail. Unless the prisoner is charged with a capital offense or one punishable by life imprisonment under the laws of this Commonwealth, an MDJ may admit the prisoner to bail by bond and with sufficient sureties and	42 Pa.C.S. § 9164. <u>Note:</u> Bail procedures in court cases are discussed in Section V(C)--

in such sum as he/she deems proper, conditioned upon the prisoner's appearance before the MDJ at a time specified in the bond and for his/her surrender to be arrested upon the warrant of the charging county.	specifically in Checklists 5-5, 5-6, and 5-7 of that section.
---	---

F. JUVENILE DELINQUENCY ARREST WARRANTS

Although juvenile delinquency matters are typically outside of the jurisdiction of the MDJ courts, there is one area that the Rules of Juvenile Court Procedure state could come before an MDJ: arrest warrants. Pa.R.J.C.P. 120 & 210. Under Rule 210, an issuing authority designated by the president judge may issue an arrest warrant in a delinquency matter. Checklist 3-6 below outlines the procedures for issuance of such a warrant.

Checklist 3-6: Delinquency Arrest Warrant Procedure	Authority/Notes
☐ 1. Application for warrant. An application for an arrest warrant for a juvenile shall be made to either the president judge or an MDJ designated by the president judge. If the district attorney has filed a certification pursuant to Pa.R.J.C.P. 231, no application for an arrest warrant may be submitted to an MDJ unless it has been approved by the district attorney.	Pa.R.J.C.P. 210(A). Pa.R.J.C.P. 210(B).
☐ 2. Requirements for issuance. The arrest warrant shall only be issued on probable cause supported by one or more affidavits sworn to before the MDJ. In determining probable cause the MDJ may not consider any evidence outside the affidavits.	Pa.R.J.C.P. 211(A).
☐ 3. Duplicate warrants. If necessary or desirable, duplicate arrest warrants may be issued which shall have the same force and effect as the original. Costs and service fees may only be assessed on the original. An alias warrant may be issued following service and execution of the original warrant if the purpose for which the original warrant was issued has not been accomplished.	Pa.R.J.C.P. 212(A). Pa.R.J.C.P. 212(B).
☐ 4. Procedure following issuance.	

☐ a. Transmission of file. If the MDJ issues the warrant, he/she shall forward the juvenile case file to the clerk of courts immediately or no later than the next business day. ☐ b. Return of arrest warrant. Following execution of the warrant it shall be returned to the juvenile probation office which shall, immediately and no later than the next business day, notify the MDJ that the warrant has been executed. ☐ c. Closing the case. Once the MDJ receives notice of execution, he/she shall mark the arrest warrant served and close the case. ☐ 5. Confidentiality. When issuing an arrest warrant, the MDJ is required to maintain the confidentiality of the records as required by Pa.R.J.C.P. 160.	Pa.R.J.C.P. 210(D). Pa.R.J.C.P. 210(E). Pa.R.J.C.P. 210(F). Comment to Pa.R.J.C.P. 210.
--	---

IV. CRIMINAL: SUMMARY OFFENSES

A. INTRODUCTION

The criminal offenses that an MDJ handles are divided into two broad categories: summary offenses, which are discussed in this section, and non-summary offenses--also referred to as court cases--that are discussed in Section V. Summary offenses are those that are designated as such under the Crimes Code or other statute, or that carry a potential term of imprisonment of not more than 90 days. 18 Pa.C.S. § 106(c). Violations of municipal ordinances can also be summary offenses. If a defendant is charged with a felony or misdemeanor offense in addition to a summary offense, the case should proceed as a court case in the manner discussed in Section V. Summary offenses consist of two main categories: traffic and non-traffic offenses.

CAVEAT: The following section is based primarily upon the general rules of court, case law, and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that also affect these procedures. The MDJ should familiarize him/herself with any such local rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. INSTITUTING SUMMARY CRIMINAL PROCEEDINGS

Generally, a summary offense proceeding before an MDJ may be initiated in one of four ways: (1) the issuance of a citation directly to the defendant (Pa.R.Crim.P. 405 - 409); (2) the filing of a citation with the MDJ when it is not issued directly to the defendant (Pa.R.Crim.P. 410 - 414); (3) the filing of a summary complaint by a private citizen (Pa.R.Crim.P. 420 - 424); or (4) arrest without a warrant as authorized by law (Pa.R.Crim.P. 440 - 441).

Except as otherwise provided, prosecution of a summary offense shall be commenced within 2 years after the alleged offense is committed. 42 Pa.C.S. § 5552(a). Summary traffic offenses generally shall be commenced within 30 days after commission of the alleged offense or within 30 days after discovery of the

commission of the offense or the identity of the offender, whichever is later, although there are exceptions to this time limit. 42 Pa.C.S. § 5553.

1. Institution of Proceedings: Direct Issuance of Citation

Many summary cases will begin with a law enforcement officer issuing a completed citation directly to the defendant. Pa.R.Crim.P. 402 & 405. These cases are handled as set forth in Checklist 4-1 below.

Checklist 4-1: Direct Issuance of Citation	Authority/Notes
☐ 1. Contents of the citation. The citation shall contain: ☐ a. The name, address, and badge number (if any) of the law enforcement officer; ☐ b. The defendant's name and address; ☐ c. A notation if the defendant is under 18 years of age and whether his/her parents or guardians have been notified of the charge(s); ☐ d. The date and time the alleged offense was committed and, if the day of the week is an essential element of the offense, it shall also be specifically set forth; ☐ e. The place where the offense is alleged to have been committed; ☐ f. A citation to the specific section and subsection of the statute/ordinance allegedly violated, along with a summary of the facts sufficient to advise the defendant of the nature of the offense charged; ☐ g. The date the citation was issued; ☐ h. A notation as to whether criminal laboratory services have been requested;	Pa.R.Crim.P. 403(A)(1). Pa.R.Crim.P. 403(A)(2). Pa.R.Crim.P. 403(A)(3). <u>Note:</u> The parental notification requirement does not apply to charges under the Vehicle Code (Title 75) except for charges under 75 Pa.C.S. § 1543 (driving while operating privileges are suspended or revoked). Pa.R.Crim.P. 403(A)(4). Pa.R.Crim.P. 403(A)(5). Pa.R.Crim.P. 403(A)(6). Pa.R.Crim.P. 403(A)(7). Pa.R.Crim.P. 403(A)(8). <u>Note:</u> This will notify the MDJ that in addition to any fines, restitution, or

☐ i. A verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements are subject to the penalties of 18 Pa.C.S. § 4904 (unsworn falsifications to authorities); and ☐ j. Notices to the defendant that: the original citation will be filed with the MDJ; the defendant will have 10 days to plead guilty or not guilty or appear before the MDJ; all checks sent for fines, costs, or collateral shall be made payable to the magisterial district court set forth on the citation; failure to respond shall result in the issuance of a summons or warrant (whichever is appropriate), suspension of driver's license (for Vehicle Code violations); failure to indicate a plea when sending back an amount equal to fines and costs will result in a guilty plea being recorded; and, if the defendant is convicted or pleads guilty, he/she may appeal within 30 days for a trial <i>de novo</i>. ☐ 2. Filing of citation by law enforcement officer. After issuing the citation to the defendant, the law enforcement officer shall file the original with the proper MDJ court within 5 days of issuance. Electronic filing. The citation need not be filed personally, and may be filed electronically. Untimely filing: no dismissal. The 5 day time limit is not to be grounds for dismissal unless the defendant is prejudiced by the delay. The defendant shall raise any alleged defective filing before the conclusion of the summary trial. Parental notification. If the defendant is under the age of 18 and not emancipated, the MDJ shall mail a copy of	costs, he/she may also be required to sentence the defendant to pay a criminal laboratory user fee pursuant to 42 Pa.C.S. § 1725.3. Comment to Pa.R.Crim.P. 403. Pa.R.Crim.P. 403(A)(9). Pa.R.Crim.P. 403(B). Pa.R.Crim.P. 406. <u>Note:</u> Determination of proper MDJ office is a question of venue, which is discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130; Comment to Pa.R.Crim.P. 420. Comment to Pa.R.Crim.P. 406. Pa.R.Crim.P. 109; Comment to Pa.R.Crim.P. 406. 42 Pa.C.S. § 1522(a) & (b).
---	--

the citation, or other appropriate written notification, to the parents or legal guardians at the time of filing of the citation if they have not previously been notified by the police. The MDJ shall not accept a plea or schedule a hearing until 72 hours have elapsed from the mailing of the notice. This notice requirement does not apply to Vehicle Code offenses except for 75 Pa.C.S. § 1543 (driving while operating privileges suspended or revoked). ☐ 3. Plea. A defendant has 10 days after issuance of the citation to plead guilty or not guilty, either in person or by mail. The defendant may do so by signing and returning the citation. If the defendant fails to sign the citation to indicate his/her plea, the MDJ should treat the unsigned citation as a guilty plea. Failure to respond. If the defendant fails to respond, a warrant may be issued for his/her arrest in the manner discussed in Checklist 4-8 below unless the offense charged is a violation of an ordinance or a parking offense, or the defendant is under the age of 18, in which case a summons shall be issued. In addition, if a defendant fails to respond to a citation issued in a Vehicle Code case, the procedures outlined in Checklist 4-1(4) below should be followed. ☐ a. Not guilty pleas. A defendant may plead not guilty in one of two ways: (1) by appearing before the MDJ, entering the plea, and depositing such collateral as the MDJ requires; or (2) by notifying the MDJ in writing of the plea and forwarding as collateral an amount equal to the fines and costs specified, plus any additional fee required by law. If the fines and costs are not specified, the defendant shall forward \$50 for collateral. ☐ i. Procedure after the plea is received. Once the not guilty plea is received the MDJ shall: (1) fix a date and hour for trial; (2) notify the defendant and law enforcement officer of the date and hour for trial; and (3) advise the defendant	Pa.R.Crim.P. 407 & 408(A). Comment to Pa.R.Crim.P. 407, citing Pa.R.Crim.P. 403(B)(5) (notice to defendant of consequences of failure to indicate a plea). Comment to Pa.R.Crim.P. 407; Pa.R.Crim.P. 403(B)(4)(a). Pa.R.Crim.P. 470(A). Pa.R.Crim.P. 408(A). <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452. Pa.R.Crim.P. 408(B).
--	---

that failure to appear for trial will constitute consent to trial in his/her absence and that, if found guilty, the collateral deposited will be forfeited and applied to fines, costs, and restitution and defendant shall have the right to appeal within 30 days for trial <i>de novo</i>. ☐ b. Guilty pleas. A defendant may plead guilty by: notifying the MDJ in writing and forwarding an amount equal to the fines and costs specified in the citation, or appearing before the MDJ when the fines and costs are not specified in the citation, or after receiving notice from the MDJ that a guilty plea has not been accepted. ☐ i. By mail. When a defendant pleads guilty by mail, he/she shall sign the plea acknowledging that it is entered voluntarily and understandingly. ☐ ii. Warrant. The MDJ may issue a warrant for the arrest of the defendant (see Checklist 4-8 below) if the money sent with the plea is insufficient. ☐ iii. Plea restrictions. An MDJ may not accept a guilty plea by mail when the offense carries a mandatory sentence of imprisonment. An MDJ may, however, accept a guilty plea by mail if the charged offense carries a possible sentence of imprisonment. If the MDJ does not accept a guilty plea by mail, he/she shall notify the defendant that: the plea has not been accepted; that he/she shall appear before the MDJ at a given date and time; and that he/she has a right to counsel. The MDJ shall also notify the affiant that the guilty plea by mail was rejected. ☐ iv. In person. When the defendant is required to personally appear before the MDJ to plead guilty pursuant to Rule 409(A)(2), the MDJ shall:	Pa.R.Crim.P. 409(A)(1)&(2). <u>Note:</u> MDJS Forms 408A and 408B are the Pleas of Guilty Before Issuing Authority and Guilty Plea Colloquy forms. Pa.R.Crim.P. 409(B)(1). Pa.R.Crim.P. 409(B)(2). Pa.R.Crim.P. 409(B)(3)(a) & (b). Pa.R.Crim.P. 409(B)(3)(c). Pa.R.Crim.P. 409(C). <u>Note:</u> If the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a
---	---

☐ A. Advise the defendant of the right to counsel if there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel; ☐ B. Determine by inquiring of the defendant whether the plea is voluntarily and understandingly entered; ☐ C. Have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; ☐ D. Impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the MDJ may delay sentencing pending confirmation of the defendant's eligibility for intermediate punishment; and ☐ E. Provide for installment payments when a defendant sentenced to pay a fines and costs is without financial means to immediately pay. ☐ 4. Procedure for license suspension for failure to respond to citation or summons.	mandatory prison sentence as prescribed by statute, the MDJ is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. Comment to Pa.R.Crim.P. 409, citing 42 Pa.C.S. §§ 6302 & 6303; 75 Pa.C.S. § 6303(b). Pa.R.Crim.P. 409(C)(1). Pa.R.Crim.P. 409(C)(2). <u>Note:</u> MDJS Form 408B is the Guilty Plea Colloquy form. Pa.R.Crim.P. 409(C)(3). <u>Note:</u> MDJS Form 408A is the Pleas of Guilty Before Issuing Authority form. Pa.R.Crim.P. 409(C)(4). <u>Note:</u> "Intermediate punishment is described as the conditions that a court can place on a defendant in lieu of total or partial confinement." <i>Commonwealth v. Koskey</i>, 812 A.2d 509, 512 (Pa. 2002). Intermediate punishment may not be available in all counties. Pa.R.Crim.P. 409(C)(5). <u>Note:</u> If the sentence includes restitution, any fine set should not be so high as to prevent the defendant from making restitution. 42 Pa.C.S. § 9726(c).
---	--

☐ a. Notice. If the defendant fails to respond to the citation for a summary Vehicle Code offense within 10 days as required by Pa.R.Crim.P. 407, 412, 422 or 456, the MDJ shall notify the defendant in writing that, pursuant to 75 Pa.C.S. § 1533, his/her license will be suspended if he/she fails to respond to the citation or fails to pay all fines and costs or enter into an agreement to make installment payments for all fines or costs within 15 days of the notice. The notice shall be served by first class mail and a copy shall be made part of the record. ☐ b. If defendant fails to respond. If the defendant does not respond to the foregoing notice within 15 days, the MDJ shall notify the Pennsylvania Department of Transportation. This notice shall be sent electronically in the form prescribed by the department. The MDJ shall print out and sign a copy of the notice, which shall include the date and time of transmission and shall be made part of the record. ☐ c. If the defendant responds after the 15th day. If the defendant responds or pays all fines and costs or enters into an agreement to make installment payments for fines and costs imposed after notice has been sent to the Department of Transportation pursuant to 4(b) above, the MDJ shall notify the department and request withdrawal of the license suspension. The notice and request shall be sent by electronic transmission. The MDJ shall also print out and sign a copy of the notice, which shall include the date and time of transmission and this shall be made part of the record.	Pa.R.Crim.P. 470(A). <u>Note:</u> MDJS Forms 638A1-E are the relevant forms. Pa.R.Crim.P. 470(B). Pa.R.Crim.P. 470(C). <u>Note:</u> MDJS Form 638B is the DL-38 Request for Suspension of Operating Privilege for Failure to Respond to a Citation or Summons form. MDJS Form 638D is the Out of State Driver Suspension Request form. <u>Note:</u> Although the rule states the MDJ must print out and sign a copy of the notice, the form and facsimile signature are typically generated by computer and this is acceptable. See Pa.R.Crim.P. 103; see also Pa.R.S.M.D.J. 113 (MDJ may authorize use of facsimile signature on certain documents listed by the AOPC). Pa.R.Crim.P. 470(D). <u>Note:</u> MDJS Form 638C is the DL-38 Receipt of Response to Citation/Summons form. <u>Note:</u> Although the rule states the MDJ shall print out and sign a copy of the notice, the form and facsimile signature are typically generated by computer and this is acceptable. See Pa.R.Crim.P. 103; see also Pa.R.S.M.D.J. 113 (MDJ may authorize use of facsimile signature on certain documents listed by AOPC).
--	---

☐ d. Certified copies. Upon the request of the defendant, the attorney for the Commonwealth or any other government agency, the MDJ shall provide a certified copy of any notices or request forms required by Pa.R.Crim.P. 470. ☐ 5. Parking tickets. Parking tickets may be used to inform defendants of parking violations and offer them an opportunity to avoid criminal proceedings by paying the amount specified on the ticket within a specified time. ☐ a. Procedure. If a parking ticket has been handed to the defendant or placed on his/her windshield, a criminal proceeding shall only be instituted if he/she fails to respond to the ticket. ☐ b. Defendant does not respond. If the defendant fails to respond, the criminal proceeding shall be instituted either by a law enforcement officer filing a citation with the proper MDJ or by having the parking violation information electronically transmitted to the proper MDJ. ☐ c. MDJ's role. Once the MDJ receives the citation or electronically transmitted information, he/she shall proceed as provided in Pa.R.Crim.P. 411 (procedures following filing of citation) discussed in Checklist 4-2 below).	Pa.R.Crim.P. 470(E). Pa.R.Crim.P. 401(A). <u>Note:</u> If parking tickets are not used, summary cases charging parking violations shall be instituted by citation, and the case shall proceed as one where the citation is issued directly to the defendant (Checklist 4-1), unless the defendant fails to respond, in which case it shall proceed as if instituted by the filing of the citation (Checklist 4-2). Pa.R.Crim.P. 401(B). Pa.R.Crim.P. 401(A)(1). Pa.R.Crim.P. 401(A)(2). <u>Note:</u> A defendant's license cannot be suspended for failure to respond to a parking citation. Pa.R.Crim.P. 401(A)(2).
---	---

2. Institution of Proceedings: Filing of Citation with the MDJ

When direct issuance of the citation is not feasible or when evidence giving rise to additional summary charges resulting from the same incident is discovered after the citation is issued, a law enforcement officer shall file the citation with the MDJ court. Pa.R.Crim.P. 410.

Checklist 4-2: Filing of Citation with the MDJ	Authority/Notes
☐ 1. Procedure after filing--issuance of summons. Once the citation is filed (which includes electronically transmitted citation or parking violation information), the MDJ shall issue a summons requiring the defendant to respond within 10 days of receipt of the summons. If the MDJ has reasonable grounds to believe that the defendant will not obey a summons, he/she shall issue an arrest warrant pursuant to Pa.R.Crim.P. 430 (see Checklist 4-8 below). No fines or costs should be specified in the summons in cases where the MDJ determines there is the likelihood of imprisonment. ☐ 2. Service of citation. A copy of the citation shall be served with the summons except in cases where parking violations are charged and the parking violation information is electronically filed. Summonses may be served, either personally on the defendant or by mail to his/her last known address. When a summons is served by first class mail and defendant fails to respond or appear within the time specified by the rules, the MDJ shall cause service to be made either personally or by certified mail, return receipt requested. ☐ 3. Contents of the summons: electronically filed parking violation cases. In parking violation cases where the information is filed electronically, the summons shall also include: the date, time, and location of the violation, a description of the vehicle and its license number, and a description of the parking violation. ☐ 4. Pleas in response to summons. Within 10 days of receiving the summons, the defendant shall notify the MDJ by mail or in person that he/she either pleads guilty or not guilty. To notify the MDJ of his/her plea, the defendant should sign and return the summons. If the defendant fails to sign the summons to indicate a plea, it should be recorded as a guilty plea.	Pa.R.Crim.P. 411(A). <u>Note:</u> MDJS Form 617 is the Summons for Summary Case Non-Traffic form. Comment to Pa.R.Crim.P. 411. Pa.R.Crim.P. 411(B). <u>Note:</u> The citation and summons may be served either personally on the defendant or by mail to his/her last known address. Pa.R.Crim.P. 451(a). Pa.R.Crim.P. 451(A) & (B). <u>Note:</u> MDJS Form 624 is the Service of Process form. MDJS Form 640 is the Server Fee Notice form. Pa.R.Crim.P. 411(C)(1)-(3). Pa.R.Crim.P. 412. Pa.R.Crim.P. 403(B)(5); Comment to Pa.R.Crim.P. 412.

Failure to respond. If the defendant fails to respond to a summons that was served by first class mail, the MDJ shall cause service to be made either personally or by certified mail, return receipt requested. If a summons sent by first class mail is returned as undelivered, an arrest warrant shall be issued in the manner discussed in Checklist 4-8 below. If the defendant fails to respond to a summons that was personally served or was served by certified mail return receipt requested, a bench warrant shall be issued for his/her arrest in the manner discussed in Checklist 4-9 below. In addition, if a defendant fails to respond to a summons issued in a Vehicle Code case, the procedures outlined in Checklist 4-2(5) below should be followed. ☐ a. Not guilty pleas. A defendant may plead not guilty in one of two ways: (1) by appearing before the MDJ, entering the plea, and depositing such collateral as the MDJ requires; or (2) by notifying the MDJ in writing of the plea and forwarding as collateral an amount equal to the fines and costs specified, plus any additional fee required by law. If no fines or costs are specified, the defendant must forward \$50 as collateral. ☐ i. Procedure after the plea is received. Once the not guilty plea is received, the MDJ shall: (1) fix a date and hour for trial; (2) notify the defendant and law enforcement officer of the date and hour of the trial; and (3) advise the defendant that failure to appear for trial will constitute consent to trial in his/her absence and, that if found guilty, the collateral shall be forfeited and applied to fines, costs, and restitution, and the defendant shall have the right to appeal within 30 days for trial <i>de novo</i>.	Pa.R.Crim.P. 430 & 451(B). Comment to Pa.R.Crim.P. 412. Pa.R.Crim.P. 413(A). Pa.R.Crim.P. 413(B). <u>Note:</u> In fixing a day and time for trial, the MDJ should ascertain if the trial must be delayed because the defendant's criminal record must be established prior to trial as specifically required by statute for purposes of grading the offense charged. Comment to Pa.R.Crim.P. 413. <u>Note:</u> MDJS Form 308 is the Summary Hearing Notice form. <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452.
--	---

☐ b. Guilty pleas. A defendant may plead guilty in one of two ways: (1) by notifying the MDJ in writing of the plea and forwarding an amount equal to the fines and costs specified in the summons; or (2) appearing before the MDJ for entry of the plea and imposition of sentence when the fines and costs are not specified, or after receipt of notice that a guilty plea by mail has not been accepted by the MDJ pursuant to Rule 414(B)(3). See Checklist 4-2(4)(b)(iii) below. ☐ i. By mail. When the defendant pleads guilty by mail, he/she shall sign the plea acknowledging that it is entered voluntarily and understandingly. ☐ ii. Warrant. The MDJ may issue an arrest warrant (see Checklist 4-8) if the amount forwarded with the plea is less than the fines and costs specified in the summons. ☐ iii. Plea restrictions. The MDJ cannot accept a guilty plea by mail when the offense carries a mandatory sentence of imprisonment. In cases where the charge carries a possible sentence of imprisonment, the MDJ may accept a guilty plea by mail. If the MDJ does not accept a guilty plea by mail, he/she shall notify the defendant that: the plea has been rejected; he/she shall appear personally before the MDJ at a date and time certain; and he/she has a right to counsel. Notice of the rejected plea shall also be provided to the affiant. ☐ iv. In person. When the defendant personally appears to enter a guilty plea, the MDJ shall:	Pa.R.Crim.P. 414(A). <u>Note:</u> MDJS Forms 408A and 408 are the Pleas of Guilty Before Issuing Authority and Guilty Plea Colloquy forms. Pa.R.Crim.P. 414(B)(1). Pa.R.Crim.P. 414(B)(2). Pa.R.Crim.P. 414(B)(3)(a). Pa.R.Crim.P. 414(B)(3)(b). Pa.R.Crim.P. 414(B)(3)(c). <u>Note:</u> The following procedures are not required if the defendant returns a written guilty plea and fines and costs in person to the MDJ's office pursuant to Pa.R.Crim.P. 414(A)(1)
---	---

☐ A. Advise the defendant of the right to counsel if there is a likelihood of imprisonment and give the defendant, upon request, reasonable opportunity to obtain counsel; ☐ B. Determine by inquiring of the defendant that the plea is voluntarily and understandingly entered; ☐ C. Have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; ☐ D. Impose sentence or, in cases in which the defendant may be sentenced to intermediate punishment, the MDJ may delay sentencing pending confirmation of defendant's eligibility for intermediate punishment; and ☐ E. Provide for installment payments when a defendant sentenced to pay a fines and costs is without financial means to immediately pay. ☐ 5. Procedure for license suspensions for failure to respond to citation or summons.	and (B), but does not plead guilty in court. Pa.R.Crim.P. 414(C)(1). <u>Note:</u> If the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory prison sentence as prescribed by statute, the MDJ is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. Comment to Pa.R.Crim.P. 414, citing 42 Pa.C.S. §§ 6302 & 6303; 75 Pa.C.S. § 6303(b). Pa.R.Crim.P. 414(C)(2). <u>Note:</u> MDJS Form 408B is the Guilty Plea Colloquy form. Pa.R.Crim.P. 414(C)(3). <u>Note:</u> MDJS Form 408A is the Pleas of Guilty Before Issuing Authority form. Pa.R.Crim.P. 414(C)(4). <u>Note:</u> "Intermediate punishment is described as the conditions that a court can place on a defendant in lieu of total or partial confinement." <i>Commonwealth v. Koskey</i>, 812 A.2d 509, 512 (Pa. 2002). Intermediate punishment may not be available in all counties. Pa.R.Crim.P. 414(C)(5). <u>Note:</u> If the sentence includes restitution, any fine set should not be set so high as to prevent the defendant from making restitution. 42 Pa.C.S. § 9726(c). <u>Note:</u> License suspension for failure to respond is only for traffic
--	---

☐ a. Notice. If the defendant fails to respond to the summons for a summary Vehicle Code offense within 10 days as required by Pa.R.Crim.P. 407, 412, 422 and 456, the MDJ shall notify him/her in writing that, pursuant to 75 Pa.C.S. § 1533, his/her license will be suspended if he/she fails to respond to the summons within 15 days of the notice. The notice shall be served by first class mail and a copy shall be made part of the record. ☐ b. If defendant fails to respond. If the defendant does not respond to the foregoing notice within 15 days, the MDJ shall notify the Pennsylvania Department of Transportation. The DL-38 notice shall be sent electronically in the form prescribed by the department. The MDJ shall print out and sign a copy of the notice, which shall include the date and time of transmission and shall be made part of the record. ☐ c. If the defendant responds after the 15th day. If the defendant responds or pays all fines and costs or enters into an agreement to make installment payments for the fines and costs imposed after notice has been sent to the Pennsylvania Department of Transportation pursuant to 5(b) above, the MDJ shall notify the department and request withdrawal of the license suspension. The notice and request shall be sent by electronic transmission. The MDJ shall print out and sign a copy of the notice, which shall include the date and time of transmission, and this shall be made part of the record.	summary cases except parking violations. Pa.R.Crim.P. 470(A). <u>Note:</u> MDJS Forms 638A2 and B are the DL-38 Request for Suspension of Driving Privilege for Failure to Respond to a Citation or Summons or Pay the Fines or Costs Imposed forms. Pa.R.Crim.P. 470(B). Pa.R.Crim.P. 470(C). <u>Note:</u> MDJS Form 638B is the DL-38 Request for Suspension of Operating Privilege for Failure to Respond to a Citation or Summons form. MDJS Form 638D is the out of state driver suspension request form. <u>Note:</u> Although the rule states the MDJ shall print out and sign a copy of the notice, the form and facsimile signature are typically generated by computer and this is acceptable. See Pa.R.S.M.D.J. 113 (MDJ may authorize use of facsimile signature on certain documents listed by the AOPC). Pa.R.Crim.P. 470(D). <u>Note:</u> MDJS Form 638C is the Receipt of Response to Citation/Summons form. <u>Note:</u> Although the rule states the MDJ shall print out and sign a copy of the notice, the form and facsimile signature are typically generated by computer and this is acceptable. See Pa.R.S.M.D.J. 113 (MDJ may authorize use of facsimile signature on certain documents listed by the AOPC).
---	---

☐ d. Certified copies. Upon the request of the defendant, the attorney for the Commonwealth or any other government agency, the MDJ shall provide a certified copy of any notices or request forms required by Pa.R.Crim.P. 470.	Pa.R.Crim.P. 470(E).
---	-----------------------------

3. Institution of Proceedings: Filing of a Summary Complaint by a Private Citizen

Checklist 4-3: Filing of a Complaint by a Private Citizen	Authority/Notes
☐ 1. Procedure for filing. When the affiant is not a law enforcement officer, he/she shall institute a summary criminal proceeding by filing a complaint with the proper MDJ. ☐ 2. Procedure following filing of complaint. Once the complaint is filed, the MDJ shall decide whether to issue process. If the MDJ decides to issue process, a summons shall be issued unless the MDJ has reasonable grounds to believe that the defendant will not obey a summons, in which case an arrest warrant shall be issued. A copy of the complaint is to be served with the summons. Summonses may be served, either personally on the defendant or by mail to his/her last known address. When a summons is served by first class mail and defendant fails to respond or appear within the time specified by the rules, the MDJ shall cause service to be made either personally or by certified mail, return receipt requested.	Pa.R.Crim.P. 420. <u>Note:</u> MDJS Form 411A is the Private Criminal Complaint form and Affidavit of Probable Cause form. <u>Note:</u> Determination of proper MDJ is a question of venue, which is discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130; Comment to Pa.R.Crim.P. 420. Pa.R.Crim.P. 421. <u>Note:</u> Although the rule does not specify who may personally serve the defendant, it would probably not be advisable to have the affiant serve the complaint on the defendant. <u>Note:</u> The MDJ should make sure that there isn't a local rule that requires the district attorney to approve private summary complaints before they can be filed. <u>Note:</u> MDJS Form 617 is the Summons for Summary Case Non-Traffic form. MDJS Form 617A is the Summons for Summary Case Traffic form.

☐ 3. Plea in response to summons. Within 10 days of receiving the summons, the defendant shall notify the MDJ by mail or in person that he/she either pleads guilty or not guilty. Failure to respond. If the defendant fails to respond to a summons that was served by first class mail, the MDJ shall cause service to be made either personally or by certified mail, return receipt requested. If a summons sent by first class mail is returned as undelivered, an arrest warrant shall be issued in the manner discussed in Checklist 4-8 below. If the defendant fails to respond to a summons that was personally served or was served by certified mail return receipt requested, a bench warrant shall be issued for his/her arrest in the manner discussed in Checklist 4-9 below. The MDJ should also follow the procedures outlined in Pa.R.Crim.P. 470, set forth in Checklist 4-1(4) above. ☐ a. Not guilty pleas. A defendant may plead not guilty in one of two ways: (1) by appearing before the MDJ, entering the plea, and depositing such collateral as the MDJ requires; or (2) by notifying the MDJ in writing of the plea and forwarding as collateral an amount equal to the fines and costs specified, plus any additional fee required by law. If no fines or costs are specified, the defendant must forward \$50.00 as collateral. ☐ i. Procedure after plea is received. Once the not guilty plea is received, the MDJ shall: (1) fix a date and hour for trial; (2) notify the defendant and the affiant of the date and hour of the trial; and (3) advise the defendant that failure to appear for trial will constitute consent to trial in his/her absence, and that if found guilty, the collateral deposited shall be forfeited and applied to fines, costs, and restitution, and the defendant shall have the right to appeal within 30 days for trial <i>de novo</i>.	Pa.R.Crim.P. 422. <u>Note:</u> If the defendant fails to sign the summons to indicate a plea, the MDJ should record the unsigned summons as a guilty plea. Pa.R.Crim.P. 403(B)(5); Comment to Pa.R.Crim.P. 422. Pa.R.Crim.P. 430 & 451(B); Comment to Pa.R.Crim.P. 422. Pa.R.Crim.P. 470. Pa.R.Crim.P. 423(A). <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452. Pa.R.Crim.P. 423(B). <u>Note:</u> In fixing a day and time for trial, the MDJ should determine if the trial must be delayed, because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged. Comment to Pa.R.Crim.P. 423.
--	---

☐ b. Guilty pleas. A defendant may plead guilty in one of two ways: (1) by notifying the MDJ in writing of the plea and forwarding an amount equal to the fines and costs specified in the summons; or (2) appearing before the MDJ for entry of the plea and imposition of sentence when the fines and costs are not specified, or after receipt of notice that a guilty plea by mail has not been accepted by the MDJ pursuant to Rule 424(B)(3) (see Checklist 4-3(3)(b)(iii) below). ☐ i. By mail. When the defendant pleads guilty by mail, he/she shall sign the guilty plea acknowledging that it is entered voluntarily and understandingly. ☐ ii. Warrant. The MDJ may issue an arrest warrant (see Checklist 4-8) if the amount forwarded with the plea is less than the fines and costs specified in the summons. ☐ iii. Plea restrictions. The MDJ cannot accept a guilty plea by mail when the offense carries a mandatory sentence of imprisonment. In cases where the charge carries a possible sentence of imprisonment, the MDJ may accept a guilty plea by mail. If the MDJ does not accept a guilty plea by mail, he/she shall notify the defendant that: the plea has been rejected; he/she shall appear personally before the MDJ at a date and time certain; and he/she has a right to counsel. Notice of the rejected plea shall also be provided to the affiant. ☐ iv. In person. When the defendant personally appears to enter a guilty plea, the MDJ shall:	Pa.R.Crim.P. 424(A). <u>Note:</u> MDJS Forms 408A and 408 are the Pleas of Guilty Before Issuing Authority and Guilty Plea Colloquy forms. Pa.R.Crim.P. 424(B)(1). Pa.R.Crim.P. 424(B)(2). Pa.R.Crim.P. 424(B)(3)(a). Pa.R.Crim.P. 424(B)(3)(b). Pa.R.Crim.P. 424(B)(3)(c). <u>Note:</u> The following procedures are not required if a defendant returns a written guilty plea and fines and costs in person to the MDJ's office pursuant to Pa.R.Crim.P. 424(A)(1) & (B), rather than mailing them.
---	--

☐ A. Advise the defendant of the right to counsel if there is a likelihood of imprisonment, and give defendant, upon request, reasonable opportunity to obtain counsel; ☐ B. Determine by inquiring of the defendant that the plea is voluntarily and understandingly entered; ☐ C. Have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; ☐ D. Impose sentence or, in cases in which the defendant may be sentenced to intermediate punishment, the MDJ may delay sentencing pending confirmation of defendant's eligibility for intermediate punishment; and ☐ E. Provide for installment payments when a defendant sentenced to pay a fines and costs is without financial means to immediately pay.	Pa.R.Crim.P. 424(C)(1). <u>Note:</u> If the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory prison sentence as prescribed by statute, the MDJ is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. Comment to Pa.R.Crim.P. 424, citing 42 Pa.C.S. §§ 6302 & 6303; 75 Pa.C.S. § 6303(b). Pa.R.Crim.P. 424(C)(2). <u>Note:</u> MDJS Form 408B is the Guilty Plea Colloquy form. Pa.R.Crim.P. 424(C)(3). <u>Note:</u> MDJS Form 408A is the Pleas of Guilty Before Issuing Authorities form. Pa.R.Crim.P. 424(C)(4). <u>Note:</u> "Intermediate punishment is described as the conditions that a court can place on a defendant in lieu of total or partial confinement." <i>Commonwealth v. Koskey</i>, 812 A.2d 509, 512 (Pa. 2002). Intermediate punishment may not be available in all counties. Pa.R.Crim.P. 424(C)(5). <u>Note:</u> If the sentence includes restitution, any fines should not be set so high as to prevent the defendant from making restitution. 42 Pa.C.S. § 9726(c).
--	--

4. Institution of Proceedings: Arrest Without a Warrant

Checklist 4-4: Arrest Without a Warrant	Authority/Notes
---	-----------------

☐ 1. Who may arrest without a warrant. A police officer who exhibits some sign of authority may institute summary proceedings by arrest when authorized by law. It is important to note that only a police officer has the power to arrest without a warrant pursuant to Pa.R.Crim.P. 440. Non-traffic. The intent of Pa.R.Crim.P. 440 is that summary proceedings will be initiated by arrest without a warrant only in the most exceptional circumstances, such as those involving violence, imminent threat of violence, or where there is a risk of flight. A police officer may arrest without a warrant upon view and with probable cause for the following summary offenses: disorderly conduct (18 Pa.C.S. § 5503); public drunkenness (18 Pa.C.S. § 5505); obstructing highways/public passages (18 Pa.C.S. § 5507); purchase, possession, consumption, and transportation of liquor/malt beverages by minors (18 Pa.C.S. § 6308); or violations of an ordinance of a second class city. Traffic. Under the Vehicle Code, a uniformed member of the Pennsylvania State Police may arrest without a warrant any person who violates any provision of the Code in the trooper's presence. In addition, any uniformed officer may arrest without a warrant any nonresident who violates any provision of the Vehicle Code in the officer's presence.	42 Pa.C.S. § 8902(a); Pa.R.Crim.P. 400(4) & 440. Comment to Pa.R.Crim.P. 440. <u>Note:</u> A "police officer" is defined as "any person who is by law given the power to arrest when acting within the scope of the person's employment." Pa.R.Crim.P. 103. Comment to Pa.R.Crim.P. 440. 42 Pa.C.S. § 8902(a). 75 Pa.C.S. § 6304(a). 75 Pa.C.S. § 6304(b).
☐ 2. Procedure following arrest without a warrant. When a defendant has been arrested without a warrant, he/she shall either be released from custody or taken before the proper MDJ. ☐ a. Conditions for release. The arresting officer shall promptly release the defendant from custody when the following conditions are met: ☐ i. The defendant poses no threat of immediate physical harm to any other person or to him/herself; and	Pa.R.Crim.P. 441(A). Pa.R.Crim.P. 441(B). Pa.R.Crim.P. 441(B)(1).

☐ ii. The arresting officer has reasonable grounds to believe that the defendant will appear as required. If the defendant is released, a citation shall be issued and the case shall then proceed as if it had been instituted by a citation issued to the defendant (see Checklist 4-1).	Pa.R.Crim.P. 441(B)(2). <u>Note:</u> "Reasonable grounds" includes things like concern about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the officer's personal knowledge of the defendant. Comment to Pa.R.Crim.P. 441. Pa.R.Crim.P. 441(B).
☐ b. Procedure if the defendant is not released. ☐ i. The defendant shall be taken without unnecessary delay before the MDJ, when available pursuant to Pa.R.Crim.P. 117, where a citation shall be filed against him/her and the defendant shall enter a plea. If he/she pleads guilty, the MDJ shall impose sentence. If he/she pleads not guilty, the defendant shall be given an immediate trial unless: ☐ A. The Commonwealth is not ready to proceed or the defendant requests a postponement or is not able to proceed, and in any of these circumstances the MDJ shall release the defendant on recognizance unless he/she has reasonable grounds to believe the defendant will not appear, in which case the MDJ may fix the amount of collateral to ensure the defendant's appearance on a new date and at a new time fixed for trial; or ☐ B. The defendant's criminal record must be ascertained prior to trial as specifically required by	Pa.R.Crim.P. 441(C)(1) <u>Note:</u> Pa.R.Crim.P. 117 sets forth a president judge's responsibility to insure sufficient availability of MDJs to conduct, among other things, summary trials or set collateral following an arrest without a warrant. Pa.R.Crim.P. 441(C)(1)(b)(i). <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452. Pa.R.Crim.P. 441(C)(1)(b)(ii). <u>Note:</u> The collateral should be reasonable and should not exceed the

statute for purposes of grading the offense charged, in which case the MDJ shall release defendant on recognizance unless he/she has reasonable grounds to believe defendant will not appear, in which case, MDJ may fix the amount of collateral to ensure defendant's appearance on the new date and at a new hour fixed for trial, which shall be after the MDJ receives the required information. ☐ C. In determining whether collateral is necessary and, if so, what amount should be set, the MDJ shall consider the factors listed in Pa.R.Crim.P. 523 (see Section V, Checklist 5-6). The amount of collateral cannot exceed the full amount of fines and costs. ☐ D. If collateral has been set, the MDJ shall state in writing the reasons why any collateral than release on recognizance has been set and the facts supporting the determination that the defendant is able to pay monetary collateral. ☐ E. If collateral is set and defendant does not post it, he/she shall not be detained without trial longer than 72 hours or the close of the next business day if the 72 hour period expires on a non-business day. ☐ ii. If the defendant is under 18 years of age and cannot be given an immediate trial, the MDJ shall promptly notify the defendant and his/her parents, guardian, or other custodian of the date set for	maximum fine and costs for the violation. Pa.R.Crim.P. 441(C)(1)(b)(iii). Pa.R.Crim.P. 441(C)(1)(b)(iv). Pa.R.Crim.P. 441(C)(1)(b)(v). Pa.R.Crim.P. 441(C)(2). <u>Note:</u> MDJS Form 608A is the Order for Parent/Legal Guardian to Attend Juvenile Summary Proceedings form.
--	---

summary trial and shall release defendant on his/her own recognizance. ☐ c. Procedure following arrest of non-resident. A non-resident defendant arrested for a summary offense under the Vehicle Code shall be escorted to the proper MDJ for a hearing, posting of bond, or payment of the applicable fines and costs, unless the defendant chooses to place the amount of the applicable fines (or maximum fine, in the case of a variable fine) and costs in a stamped envelope addressed to the MDJ and mails it in the presence of the officer. If the defendant mails the fine(s), the defendant shall indicate on the accompanying form whether the payment constitutes a fine based on a plea of guilty or a bond based on a plea of not guilty. If the plea is not guilty, the police officer shall notify the MDJ by telephone and the MDJ shall schedule a hearing for the following day (excluding Saturdays, Sundays, and legal holidays), unless the defendant requests a continuance, in which case a hearing shall be scheduled to accommodate the defendant, MDJ and police officer.	75 Pa.C.S. § 6305(a). <u>Note:</u> Determination of proper MDJ is a question of venue, which is discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130; Comment to Pa.R.Crim.P. 420. 75 Pa.C.S. § 6305(b).
---	--

C. GENERAL PROCEDURES IN SUMMARY CASES

Checklist 4-5: General Summary Criminal Procedures	Authority/Notes
☐ 1. Service. Citations, summonses, and trial notices may be served, either personally on the defendant or by mail to his/her last known address. When a summons is served by first class mail and the defendant fails to respond or appear within the time specified by the rules, the MDJ shall cause service to be made either personally or by certified mail, return receipt requested. Juveniles. In summary proceedings involving persons under the age of 18 and who are not emancipated, the MDJ may--if he/she determines that it is in the child's best interests--issue an order requiring the parent or legal guardian, or other person with whom the child resides (if different from the parent or guardian), to be present and ready to participate at the proceedings. No later than 10 days before the proceedings, the MDJ shall send notice of the order to the parent/guardian/other person with whom	Pa.R.Crim.P. 451(A) & (B). <u>Note:</u> MDJS Form 624 is the Service of Process form. MDJS Form 640 is the Server Fee Notice form. 42 Pa.C.S. § 1523. <u>Note:</u> MDJS Form 608A is the Order for Parent/Legal Guardian to Attend Juvenile Summary Proceedings form.

the child resides. If the parent/guardian/other person with whom the child resides fails to comply, he/she may be found in contempt of court pursuant to 42 Pa.C.S. § 4137 (see Section VII). In addition, the MDJ may issue a bench warrant if the parent/guardian/other person with whom the child resides fails to appear at the proceeding. ☐ 2. Collateral. The MDJ shall generally release a defendant on recognizance unless he/she has reasonable grounds to believe the defendant will not appear. If the MDJ has reasonable grounds to believe the defendant will not appear he/she may fix the amount of collateral to be deposited to ensure defendant's appearance at summary trial, which shall not exceed the full amount of fines and costs. In determining whether collateral is necessary and what amount to set, the MDJ shall consider the factors listed in Pa.R.Crim.P. 523 (see Section V, Checklist 5-6). If the MDJ sets collateral, he/she shall state in writing the reasons why any collateral other than release on recognizance has been set and the facts that support the determination that the defendant has the ability to pay monetary collateral. To be released on recognizance or request lower collateral, the defendant must appear personally before the MDJ to enter a plea as provided in Pa.R.Crim.P. 408, 413, and 423. Collateral shall be in United States currency or cash equivalent, and may be forfeited after conviction and applied to payment of fines, costs, and restitution. Purpose of collateral. Collateral has two purposes: (1) to function as bail to secure the defendant's appearance; and (2) as security that may be forfeited in the event of conviction to pay fines and costs. A defendant may not be penalized or denied a hearing because he/she cannot pay the full amount of fines and costs as collateral.	Pa.R.Crim.P. 452(A). Pa.R.Crim.P. 452(B). Pa.R.Crim.P. 452(C). Pa.R.Crim.P. 452(D). Pa.R.Crim.P. 452(E). Pa.R.Crim.P. 452(F)&(G). <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452. Comment to Pa.R.Crim.P. 452. Comment to Pa.R.Crim.P. 452.
--	---

☐ 3. Joinder ☐ a. Defendants. When more than one person is alleged to have participated in the commission of a summary offense, the MDJ shall accept one citation or complaint for each person charged. The citations or complaints against such persons may be consolidated for trial. ☐ b. Offenses. When more than one summary offense arising from the same incident is alleged to have been committed by one person, the matter shall proceed as a single case and the MDJ shall receive only one set of costs. ☐ 4. Continuances. In the interests of justice, an MDJ may grant a continuance either upon motion of a party or upon the MDJ's own motion. The MDJ shall record on the transcript the name of the moving party and the reasons for granting or denying the continuance and shall give notice to the parties. A defendant's motion for continuance shall be made no later than 48 hours before the time set for trial. A later motion shall be entertained only if the opportunity for making it did not previously exist, the defendant was not aware of the grounds for the motion, or the interests of justice require it. ☐ 5. Accelerated Rehabilitative Disposition (ARD). ARD programs are designed to rehabilitate offenders and secure prompt disposition of charges. Offenders typically eligible for ARD are first-time offenders who commit relatively minor crimes that do not involve a serious breach of the public trust. ☐ a. Local procedures. The president judge shall formulate local procedures for ARD in his/her judicial district, which shall be in writing and filed with the clerk of courts with copies served on all judges and MDJs handling summary case ARD matters. The local procedures shall--at a minimum--establish: costs and administrative expenses taxable for summary case ARD; procedures for restitution; conditions of the program; record checking, record keeping, and reporting requirements; procedures requiring	Pa.R.Crim.P. 453(A). <u>Note:</u> Costs in a summary case where there are multiple defendants would be assessed against each defendant even if the cases are consolidated for trial. Comment to Pa.R.Crim.P. 453. Pa.R.Crim.P. 453(B). Pa.R.Crim.P. 106. Explanatory comment to Chapter 3 of the Rules of Criminal Procedure. Pa.R.Crim.P. 300(D). <u>Note:</u> If there is no local procedure, the MDJ could follow the directives under 42 Pa.C.S. § 1520 concerning public service programs and other adjudication alternatives.
--	--

each MDJ to submit a monthly report on the disposition of all the cases eligible for ARD to the official designated by the president judge to compile these reports and monitor the cases; and procedures for completion or termination of the program. ☐ b. Procedure for handling summary ARD matters. Unless the district attorney has elected that ARD in summary cases should proceed in the court of common pleas, a defendant who is eligible for inclusion in an ARD program may be admitted by an MDJ subject to local procedures formulated by the president judge. If the MDJ does not admit an eligible defendant, he/she shall include a statement of reasons for the denial in the monthly report required by local procedures. If the defendant declines to accept or fails to complete the program, or if the MDJ does not admit the case for ARD, the case shall proceed to trial in the manner described below. ☐ 6. Trial procedures. ☐ a. Prior to trial. Immediately before the trial begins, the defendant shall be given the following advisories followed by an opportunity to enter a plea. ☐ i. The defendant shall be advised of the charges against him/her. ☐ ii. The defendant shall be advised of his/her right to counsel if there is a reasonable likelihood of a sentence of imprisonment or probation in the event of a conviction and: ☐ A. Upon request, the defendant shall be given a reasonable opportunity to secure counsel; or ☐ B. If the defendant is without financial resources or is otherwise unable to hire counsel, counsel shall be assigned as provided in Pa.R.Crim.P. 122.	Pa.R.Crim.P. 301. Pa.R.Crim.P. 454(A). Pa.R.Crim.P. 454(A)(1). Pa.R.Crim.P. 454(A)(2).
---	--

☐ iii. Plea. Once the defendant has been advised of (i) and (ii) above, he/she shall enter a plea. If the defendant pleads guilty, the MDJ shall impose sentence as provided in Checklist 4-5(6)(c) below. If the defendant pleads not guilty, the MDJ shall proceed to trial. ☐ b. Trial. ☐ i. Conduct of trial. The MDJ shall try the case in the same manner as non-jury criminal trials are conducted in the court of common pleas pursuant to Pa.R.Crim.P. 621. Rule 621 states that the judge in a non-jury trial shall determine all questions of law and fact and render a verdict. ☐ ii. Scheduling. Scheduling of the summary trial is at the discretion of the MDJ; however, trial should be scheduled promptly following the defendant's plea/arrest. If the defendant is incarcerated pending trial, it is incumbent upon the MDJ to schedule trial at the earliest possible time. ☐ iii. Presence of the law enforcement officer. In summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer who observed the alleged offense may, but is not required to, appear and testify. In no event shall the failure of a law enforcement officer to appear, by itself, be grounds for dismissal of the charges. ☐ iv. Subpoena power. The MDJ may use his/her subpoena powers to command a person to attend the hearing and to produce documents and items relevant to the hearing.	Pa.R.Crim.P. 454(A)(3). Pa.R.Crim.P. 454(B). <u>Note:</u> MDJS Forms 408A and 408B are the Pleas of Guilty Before Issuing Authority and Guilty Plea Colloquy forms. Pa.R.Crim.P. 454(B). Pa.R.Crim.P. 621(A). Comment to Pa.R.Crim.P. 454. <u>Note:</u> See Checklists 4-4(2)(b)(E) and 4-8(3)(b)(C) above regarding release from jail within 72 hours if the failure to post collateral is the cause of the defendant's incarceration. Pa.R.Crim.P. 454(B). <u>Note:</u> In this situation the MDJ has two options. If there appears to be good grounds for the officer's absence, the MDJ could grant a continuance. If there does not appear to be good grounds for the officer's absence, the MDJ could proceed with trial. In determining which way to proceed the MDJ should also consider the seriousness of the charge. 42 Pa.C.S. § 1513 (describing MDJs' powers to issue every lawful process) and § 5905 (setting forth civil and criminal subpoena power of courts).
---	--

Content. The subpoena shall state: that the witness is to appear before the court at the time, date, and place specified; and what items, if any, he/she is to bring; on whose behalf the witness is ordered to testify; and the identity, address, and phone number of the attorney, if any, who applied for the subpoena. ☐ v. Juveniles--non-traffic offenses. If the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory prison sentence as prescribed by statute, the MDJ is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. Traffic. Any person over the age of 16 who is charged with a violation of the Vehicle Code constituting a summary offense shall have the same rights as an adult and may be prosecuted as an adult. No person, however, may be sentenced to a term of imprisonment for violation of any provision of the Vehicle Code committed while the person was under the age of 18 years. ☐ vi. Prosecution. The attorney for the Commonwealth may appear and take charge of the prosecution. If a violation of a municipal ordinance is charged, an attorney representing the municipality may appear and take charge of the prosecution with the consent of the Commonwealth's attorney. If no attorney appears for the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.	Pa.R.Crim.P. 107. <u>Note:</u> MDJS Form 605 is the Subpoena form. Comment to Pa.R.Crim.P. 454, citing 42 Pa.C.S. §§ 6302 & 6303; 75 Pa.C.S. § 6303(b). 75 Pa.C.S. § 6303. Pa.R.Crim.P. 454(C). <u>Note:</u> The MDJ controls the conduct of the trial. When an attorney appears for the Commonwealth or municipality, he/she takes charge of prosecution. When no attorney appears for the Commonwealth or municipality, the MDJ may ask questions of any witness and the affiant may request the MDJ to ask specific questions. In appropriate circumstances, the MDJ may also allow the affiant to question and cross-examine witnesses and make recommendations about the case to the MDJ. Comment to Pa.R.Crim.P. 454.
---	---

☐ vii. Withdrawal of charges. The affiant or his/her designee may be permitted to withdraw one or more of the charges before the MDJ at any time prior to completion of the trial or acceptance of a guilty plea. If the MDJ permits the charges to be withdrawn, he/she shall record the withdrawal on the transcript and promptly notify the defendant in writing. ☐ viii. Dismissal of charges. When a defendant is charged with a summary offense, the MDJ may dismiss the case based upon a showing that: ☐ A. The public interest will not be adversely affected; ☐ B. The attorney for the Commonwealth, or in cases where no attorney for the Commonwealth is present, the affiant consents to the dismissal; ☐ C. Satisfaction has been made to the aggrieved person or there is an agreement that satisfaction (i.e., full restitution) will be made; and ☐ D. There is an agreement as to who shall pay costs. Recording the dismissal. If the MDJ dismisses a case, he/she shall record the dismissal on the transcript. Release of defendant. If the defendant is incarcerated, and the charges are dismissed or he/she is found not guilty, the MDJ shall direct that he/she be released.	Pa.R.Crim.P. 457; Comment to Pa.R.Crim.P. 454. <u>Note:</u> MDJS Form 409 is the Notice of Withdrawal of Charges form. For a discussion of the transcript, see Checklist 4-6(1)(c)(i). <u>Note:</u> All of the criteria of viii.(A)-(D) must be met before an MDJ has discretion to dismiss the case. Comment to Pa.R.Crim.P. 458. Pa.R.Crim.P. 458(A)(1). Pa.R.Crim.P. 458(A)(2). <u>Note:</u> If the Commonwealth's attorney is present and consents to dismissal, the MDJ may dismiss the case (provided the other criteria are also present) even if the affiant does not consent to dismissal. Comment to Pa.R.Crim.P. 458. Pa.R.Crim.P. 458(A)(3). Pa.R.Crim.P. 458(A)(4). Pa.R.Crim.P. 458(B). <u>Note:</u> Transcript is discussed in Checklist 4-6(1)(c)(i). <u>Note:</u> MDJS Form 602 is the Release of Prisoner form.
---	---

Dismissal on appeal. For dismissal upon satisfaction or by agreement for cases on appeal to the court of common pleas see Pa.R.Crim.P. 463. ☐ ix. Burden of proof. In deciding summary trials, the MDJ shall determine whether the Commonwealth has established the defendant's guilt beyond a reasonable doubt. The standard of "beyond a reasonable doubt" is to be measured based on reason and common sense. "A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his [or her] own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt; it may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty." ☐ c. Verdict and sentence. ☐ i. Time. The verdict and sentence shall be announced in open court immediately following conclusion of the trial, unless the defendant may be sentenced to intermediate punishment, in which case the MDJ may delay sentencing pending confirmation of defendant's eligibility for intermediate sentencing. Release of defendant. If the defendant is incarcerated, and the charges are	Comment to Pa.R.Crim.P. 458. <i>Commonwealth v. Hendrick</i>, 251 A.2d 732, 734 (Pa. Super. 1969). <u>Note:</u> The defendant's presumption of innocence is not overcome unless the Commonwealth proves guilt beyond a reasonable doubt. The defendant is not required to call or question any of the witnesses and may simply leave the Commonwealth or affiant with the obligation of meeting the burden of proof. <i>Commonwealth v. Stokes</i>, 615 A.2d 704, 709 (Pa. 1992). <i>Commonwealth v. Jones</i>, 563 A.2d 161, 164 (Pa. Super. 1989), <i>aff'd</i> 602 A.2d 820 (Pa. 1992), <i>quoting</i> Pa. Std.Crim. Jury Inst. 7.01(3). Pa.R.Crim.P. 454(D) & (E). <u>Note:</u> "Intermediate punishment" is described as the conditions that a court can place on a defendant in lieu of total or partial confinement." <i>Commonwealth v. Koskey</i>, 812 A.2d 509, 512 (Pa. 2002); <i>see also</i> 42 Pa.C.S. §§ 9801 - 9813. <u>Note:</u> MDJS Form 602 is the Release of Prisoner form.
--	---

dismissed or he/she is found not guilty, the MDJ shall direct that he/she be released. ☐ ii. Sentencing procedure. At the time of sentencing, the MDJ shall: ☐ A. If the sentence includes restitution, fines, or costs, state: ☐ • the amount of the fines and the obligation to pay costs ☐ • the amount of restitution including the identity of the payee, to whom the restitution payment shall be made, and whether any restitution has been made and in what amount; and ☐ • the date payment is due. If the defendant lacks the financial means to pay in a single payment, the MDJ may provide for installment payments, in which case he/she shall state the date on which each installment is due; ☐ B. Advise the defendant of his/her right to appeal within 30 days for a trial <i>de novo</i> in the court of common pleas and that if such an appeal is filed: ☐ • Execution of sentence will be stayed and the MDJ may set collateral; and ☐ • The defendant shall appear for the <i>de novo</i> trial or the appeal may be dismissed.	Pa.R.Crim.P. 454(F)(1). <u>Note:</u> Before imposing both a fine and restitution, the MDJ must determine that the fine will not prevent the defendant from making restitution. 42 Pa.C.S. § 9726(c). <u>Note:</u> MDJS Form 120 is the Receipt form. Pa.R.Crim.P. 454(F)(2). Pa.R.Crim.P. 454(F)(2)(a). Pa.R.Crim.P. 454(F)(2)(b).
--	--

☐ C. If a sentence of imprisonment is imposed, the MDJ shall direct the defendant to appear for execution of sentence on a date certain unless the defendant files a notice of appeal within the 30 day period, and advise the defendant that, if he/she fails to appear for execution of sentence, a warrant for his/her arrest will be issued; and ☐ D. Issue a written order imposing sentence that is signed by the MDJ and shall include the information specified in Pa.R.Crim.P. 454(F)(1) - (3) (Checklist 4-5(6)(c)(ii)(A) - (D), above). A copy of the order shall be given to the defendant. ☐ d. Default on payment of restitution, fines, and costs. ☐ i. Procedure when defendant advises of imminent default. If the defendant advises the MDJ that default on a single remittance or installment payment of restitution, fines, or costs is imminent, the MDJ may schedule a payment determination hearing on the issue of defendant's ability to pay. If the MDJ orders a new payment schedule, the order shall state the date on which each	Pa.R.Crim.P. 454(F)(3). <u>Note:</u> When setting the date for the defendant to appear for sentencing, the MDJ should set the earliest possible date for sentencing after the appeal period expires. Comment to Pa.R.Crim.P. 454. A period of 37 days reasonably allows for appeal and mail delivery periods. If, however, the defendant waives the stay pursuant to Pa.R.Crim.P. 461 (see Checklist 4-6(2)(c) below), the MDJ may fix the commencement date of sentence as the date of conviction. <i>Id.</i> <u>Note:</u> MDJS Form 582 is the Order to Appear for Sentence of Imprisonment form. MDJS Form 609 is the Commitment form. <u>Note:</u> MDJS Form 9133 is the Waiver of Stay of Execution of Sentence form. Pa.R.Crim.P. 454(F)(4). <u>Note:</u> MDJS Form 581 is the Order Imposing Sentence form. Pa.R.Crim.P. 456(A). <u>Note:</u> MDJS Form 416B is the MDJ Time Payment Worksheet. MDJS Form 416A is the MDJ Payment Order for a new payment schedule.
---	---

payment is due and the defendant shall be given a copy of the order. ☐ ii. Procedure following default. ☐ A. Notice to defendant. If the defendant defaults on payment of fines, costs, or restitution, the MDJ shall notify the defendant in person or by first class mail that he/she has 10 days from the date on the notice to pay the amount due or appear before the MDJ to explain why he/she should not be imprisoned for nonpayment, or a warrant may be issued for his/her arrest. Juveniles. Except in truancy cases in which the defendant is at least 15 but not yet 17 (see Checklist 4-7(1)), if the defendant is under 18 years of age, the notice shall inform the defendant and his/her parents, guardian or other custodian that if payment is not received or the defendant does not appear before the MDJ, the MDJ will certify notice of failure to pay to the court of common pleas and the case will proceed pursuant to the Juvenile Act, 42 Pa.C.S. § 6302, and the Rules of Juvenile Court Procedure. If, however, the defendant is 18 years or older when the default occurs, the MDJ shall proceed under the Rules of Criminal Procedure. If the defendant does not comply with the 10 day response period, the MDJ should follow the procedures of Pa.R.Crim.P. 470 set forth in Checklist 4-1(4) above.	Pa.R.Crim.P. 456(B). <u>Note:</u> Notice by first class mail is considered complete upon mailing to the defendant's last known address. Comment to Pa.R.Crim.P. 456. <u>Note:</u> MDJS Form 418 is the Notice of Impending Bench Warrant form. Comment to Pa.R.Crim.P. 456. <u>Note:</u> MDJS Form 608C is the Notice of Impending Juvenile Certification form. MDJS Form 608 is the Juvenile Certification form. Comment to Pa.R.Crim.P. 456. Pa.R.Crim.P. 470.
---	---

☐ B. Hearing. If the defendant appears either pursuant to the 10 day notice or following arrest for failing to respond to the notice, the MDJ shall conduct a hearing immediately to determine whether he/she is financially able to pay as ordered. ☐ • If the MDJ determines that the defendant is financially able to pay as ordered, he/she may impose any sanction provided by law. ☐ • If the MDJ determines that the defendant is not financially able to pay as ordered, he/she may order a schedule or reschedule for installment payments, or alter amend the order as otherwise provided by law. This includes reducing or waiving	Pa.R.Crim.P. 456(C). <u>Note:</u> MDJS Forms 415A and 415B are the Notice of Payment Determination forms. <u>Note:</u> The MDJ may proceed under either Pa.R.Crim.P. 456 or contempt procedures (see § VII for contempt procedures). Pa.R.Crim.P. 456(D)(1). <u>Note:</u> The MDJ could find the defendant in contempt pursuant to 42 Pa.C.S. § 4137(a)(3) and (4) (empowering MDJs to punish failure to abide by orders to pay restitution, fines and costs). 42 Pa.C.S. § 9730(b). See § VII for contempt procedures. <u>Note:</u> Nothing in Rule 456, however, is intended to preclude an MDJ from imposing punishment for indirect criminal contempt pursuant to 42 Pa.C.S. § 4137. Comment to Pa.R.Crim.P. 456. <u>Note:</u> MDJS Form 638A2 is the Request for Suspension of Driving Privilege for Failure to Pay Fines and Costs Imposed. MDJS Form 638E is the Request for Suspension of Driving Privilege for Failure to Make Regular Installment Payments form. <u>Note:</u> In vehicle cases, 75 Pa.C.S. § 6504(b) allows for imprisonment in certain circumstances. Pa.R.Crim.P. 456(D)(2). <u>Note:</u> The MDJ may alter/amend the restitution order pursuant to 18 Pa.C.S. § 1106(c)(2) & (3). Comment to Pa.R.Crim.P. 456. <u>Note:</u> MDJS Forms 415A and 415B are the Notice of Payment Determination forms. 42 Pa.C.S. § 9730(b)(3)(i).
---	--

costs or fines except those imposed under § 1101 of Crime Victims Act. If the MDJ determines the defendant is without the means to pay, he/she shall waive an existing collection fee under 42 Pa.C.S. § 9730.1 (Collection of Costs, Fines, and Restitution by Private Collection Agency) that was not previously collected from the defendant. The defendant has the burden at a rehearing to show changes in his/her financial condition such that he/she is without means to meet the previous payment schedule. The MDJ may extend or accelerate the schedule, leave it unchanged, reduce or waive costs or fines except those under § 1101 of Crime Victims Act, or sentence the defendant to a period of community service as the MDJ finds to be just and practicable under the circumstances. ☐ C. Collateral if hearing cannot be held immediately. If the hearing cannot be held immediately, the MDJ shall release defendant on recognizance unless he/she has reasonable grounds to believe defendant will not appear, in which case, MDJ may set	42 Pa.C.S. § 9730(b)(3)(iii). 42 Pa.C.S. § 9730(b)(3)(ii). <u>Note:</u> Community service is not available for violations of the Vehicle Code or Game Code summary offenses. In addition, individual judicial districts may have rules governing when an MDJ can order community service. Pa.R.Crim.P. 456(C)(1). <u>Note:</u> The MDJ should only set monetary collateral if he/she has determined that less restrictive conditions of release will not be effective to ensure the defendant's presence. Comment to Pa.R.Crim.P. 456.
--	---

collateral as provided in Pa.R.Crim.P. 523 (see Section V, Checklist 5-6). If the MDJ sets collateral, he/she shall state in writing the reasons why any collateral other than recognizance was set and the facts supporting the determination that defendant is able to pay monetary collateral. If collateral is set and defendant does not post it, he/she shall not be detained without a hearing for more than 72 hours or the close of the next business day if the 72 hours expires on a non-business day. ☐ D. At the conclusion of the hearing. At the end of the hearing, the MDJ shall: ☐ • If the MDJ has ordered a schedule of installment payments, he/she shall state the date on which each installment is due; ☐ • Advise the defendant of his/her right to appeal for a hearing <i>de novo</i> in the court of common pleas within 30 days, and that if an appeal is filed: execution of sentence will be stayed and the MDJ may set bail or collateral; and the defendant shall appear for the hearing <i>de novo</i> in the court of common pleas or the appeal may be dismissed;	Pa.R.Crim.P. 456(C)(2). Pa.R.Crim.P. 456(C)(3). Pa.R.Crim.P. 456(D)(3). Pa.R.Crim.P. 456(D)(3)(a). Pa.R.Crim.P. 456(D)(3)(b).
---	--

☐ • If a sentence of imprisonment is imposed, direct the defendant to appear for execution of sentence on a date certain, unless the defendant files a notice of appeal within the appeal period; and	Pa.R.Crim.P. 456(D)(3)(c).
☐ • Issue a written order imposing sentence signed by the MDJ, which shall contain the information in Pa.R.Crim.P. 456(D)(3) (a) - (c). A copy shall be given to the defendant.	Pa.R.Crim.P. 456(D)(3)(d).
☐ E. Appeal. The defendant may appeal an MDJ's determination under Pa.R.Crim.P. 456 by filing a notice of appeal within 30 days of the order.	Pa.R.Crim.P. 456(E).
☐ F. Defendant fails to appear at financial determination hearing. If the defendant fails to appear at the hearing after receiving notice, the MDJ may turn the delinquent account over to a private collection agency or the county's collection enforcement unit.	42 Pa.C.S. § 9730(b)(2.1)(i).
In each communication, the collection agency/enforcement unit shall notify defendant of his/her right to request a new financial determination hearing.	42 Pa.C.S. § 9730(b)(2.1)(ii).
Request for new hearing. If a defendant has had an account turned over to a collection agency/enforcement unit he or she may request a new financial determination hearing. Upon receiving the request, the MDJ	42 Pa.C.S. § 9730(b)(2.2).

shall schedule and conduct the hearing. Upon notice that the defendant has requested a new hearing the collection agency/enforcement unit shall cease collection activity pending the outcome of the hearing. If the defendant fails to appear at the new determination hearing the collection agency/enforcement unit may resume collection activities. If defendant later requests another hearing and fails to appear the collection agency/enforcement unit may continue unless stayed by court order.	
☐ 7. Trial in defendant's absence (trial in absentia). ☐ a. Procedure for trial. If the defendant fails to appear for summary trial, the trial shall be conducted in his/her absence, unless the MDJ determines that there is a likelihood that the sentence imposed will be imprisonment or there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the MDJ may issue an arrest warrant. At trial, the MDJ shall proceed to determine the facts and render a verdict. Except in truancy cases in which the defendant is at least 15 but not yet 17 (see Checklist 4-7(1)), If the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory prison sentence as prescribed by statute, the MDJ is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment.	Pa.R.Crim.P. 455 (A). <u>Note:</u> If the MDJ determines that the defendant should be present, an arrest warrant should be issued and the defendant brought before the court for trial pursuant to Pa.R.Crim.P. 454. <u>Note:</u> MDJS Form 417 is the Bench Warrant form. Pa.R.Crim.P. 455(B). Comment to Pa.R.Crim.P. 455, citing 42 Pa.C.S. §§ 6302 & 6303; 75 Pa.C.S. § 6303(b). Pa.R.Crim.P. 455(C).

☐ b. Verdict. If the defendant is found not guilty in absentia, any collateral previously deposited shall be returned. If the defendant is found guilty in absentia, the MDJ shall impose sentence and shall give notice to the defendant by first class mail of the conviction, sentence, and right to appeal within 30 days for trial <i>de novo</i>. If the amount of collateral deposited is insufficient to cover the fines or costs, or restitution is imposed, the notice shall also state that the defendant has 10 days from the date of notice to pay the amount due or appear for a hearing to determine his/her ability to pay, or an arrest warrant will be issued. Except in truancy cases in which the defendant is at least 15 but not yet 17 (see Checklist 4-7(1)), if the defendant is under the age of 18, the notice shall inform the defendant and his/her parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within 10 days, the MDJ will certify notice of the failure to pay to the court of common pleas pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 <i>et seq.</i> Any collateral deposited shall be forfeited and applied only to the payment of the fines, costs and restitution. When the collateral deposited exceeds the fines and costs, the balance shall be returned to the defendant.	Pa.R.Crim.P. 455(D) & 455(F). MDJS Form 581 is the Order Imposing Sentence. Comment to Pa.R.Crim.P. 455. <u>Note:</u> MDJS Form 608C is the Notice of Impending Juvenile Certification. MDJS Form 608 is the Juvenile Certification form. Pa.R.Crim.P. 455(E).
☐ 8. Reports of disposition under the Vehicle Code. Reports of all summary cases arising from the Vehicle Code are filed electronically. Request for a copy of the report. Upon the request of the defendant, the Commonwealth's attorney, or any other government agency, the MDJ shall provide a certified copy of the report.	Pa.R.Crim.P. 471. <u>Note:</u> These reports shall be sent electronically and the MDJS typically does this automatically. Pa.R.Crim.P. 471(C).
☐ 9. Immobilization and impoundment of vehicles or combinations.	

Failure of a defendant to pay fines for certain violations of the Vehicle Code may subject a vehicle or combination to immobilization or impoundment. For example, overweight vehicles/combinations (>17,000 pounds) may be impounded under certain circumstances described below. In addition, a defendant's vehicle or combination may be immobilized and impounded for driving without a valid operating privilege or registration. Each of these is discussed in detail below. ☐ a. Immobilization or impoundment for failure to pay certain fines. ☐ i. Vehicles/combinations of 17,001 pounds or more. If a fine greater than \$250.00 is imposed for violations of §§ 1301 (registration and certificate of title), 1371 (suspension of registration), 4107(b) (certain unlawful activities), or Chapter 49 (size, weight and load) of the Vehicle Code, the defendant shall have 24 hours to either pay the fine and costs or make arrangements with the MDJ to pay in installments, during which time the vehicle or combination shall be rendered temporarily inoperable. ☐ A. Failure to pay. If the defendant fails to pay the fines or costs or to arrange to pay in installments, the MDJ may issue an impoundment order. If the MDJ issues an impoundment order, he/she shall notify the appropriate law enforcement officer of the county in which the violation occurred, who shall store the vehicle or combination. ☐ B. Recovery. An impounded vehicle or combination may be recovered by proof of valid registration and financial responsibility and payment of all fines and costs or making	75 Pa.C.S. §§ 6309 & 6309.1. 75 Pa.C.S. § 6309.2. 75 Pa.C.S. § 6309. <u>Note:</u> MDJS Form 653 is the Order of Temporary Inoperability form. 75 Pa.C.S. § 6309. <u>Note:</u> MDJS Form 654 is the Impoundment Order form and MDJS Form 655 is the Notification of Impoundment form. 75 Pa.C.S. § 6309(e)(1). <u>Note:</u> MDJS Form 656 is the Certificate of Release of Vehicle or Combination form.
--	---

arrangements for installment payments. ☐ C. Sale. Any vehicle or combination that is not recovered may be sold pursuant to 75 Pa.C.S. § 6310 (see below). ☐ ii. Vehicles/combinations of 17,000 pounds or less. Upon conviction, guilty plea, or <i>nolo contendere</i> plea for violating §§ 1301 (registration and certificate of title), 1332 (display of registration plate), 1371 (suspension of registration), 1501 (driver's license), 1543 (suspended or revoked operating privilege), 1786 (required financial responsibility), or 7124 (fraudulent use or removal of registration plate) of the Vehicle Code, and imposition of fines totaling in excess of \$250.00, the defendant has 24 hours to pay the fines and costs or make arrangements to pay in installments, during which time his/her vehicle or combination shall be rendered temporarily inoperable. ☐ A. Applicability. This provision only applies in first class cities and municipalities (other than counties) where the governing body has adopted an ordinance electing to be subject to the provisions of § 6309.1. ☐ B. Failure to pay. If the defendant fails to pay the fines or costs or arrange to pay in installments, the MDJ may issue an impoundment order. If the MDJ issues such an order, he/she shall notify the appropriate law enforcement officer of the county in which the violation occurred who shall store the vehicle or combination.	75 Pa.C.S. § 6309(e)(2). 75 Pa.C.S. § 6309.1(b). <u>Note:</u> MDJS Form 653 is the Order of Temporary Inoperability form. MDJS Form 656 is the Certificate of Release of Vehicle or Combination form. 75 Pa.C.S. § 6309.1(a). 75 Pa.C.S. § 6309.1(b). <u>Note:</u> MDJS Form 654 is the Impoundment Order form and MDJS Form 655 is the Notification of Impoundment form.
---	---

☐ C. Recovery. An impounded vehicle or combination may be recovered by proof of valid registration and financial responsibility and payment of all fines and costs or making arrangements for installment payments. ☐ D. Sale. Any vehicle or combination that is not recovered may be sold by the sheriff pursuant to 75 Pa.C.S. § 6310 (see below). ☐ iii. Vehicles/combinations driven without operating privileges or without valid registration. If a person operates a motor vehicle or combination while his/her operating privilege is suspended, revoked, cancelled, recalled or disqualified, or he/she is unlicensed, or there is no valid registration for the vehicle or combination, the law enforcement officer shall immobilize the vehicle. The law enforcement officer shall notify the MDJ in whose district the violation occurred. ☐ A. Release. The vehicle operator may appear before the MDJ within 24 hours of when the vehicle was immobilized. The MDJ may issue a certificate of release if the owner provides proof of registration and financial responsibility and provides evidence that the operator has complied with the pertinent provisions of Judicial and Vehicle codes. ☐ B. Towing and storage. If a certificate of release is not obtained within 24 hours of immobilization, the vehicle or combination shall be towed and	75 Pa.C.S. § 6309.1(f)(1). <u>Note:</u> MDJS Form 656 is the Certificate of Release of Vehicle or Combination form. 75 Pa.C.S. § 6309.1(f)(2); 75 Pa.C.S. § 6310. 75 Pa.C.S. § 6309.2(1) & (2); and § 6309.2(e). 75 Pa.C.S. § 6309.2(b)(1). <u>Note:</u> MDJS Form 656 is the Certificate of Release of Vehicle or Combination form. 75 Pa.C.S. § 6309.2(b)(3). <u>Note:</u> The appropriate towing and storage agent is the agent designated by local ordinance. 75 Pa.C.S. § 6309.2(e).
--	--

stored by the appropriate towing and storage agent. The MDJ shall notify the appropriate law enforcement officer of the county where the violation occurred that the vehicle or combination is to be towed and stored, and said officer is responsible for notifying the appropriate towing and storage agent. ☐ C. Recovery. Once a vehicle or combination is towed and stored it may be recovered if the owner or lienholder provides proof of valid registration and financial responsibility and: • if the towing and storage resulted from operation of the vehicle or combination by the owner, payment of all fines and costs associated with towing and storage and any outstanding fines and costs; or • if the towing and storage resulted from operation of the vehicle or combination by someone other than the owner, payment of costs associated with towing and storage and any fines associated with citations issued related to towing and storage and any other outstanding fines and costs of the owner. ☐ D. Sale. Any vehicle or combination that is not	75 Pa.C.S. § 6309.2(c)(1). 75 Pa.C.S. § 6309.2(d)(1)(i). 75 Pa.C.S. § 6309.2(d)(1)(ii)(A). 75 Pa.C.S. § 6309.2(d)(1)(ii)(B). 75 Pa.C.S. § 6309.2(d)(2); 75 Pa.C.S. § 6310.
--	---

recovered may be sold pursuant to 75 Pa.C.S. § 6310 (see below). The sheriff conducts the sale. The sale proceeds shall be applied to payment of fines and costs associated with the towing and storage. ☐ b. Appeal of impoundment order. The procedure for appeal of an impoundment order follow the Rules of Criminal Procedure (see Checklist 4-6 in Section IV.(D)). The matter will be heard <i>de novo</i> by the court of common pleas. ☐ c. Sale of impounded vehicle or combination. The vehicle or combination may be sold at public sale by the sheriff. The proceeds of the sale are to first be applied to payment of fines and costs and second, to the payment of encumbrances. The remainder, if any, shall be remitted to the owner.	Pa.R.Crim.P. 460 & 461. 75 Pa.C.S. § 6310.
---	--

D. APPEAL PROCEDURE IN SUMMARY CRIMINAL CASES

Checklist 4-6: Appeal and Stay	Authority/Notes
☐ 1. Appeal. ☐ a. Time for filing. The notice of appeal of a summary conviction shall be filed within 30 days of the entry of the guilty plea, conviction or other final order from which the appeal is taken. This time limit also applies to appeals following prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine. ☐ b. Place of filing. The notice of appeal shall be filed with the clerk of courts. Within 5 days of the filing of the notice of appeal, a copy of it shall be served (either personally or by mail) by the clerk of courts on	Pa.R.Crim.P. 460(A). <u>Note:</u> For purposes of this rule, the term "entry" means the date on which the MDJ enters or records the guilty plea, conviction, or other order on the MDJS. Comment to Pa.R.Crim.P. 460. Pa.R.Crim.P. 460(A). Pa.R.Crim.P. 460(C). <u>Note:</u> MDJS Form 729B is the Common Pleas Notification Request forms by which the court of common

the MDJ, the affiant, and the appellee or appellee's attorney, if any.	pleas will inform the MDJ of the disposition of the appeal.
☐ c. MDJ's duties. Within 20 days of receiving a copy of the notice of appeal, the MDJ shall file with the clerk of courts:	Pa.R.Crim.P. 460(D).
☐ i. The transcript of the proceedings;	Pa.R.Crim.P. 460(D)(1).
Contents of transcript: The information that must be contained in the transcript is discussed in Checklist 3-1(7) of Section III.	Pa.R.Crim.P. 135(B). <u>Note:</u> MDJS Form 1200 is the Docket Transcript form.
☐ ii. The original complaint or citation, if any;	Pa.R.Crim.P. 460(D)(2).
☐ iii. The summons or arrest warrant, if any; and	Pa.R.Crim.P. 460(D)(3).
☐ iv. The bail bond, if any.	Pa.R.Crim.P. 460(D)(4). <u>Note:</u> The rule uses the term "bail bond" although since this is a summary matter it is actually referring to collateral.
☐ d. No writ of certiorari. Rule 460 is the exclusive means of appealing summary guilty pleas or convictions--courts of common pleas shall not issue writs of <i>certiorari</i> in such cases.	Pa.R.Crim.P. 460(E).
☐ e. Contempt adjudications. Rule 460 does not apply to appeals from contempt adjudications. Appeal from contempt adjudications are governed by Pa.R.Crim.P. 141, which is discussed in Checklist 9-2(3) in Section IX.	Pa.R.Crim.P. 460(G).
☐ 2. Stay. Execution of sentence in summary cases shall be stayed in the following situations:	
☐ a. In all summary cases where a sentence of imprisonment has been imposed, a stay shall be in effect until the time for filing an appeal expires; and	Pa.R.Crim.P. 461(A).

☐ b. In any summary case in which a notice of appeal is filed.	Pa.R.Crim.P. 461(B). <u>Note:</u> The stay applies to all sentences imposed after conviction, including sentences of imprisonment, fines and costs, or restitution and sentences of imprisonment for defaults. Comment to Pa.R.Crim.P. 461.
☐ c. Waiver of stay. A defendant who is represented by counsel, or who has waived counsel pursuant to Pa.R.Crim.P. 121, may waive the stay. The waiver shall be in writing, signed by the defendant and his/her counsel (if any) and made part of the record. If the defendant waives the stay, the MDJ has discretion to determine the date to set the start of the sentence of imprisonment.	Pa.R.Crim.P. 461(C). <u>Note:</u> The waiver of the stay is not to be construed as a waiver of the right to appeal. Comment to Pa.R.Crim.P. 461. MDJS Form 9133 and 9133A is the Waiver of Stay of Execution of Sentence form. Comment to Pa.R.Crim.P. 461.
☐ d. Collateral during stay. If execution is stayed under Rule 461, the MDJ shall release defendant on recognizance unless he/she has reasonable grounds to believe defendant will not appear, in which case, MDJ may set collateral as provided in Pa.R.Crim.P. 523 (see Section V, Checklist 5-6).	Pa.R.Crim.P. 461(D).
☐ i. Factors. When determining whether collateral is necessary and what amount to set, the MDJ shall consider the factors in Pa.R.Crim.P. 523 and the length of sentence in relation to the length of the stay.	Pa.R.Crim.P. 461(D)(1).
☐ ii. Reasons. The MDJ shall state in writing the reasons why any collateral other than release on recognizance has been ordered and the facts on which he/she based the determination that defendant has the ability to pay monetary collateral.	Pa.R.Crim.P. 461(D)(2).
☐ iii. Incarcerated defendants. If defendant is incarcerated during the stay for failure to post collateral, in no event shall he/she be incarcerated for a period	Pa.R.Crim.P. 461(D)(3). <u>Note:</u> “[G]iven the potentially short sentences in such cases, imprisoning a defendant during the stay period for

greater than the period imposed in the original sentence. ☐ e. Fines, costs, and restitution--effect of the 30 day appeal period. During the 30 day appeal period, the failure of the defendant to pay fine, costs, or restitution shall not be grounds for imprisonment or preclude the taking of an appeal.	failure to post collateral is contrary to the intent of the stay provision of this rule.” Pa.R.Crim.P. 461(E).
---	--

E. MISCELLANEOUS SUMMARY ISSUES

1. Truancy Cases

Checklist 4-7: Truancy	Authority/Notes
☐ 1. Truancy: generally. A child under 15 years of age who is habitually truant (i.e., 6 or more school days of unexcused absences during the school year) shall be either referred by the school to a school or community-based attendance improvement program or referred to the county children and youth agency for services and possible disposition as a dependent child under the Juvenile Act, 42 Pa.C.S. § 6301 <i>et seq.</i> The school may also file a citation with the appropriate MDJ against the person in parental relation who resides in the same household as the child. A person in parental relation means: (1) a custodial biological or adoptive parent; (2) a noncustodial biological or adoptive parent; (3) a guardian of the person of a child; or (4) a person with whom a child lives and who is acting in a parental role of a child. The definition does not include any county agency or person acting as an agent of a county agency in the jurisdiction of a dependent child. If a child 15 years of age or older is habitually truant the school shall either refer the child to a school or community-based attendance improvement program or file a citation with the appropriate MDJ against the child	24 P.S. § 13-1333.1(a); 24 P.S. § 13-1326. 24 P.S. § 13-1326. 24 P.S. § 13-1333.1(b).

or the person in parental relation who resides in the same household as the child. Home schooling. The provisions of § 13-1333 do not apply to parents, guardians, or persons in parental relation whose child or children are in a home education program pursuant to 24 P.S. § 13-1327.1.	
☐ 2. Truancy: procedure upon filing of citation.	
☐ a. Venue. Venue for a truancy citation is based on the location of the school in which the child is enrolled or shall be enrolled. In the case of a child enrolled in a cyber charter school, venue is based on the child's residence.	24 P.S. § 13-1333.1(e). 24 P.S. § 13-1333.2(a). 24 P.S. § 13-1327.2(b).
☐ b. Notice of violation. Before proceedings may be initiated against a child or person in parental relation who resides in the same household, the MDJ shall provide written notice of the hearing to the school, the person in parental relation, the child, and the county children and youth agency. In addition, the MDJ shall provide the child or person in parental relation with notice of the availability of a pre-conviction diversionary program authorized under 42 Pa.C.S. § 1520.	24 P.S. § 13-1333.2(b). <u>Note:</u> For purposes of this statute, the term "person in parental relation" does not include any county agency or person acting as an agent of the county agency. 24 P.S. § 13-1326.
☐ c. Hearing. The burden is on the school to prove beyond a reasonable doubt that while subject to compulsory attendance requirements, the child was habitually and without justification truant. If the person in parental relation who shares the same household as the child shows by a preponderance of the evidence that he/she took every reasonable step to insure the child's attendance at school, he/she shall not be convicted of the summary offense. The MDJ then determines if the evidence has established a violation and enters the verdict. To the extent possible, the school is to inform the court of any prior truancy convictions by the child or the person in parental relation.	24 P.S. § 13-1333.2(c). 24 P.S. § 13-1333.2(d) & (e). 24 P.S. § 13-1332.2(f). 24 P.S. § 13-1332.2(g).

☐ d. Sentencing. Prior to sentencing, the MDJ shall permit the school, person in parental relation, or child to present relevant information to assist the MDJ in making an informed decision. The child's attendance after the citation was filed and while proceedings were pending may be considered. A person convicted of truancy may be sentenced to: (1) pay a fine for the benefit of the school not to exceed \$300 plus costs for a first offense (\$500 for second and \$750 for third and subsequent offenses); (2) community service; or (3) completion of a course/program designed to improve school attendance approved by the president judge. Subsequent convictions. Upon a person's second or subsequent truancy conviction within a three year period the court shall refer the child for services or possible disposition as a dependent child. Suspension of sentence. The MDJ may suspend a sentence and may remit or waive fines and costs if the child attends school in accordance with a plan devised by the court. ☐ e. Appeal. Any person convicted of truancy has the right to appeal <i>de novo</i> to the court of common pleas within 30 days of conviction. ☐ f. Failure to satisfy penalty. If a person fails to satisfy the penalty imposed by the court, a person in parental relation may be found in contempt and sentenced three days in any one case. The court shall make a determination as to the person in parental relation's reasonable ability to comply and whether noncompliance was willful. In the case of a child, failure to satisfy fines or costs shall not be considered a delinquent act. The president judge may adopt a local policy to provide that juvenile probation	24 P.S. § 13-1333.2(h). 24 P.S. § 13-1333.3(a). 24 P.S. § 13-1333.3(e). 24 P.S. § 13-1333.3(b). 24 P.S. § 13-1333.3(c). 24 P.S. § 13-1333.3(f).
--	---

may receive allegations that a child who fails to satisfy fines or costs is dependent. ☐ g. Subsequent violations. No citation for a subsequent violation may be filed if: (1) a truancy proceeding and judgment had not been rendered unless a warrant for failure to appear has been issued and has not yet been served; (2) a referral to county children and youth services has been made, the agency has not yet closed the case, and the educational entity has not consulted with the county children and youth agency prior to filing the petition; or (3) a dependency petition due to truancy has been filed and remains under juvenile court jurisdiction. ☐ h. Notice to PennDot. If a child is convicted of truancy the MDJ may send the Department of Transportation a certified record of the conviction on a form prescribed by the department only if the child fails to comply with a lawful sentence and is not subject to an exception to compulsory attendance requirement. ☐ 3. Truancy: expungement Upon application of a child convicted of truancy, the court shall grant expungement if: (1) the child has earned a high school diploma, Commonwealth secondary school diploma, or another approved equivalent or is subject to an exception to compulsory attendance; and (2) the child has satisfied any sentence imposed by the court including fines and costs. Truancy expungement procedures under Pa.R.Crim.P. 490.1, is discussed in Checklist 4-10 below.	24 P.S. § 13-1333.3(d). 24 P.S. § 13-1333.3(g). 24 P.S. § 13-1333.3(h).
---	--

2. Summary Arrest Warrants

Checklist 4-8: Arrest by Warrant	Authority/Notes
☐ 1. Arrest warrants. An arrest warrant shall be issued when: (a) the citation or summons is returned	Pa.R.Crim.P. 430(A). <u>Note:</u> MDJS Form 417 is the Warrant form.

undelivered, or (b) the MDJ has reasonable grounds to believe that the defendant will not obey a summons. ☐ 2. Juveniles. If the defendant is under the age of 18 and fails to respond to a citation, the MDJ shall first issue a summons as set forth in Pa.R.Crim.P. 403(B)(4)(a) (see Checklist 4-2 for summons). If the defendant fails to respond to the summons, the MDJ should issue a warrant as provided in either Checklist 4-8 or 4-9, whichever is appropriate. Except in truancy cases in which the defendant is at least 15 but not yet 17 (see Checklist 4-7(1)), if the defendant is under the age of 18 and has not paid fines and costs, the MDJ shall issue the notice required under Pa.R.Crim.P. 430(B)(4) (see Checklist 4-8(2)(b)(ii)) to the defendant and his/her parent, guardian, or other custodian, informing them that if payment is not received or defendant does not appear within 10 days, the MDJ will certify the failure to pay to the court of common pleas as required by the Juvenile Act. After certification, the case will proceed according to the Juvenile Act and the Rules of Juvenile Court Procedure. If the default occurs when the defendant is over 18, the Rules of Criminal Procedure should be followed. Traffic. Any person over the age of 16 who is charged with a violation of the Vehicle Code constituting a summary offense shall have the same rights as an adult and may be prosecuted as an adult. No person, however, may be sentenced to a term of imprisonment for violation of any provision of the Vehicle Code committed while the person was under the age of 18 years. ☐ 3. Procedure for arrest by warrant. ☐ a. Execution. If a warrant is issued in a summary case pursuant to Pa.R.Crim.P. 430, it shall be executed by a police officer. If the warrant is executed between 6 a.m. and 10 p.m., the officer shall proceed as provided in Pa.R.Crim.P. 431(B) (arrest warrants initiating proceedings), which is discussed below.	<u>Note:</u> Reasonable grounds would include, for example, other outstanding warrants, a history of failure to appear, continuing criminal conduct, etc. Comment to Pa.R.Crim.P. 430 & 431. Comment to Pa.R.Crim.P. 430 & 431. 75 Pa.C.S. § 6303(a) & (b). Pa.R.Crim.P. 431(A)(1). <u>Note:</u> A "police officer" is defined as "any person who is by law given the power to arrest when acting within the scope of the person's employment." Pa.R.Crim.P. 103.
---	--

If the warrant is executed outside of 6 a.m. to 10 p.m.--unless the time period is extended by the president judge by local rule-- the officer shall call the proper MDJ to determine when he/she will be available pursuant to Pa.R.Crim.P. 117. Nothing in Pa.R.Crim.P. 431(A) is intended to preclude the MDJ from authorizing in writing on the warrant that the police officer may execute it at any time and bring the defendant before the MDJ for a hearing. ☐ b. Procedure following execution of the arrest warrant. Upon execution of an arrest warrant, the police officer shall: ☐ i. Accept the defendant's signed guilty plea and full amount of fines and costs (if stated on the warrant); Receipt. If the officer accepts the full amount of fines and costs (guilty plea) or collateral (not guilty plea), the officer shall issue a receipt stating the amount received and shall return a copy (signed by the defendant and the officer) to the proper MDJ. ☐ ii. Accept the defendant's signed not guilty plea and the full amount of collateral (if stated on the warrant); or	Pa.R.Crim.P. 431(A)(2). <u>Note:</u> Pa.R.Crim.P. 117 sets forth a president judge's responsibility to insure sufficient availability of MDJs to conduct, among other things, summary trials or set collateral following arrest without a warrant. <u>Note:</u> Determination of proper MDJ is a question of venue, which is discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130; Comment to Pa.R.Crim.P. 431. Comment to Pa.R.Crim.P. 431. Pa.R.Crim.P. 431(B)(1). Pa.R.Crim.P. 431(B)(1)(a). <u>Note:</u> MDJS Forms 408A and 408B are the Pleas of Guilty Before Issuing Authority and Guilty Pleas Colloquy forms. Pa.R.Crim.P. 431(B)(2). Pa.R.Crim.P. 431(B)(1)(b). <u>Note:</u> Any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 constitutes a cash equivalent. Comment to Pa.R.Crim.P. 452.
--	--

☐ iii. If the defendant is unable to pay, cause the defendant to be taken to the proper MDJ without unnecessary delay. ☐ A. If the defendant is taken before the MDJ, he/she shall enter a plea. ☐ B. If the defendant pleads guilty, the MDJ shall impose sentence. ☐ C. If the defendant pleads not guilty, he/she shall be given an immediate trial unless: ☐ • The Commonwealth is not ready or the defendant requests a postponement or is not ready, in any of circumstances the MDJ shall release defendant on recognizance unless the MDJ has reasonable grounds to believe he/she will not appear, in which case, the MDJ may fix the amount of collateral to ensure defendant's appearance on the new date and at the new hour of trial; or ☐ • The defendant's criminal record shall be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which case the MDJ shall release defendant on recognizance unless he/she has reasonable grounds to believe the defendant will not appear, in which event,	Pa.R.Crim.P. 431(B)(1)(c). Pa.R.Crim.P. 431(B)(3)(a). Pa.R.Crim.P. 431(B)(3)(b) Pa.R.Crim.P. 431(B)(3)(b). Pa.R.Crim.P. 431(B)(3)(b)(i). <u>Note:</u> The fact that a defendant's trial may be delayed does not affect the requirement that he/she be taken before the proper MDJ without unnecessary delay following arrest. Comment to Pa.R.Crim.P. 431. Pa.R.Crim.P. 431(B)(3)(b)(ii). <u>Note:</u> The fact that a defendant's trial may be delayed does not affect the requirement that he/she be taken before the proper MDJ without unnecessary delay following arrest. Comment to Pa.R.Crim.P. 431.
---	---

the MDJ may fix the amount of collateral to ensure the defendant's appearance on the new date and hour for trial, which shall be after the MDJ's receipt of the necessary information. ☐ • In determining whether collateral is necessary and, if so, the amount, the MDJ shall consider the factors listed in Pa.R.Crim.P. 523 (see Section V, Checklist 5-6). The amount of collateral cannot exceed the full amount of the fines and costs. ☐ • If collateral has been set, the MDJ shall state in writing the reasons why any collateral other than release on recognizance has been set and the facts that support the MDJ's determination that the defendant has the ability to pay monetary collateral. ☐ • If collateral is set and defendant fails to post it, he/she shall not be detained without a trial longer than 72 hours or the close of the next business day, if the 72 hour period expires on a non-business day. ☐ D. If the defendant is under 18 years of age and cannot be given an immediate trial, the MDJ shall promptly notify the defendant and his/her parents, guardian or	Pa.R.Crim.P. 431(B)(3)(b)(iii). Pa.R.Crim.P. 431(B)(3)(b)(iv). Pa.R.Crim.P. 431(B)(3)(v). Pa.R.Crim.P. 431(B)(3)(c).
--	--

other custodian of the date set for the summary trial and shall release the defendant on his/her own recognizance.	
--	--

3. Bench Warrant Procedures in Summary Cases

Checklist 4-9: Summary Bench Warrants	Authority/Notes
☐ 1. Issuance of bench warrants. ☐ a. A bench warrant shall be issued when: ☐ i. The defendant fails to respond to a citation or summons that was served on him/her personally or by certified mail, return receipt requested; or ☐ ii. The defendant has failed to appear for execution of sentence as required by Pa.R.Crim.P. 454(F)(3) (see Checklist 4-5(6)(c)(ii)(C) above). ☐ b. A bench warrant may be issued when: ☐ i. A defendant has entered a not guilty plea and fails to appear for the summary trial, if the MDJ determines (pursuant to Pa.R.Crim.P. 455(A)), that the trial should not be conducted in the defendant's absence. ☐ ii. (A) The defendant has entered a guilty plea by mail and the money forwarded is less than the amount of the fines and costs specified in the citation or summons; (B) the defendant has been sentenced to pay restitution, fines, or costs and has defaulted on the payment; or (C) the MDJ has, in defendant's absence, tried and sentenced him/her to pay a fine and costs, and the collateral deposited is less than the amount of the fines and costs imposed.	<u>Note:</u> MDJS Forms 417 is the Warrant form. Pa.R.Crim.P. 430(B)(1). <u>Note:</u> Personal service of a citation is intended to include issuing a citation to a defendant as provided in Pa.R.Crim.P. 400(A) & 405 - 409. Comment to Pa.R.Crim.P. 430. Pa.R.Crim.P. 430(B)(2). Pa.R.Crim.P. 430(B)(3). <u>Note:</u> A bench warrant issued pursuant to this provision should state the amount required to satisfy the sentence. When a defendant is arrested pursuant to this provision the MDJ must conduct a hearing to determine if the defendant is able to pay the amount due. Pa.R.Crim.P. 456.

No warrant shall be issued under Pa.R.Crim.P. 430(B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address. ☐ 2. Juveniles. If the defendant is under the age of 18 and fails to respond to a citation, the MDJ shall first issue a summons as set forth in Pa.R.Crim.P. 403(B)(4)(a) (see Checklist 4-2 for summons). If the juvenile fails to respond to the summons, the MDJ should issue a warrant as provided in either Checklist 4-8 or 4-9, whichever is appropriate. Except in truancy cases in which the defendant is at least 15 but not yet 17 (see Checklist 4-7(1)), if a defendant under the age of 18 has not paid fines and costs, the MDJ shall issue the notice required under Pa.R.Crim.P. 430(B)(4) (see Checklist 4-8(1)(b)(ii)) to the defendant and his/her parent, guardian, or other custodian informing them that, if payment is not received or defendant does not appear within 10 days, the MDJ will certify the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302 <i>et seq.</i> After certification, the case will proceed according to the Juvenile Act and the Rules of Juvenile Court Procedure. If the default occurs when the defendant is 18 years or older, the Rules of Criminal Procedure should be followed. Traffic. Any person over the age of 16 who is charged with a violation of the Vehicle Code constituting a summary offense shall have the same rights as an adult and may be prosecuted as an adult. No person, however, may be sentenced to a term of imprisonment for violation of any provision of the Vehicle Code committed while the person was under the age of 18 years.	<u>Note:</u> MDJS Form 415A is the Payment Determination Hearing Notice form. Pa.R.Crim.P. 430(B)(4). <u>Note:</u> MDJS Form 418 is the Notice of Impending Bench Warrant form. Comment to Pa.R.Crim.P. 430 & 431. Comment to Pa.R.Crim.P. 430 & 431. <u>Note:</u> MDJS Form 608C is the Notice of Impending Juvenile Certification form. MDJS Form 608 is the Juvenile Certification form. 75 Pa.C.S. § 6303(a) & (b).
---	--

☐ 3. Bench warrant procedure ☐ a. Execution. If a warrant is issued in a summary case pursuant to Pa.R.Crim.P. 430, it shall be executed by a police officer. If the warrant is executed between 6 a.m. and 10 p.m., the officer shall proceed as provided in Pa.R.Crim.P. 431(C), which is discussed below. If the warrant is executed outside of 6 a.m. to 10 p.m.--unless the time period is extended by the president judge by local rule-- the officer shall call the proper MDJ to determine when he/she will be available pursuant to Pa.R.Crim.P. 117. Nothing in Pa.R.Crim.P. 431(A) is intended to preclude the MDJ from authorizing in writing on the warrant that the police officer may execute it at any time and bring the defendant before the MDJ for a hearing. ☐ b. Following execution. Upon execution of a bench warrant, the police officer shall either: ☐ i. Accept the defendant's signed guilty plea and full amount of fines and costs (if stated on the warrant); ☐ ii. Accept the defendant's signed not guilty plea and the full amount of collateral (if stated on the warrant); ☐ iii. Accept from the defendant the amount of restitution, fines, and costs specified in the warrant if the warrant is for collection of same following a guilty plea or conviction; or	Pa.R.Crim.P. 431(A)(1). <u>Note:</u> A "police officer" is defined as "any person who is by law given the power to arrest when acting within the scope of the person's employment." Pa.R.Crim.P. 103. Pa.R.Crim.P. 431(A)(2). <u>Note:</u> Pa.R.Crim.P. 117 sets forth a president judge's responsibility to insure sufficient availability of MDJs to conduct, among other things, summary trials or set collateral following arrest without a warrant. <u>Note:</u> Determination of proper MDJ is a question of venue, which is discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130; Comment to Pa.R.Crim.P. 431. Comment to Pa.R.Crim.P. 431. Pa.R.Crim.P. 431(C)(1). Pa.R.Crim.P. 431(C)(1)(a). <u>Note:</u> MDJS Forms 408A and 408B are the Pleas of Guilty Before Issuing Authority and Guilty Plea Colloquy forms. Pa.R.Crim.P. 431(C)(1)(b). Pa.R.Crim.P. 431(C)(1)(c).
---	---

☐ iv. If the defendant is unable to pay, promptly take him/her for a hearing on the bench warrant before the proper MDJ (when available pursuant to Pa.R.Crim.P. 117). The hearing may be conducted by two-way simultaneous audio-visual communication. Receipt. If the defendant pays restitution, fines, costs, or collateral pursuant to Rule 431(C)(1) above, the officer shall issue a receipt to the defendant signed by the defendant and the officer, and a copy shall be returned to the proper MDJ.	Pa.R.Crim.P. 431(C)(1)(d) & (C)(3). Pa.R.Crim.P. 431(C)(2).
---	---

4. Expungement: Summary Convictions Generally

Summary convictions that meet the requirements of 18 Pa.C.S. § 9122 (Expungement) and 18 Pa.C.S. § 9123 (Juvenile Records) may be expunged under the procedures outlined in Pa.R.Crim.P. 490. A petition for expungement of a summary conviction is filed with the clerk of courts for the court of common pleas of the judicial district in which the charges were disposed. Petitioners may find information about such petitions on the AOPC website at <http://www.pacourts.us/forms/for-the-public>.

For expungement of summary truancy convictions see Checklist 4-10 immediately below.

5. Expungement: Truancy Convictions

Checklist 4-10: Expungement of Truancy Conviction	Authority/Notes
☐ 1. Truancy expungement: generally Upon application of a child convicted of truancy, the court shall grant expungement if: (1) the child has earned a high school diploma, Commonwealth secondary school diploma, or another approved equivalent or is subject to an exception to compulsory attendance; and (2) the child has satisfied any sentence imposed by the court including fines and costs.	24 P.S. § 13-1333.3(h).

☐ 2. Petition contents. A petition for truancy expungement must contain: petitioner's name and any aliases; address, date of birth, and social security number; name and address of the MDJ who accepted the guilty plea or heard the case; name and mailing address of the affiant as shown on the complaint or citation, if available; MDJ court number; docket number; school from which the petitioner had been found to be truant; date on the citation or complaint, or date of arrest, and, if available, criminal justice agency that made the arrest; specific charges, as they appear on the charging document, to be expunged; disposition and, if sentence includes fine, costs, or restitution, whether the amount due has been paid; that petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and a verification by the petitioner. In addition, a copy of the petitioner's high school diploma, Commonwealth secondary school diploma or another Department of Education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition. Additional information cannot be required by local rule or practice. A form petition can be found on the AOPC website at http://www.pacourts.us/forms/for-the-public.	Pa.R.Crim.P. 490.1(A).
☐ 3. Service. A copy of the petition is to be served on the affiant, the Commonwealth's attorney, and the school from which the petitioner had been found to be truant.	Pa.R.Crim.P. 490.1(A)(4).
☐ 4. Objections. Within 30 days after service of the petition, the school, the affiant, or the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The consent or objection shall be filed with the MDJ, and copies served on the petitioner's attorney, or the petitioner, if unrepresented.	Pa.R.Crim.P. 490.1(B)(1).
☐ 5. Hearing. Upon receipt of the school, affiant, or the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day response period above, the MDJ shall grant or deny the petition or schedule a hearing. If a hearing is held, petitioner, affiant and attorney for the Commonwealth and the school shall be given an	Pa.R.Crim.P. 490.1(B)(2). Pa.R.Crim.P. 490.1(B)(3)&(4).

opportunity to be heard. Following the hearing, the MDJ shall promptly enter an order granting or denying the petition. If the MDJ grants the petition he or she shall enter an order directing expungement. Unless the school, affiant, or attorney for Commonwealth consent, the order shall be stayed 30 days pending appeal. An order denying a petition shall be entered in writing stating the reasons for denial. □ 6. Order contents. An expungement order must contain: petitioner's name and any aliases has used, address, date of birth, and social security number; name and address of the MDJ who accepted the guilty plea or heard the case; name and mailing address of the affiant as shown on the complaint or citation, if available; MDJ court number; docket number; school from which petitioner had been found to be truant; date on the citation or complaint, or date of arrest, and, if available, the criminal justice agency that made the arrest; specific charges, as they appear on the charging document, to be expunged; disposition and, if the sentence includes fine, costs, or restitution, whether the amount due has been paid; a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and the criminal justice agencies upon which certified copies of the order shall be served. Additional information cannot be required by local rule or practice. The MDJ shall serve a certified copy of the order to the school from which the petitioner had been found to be truant, the Pennsylvania Department of Transportation and to each criminal justice agency identified in the order.	Pa.R.Crim.P. 490.1(B)(4). Pa.R.Crim.P. 490.1(B)(5)&(6). Pa.R.Crim.P. 490.1(C).
--	---

V. CRIMINAL: COURT CASES

A. INTRODUCTION

The criminal offenses that an MDJ handles are divided into two broad categories: summary offenses, which are discussed in section IV, and non-summary offenses--also referred to as court cases-- which are discussed in this section. Summary offenses are those that are designated as such under the Crimes Code or other statute, or carry a potential term of imprisonment of not more than 90 days. 18 Pa.C.S. § 106(c). Court cases consist of murder (first, second, or third degree), felonies, and misdemeanors. 18 Pa.C.S. §§ 103; 106(b). If a defendant is charged with a court case offense in addition to a summary offense, the case should proceed as a court case. Comment to Pa.R.Crim.P. 502.

CAVEAT: The following section is based primarily upon the general rules of court, case law and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that may also affect these procedures. The MDJ should familiarize him/herself with any such local rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. INSTITUTING COURT CASE PROCEEDINGS

Generally, Pa.R.Crim.P. 502 states that court cases may be initiated in two ways: (1) by the filing of a written complaint (Pa.R.Crim.P. 503 - 517), or (2) by an arrest without a warrant (Pa.R.Crim.P. 519). The situations where a court case may be initiated by an arrest without a warrant are: (a) when the offense is a murder, felony, or misdemeanor committed in the presence of the arresting officer; (b) upon probable cause when the offense is a felony or murder; or (c) upon probable cause when the offense is a misdemeanor not committed in the presence of the arresting officer, when such an arrest is specifically authorized by a statute. Pa.R.Crim.P. 502.

1. Institution of Proceedings: Complaint

Many court cases will begin with a complaint filed with the appropriate issuing authority (which is, for the purpose of this bench book, the MDJ). Pa.R.Crim.P. 503. These cases are handled as set forth in Checklist 5-1 below.

Checklist 5-1: Complaint Procedures	Authority/Notes
☐ 1. Content of the complaint. The complaint shall contain:	<u>Note:</u> The requirements of Rule 504 shall be met whether the affiant is a law enforcement officer, police officer, or private citizen. A "law enforcement officer" is defined as "any person who is by law given the power to enforce the law when acting within the scope of that person's employment." Pa.R.Crim.P. 103. A "police officer" is defined as "any person who is by law given the power to arrest when acting within the scope of that person's employment." <i>Id.</i> <u>Note:</u> MDJS Form 412A is the Police Criminal Complaint form.
☐ a. The name of the affiant;	Pa.R.Crim.P. 504(1). <u>Note:</u> "Affiant" is defined as "any responsible person capable of taking an oath who signs, swears to, affirms, or, when permitted by these rules, verifies a complaint and appreciates the nature and quality of that person's act." Pa.R.Crim.P. 103.
☐ b. The defendant's name and address or, if not known, a description of the defendant "as nearly as may be";	Pa.R.Crim.P. 504(2).
☐ c. A direct accusation, to the best of the affiant's knowledge, information, and belief, that the defendant violated the penal laws of the Commonwealth of Pennsylvania;	Pa.R.Crim.P. 504(3).
☐ d. The date the offense is alleged to have been committed and, if the date or day of the week is an essential element of the offense, it shall also be specifically stated;	Pa.R.Crim.P. 504(4). <u>Note:</u> If the specific date is unknown or the offense is a continuing one, it is sufficient to state that it was committed on or about any date within the period of limitations. Pa.R.Crim.P. 504(4)(a).

☐ e. The place where the offense is alleged to have been committed; ☐ f. A summary of the facts sufficient to advise the defendant of the nature of the offense charged, but neither the evidence nor the statute that is alleged to have been violated need be cited in the complaint. If the statute allegedly violated is cited this, by itself, shall not be sufficient by itself to constitute compliance with this requirement; ☐ g. A statement that the defendant's acts were against the peace and dignity of the Commonwealth or in violation of an ordinance of one of its political subdivisions; ☐ h. A notation if criminal laboratory services are requested; ☐ i. A notation that the defendant has, or has not been, fingerprinted; ☐ j. A request for the issuance of an arrest warrant or a summons, unless an arrest has already been effectuated; ☐ k. A verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, information, and belief, and that any false statements are subject to the penalties of 18 Pa.C.S. § 4904 (unsworn falsifications to authorities); ☐ l. Certification that the complaint complies with the UJS Public Access Policy regarding confidential information and documents. ☐ m. The signature of the affiant and the date of execution of the complaint.	Pa.R.Crim.P. 504(5). Pa.R.Crim.P. 504(6)(a). Pa.R.Crim.P. 504(7). Pa.R.Crim.P. 504(8). <u>Note:</u> This will serve to notify the MDJ that in addition to any fines, restitution, or costs, he/she may also be required to sentence the defendant to pay a criminal laboratory user fee pursuant to 42 Pa.C.S. § 1725.3. Comment to Pa.R.Crim.P. 504. Pa.R.Crim.P. 504(9). <u>Note:</u> MDJS Form 405 is the Fingerprint Order form. Pa.R.Crim.P. 504(10). Pa.R.Crim.P. 504(11). Pa.R.Crim.P. 504(12). Pa.R.Crim.P. 504(13).
--	---

☐ 2. Private citizen complaint. A private citizen may file a complaint if it is first submitted to an attorney for the Commonwealth for approval. ☐ a. Contents. A private citizen complaint shall contain all of the information required by Pa.R.Crim.P. 504. ☐ b. Approval/disapproval of private complaints. When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay. If the attorney for the Commonwealth approves it, he/she shall note this on the complaint form and transmit it to the MDJ. If the attorney for the Commonwealth disapproves of the complaint, he/she shall state the reasons for disapproval on the form and return it to the affiant. The affiant may then petition the court of common pleas for review of the disapproval decision. ☐ 3. Approval/disapproval of police complaints and arrest warrants: Local Option. The district attorney of any county may require that criminal complaints and/or arrest warrant affidavits filed in the county by police officers be approved by an attorney for the Commonwealth before filing. If the district attorney elects to proceed under Pa.R.Crim.P. 507(A), he/she shall file a certification with the court of common pleas stating whether prior approval of police complaints and/or arrest warrants is required. The court of common pleas shall then promulgate a local rule to that effect. ☐ 4. Joinder of offenses and defendants. ☐ a. Defendants. When more than one person is alleged to have participated in the commission of an offense, the MDJ shall accept a complaint for each person charged. Each complaint shall contain the names of all the persons alleged to have participated in the commission of the offense as well as a reference to the docket	Pa.R.Crim.P. 506. Comment to Pa.R.Crim.P. 504. <u>Note:</u> MDJS Form 411A is the Private Criminal Complaint form. Pa.R.Crim.P. 506. <u>Note:</u> The Commonwealth's attorney may transmit the complaint to the MDJ by returning it to the affiant for delivery. Comment to Pa.R.Crim.P. 506. Pa.R.Crim.P. 507(A). Pa.R.Crim.P. 507(B). Pa.R.Crim.P. 505(A).
--	---

numbers of the complaints issued for the other alleged participants. Consolidation. The foregoing complaints may be consolidated for hearing or such further action as may be required. Where complaints are consolidated, additional costs shall not be taxed as a result of the acceptance of separate complaints.	Pa.R.Crim.P. 505(A).
☐ b. Offenses. When more than one offense is alleged to have been committed by one person arising out of the same incident, the MDJ shall accept only one complaint and shall docket the matter as a single case.	Pa.R.Crim.P. 505(B).
☐ c. Penalty. Upon application of any interested person and proof that any provision of Pa.R.Crim.P. 505(A) or (B) was violated, a judge may order forfeiture of all additional costs of the MDJ accrued by reason of such violation, and thereafter such costs shall not be taxed in the case.	Pa.R.Crim.P. 505(C). <u>Note:</u> The wording of Rule 505(C) indicates that the penalty would be imposed by a common pleas judge, not an MDJ.
☐ 5. Procedure after the complaint has been submitted to the MDJ.	
☐ a. Criteria for acceptance. Before accepting a complaint for filing, the MDJ shall ascertain and certify on the complaint that:	
☐ i. The complaint has been properly completed and executed; and	Pa.R.Crim.P. 508(A)(1).
☐ ii. When prior submission to an attorney for the Commonwealth is required, whether such an attorney has approved the complaint.	Pa.R.Crim.P. 508(A)(2).
☐ b. Acceptance for filing. Once the MDJ has certified that the above criteria are met, he/she shall accept the complaint for filing and the case shall proceed as provided in the Rules of Criminal Procedure.	Pa.R.Crim.P. 508(B).
☐ 6. Issuance of summons or arrest warrants. If a complaint charges an offense that is a court case, the MDJ with whom it is filed shall:	Pa.R.Crim.P. 509. <u>Note:</u> Nothing in Rule 509 precludes a judicial district from using the

☐ a. Issue a summons in cases in which the most serious offense charged is a second degree misdemeanor or a first degree misdemeanor in cases arising under 75 Pa.C.S. § 3802 (driving under the influence), except as provided below; ☐ b. Issue an arrest warrant when: ☐ i. One or more of the offenses charged is a felony or murder; or ☐ ii. The MDJ has reasonable grounds for believing that the defendant will not obey a summons; or ☐ iii. The MDJ has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or himself/herself; or ☐ iv. The summons was mailed pursuant to Pa.R.Crim.P. 511(A) (see Checklist 5-2(2)(a) below) and has been returned undelivered; or ☐ v. The identity of the defendant is unknown. ☐ c. MDJ's discretion. If the offense charged does not fit into any of the categories specified in Pa.R.Crim.P. 509(1) or (2) (Checklist 5-1(6)(a) & (b) above), the MDJ has discretion to issue either a summons or an arrest warrant.	United States Postal Service's return receipt electronic option or a similar service that provides an electronic receipt when using certified mail, return receipt requested. Comment to Pa.R.Crim.P. 509. Pa.R.Crim.P. 509(1). <u>Note:</u> For summons procedures, see Checklist 5-2 below. <u>Note:</u> MDJS Form 618 is the Summons for Criminal Case form. Pa.R.Crim.P. 509(2). <u>Note:</u> For arrest warrant procedures, see Checklist 5-3 below. Pa.R.Crim.P. 509(2)(a). Pa.R.Crim.P. 509(2)(b). Pa.R.Crim.P. 509(2)(c). Pa.R.Crim.P. 509(d). <u>Note:</u> Before the warrant may be issued in this situation, the summons shall have been served by both first class and certified mail, return receipt requested, and returned undelivered under both. Comment to Pa. R. Crim. P. 509. Pa.R.Crim.P. 509(2)(e). Pa.R.Crim.P. 509(3).
---	---

Factors the MDJ may consider are: the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, and the known prior criminal history of the defendant. In all cases, however, where the defendant has been released pursuant to Pa.R.Crim.P. 519(B) (see checklist 5-4(2) below), a summons shall be issued.	Comment to Pa.R.Crim.P. 509.
--	------------------------------

a. Summons Procedures

Once the complaint has been filed and the MDJ determines that a summons is appropriate, the MDJ shall issue the summons. Checklist 5-2 below describes the procedures for issuing the summons. If an arrest warrant is proper, Checklist 5-3 sets forth the procedures for issuing an arrest warrant.

Checklist 5-2: Summons Procedures	Authority/Notes
☐ 1. Contents of the summons. The summons in a court case shall command the defendant to appear before the MDJ for a preliminary hearing at the place and on the date and time stated on the summons. The date set for the preliminary hearing shall be not less than twenty (20) days from the date of mailing of the summons unless the MDJ fixes an earlier date at the request of the defendant or defendant's attorney with the affiant's consent.	Pa.R.Crim.P. 510(A).
☐ a. Notice to the defendant. The summons shall give notice to the defendant:	Pa.R.Crim.P. 510(B).
☐ i. Of the right to secure counsel of his/her choice and, for defendants without financial resources, of the right to assigned counsel pursuant to Pa.R.Crim.P. 122 (see Checklist 3-2(2));	Pa.R.Crim.P. 510(B)(1).
☐ ii. That bail will be set at the preliminary hearing;	Pa.R.Crim.P. 510(B)(2).
☐ iii. 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 his/her absence, and a bench warrant will be issued for his/her arrest; and	Pa.R.Crim.P. 510(B)(3). <u>Note:</u> The bench warrant will actually be issued by the court of common pleas, not the MDJ.

☐ iv. That if the case is held for court the defendant fails to appear without cause at any proceeding for which his/her presence is required, including trial, that his/her absence may be deemed a waiver of the right to be present and the proceeding, including the trial, may be conducted in his/her absence. ☐ b. Copy of the complaint. A copy of the complaint shall be attached to the summons. ☐ c. Fingerprint order. Except in cases initiated by private complaint, an order directing the defendant to submit to fingerprinting shall be attached to the summons. ☐ 2. Service of the summons. ☐ a. Service. The summons shall be served on the defendant by both first class mail and certified mail, return receipt requested, and a copy of the complaint shall be served with the summons. ☐ b. Proof of service. Proof of service of the summons shall include: (1) a return receipt signed by the defendant; or (2) the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the MDJ within 20 days after the mailing. ☐ 3. Procedure following issuance of the summons. The defendant shall appear before the MDJ for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the MDJ shall proceed as provided in Pa.R.Crim.P. 543(D) (see Checklist 5-9(4)(b) below).	Pa.R.Crim.P. 510(B)(4). Pa.R.Crim.P. 510(C)(1). Pa.R.Crim.P. 510(C)(2). <u>Note:</u> MDJS Form 405 is the Fingerprint Order form. Pa.R.Crim.P. 511(A). <u>Note:</u> Nothing in Rule 511 precludes a judicial district from using the United States Postal Service's return receipt electronic option, or a similar service that provides an electronic receipt when using certified mail, return receipt requested. Comment to Pa.R.Crim.P. 511. Pa.R.Crim.P. 511(B). <u>Note:</u> MDJS Form 624 is the Service of Process form and Form 640 is the Server Fee Notice form. Pa.R.Crim.P. 512.
--	---

b. Arrest Warrant Procedures

After the complaint is filed, if the MDJ determines that an arrest warrant is appropriate, he/she shall follow the arrest warrant procedures outlined in the Rules of Criminal Procedure. Checklist 5-3 describes the procedures for issuing an arrest warrant.

Checklist 5-3: Arrest Warrant Procedures	Authority/Notes
☐ 1. Requirements for issuance. ☐ a. “Arrest warrant information” defined. Arrest warrant information is the criminal complaint in cases where an arrest warrant is issued, the arrest warrant, any affidavits of probable cause, and documents or information related to the case. ☐ b. At the MDJ's discretion, advanced communication technology may be used to submit a complaint and affidavit for an arrest warrant and to issue an arrest warrant. ☐ c. No arrest warrant shall be issued except upon probable cause supported by one or more affidavits sworn to before the MDJ in person or using advanced communication technology. The MDJ, in determining whether probable cause has been established, may not consider any evidence outside of the affidavits.	Pa.R.Crim.P. 513. <u>Note:</u> MDJS Form 417 is the Warrant of Arrest form. Pa.R.Crim.P. 513(A). Pa.R.Crim.P. 513(B)(1). <u>Note:</u> "Advanced communication technology" is defined as "any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound, closed-circuit television, telephone and facsimile equipment, and electronic mail." Pa.R.Crim.P. 103. Pa.R.Crim.P. 513(B)(2). <u>Note:</u> Although this rule does not preclude oral testimony, it does require that it be reduced to an affidavit sworn to before the MDJ prior to the issuance of the warrant. Comment to Pa.R.Crim.P. 513. An affidavit may be sworn to before the MDJ by the use of advanced communication technology. <i>Id.</i> An affidavit is not required for an arrest warrant issued for non-compliance with a citation, summons, or court order. <i>Id.</i>

☐ d. Immediately before submitting a complaint and affidavit to an MDJ using advanced communication technology, the affiant shall personally communicate with the MDJ by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the MDJ shall verify the identity of the affiant and orally administer an oath to him/her. In any telephonic communication, if the MDJ has a concern regarding the identity of the affiant, he/she may require the affiant to communicate by a device allowing for two-way simultaneous audio-visual communication or may require the affiant to appear in person.	Pa.R.Crim.P. 513(B)(3). <u>Note:</u> It must be stressed that the advanced communication technology used must have visual as well as audio technology. Verification requirements can include, but aren't limited to: a "call back" system where the MDJ would call the agency or department the affiant indicates is seeking the warrant; a "signature comparison" system; or an established password system. Comment to Pa.R.Crim.P. 513.
☐ 2. Duplicate and reissued arrest warrants. ☐ a. Duplicate warrants. When an arrest warrant has been issued and it appears necessary or desirable to issue duplicates for execution, the MDJ may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be taxed only for one such warrant and only one service fee shall be charged. ☐ b. Reissued warrant. After service and execution of an original or duplicate warrant, the MDJ may reissue the warrant if the purpose for which the original or duplicate has been issued has not been accomplished.	Pa.R.Crim.P. 514(A). Pa.R.Crim.P. 514(B).
☐ 3. Execution of the arrest warrant. An arrest warrant may be executed at any place within the Commonwealth of Pennsylvania. The arrest warrant shall be executed by a police officer.	Pa.R.Crim.P. 515. <u>Note:</u> A "police officer" is defined as "any person who is by law given the power to arrest when acting within the scope of that person's employment." Pa.R.Crim.P. 103.
☐ 4. Procedure when the arrest warrant is executed within the judicial district of issuance. ☐ a. Preliminary arraignment. When a defendant has been arrested in a court case with a warrant within the judicial district where the warrant was	Pa.R.Crim.P. 516. Pa.R.Crim.P. 516(A). <u>Note:</u> Determination of the proper MDJ is a question of venue, which is

issued, he/she shall be afforded a preliminary arraignment by the proper MDJ without unnecessary delay. ☐ b. Advanced communication technology. When a preliminary arraignment is conducted using advanced communication technology, the defendant shall be taken to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial or judicial district.	discussed in Checklist 2-3 of Section II. Pa.R.Crim.P. 130. Pa.R.Crim.P. 516(B). <u>Note:</u> An "advanced communication technology site" is "any approved location within Pennsylvania designated by the president judge, or the president judge's designee, with advanced communication technology equipment that is available for parties in a criminal matter to communicate with others in physically separate locations as provided in these rules." Pa.R.Crim.P. 103. <u>Note:</u> This rule makes clear that the advanced communication technology site need not be in the MDJ's magisterial district or even in the same judicial district.
☐ 5. Procedure when the arrest warrant is executed outside the judicial district of issuance. ☐ a. Post-arrest. After arrest, the defendant shall be taken without unnecessary delay to the proper MDJ in the judicial district of arrest for purpose of posting bail, as permitted by law. ☐ b. Bail. The MDJ to whom the defendant is taken pursuant to a. above shall advise the defendant of the right to post bail. If bail is posted, the defendant shall be admitted to bail, conditioned upon the defendant's appearance for preliminary arraignment before the proper MDJ in the judicial district where the warrant was issued at a date certain that is not less than 5 nor more than 10 days later. ☐ c. Failure to post bail. If the defendant fails to post bail, the arresting officer shall:	Pa.R.Crim.P. 517. Pa.R.Crim.P. 517(A). <u>Note:</u> A defendant may consent to dispense with this procedure if he/she is given a preliminary arraignment without unnecessary delay in the judicial district where the arrest warrant was issued. Comment to Pa.R.Crim.P. 517. Pa.R.Crim.P. 517(B). Pa.R.Crim.P. 517(C).

☐ i. Return the defendant to the judicial district where the warrant was issued, without unnecessary delay, for preliminary arraignment by the proper MDJ; or ☐ ii. Lodge the defendant in a suitable place of detention in the judicial district of arrest, and immediately notify the proper MDJ in the judicial district where the warrant was issued of the detention and the place of such detention. Upon receipt of this notice, the MDJ of the district where the warrant was issued shall, without unnecessary delay, cause the defendant to be brought to the judicial district where the warrant was issued for preliminary arraignment by the proper MDJ. ☐ d. Discharge after 48 hours. If the defendant is held for 48 hours or more without a preliminary arraignment in a place of detention outside the judicial district where the warrant was issued due to inability to post bail, the defendant shall be discharged from custody upon application of any interested person to a judge of a court of the judicial district of detention. However, upon cause shown, the judge may grant one or more extensions to an early date, fixed in the order, but if the defendant remains in custody and hasn't been removed to the judicial district where the warrant was issued at the end of the extended detention period, the defendant shall be discharged from custody. ☐ e. Defendant fails to appear. If a defendant who has been released on bail fails to appear at the time fixed for the preliminary arraignment, the proper MDJ in the judicial district where the warrant was issued shall immediately cause the bail to be forfeited according to law and issue a bench warrant. If the defendant is later arrested outside the judicial district where the bench warrant was issued, he/she shall not be entitled to post bail in	Pa.R.Crim.P. 517(C)(1). Pa.R.Crim.P. 517(C)(2). Pa.R.Crim.P. 517(C)(2). Pa.R.Crim.P. 517(D). <u>Note:</u> The application should be made to a court of record, not an MDJ. Pa.R.Crim.P. 517(E). Pa.R.Crim.P. 517(E).
---	--

the judicial district of arrest, but shall be taken, as soon as is practicable, to the judicial district where the bench warrant was issued for preliminary arraignment by the proper MDJ. ☐ f. Defendant not afforded the opportunity to post bail. If, upon application of any interested person, it is shown to the satisfaction of a judge of a court in the judicial district where the arrest warrant was issued that the defendant was returned there without being given the opportunity to post bail and that had he/she had the opportunity he/she would have been able to post bail, the judge shall have discretion to: ☐ i. Discharge the defendant from custody; or ☐ ii. Release the defendant on bail, conditioned upon his/her appearance at the preliminary hearing; and ☐ iii. Forfeit all costs, including mileage and transportation charges, of the arresting and transporting person, in order that such costs and charges shall not be taxed in the case. ☐ g. Recognizances. All recognizances accepted under Pa.R.Crim. 517 shall immediately be transmitted to the proper MDJ in the judicial district where the warrant was issued. ☐ h. Advanced communication technology. ☐ i. Preliminary arraignment/bail. When a defendant is arrested with a warrant outside of the issuing judicial district, the defendant may be taken for preliminary arraignment/posting of bail to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any MDJ district and:	Pa.R.Crim.P. 517(F). <u>Note:</u> The application is to be made to a court of record, not an MDJ. Pa.R.Crim.P. 517(F)(1). Pa.R.Crim.P. 517(F)(2). Pa.R.Crim.P. 517(F)(3). Pa.R.Crim.P. 517(G). Pa.R.Crim.P. 518. Pa.R.Crim.P. 518(A). <u>Note:</u> This rule allows the defendant to be transported to an advanced communication technology site located outside of the judicial district of arrest if it is most convenient to the place of arrest. Comment to Pa.R.Crim.P. 518.
---	--

☐ A. The defendant shall be taken to the site without unnecessary delay. ☐ B. The preliminary arraignment may be held by the proper MDJ in the magisterial district or judicial district in which the warrant was issued; or ☐ C. The defendant may post bail as permitted by law with the proper MDJ in the judicial district in which he/she was arrested.	Pa.R.Crim.P. 518(A)(1). Pa.R.Crim.P. 518(A)(2). Pa.R.Crim.P. 518(A)(3). <u>Note:</u> If advanced communication technology is only available in the judicial district of arrest, the MDJ would proceed under Rule 518(A)(3), unless the defendant consents to dispense with these procedures and he/she is afforded a preliminary arraignment without unnecessary delay in the judicial district in which the warrant was issued. Comment to Pa.R.Crim.P. 518.
☐ ii. Defendant fails to post bail. If a preliminary arraignment is conducted pursuant to Pa.R.Crim.P. 518(A)(2) (Checklist 5-3(5)(h)(i)(B) above), and the defendant does not post bail, the MDJ who conducted the preliminary arraignment shall commit the defendant to jail in the district of arrest or the judicial district in which the arrest warrant was issued.	Pa.R.Crim.P. 518(B). <u>Note:</u> As a practical matter, although the rule allows it, committing the defendant to jail in the district of arrest may not always be feasible. <u>Note:</u> MDJS Form 609 is the Commitment form.
☐ A. The MDJ may transmit to the jail any required documents by using advanced communication technology.	Pa.R.Crim.P. 518(B)(1).
☐ B. When a monetary condition of bail is set by the MDJ who conducted the preliminary arraignment, the payment of this condition shall be made either to the MDJ who imposed it or the proper MDJ in the	Pa.R.Crim.P. 518(B)(2). <u>Note:</u> In some counties the bail payment may be made at the county jail.

judicial district in which the defendant was arrested. ☐ iii. Procedures to be used. When the defendant appears pursuant to Pa.R.Crim.P. 518(A)(3) (Checklist 5-3(5)(h)(i)(C)) above) before the proper MDJ in the judicial district where he/she was arrested by way of advanced communication technology, the procedures of Pa.R.Crim.P. 517 (Checklist 5-3(5)(a)-(g) above) should be followed. ☐ 6. Delay in dissemination of arrest warrant information. ☐ a. Request for delay. Either the affiant or the district attorney may request that the availability of the arrest warrant information for inspection/dissemination be delayed. The arrest warrant affidavit shall include facts and circumstances that are alleged to establish good cause for such delay. In counties where the district attorney requires all complaints and arrest warrant affidavits to be approved prior to filing under Pa.R.Crim.P. 507 (see Local Option, Checklist 5-1(3) above), only the district attorney can request a delay in inspection and dissemination of arrest warrant information. ☐ b. Grant of request. On finding good cause, the MDJ shall grant the request and order that the availability of the arrest warrant information be delayed for 72 hours or until receipt of notice that the warrant has been executed, whichever occurs first. There may be an initial period of delay of not more than 24 hours preceding the 72 hour period if additional time is needed to complete the administrative processing of the warrant information before its issuance. The MDJ shall complete the administrative processing prior to the expiration of the initial 24 hour period.	Pa.R.Crim.P. 518(C). Pa.R.Crim.P. 513(C). Pa.R.Crim.P. 513(C)(3). Pa.R.Crim.P. 513(C)(1).
---	---

☐ c. Duration of delay. Once the warrant is issued, the 72 hour delay period begins. ☐ 7. Sealing of arrest warrant. Under the rules, a common pleas court judge or appellate court judge or justice may grant a request to seal arrest warrant information. MDJs do not have this authority. Defendant's access. After a sealed warrant is executed, a copy of the warrant information shall be given to defendant at the preliminary arraignment. ☐ 8. Public access. Under the UJS Electronic Case Record Information Public Access Policy electronic case information relating to arrest warrants and supporting affidavits is not accessible until after the warrant is executed.	Pa.R.Crim.P. 513(C)(2). Pa.R.Crim.P. 513.1; Comment to Pa.R.Crim.P. 513.1. Pa.R.Crim.P. 513.1(F). Electronic Case Record Policy of the UJS, § 3.00(M).
---	--

2. Institution of Proceedings: Arrest Without a Warrant

As discussed above, when a complaint is filed, this act initiates the criminal proceedings. When, however, a defendant is arrested without a warrant, it is the arrest which initiates the criminal proceedings. Comment to Pa.R.Crim.P. 503. The situations where a court case may be initiated by an arrest without a warrant are: (a) when the offense is a murder, felony, or misdemeanor committed in the presence of the arresting officer; (b) upon probable cause when the offense is a felony or murder; or (c) upon probable cause when the offense is a misdemeanor not committed in the presence of the arresting officer, when such an arrest is specifically authorized by a statute. Pa.R.Crim.P. 502. The following checklist discusses the procedures following a warrantless arrest.

Checklist 5-4: Arrest Without a Warrant	Authority/Notes
☐ 1. Procedure following arrest without a warrant. ☐ a. Preliminary arraignment. Except as provided in Checklist 5-4(1)(b) below, when a defendant has been arrested without a warrant, a complaint shall be filed against him/her, and he/she shall be afforded a preliminary arraignment by the proper MDJ without unnecessary delay.	Pa.R.Crim.P. 519(A)(1). <u>Note:</u> An example of necessary delay would be a delay attributable to a defendant's mental or physical condition which renders him/her incapable of benefiting from the

☐ b. Advanced communication technology. When a preliminary arraignment is conducted by advanced communication technology, the defendant shall be taken to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district. ☐ 2. Release. ☐ a. Criteria for release. The arresting officer shall promptly release a defendant from custody rather than taking him/her to an MDJ when the following criteria are met: ☐ i. The most serious offense charged is a second degree misdemeanor or a first degree misdemeanor arising under 75 Pa.C.S. § 3802 (driving under the influence); ☐ ii. The defendant poses no threat of immediate physical harm to any other person or him/herself; and ☐ iii. The arresting officer has reasonable grounds to believe that the defendant will appear as required.	protections the preliminary arraignment was meant to afford. <i>Commonwealth v. Williams</i>, 400 A.2d 1258, 1261 (Pa. 1979). Pa.R.Crim.P. 519(A)(2). <u>Note:</u> The complaint may be filed by advanced communication technology. Comment to Pa.R.Crim.P. 519. The advanced communication technology site need not be in the judicial district of arrest. <i>Id.</i> Pa.R.Crim.P. 519(B)(1). <u>Note:</u> If the three criteria are met, release is mandatory and this requirement may not be modified by local rule. Comment to Pa.R.Crim.P. 519. Prompt release does allow for the administration of any sobriety tests pursuant to the Vehicle Code, or the completion of any other procedures allowed by law. <i>Id.</i> Pa.R.Crim.P. 519(B)(1)(a). Pa.R.Crim.P. 519(B)(1)(b). Pa.R.Crim.P. 519(B)(1)(c). <u>Note:</u> "Reasonable grounds" includes things such as: concerns about the validity of defendant's address, the defendant's prior contacts with the criminal justice system, and the officer's personal knowledge of the
--	---

☐ b. Complaint and summons following release. When the defendant is released pursuant to Pa.R.Crim.P. 519(B)(1) (Checklist 5-4(2)(a) above), a complaint shall be filed within 5 days of defendant's release. Thereafter, the MDJ shall issue a summons, not an arrest warrant, and shall proceed as provided in Pa.R.Crim.P. 510 (see Checklist 5-2(1) above). ☐ c. Statutory exceptions from release. A defendant may not be released but shall instead be brought before an MDJ for a preliminary arraignment when the defendant is arrested for failure to comply with the registration requirement for sexual offenders (18 Pa.C.S. § 4915.1(e)(2)), or a police officer has arrested the defendant in a domestic violence case (18 Pa.C.S. § 2711; 23 Pa.C.S. § 6113(c)).	defendant. Comment to Pa.R.Crim.P. 519. Pa.R.Crim.P. 519(B)(2). Comment to Pa.R.Crim.P. 519.
---	---

C. BAIL

Magisterial district judges have the authority to "preside at arraignments, fix and accept bail, except for offenses under 18 Pa.C.S. §§ 2502 (relating to murder) and 2503 (relating to voluntary manslaughter)" 42 Pa.C.S. § 1515(a)(4). All prisoners are bailable by sufficient sureties, except those charged with capital offenses, or offenses for which the maximum sentence is life imprisonment, or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption is great. Pa.Const. Art. I, § 14; 42 Pa.C.S. § 5701. The Commonwealth bears the burden of proving a defendant is not entitled to bail, which it can satisfy by establishing a *prima facie* case of first degree murder. *Commonwealth v. Heiser*, 478 A.2d 1355, 1356 (Pa. Super. 1984). Bail for defendants who are entitled to it is governed by the rules of criminal procedure. 42 Pa.C.S. § 5702; Explanatory Comment to Pa.R.Crim.P. 520-536. The procedures for fixing, posting, forfeiting, exoneration, and distribution of bail under the Rules of Criminal Procedure are discussed below.

1. Bail: Generally

Checklist 5-5: Bail, generally	Authority/Notes
☐ 1. Bail before verdict. ☐ a. Refusal of bail. Bail before verdict shall be set in all cases as permitted by law. If bail is refused, the bail authority shall state in writing or on the record the reasons for that determination. Criteria. The decision to deny bail shall be based on the application of certain criteria such as: (1) general reputation in the community; (2) past record; (3) past conduct while on bail; and (4) ties to the community in form of job, family or wealth. As previously mentioned, the Pennsylvania Constitution provides: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great" ☐ b. Time for admittance. A defendant may be admitted to bail on any day and any time. ☐ 2. Bail after a finding of guilt. Rule 521's provisions would not be relevant to an MDJ since MDJs do not determine guilt in court cases only whether a <i>prima facie</i> case has been established. ☐ 3. Detention of witnesses. Detention of witnesses is a power of a court of record.	Pa.R.Crim.P. 520(A). <u>Note:</u> "Bail authority" is defined as "the [MDJ], magistrate, Philadelphia arraignment court magistrate, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail." Pa.R.Crim.P. 103. If the court is not of record, the written reasons for denial shall be included with the docket transcript. Comment to Pa.R.Crim.P. 520. <i>Commonwealth v. Truesdale</i>, 296 A.2d 829, 836 (Pa. 1972); <i>see also</i> Pa.R.Crim.P. 523 (Release Criteria in Checklist 5-6 below). Pa.Const. Art. I, § 14. Pa.R.Crim.P. 520(B). Pa.R.Crim.P. 521. Pa.R.Crim.P. 522.

2. Bail: Release Procedures

Checklist 5-6: Bail: Release Procedures	Authority/Notes
☐ 1. Release criteria. ☐ a. Factors to consider. In determining whether to release a defendant and what, if any, conditions to impose, the bail authority shall consider all available information as is relevant to the defendant's likely appearance/ nonappearance at subsequent proceedings or compliance/noncompliance with the conditions of bail bond including information about: ☐ i. The nature of the offense charged and any mitigating/aggravating factors that may bear on the likelihood of conviction and possible penalty; ☐ ii. The defendant's employment status and history, and financial condition; ☐ iii. The nature of the defendant's family relationships; ☐ iv. The length and nature of the defendant's residence in the community, and any past residences; ☐ v. The defendant's age, character, reputation, mental condition, and whether he/she is addicted to alcohol or drugs; ☐ vi. If the defendant has been previously released on bail, whether he/she appeared as required and complied with the conditions of the bail bond;	Pa.R.Crim.P. 523(A). <u>Note:</u> The bail authority is required to consider all of the criteria set forth below and not focus solely on one or two of them. Comment to Pa.R.Crim.P. 523. <u>Note:</u> As the factors of Rule 523 make clear, the purpose of bail is to ensure the defendant's appearance at subsequent proceedings and not punishment. Pa.R.Crim.P. 523(A)(1). Pa.R.Crim.P. 523(A)(2). Pa.R.Crim.P. 523(A)(3). Pa.R.Crim.P. 523(A)(4). Pa.R.Crim.P. 523(A)(5). Pa.R.Crim.P. 523(A)(6).

☐ vii. Whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape; ☐ viii. The defendant's prior criminal record; ☐ ix. Any use of false identification; and ☐ x. Any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond. Pretrial Risk Assessment tool can be used as a means of evaluating the factors but it cannot be the only means of reaching the bail determination.	Pa.R.Crim.P. 523(A)(7). Pa.R.Crim.P. 523(A)(8). Pa.R.Crim.P. 523(A)(9). Pa.R.Crim.P. 523(A)(10). <u>Note:</u> When a defendant who has been released on bail is arrested on a second or subsequent charge, the bail authority may consider that factor in conjunction with other release criteria when setting bail for the new charge. Comment to Pa.R.Crim.P. 523. Comment to Pa.R.Crim.P. 523.
☐ b. Additional factor in domestic violence cases. In domestic violence cases arising under 18 Pa.C.S. § 2711 (arrests in domestic violence cases), the bail authority shall also consider whether the defendant poses a threat to the victim. If the bail authority makes such a determination, he/she shall require as a condition of bail that the defendant refrain from entering the residence or household and place of employment, and refrain from committing any further criminal conduct against the victim, and shall so notify the victim at the time the defendant is admitted to bail.	18 Pa.C.S. § 2711(c)(2); Comment to Pa.R.Crim.P. 523.
☐ c. Improper factor to consider. The defendant's decision not to admit culpability or not to assist in an investigation shall not be a reason to impose additional or more restrictive conditions of bail.	Pa.R.Crim.P. 523(B).
☐ 2. Types of release. If bail is set pursuant to Pa.R.Crim.P. 520 (bail before verdict), the defendant shall be eligible for the types of release set forth below. The bail authority, after considering the criteria of Pa.R.Crim.P.	Pa.R.Crim.P. 524(A).

523, shall determine the type, or combination of types, of release on bail reasonably necessary (in the bail authority's discretion) to ensure that the defendant will appear at all subsequent proceedings and comply with the conditions of the bail bond. The types of release are: ☐ a. Release on recognizance (ROR). Release conditioned only on the defendant's written agreement to appear and comply with the conditions of the bail bond. ☐ b. Release on non-monetary conditions. Release conditioned upon the defendant's agreement to comply with any non-monetary conditions (as set forth in Pa.R.Crim.P. 527, see Checklist 5-6(5)) that the bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond. ☐ c. Release on unsecured bail bond. Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he/she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited. ☐ d. Release on nominal bail. Release conditioned upon the defendant's depositing a nominal amount of cash that the bail authority determines is sufficient security for his/her release, such as \$1.00, and the agreement of a designated person, organization or bail agency to act as a surety for the defendant. ☐ e. Release on a monetary condition. Release conditioned on the defendant's compliance with a monetary condition imposed pursuant to Pa.R.Crim.P. 528 (see Checklist 5-6(6), below). The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond. ☐ 3. Bail bond. A bail bond is a document whereby the defendant agrees that while at liberty after being released	Pa.R.Crim.P. 524(C)(1). Pa.R.Crim.P. 524(C)(2). Pa.R.Crim.P. 524(C)(3). Pa.R.Crim.P. 524(C)(4). Pa.R.Crim.P. 524(C)(5). Pa.R.Crim.P. 525(A).
--	--

on bail, he/she will appear at all subsequent proceedings as required and comply with all conditions of the bail bond. ☐ a. Preparation of bail bond. At the time bail is set, the bail authority shall have the bail bond prepared and sign it, verifying the conditions imposed. ☐ b. If defendant cannot post bail. If the defendant cannot post bail at the time it is set, when the bail authority commits the defendant to jail, he/she shall send the prepared and verified bail bond and any other necessary paperwork with the defendant to the place of incarceration. ☐ c. Release. When the defendant is to be released, the defendant and--when applicable--one or more sureties--shall sign the bail bond. In addition, the official who releases the defendant shall also sign the bail bond witnessing the defendant's signature. ☐ d. Content of the bail bond. The bail bond shall set forth the type or combination of types of release, the conditions of release, and the conditions of the bail bond set forth in Pa.R.Crim.P. 526(A) (see Checklist 5-6(4), below), and the consequences of failing to appear or failing to comply with all the conditions of the bail bond. ☐ e. Signature. The defendant may not be released until he/she signs the bail bond. ☐ f. Copy. After the defendant signs the bail bond, a copy shall be given to him/her and the original included in the record. ☐ g. Duration of obligation. Unless bail is revoked, a bail bond shall be valid until the full and final disposition of the case, including all avenues of direct appeal to the Supreme Court of Pennsylvania.	<u>Note:</u> MDJS Form 414 is the Bail Bond form. <u>Note:</u> Conditions of bail bond are discussed in Checklist 5-6(4) below). Pa.R.Crim.P. 525(B)(1)-(2). Pa.R.Crim.P. 525(C). Pa.R.Crim.P. 525(D). <u>Note:</u> MDJS Form 602 is the Release of Prisoner form. Pa.R.Crim.P. 525(E). Pa.R.Crim.P. 525(F). Pa.R.Crim.P. 525(G). Pa.R.Crim.P. 534. <u>Note:</u> When bail is terminated due to the defendant's acceptance into an ARD program, this action constitutes full and final disposition. Comment to Pa.R.Crim.P. 534.
--	---

☐ 4. Conditions of the bail bond. The bail authority shall set forth in the bail bond all conditions of release. ☐ a. Required conditions. In every case where a defendant is released on bail, the conditions of the bail bond shall be that the defendant will: ☐ i. Appear at all times required until full and final disposition of the case; ☐ ii. Obey all further orders of the bail authority; ☐ iii. Give written notice to the bail authority, the clerk of courts, the district attorney, and the court bail agency or other designated court bail officer, of any change of address within 48 hours of the date of the change; ☐ iv. Neither do, nor cause to be done, nor permit to be done on his/her behalf, any act proscribed by 18 Pa.C.S. § 4952 (victim or witness intimidation) or § 4953 (retaliation against victims or witnesses); and ☐ v. Refrain from criminal activity. ☐ b. Additional conditions. If the bail authority determines that additional conditions are necessary to ensure the defendant's appearance and compliance, he/she may impose such conditions as provided in the rules.	Pa.R.Crim.P. 526(C). <u>Note:</u> MDJS Form 730 is the Bail Release Conditions form. Pa.R.Crim.P. 526(A). <u>Note:</u> All of the types of release outlined in Pa.R.Crim.P. 524(C) (Checklist 5-6(2)) must be conditioned upon defendant's written agreement to appear and comply with the conditions outlined here. <u>Note:</u> In a case proceeding on a summons, if the defendant has not yet been fingerprinted pursuant to Pa.R.Crim.P. 510(C)(2), completion of fingerprinting shall be made a condition of release. Comment to Pa.R.Crim.P. 527. Pa.R.Crim.P. 526(A)(1). Pa.R.Crim.P. 526(A)(2). Pa.R.Crim.P. 526(A)(3). Pa.R.Crim.P. 526(A)(4). Pa.R.Crim.P. 526(A)(5). Pa.R.Crim.P. 526(B).
---	---

Additional required factor in domestic violence cases. In domestic violence cases arising under 18 Pa.C.S. § 2711 (arrests in domestic violence cases), the bail authority shall also consider whether the defendant poses a threat to the victim. If the bail authority makes such a determination, he/she shall require as a condition of bail that the defendant refrain from entering the residence or household and place of employment of the victim, and refrain from committing any further criminal conduct against the victim, and shall so notify the victim at the time the defendant is admitted to bail.	18 Pa.C.S. § 2711(c)(2); Comment to Pa.R.Crim.P. 526.
☐ 5. Non-monetary conditions of release on bail. If the bail authority determines that, in addition to the required conditions of the bail bond, nonmonetary conditions of release are necessary, he/she shall state them with specificity on the bail bond.	Pa.R.Crim.P. 527(B). <u>Note:</u> When the bail authority determines that additional non-monetary conditions are appropriate, he/she should consider what specific circumstances related to the likelihood the defendant will appear and comply and should tailor the conditions of release to those circumstances. Comment to Pa.R.Crim.P. 527. The bail authority shall also determine whether the conditions are reasonably capable of being enforced. <i>Id.</i>
The types of nonmonetary conditions that may be imposed are:	
☐ a. Reporting requirements;	Pa.R.Crim.P. 527(A)(1).
☐ b. Restrictions on defendant's travel; and/or	Pa.R.Crim.P. 527(A)(2).
☐ c. Any other appropriate condition designed to ensure defendant's appearance and compliance with the conditions of the bail bond.	Pa.R.Crim.P. 527(A)(3). <u>Note:</u> As noted above, in domestic violence cases arising under 18 Pa.C.S. § 2711 (arrests in domestic violence cases), the bail authority shall also consider whether the defendant poses a threat to the victim. If the bail authority makes such a determination, he/she shall require as a condition of bail that the defendant refrain from entering the residence or household and place of

☐ 6. Monetary condition of release on bail. ☐ a. Considerations. If the bail authority determines that it is necessary to impose a monetary condition, he/she shall consider the following in determining the amount of the monetary consideration: ☐ i. The release criteria of Pa.R.Crim.P. 523 (see Checklist 5-6(1)), and ☐ ii. The defendant's financial ability to pay. ☐ b. Reasonableness. The amount of the monetary condition shall be reasonable. ☐ c. Bail for drug offenses. When fixing and accepting bail for a person charged with violating the "Controlled Substance, Drug, Device and Cosmetic Act" (35 P.S. § 780-101 <i>et seq.</i>), the MDJ shall determine the source of the currency, bonds, realty or other property used for payment of the bail or procurement of the surety bond. The MDJ may request such information as needed to identify the direct or indirect sources, derivation or ownership of the currency or other property used. Drug proceeds unacceptable. If the MDJ determines that the bail or surety bond is being financed from funds derived from violations of the "Controlled Substance, Drug, Device and	employment, and refrain from committing any further criminal conduct against the victim, and shall so notify the victim at the time the defendant is admitted to bail. 18 Pa.C.S. § 2711(c)(2); Comment to Pa.R.Crim.P. 527. Pa.R.Crim.P. 528(A). Pa.R.Crim.P. 528(A)(1). Pa.R.Crim.P. 528(A)(2). <u>Note:</u> If the defendant is not financially able to pay the full amount of the monetary condition, the MDJ may permit the deposit of a portion of the full amount pursuant to Pa.R.Crim.P. 528(C) (see 5-6(6)(d) below). Pa.R.Crim.P. 528(B). 42 Pa.C.S. § 5761(a). 42 Pa.C.S. § 5761(b).
--	---

Cosmetic Act," the security shall not be accepted, and other security shall be required. ☐ d. Deposit. After determining the amount of the monetary condition, the bail authority may permit the defendant to deposit a sum of money not to exceed 10% of the full amount of the monetary condition if he/she determines that the deposit is sufficient to ensure the defendant's appearance and compliance. See Checklist 5-6(8)(d) below on what to do if the defendant or another deposits the cash percentage. ☐ e. Forms of security. One or a combination of the following shall be accepted to satisfy the full amount of the monetary condition: ☐ i. Cash or, if permitted by the local court, a cash equivalent. ☐ ii. Bearer bonds of the United States or Commonwealth of Pennsylvania governments, or of any political subdivision of the Commonwealth, in the full amount of the monetary condition, provided that the defendant or the surety files with the bearer bond a sworn schedule verifying the value and marketability of the bonds, and which shall be approved by the bail authority. ☐ iii. Realty located anywhere in the Commonwealth, including defendant's realty, as long as the actual net value is at least equal to the full amount of the monetary condition. Actual net value may be determined by considering cost, encumbrances, and assessed value or another valuation formula provided by statute, ordinance, or local rule of court. Realty held in joint tenancy or tenancy by the entireties may be accepted as long as all joint tenants or tenants by the entireties execute the bond.	Pa.R.Crim.P. 528(C). <u>Note:</u> Although Pa.R.Crim.P. 528(C) requires the MDJ to consider whether a defendant should be permitted to deposit a percentage of cash bail, the MDJ is free to require payment of the full amount of bail. Comment to Pa.R.Crim.P. 528. Pa.R.Crim.P. 528(D)(1). Pa.R.Crim.P. 528(D)(2). Pa.R.Crim.P. 528(D)(3). <u>Note:</u> In light of the complexities of posting real estate, it may not be feasible to do so outside of normal business hours. Comment to Pa.R.Crim.P. 535.
--	--

☐ iv. Realty located anywhere outside of the Commonwealth but within the United States, provided that the person posting the realty shall comply with all reasonable conditions designed to perfect the lien of the county in which the prosecution is pending.	Pa.R.Crim.P. 528(D)(4).
☐ v. The surety bond of a professional bondsman licensed under the Judicial Code (42 Pa.C.S. §§ 5741-5749) or of a surety company authorized to do business in the Commonwealth of Pennsylvania.	Pa.R.Crim.P. 528(D)(5).
☐ f. Recording. The bail authority shall record on the bail bond the amount of the monetary condition imposed and the form of security posted by the defendant or by an individual acting on behalf of the defendant or acting as a surety for the defendant.	Pa.R.Crim.P. 528(E). <u>Note:</u> MDJS Form 503 is the Current Bail Information form.
☐ g. Receipt and return of deposit.	
☐ i. Any cash deposit in satisfaction of a monetary condition of bond shall be given to the MDJ, clerk of courts, or other official designated by local rule. The official who receives the deposit shall give the depositor an itemized receipt and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond and be given a copy of the signed bail bond.	Pa.R.Crim.P. 535(A). <u>Note:</u> MDJS Form 120 is the Receipt form. <u>Note:</u> If the amount of bail deposited exceeds \$10,000.00, an information return must be filed with the Internal Revenue Service. 26 C.F.R. § 1.6050I-2.
☐ A. After receiving a deposit of bail, the MDJ shall note on the docket transcript the amount deposited and the name of the person making the deposit. The MDJ shall have the deposit, docket transcript, and a copy of the bail bond delivered to the clerk of courts.	Pa.R.Crim.P. 535(A)(1).
☐ B. If another official is designated by the president judge to accept	Pa.R.Crim.P. 535(A)(2).

a bail deposit, that official shall deliver the deposit and the bail bond to either the MDJ, who shall proceed as provided in Checklist 5-6(6)(g)(i)(A) above, or the clerk of courts who shall proceed as provided in Pa.R.Crim.P. 535(A)(3) (clerk of court's duties handling deposit and bond). ☐ C. Notice to depositor. If the deposit is a percentage of the cash bail, the depositor shall be notified that by signing the bail bond, he/she becomes a surety for the defendant and is liable for the full amount of the monetary condition if the defendant fails to appear or comply and that, if defendant is the depositor, the amount otherwise returnable may be used to pay and satisfy any outstanding restitution, fees, and costs owed by him/her as a consequence of a sentence imposed in the case for which the deposit is made. ☐ ii. Return of deposit. Unless a motion is filed under Pa.R.Crim.P. 535(E) (see below) within 20 days of full and final disposition, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program. ☐ iii. Transfer. When a case is transferred pursuant to Pa.R.Crim.P. 130(B) (transfer of venue) or 555 (transfer of	Pa.R.Crim.P. 535(B). <u>Note:</u> MDJS Form 451 is the Bail Payment form. Pa.R.Crim.P. 535(D). <u>Note:</u> Full and final disposition includes all avenues of direct appeal in the state courts. Comment to Pa.R.Crim.P. 535. Therefore, return of the deposit would not be required until after either the expiration of the appeal period or, if an appeal is taken, after disposition of the appeal. <i>Id.</i> When bail is terminated due to the defendant's acceptance into an ARD program, this action constitutes full and final disposition. <i>Id.</i> Pa.R.Crim.P. 535(F).
--	---

multi-venue case), the full deposit shall be promptly forwarded to the transferee judicial district, together with any bail-related fees, commissions, or costs paid by the depositor. ☐ iv. Motion to apply deposit. Where the defendant is the named depositor, the attorney for the Commonwealth may move for an order that any deposited monies otherwise returnable to the defendant be held and applied to pay any restitution, fees, fines, and costs imposed on the defendant in the case for which the deposit is made, unless the defendant can show undue hardship. ☐ 7. Modification of bail order prior to verdict. ☐ a. By an MDJ. The issuing authority who is the MDJ elected or assigned to preside over the jurisdiction where the crime occurred may--upon request of the defendant or the attorney for the Commonwealth or on his/her own initiative and notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard--modify a bail order any time before the preliminary hearing. The bail order may also be modified at the preliminary hearing. ☐ b. By common pleas court judge. An existing bail order may be modified by a judge of the court of common pleas at any time prior to verdict upon motion of counsel for either party with notice to opposing counsel and after a hearing or at trial or at a pre-trial hearing in open court on the record when all parties are present. Subsequent modification. Once bail has been set or modified by a judge of the court of common pleas, it shall not be modified except by a judge of a court of superior jurisdiction, or by the same judge, or by another judge of the court of common pleas, either at trial or after notice to the parties and a hearing.	Pa.R.Crim.P. 535(E). <u>Note:</u> It is contemplated that such a motion will generally be filed in the court of common pleas. Where the motion is filed before the MDJ, the MDJ may not order retention of the bail money unless the Commonwealth and the defendant agree. Comment to Pa.R.Crim.P. 535. Pa.R.Crim.P. 529(a). Pa.R.Crim.P. 529(c). Pa.R.Crim.P. 529(c)(1)-(2). Pa.R.Crim.P. 529(d)(1)-(2). Pa.R.Crim.P. 529(e).
---	---

☐ c. Explanation of modification. When bail is modified, the modification shall be explained to the defendant and stated in writing or on the record. ☐ d. Increase in amount of monetary condition. If the amount of monetary condition is increased, the original amount shall remain in effect and additional cash or other form of security shall be required only for the amount of the increase.	
☐ 8. Sureties. ☐ a. Qualified sureties. Subject to any additional requirements of the local rules of court, the following are qualified to act as sureties: ☐ i. Owners of cash or securities as provided in Pa.R.Crim. 528 (see Checklist 5-6(6) above); ☐ ii. Owners of realty in the Commonwealth, or outside the Commonwealth but within the United States as provided in Pa.R.Crim.P. 528 (see Checklist 5-6(6)(e) above), as long as satisfactory evidence of ownership or approval of the court is obtained; ☐ iii. Surety companies approved by the court and authorized to do business in the Commonwealth; ☐ iv. A professional bondsman licensed under 42 Pa.C.S. §§ 5741-5750; and ☐ v. For percentage cash bail only: the defendant or any private individual or organization. ☐ b. Those who are not qualified to be sureties. ☐ i. No attorney, or spouse or employee of any attorney, shall be permitted to become a surety for a client of the	Pa.R.Crim.P. 533. Pa.R.Crim.P. 531(A). <u>Note:</u> MDJS Form 414 is the Bail Bond Set form. Pa.R.Crim.P. 531(A)(1). Pa.R.Crim.P. 531(A)(2). Pa.R.Crim.P. 531(A)(3). Pa.R.Crim.P. 531(A)(4). Pa.R.Crim.P. 531(A)(5). Pa.R.Crim.P. 531(B).

attorney or for a client of the attorney's office. ☐ ii. No sheriff, employee of a sheriff, tipstaff, other employee, or official of the courts or issuing authorities of any judicial district shall be permitted to become a surety unless the defendant is a member of that person's immediate family. ☐ iii. No person who is named in any current official list of undesirable bondsmen shall be permitted to become a surety in any case. ☐ c. Substitution of surety or security. The defendant or his/her surety, with the bail authority's approval, may at any time substitute another surety or another form of security. Upon substitution of the form of security, the original security shall be returned to the depositor. ☐ d. Defendant or another posting cash percentage of bail. If the defendant posts the cash percentage, he/she shall sign the bond and become his/her own surety and liable for the full amount of the bond for failure to appear or comply. If someone other than the defendant posts the cash percentage, the clerk of courts or MDJ shall explain and provide written notice that: ☐ i. If the person agrees to act as surety and signs the bail bond he/she shall be liable for the full amount of bail if the defendant fails to appear or comply. ☐ ii. If the person does not want to be liable for the full amount of bail, he/she shall be allowed to deposit the money for the defendant to post, and will give up the right to make a later claim for return of the money. In this situation, the person would be considered the depositor and only the defendant would sign the bond	Pa.R.Crim.P. 531(C). <u>Note:</u> "Immediate family" includes only grandparents, parents, spouses, siblings, children, grandchildren, stepchildren, and like relatives-in-law. Comment to Pa.R.Crim.P. 531. Pa.R.Crim.P. 531(D). Pa.R.Crim.P. 532. Pa.R.Crim.P. 528(F). Pa.R.Crim.P. 528(F)(1). Pa.R.Crim.P. 528(F)(2).
---	---

and be liable for the full amount of the bail. ☐ iii. Under Pa.R.Crim.P. 535(E), if the bail was deposited by or on behalf of the defendant and the defendant is named the depositor, the amount of the bail that would otherwise be returnable to the defendant may be used to satisfy any outstanding restitution, fees, fines, and costs owed as a result of a sentence imposed in the court case for which the deposit was made.	Pa.R.Crim.P. 528(F)(3).
---	--------------------------------

3. Procedures for Violation of Bail Conditions: Revocation of Release and Forfeiture/Bail Pieces/Exoneration of Surety

Checklist 5-7: Procedure for Violation of Bail Conditions	Authority/Notes
☐ 1. Sanctions for violation of bail conditions. ☐ a. Revocation of release. A person who violates a condition of a bail bond is subject to a revocation of release and/or a change in the conditions of the bail bond by the bail authority. ☐ i. Bench warrant. When a violation occurs, the bail authority may issue a bench warrant for the defendant's arrest. When the bench warrant is executed, the bench warrant proceedings shall be conducted pursuant to Pa.R.Crim.P. 150 (bench warrants). ☐ ii. Request for explanation. The bail authority may also order the defendant or the defendant's surety to explain why defendant's release should not be revoked or why the conditions of release should not be changed. A copy of this order shall be served on the defendant and the defendant's surety, if any.	Pa.R.Crim.P. 536(A)(1)(a). <u>Note:</u> This rule does not apply when a defendant is arrested pursuant to extradition proceedings. Comment to Pa.R.Crim.P. 536. Pa.R.Crim.P. 536(A)(1)(b). <u>Note:</u> MDJS Form 417 is the Warrant form. Pa.R.Crim.P. 536(A)(1)(c).

☐ iii. Statement of reasons. When the bail authority changes the conditions of the bail bond and/or revokes the defendant's release, the bail authority shall state in writing or on the record the reasons for doing so. ☐ b. Forfeiture. When a monetary condition of release has been imposed and the defendant violates a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons why. If the surety is a third party, cash or other security may be forfeited only when the condition violated is that the defendant failed to appear for a scheduled court appearance. ☐ i. Notice. Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and surety's last known addresses. ☐ ii. Time for execution. The forfeiture shall not be executed until 90 days after notice of the forfeiture order. ☐ iii. Setting aside forfeiture. The bail authority may direct that forfeiture be set aside or remitted as provided by law or if justice does not require the full enforcement of the forfeiture order. ☐ iv. Handling of forfeited monies. When an MDJ orders bail forfeited, he/she shall generate a check in the amount of the bail monies on deposit and shall send it and a copy of the docket transcript to the clerk of courts for processing and disbursement.	Pa.R.Crim.P. 536(A)(1)(d). Pa.R.Crim.P. 536(A)(2)(a). Pa.R.Crim.P. 536(A)(2)(b). <u>Note:</u> Nothing in Rule 536 precludes a judicial district from using the United States Postal Service's return receipt electronic option, or a similar service that provides an electronic receipt when using certified mail, return receipt requested. Comment to Pa.R.Crim.P. 536. <u>Note:</u> MDJS Form 414A3 is the Notice of Bail Forfeiture form. Pa.R.Crim.P. 536(A)(2)(c). Pa.R.Crim.P. 536(A)(2)(d). Pa.R.Crim.P. 536(A)(2)(e).
--	---

☐ 2. Bail pieces. A surety or bail agency may apply to the court of common pleas for a bail piece. If the court is satisfied that a bail piece is required, it may issue one authorizing the surety or bail agency to apprehend and detain the defendant and to bring him/her before the bail authority without unnecessary delay.	Pa.R.Crim.P. 536(B)(1)-(2).
☐ 3. Exoneration. A bail authority, as provided by law or as justice requires, may exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner. When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.	Pa.R.Crim.P. 536(C)(1)-(2).

D. PRELIMINARY ARRAIGNMENT

The preliminary arraignment follows the defendant's arrest with, or without, a warrant, and should be conducted without unnecessary delay. Pa.R.Crim.P. 516(A) & 519(A). At the preliminary arraignment bail is set and the preliminary hearing date and time are scheduled. Checklist 5-8 outlines the preliminary arraignment procedures.

Checklist 5-8: Preliminary Arraignment Procedures	Authority/Notes
☐ 1. Conduct of the preliminary arraignment. At the MDJ's discretion, a preliminary arraignment may be conducted using two-way simultaneous audio-visual communication. Counsel. When defendant's counsel is present, the defendant shall be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.	Pa.R.Crim.P. 540(A). <u>Note:</u> According to the rule there is no requirement that the preliminary arraignment be conducted in this manner, and the MDJ has the discretion to order that the defendant appear in person. Comment to Pa.R.Crim.P. 540. Pa.R.Crim.P. 540(A). <u>Note:</u> Counsel is considered to be present when physically with the defendant or the MDJ. Comment to Pa.R.Crim.P. 540.
☐ 2. Copy of the complaint. At the preliminary arraignment, the defendant shall be given a copy of the complaint that was accepted for filing pursuant to Pa.R.Crim.P. 508 (see Checklist 5-1(5) above).	Pa.R.Crim.P. 540(C).

☐ 3. Copy of the warrant and affidavit. If the defendant was arrested pursuant to a warrant, the MDJ shall provide him/her with copies of the warrant and supporting affidavits at the preliminary arraignment. If the warrant and affidavits are not available at the time of the preliminary arraignment, the defendant shall be given copies of them no later than the first business day after the preliminary arraignment.	Pa.R.Crim.P. 540(D).
☐ 4. Warrantless arrest: detention following determination of probable cause. If the defendant was arrested without a warrant, he/she shall not be detained unless the MDJ makes a determination of probable cause.	<i>Riverside v. McLaughlin</i>, 500 U.S. 44 (1991); Pa.R.Crim.P. 540(E). <u>Note:</u> The determination of probable cause may be based on written affidavits, an oral statement under oath, or both. Comment to Pa.R.Crim.P. 540.
☐ 5. Informing defendant of the charges and his/her rights. At the preliminary arraignment, the MDJ shall not question the defendant about the offenses charged but shall read the complaint to him/her. The MDJ shall also inform him/her: ☐ a. Of his/her right to secure counsel of his/her choice and the right to assigned counsel pursuant to Pa.R.Crim.P. 122 (see Checklist 3-2); ☐ b. Of his/her right to have a preliminary hearing, except in cases being presented to an indicting grand jury pursuant to Pa.R.Crim.P. 556.2; and ☐ c. If the offense is bailable, the type of release on bail and the conditions of the bail bond.	Pa.R.Crim.P. 540(F). <u>Note:</u> MDJS Form 650 is the Notice of License Suspension for persons charged with violations of 18 Pa.C.S. §§ 6307, 6308, or 6310.3 (underage drinking related offenses) or 24 P.S. § 13-1333 (truancy). Pa.R.Crim.P. 540(F)(1). Pa.R.Crim.P. 540(F)(2). Pa.R.Crim.P. 540(F)(3).
☐ 6. Setting the preliminary hearing date. Unless the preliminary hearing is waived by a defendant represented by counsel (see Checklist 5-9(1), below) or the case is being presented to an indicting grand jury pursuant to Pa.R.Crim.P. 556.2, the MDJ shall: ☐ a. Fix a day and hour for the preliminary hearing which shall be not later than 14 days after the preliminary arraignment if the defendant is in custody or 21 days if not in custody, unless it is	Pa.R.Crim.P. 540(G). Pa.R.Crim.P. 540(G)(1)(a)-(b).

extended for cause shown or the MDJ fixes an earlier date upon request of the defendant or his/her counsel with the consent of the complainant and the attorney for the Commonwealth. ☐ b. Give the defendant, both orally and in writing, notice: ☐ i. Of the date, time, and place of the preliminary hearing; ☐ ii. That failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of his/her right to be present at any further proceedings before the MDJ, and will result in the case proceeding in the defendant's absence and in the issuance of an arrest warrant; and ☐ iii. That if the case is held for court at the preliminary hearing and the defendant fails to appear without cause at any proceeding for which his/her presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceedings may be conducted in defendant's absence. ☐ 7. Bail. After the preliminary arraignment, if the defendant is detained, he/she 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/she shall be committed to jail as provided by law. ☐ 8. Acceptance of monetary bail condition. If a monetary condition of bail is set, the MDJ shall accept payment of the monetary condition as provided in Pa.R.Crim.P. 528 (see Checklist 5-6(6)) at any time prior to the return of the docket transcript to the court of common pleas. ☐ 9. Case proceeding to indicting grand jury. If the MDJ receives notice that the case will proceed to an indicting grand jury as provided in Pa.R.Crim.P. 556.2, the MDJ	Pa.R.Crim.P. 540(G)(2). Pa.R.Crim.P. 540(G)(2)(a). Pa.R.Crim.P. 540(G)(2)(b). Pa.R.Crim.P. 540(G)(2)(c). Pa.R.Crim.P. 540(H). <u>Note:</u> MDJS Form 609 is the Commitment form. Pa.R.Crim.P. 540(I). Pa.R.Crim.P. 556.2(3)(a).
---	--

shall cancel the preliminary hearing, close out the case, and forward the case to the court of common pleas pursuant to Pa.R.Crim.P. 547 (Checklist 5-9(9)).	
☐ 10. Victim's Rights. The arresting officer is required to provide the name and contact information of the victim to the court so they may receive notice of any proceedings to modify bail conditions and exercise their opportunity to appear.	18 P.S. § 11.201(2)(iii)(A); Comment to Pa.R.Crim.P. 540.

E. PRELIMINARY HEARING

1. Preliminary Hearing Procedures

At the preliminary hearing, the MDJ determines whether the Commonwealth has established a *prima facie* case against the defendant and, if so, holds or binds over him/her for court. The MDJ may also set bail (if it has not already been set), or continue or modify an existing bail order (if bail has already been set). Checklist 5-9 below sets forth the procedures for a preliminary hearing.

Checklist 5-9: Preliminary Hearing Procedures	Authority/Notes
☐ 1. Waiver of the preliminary hearing.	Pa.R.Crim.P. 541.
☐ a. Who may waive. A defendant who is represented by counsel may waive the preliminary hearing at the preliminary arraignment or at any time thereafter. A defendant who is not represented by counsel at the preliminary arraignment may not waive the preliminary hearing at that time.	Pa.R.Crim.P. 541(A) & (B).
☐ b. Certification. If the defendant waives the preliminary hearing and consents to be bound over to court, the defendant and defense attorney, if any, shall certify in writing that: (1) the MDJ told the defendant of his/her right to have a preliminary hearing; (2) if represented by counsel, that the defendant understands that by waiving the right to the preliminary hearing he/she is later precluded from challenging sufficiency of the <i>prima facie</i> case; and (3) the defendant voluntarily waives the hearing and consents to be bound over to court.	Pa.R.Crim.P. 541(C). <u>Note:</u> MDJS Form 601 is the Waiver of Preliminary Hearing form.

☐ 2. Conduct of the preliminary hearing. ☐ a. Prosecution. The attorney for the Commonwealth may appear at the preliminary hearing, take charge of the prosecution, and recommend to the MDJ that the defendant be discharged or bound over to court according to law. If no attorney for the Commonwealth appears, the affiant may be permitted to ask questions of any witness who testifies. ☐ b. Defendant's rights. The defendant shall be present at the preliminary hearing except as may be provided in the Rules of Criminal Procedure and may: ☐ i. Be represented by counsel; ☐ ii. Cross-examine witnesses and inspect physical evidence offered against him/her; ☐ iii. Call witnesses on his/her behalf, other than witnesses who will only testify as to defendant's good reputation;	Pa.R.Crim.P. 542(A)(1)-(2). <u>Note:</u> MDJS Form 605 is the Subpoena form. Pa.R.Crim.P. 542(B). Pa.R.Crim.P. 542(C). Pa.R.Crim.P. 542(C)(1). <u>Note:</u> For the procedures for appointment of counsel, see Checklist 3-2. Pa.R.Crim.P. 542(C)(2). <u>Note:</u> The MDJ may limit cross-examination in certain circumstances. See <i>e.g.</i>, <i>Commonwealth v. Fox</i>, 619 A.2d 327, 332 (Pa. Super. 1993) (finding MDJ was allowed to limit defendant's cross-examination at preliminary hearing as to witness's credibility as credibility was not an issue at a preliminary hearing). <u>Note:</u> The Commonwealth is not required to call all of its witnesses at the preliminary hearing. See <i>Commonwealth v. Rashed</i>, 436 A.2d 134, 137 (Pa. 1981) (stating that defendant was not denied his right to confront witnesses because the Commonwealth did not call an eyewitness at a preliminary hearing). Pa.R.Crim.P. 542(C)(3). <u>Note:</u> The defendant is permitted to call witnesses only to negate the
--	---

☐ iv. Offer evidence on his/her own behalf and testify; and ☐ v. Make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic recording of the proceedings. ☐ c. Interpreter. In addition, if a principal party in interest or a witness is a person with limited English proficiency or is deaf, an interpreter may have to be appointed. See Section XI for a discussion of the requirements and procedures for appointment of an interpreter. ☐ d. Summary offenses. In cases where a summary offense is joined with a misdemeanor, felony or murder charge, the MDJ shall not proceed on the summary offense except as provided in Pa.R.Crim.P. 543(F) (see Checklist 5-9(4)(d), below). ☐ e. Sequestration of witnesses. At the request of a party or on his/her own, the MDJ may order witnesses sequestered so they cannot learn the testimony of other witnesses. Certain persons may not be sequestered, such as: (1) a party who is a natural person; (2) an officer or employee of a party which is not a natural person (such as a corporation or the Commonwealth) designated as its representative by its attorney; (3) a person whose presence is shown by a party to be essential to the presentation of the party's case; or (4) a person authorized by statute or rule. ☐ f. Suppression motion. A motion to suppress evidence in a court case should be brought in an omnibus pretrial motion filed with the clerk of courts of the court of common pleas and thus should not be disposed of by the MDJ. ☐ g. Prima facie case. At the preliminary hearing, the Commonwealth bears the burden of	existence of a <i>prima facie</i> case and not for the purpose of discovering the Commonwealth's case. Comment to Pa.R.Crim.P. 542. Pa.R.Crim.P. 542(C)(4). Pa.R.Crim.P. 542(C)(5). 42 Pa.C.S. § 4401 <i>et seq.</i>; See also Unified Judicial System Language Access Plan. Pa.R.Crim.P. 542(F). Pa.R.E. 615. <u>Note:</u> A "natural person" is a human being. Black's Law Dictionary (11th ed. 2019). Pa.R.Crim.P. 576(a)(1) & 578. Pa.R.Crim.P. 542(D).
---	---

establishing a <i>prima facie</i> case. The MDJ shall determine from the evidence presented whether there is a <i>prima facie</i> case that: (1) an offense has been committed; and (2) the defendant committed it. "A <i>prima facie</i> case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of the crime. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth shall show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury." The Commonwealth must produce evidence of the existence of each and every element of the offense of the crime(s) charged and absence of evidence as to the existence of a material element is fatal to the charge. ☐ h. Credibility not to be considered. In determining if a <i>prima facie</i> case has been established, an MDJ is precluded from considering the credibility of a witness called to testify at a preliminary hearing. ☐ i. Hearsay evidence. Hearsay evidence shall be considered by the MDJ in determining whether a <i>prima facie</i> case has been established. "Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property." ☐ j. Certificates of accuracy and calibration of breath testing devices. Breath testing machine results are admissible in preliminary hearings for Driving Under the Influence (DUI) cases if conducted by qualified persons using approved equipment. ☐ 3. Continuances.	<i>Commonwealth v. Keller</i>, 823 A.2d 1004, 1010 (Pa. Super. 2003), <i>appeal denied</i>, 832 A.2d 435 (Pa. 2003). <i>Commonwealth v. Kelley</i>, 664 A.2d 123, 127 (Pa. Super. 1995). <i>Liciaga v. C.C.P. of Lehigh County</i>, 566 A.2d 246, 248 (Pa. 1989). Pa.R.Crim.P. 542(E). <u>Note:</u> See Subsection F and Checklist 10-8 of Section X for a discussion of the hearsay rule and the exceptions thereto. 75 Pa.C.S. § 1547(c); 67 Pa.Code §§ 77.25(c), 77.26(d).
--	--

☐ a. Grant. The MDJ may, for cause shown, grant a continuance and shall note on the transcript every continuance together with: ☐ i. The grounds for granting each; ☐ ii. The identity of the party requesting such continuance; and ☐ iii. The new date, time and place for the preliminary hearing, and the reasons the particular date was chosen. ☐ b. Notice of new hearing. The MDJ shall give notice of the new date, time and place for the preliminary hearing to the defendant and his/her attorney (if any) and the Commonwealth's attorney. The notice shall be: ☐ a. In writing; ☐ b. Served on the defendant either in person or by first class mail; and ☐ c. Served on defendant's attorney and the Commonwealth's attorney either by personal delivery or by leaving a copy for or mailing a copy to the attorneys at their offices. ☐ 4. Disposition of the case at the preliminary hearing. At the conclusion of the preliminary hearing, the MDJ's decision shall be publicly announced. ☐ a. If a <i>prima facie</i> case is established. If the MDJ finds that the Commonwealth established a <i>prima facie</i> case that a crime has been committed and the defendant has committed it, the MDJ shall hold the defendant for court on the offense(s) for which a <i>prima facie</i> case has been established. When the defendant has appeared and been held for court, the MDJ shall:	Pa.R.Crim.P. 542(G)(1). <u>Note:</u> MDJS Form 616A is the Rescheduling Notice form. Pa.R.Crim.P. 542(G)(1)(a). Pa.R.Crim.P. 542(G)(1)(b). Pa.R.Crim.P. 542(G)(1)(c). Pa.R.Crim.P. 542(G)(2). Pa.R.Crim.P. 542(G)(2)(a). Pa.R.Crim.P. 542(G)(2)(b). Pa.R.Crim.P. 542(G)(2)(c). Pa.R.Crim.P. 543(A). <u>Note:</u> MDJS Form 736 is the Notice of Preliminary Hearing Results form. Pa.R.Crim.P. 543(B). <u>Note:</u> The MDJ is not permitted to reduce the grading on his or her own. Comment to Pa.R.Crim.P. 543. Pa.R.Crim.P. 543(C).
---	--

☐ i. Set bail as permitted by law if the defendant did not receive a preliminary arraignment; or ☐ ii. Continue the existing bail order, unless the MDJ modifies the order as permitted by Pa.R.Crim.P. 529 (see Checklist 5-6(7), above); and ☐ iii. If the defendant has not submitted to administrative processing and identification procedures such as fingerprinting pursuant to Pa.R.Crim.P. 510(C)(2), make compliance with such procedures a condition of bail. ☐ iv. Advise the defendant that if he/she fails to appear without cause at any proceeding at which his/her presence is required, including trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in his/her absence. ☐ b. If defendant fails to appear at the preliminary hearing. ☐ i. Absence due to lack of notice. If the MDJ finds that the defendant did not receive notice of the preliminary hearing by a summons, then an arrest warrant shall be issued. ☐ ii. Absence for cause. If the MDJ finds that there was cause for defendant's failure to appear, he/she shall continue the preliminary hearing to a specific date and time and shall give	Pa.R.Crim.P. 543(C)(1). Pa.R.Crim.P. 543(C)(2). <u>Note:</u> In addition, the MDJ may also provide written notice of the formal arraignment to the defendant (MDJS Notice of Formal Arraignment). Comment to Pa.R.Crim.P. 543. Pa.R.Crim.P. 543(C)(3). Pa.R.Crim.P. 543(C)(4). Pa.R.Crim.P. 543(D). Pa.R.Crim.P. 543(D)(1). Pa.R.Crim.P. 543(D)(2).
---	--

notice of the new date, time, and place as specified above (Checklist 5-9(3)(b)). In this situation the MDJ shall not issue a bench warrant. ☐ iii. Absence with notice and without cause. If the MDJ finds the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by defendant of his/her right to be present at any further proceedings before the MDJ. ☐ A. In these cases, the MDJ shall proceed with the case in the same manner as though the defendant were present. ☐ B. If the preliminary hearing is conducted and the defendant is held for court, the MDJ shall: (1) give defendant notice by first class mail of the results of the preliminary hearing; and (2) pursuant to Pa.R.Crim.P. 547, transmit the transcript to the clerk of court of common pleas with a request that a bench warrant be issued by the court of common pleas and, if the defendant has not complied with a fingerprint order issued pursuant to Pa.R.Crim.P. 510(C)(2), with a notice	Pa.R.Crim.P. 543(D)(3). Pa.R.Crim.P. 543(D)(3)(a). <u>Note:</u> In this situation, the MDJ could: choose to proceed with the hearing or, if the MDJ believes it necessary, continue the hearing, or convene the preliminary hearing to take testimony of the present witnesses and continue the remainder to a date certain. Comment to Pa.R.Crim.P. 543. Pa.R.Crim.P. 543(D)(3)(b)(i)-(ii). <u>Note:</u> The notice may also include the date of the arraignment in the court of common pleas. Comment to Pa.R.Crim.P. 543. <u>Note:</u> MDJS Form 421 is the Request for Issuance of Bench Warrant form.
--	---

of defendant's noncompliance. ☐ C. If the hearing is conducted and the case is dismissed, the MDJ shall give notice to defendant by first class mail. ☐ D. If a continuance of the hearing held in the defendant's absence is required, the MDJ shall give the parties notice of the new date, time, and place and may issue a bench warrant. If a bench warrant is issued and remains unserved for the continuation period of the preliminary hearing, the MDJ shall vacate the bench warrant and the case shall proceed as provided in Checklist 5-9(4)(b)(iii). ☐ c. No <i>prima facie</i> case. If the Commonwealth does not establish a <i>prima facie</i> case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the MDJ shall dismiss the complaint. ☐ d. Summary offenses. In any case in which a summary offense is joined with misdemeanor, felony, or murder charges: ☐ i. If the Commonwealth establishes a <i>prima facie</i> case, the MDJ shall not adjudicate or dispose of the summary offenses, but shall forward them	Pa.R.Crim.P. 543(D)(3)(c). Pa.R.Crim.P. 543(D)(3)(d). <u>Note:</u> Notice shall be as provided in Pa.R.Crim.P. 542 (Checklist 5-9(3)(b)). <u>Note:</u> The issuance of a bench warrant in this situation is not required and is at the MDJ's discretion. Even though the preliminary hearing is being continued, the MDJ has the option of issuing a bench warrant because the defendant is still at large; the preliminary hearing, which is being continued, is being held in his/her absence. Pa.R.Crim.P. 543(E). <u>Note:</u> MDJS Form 602 is the Release of Prisoner form to be used if the defendant is incarcerated. Pa.R.Crim.P. 543(F). Pa.R.Crim.P. 543(F)(1).
--	--

to the court of common pleas with the charges held for court. ☐ ii. If the Commonwealth does not establish a <i>prima facie</i> case, upon the request of the Commonwealth, the MDJ shall dispose of the summary offenses as provided by Pa.R.Crim.P. 454 (trial in summary cases, see Checklist 4-5(6)). ☐ iii. If the Commonwealth withdraws all the misdemeanor, felony and murder charges, the MDJ shall dispose of the summary offenses as provided in Pa.R.Crim.P. 454 (trial in summary cases, see Checklist 4-5(6)). ☐ 5. Withdrawal of charges. In any court case pending before an MDJ, the attorney for the Commonwealth or his/her designee may withdraw one or more of the charges. The withdrawal shall be in writing. ☐ 6. Reinstituting charges following withdrawal or dismissal. ☐ a. Reinstatement. When charges are dismissed or withdrawn at, or prior to a preliminary hearing,	Pa.R.Crim.P. 543(F)(2). <u>Note:</u> If the parties are not prepared to proceed, the MDJ should grant a continuance and set the date and time for the summary trial. Comment to Pa.R.Crim.P. 543. <u>Note:</u> Because jeopardy may attach, the Commonwealth might object to the MDJ proceeding on the summary charges as a verdict on these may preclude reinstitution of the felony and misdemeanor charges on double jeopardy grounds. <i>See generally Commonwealth v. Cauffman</i>, 662 A.2d 1050 (Pa. 1995). If a <i>prima facie case</i> is not established on the felony and misdemeanor charges and the Commonwealth does not ask the MDJ to proceed on the summary charges, the MDJ should dismiss the complaint and discharge the defendant unless there are outstanding detainers against him/her. <i>Id.</i> Pa.R.Crim.P. 543(F)(3). <u>Note:</u> If the parties are not prepared to proceed, the MDJ should grant a continuance and set the date and time for the summary trial. Comment to Pa.R.Crim.P. 543. Pa.R.Crim.P. 551. <u>Note:</u> MDJS Form 409 is the Notice of Withdrawal of Charges form. No costs are imposed on a withdrawal. Pa.R.Crim.P. 544(A).
---	--

or when a grand jury declines to indict and the complaint is dismissed, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the refiling of the complaint with the MDJ who dismissed or permitted withdrawal of the charges. The charges must be reinstated within the applicable statute of limitations. ☐ b. Request for a different MDJ. After the complaint is refiled, if the Commonwealth's attorney determines that the preliminary hearing should be held before a different MDJ, he/she may file a Pa.R.Crim.P. 132 motion with the clerk of courts requesting that the president judge of the court of common pleas (or his/her designee) assign a different MDJ to conduct the preliminary hearing. The motion shall set forth the reasons for the request. ☐ 7. Witnesses: compulsory process. The MDJ shall issue such process as may be necessary for the summoning of witnesses for the Commonwealth or the defendant. Persons will not be allowed to testify at the preliminary hearing without first being sworn according to law (see Oaths, Section XI, Oaths, Checklist 11-1). ☐ 8. Dismissal upon satisfaction or agreement. When a defendant is charged in a case in which the most serious offense charged is a misdemeanor, the MDJ may dismiss the case upon a showing that: ☐ a. The public interest will not be adversely affected; ☐ b. The Commonwealth's attorney, or in cases where there is no attorney for the Commonwealth, the affiant, consents to the dismissal; ☐ c. Satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made; and ☐ d. There is an agreement as to who shall pay the costs.	<u>Note:</u> The decision to reinstate can only be made by the Commonwealth's attorney--a police officer may not refile the complaint without written authorization of the Commonwealth's attorney. Comment to Pa.R.Crim.P. 544. Comment to Pa.R.Crim.P. 544. Pa.R.Crim.P. 544(B). Pa.R.Crim.P. 545. <u>Note:</u> If a witness fails to comply with a subpoena, he or she may be subject to contempt (see Checklist 9-1(1)(b)). Pa.R.Crim.P. 546. <u>Note:</u> All of the factors must be present before the MDJ has discretion to dismiss under this rule. Comment to Pa.R.Crim.P. 546. Pa.R.Crim.P. 546(1). Pa.R.Crim.P. 546(2). Pa.R.Crim.P. 546(3). Pa.R.Crim.P. 546(4).
---	---

Scope of dismissal. A dismissal under Pa.R.Crim.P. 546 is dismissal of all the charges, including any summary offenses that have been joined to the misdemeanors. Dismissal on appeal. For dismissal upon satisfaction or by agreement for cases on appeal to the court of common pleas see Pa.R.Crim.P. 463.	Comment to Pa.R.Crim.P. 546. Comment to Pa.R.Crim.P. 546.
☐ 9. Return of transcript and original papers. ☐ a. Transcript. When the defendant is held for court, or after the MDJ receives notice that the case will be presented to the indicting grand jury and closes out the case, the MDJ shall prepare a transcript of the proceedings containing all information that the Rules of Criminal Procedure require to be recorded on the transcript. The transcript shall be signed by the MDJ and have the MDJ's seal of office affixed to it. ☐ b. Time for transmission. The MDJ shall send the transcript to the clerk of the court of common pleas within 5 days after holding the defendant for court or after closing out the case after receiving notice that the case will be presented to the indicting grand jury. ☐ c. Original papers. In addition to the transcript, the MDJ also shall send: ☐ i. The original complaint; ☐ ii. The summons or arrest warrant and its return; ☐ iii. All affidavits filed in the proceeding; ☐ iv. The appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody;	Pa.R.Crim.P. 547(A). <u>Note:</u> Pa.R.Crim.P. 135 (Checklist 3-1(7)) sets forth the general requirements for the contents of the transcript. Comment to Pa.R.Crim.P. 547. In addition, a number of other specific rules (for example, Pa.R.Crim.P. 542--Checklist 5-9(3)) contain additional things that shall be recorded. <i>Id.</i> <u>Note:</u> MDJS Form 1200 is the Docket Sheet form. Pa.R.Crim.P. 547(B). Pa.R.Crim.P. 547(C). Pa.R.Crim.P. 547(C)(1). Pa.R.Crim.P. 547(C)(2). Pa.R.Crim.P. 547(C)(3). Pa.R.Crim.P. 547(C)(4).

☐ v. A request for the court of common pleas to issue a bench warrant as required by Pa.R.Crim.P. 543(D)(3)(b) (see Checklist 5-9(4)(b)(iii)(B)); ☐ vi. Notice informing the court of common pleas that the defendant has not complied with the fingerprint order as required by Pa.R.Crim.P. 543(D)(3)(b)(ii); and ☐ vii. A copy of the notice that the case will be presented to the indicting grandjury. ☐ viii. Crime victim contact information.	Pa.R.Crim.P. 547(C)(5). Pa.R.Crim.P. 547(C)(6). Pa.R.Crim.P. 547(C)(7). 18 P.S. § 11.201(2)(iii)(B).
☐ 10. Amendment of the transcript. The MDJ may make any proper amendments, additions, or corrections to the transcript before it is transmitted to the court of common pleas. After the transcript has been returned, amendments, additions, or corrections can be made only upon application filed in, and permission granted by, the court of common pleas, and only to perfect the record to conform to the facts of the case. ☐ 11. Compelling transmission of papers by the MDJ. If an MDJ refuses or fails to transmit the papers as required by the Rules of Criminal Procedure, the court of common pleas may issue a subpoena to compel their production.	Pa.R.Crim.P. 548. Pa.R.Crim.P. 549.

2. Procedure Following Arrest on a Bench Warrant

As discussed above (Checklist 5-9(4)(b)(iii)(D)), there is a narrow circumstance under which an MDJ could issue a bench warrant for a defendant's failure to appear for a preliminary hearing. Specifically, pursuant to Pa.R.Crim.P. 543(D)(3)(d), if an MDJ is conducting a preliminary hearing in the defendant's absence and must subsequently continue the hearing for some reason other than the defendant's absence, the MDJ may issue a bench warrant. (See Checklist 5-9 of Section V for Rule 543(D)(3)(d)). The procedures set forth in Checklist 5-10 below would apply to this very limited situation. It is important to note that any local rule or directive must be consistent with the Pennsylvania Rules of Criminal Procedure.

Pa.R.J.A. 103.

Checklist 5-10: Bench Warrant Procedures in Court Cases	Authority/Notes
☐ 1. Procedure following arrest pursuant to a bench warrant in court cases. ☐ a. Hearing. A defendant arrested pursuant to a bench warrant is to be taken, without unnecessary delay, for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant or another judicial officer designated by the president judge or his/her designee to conduct bench warrant hearings. ☐ b. Detention following arrest. ☐ i. Arrest in county of issuance. If the individual is arrested in the county where the bench warrant was issued and the hearing cannot be held promptly after arrest, the individual shall be lodged in the county jail pending the hearing. The authority in charge of the county jail shall notify the court that the individual is being held pursuant to the bench warrant. ☐ ii. Arrest outside county of issuance. If the individual is arrested outside the county where the bench warrant was issued, the authority in charge of the county jail shall promptly notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant. ☐ c. Time for hearing. The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county that issued the bench warrant. An individual shall not be detained without a hearing on the bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.	<u>Note:</u> Bench warrant procedures in summary cases are discussed in Checklist 4-9. Pa.R.Crim.P. 150(A)(1). <u>Note:</u> There is no procedure in the Rules of Criminal Procedure specifying the procedure for a bench warrant hearing. The hearing would be designed to address issues related to the bench warrant itself. Pa.R.Crim.P. 150(A)(3). <u>Note:</u> Although Rule 150 states that the individual shall be lodged at the county jail, local practice in this regard may vary. Pa.R.Crim.P. 150(A)(4). <u>Note:</u> These procedures do not apply to bench warrants executed outside of Pennsylvania, which are governed by extradition procedures, discussed in Checklist 3-4. Warrants issued in connection with probation or parole proceedings are also not applicable. Comment to Pa.R.Crim.P. 150. Pa.R.Crim.P. 150(A)(5). Pa.R.Crim.P. 150(A)(5)(b).

Effect of untimely hearing. If a bench warrant hearing is not held within the time limits of Pa.R.Crim.P. 150(A)(5)(b) above, the bench warrant shall expire by operation of law. ☐ d. Removal of warrant. At the conclusion of the bench warrant hearing, following disposition of the matter, the MDJ shall immediately vacate the bench warrant. ☐ 2. Bench warrant procedure when witness is under 18 years of age. When a bench warrant for a witness under the age of 18 is executed the case shall proceed in accordance with Pa.R.Crim.P. 150 except as provided below. ☐ a. Notification. Upon execution of the warrant, the arresting officer immediately shall inform the proper judicial officer and a parent/guardian of the minor. ☐ b. Detention following execution. ☐ i. Execution in county of issuance. If the judicial officer who issued the warrant, or another judicial officer designated by the president judge or his/her designee is not available to conduct the bench warrant hearing without unnecessary delay, the minor shall be taken before the on-call judge of the court of common pleas. The on-call judge shall determine whether to release the minor witness or detain him/her pending the bench warrant hearing but if the bench warrant specifically orders detention the witness shall not be released. If the on-call judge determines that the witness be detained, he/she shall be detained in a detention facility and the on-call judge shall notify the witness's parent/guardian of the detention.	Pa.R.Crim.P. 150(A)(7). Pa.R.Crim.P. 150(A)(6). <u>Note:</u> Once a bench warrant is executed and the defendant is taken into custody, the bench warrant is no longer valid. Comment to Pa.R.Crim.P. 150. Pa.R.Crim.P. 151(A). Pa.R.Crim.P. 151(B). Pa.R.Crim.P. 151(C)(1). Pa.R.Crim.P. 151(C)(1)(a). Pa.R.Crim.P. 151(C)(1)(b).
---	--

The witness shall not be detained without a bench warrant hearing for longer than 24 hours, or the close of the next business day if the 24 hour period expires on a non-business day. ☐ ii. Execution outside the county of issuance. The minor witness shall be taken before a common pleas court judge of the county of arrest without unnecessary delay, in no case later than the end of the next business day. The judge shall identify the minor as the subject of the bench warrant, decide whether detention is necessary, and order that arrangements be made to transport him/her to the county of issuance. If transportation cannot be immediately arranged, the minor shall be released unless the bench warrant specifically orders detention. In which event, he/she shall be held in an out-of-county detention facility. If detention is ordered the minor shall be brought to the county of issuance within 72 hours of execution of the bench warrant. If the time requirements of Pa.R.Crim.P. 151(D) are not met, the minor shall be released.	Pa.R.Crim.P. 151(C)(2). Pa.R.Crim.P. 151(D)(1). Pa.R.Crim.P. 151(D)(2)&(3). Pa.R.Crim.P. 151(D)(4). Pa.R.Crim.P. 151(D)(5).
---	--

F. GUILTY PLEAS BEFORE MDJS IN COURT CASES

Although typically an MDJ's power to adjudicate criminal matters is limited to summary cases, he/she is empowered by statute to handle certain guilty pleas in certain types of court cases. 42 Pa.C.S. §§ 1515(a)(5), (5.1), (6), (6.1), and (7). Rule 550, discussed below, provides the procedures to implement this expanded jurisdiction. Comment to Pa.R.Crim.P. 550. It is important to note, however, that in your judicial district this jurisdiction may be affected by local rule or by order of the president judge.

Checklist 5-11: Guilty Pleas in Court Cases	Authority/Notes
☐ 1. Examples of court cases in which the MDJ may accept a plea: ☐ a. DUI offenses under 75 Pa.C.S. § 3802 if the following criteria are met: (1) it is defendant's first offense under § 3802; (2) no personal injury to anyone other than the defendant resulted from the offense; (3) defendant pleads guilty; (4) no property damage in excess of \$500, other than to the defendant, resulted from the violation; (5) defendant is not a juvenile; and (6) the arresting authority causes to be transmitted a charge of any violation of § 3802 to the clerk of courts' office within five days after the preliminary arraignment. In determining if the foregoing criteria are met the MDJ shall rely on the certification of the arresting authority, which need not be in writing. Within 10 days after disposition the MDJ shall certify it to the clerk of courts' office in writing. ☐ b. Ignition interlock cases under 75 Pa.C.S. § 3808 (illegally operating a motor vehicle not equipped with an ignition interlock). ☐ c. 3rd degree misdemeanors under Title 18 (Crimes and Offenses), Title 30 (Fish); Title 35 (Health and Safety) if the following criteria are met: (1) the misdemeanor is not the result of a reduced charge; (2) any personal injury or property damage is less than \$500; (3) defendant pleads guilty; and (4) defendant is not a juvenile. Excluded offenses. An MDJ <u>shall not</u> accept a plea to the following offenses: (1) 18 Pa.C.S. § 4303 (Concealing Death of Child Born Out of Wedlock); (2) 18 Pa.C.S. § 4321 (Willful Separation or Nonsupport); and (3) 18 Pa.C.S. § 5103 (Unlawfully Listening into Deliberations of a Jury). ☐ d. Offenses under Title 34 (Game). ☐ e. Any matter in which jurisdiction is specifically vested in MDJs by statute.	42 Pa.C.S. § 1515(a)(5). 42 Pa.C.S. § 1515(a)(5.1). 42 Pa.C.S. § 1515(a)(6)(i). 42 Pa.C.S. § 1515(a)(6)(ii). 42 Pa.C.S. § 1515(a)(6.1). 42 Pa.C.S. § 1515(a)(7).

☐ 2. Time for plea. In a court case where an MDJ is specially empowered by statute to exercise jurisdiction, a defendant may plead guilty before an MDJ at any time up to the completion of the preliminary hearing or the waiver of the preliminary hearing. ☐ 3. Refusal to accept guilty plea. The MDJ may refuse to accept the guilty plea, and shall not accept a guilty plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly offered. ☐ 4. Factors to consider before accepting a plea. Before accepting a guilty plea, it is suggested that the MDJ consult with the Commonwealth's attorney concerning the case, the defendant's eligibility for Accelerated Rehabilitative Disposition (ARD) and other types of diversionary programs, and concerning possible related offenses that might be charged in the same complaint. In addition, before accepting a plea: ☐ a. The MDJ should be satisfied that he/she has jurisdiction to accept it and determine whether any other related offenses exist which might affect jurisdiction. ☐ b. The MDJ should be satisfied that the defendant is eligible under the law to plead guilty before an MDJ and, when relevant, should check his/her prior record and inquire into the amount of damages. ☐ c. The MDJ should advise the defendant of his/her right to counsel. The procedures of Pa.R.Crim.P. 122 should be followed (see Checklist 3-2). ☐ d. The MDJ should advise the defendant that, if he/she wants to change the plea to not guilty, the defendant shall notify the MDJ who accepted the plea in writing within 30 days after imposition of sentence.	Pa.R.Crim.P. 550(A). <u>Note:</u> After this time period expires, the MDJ no longer has authority to accept a guilty plea. Comment to Pa.R.Crim.P. 550. Pa.R.Crim.P. 550(B). <u>Note:</u> In cases where the defendant declines to enter a plea or the MDJ refuses to accept it, the case should proceed as any other court case. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. <u>Note:</u> MDJS Form 408A is the Pleas of Guilty Before Issuing Authority form. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550.
---	--

☐ e. The MDJ should make a searching inquiry into the voluntariness of the plea. A colloquy suggested in Pa.R.Crim.P. 590 (plea procedures) should be conducted. At minimum, the MDJ should ask questions to elicit the following information: ☐ i. That the defendant understands the nature of the charges pursuant to which the plea is entered; ☐ ii. That there is a factual basis for the plea; ☐ iii. That the defendant understands that he/she is waiving his/her right to a trial by jury; ☐ iv. That the defendant understands that he/she is presumed innocent until found guilty; ☐ v. That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged; ☐ vi. That the defendant is aware that the MDJ is not bound by the terms of any plea agreement unless the MDJ accepts such agreement; and ☐ vii. That the defendant understands that the plea precludes consideration of ARD or other diversionary programs. ☐ 5. Requirements of the plea. The plea shall be in writing: ☐ a. Signed by the defendant, with a representation by the defendant that the plea is entered knowingly, voluntarily, and intelligently; and ☐ b. Signed by the MDJ, with a certification that the plea was accepted after a full inquiry of the defendant and that the plea was made knowingly, voluntarily, and intelligently. ☐ 6. Change of guilty plea. A defendant who enters a guilty plea under Pa.R.Crim.P. 550 may change the plea to not guilty within 30 days after sentencing by notifying the	Comment to Pa.R.Crim.P. 550. <u>Note:</u> MDJS Form 408B is the Guilty Plea Colloquy form. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Comment to Pa.R.Crim.P. 550. Pa.R.Crim.P. 550(C). Pa.R.Crim.P. 550(C)(1). Pa.R.Crim.P. 550(C)(2). Pa.R.Crim.P. 550(D). <u>Note:</u> Withdrawal of the plea is the only relief available before the MDJ
--	---

MDJ in writing. In such an event, the MDJ shall vacate the plea and judgment of sentence and the case shall proceed as though the defendant had been held for court, i.e., the transcript and original papers shall be forwarded to the court of common pleas.	for a defendant who entered a plea under Pa.R.Crim.P. 550, other challenges to the plea must be sought in the court of common pleas. Comment to Pa.R.Crim.P. 550.
☐ 7. Certification of judgment. 30 days after accepting the guilty plea and imposing sentence, the MDJ shall certify the judgment, and shall forward the case to the clerk of courts of the court of common pleas for further proceedings.	Pa.R.Crim.P. 550(E).
☐ 8. Installment payments. At sentencing, or any time within the 30 day period before transmitting the case to the clerk of courts, the MDJ may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.	Comment to Pa.R.Crim.P. 550. <u>Note:</u> MDJS Form 416A is the MDJ Time Payment Order for a new payment schedule. MDJS Form 416B is the MDJ Time Payment Worksheet. MDJS Form 120 is the Receipt form.

G. JUVENILES CHARGED AS ADULTS: PRETRIAL DETENTION

Under § 223(a)(11)(B) of the Juvenile Justice and Delinquency Prevention Act (JJDP, 42 U.S.C. § 11133(a)(11)(B)), juveniles who are being charged and tried as adults may not be detained awaiting trial in an adult jail or lockup or have sight or sound contact with adult inmates unless the court finds it is in the interests of justice to do so. *Id.* The interests of justice determination must be made after a hearing, in writing, and considering: the juvenile's age, physical and mental maturity, present mental state, and history of prior delinquent acts; the nature and circumstances of the alleged offense; the relative ability of available adult and juvenile detention facilities to meet the specific needs of the juvenile and protect the safety of the public and other detained youth; and any other relevant factors. In addition, you should check with your court administrator to see if your county has procedures for this situation governed by local rule or order.

VI. CIVIL ACTIONS

A. INTRODUCTION

Civil actions discussed in this section concern claims (except against the Commonwealth) in which the amount demanded does not exceed \$12,000 (exclusive of interests and costs) in the following causes of action: (1) contracts (except in cases where title to real estate may be in question; in such cases, see Pa.R.Civ.P.M.D.J. 513, Checklist 7-9, for procedure), (2) trespass for damages to one's person, property, or relationships with others; and (3) for fines and penalties by any government agency. 42 Pa.C.S. § 1515(a)(3). Other types of civil actions that may come before an MDJ such as landlord/tenant matters and protection from abuse actions are discussed in Sections VII and VIII, respectively.

CAVEAT: The following section is based primarily upon the general rules of court, case law, and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that also affect these procedures. The MDJ should familiarize him/herself with any such local rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. RECORD AND TRANSCRIPT

Checklist 6-1: Record and Transcript	Authority/Notes
☐ 1. Record. The record of any proceeding before an MDJ, including proof of service, returns, entry of judgment, and other matters, appearing on a form prescribed by the court administrator of Pennsylvania shall, for all purposes, be considered to be a sufficient record of the proceedings.	Pa.R.Civ.P.M.D.J. 205(A).
☐ 2. Transcript. A copy of any record appearing on a form prescribed by the court administrator of Pennsylvania (certified as true by the MDJ in whose office it is on file) or by any other official custodian, shall, for all purposes, be considered sufficient transcript of the record, including any judgment, order, or other disposition contained therein.	Pa.R.Civ.P.M.D.J. 205(B).

C. COSTS

1. Generally

Checklist 6-2: Costs, Generally	Authority/Notes
☐ 1. Costs for filing and service shall be paid by the plaintiff at the time of filing.	Pa.R.Civ.P.M.D.J. 206(A).
☐ 2. The prevailing party may recover taxable costs that are authorized by statute or rule and that have been paid by the prevailing party.	Pa.R.Civ.P.M.D.J. 206(B). <u>Note:</u> Mailing costs are not recoverable. Comment to Pa.R.Civ.P.M.D.J. 206.
☐ 3. The losing party shall also pay any taxable costs on appeal. For purposes of this rule, a plaintiff who appeals shall be considered a losing party on appeal if he/she does not obtain a more favorable judgment on appeal than that obtained in the MDJ court.	Pa.R.Civ.P.M.D.J. 206(C).
☐ 4. A defendant prevailing in certiorari proceedings brought by the defendant, or who obtains a favorable judgment on appeal by either party, shall not be liable for costs incurred by the plaintiff in the MDJ court, and may recover taxable costs from the plaintiff.	Pa.R.Civ.P.M.D.J. 206(C).
☐ 5. A plaintiff who loses at the MDJ level may recover taxable costs for that proceeding from the defendant if the plaintiff is successful on appeal. In this situation, the defendant may not recover costs in the MDJ proceeding from the plaintiff.	Pa.R.Civ.P.M.D.J. 206(C).
☐ 6. The provisions of this rule do not apply to proceedings brought pursuant to the Protection from Abuse Act, 23 Pa.C.S. § 6101 <i>et seq.</i> or Protection of Victims of Sexual Violence and Intimidation Act, 42 Pa.C.S. § 62A01 <i>et seq.</i>	Pa.R.Civ.P.M.D.J. 206(D).

2. *In Forma Pauperis* (IFP) Status for Persons Unable to Pay Costs

Checklist 6-3: Costs – IFP Status	Authority/Notes
☐ 1. A party who is financially unable to pay costs shall be entitled to proceed <i>in forma pauperis</i> (IFP).	Pa.R.Civ.P.M.D.J. 206(E)(1).

☐ 2. A party desiring to proceed IFP shall file a petition and affidavit with the MDJ, who shall decide the petition within 5 days of its filing.	Pa.R.Civ.P.M.D.J. 206(E)(2). <u>Note:</u> Rule 206(E)(6) contains an example of an IFP petition. MDJS Form 622A constitutes the IFP Affidavit/Petition forms.
☐ 3. If the MDJ denies the IFP petition, in whole or in part, he/she shall briefly state the reasons for the denial .	Pa.R.Civ.P.M.D.J. 206(E)(2).
☐ 4. If the party petitioning for IFP status is represented by counsel, the party shall be permitted to proceed IFP upon the filing of a praecipe containing a certification by counsel that he/she is providing the party with free legal services and that he/she believes the party is financially unable to pay the costs.	Pa.R.Civ.P.M.D.J. 206(E)(3).
☐ 5. If the MDJ permits the party to proceed IFP, the party shall not be required to pay costs and shall be informed of the option of serving the complaint by mail .	Pa.R.Civ.P.M.D.J. 206(E)(4).
☐ 6. If the party proceeding IFP later recovers a monetary judgment or settlement, the exonerated fees shall be taxed as costs and paid by the unsuccessful party. Under no circumstances, however, shall the exonerated costs be paid to the indigent party.	Pa.R.Civ.P.M.D.J. 206(E)(5).

D. COMPLAINT

1. Complaint Contents and Procedure

Checklist 6-4: Venue/Complaint Contents and Procedure	Authority/Notes
☐ 1. Venue. Information concerning the proper venue or locality for civil actions can be found in Checklist 2-2.	Pa.R.Civ.P.M.D.J. 302.
☐ 2. Contents of the complaint. A civil action is commenced by the filing of a complaint. The complaint shall be made in writing on a form prescribed by the court administrator of Pennsylvania, signed and verified by the plaintiff or the plaintiff's agent, and shall set forth: ☐ a. The names and addresses of the parties; ☐ b. The amount claimed; ☐ c. A brief and concise statement of the facts upon which the claim is based including:	Pa.R.Civ.P.M.D.J. 303. Pa.R.Civ.P.M.D.J. 304(A), (B). <u>Note:</u> MDJS Form 308A is the Civil Complaint form. Pa.R.Civ.P.M.D.J. 304(B)(1). Pa.R.Civ.P.M.D.J. 304(B)(2). Pa.R.Civ.P.M.D.J. 304(B)(3).

☐ i. The date, time, and place of the occurrence and a brief description of damages sustained when the claim alleges tortious conduct; ☐ ii. The date of the transaction and a brief description of the subject matter when the claim is contractual; and ☐ iii. The date and description of the occurrence when the claim is for a civil fine or penalty as well as a citation to the statute authorizing the claim; and ☐ d. Any other information as is required on the complaint form. ☐ e. The complaint is to be signed by the plaintiff or plaintiff's agent and contain a verification pursuant to 18 Pa.C.S. § 4904 (Unsworn Falsification to Authorities). ☐ f. For each individual defendant the plaintiff (or agent) shall attach an affidavit indicating that the defendant is in military service, is not in military service, or that plaintiff is unable to determine whether defendant is in the service.	Pa.R.Civ.P.M.D.J. 304(B)(3)(a). Pa.R.Civ.P.M.D.J. 304(B)(3)(b). Pa.R.Civ.P.M.D.J. 304(B)(3)(c). Pa.R.Civ.P.M.D.J. 304(B)(4). Pa.R.Civ.P.M.D.J. 304(C). Pa.R.Civ.P.M.D.J. 304(D). <u>Note:</u> Requiring this information ensures that an eligible defendant receives the protections of the Service Members Civil Relief Act, 50 U.S.C. § 3901. Comment to Pa.R.Civ.P.M.D.J. 304.
☐ 3. Hearing date. At the time the complaint is filed, the MDJ shall: ☐ a. Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint was filed; ☐ b. Insert the hearing time, date, and the address of the MDJ court in the complaint form; and ☐ c. Deliver a copy of the complaint form with the hearing time and date on it to the plaintiff. ☐ 4. Notice to defendant. At the time the complaint is filed, the MDJ shall deliver a copy of the complaint form with the hearing time and date on it for service on the defendant, and the defendant's copy shall contain the following notice:	<u>Note:</u> MDJS Form 308 is the Hearing Notice form. Pa.R.Civ.P.M.D.J. 305(1). Pa.R.Civ.P.M.D.J. 305(2). Pa.R.Civ.P.M.D.J. 305(3). Pa.R.Civ.P.M.D.J. 305(4). <u>Note:</u> MDJS Form 308 is the Hearing Notice form.

☐ a. "If you intend to enter a defense to this complaint, you should so notify this office immediately." ☐ b. "If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least 5 days before the date set for the hearing." ☐ c. "YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT." ☐ 5. Notice of intent to defend. If the defendant gives the MDJ court notice of intent to defend as provided in Pa.R.Civ.P.M.D.J. 305(4)(a) (see Checklist 6-4(4)(a) above), the MDJ court shall promptly give the plaintiff written notice that the defendant intends to enter a defense. ☐ 6. Filing of complaint. The MDJ shall keep the original complaint. It shall be numbered consecutively in order of filing annually and filed in the manner prescribed by the court administrator of Pennsylvania. ☐ 7. Minor parties. A minor may be a party to a civil or landlord-tenant action before an MDJ and need not be represented by a guardian. ☐ a. Entitlement of complaint. The complaint in an action in which a minor is a party shall be entitled in the name of the minor without reference to his/her minority or any guardian. ☐ b. Service of complaint on minor. Service of a complaint or cross-complaint upon a minor shall be in the same manner as that prescribed for service on an adult party (see Checklist 6-5).	Pa.R.Civ.P.M.D.J. 305(4)(a). Pa.R.Civ.P.M.D.J. 305(4)(b). Pa.R.Civ.P.M.D.J. 305(4)(c). Pa.R.Civ.P.M.D.J. 318. <u>Note:</u> No specific form of notice by the defendant is prescribed in the rules; however, docket entries will show that the defendant gave notice of intent to defend and that the MDJ gave written notice to plaintiff. Note to Pa.R.Civ.P.M.D.J. 318. MDJS Form 623 is the Notice of Intent to Defend form. Pa.R.Civ.P.M.D.J. 306. Pa.R.Civ.P.M.D.J. 802. Pa.R.Civ.P.M.D.J. 803. Pa.R.Civ.P.M.D.J. 804.
---	---

☐ 8. Incapacitated person. An incapacitated person may be a party to a civil or landlord-tenant action before an MDJ if he/she is represented by a court appointed guardian. ☐ a. Entitlement of complaint. The complaint in an action in which an incapacitated person is a party shall be entitled in the name of the incapacitated person followed by the phrase "an incapacitated person, represented by A, Guardian." The address of the incapacitated person and that of the guardian shall be shown on the complaint form. ☐ b. Service of complaint on the incapacitated person. Service of a complaint or cross-complaint upon an incapacitated person shall be upon his/her guardian and shall be made in accordance with Pa.R.Civ.P.M.D.J. 307, 308, and 315 (see Checklists 6-4(10) and 6-5(1)-(3)). ☐ c. If MDJ subsequently learns that a person is incapacitated. Except as provided below, if during the pendency of the action the MDJ learns that a party not designated in the complaint as incapacitated is in fact incapacitated, the MDJ shall dismiss the proceedings without prejudice. The MDJ's finding shall be based upon on the fact that the party has a guardian appointed by a court of competent jurisdiction. ☐ i. If the incapacitated person is one of several defendants or plaintiffs. If the party found incapacitated above is one of several plaintiffs or defendants, the proceedings shall only be dismissed as to him/her. ☐ ii. Amendment of complaint. A complaint filed by an incapacitated person who is not designated as such in the complaint may be amended by his/her guardian at any time during the pendency of the action before judgment, to state that the party is an incapacitated person represented by his/her guardian. A complaint filed against an incapacitated person not	Pa.R.Civ.P.M.D.J. 809. Pa.R.Civ.P.M.D.J. 810. Pa.R.Civ.P.M.D.J. 811. Pa.R.Civ.P.M.D.J. 813(A). Pa.R.Civ.P.M.D.J. 813(B). Pa.R.Civ.P.M.D.J. 813(C).
--	--

designated as incapacitated may only be so amended with the written consent of the guardian, which shall be attached to the record copy of the complaint form. ☐ 9. MDJ may not appoint guardians <i>ad litem</i>. An MDJ shall not appoint guardians or guardians <i>ad litem</i>. ☐ 10. Claim by defendant (cross-complaint). ☐ a. Claims that can be raised. A defendant who files a complaint at least five (5) days prior to the date set for the hearing may assert in the case any claim against the plaintiff that is within MDJ jurisdiction. No cross-complaint may be filed in a supplementary action filed pursuant to Pa.R.Civ.P.M.D.J. 342. See Checklist 6-8(6) below. ☐ b. Applicable rules. The rules governing form, processing, and service of the plaintiff's complaint shall also apply to the defendant's complaint. ☐ c. Scheduling of consolidated hearing. The MDJ shall set a date and time for a consolidated hearing on both complaints that shall be not less than 12 or more than 30 days from the filing of defendant's complaint. The MDJ shall promptly notify the parties of the date and time set for the consolidated hearing of both complaints. ☐ d. Judgment on cross-complaint. A money judgment for the plaintiff or the defendant, but not both, shall be entered with respect to cross-complaints, with any lesser amount found due on one claim being deducted from the greater amount found due on the other. ☐ 11. Amendment of complaint. The complaint may only be amended at the hearing in the presence of the adverse party or his/her representative. Amendments other than	Pa.R.Civ.P.M.D.J. 819. Pa.R.Civ.P.M.D.J. 315(A). <u>Note:</u> If the complaint is not filed 5 days prior to the hearing, it may still be filed, but will not be processed as a cross-complaint. Note to Pa.R.Civ.P.M.D.J. 315. Pa.R.Civ.P.M.D.J. 342(C); Note to Pa.R.Civ.P.M.D.J. 315 and 342. Pa.R.Civ.P.M.D.J. 315(B). Pa.R.Civ.P.M.D.J. 315(B). Pa.R.Civ.P.M.D.J. 315(C). <u>Note:</u> If the MDJ feels that it would be helpful to aid the parties to understand the decision, he/she can include calculations with the judgment to explain how it was obtained. Pa.R.Civ.P.M.D.J. 316.
---	---

those as to the form of the complaint constitute grounds for a continuance. See Checklist 6-6 for Continuances.	
☐ 12. Adding parties. When considering amendments to the complaint, the MDJ should also keep in mind that the general rules of civil procedure for MDJ matters specifically prohibit adding parties after the complaint has been filed.	Pa.R.Civ.P.M.D.J. 210(2).

2. Service of the Complaint and Cross-Complaint

Checklist 6-5: Service of Complaint and Cross-Complaint	Authority/Notes
☐ 1. Time for service. The complaint shall be served at least 10 days before the hearing in one of three ways set forth in Checklist 6-5(2) below.	Pa.R.Civ.P.M.D.J. 307. <u>Note:</u> MDJS Form 624 is the Service of Process form.
☐ 2. Manner of service within Pennsylvania.	
☐ a. Personal service. The MDJ shall deliver one copy of the complaint for each defendant for service to the sheriff of, or any certified constable in, the county in which the MDJ district is located. If such service is not available, service may be made by any certified constable of the Commonwealth. If the complaint is delivered for service to the sheriff for service in a county other than the one in which the MDJ district is located, the sheriff shall deputize the sheriff of the county in which service is to be made. A certified constable may serve the complaint anywhere in the Commonwealth.	Pa.R.Civ.P.M.D.J. 307(1).
☐ b. Personal service out of county, alternative. As an alternative to Checklist 6-5(2)(a), if service is to be made in another county the MDJ may:	Pa.R.Civ.P.M.D.J. 307(2).
☐ i. Send the copy of the complaint for service to an MDJ in the county in which service is to be made, who shall then deliver it for service to the sheriff of, or any certified constable in, that county. If such service is not available, service may be made by any certified constable of the Commonwealth; or	Pa.R.Civ.P.M.D.J. 307(2)(a).

☐ ii. If service is to be made in Philadelphia, send a copy of the complaint for service to the court administrator of the municipal court of Philadelphia County, who shall deliver it for service to a writ server or the sheriff.	Pa.R.Civ.P.M.D.J. 307(2)(b).
☐ c. Service by mail. When service by mail is permitted by the rules, it shall be at the option of the plaintiff and shall be made by the MDJ by certified mail or comparable delivery method resulting in a return receipt in either paper or electronic form. Such service may be made to any place in or outside of Pennsylvania.	Pa.R.Civ.P.M.D.J. 307(3). <u>Note:</u> Service by mail is permitted by Pa.R.Civ.P.M.D.J. 308(3), 309(3), 310(4), 312(3), 313(2).
☐ 3. Service upon individuals. Service upon an individual defendant shall be made:	Pa.R.Civ.P.M.D.J. 308.
☐ a. By handing a copy to the defendant;	Pa.R.Civ.P.M.D.J. 308(1).
☐ b. By handing a copy to:	
☐ i. An adult member of defendant's family at his residence, but if no adult member of the family is found, then to an adult in charge of such residence;	Pa.R.Civ.P.M.D.J. 308(2)(a).
☐ ii. The clerk/manager of a hotel, inn, apartment house, boarding house, or other place of lodging where the defendant resides; or	Pa.R.Civ.P.M.D.J. 308(2)(b).
☐ iii. Any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.	Pa.R.Civ.P.M.D.J. 308(2)(c).
☐ c. By mailing a copy to the defendant.	Pa.R.Civ.P.M.D.J. 308(3).
In the case of service by mail, a copy shall be mailed to the defendant by certified mail or comparable delivery method resulting in a return receipt in paper or electronic form. The return receipt shall show the signature of the defendant or persons designated in Pa.R.Civ.P.M.D.J. 308(2). If the signature is of any of the persons designated in Pa.R.Civ.P.M.D.J. 308(2), it shall presumed--	Pa.R.Civ.P.M.D.J. 308(3).

unless shown otherwise—the signer was agent of the defendant. ☐ 4. Service upon partnerships. Service of the complaint on a partnership shall be made: ☐ a. By handing a copy to a partner, manager, clerk, or other person for the time being in charge, at any regular place of business of the partnership; ☐ b. On a partner in the same manner as an individual if there is no regular place of business; or ☐ c. By mailing a copy, by certified mail or a comparable delivery method that results in a return receipt in either paper or electronic form, to the partnership's regular place of business. The return receipt shall show that the complaint was received by the partnership. ☐ 5. Service upon corporations. Service of the complaint on a corporation or similar entity shall be made: ☐ a. On an executive officer/partner/trustee of the corporation; ☐ b. On an agent or person for the time being in charge of, and only at, any office or usual place of business of the corporation; ☐ c. On an agent authorized by appointment to receive service of process; or ☐ d. By mailing a copy, by certified mail or a comparable delivery method that results in a return receipt in either paper or electronic form, of the complaint to the corporation's regular place of business. The return receipt shall show	Pa.R.Civ.P.M.D.J. 309. Pa.R.Civ.P.M.D.J. 309(1). Pa.R.Civ.P.M.D.J. 309(2). Pa.R.Civ.P.M.D.J. 309(3). Pa.R.Civ.P.M.D.J. 310. Pa.R.Civ.P.M.D.J. 310(1). Pa.R.Civ.P.M.D.J. 310(2). <u>Note:</u> In deciding whether the person served was a "person in charge for the time being," there must be a sufficient connection between the person served and the defendant to demonstrate that service was reasonably calculated to give defendant notice of the action. <i>Cintas Corp. v. Lee's Cleaning Services, Inc.</i>, 700 A.2d 915, 920 (Pa. 1997). Pa.R.Civ.P.M.D.J. 310(3). Pa.R.Civ.P.M.D.J. 310(4).
---	--

that the complaint was received by the corporation or similar entity.	
☐ 6. Service upon unincorporated associations. Service of the complaint upon an unincorporated association shall be made upon the manager, clerk or other person for the time being in charge of any place where the association regularly conducts business or association activity, so long as the person served is not a plaintiff in the action.	Pa.R.Civ.P.M.D.J. 311.
☐ 7. Service on political subdivision. Service of the complaint upon a political subdivision shall be made:	Pa.R.Civ.P.M.D.J. 312.
☐ a. By handing a copy of the complaint to an agent duly authorized by the political subdivision to receive service, or the mayor, president, chairman, secretary, or tax levying body thereof;	Pa.R.Civ.P.M.D.J. 312(1).
☐ b. In counties where there is no tax levying body, by handing a copy to the chairman or clerk of the county commissioners; or	Pa.R.Civ.P.M.D.J. 312(2).
☐ c. By mailing a copy, by certified mail or a comparable delivery method that results in a return receipt in either paper or electronic form, to the office of the political subdivision. The return receipt shall show that the complaint was received by the political subdivision.	Pa.R.Civ.P.M.D.J. 312(3).
☐ 8. Service outside of Pennsylvania. Service of the complaint outside of Pennsylvania may be accomplished in one of the following ways:	Pa.R.Civ.P.M.D.J. 313.
☐ a. By service pursuant to Pa.R.Civ.P.M.D.J. 308, 309, 310, or 311 (see Checklist 6-5(3), (4), (5), (6) above), as applicable, by a Pennsylvania sheriff or constable or by any adult (other than the plaintiff) designated by the MDJ;	Pa.R.Civ.P.M.D.J. 313(1).
☐ b. By certified mail or comparable delivery method resulting in a return receipt in paper or electronic form as provided in Pa.R.Civ.P.M.D.J. 308, 309, or 310 (see Checklist 6-5(3), (4), (5) above); or	Pa.R.Civ.P.M.D.J. 313(2).
If the mail is returned with a notation that receipt was refused, the MDJ may serve the complaint by sending a copy by ordinary mail to the same	Pa.R.Civ.P.M.D.J. 313(2)(a).

address with the return address on the envelope. Service in this manner is complete if the mail is not returned to sender within 15 days of mailing. If the mail is returned with a notation by postal authorities or commercial carrier that it was unclaimed, the plaintiff shall make service by another means allowed under the rules; and	
☐ c. In the manner provided/prescribed by law of the place where service is to be made for service in that place in an action in any of its courts of general jurisdiction.	Pa.R.Civ.P.M.D.J. 313(2)(b).
☐ 9. Return of service. At or before the hearing, the person who serves the complaint shall make proof of service showing:	Pa.R.Civ.P.M.D.J. 313(3).
☐ a. Manner of service;	Pa.R.Civ.P.M.D.J. 314(A).
☐ b. Date, time, and place of service; and	Pa.R.Civ.P.M.D.J. 314(A)(1).
☐ c. The name and relationship or title, if any, of the person on whom the complaint was served.	Pa.R.Civ.P.M.D.J. 314(A)(2).
When service is made by certified mail or comparable delivery method resulting in a return receipt in either paper or electronic form, the return receipt shall be filed with the original complaint.	Pa.R.Civ.P.M.D.J. 314(A)(3).
☐ 10. Waiver of defect in service. The appearance of the defendant, either in person or by representative, or the filing by defendant of a claim in the case, shall be deemed a waiver of any defect in service, but not a waiver of a defect in venue.	Pa.R.Civ.P.M.D.J. 314(B).
☐ 11. Failure of service. If the complaint is not served on the defendant in time to permit the holding of a hearing within 60 days of the filing of the complaint, the MDJ shall dismiss the complaint without prejudice.	Pa.R.Civ.P.M.D.J. 314(C).
☐ 12. Reinstatement of the complaint. Upon written request of the plaintiff, a complaint that has been dismissed without prejudice for failure to make service pursuant to 314(D) as to all defendants may be reinstated at any time and any number of times. The date of reinstatement	Pa.R.Civ.P.M.D.J. 314(D).
	Pa.R.Civ.P.M.D.J. 314(E)(1).

shall be the date upon which the request for reinstatement is filed. When a complaint is dismissed against less than all defendants for failure to make service and the matter has proceeded to a hearing on the merits/default judgment, any further action against an unserved defendant must be initiated by the filing of a new complaint. The new complaint is subject to applicable fees and costs of a new filing.	Pa.R.Civ.P.M.D.J. 314(E)(2). Official Note to Pa.R.Civ.P.M.D.J. 314.
--	--

E. HEARING PROCEDURE

1. Continuances and Withdrawal of Complaint Prior to Hearing

Checklist 6-6: Continuances; Withdrawal of Complaint	Authority/Notes
☐ 1. Prior to the hearing, the MDJ may grant continuances for cause or by agreement. All agreements to continue the matter must be to a specific time and date that shall be noted on the complaint.	Pa.R.Civ.P.M.D.J. 209(A) & (B).
☐ 2. If a continuance is granted, the MDJ shall give the parties notice of the continuance.	Pa.R.Civ.P.M.D.J. 209(B).
☐ 3. Except for good cause, the MDJ may not grant more than one continuance, and the aggregate of all continuances shall not extend the hearing date to 90 days beyond the date on which the plaintiff filed the complaint.	Pa.R.Civ.P.M.D.J. 209(C). <u>Note:</u> For landlord-tenant actions, the aggregate of all continuances shall not extend the hearing date beyond 30 days from the date the complaint is filed. Pa.R.Civ.P.M.D.J. 209(C)(2)(b); <i>see also</i> Checklist 7-7(3) in Section VII.
☐ 4. The following are cause for granting a continuance: ☐ a. A party's attorney of record is scheduled to appear at a proceeding under the attorney disciplinary rules (as counsel, special master, hearing committee member, or member of the Disciplinary Board). ☐ b. A party's attorney of record is scheduled to appear at any judicial discipline proceeding (as counsel or as a member of the Court of Judicial	Pa.R.Crim.P. 209(D).

Discipline, Judicial Conduct Board, hearing committee, or other arm of the Judicial Conduct Board). ☐ 5. Continuances and stays shall be granted in compliance with federal and state laws (e.g., the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 <i>et seq.</i>). ☐ 6. As stated above (Checklist 6-4(12)), any amendments to the complaint, other than those as to its form, shall constitute grounds for a continuance. ☐ 7. Request to withdraw complaint. Plaintiff may withdraw the complaint prior to the commencement of the hearing by filing a written notice of withdrawal with the MDJ court. Upon receipt, the MDJ court shall note the withdrawal on the docket, cancel any scheduled hearing (except a consolidated hearing on a cross-complaint pursuant to Pa.R.Civ.P.M.D.J. 315(B)), and notify the parties in writing of the withdrawal. Withdrawal of the complaint prior to the hearing shall be deemed without prejudice. Plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs. Cross-complaints. Withdrawal of the complaint does not affect the right of a defendant to proceed with a cross-complaint. A defendant may file written notice of withdrawal of a cross-complaint in the same way a plaintiff can request withdrawal of a complaint.	Pa.R.Crim.P. 209(E). Pa.R.Civ.P.M.D.J. 316. Pa.R.Civ.P.M.D.J. 320(A)(1). Pa.R.Civ.P.M.D.J. 320(A)(2). Pa.R.Civ.P.M.D.J. 320(C)(1)-(2).
---	---

2. Conduct of the Hearing

Checklist 6-7: Conduct of the Hearing	Authority/Notes
☐ 1. Plaintiff fails to appear. If a plaintiff who has received proper notice of the defendant's intention to defend and does not appear at the hearing but the defendant does, the MDJ shall either enter judgment for the defendant or continue the case for cause. If the plaintiff does not appear at the hearing and the defendant does, but the plaintiff has not been given proper notice of the defendant's intention to defend, the case shall be continued. See Checklist 6-6 for continuances.	Pa.R.Civ.P.M.D.J. 319(A).

☐ 2. Defendant fails to appear. If the defendant does not appear at the hearing, regardless of whether or not the plaintiff appears, the MDJ shall enter judgment for the plaintiff or continue the case for cause. ☐ a. Damages. If judgment is entered for the plaintiff, the MDJ shall assess damages for the amount to which plaintiff is entitled if it is for a sum certain or which can be made certain by computation. If not, damages shall be assessed by the MDJ at a hearing at which issues shall be limited to the amount of damages. ☐ b. Notice of damages hearing. If a damages hearing is held, the MDJ shall give the defendant written notice of the time and date of the hearing, which cannot be less than 10 days from the date of the notice.	Pa.R.Civ.P.M.D.J. 319(B). Pa.R.Civ.P.M.D.J. 319(B). Pa.R.Civ.P.M.D.J. 319(B). <u>Note:</u> MDJS Form 308 is the Hearing Notice form.
☐ 3. Representation: ☐ a. Individuals. In MDJ proceedings, individuals may be represented by themselves, by an attorney-at-law, or by a representative with personal knowledge of the subject matter of the litigation and written authorization from the individual to appear as the individual's representative. ☐ b. Partnerships. In MDJ proceedings, a partnership may be represented by an attorney-at-law, a partner, or by an employee or authorized agent of the partnership with personal knowledge of the subject matter of the litigation and written authorization from a partner to appear as the partnership's representative. ☐ c. Corporations. Corporations or similar entities and unincorporated associations may be represented by an attorney-at-law; an officer of the corporation, entity, or association; or an employee or authorized agent of the corporation, entity, or association with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation, entity, or association, to appear as its representative.	Pa.R.Civ.P.M.D.J. 207(A)(1). Pa.R.Civ.P.M.D.J. 207(A)(2). Pa.R.Civ.P.M.D.J. 207(A)(3).

☐ d. Minor party: guardian. A guardian may give notice to the court of his/her intent to represent a minor party. Only one guardian may represent the minor party. ☐ e. Authorization required. A representative, employee, or authorized agent must provide written verification of their personal knowledge of the subject matter of the litigation and may take no action on behalf of the party until the written authorization required under Rule 207(A)(1)-(3), whichever is applicable, is filed with the court. ☐ f. Pro hac vice admission under Pa.B.A.R. 301 shall proceed by request. The content and disposition of the request shall conform to Pa.R.C.P. 1012.1. To gain admission under Pa.B.A.R. 301, the applicant must seek approval by the IOLTA Board before the sponsor's request for admission before the MDJ court. ☐ g. Entry of appearance by attorney. To be considered the attorney of record for a party, an attorney-at-law shall file a notice with the MDJ acknowledging that he/she represents the party. ☐ 4. Subpoenas. An MDJ has the power to issue subpoenas throughout the Commonwealth upon the request of a party. The subpoena may not be issued in blank. The subpoena may be served by a competent adult. The MDJ may subpoena witnesses to require them to attend, and may also require witnesses to produce documents or things in their possession, control, or custody. A subpoena may not be used to force a person to appear or to produce documents or other things <i>ex parte</i> before an attorney, a party or a party's representative. Minors. If the subpoenaed witness is under the age of 18, his or her parent or guardian shall be served with a copy of the subpoena in the manner set forth in Pa.R.Civ.P.M.D.J. 214.	Pa.R.Civ.P.M.D.J. 805. <u>Note:</u> MDJS Form 610 is the Guardian's Notice of Intent to Represent Minor Party form. Pa.R.Civ.P.M.D.J. 207(B). <u>Note:</u> MDJS Form 317 is the Authorization of Representative form for individuals (except minors), partnerships and corporations. MDJS Form 610 is the Notice of Intent to Represent Minor Party form. Pa.R.Civ.P.M.D.J. 207(C). Note to Pa.R.Civ.P.M.D.J. 207. Pa.R.Civ.P.M.D.J. 207.1(A). Pa.R.Civ.P.M.D.J. 214. <u>Note:</u> MDJS Form 604 is the Subpoena Civil Case form. Pa.R.Civ.P.M.D.J. 213(A) & (B). <u>Note:</u> The prohibition against <i>ex parte</i> appearance or production of documents appears intended to prevent the subpoena power from being used as a discovery tool. Note to Pa.R.Civ.P.M.D.J. 210 and 213. Pa.R.Civ.P.M.D.J. 214(E).
--	---

☐ 5. Evidentiary rules. The MDJ shall follow the rules of evidence, "except that a bill, estimate, receipt, or statement of account which appears to have been made in the regular course of business may be introduced into evidence by any party without affidavit or other evidence of truth, accuracy, or authenticity." See Pa.R.Civ.P.M.D.J. 350 (Checklist 6-16) for exceptions applicable to appeals from automated work zone speed enforcement system (AWZSES) violations. ☐ 6. Advanced communication technology. The MDJ may authorized the use of advanced communication technology during any civil proceeding or action governed by the MDJ Civil Rules. Advanced communication technology is defined as "any commination equipment that is used as a link between parties in physically separate locations."	Pa.R.Civ.P.M.D.J. 321. Comment to Pa.R.Civ.P.M.D.J. 321. Pa.R.Civ.P.M.D.J. 215. Pa.R.Civ.P.M.D.J. 202.
--	--

3. Decision and Damages

Checklist 6-8: Decision and Damages	Authority/Notes
☐ 1. Timing of entry of judgment. The MDJ shall enter judgment at the conclusion of the hearing or within five 5 days after it. ☐ 2. Content of judgment. The judgment shall be entered on the complaint form. The judgment shall also include a separate entry for costs in favor of the party entitled to costs. ☐ 3. Installment payments. In the entry of judgment the MDJ may order the judgment be paid in periodic installments which shall not extend beyond 12 months from the date of judgment. ☐ 4. Notice of judgment. The MDJ shall give or mail written notice of the judgment or dismissal to the parties. The notice shall contain: ☐ a. Notice of the right to appeal, the time limit for filing an appeal, and that the appeal is to the court of common pleas;	Pa.R.Civ.P.M.D.J. 322. Pa.R.Civ.P.M.D.J. 322. Pa.R.Civ.P.M.D.J. 323. Pa.R.Civ.P.M.D.J. 324(A). <u>Note:</u> MDJS Form 315 is the Notice of Judgment/Transcript Civil Case form. Pa.R.Civ.P.M.D.J. 324(B)(1).

☐ b. Notice that, except as otherwise provided in the rules, if the judgment holder chooses to enter the judgment in the court of common pleas, all further process must come from that court and no further process may be issued by the MDJ; and ☐ c. Notice that, unless the judgment is entered in the court of common pleas, anyone interested in the judgment may file a request for entry of satisfaction with the MDJ if the debtor pays in full, settles, or otherwise complies with the judgment.	Pa.R.Civ.P.M.D.J. 324(B)(2). Pa.R.Civ.P.M.D.J. 324(B)(3).
☐ 5. Satisfaction: request/service/entry. ☐ a. Request for entry of satisfaction. If a judgment debtor has paid in full, settled, or otherwise complied with the judgment rendered in MDJ court, anyone interested in the judgment may request entry of satisfaction of the judgment by filing a written request in the office of the MDJ who rendered the judgment. ☐ b. Service of request. A request for entry made by anyone other than the judgment creditor shall be served upon the judgment creditor in accordance with the rules concerning service of the complaint. If the requestor is unable to find or otherwise serve the request on the judgment creditor, he/she may need to enter the judgment in the court of common pleas and seek alternative service under Pa.R.C.P. 430. ☐ c. Entry of satisfaction. Within 90 days of date of service of the request for satisfaction, the judgment creditor shall enter satisfaction in the office of the MDJ in which the request for entry of satisfaction was filed.	Pa.R.Civ.P.M.D.J. 341(A). <u>Note:</u> MDJS Form 316 is the Request for Entry of Satisfaction form, MDJS Form 316A is the Entry of Satisfaction form, and MDJS Form 316B is the Request for Entry of Satisfaction Creditor form. Pa.R.Civ.P.M.D.J. 341(B). Note to Pa.R.Civ.P.M.D.J. 341. Pa.R.Civ.P.M.D.J. 341(C). <u>Note:</u> MDJS Form 316A is the Entry of Satisfaction form.
☐ 6. Failure of judgment creditor to enter satisfaction--supplementary action. If the judgment creditor does not enter satisfaction within 90 days after service of the request to enter judgment, the judgment debtor may	Pa.R.Civ.P.M.D.J. 342(A). 42 Pa.C.S. § 8104(b) (providing for liquidated damages where judgment creditor refuses to enter satisfaction).

commence a supplementary action for damages by filing a civil complaint in the office of the MDJ where the request for entry of satisfaction was filed. Upon the filing of the complaint, the matter shall proceed as a civil action under the Rules of Civil Procedure for MDJs, except that no cross-claim by the defendant is permitted. The supplementary action shall be indexed to the same docket number as the original action. There are no filing costs but there may be costs for service.	<u>Note:</u> MDJS Form 308C is the Civil Complaint Supplementary Action form. Pa.R.Civ.P.M.D.J. 342(B). Note to Pa.R.Civ.P.M.D.J. 342.
☐ 7. Minors: judgment and costs. A judgment may be entered for or against a minor party whether or not he/she is represented by a guardian. A judgment entered against a minor is the obligation of the minor; the guardian shall not be individually liable for the payment of the judgment or for costs of the action.	Pa.R.Civ.P.M.D.J. 807.
☐ 8. Minors: compromise/settlement/discontinuance and payment. If represented by a guardian, the guardian may compromise or settle the action on the minor's behalf or discontinue it. A minor who is not represented by a guardian may compromise, settle, or withdraw an action brought by the minor. The amount of the compromise, settlement or judgment in favor of the minor party shall be paid to the guardian of the estate of the minor qualified to receive the fund if there is one or one is to be appointed. If there is no such guardian and none is to be appointed, the amount shall be paid to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor.	Pa.R.Civ.P.M.D.J. 808(A). Pa.R.Civ.P.M.D.J. 808(B).
☐ 9. Incapacitated parties: judgment and costs. A judgment entered in an action shall be the obligation of the incapacitated person only; the guardian shall not be individually liable for the payment of any judgment entered against the incapacitated person or for any costs.	Pa.R.Civ.P.M.D.J. 814.
☐ 10. Incapacitated parties: judgment against unrepresented incapacitated person. Except as provided below, if after judgment the MDJ finds that a party not designated in the complaint an incapacitated person represented by a guardian was in fact incapacitated, the MDJ shall, unless the party's guardian	Pa.R.Civ.P.M.D.J. 815(A).

files his/her consent in writing to the judgment, vacate the judgment and dismiss the proceedings without prejudice. Such a finding must be based on the fact that the party had a guardian appointed by a court of competent jurisdiction. Judgment in favor of unrepresented defendant. A judgment in favor of a defendant shall not be vacated or set aside on the ground that he/she was an incapacitated person not represented by his/her guardian. ☐ 11. Incapacitated persons: compromise/settlement/discontinuance and payment. The guardian of an incapacitated person may compromise or settle the action on behalf of the incapacitated person or may discontinue the action if it was brought by or on behalf of the incapacitated person. The amount of a compromise, settlement, or judgment in favor of an incapacitated person shall, if it is known that he/she is incompetent, be paid to the guardian of his/her estate qualified to receive the fund if he/she has one or one is to be appointed. If there is no such guardian and none is to be appointed, the amount shall be paid to the guardian of the person or to the person or agency by whom the incapacitated person is maintained.	Pa.R.Civ.P.M.D.J. 815(B). Pa.R.Civ.P.M.D.J. 816(A). Pa.R.Civ.P.M.D.J. 816(B).
---	--

F. REVIEW: APPEAL/SUPERSEDEAS/CERTIORARI/STATEMENT OF OBJECTION

1. Procedure for Filing an Appeal

Checklist 6-9: Procedure for Filing an Appeal	Authority/Notes
☐ 1. Time for filing appeal. A party aggrieved by a judgment for money may appeal within 30 days of the date of the entry of the judgment. The prothonotary of the court of common pleas is not permitted to accept an appeal more than 30 days from the entry of judgment "without leave of court and for good cause shown."	Pa.R.Civ.P.M.D.J. 1002(A).
☐ 2. Notice of appeal/bond. The notice of appeal shall be filed with the prothonotary of the court of common pleas utilizing the form prescribed by the court administrator of Pennsylvania along with a copy of the notice of judgment issued by the MDJ.	Pa.R.Civ.P.M.D.J. 1002(A). <u>Note:</u> AOPC Forms 312 and 312A constitute the Notice of Appeal forms.

No bond or other security is required for appeal. ☐ 3. Guardian for minor or incapacitated person. A guardian of a minor or incapacitated person may initiate in an appropriate court of common pleas an appeal, certiorari proceeding, or statement of objection to Pa.R.Civ.P.M.D.J. 420 and 519.1 orders and determinations.	Pa.R.Civ.P.M.D.J. 1003. Pa.R.Civ.P.M.D.J. 820.
---	--

2. Supersedeas (Stay)

Checklist 6-10: Supersedeas (Stay) Procedure	Authority/Notes
☐ 1. Appeals from monetary judgments: The receipt by the MDJ of a copy of the notice of appeal pursuant to Pa.R.Civ.P.M.D.J. 1005(A) shall act as a supersedeas. Landlord-tenant. The supersedeas rules are different for landlord-tenant matters. These rules are discussed in Checklist 7-12 of Section VII. ☐ 2. Termination of the supersedeas. If the appeal is stricken or voluntarily terminated, the supersedeas will terminate.	Pa.R.Civ.P.M.D.J. 1008(A) & the accompanying note. Pa.R.Civ.P.M.D.J. 1008(B) Pa.R.Civ.P.M.D.J. 1008(D).

3. Writ of Certiorari

Checklist 6-11: Writ of Certiorari	Authority/Notes
☐ 1. Filing of writ/bond. A party aggrieved by the judgment--except the plaintiff--may file a praecipe for writ of certiorari with the prothonotary of the court of common pleas seeking to have the judgment set aside on the grounds of: (a) lack of jurisdiction over the subject or parties; (b) improper venue; or (c) such gross irregularity of procedure as to make judgment void. The plaintiff may only petition for writ of certiorari based upon the last ground. No bond or other security shall be required for the issuance of a writ of certiorari. ☐ 2. No certiorari and appeal. A judgment cannot be the subject of both an appeal and certiorari. The prothonotary is to mark as stricken any writ of certiorari concerning a judgment as to which appeal is pending if	Pa.R.Civ.P.M.D.J. 1009(A). Pa.R.Civ.P.M.D.J. 1010. Pa.R.Civ.P.M.D.J. 1015.

proof of service of the notice of appeal has been filed. If the appeal is stricken or voluntarily terminated, the writ of certiorari shall be reinstated upon praecipe of the party obtaining the writ. ☐ 3. Time for filing. If lack of jurisdiction over the parties or subject matter is claimed, the praecipe may be filed at any time after judgment. Otherwise it shall be filed within 30 days after the date of the judgment. ☐ 4. Content of the praecipe. The praecipe shall identify the judgment complained of and the MDJ in whose office the record of the proceedings is filed. The praecipe and the writ shall be on a form which shall be prescribed by the court administrator of Pennsylvania. ☐ 5. Issuance and service of writ. ☐ a. Issuance. Upon receipt of the praecipe for a writ of certiorari, the prothonotary shall issue the writ and direct it to the MDJ in whose office the record of the proceedings containing the judgment is filed, and it shall be delivered for service to the party who filed the praecipe. ☐ b. Service. The party obtaining the writ shall serve it by either personal service or certified or registered mail upon the MDJ to whom it was directed. Similarly, he/she shall also serve it upon the opposing party. Service and proof of service may be made by attorney or other agent. ☐ c. Failure to serve. If proof of service on the MDJ and the opposite party is not filed with the prothonotary within 5 days after delivery of the writ for service, the prothonotary shall, upon praecipe of the opposite party, mark the writ stricken and the writ shall not be reinstated nor shall any new writ be issued. ☐ 6. Return of writ by the MDJ. The MDJ to whom the writ is directed shall make a return of the writ by sending a certified true copy of the record containing the	Pa.R.Civ.P.M.D.J. 1009(B). Pa.R.Civ.P.M.D.J. 1009(C). Pa.R.Civ.P.M.D.J. 1009(D). <u>Note:</u> AOPC Form 25 is the Writ of Certiorari form. Pa.R.Civ.P.M.D.J. 1011(A). Pa.R.Civ.P.M.D.J. 1011(B). Pa.R.Civ.P.M.D.J. 1011(D). Pa.R.Civ.P.M.D.J. 1011(C). Pa.R.Civ.P.M.D.J. 1012.
---	--

judgment to the prothonotary within 10 days after receiving the writ. ☐ 7. Writ as supersedeas. ☐ a. Civil actions other than landlord/tenant. Receipt of the writ by the MDJ will act as a supersedeas. ☐ b. Landlord/tenant actions for possession of real property. If the judgment concerns possession of real property, the writ shall act as a supersedeas only if the party obtaining the writ deposits a sum of money with the prothonotary equal to the lesser of 3 months rent or the rent actually in arrears as of the date of filing of the praecipe, and makes subsequent deposits of monthly rent every 30 days. See section VII for landlord/tenant actions. ☐ c. Termination. If the writ is stricken, dismissed, or discontinued, any supersedeas based on it shall terminate. ☐ 8. Guardian for minor or incapacitated person. A guardian of a minor or incapacitated person may initiate in an appropriate court of common pleas an appeal, certiorari proceeding, or statement of objection to Pa.R.Civ.P.M.D.J. 420 and 519.1 orders and determinations.	Pa.R.Civ.P.M.D.J. 1013(A). Pa.R.Civ.P.M.D.J. 1013(B). Pa.R.Civ.P.M.D.J. 1013(D). Pa.R.Civ.P.M.D.J. 820.
--	---

4. Statement of Objection

A method of gaining court of common pleas review of an MDJ's determination made pursuant to Pa.R.Civ.P.M.D.J. 420 (see Checklist 6-13(11) below) is the filing of a statement of objection. The following checklist reviews the procedure for a statement of objection.

Checklist 6-12: Statement of Objection	Authority/Notes
☐ 1. Filing of statement: Who may file/place of filing/content. A party aggrieved by an MDJ's order made pursuant to Pa.R.Civ.P.M.D.J. 420 (see Checklist 6-13(11) below) or 519.1 (see Checklist 7-17(5)(f) below), may obtain reconsideration in the court of common pleas by filing a statement of objection with the prothonotary of the court of common pleas and the MDJ in whose	Pa.R.Civ.P.M.D.J. 1016.

office the order or determination was made within 10 days of the date of the order or determination. The statement of objection shall be on a form prescribed by the court administrator of Pennsylvania and shall merely state that the filing party objects to the order or determination described in the statement. ☐ 2. MDJ's duties once statement of objection is filed. ☐ a. Notice. Immediately upon receipt of the statement of objection, the MDJ shall send a copy of it by ordinary mail to all other parties at interest. ☐ b. Record. Within 10 days after receiving the statement of objection, the MDJ shall file with the prothonotary a certified true copy of the record of actions taken by the MDJ under Pa.R.Civ.P.M.D.J. 420 or 519.1; however, copies of only those appeals, objections, claims, exceptions, or requests considered under Rule 420 or 519.1 which are pertinent to the statement of objection need be attached to that record. ☐ 3. Stay. Until further order of the court of common pleas, the receipt by the MDJ of a statement of objection shall operate as a stay of any execution proceedings that may be affected by the proceedings on the statement of objections. ☐ 4. Consideration by the court of common pleas. The matters raised in the statement of objection shall be considered <i>de novo</i> by the court of common pleas and it shall take such action and make such orders as are just and proper. ☐ 5. Guardian for minor or incapacitated person. A guardian of a minor or incapacitated person may initiate in an appropriate court of common pleas an appeal, certiorari proceeding, or statement of objection to Pa.R.Civ.P.M.D.J. 420 and 519.1 orders and determinations.	Pa.R.Civ.P.M.D.J. 1017. <u>Note:</u> AOPC Form 340 is the Statement of Objection to Rule 420 Orders and Determinations form. Pa.R.Civ.P.M.D.J. 1018(A). Pa.R.Civ.P.M.D.J. 1018(B). Pa.R.Civ.P.M.D.J. 1020. Pa.R.Civ.P.M.D.J. 1019. <u>Note:</u> Although consideration is <i>de novo</i> this does not excuse the failure to comply with whatever time limits under the rules for raising before the MDJ the matters sought to be raised in the court of common pleas. Note to Pa.R.Civ.P.M.D.J. 1019. Pa.R.Civ.P.M.D.J. 820.
---	---

G. EXECUTION

Checklist 6-13: Execution	Authority/Notes
☐ 1. Assignment of judgment. If the judgment is assigned, the MDJ shall, upon request of the real party in interest (assignee): ☐ a. Cause an entry to be made on the docket indicating the assignment, the name of the original plaintiff/judgment holder, and the name of the real party in interest; and ☐ b. Issue an amended notice of judgment indicating the assignment, the name of the original plaintiff, and the name of the assignee. ☐ 2. Request for order of execution. The MDJ in whose office a monetary judgment was entered or rendered may order execution, provided the plaintiff files a request for an order of execution in that office between 30 days after the date judgment is entered and 5 years after the date judgment is entered. The MDJ in whose office judgment was rendered or entered shall accept all timely requests for order of execution on that judgment even if the property to be levied upon is located outside of the county where the judgment was entered or rendered. In such a situation, the MDJ shall accept the request and use the MDJS to transfer to the proper MDJ court. The request form must be attached to the order, the return and other matters required by the rules. ☐ 3. Entry of judgment in another MDJ district. A plaintiff may enter the judgment for purposes of requesting an order of execution in an MDJ district other than the one in which it was originally entered only if levy is to be made outside the county in which the judgment was entered and the office where the judgment was entered for execution is located in the county in which the levy is to be made.	Pa.R.Civ.P.M.D.J. 401.1. <u>Note:</u> In the execution context, "plaintiff" refers to the holder of the judgment. Pa.R.Civ.P.M.D.J. 401(1). Pa.R.Civ.P.M.D.J. 401.1(1). Pa.R.Civ.P.M.D.J. 401.1(2). <u>Note:</u> MDJS Form 315 is the Notice Judgment/Transcript Civil Case form. Pa.R.Civ.P.M.D.J. 402(A). <u>Note:</u> MDJS Form 305A is the Request for Order of Execution form. MDJS Form 305B1 is the Notice to Defendant form. MDJS Form 634 is the Order of Execution Worksheet. Pa.R.Civ.P.M.D.J. 402(A)(2). Comment to Pa.R.Civ.P.M.D.J. 402. Pa.R.Civ.P.M.D.J. 402(B). Pa.R.Civ.P.M.D.J. 402(C).

The plaintiff may enter the judgment in the other MDJ office by filing a certified copy of the record of the proceedings containing the judgment. The record may be certified by either the MDJ in whose office the judgment was originally rendered or any other official custodian of the record.	Pa.R.Civ.P.M.D.J. 402(C).
☐ 4. Entry of judgment in the court of common pleas. ☐ a. Where the judgment may be entered. The plaintiff may enter the judgment in the court of common pleas of any county. The indexing, revival, and execution of the judgment shall be in accordance with procedures applicable in the court of common pleas. ☐ b. How the judgment may be entered. The judgment may be entered by filing with the prothonotary a certified copy of the record of the proceedings containing the judgment. The record may be certified by either the MDJ in whose office the judgment was originally rendered or any other official custodian of the record. ☐ c. When the judgment may be entered. The plaintiff may enter the judgment in the court of common pleas between 30 days after judgment is entered by the MDJ and 5 years after judgment is entered by the MDJ. ☐ d. Proof of entry of judgment. Within 14 days of entry of judgment in the court of common pleas, the plaintiff shall file proof thereof with the MDJ that entered the judgment and the MDJ court shall vacate the judgment from its docket. If after 14 days following entry in the court of common pleas the plaintiff fails to comply with this requirement, the defendant may file such proof with the MDJ court and the court shall vacate the judgment from its docket. ☐ e. Effect of entry of judgment. Except as provided in Pa.R.Civ.P.M.D.J. 402(D)(4)&(6), once judgment is entered in the court of common pleas, all subsequent process must come from that court and no further process may be issued by the MDJ.	Pa.R.Civ.P.M.D.J. 402(D)(1). Pa.R.Civ.P.M.D.J. 402(D)(2). Pa.R.Civ.P.M.D.J. 402(D)(3). Pa.R.Civ.P.M.D.J. 402(D)(4)(a). Pa.R.Civ.P.M.D.J. 402(D)(4)(b). Pa.R.Civ.P.M.D.J. 402(D)(5).

An exception to the foregoing is that an MDJ shall enter satisfaction on the docket of the MDJ proceeding upon the filing of any party in interest of a certified copy of the common pleas court docket entries showing that judgment and satisfaction have been entered in that court.	Pa.R.Civ.P.M.D.J. 402(D)(6).
☐ f. Expired judgments. A judgment marked “expired” is one that cannot be satisfied, revived, or vacated because the 5 year period designated in Pa.R.Civ.P.M.D.J. 402 has passed. If the plaintiff does not request an order of execution in MDJ court or enter judgment in the court of common pleas within 5 years of its entry by the MDJ, it shall be marked expired.	Pa.R.Civ.P.M.D.J. 402(E).
☐ 5. Issuance and reissuance of the order for execution/levy. ☐ a. Issuance of the order for execution. Once the request form is filed, the MDJ shall note on it the time and date of its filing and shall issue the order for execution. The MDJ shall deliver the order of execution for service and execution to the sheriff of, or any certified constable in, the county in which the MDJ issuing the order is located. If such service is not available, service may be made by any certified constable of the Commonwealth. ☐ b. Service of the order for execution. ☐ i. The sheriff or certified constable receiving the order shall note on it the date and time it was received. ☐ ii. Service shall be made by the sheriff of, or any certified constable in, the county in which the MDJ office is located by levy within 60 days of issuance or reissuance of the order. If such service is not available, service may be made by any certified constable of the Commonwealth. ☐ c. Levy.	Pa.R.Civ.P.M.D.J. 403(A). Pa.R.Civ.P.M.D.J. 404. Pa.R.Civ.P.M.D.J. 405(A).

☐ i. Service of copy of order. At the time of levy, the executing officer must give the defendant a copy of the order or leave it at the place of levy, unless such place is not the defendant's residence or usual place of business and the defendant has not been given a copy, in which case the copy shall be mailed to his/her last known address. If the levy is made on property of the defendant in the possession of another person, a copy of the order shall be made available to that person as well as the defendant. The order of execution must contain notice as set forth in Rule 409. ☐ ii. Property subject to levy. The levy shall only be made upon tangible, non-perishable personal property of the defendant, and only upon such property within the county where the order for execution is issued. ☐ d. Reissuance of order: generally. On written request filed by the plaintiff within 5 years of date of entry of the judgment, an order of execution shall be reissued at any time and any number of times. ☐ e. Reissuance following termination of appeal, writ of certiorari, supersedeas, or lifting of bankruptcy stay. If the order of execution is superseded by an appeal, writ of certiorari, supersedeas or bankruptcy stay or other federal or state law; and the appeal, writ of certiorari, or supersedeas is terminated or the bankruptcy or other stay is lifted; and the plaintiff wishes to proceed, the plaintiff must file a written request for reissuance of the order of execution. A written request for reissuance following the termination of an appeal, writ of certiorari,	Pa.R.Civ.P.M.D.J. 405(B). <u>Note:</u> In the execution context, "defendant" refers to the party against whom the judgment is rendered. Pa.R.Civ.P.M.D.J. 401(2). <u>Note:</u> MDJS Forms 306A1 is the Schedule of Property Levied Upon and Set Aside form. MDJS Form 306B is the Notice of Levy form. Pa.R.Civ.P.M.D.J. 405(B). Pa.R.Civ.P.M.D.J. 409. <u>Note:</u> The Order of Execution form, MDJS 305(B)(1), contains the Rule 409 notice. Pa.R.Civ.P.M.D.J. 406. Pa.R.Civ.P.M.D.J. 403(B)(1). Pa.R.Civ.P.M.D.J. 403(B)(2). Pa.R.Civ.P.M.D.J. 403(C).
--	---

supersedeas, or lifting of a bankruptcy stay must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, supersedeas or lifting the bankruptcy or other stay. ☐ 6. Exemptions from execution. ☐ a. General. A defendant entitled to a general monetary exemption under 42 Pa.C.S. § 8123 may claim it in kind or in cash out of the proceeds of the sale by notifying the officer executing the order of his/her claim. If the exemption is claimed in kind, the defendant may claim it by designating the items of property he/she chooses to retain as exempt. The failure of the judgment debtor to claim his/her exemption under § 8123 shall not constitute a waiver of the exemption. ☐ b. Setting aside exempt property. ☐ i. Setting aside. If the executing officer receives a claim for exemption in kind, he/she shall set aside from the designated property enough of it as he/she appraises as equal to the value of the exemption, unless the property is incapable of division. If the defendant does not claim the statutory exemption, the executing officer shall choose, appraise and set aside property in kind. ☐ ii. Property incapable of division. If property in kind cannot be set aside because it is not capable of division, the executing officer shall set aside from the proceeds of the sale and pay to the judgment debtor the amount of the statutory exemption. ☐ iii. Appeal of appraisal, designation, or setting aside of property. The defendant or any interested party may appeal the executing officer's appraisal or designation to the MDJ who issued the order of execution within 2 days of	Pa.R.Civ.P.M.D.J. 407. Pa.R.Civ.P.M.D.J. 408(A). Pa.R.Civ.P.M.D.J. 408(B). Pa.R.Civ.P.M.D.J. 408(C).
---	--

the appraisal or designation. The plaintiff may appeal a setting aside of property by the executing officer at any time before sale on the grounds that it is excessive or illegal (see Checklist 6-13(11) below). ☐ 7. Stay of execution on bond. The MDJ shall stay execution if any of the following occur: ☐ a. The plaintiff makes a written request to the MDJ to stay execution; or ☐ b. The defendant or any other interested party enters a bond with the MDJ with security approved by the MDJ in the amount of the judgment, including probable interest and costs, or a lesser amount as the MDJ may direct. The bond shall name the Commonwealth of Pennsylvania as obligee, and the bond shall be conditioned to pay the amount due within 90 days of entry of the bond, unless this time period is extended by the MDJ. ☐ c. The defendant or any other interested party requests a stay in compliance with federal or state law. Notice of stay. If execution is stayed pursuant to Rule 410, the MDJ shall give notice of the stay via MDJS Form 620. Lifting of stay. When execution is stayed under this rule, it may not be lifted without a written order of the MDJ. Once the stay is lifted, execution may proceed without the necessity for reissuance of the order of execution. ☐ 8. Stay of sale: objection to levy or third party claim. The MDJ shall stay the sale if before the sale either: ☐ a. The defendant files in the MDJ office where the order of execution originated an objection to the levy on the ground that it is illegal or excessive	Pa.R.Civ.P.M.D.J. 410. Pa.R.Civ.P.M.D.J. 410(A)(1). Pa.R.Civ.P.M.D.J. 410(A)(2). <u>Note:</u> Execution can also be stayed as a result of the automatic stay resulting from the debtor's filing of a bankruptcy petition. 11 U.S.C. § 362. See Checklist 6-14. Pa.R.Civ.P.M.D.J. 410(A)(3). <u>Note:</u> The MDJ court shall enter stays in compliance with federal or state law (e.g., Servicemembers Civil Relief Act, 50 U.S.C. § 3901 <i>et seq.</i>). Note to Pa.R.Civ.P.M.D.J. 410. Pa.R.Civ.P.M.D.J. 410(B). Pa.R.Civ.P.M.D.J. 410(C). Pa.R.Civ.P.M.D.J. 413. Pa.R.Civ.P.M.D.J. 413(1).
--	--

compared to the judgment, interest, and probable costs; or ☐ b. A third party files a claim to all or part of the levied-upon property in the MDJ office where the order of execution originated. If either occurs, the sale shall be stayed pending a determination under Pa.R.Civ.P.M.D.J. 420 (see Checklist 6-13(11) below). ☐ 9. Right to break and enter. After levying on the personal property, the executing officer may enter the place or building where the goods are contained, either peaceably or by breaking in by force, for the purpose of taking possession of or selling the property levied upon, and no bond shall be required of the plaintiff by the executing officer. ☐ 10. Sale. ☐ a. Notice of sale. The executing officer must give notice of the sale at least 6 days prior in the following manner: ☐ i. By posting handbills at the MDJ court from which the order of execution issued and, if different from the court from which the order issued, the MDJ court in the MDJ district in which the sale is located: ☐ ii. By posting handbills at the place of sale, the place of levy (if different from the place of sale); and ☐ iii. By mail to the defendant. ☐ b. Content of notice. The notice must state: that all claims must be filed prior to the sale in the office of the MDJ that issued the order for execution, and that all claims to the proceeds must be filed in that office before distribution; that a proposed schedule of distribution will be filed in that office on a date specified that will not be later than 5 days following the sale; and that distribution will be made in accordance	<u>Note:</u> MDJS Form 632 is the Objection to Levy Property Claim form. Pa.R.Civ.P.M.D.J. 413(2). Pa.R.Civ.P.M.D.J. 411. Pa.R.Civ.P.M.D.J. 412(A)(1). <u>Note:</u> MDJS Form 309A is the Notice of Execution Sale form. Pa.R.Civ.P.M.D.J. 412(A)(2)(a). Pa.R.Civ.P.M.D.J. 412(A)(2)(b). Pa.R.Civ.P.M.D.J. 412(A)(2)(c). Pa.R.Civ.P.M.D.J. 412(B). <u>Note:</u> MDJS Form 309A is the Notice of Execution Sale form.
--	--

with the proposed schedule unless exceptions are filed within 10 days thereafter. If a new date for the sale is set, new notice must be given as set forth in Pa.R.Civ.P.M.D.J. 412(A) & (B).	Pa.R.Civ.P.M.D.J. 412(C).
☐ c. Plaintiff/judgment holder as purchaser. If personal property sold on execution is purchased by the plaintiff entitled to receive all or part of the sale proceeds, the executing officer shall accept on account of the purchase price a receipt of the plaintiff up to the amount of the proceeds to which he/she is entitled.	Pa.R.Civ.P.M.D.J. 414.
☐ d. Transfer of property to the purchaser. When the executing officer sells property, he/she shall, upon request of the purchaser, execute and deliver a bill of sale to the purchaser setting forth the case caption and a description of the property.	Pa.R.Civ.P.M.D.J. 415.
☐ e. Distribution of proceeds of sale.	
☐ i. Schedule of distribution. Within 5 days of sale, the executing officer must prepare a proposed schedule of distribution of the proceeds that shall be kept on file at the MDJ office where the order for execution originated. No schedule of distribution is required if the property is sold to the plaintiff for costs only.	Pa.R.Civ.P.M.D.J. 416(A). <u>Note:</u> MDJS Form 309B is the Proposed Schedule of Distribution form.
☐ ii. Distribution. Unless written exceptions are filed in the MDJ office not later than 10 days after filing of the proposed schedule of distribution, the executing officer shall distribute the proceeds in accordance with the schedule (see Checklist 6-13(11) below).	Pa.R.Civ.P.M.D.J. 416(C). <u>Note:</u> It is the executing officer's responsibility to distribute the proceeds, not the MDJ's. Note to Pa.R.Civ.P.M.D.J. 416.
☐ iii. Competing levies. If one or more executing officers make levies against the same property at the request of separate plaintiffs, priority of distribution of the proceeds shall be	Pa.R.Civ.P.M.D.J. 416(D).

determined by the time of their respective requests for orders of execution, or reissuance thereof. ☐ f. Executing officer's expenses and fees. The plaintiff shall pay the executing officer's expenses and fees promptly upon demand. Prior to service of the order for execution, however, the executing officer may only require the plaintiff to pay in advance only expenses and fees incident to levy. Any expenses and fees paid by the plaintiff shall be deemed taxable costs that may be refunded from the proceeds of the sale. ☐ g. Abandonment of levy for inability to hold sale. Except as provided below, the executing officer shall abandon the levy if sale of the levied-upon property is not held within 3 months after levy. Exclusion of time. Any period of time during which the sale is stayed under any provision of the rules shall be excluded in computing the 3 month period, but in all cases the officer executing the order shall abandon the levy if sale is not held within 6 months. ☐ h. Return by executing officer. The executing officer is required to make a return on the order of execution form indicating: date, time, and place of levy; his/her appraisal of value of any property set aside as exempt; date, time, and place of any sale; proceeds of any sale, specifying any sale on receipt to the judgment holder; his/her expenses and fees; any distributions made; if no levy could be made or the levy was abandoned, and the reasons therefor; or that the order was returned unexecuted for nonpayment of expenses and fees. ☐ 11. Determination of property claims and disputes.	Pa.R.Civ.P.M.D.J. 417. Pa.R.Civ.P.M.D.J. 418(A). Pa.R.Civ.P.M.D.J. 418(B). Pa.R.Civ.P.M.D.J. 419. <u>Note:</u> MDJS Form 305C is the Executing Officer's Return form. <u>Note:</u> A helpful way for the MDJ to keep track of the actions taken pursuant to Pa.R.Civ.P.M.D.J. 420, is to use MDJS Form 634, the Order of Execution Worksheet.
---	--

☐ a. Types of claims and disputes. The MDJ from whose office the order of execution was issued shall hear and determine: (1) appeals from appraisal, designation, or setting aside of property pursuant to Pa.R.Civ.P.M.D.J. 408(C) (see Checklist 6-13(6)(b)(iii) above); (2) objections by the defendant to the levy on the grounds it was illegal or excessive pursuant to Pa.R.Civ.P.M.D.J. 413 (see Checklist 6-13(8) above); (3) claims of third parties to the property filed pursuant to Pa.R.Civ.P.M.D.J. 413 (see Checklist 6-13(8) above); and (4) exceptions to proposed distribution filed pursuant to Pa.R.Civ.P.M.D.J. 416(C) (see Checklist 6-13(10)(e)(ii) above).	Pa.R.Civ.P.M.D.J. 420(A).
☐ b. Types of relief available. In deciding any of the foregoing claims and disputes, the MDJ may: (1) reappraise or redesignate the property or order inclusion in the levy of property the executing officer set aside; (2) order the abandonment of the levy in whole or part, or release property from the levy; (3) stay or prohibit a sale of all or part of the property levied-upon; (4) order that property levied on be released to a third party who has a valid claim upon it; or (5) stay distribution or order a distribution different from that proposed by the executing officer.	Pa.R.Civ.P.M.D.J. 420(B).
☐ c. Setting aside of sale. The MDJ from whose office the order of execution was issued may set aside the sale of property and order resale, or enter any other order which is just and proper under the circumstance, upon written request of a party in interest made before delivery of the property sold pursuant to the order of execution and upon proper cause shown.	Pa.R.Civ.P.M.D.J. 420(C).
☐ d. Hearing procedure. ☐ i. Time of hearing and notice; time of determination. The MDJ must hold hearings on matters to be determined pursuant to Checklist 6-13(11)(a) above no later than 5 days after they are filed. The MDJ shall notify all parties in	Pa.R.Civ.P.M.D.J. 421(A).

interest of the date and time of the hearing by telephone or other timely means of communication. The MDJ must enter a determination no later than 3 days after the hearing. ☐ ii. Notice of determination. The MDJ court must promptly give/mail the parties written notice of the determination, which shall advise the parties of their right to file a statement of objection and the time period and place for filing such a statement. ☐ iii. Date of effectiveness of orders. A stay order shall take effect immediately. All other orders and determinations with respect to execution proceedings shall not take effect until after 10 days have passed from the date of entry of the order or determination. ☐ e. Minors and incapacitated persons. A guardian of a party in interest who is a minor or an incapacitated person may represent the minor or incapacitated person in proceedings under Pa.R.Civ.P.M.D.J. 420 and 519.1. On behalf of the minor or incapacitated person he/she may make any appeal or file any objection, claim, exception or request mentioned in that rule.	Pa.R.Civ.P.M.D.J. 421(B). <u>Note:</u> MDJS Form 642 is the Notice of Determination of Property Claims and Disputes form. Pa.R.Civ.P.M.D.J. 420(D). <u>Note:</u> The 10-day time period gives the aggrieved party time to file a statement of objection in the court of common pleas. Note to Pa.R.Civ.P.M.D.J. 420. <u>Note:</u> For statement of objection, see Checklist 6-12 above. Pa.R.Civ.P.M.D.J. 818.
--	--

H. MISCELLANEOUS

1. Bankruptcy Stay

The filing of a petition for bankruptcy under the United States Bankruptcy Code will automatically stay the proceedings against the defendant under certain circumstances. 11 U.S.C. § 362. The automatic stay is subject to exceptions that may be applicable. The automatic stay and the relevant exceptions to it are discussed in Checklist 6-14 below.

Checklist 6-14: Bankruptcy Stay	Authority/Notes
---------------------------------	-----------------

☐ 1. Automatic stay. The filing of a bankruptcy petition stays the following actions: ☐ a. "The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of [the bankruptcy case], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy case]"; ☐ b. "The enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the [bankruptcy case]"; and ☐ c. "Any act to obtain possession of property of the estate or of property from the estate or to exercise control over the property of the estate." ☐ d. "Any act to create, perfect, or enforce any lien against property of the estate"; ☐ e. "Any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the [bankruptcy case]"; ☐ f. "Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the [bankruptcy case]"; ☐ g. "The setoff of any debt owing to the debtor that arose before the commencement of the [bankruptcy case] against any claim against the debtor; and ☐ h. "The commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability . . ." ☐ 2. Exceptions to automatic stay. A bankruptcy petition does not act as a stay to the following actions that may come before an MDJ:	11 U.S.C. § 362(a)(1). 11 U.S.C. § 362(a)(2). 11 U.S.C. § 362(a)(3). 11 U.S.C. § 362(a)(4). 11 U.S.C. § 362(a)(5). 11 U.S.C. § 362(a)(6). 11 U.S.C. § 362(a)(7). 11 U.S.C. § 362(a)(8).
--	---

☐ a. The commencement or continuation of a criminal action against the debtor. ☐ b. The commencement or continuation of a civil action or proceeding regarding domestic violence. ☐ c. Any act by the landlord to the tenant under a commercial lease that has terminated by the expiration of the term of the lease prior to the commencement of, or during a bankruptcy case to obtain possession of the leased property. ☐ d. The continuation of any eviction, unlawful detainer action, or similar proceeding by a landlord against a debtor/tenant involving a residential property in which the tenant resides under a lease or rental agreement, and to which the landlord has obtained a judgment for possession prior to the filing of the bankruptcy petition; and Limitation on exception. Except as otherwise provided, the exception of 11 U.S.C. § 362(b)(22) shall apply 30 days after the date the bankruptcy petition is filed if the tenant files a certification with the bankruptcy court (and serves it on the landlord) that the non-bankruptcy law allows him/her to cure the default giving rise to the judgment for possession after said judgment has been entered and the debtor has deposited with the clerk rent that has come due following the filing of the bankruptcy petition. If, within 30 days after the filing of the bankruptcy petition, a tenant complies with the preceding paragraph and files with the bankruptcy court (and serves on the landlord) an additional certification that the tenant has cured the default giving rise to the judgment under which possession is sought, 11 U.S.C. § 362(b)(22) shall not apply unless the bankruptcy court orders it to apply.	11 U.S.C. § 362(b)(1). 11 U.S.C. § 362(b)(2)(A)(v). 11 U.S.C. § 362(b)(10). 11 U.S.C. § 362(b)(22). 11 U.S.C. § 362(l)(1). 11 U.S.C. § 362(l)(2).
---	---

☐ e. An eviction seeking possession of residential property in which the tenant resides under a lease or rental agreement based on the endangerment of the property or the illegal use of controlled substances on the property, but only if the landlord files with the bankruptcy court (and serves upon the debtor) a certification that such an eviction has been filed, or that the tenant, during the 30 day period preceding the filing of the certification, has endangered the property, or illegally used, or allowed to be used, a controlled substance on the property. Limitation on the exception. The exception of 11 U.S.C. § 362(b)(23), except as stated below, shall apply 15 days after the lessor files the aforementioned certification. The tenant may file an objection to the certification. ☐ 3. Relief. Relief from the automatic stay shall be sought in the bankruptcy court.	11 U.S.C. § 362(b)(23). 11 U.S.C. § 362(m)(1)&(2). 11 U.S.C. § 362(e).
---	---

2. Settlement

Checklist 6-15: Settlement	Authority/Notes
☐ 1. Notice of settlement. The parties may file a written notice of settlement at any time prior to the entry of judgment. Upon receiving the notice, the MDJ court shall note the case settled on the docket, cancel any scheduled hearing (except a consolidated hearing on a cross-complaint pursuant to Pa.R.Civ.P.M.D.J. 315(B)), and give written notice to the parties that the complaint has been marked settled. ☐ 2. Breach of settlement agreement. Where a notice of settlement has been filed and a breach of the settlement agreement occurs, a party may file a new complaint citing breach of the settlement agreement as the cause of action. ☐ 3. Cross-complaints. The settlement of a complaint does not affect the right of the defendant to proceed with a cross-complaint. The parties may file written notice of	Pa.R.Civ.P.M.D.J. 320(B)(1). Pa.R.Civ.P.M.D.J. 320(B)(2). Pa.R.Civ.P.M.D.J. 320(C)(1), (3).

settlement of a cross-complaint in the same way parties can request settlement of a complaint.	
--	--

3. Automated Work Zone Speed Enforcement System (AWZSES) Violation Appeals

A fine for alleged violations of an Automated Work Zone Speed Enforcement System (AWZSES) is a civil matter and an appeal of such violations are governed specifically by Pa.R.Civ.P.M.D.J. 350 and generally (i.e., to the extent not otherwise provided in Rule 350) by Pa.R.Civ.P.M.D.J. 301 – 382. Comment to Pa.R.Civ.P.M.D.J. 301.

Checklist 6-16: AWZSES Violation Appeals	Authority/Notes
☐ 1. Parties. The owner of the vehicle requesting appeal of the hearing officer's determination is the appellant. The appellee is the Pa. Department of Transportation, the Pa. Turnpike Commission, or a system administrator designated by them. The appellant can also be considered the defendant and the appellee the plaintiff.	Pa.R.Civ.P.M.D.J. 350(A). Comment to Pa.R.Civ.P.M.D.J. 350.
☐ 2. Venue. An AWZSES appeal shall only be filed in the MDJ in the magisterial district where the alleged violation occurred.	Pa.R.Civ.P.M.D.J. 350(B).
☐ 3. Appeal procedure. The appellant commences the appeal by filing a notice of appeal on the prescribed by the AOPC with a copy of the hearing officer's determination. The appellant is to pay all costs of filing and service of the notice at the time of filing if able and if unable shall file a petition to proceed IFP (Checklist 6-3 above) pursuant to Pa.R.Civ.P. 206(E). The MDJ shall set a hearing date (Checklist 6-4 above) and serve the notice of appeal on appellee by mailing a copy at the address listed on the hearing officer's determination by certified mail or comparable method that results in a return receipt. The notice of appeal is used in lieu of the complaint.	Pa.R.Civ.P.M.D.J. 350(C). Comment to Pa.R.Civ.P.M.D.J. 350.
☐ 4. Hearing, burden of proof, and evidence. The hearing shall proceed <i>de novo</i> in accordance with the MDJ Civil Rules as if initially filed in the MDJ court. The appellee has the burden of proof. The hearing is subject to the evidentiary standards of Pa.R.Civ.P. 321, "except that photographs, videos, vehicle titles, police reports, and	Pa.R.Civ.P. M.D.J. 350(D).

records of the Pennsylvania Department of Transportation may also be entered as evidence by any party without affidavit or other evidence of their truth, accuracy, or authenticity.” □ 5. Finding and appeal. If the MDJ finds against the appellant, the appellant shall pay the appellee NOT the MDJ court. If the appellant prevails, the appellant is entitled to recover taxable costs from the appellee per Pa.R.Civ.P.M.D.J. 206B (Checklist 6-2 above). Enforcement of judgments follows the procedures in Pa.R.Civ.P.M.D.J. 401 <i>et seq.</i> (Chapter VI(G) above). Appeals follow the civil appeals procedures of Pa.R.Civ.P.M.D.J. 1001 <i>et seq.</i> (Chapter VI(F) above).	Comment to Pa.R.Civ.P.M.D.J. 350.
--	--

4. School Bus Side Stop Signal Arm Enforcement System (SSSAES) Violations

A fine for alleged violations of a School Bus Side Stop Signal Arm Enforcement System (SSSAES) is an administrative matter handled initially by the school entity or system administrator on the entity’s behalf. 75 Pa.C.S. § 3345.1(i.2)-(i.4). As of December 2023, the Minor Court Rules Committee has proposed rule amendments which would govern the procedures for appeals of the hearing officer’s determination to MDJ court. The proposal (which has not yet been approved by the Supreme Court) can be found on the Rules Committee’s [website](#) or by following this link: [155626-nprschoolbuscameras2023.pdf \(pacourts.us\)](#).

VII. LANDLORD/TENANT

A. INTRODUCTION

A landlord is the owner of a property who leases it to another party while a tenant is a party who occupies the property of the landlord with his/her express or implied consent. Black's Law Dictionary (11th ed. 2019). *Id.* at 1466. Two major types of landlord/tenant actions, or a combination of both, may come before an MDJ.

First, a landlord may bring an action to recover monetary damages against a tenant to recover for injury to, or unjust detention of, the property, for rent remaining due, and for the costs of the proceeding. Pa.R.Civ.P.M.D.J. 514(A). These types of actions are civil actions before the MDJ (provided that the amount of damages claimed does not exceed the MDJ's jurisdictional limit) and are discussed in Section VI. (civil actions). Second, a landlord may bring an action for possession of the property to remove a tenant or to otherwise regain possession, a process commonly known as eviction. *Id.*; Pa.R.Civ.P.M.D.J. 515(A). The tenant-defendant can also file a cross-complaint in an eviction action. Pa.R.Civ.P.M.D.J. 508(A). In addition to these actions, other civil actions may arise from the landlord/tenant relationship that are governed by general civil procedure discussed in Section VI. of this bench book. For example, suits alleging violations of the Manufactured Home Community Rights Act (formerly the Mobile Home Park Rights Act), conversion actions by a tenant against a landlord concerning property left behind, and civil actions by a tenant against a landlord for illegal retention of a security deposit. Actions concerning recovery of self-service storage facilities are not landlord/tenant actions; these actions are discussed in Section XI, Checklist 11-5.

Sections B through H discuss actions to evict tenants and regain possession of the leasehold premises and accompanying claims for monetary damages. Section I discusses miscellaneous landlord/tenant issues such as mobile/manufactured homes, abandonment and surrender of leased premises, the implied warranty of habitability, the covenant of quiet enjoyment, security deposits, the Plain Language

Act, and the automatic bankruptcy stay.

CAVEAT: The following section is based primarily upon the general rules of court, case law and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that may also affect these procedures. The MDJ should familiarize him/herself with any such rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. RECORD AND TRANSCRIPT

Checklist 7-1: Record and Transcript	Authority/Notes
☐ 1. Record. The record of any proceeding before an MDJ, including proof of service, returns, entry of judgment, and other matters, appearing on a form prescribed by the court administrator of Pennsylvania shall, for all purposes, be considered a sufficient record of the proceedings.	Pa.R.Civ.P.M.D.J. 205(A).
☐ 2. Transcript. A copy of any record appearing on a form prescribed by the court administrator of Pennsylvania certified as true by the MDJ in whose office it is on file or by any other official custodian, shall for all purposes be considered sufficient transcript of the record, including any judgment, order, or other disposition contained therein.	Pa.R.Civ.P.M.D.J. 205(B).

C. NOTICE TO QUIT

A landlord/tenant case must proceed in a certain manner (using the Civil/Landlord/Tenant Worksheet, MDJS Form 633, is a good way for the MDJ to stay on track). The first step in the eviction process is for the landlord to provide to the tenant a notice to quit.

Checklist 7-2: Notice to Quit Requirements	Authority/Notes
☐ 1. Has a notice to quit been provided to the tenant prior to the filing of the complaint?	68 P.S. § 250.501. Pa.R.Civ.P.M.D.J. 503(B)(5).
☐ 2. If a notice to quit has been provided and the tenant fails to leave within the time specified in the notice (see Step 4 below), proceed to Step 5 below.	

☐ 3. If notice to quit has not been provided prior to the filing of the complaint, has the notice to quit been waived by the terms of the lease? If the notice to quit has been properly waived in the lease, a complaint is proper--see Checklist 7-4 below. Verbal lease. If the lease is verbal, the notice to quit period would be the applicable period set forth in Step 4 below.	68 P.S. § 250.501(e).
☐ 4. What the notice to quit shall contain varies depending on the reason for the eviction and/or the term of the lease: ☐ a. Where the tenant is being evicted due to the expiration of the lease term or for violation of the conditions of the lease and the term of the lease is for a year or less or for an indeterminate period, the notice shall specify that the tenant shall leave within 15 days of service of the notice to quit. ☐ b. Where the tenant is being evicted due to the expiration of the lease term or for violations of the conditions of the lease and the term of the lease is for more than a year, the notice shall specify that the tenant shall leave within 30 days of service of the notice. ☐ c. Where the tenant is being evicted for failure to pay, on demand, rent reserved and due, the notice shall specify that the tenant should leave within 10 days of the service of the notice. ☐ d. Where the residential tenant is being evicted for sale, manufacture, or distribution of illegal drugs in violation of the Controlled Substance Drug Device and Cosmetic Act (CSDDCA) (35 P.S. §780-101 <i>et seq.</i>), or a second violation of the CSDDCA, or illegal drugs are seized on the leased premises, the notice shall specify the tenant shall leave on 10 days' notice.	68 P.S. § 250.501(b). 68 P.S. § 250.501(b). 68 P.S. § 250.501(b). 68 P.S. § 250.501(d); 68 P.S. § 250.505-A. <u>Note:</u> There is also a procedure for eviction under the Model Expedited Eviction of Drug Traffickers Act, 35 P.S. § 780-151 <i>et seq.</i>; however, jurisdiction for these evictions lies in the court of common pleas. See 35 P.S. § 780-153 (defining "court" as the court of common pleas of the county in which the premises is located).

☐ e. Federally subsidized housing. Notice to quit may not be waived under the terms of the lease. ☐ i. Subsidized housing projects. The notice to quit must be served by both first-class mail and personal service. Time. At least 30 days notice must be provided unless the termination notice is based on material noncompliance with the rental agreement or material failure to carry out obligations under a state landlord and tenant act in which case the time of service shall be in accord with the rental agreement and state law. In cases of nonpayment of rent, if the Secretary of Housing and Urban Development determines that tenants must be provided with adequate notice to secure Federal funding available due to a Presidential declaration of national emergency, the termination notice shall be effective no earlier than 30 days after receipt by the tenant of the notice. ☐ ii. Section 8 housing. Notice must be provided in accordance with the applicable state law. ☐ f. Mobile/manufactured homes. While evictions of people who lease mobile or manufactured homes are covered by the Landlord/Tenant Act (68 P.S. § 250.501 <i>et seq.</i>), evictions of people who own a manufactured home and lease space in a manufactured home community are covered by the Manufactured Home Community Rights Act (MHCRA), 68 P.S. § 398.1 <i>et seq.</i> Procedures for evictions under the MHCRA are discussed in Checklist 7-17 below. ☐ 5. If the tenant fails to comply with a proper notice to quit, the landlord may then file a complaint for recovery of possession of the premises, see Checklist 7-4 below. ☐ 6. Federally subsidized housing. If the leased premises are federally subsidized, the notice to quit under the Landlord/Tenant Act may not be served until the notice	24 C.F.R. § 966.6(d). 24 C.F.R. § 247.4(b). 24 C.F.R. § 247.4(c). 24 C.F.R. § 982.310(e). 68 P.S. § 398.1. Pa.R.Civ.P.M.D.J. 503(B)(5). <i>Noble v. Bethlehem Housing Authority</i>, 617 F.Supp. 248, 252
--	--

period under the federal regulations has run. 14 days in the case of failure to pay rent. A reasonable time considering the seriousness situation (but not to exceed 30 days) in the case of: (1) threat to health or safety of other residents, housing authority employees, or others in the immediate vicinity; (2) member(s) of household engaging in drug-related criminal activity or violent criminal activity; or (3) if any member of the household has been convicted of a felony. In all other cases, 30 days unless a state or local law allows a shorter period.	(E.D. Pa. 1985); 42 U.S.C. § 1437d(l)(4); 24 C.F.R. § 966.4(l)(3)(i).
---	--

D. COSTS

Checklist 7-3: Costs, Generally	Authority/Notes
☐ 1. Fees for filing and service shall be paid at the time of filing.	Pa.R.Civ.P.M.D.J. 206(A).
☐ 2. The prevailing party may recover costs such as filing, personal service, witness, and execution fees.	Pa.R.Civ.P.M.D.J. 206(B). <u>Note:</u> MDJS Form 640 is the Server Fee Notice form.
☐ 3. The losing party shall also pay any taxable costs on appeal . A plaintiff who appeals shall be considered the losing party on appeal if he/she does not obtain a more favorable judgment on appeal than that obtained in the MDJ proceeding.	Pa.R.Civ.P.M.D.J. 206(C).
☐ 4. A defendant prevailing in certiorari proceedings brought by the defendant, or who obtains a favorable judgment on appeal by either party, shall not be liable for costs incurred by the plaintiff in the MDJ proceeding, and may recover taxable costs from the plaintiff .	Pa.R.Civ.P.M.D.J. 206(C).
☐ 5. A plaintiff who loses at the MDJ level may recover taxable costs in that proceeding from the defendant if the plaintiff is successful on appeal. In that event, the defendant may not recover costs in the MDJ proceeding from the plaintiff.	Pa.R.Civ.P.M.D.J. 206(C).
☐ 6. <i>In Forma Pauperis (IFP)</i> . A party financially unable to pay costs may proceed IFP. Checklist 6-3 discusses the IFP procedure.	Pa.R.Civ.P.M.D.J. 206(E).

E. COMPLAINT

1. Complaint Contents and Procedure

Checklist 7-4: Complaint Contents and Procedure	Authority/Notes
☐ 1. An action by a landlord against a tenant for recovery of the possession of real property may only be brought by the filing of a complaint in the magisterial district in which the property is located, in whole or part. ☐ 2. What the complaint shall set forth: ☐ a. The names and addresses of the parties; ☐ b. The location and address of the property to be recovered; ☐ c. That the landlord of the property is the plaintiff; ☐ d. That the landlord either leased or rented the property to the tenant; ☐ e. That the tenant was given notice to remove, if notice was required under the lease; ☐ f. That the lease term has ended, or that a breach of the conditions of the lease has resulted in a forfeiture, or that the rent reserved or due has remained unsatisfied; ☐ g. That the tenant the real property and will not give up possession of the property; and ☐ h. The amount of rent due or unpaid at the time the complaint is filed, and any additional rent that will remain due and unpaid at the time of the hearing as well as the amount of any physical damages claimed for injury to or unjust detention of the property. ☐ i. The complaint shall be signed by the landlord (or agent) and contain a verification pursuant to 18 Pa.C.S. § 4904 (Unsworn Falsifications to Authorities). ☐ j. For each individual tenant the landlord (or agent) shall attach an affidavit indicating that the tenant is in military service, is not in military service, or that landlord is unable to determine whether tenant is in the service.	Pa.R.Civ.P.M.D.J. 502. Pa.R.Civ.P.M.D.J. 503(B)(1)-(8). <u>Note:</u> Form 310A is the standard form landlord/tenant complaint. Pa.R.Civ.P.M.D.J. 503(C). Pa.R.Civ.P.M.D.J. 503(D). <u>Note:</u> Requiring this information ensures that an eligible tenant receives the protections of the Service Members Civil Relief Act, 50 U.S.C.

	§ 3901. Comment to Pa.R.Civ.P.M.D.J. 503.
☐ 3. At the time the complaint is filed, the MDJ shall set a hearing date which may not be less than 7 nor more than 15 days from the date the complaint was filed.	Pa.R.Civ.P.M.D.J. 504(1).
☐ 4. The hearing time and date, and the address of the magisterial district court shall be inserted on the complaint form that shall be delivered to the landlord or to the landlord's agent.	Pa.R.Civ.P.M.D.J. 504(2)-(3).
☐ 5. The MDJ shall also deliver a copy of the complaint for service upon the tenant, which shall inform the tenant that:	Pa.R.Civ.P.M.D.J. 504(4).
☐ a. Any defense to the complaint may be presented at the hearing;	Pa.R.Civ.P.M.D.J. 504(4)(a).
☐ b. If the tenant intends to assert any claims against the landlord arising from the occupancy of the premises that are within MDJ jurisdiction, the claim shall be filed on a complaint form before the hearing date; and	Pa.R.Civ.P.M.D.J. 504(4)(b).
☐ c. If the tenant fails to appear at the hearing, judgment for possession, costs, and any damages or rent may be entered against them.	Pa.R.Civ.P.M.D.J. 504(4)(c). <u>Note:</u> This is not a default judgment; however, the landlord must still appear and give testimony. See Checklist 7-8(1).
☐ 6. The MDJ should keep the original complaint . It shall be numbered consecutively in order of filing annually and be filed in the manner prescribed by the court administrator of Pennsylvania.	Pa.R.Civ.P.M.D.J. 306 & 505.
☐ 7. The complaint may only be amended at the hearing in the presence of the adverse party or his/her representative. Amendments other than those as to the form of the complaint constitute grounds for a continuance. See Checklist 7-7(4).	Pa.R.Civ.P.M.D.J. 509.
☐ 8. When considering amendments to the complaint, the MDJ should also keep in mind that the rules of civil procedure for MDJ matters specifically prohibit adding parties after the complaint has been filed.	Pa.R.Civ.P.M.D.J. 210(2).

2. Service of the Complaint

Checklist 7-5: Service of the Complaint	Authority/Notes
☐ 1. The MDJ is required to serve the complaint by mailing a copy of it by first class mail to the tenant's last known address and noting on the docket the date of mailing and by delivering a copy of it for service to the sheriff or any certified constable in the county where the MDJ's office is located. If such service is not available, service may be made by any certified constable of the Commonwealth.	Pa.R.Civ.P.M.D.J. 506(A). <u>Note:</u> MDJS Form 624 is the Service of Process form.
☐ 2. The officer making service shall serve the tenant at least 5 days before the hearing by handing a copy of the complaint to either the tenant or to an adult temporarily in charge of the premises. If neither is to be found the officer may post the complaint conspicuously on the premises.	Pa.R.Civ.P.M.D.J. 506(A) & (B). <u>Note:</u> MDJS Form 640 is the Server Fee Notice form.
☐ 3. The MDJ shall note on the docket the date on that a service copy of the complaint was mailed to the tenant.	Pa.R.Civ.P.M.D.J. 507(A).
☐ 4. Prior to the hearing, the officer serving the complaint shall make proof of service showing the manner of service as well as the time, date and place of service.	Pa.R.Civ.P.M.D.J. 507(A). <u>Note:</u> The appearance by the tenant (in person or by representative) or the filing of a claim in the case shall be deemed a waiver of any defect in service but not of a defect in venue. Pa.R.Civ.P.M.D.J. 507(B).

3. Service of the Cross-Complaint

Checklist 7-6: Service of the Cross-Complaint	Authority/Notes
☐ 1. Prior to the hearing on the complaint, the tenant may file a cross-complaint against the landlord for any claim stemming from the occupancy of the premises that is within the MDJ's jurisdiction.	Pa.R.Civ.P.M.D.J. 508(A). <u>Note:</u> The standard civil complaint form (AOPC Form 308A) is used.
☐ 2. The MDJ shall schedule the hearing for the complaint and cross-complaint on the same day and time, which shall be neither less than 7 nor more than 15 days from the filing of tenant's cross-complaint.	Pa.R.Civ.P.M.D.J. 508(B).
☐ 3. The tenant may choose to have the MDJ serve the cross-complaint either by mail, or by sheriff, or constable .	Pa.R.Civ.P.M.D.J. 508(C).

Service upon the landlord shall occur at least 5 days before the hearing date.	
--	--

F. HEARING PROCEDURE

1. Continuances

Checklist 7-7: Continuances	Authority/Notes
☐ 1. Prior to the hearing, the MDJ may grant continuances for cause or by agreement . All agreements to continue the matter shall be to a specific time and date that shall be noted on the complaint.	Pa.R.Civ.P.M.D.J. 209(A) & (B).
☐ 2. If a continuance is granted, the MDJ shall give the parties notice of the continuance on a Notice of Continuance form.	Pa.R.Civ.P.M.D.J. 209(B).
☐ 3. Except for good cause, the MDJ may not grant more than one continuance , and the aggregate of all continuances shall not extend the hearing date to 30 days beyond the date on which the landlord filed the complaint.	Pa.R.Civ.P.M.D.J. 209(C).
☐ 4. The following are cause for granting a continuance: ☐ a. A party's attorney of record is scheduled to appear at a proceeding under the attorney disciplinary rules (as counsel, special master, hearing committee member, or member of the Disciplinary Board). ☐ b. A party's attorney of record is scheduled to appear at any judicial discipline proceeding (as counsel or as a member of the Court of Judicial Discipline, Judicial Conduct Board, hearing committee, or other arm of the Judicial Conduct Board).	Pa.R.Civ.P.M.D.J. 209(D).
☐ 5. Continuances and stays shall be granted in compliance with federal and state laws (e.g., the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 <i>et seq.</i>).	Pa.R.Civ.P.M.D.J. 209(E).
☐ 6. As stated above (Checklist 7-4(7)), any amendments to the complaint other than those as to its form shall constitute grounds for a continuance.	Pa.R.Civ.P.M.D.J. 509.

2. Conduct of the Hearing

Checklist 7-8: Conduct of the Hearing	Authority/Notes
☐ 1. Burden of proof. At the hearing, the plaintiff-landlord shall present evidence of default before the MDJ even if the defendant does not appear at the hearing. Specifically, Rule 512(A) provides that "the landlord shall appear at the hearing and present testimony in an action for recovery of possession of real property." The requirement that the landlord appear and give testimony was intended to clarify that an MDJ cannot enter a default judgment in a possessory action, not even a judgment solely for monetary damages. ☐ 2. Landlord fails to appear. If the landlord fails to appear for the hearing, the MDJ may continue the hearing for cause or dismiss the complaint without prejudice. See also Checklist 7-7 for continuances. ☐ 3. Representation. ☐ a. Individuals. In MDJ proceedings, individuals may be represented by themselves, by an attorney-at-law, or by a representative with personal knowledge of the subject matter of the litigation <i>and</i> written authorization from the individual to appear as the individual's representative. Minors. Minors may be represented by a guardian, provided the guardian executes a Notice of Intent to Represent Minor Party form. The term "guardian" also includes the minor's parent. ☐ b. Partnerships. In MDJ proceedings, a partnership may be represented by an attorney-at-law, a partner, or by an employee or authorized agent of the partnership with personal knowledge of the subject matter of the litigation <i>and</i> written authorization from a partner to appear as the partnership's representative. ☐ c. Corporations. Corporations or similar entities and unincorporated associations may be	Pa.R.Civ.P.M.D.J. 512(A) and the accompanying note. Comment to Pa.R.Civ.P.M.D.J. 512. Comment to Pa.R.Civ.P.M.D.J. 512. Pa.R.Civ.P.M.D.J. 207(A)(1). Pa.R.Civ.P.M.D.J. 801(4) & 805. <u>Note:</u> MDJS Form 610 is the Guardian's Notice of Intent to Represent Minor Party form. Pa.R.Civ.P.M.D.J. 207(A)(2). Pa.R.Civ.P.M.D.J. 207(A)(3).

represented by an attorney-at-law; by an officer of the corporation, entity or association; or by an employee or authorized agent of the corporation, entity, or association with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation, entity, or association to appear as its representative. ☐ d. Authorization Required. A representative, employee, or authorized agent must provide written verification of their personal knowledge of the subject matter of the litigation and may take no action on behalf of the party until the written authorization required under Rule 207(A)(1)-(3), whichever is applicable, is filed with the court. ☐ e. Pro hac vice admission under Pa.B.A.R. 301 shall proceed by request. The content and disposition of the request shall conform to Pa.R.C.P. 1012.1. To gain admission under Pa.B.A.R. 301, the applicant must seek approval by the IOLTA Board before the sponsor's request for admission before the MDJ court. ☐ f. Entry of appearance by attorney. To be considered the attorney of record for a party, an attorney-at-law shall file a notice with the MDJ acknowledging that he/she represents the party. ☐ 4. Subpoenas. The MDJ may subpoena witnesses to require them to attend and may also require witnesses to produce documents or things in their possession, control or custody. A subpoena may not be used to force a person to appear or to produce documents or other things <i>ex parte</i> (on behalf of one party) before an attorney, a party, or a party's representative. The subpoena may not be issued in blank. Minors. If the subpoenaed witness is under the age of 18, his/her parent or guardian shall be served with a copy of the subpoena in the manner set forth in Pa.R.Civ.P.M.D.J. 214.	Pa.R.Civ.P.M.D.J. 207(B). <u>Note:</u> MDJS Form 317 is the Authorization of Representative form. A form must be completed for each filing of a complaint with the appropriate caption on the form. Pa.R.Civ.P.M.D.J. 207(C). Note to Pa.R.Civ.P.M.D.J. 207. Pa.R.Civ.P.M.D.J. 207.1(A). Pa.R.Civ.P.M.D.J. 213(A) & (B). <u>Note:</u> The prohibition against <i>ex parte</i> appearance or production appears intended to prevent the subpoena power from being used as a discovery tool. See Note to Pa.R.Civ.P.M.D.J. 210 & 213. <u>Note:</u> MDJS Form 604 is the Subpoena Civil Case form. Pa.R.Civ.P.M.D.J. 214(E).
---	---

☐ 5. Evidentiary rules. The MDJ shall follow the rules of evidence, "except that a bill, estimate, receipt, or statement of account which appears to have been made in the regular course of business may be introduced by any party without affidavit or other evidence of truth, accuracy, or authenticity." ☐ 6. The MDJ shall determine: ☐ a. Whether the notice to quit was provided to the tenant in accordance with the law or else that no notice was required under the terms of the lease; ☐ b. The amount of rent due, if any; ☐ c. Physical damages to the leasehold premises, if any; ☐ d. The amount found by the MDJ to constitute the monthly rental; and ☐ e. The amount of the security deposit held by the plaintiff-landlord, if any. ☐ 7. Record. ☐ a. Content. A record of any proceedings before an MDJ, including proof of service, returns, entry of judgment, and other matters, appearing on a form prescribed by the court administrator of Pennsylvania, shall for all purposes be considered a sufficient record of those proceedings. ☐ b. Transcript. A copy of any such record appearing on such a form as mentioned in a. above that is certified by the MDJ in whose office the record is on file, or by any other official custodian of the record, shall for all purposes be considered a sufficient transcript of	Pa.R.Civ.P.M.D.J. 512(B). Pa.R.Civ.P.M.D.J. 514 and the accompanying note. <u>Note:</u> Checklist 7-2 discusses the Notice to Quit requirements. <u>Note:</u> A landlord may charge the equivalent of two-months' rent as a security deposit for the first year of renting and the equivalent of one month's rent during subsequent years. 68 P.S. § 250.511a. Pa.R.Civ.P.M.D.J. 205(A). Pa.R.Civ.P.M.D.J. 205(B).
--	--

the record, including any judgment, order, or other disposition contained therein. □ 8. Contract issues the MDJ may encounter. The interpretation of a lease, whether written or not, is governed by principles of contract law. As a result, questions concerning the formation and interpretation of the lease may come before the MDJ as part of the proceeding. □ a. Lease formation. A lease may be found where it is "the intention of one party to voluntarily dispossess himself of the premises, for a consideration, and of the other to assume the possession for a prescribed period." Generally, when a lease for a term expires and the lessee remains on the premises, the landlord may treat the tenant as a hold-over and the law implies--absent evidence of a contrary intent--the same term, covenants, and conditions as the old lease. Evidence of contrary intent may include negotiations for a new lease. Written. A lease for more than 3 years shall be in writing; a lease for 3 years or less does not have to be in writing. Lead paint. Federal law states that the failure of a landlord to provide disclosure of lead paint hazards when the leasehold premises were built before 1978, may affect the validity of the lease. □ b. Lease interpretation. When a court reviews a contract the intent of the parties is paramount, and the court's objective is to ascertain the parties' intent as it is "<i>manifestly expressed</i> in the agreement itself." The intent of the parties to a written contract is considered embodied in the writing itself. In the absence of technical language, words used in the agreement are to be given their plain and ordinary meaning. □ 9. Advanced communication technology. The MDJ may authorized the use of advanced communication technology during any civil proceeding or action governed by the MDJ Civil Rules.	<i>Warren v. Greenfield</i>, 595 A.2d 1308, 1311 (Pa. Super. 1992). <i>Forest Glen Condominium Assn v. Forest Green Commons Ltd.</i>, 900 A.2d 859, 865 (Pa. Super. 2006). <i>Clairton Corp. v. Geo-Con</i>, 635 A.2d 1058, 1059-61 (Pa. Super. 1993). 68 P.S. § 250.201; 68 P.S. § 250.202. 42 U.S.C. § 4852d. <i>Warren v. Greenfield</i>, 595 A.2d 1308, 1311 (Pa. Super. 1992) (emphasis in the original). Pa.R.Civ.P.M.D.J. 215.
--	--

Advanced communication technology is defined as “any communication equipment that is used as a link between parties in physically separate locations.”	Pa.R.Civ.P.M.D.J. 202.
---	------------------------

3. Disputes Over Title to the Property

A tenant may raise as a defense the fact that the title to the leasehold premises is in dispute and claimed either by a person other than the landlord or by the tenant. *See* Pa.R.Civ.P.M.D.J. 513(A). Such a defense shall be raised by the tenant—and the MDJ shall act—in the manner set forth in Checklist 7-9 below.

Checklist 7-9: Disputes Over Title to the Property	Authority/Notes
☐ 1. Mandatory stay--when a <u>third-party</u> claims title. The MDJ shall stay the proceedings provided the third-party person claiming title files a satisfactory bond in the court of common pleas conditioned on prosecuting his/her claim in that court, if: ☐ a. The tenant declares in writing and upon oath/affirmation that title to the property at issue is disputed and claimed by a named person (other than the landlord) by virtue of a right or title accruing by descent from or deed or will of the landlord since the commencement of the lease; and ☐ b. The other person also declares in writing upon oath/affirmation that he/she truly believes he/she is entitled to the property. The other person claiming title need not appear in person before the MDJ.	Pa.R.Civ.P.M.D.J. 513(A).
☐ 2. Mandatory stay--when <u>tenant</u> claims title. The MDJ shall stay the proceedings, as long as the tenant claiming title files a satisfactory bond in the court of common pleas conditioned on prosecuting his/her claim in that court, if: ☐ a. The tenant declares in writing and upon oath/affirmation that the property is held or claimed by him/her as a joint tenant or tenant in common with the landlord; and ☐ b. The tenant truly believes that the property held does not exceed in quantity or value the just	Pa.R.Civ.P.M.D.J. 513(B).

portion of his/her share as joint tenant or tenant in common. ☐ 3. Forfeiture of bond/removal of stay. If the claim is not prosecuted in the court of common pleas in accordance with the conditions of the bond, the bond shall be forfeited to the landlord and the eviction matter shall proceed to judgment.	Pa.R.Civ.P.M.D.J. 513(A) & (B).
--	--

4. Decision and Damages

Checklist 7-10: Decision and Damages	Authority/Notes
☐ 1. Timing of entry of judgment. The MDJ can enter judgment at the conclusion of the hearing or within 3 days. Upon entry of the judgment, the MDJ shall promptly give or mail to the parties written notice of the judgment or dismissal. ☐ 2. Content of judgment. If the landlord is successful at the hearing, the MDJ shall enter judgment against the tenant by separate entries: ☐ a. Ordering delivery of the property to the landlord; ☐ b. For any rent which remains due; ☐ c. For any damages for unjust detention of the premises; ☐ d. For any physical damage to the property; ☐ e. For the costs of the proceedings; and ☐ f. For the amount of any security deposit applied as an offset to the judgment, if applicable. ☐ 3. Amount due on cross-complaint. The judgment due the landlord shall be reduced by any amount due to the tenant on his/her cross-complaint, if applicable. If the amount due on the tenant's cross-claim exceeds the amount due on the landlord's complaint, the MDJ may render a money judgment for the tenant on the cross-complaint.	Pa.R.Civ.P.M.D.J. 514(D). Pa.R.Civ.P.M.D.J. 514(A). Pa.R.Civ.P.M.D.J. 514(A). Pa.R.Civ.P.M.D.J. 514(C).

☐ 4. Determination of monthly rental is required. The MDJ shall also make an entry identifying the sum of money constituting the monthly rental of the premises.	Pa.R.Civ.P.M.D.J. 514(B).
☐ 5. Notice of judgment. The MDJ shall give written notice of the judgment to the parties. The notice shall contain: ☐ a. Notice of the right to appeal, the time limit for filing an appeal, and that the appeal is to the court of common pleas; ☐ b. Notice that a tenant in a residential lease action who is a victim of domestic violence may appeal within 30 days of the date of entry of the judgement and filing instructions for the appeal. A victim of domestic violence is defined as "a person who has obtained a protection from abuse order against another individual or can provide other evidence of abuse." ☐ c. Notice that, except as otherwise provided in the rules, if the judgment holder chooses to enter the judgment in the court of common pleas, all further process shall come from that court and no further process may be issued by the MDJ; and ☐ d. Notice that, unless the judgment is entered in the court of common pleas, anyone interested in the judgment may file a request for entry of satisfaction with the MDJ if the debtor pays in full, settles, or otherwise complies with the judgment.	Pa.R.Civ.P.M.D.J. 514(D)(2). <u>Note:</u> MDJS Form 315A is the Notice of Judgment/Transcript Residential/Non-Residential Lease form. Pa.R.Civ.P.M.D.J. 514(E)(1). Pa.R.Civ.P.M.D.J. 514(E)(2). Pa.R.Civ.P.M.D.J. 501(3). Pa.R.Civ.P.M.D.J. 514(E)(3). Pa.R.Civ.P.M.D.J. 514(E)(4). <u>Note:</u> MDJS Form 316 is the Request for Entry of Satisfaction form and 316A is the Entry of Satisfaction form.
☐ 6. Domestic Violence Affidavit – stay. ☐ a. A tenant in a residential lease action who is a victim of domestic violence (see above) may file a Domestic Violence Affidavit on a form prescribed by the AOPC to stay execution of the order for possession until an appeal is filed. The Affidavit is filed in the MDJ court and contains an affirmance by the tenant that he or she is a victim of domestic violence. The tenant must	Pa.R.Civ.P.M.D.J. 514.1(A), (B), & (F).

attach a copy of the Affidavit to an appeal filing made pursuant to Pa.R.Civ.P.M.D.J. 1002.	
☐ b. The MDJ court shall enter the Domestic Violence Affidavit on the docket of the residential lease action. The MDJ court shall also serve a copy of the Affidavit on the landlord or the landlord's attorney, if any.	Pa.R.Civ.P.M.D.J. 514.1(D) & (E).
☐ c. The filing of the Affidavit stays execution of the order for possession. The stay will terminate as of the earlier of: the filing of an appeal pursuant to Pa.R.Civ.P.M.D.J. 1002 (see Checklist 7-11); 30 days after entry of judgement; or by order of the court of common pleas.	Pa.R.Civ.P.M.D.J. 514.1(C).
☐ d. Affidavit is not a public record. The Domestic Violence Affidavit is not a public record and is therefore not to be made accessible to the public.	Pa.R.Civ.P.M.D.J. 514.1(G).

G. APPEALS & SUPERSEDEAS; WRIT OF CERTIORARI

1. Procedure for Filing an Appeal

Checklist 7-11: Procedure for Filing an Appeal	Authority/Notes
☐ 1. Time for appeal. The time period for appeal varies depending on the nature of the judgment and the tenant.	
☐ a. Nonresidential lease. A party aggrieved by either a judgment for money or judgment for possession of real property arising from a nonresidential lease may appeal within 30 days from entry of the judgment. The prothonotary of the court of common pleas is not permitted to accept an appeal more than 30 days from the entry of judgment "without leave of the court and for good cause shown."	Pa.R.Civ.P.M.D.J. 1002(A).
☐ b. Residential lease, judgment for possession. Except in situations where the tenant is a victim of domestic violence (see below), a party aggrieved by a judgment for possession of real property arising out of a residential lease shall file a notice of appeal within 10 days of the date of entry of judgment. The prothonotary of the court of common pleas is not permitted to accept	Pa.R.Civ.P.M.D.J. 1002(B)(1).

an appeal more than 10 days from the entry of judgment "without leave of the court and for good cause shown." ☐ c. Residential lease – victim of domestic violence. A tenant who is aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease, and who is a victim of domestic violence, may appeal within 30 days after the date of the entry of judgment by filing a notice of appeal with the prothonotary on a form that shall be prescribed by the AOPC, with a copy of the Notice of Judgment issued by the MDJ, and a Domestic Violence Affidavit. The Domestic Violence Affidavit shall be on a form prescribed by the AOPC, and affirm that the tenant is a victim of domestic violence. It shall contain the tenant's verification pursuant to 18 Pa.C.S. § 4904 (Unsworn Falsifications to Authorities). The Affidavit shall contain the name of the tenant who is a victim of domestic violence, the name of the perpetrator, the perpetrator's relationship to the tenant, and the docket number for any protection from abuse case involving the tenant who is a victim of domestic violence and the perpetrator, as well as a verification by the tenant. The Affidavit is not a public record and shall not be publically accessible. ☐ d. Residential lease, judgment for possession <u>and</u> monetary damages. In situations where the plaintiff in a residential lease seeks both judgment for possession and monetary damages, the applicable appeal period is the shorter 10 day period. ☐ e. Residential lease, monetary damages only. A party aggrieved by a judgment for monetary damages only shall file a notice of appeal within 30 days after entry of the judgment.	Pa.R.Civ.P.M.D.J. 1002(B)(2)(a). Pa.R.Civ.P.M.D.J. 1002(B)(2)(b); Note to Pa.R.Civ.P.M.D.J. 1002. Pa.R.Civ.P.M.D.J. 1002(B)(2)(c). Pa.R.Civ.P.M.D.J. 1002(B)(2)(d). <i>Cherry Ridge Development v. Chenoga</i>, 703 A.2d 1061, 1063 (Pa. Super. 1998). Pa.R.Civ.P.M.D.J. 1002(A).
---	---

☐ 2. Notice of appeal. The notice of appeal together with a copy of the notice of judgment shall be filed with the prothonotary of the court of common pleas utilizing the form prescribed by the court administrator of Pennsylvania.	Pa.R.Civ.P.M.D.J. 1002(A) & (B). AOPC Forms 312 and 312A.
---	--

2. Supersedeas (Stay)

Checklist 7-12: Supersedeas (Stay) Procedure	Authority/Notes
☐ 1. Appeals from monetary judgments: The receipt by the MDJ of a copy of the notice of appeal will act as a supersedeas for that portion of the judgment awarding monetary damages.	Pa.R.Civ.P.M.D.J. 1008(A) & the accompanying note.
☐ 2. Appeals from judgments for possession:	
☐ a. Initial deposit of money/bond. Except as stated in 3. below, the notice of appeal will only act as a supersedeas if the tenant-appellant, at the time he/she files the notice of appeal, deposits a sum of money or bond equal to the lesser of 3 months' rent or the rent actually in arrears on the date of judgment (as determined by the MDJ pursuant to Rule 514(A)--see Checklist 7-10 above). If the tenant makes the required deposit, the prothonotary of the court of common pleas shall note on the notice of appeal that it will act as a supersedeas when it is received by the MDJ.	Pa.R.Civ.P.M.D.J. 1008(B).
☐ b. Subsequent deposits of money/bond. The tenant shall subsequently deposit cash or bond with the prothonotary of the court of common pleas equal to the monthly rent that comes due while the matter is pending on appeal. These subsequent payments are due within 30 days of the date of the appeal and each subsequent 30-day period thereafter.	Pa.R.Civ.P.M.D.J. 1008(B).
☐ c. Release of monies. A landlord can apply to the court of common pleas to release money from escrow as compensation for the tenant's possession and use of the property while the appeal is pending. Similarly, the tenant may apply to the court for release of sums to compensate the providers of habitable services	68 P.S. § 250.513(c). Pa.R.Civ.P.M.D.J. 1008(B). 68 P.S. § 250.513(d).

which the landlord is required to provide under law or under the lease ☐ 3. Termination of the supersedeas. In the following situations, the notice of appeal will not act automatically as a supersedeas unless the applicable requirements are met. ☐ a. Judgment for possession of real property - failure to deposit money/bond. If tenant fails to deposit the sums required by Rule 1008(B) (Checklist 7-12(2)) when they are due, the prothonotary of the court of common pleas shall, upon praecipe filed by the landlord, terminate the supersedeas. Notice of termination shall be given by first class mail to all parties except if a party has an attorney of record, in which case the notice will be sent to the attorney. ☐ b. Indigent tenants. Residential tenants seeking to appeal a judgment for possession and who lack the ability to pay the required money are required to file a tenant's affidavit with the prothonotary in the form required by Pa.R.Civ.P.M.D.J. 1008(C)(2). If the rent has been paid for the month the notice of appeal is filed, tenant shall pay into escrow with the prothonotary the monthly rent in 30 day intervals from the date the notice is filed. If the rent has not been paid at the time the notice of appeal is filed, tenant shall pay: at the time the notice is filed, an amount equal to 1/3 the monthly rent; an additional 2/3 of the rent within 20 days of filing the notice; and additional deposits of full monthly rent each thirty days after the notice of appeal was filed. The amount of the monthly rent is the amount the MDJ finds pursuant to Pa.R.Civ.P.M.D.J. 514(B) (see Checklist 7-10(4)). If, however, tenant is a participant in the Section 8 program, he/she shall pay the tenant share of the rent set forth in the "Section 8 Tenant Supersedeas	Pa.R.Civ.P.M.D.J. 1008(B). Pa.R.Civ.P.M.D.J. 1008(C)(1). Pa.R.Civ.P.M.D.J. 1008(C)(3)(a). Pa.R.Civ.P.M.D.J. 1008(C)(3)(b). Pa.R.Civ.P.M.D.J. 1008(C)(3)(b)(iii).
--	---

Affidavit” set forth in Pa.R.Civ.P.M.D.J. 1008(C)(2). ☐ 4. Appeal stricken or voluntarily terminated. If the appeal is stricken or voluntarily terminated, the supersedeas will terminate and the prothonotary of the court of common pleas will pay the deposited rent to the party who sought possession of the property. ☐ 5. MDJ judgements submitted to compulsory arbitration—effect on supersedeas. In some judicial districts, appeals of MDJ judgments are submitted to compulsory arbitration pursuant to Pa.R.C.P. 1301—1314. If the prothonotary enters an award for possession on the docket in favor of the landlord after arbitration and the tenant fails to maintain the supersedeas required by Pa.R.Civ.P.M.D.J. 1008 prior to the prothonotary’s entry of judgment on the award, the landlord may terminate the supersedeas pursuant to Rule 1008(B) and request an order of possession from the MDJ pursuant to Pa.R.Civ.P.M.D.J. 515 (see Checklist 7-14). If the prothonotary enters an award on the docket in favor of the tenant and the tenant fails to maintain the supersedeas prior to the prothonotary entering judgment on the award, landlord may not obtain an order of possession between the time that the prothonotary enters the award on the docket and the time that the landlord files a notice of appeal.	Pa.R.Civ.P.M.D.J. 1008(D). Note to Pa.R.Civ.P.M.D.J. 1008; <i>see also</i> Note to Pa.R.Civ.P.M.D.J. 515, 516, and 1007.
---	--

3. Writ of Certiorari

Checklist 7-13: Writ of Certiorari	Authority/Notes
☐ 1. Filing of writ. A defendant may file a praecipe for a writ of certiorari with the prothonotary of the court of common pleas seeking to have the judgment set aside on the grounds of: (a) lack of jurisdiction over the subject or parties, (b) improper venue or (c) such gross irregularity of procedure as to make judgment void. The plaintiff may only petition for writ of certiorari based upon the last ground. No bond or other security shall be required for the issuance of a writ of certiorari.	Pa.R.Civ.P.M.D.J. 1009(A). Pa.R.Civ.P.M.D.J. 1010.

☐ 2. No certiorari and appeal. A judgment cannot be the subject of both an appeal and certiorari. The prothonotary is to mark as stricken any writ of certiorari concerning a judgment as to which appeal is pending if proof of service of the notice of appeal has been filed. If the appeal is stricken or voluntarily terminated, the writ of certiorari shall be reinstated upon praecipe of the party obtaining the writ.	Pa.R.Civ.P.M.D.J. 1015.
☐ 3. Time for filing. If lack of jurisdiction over the parties or subject matter is claimed, the praecipe may be filed at any time after judgment. Otherwise, it shall be filed within 30 days after the date of the judgment.	Pa.R.Civ.P.M.D.J. 1009(B).
☐ 4. Content of the praecipe. The praecipe shall identify the judgment complained of and the MDJ in whose office the record of the proceedings is filed. The praecipe and the writ shall be on a form which shall be prescribed by the court administrator of Pennsylvania.	Pa.R.Civ.P.M.D.J. 1009(C). Pa.R.Civ.P.M.D.J. 1009(D). AOPC Form 25 is the Writ of Certiorari form.
☐ 5. Issuance and service of the writ. ☐ a. Issuance. Upon receipt of the praecipe for a writ of certiorari, the prothonotary shall issue the writ and direct it to the MDJ in whose office the record of the proceedings containing the judgment is filed, and it shall be delivered for service to the party who filed the praecipe. ☐ b. Service. The party obtaining the writ shall serve it via either personal service or certified or registered mail upon the MDJ to whom it was directed. Similarly, he/she shall also serve it upon the opposing party. Service and proof of service may be made by attorney or other agent. ☐ c. Failure to serve. If proof of service on the MDJ and the opposite party is not filed with the prothonotary within 5 days after delivery of the writ for service, the prothonotary shall, upon praecipe of the opposite party, mark the writ stricken and the writ shall not be reinstated nor shall any new writ be issued.	Pa.R.Civ.P.M.D.J. 1011(A). Pa.R.Civ.P.M.D.J. 1011(B). Pa.R.Civ.P.M.D.J. 1011(D). Pa.R.Civ.P.M.D.J. 1011(C).

☐ 6. Return of writ by MDJ. The MDJ to whom the writ is directed shall make a return of the writ by sending a certified true copy of the record containing the judgment to the prothonotary within 10 days after the MDJ receives the writ.	Pa.R.Civ.P.M.D.J. 1012.
☐ 7. Writ as Supersedeas.	
☐ a. Civil actions other than landlord/tenant. Receipt of the writ by the MDJ will act as a supersedeas in trespass or assumpsit matters.	Pa.R.Civ.P.M.D.J. 1013(A).
☐ b. Possession of real property. If, however, the judgment concerns possession of real property, the writ will act as a supersedeas only if the party obtaining the writ deposits a sum of money with the prothonotary equal to the lesser of 3 months' rent or the rent actually in arrears as of the date of filing of the praecipe, and makes subsequent deposits of monthly rent every 30 days.	Pa.R.Civ.P.M.D.J. 1013(B).
☐ c. Indigent tenants. Residential tenants seeking to appeal a judgment for possession and who lack the ability to pay the required money are required to file a tenant's affidavit with the prothonotary in the form required by Pa.R.Civ.P.M.D.J. 1013(C)(2).	Pa.R.Civ.P.M.D.J. 1013(C).
If the rent has been paid for the month the praecipe is filed, tenant shall pay into escrow with the prothonotary the monthly rent in 30-day intervals from the date the praecipe was filed.	Pa.R.Civ.P.M.D.J. 1013(C)(3)(a).
If the rent has not been paid at the time the praecipe is filed, tenant shall pay: at the time the praecipe is filed, an amount equal to 1/3 the monthly rent; an additional 2/3 of the rent within 20 days of filing the praecipe; and additional deposits of full monthly rent each thirty days after the praecipe was filed.	Pa.R.Civ.P.M.D.J. 1013(C)(3)(b).
The amount of the monthly rent is the amount the MDJ finds pursuant to Pa.R.Civ.P.M.D.J. 514(B) (see Checklist 7-10(4)). If, however, tenant is a participant in the Section 8 program, he/she shall pay the tenant share of the rent set	Pa.R.Civ.P.M.D.J. 1013(C)(3)(b)(iii).

forth in the “Section 8 Tenant Supersedeas Affidavit” set forth in Pa.R.Civ.P.M.D.J. 1008(C)(2). ☐ d. Termination. If the writ is stricken, dismissed or discontinued, any supersedeas based on it shall terminate.	Pa.R.Civ.P.M.D.J. 1013(D).
--	----------------------------

H. EXECUTION

After judgment has been entered, and assuming no supersedeas is in effect, the next step for the victorious plaintiff-landlord is to execute on the judgment. The plaintiff-landlord shall proceed before the MDJ and may not engage in self-help repossessions. *Wofford v. Vavreck*, 22 Pa. D. & C.3d 444, 448 (Crawford 1981). The procedure for execution varies depending on whether the plaintiff-landlord seeks to execute a judgment solely for money, a judgment solely for possession, or a combination of both. If executing a judgment solely for money, the MDJ should follow the procedure for execution of judgments in civil cases discussed in Section VI. of this bench book. If executing a judgment for possession or a judgment for possession plus damages for injury to or unjust detention of the premises, the next step is for the plaintiff-landlord to obtain an order for possession from the MDJ.

1. Order for Possession

Checklist 7-14: Order for Possession Procedure	Authority/Notes
☐ 1. Determine the nature of the judgment. If the plaintiff-landlord is executing on a money judgment only, the MDJ should follow the procedures set forth in Section VI. of this bench book. If the plaintiff-landlord is seeking possession of the premises by itself or in conjunction with: a monetary judgment for damages for injury to, or unjust detention of, the premises; for unpaid rent; or for the costs of the proceeding, the MDJ may proceed to step 2 below. If the landlord is only seeking to collect a monetary judgment for damages for injury to or unjust detention of the premises, for unpaid rent, or for the costs of the proceeding, the MDJ can proceed to Checklist 7-16 below.	Pa.R.Civ.P.M.D.J. 521(A)-(B).

☐ 2. Request for order of possession. The landlord shall first submit a request for an order for possession to the MDJ. The time limit for filing the request varies depending on the nature of the property: ☐ a. Nonresidential leases. If the MDJ's judgment is that a nonresidential property be delivered to the landlord, the landlord may file a request for an order for possession after the 15th day following the entry of judgment. The request shall contain a statement of the judgment amount, return, and any other matters required by the rules. ☐ b. Residential leases. If the judgment concerns a residential property, the landlord may file a request for an order for possession between the 10th and 180th days following entry of judgment. The request shall be filed with the MDJ and shall include a statement of the judgment amount, return, and any other matters required by the rules. Domestic Violence Affidavit. A residential lease tenant who is a victim of domestic violence may file a Domestic Violence Affidavit (see Checklist 7-10(6)) to stay execution of the order for possession until an appeal is filed. Effect of removal of supersedeas or stay. In a case arising from a residential lease, if prior to the landlord's request for an order of possession, an appeal or a writ of certiorari operates as a supersedeas, or proceedings in the matter are stayed pursuant to a bankruptcy case or other state or federal law and the supersedeas or bankruptcy or other stay is subsequently removed to allow the landlord to proceed, the landlord may request an order for possession only within 180 days of the date the supersedeas or bankruptcy stay is lifted. ☐ 3. Issuance of order for possession. Once the request is filed, the MDJ shall issue an order for possession and	Pa.R.Civ.P.M.D.J. 515. <u>Note:</u> MDJS Form 311A is the Request for Order for Possession form. Pa.R.Civ.P.M.D.J. 515(A). <u>Note:</u> According to the Note to Pa.R.Civ.P.M.D.J. 515, this 15 day time limit, along with the 16 day time limit of Pa.R.Civ.P.M.D.J. 519(A) (see Checklist 7-15(1)) provides the tenant with the requisite time to file an appeal and obtain a supersedeas within the 30 day appeal period set forth in Pa.R.Civ.P.M.D.J. 1002(A). Pa.R.Civ.P.M.D.J. 515(B)(1). Note to Pa.R.Civ.P.M.D.J. 515. Pa.R.Civ.P.M.D.J. 515(B)(2). <u>Note:</u> The MDJ shall enter stays in compliance with federal or state laws such as the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 <i>et seq.</i> Comment to Pa.R.Civ.P.M.D.J. 515. Pa.R.Civ.P.M.D.J. 516(A).
---	---

deliver it for service to the sheriff or any certified constable in the county where the MDJ's office is located. If this service is not available to the MDJ, service may be made by any certified constable of the Commonwealth. The order shall direct the executing officer to deliver actual possession of the real property to the plaintiff. A copy of the request form shall be attached to the order for possession.	
☐ 4. Content of the order for possession. The order for possession "shall direct the officer executing it to deliver actual possession of the real property to the landlord." A copy of the request form shall be attached by the MDJ to the order for possession.	Pa.R.Civ.P.M.D.J. 516(A). <u>Note:</u> MDJS Form 311B is the Order for Possession, Return, and Notice form.
Form of notice. The copy of the order served upon the tenant (see Checklist 7-14(5) below)) shall contain the following notice:	Pa.R.Civ.P.M.D.J. 517.
☐ a. Nonresidential leases: If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within 15 days after the date of this notice, the law authorizes me to use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, to eject you and all unauthorized occupants.	Pa.R.Civ.P.M.D.J. 517(1).
☐ b. Residential leases: If you, and all occupants of this property not authorized by the owner to be present thereon, do not vacate this property within 10 days after the date of this notice, the law authorizes me to use such force as may be necessary to enter upon the property, by the breaking in of any door or otherwise, to eject you and all unauthorized occupants.	Pa.R.Civ.P.M.D.J. 517(2).
☐ 5. Service of the order for possession. The MDJ shall deliver the order for service to the sheriff or any certified constable in the county where the MDJ's office is located. If this service is not available to the MDJ, service may be made by any certified constable of the Commonwealth. The officer receiving the order should note upon the form the time and date it was received and serve it within 48 hours by handing a copy to the tenant	Pa.R.Civ.P.M.D.J. 517.

or to an adult person in charge of the premises for the time being, or if none of these is found, by posting the notice conspicuously on the premises. The MDJ shall also mail a copy of the order for possession to the tenant by first class mail. ☐ 6. Time limit for execution on the order for possession. An order for possession can be executed upon for a period of 60 days from its issuance or reissuance. ☐ 7. Reissuance of the order for possession. A MDJ shall, upon written request, reissue the order for possession for one additional 60 day period. If an order for possession is subsequently superseded by an appeal, writ of certiorari, supersedeas, or bankruptcy proceeding or other federal or state law, or Pa.R.Civ.P.M.D.J. 514.1(C) stay, and the appeal, writ of certiorari, supersedeas, or bankruptcy proceeding or other federal or state law is later removed, the landlord shall file a written request for reissuance with the MDJ in order to proceed. In cases concerning residential leases, a request for reissuance of the order for possession shall be filed within 180 days of the date of entry of the judgment unless the order for possession is superseded by an appeal, writ of certiorari, supersedeas, or bankruptcy proceeding or other federal or state law, in which case the request for reissuance shall be filed within 180 days of the date the appeal, writ of certiorari, supersedeas, or bankruptcy or other stay is removed. Upon written request of the landlord, the MDJ shall reissue an order for possession for no more than two additional 60-day periods. ☐ 8. "Pay and Stay" option. The so-called "pay and stay" option allows tenants-- in failure to pay rent cases only-- to recover possession by satisfying the order for possession at any time before the actual delivery date of the real property by paying the rent actually in arrears to the executing officer plus the costs of the proceedings. The rent actually in arrears is the sum set forth in the order for possession. If the tenant exercises the "pay and stay" option, the executing officer shall give the tenant a signed receipt for any such payment.	Pa.R.Civ.P.M.D.J. 517. Pa.R.Civ.P.M.D.J. 519(C). Pa.R.Civ.P.M.D.J. 516(B)(1). Pa.R.Civ.P.M.D.J. 516(B)(2). Pa.R.Civ.P.M.D.J. 516(C). Pa.R.Civ.P.M.D.J. 518. <u>Note:</u> MDJS Form 316 is the Request for Entry of Satisfaction form and 316A is the Entry of Satisfaction form. <u>Note:</u> MDJS Form 120 is the Receipt form.
---	---

☐ 9. Protections for military personnel. The federal Servicemembers Civil Relief Act and the Pennsylvania Military Civil Relief Act may prevent the eviction of a servicemember or his/her dependents during a period of military service.	50 U.S.C. § 3951. 51 Pa.C.S. § 7312.
---	---

2. Forcible Entry and Ejectment

Checklist 7-15: Forcible Entry and Ejectment	Authority/Notes
☐ 1. When execution can be carried out. ☐ a. Nonresidential lease. On or after the 16th day following service of the order of possession if the tenant or any other unauthorized occupant remains on the property. ☐ b. Residential lease. On or after the 11th day following service of the order of possession if the tenant or any other unauthorized occupant remains on the property.	Pa.R.Civ.P.M.D.J. 519(A). Pa.R.Civ.P.M.D.J. 519(B).
☐ 2. Permissible force. The executing officer may use any necessary force to enter the property, by the breaking in of any door or otherwise, to eject the tenant and any other unauthorized occupant, and shall deliver possession to the landlord or the landlord's agent.	Pa.R.Civ.P.M.D.J. 519(A) & (B).
☐ 3. Return. Within 5 business days after delivery of possession or satisfaction by payment of rent in arrears and costs ("pay and stay"-- see Checklist 7-14(8)), the executing officer shall make a return on the order for possession form. The return shall show: the date, time, place and manner of service; if the "pay and stay" option was exercised; the amount of payment and its distribution; the time and date of any forcible entry and ejectment or that no entry had to be made; and the officer's expenses and fees.	Pa.R.Civ.P.M.D.J. 520.

3. Execution by Levy/Garnishment

Checklist 7-16: Execution by Levy/Garnishment	Authority/Notes
☐ 1. Plaintiff. If the plaintiff in a possessory action obtains a judgment for damages for injury to or unjust detention of the property, for rent remaining due or for the costs of the proceedings, he/she may execute upon that judgment by levy upon the defendant's personal	Pa.R.Civ.P.M.D.J. 521(A).

property in the manner set forth in Pa.R.Civ.P.M.D.J. 401 - 482 (see Section VI. of the bench book). ☐ 2. Defendant. If a tenant in a possessory action obtains a money judgment on a cross-complaint against the landlord, he/she may also obtain execution of judgment by levy upon the landlord's personal property in the manner set forth in Pa.R.Civ.P.M.D.J. 401 - 482 (see Section VI. of the bench book). ☐ 3. Garnishment of earnings. A prevailing landlord in a residential lease situation may seek to garnish the tenant's wages in the court of common pleas for the amount of the judgment up to either 10% of the tenant's net wages or a sum not to place the tenant below federal poverty guidelines, whichever is less. The amount subject to attachment shall have deducted from it any security deposit forfeited by the tenant pursuant to the Landlord/Tenant Act unless it has already been applied to payment for rent due on the premises. In implementing the garnishment, the landlord is required to follow the Pennsylvania Rules of Civil Procedure and any applicable local rules in the court of common pleas. The judgment of the MDJ shall reflect that portion of the judgment which is for physical damage arising from a residential lease.	Pa.R.Civ.P.M.D.J. 521(B). 42 Pa.C.S. § 8127(a)(3.1). <u>Note:</u> Garnishment cannot be ordered by an MDJ. 42 Pa.C.S. § 8127(a)(3.2). <u>Note:</u> Garnishment cannot be ordered by an MDJ. 42 Pa.C.S. § 8127(a)(3.2).
---	--

I. MISCELLANEOUS ISSUES

1. Manufactured Homes

The Manufactured Home Community Rights Act (previously known as the Mobile Homes Park Rights Act) governs evictions of manufactured home community residents who own the manufactured home and lease space in the community. 68 P.S. § 398.1 *et seq.* Evictions of persons who lease the manufactured home itself (as opposed to the space) are governed by the Landlord/Tenant Act. 68 P.S. § 250.501 *et seq.* Evictions under the Manufactured Home Community Rights Act (MHCRA) are discussed in Checklist 7-17 below.

Checklist 7-17: Manufactured Homes	Authority/Notes
☐ 1. Manufactured Home Community Rights Act (MHCRA). The MHCRA governs evictions of manufactured home community residents. A manufactured home resident is "an owner of a manufactured home who leases or rents space in the manufactured home community." This term does not include a person who rents or leases the manufactured home itself. A manufactured home community is "any site, lot, field or tract of land, privately or publicly owned or operated, upon which three or more manufactured homes, occupied for dwelling or sleeping purposes, are or are intended to be located, regardless of whether or not a charge is made for such an accommodation."	68 P.S. § 398.1 <i>et seq.</i> 68 P.S. § 398.2. <u>Note:</u> Evictions of persons who lease the mobile home are governed by the Landlord/Tenant Act. 68 P.S. § 398.2.
☐ 2. Grounds for eviction. A manufactured home community resident or occupant can only be evicted for any of the following: ☐ a. Nonpayment of rent; ☐ b. A second or subsequent violation of the manufactured home community rules within a 6 month period; ☐ c. A change in the use of the manufactured home community lands or parts thereof; and/or ☐ d. Termination of the manufactured home community.	68 P.S. § 398.3(a). 68 P.S. § 398.3(a)(1). 68 P.S. § 398.3(a)(2). 68 P.S. § 398.3(a)(3). 68 P.S. § 398.3(a)(4).
☐ 3. Procedure for eviction. A resident shall be evicted in the following manner: ☐ a. The resident may not be evicted by any self-help measure. ☐ b. Before commencing any eviction proceeding, the manufactured home community owner shall notify the resident in writing of the particular breach or violation of the lease or community rules by certified or registered mail. ☐ i. In the case of nonpayment of rent, the notice shall state that an eviction	68 P.S. § 398.3(b). 68 P.S. § 398.3(b)(1). 68 P.S. § 398.3(b)(2). 68 P.S. § 398.3(b)(2)(i).

proceeding may be commenced if the manufactured home resident does not pay the overdue rent within 20 days from the date of service if the notice is given on or after April 1 and before September 1, and 30 days if given on or after September 1 and before April 1 or an additional nonpayment of rent occurring within 6 months of the giving of the notice may result in immediate eviction proceedings. ☐ ii. In the case of a breach of the lease or violation of the community rules, other than the nonpayment of rent, the notice shall describe the particular breach or violation. No eviction action shall be commenced unless the manufactured home community resident has been notified as required by this section, and upon a second or subsequent violation or breach occurring within 6 months, the manufactured home community owner may commence eviction proceedings at any time within 60 days of the last violation or breach. ☐ c. Notice to quit. In a manufactured home community eviction, what the notice must state varies depending on the reason eviction is being sought and the term of the lease. ☐ i. Expiration of lease or breach of lease. In cases involving expiration of the lease term or breach of lease conditions where: ☐ A. The lease term is for less than a year or for an indefinite term, the notice shall state that the tenant shall leave within 30 days of service of the notice; or ☐ B. When the lease is for a year or more, the notice shall state that the tenant shall leave within 3	68 P.S. § 398.3(b)(2)(ii). 68 P.S. § 250.501(c). 68 P.S. § 250.501(c). 68 P.S. § 250.501(c).
--	--

months of the date of service of the notice.	
☐ ii. Failure to pay rent. In the case of a tenant who fails, upon demand, to pay rent reserved and due, the notice--if given after April 1st and before September 1st--shall specify that the tenant shall leave within 15 days of service of the notice. If the notice is given on/after September 1st and before April 1st, the notice shall state that the tenant shall remove within 30 days from service of the notice.	68 P.S. § 250.501(c).
☐ d. Unequal enforcement of community rules. A manufactured home community shall not be evicted when there is proof that the rules he/she is accused of violating are not enforced with respect to other manufactured home residents and nonresidents on the community premises.	68 P.S. § 398.3(c).
☐ e. Retaliatory eviction. Any action by a manufactured home community owner or operator to recover possession of real property from a manufactured home community resident or to change the lease within 6 months of a resident's assertion of his/her rights under the MHCRA or any other legal right shall raise a presumption that such action constitutes a retaliatory and unlawful eviction and is in violation of the MHCRA. This presumption may be rebutted by competent evidence presented in any appropriate court of initial jurisdiction within the Commonwealth.	68 P.S. § 398.16.
☐ 4. Other causes of action: Any manufactured home community owner, operator, or resident aggrieved by a violation of their rights under the MHCRA may file a private cause of action in any appropriate court of initial jurisdiction within the Commonwealth.	68 P.S. § 398.13.
☐ 5. Abandoned manufactured homes: If a manufactured home is abandoned by its resident (see below for determination of abandonment), the manufactured home community owner or other authorized person may enter the home, move it, assess removal and storage costs, and dispose of the home and related personal possessions.	68 P.S. § 398.10.2(a).

☐ a. Entry. Enter the manufactured home and secure any appliances, furnishings, materials, supplies, or other personal property; disconnect the manufactured home from any utilities; and otherwise exercise “ordinary care” in relation to the home and personal property, including promptly disposing of perishable food and contacting an animal control agency/humane society to remove any abandoned pets.	68 P.S. § 398.10.2(a)(1).
☐ b. Moving. Move the manufactured home and any personal property within the community that is believed to belong to the resident, to a storage area either within the community or to another location deemed necessary and proper without the need to obtain a removal permit. The manufactured home shall continue to be subject to lien for any taxes assessed on it but the real estate on which it was located shall not. Prior to moving the manufactured home and personal property, the community owner shall notify the former manufactured home resident by mail and by a posting on the home and any other known address, or by any other means by which notice may be achieved, that the mobile home will be moved 60 days after the date of notice and of the new location of the home and personal property.	68 P.S. § 398.10.2(a)(2).
☐ c. Costs. Assess removal and storage charges against the former manufactured home resident.	68 P.S. § 398.10.2(a)(3).
☐ d. Dispose. Dispose of the personal property and/or manufactured home after giving notice to the former resident and any lienholder. The notice shall be sent certified mail, return receipt requested or receipted first class mail to the resident’s last known address (which may be the premises) and at any alternate address(es), if known, including the address of emergency contacts, if provided. The notice must also be posted in a conspicuous location in the manufactured home community. The notice of removal (see b. above) and the notice of disposal can be combined).	68 P.S. § 398.10.2(a)(4) & (c).
Content of notice. The notice provided must state:	68 P.S. § 398.10.2(d).

☐ i. “The manufactured home and contents are considered abandoned and, to avoid the sale or other disposal of the manufactured home, the manufactured home and contents must be claimed and removed from the premises in the manufactured home community or from the storage area or from the place of storage within 60 days after the date of mailing of the notice.”	68 P.S. § 398.10.2(d)(1).
☐ ii. “If the manufactured home and contents are not claimed and removed within the time set forth in the notice: (i) the owner or other authorized person may sell the manufactured home at public or private sale with or without additional notices; or (ii) if it is reasonably determined by the owner or other authorized person that the value of the property is so low that the cost of storage and conducting a sale would exceed the amount that would be realized from the sale of the manufactured home, the manufactured home may be destroyed or discarded.”	68 P.S. § 398.10.2(d)(2).
☐ iii. “Within the time provided in the notice, the resident may claim the manufactured home by notifying the manufactured home community owner or other authorized person in writing that the manufactured home will be claimed and removed within the time provided in the notice or such later time as is mutually agreed to by the owner or other authorized person and the resident.”	68 P.S. § 398.10.2(d)(3)(i).
☐ iv. “If the resident fails to claim and remove the manufactured home within the time specified in the notice or such later time, the manufactured home shall be conclusively deemed abandoned, and the community owner or other authorized person shall be entitled to proceed to sell or otherwise dispose of the manufactured home.”	68 P.S. § 398.10.2(d)(3)(ii).

☐ e. Determination of abandonment. A lessee or resident shall be deemed to have abandoned a manufactured home and all personal possessions therein only after either: (1) judicial process (including entry of judgment for possession, execution of an order for possession, and a determination by an MDJ or other court of competent jurisdiction that the home and property have been abandoned); (2) voluntary abandonment as evidenced by a written statement by lessee/resident stating that he/she has physically or permanently vacated, does not intend to return, and has given up all further rights or ownership interests.	68 P.S. § 398.10.1(a).
☐ f. Judicial process for determination of abandonment. An MDJ court has jurisdiction to determine if a manufactured home has been abandoned and shall make such a determination if the issue is presented to it.	68 P.S. § 398.10.1(c).
☐ i. Request. A landlord may request a determination upon filing it on a form prescribed by the State Court Administrator with the MDJ for the district where the manufactured home is located.	Pa.R.Civ.P.M.D.J. 519.1(A).
☐ ii. Hearing date; service. If the determination is not, or cannot be, made during a hearing for recovery of possession the MDJ shall set a hearing date not less than 7 or more than 15 days from the date the request is filed.	Pa.R.Civ.P.M.D.J. 519.1(B).
The MDJ court shall serve a copy of the request and the hearing notice on the tenant as provided in Pa.R.Civ.P.M.D.J. 506 (see Checklist 7-5).	Pa.R.Civ.P.M.D.J. 519.1(C).
☐ iii. Determination. The determination shall be based on a preponderance of the evidence of the lessee's absence from the home for at least 30 days and non-payment of rent for at least 30 days from the date it is due, plus one or more of the following: (1) termination of electric or	68 P.S. § 398.10.1(b).

water service to the home and other utility or payment of services to the community owner; (2) cancellation of insurance; (3) removal of most or all personal property; or (4) any other indicia of abandonment. Notice. The MDJ shall promptly give or mail written notice of the determination to the parties in interest. The notice shall contain advice as to the right to file a Statement of Objection, the time in which to do so, and that the Statement is to be filed in the court of common pleas. ☐ iv. Effect of determination. A determination that a manufactured home has been abandoned gives the community owner the same rights as an entity granted judgment of possession. ☐ v. Review of determination. Any party aggrieved by the MDJ's determination may obtain reconsideration in the court of common pleas by filing a Statement of Objection pursuant to Pa.R.Civ.P.M.D.J. 1016 (see Checklist 6-12) with the prothonotary and the MDJ. ☐ f. Liability. A manufactured home community owner who complied with the procedures Manufactured Home Community Rights Act shall be immune from liability with regard to, or as a consequence of, the sale, disposal, or destruction of the abandoned manufactured home and any contents in the home or the community except to the extent specifically set forth in the Act. . ☐ 6. When eviction may not occur. The landlord is not entitled to recover possession of a mobile home space upon termination of a lease regardless of the term of the lease if the tenant: ☐ a. Is complying with the rules of the mobile home park;	Pa.R.Civ.P.M.D.J. 519.1(D). 68 P.S. § 398.10.1(d). Pa.R.Civ.P.M.D.J. 519.1(E). 68 P.S. § 398.10.3. 68 P.S. § 250.501(c.1). 68 P.S. § 250.501(c.1)(1).
--	---

☐ b. Is paying the rent due; and	68 P.S. § 250.501(c.1)(2).
☐ c. Desires to continue living in the mobile home park.	68 P.S. § 250.501(c.1)(3).

2. Abandonment and Surrender of Premises

Checklist 7-18: Abandonment and Surrender	Authority/Notes
☐ 1. Abandonment. Abandonment is a relinquishment of the premises which justifies immediate repossession. In order to establish abandonment, there shall be found, as a matter of law, an intent to abandon and conduct by which this intention is carried out.	<i>Turnway Corp. v. Soffer</i> , 336 A.2d 871, 877 (Pa. 1975).
☐ 2. Surrender. In a lease surrender situation, there is not only an intentional relinquishment of the lease, but also an acceptance of the surrender by the landlord. The tenant has the burden of proving, by clear and convincing evidence, that the landlord accepted the surrender. It is the intention of the parties that controls. Whether there has been acceptance is a question of fact, and it must be shown that the landlord made some unequivocal act that would constitute acceptance.	<i>Stonehedge Square L.P. v. Movie Merchants, Inc.</i> , 685 A.2d 1019, 1023 (Pa. Super. 1996).
☐ a. Termination of lease by military personnel. Both federal and state laws allow military personnel to terminate leases after entry into military service or the receipt of orders for change of station or deployment. Both laws require written notice to the landlord.	50 U.S.C. § 3955. 51 Pa.C.S. § 7315.

3. Implied Warranty of Habitability

All residential leases contain an implied warranty of habitability. *Pugh v. Holmes*, 405 A.2d 897, 903 (Pa. 1979). The tenant's obligation to pay rent and the landlord's obligation to maintain the premises in a habitable condition are mutually dependent, and a breach of one's obligation relieves the other so long as the breach continues. *Pugh*, 405 A.2d at 903.

Checklist 7-19: Implied Warranty of Habitability	Authority/Notes
☐ 1. Purpose and scope. The implied warranty of habitability "is designed to insure that the landlord will provide facilities and services vital to the life, health, and safety of the tenant and to the use of the premises for residential purposes." Although the tenant is entitled to	<i>Pugh v. Holmes</i> , 405 A.2d 897, 903, 905 (Pa. 1979).

a safe and healthy premises, he/she is not entitled to a perfect or aesthetically pleasing dwelling. There shall be no latent defects in the facilities or utilities at the inception of the lease, and all of the essential features shall remain in a reasonably fit condition throughout the leasehold. Although the landlord has the duty to repair damage caused by normal wear and tear, the tenant will be liable for any damage caused by malicious, abnormal, or unusual use. ☐ 2. Elements of breach: ☐ a. The defect shall render the premises unsafe or unsanitary and unfit for living. The materiality of the breach is a question of fact to be decided on a case-by-case basis. Some factors to consider are: ☐ i. Whether the condition violates a housing law, regulation, or ordinance; ☐ ii. The nature and seriousness of the defect; ☐ iii. The effect of the defect on safety and sanitation; ☐ iv. The length of time for which the condition has persisted; and ☐ v. The age of the structure. ☐ b. Notice and opportunity to correct. A tenant shall prove that he/she gave notice to the landlord of the defect or condition, that the landlord had a reasonable opportunity to correct the defect or condition, and that the landlord failed to do so. ☐ 3. Remedies for breach: ☐ a. Vacating the property; ☐ b. Remaining in possession and withholding rent;	<i>Pugh v. Holmes</i>, 384 A.2d 1234, 1240 (Pa. Super. 1978), <i>aff'd</i>, 405 A.2d 897, 905 (Pa. 1979). <i>Pugh v. Holmes</i>, 384 A.2d 1234, 1240 (Pa. Super. 1978), <i>aff'd</i>, 405 A.2d 897, 905 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 905-06 (Pa. 1979). <i>Pugh v. Holmes</i>, 384 A.2d 1234, 1240 (Pa. Super. 1978), <i>aff'd</i>, 405 A.2d 897, 905 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 906 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 907 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 907 (Pa. 1979).
---	---

If the landlord totally breached the implied warranty of habitability the tenant would be entitled to total abatement. If the landlord partially breached the warranty, the tenant's obligation to pay rent would be partly abated. It is within the MDJ's discretion whether to order that the unpaid rent be escrowed. ☐ c. Repair and deduct; Tenant, after first giving landlord notice and opportunity to correct the defect, may have the repair made and deduct the cost from the rent. ☐ d. Counterclaim for repairs made; This remedy is not available where tenant has not paid his/her rent for the period in which the repairs are made and the cost of the repairs do not exceed the rent owed for that period, because the tenant has already been compensated for the cost of the repairs by not paying rent. ☐ 4. Measure of damages. Damages are calculated under the "percentage reduction of use" method that reduces the amount of rent owed by a percentage equal to the percentage by which the use of the premises has been decreased by the breach.	<i>Pugh v. Holmes</i>, 405 A.2d 897, 907-08 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 908 (Pa. 1979). <i>Pugh v. Holmes</i>, 405 A.2d 897, 909 (Pa. 1979).
---	--

4. Covenant of Quiet Enjoyment

Another implied and non-waivable component of every lease in Pennsylvania is the implied covenant of quiet enjoyment. *Kohl v. PNC Bank, N.A.*, 863 A.2d 23, 27 (Pa. Super. 2004), *reversed on other grounds*, 912 A.2d 237 (Pa. 2006). Any "wrongful act of the lessor that interferes with the lessee's possession, in whole or in part, is a breach of the covenant of quiet enjoyment." *Kohl*, at 27 (quoting *Branish v. NHP Property Mgmt, Inc.*, 694 A.2d 1106, 1107 (Pa. Super. 1997)).

Checklist 7-20: Covenant of Quiet Enjoyment	Authority/Notes
☐ 1. Standard for breach. To constitute a breach, "[t]he impairment of the lessee's possession need not be total, but the utility of the premises shall be substantially decreased by the landlord's interference with a right or	<i>Kohl v. PNC Bank, N.A.</i>, 863 A.2d 23, 27-28 (Pa. Super. 2004) (quoting <i>Checker Oil Co. of Delaware, Inc. v. Harold H. Hogg, Inc.</i>, 380 A.2d 815,

privilege which is necessary to the enjoyment of the premises." ☐ 2. Specific instances: ☐ a. Substantial alteration of the premises. The covenant is breached if the landlord "so substantially altered some essential features of the premises so as to render the property unsuitable for the purpose for which it was leased." ☐ b. Eviction (actual and constructive). Actual eviction of the tenant by the landlord breaches the covenant as does constructive eviction which does not oust the tenant but substantially impairs the tenant's possession. ☐ c. Litigation affecting tenant's possessory interests. "[A] suit brought by a landlord which substantially impairs a tenant's possessory interest in a leasehold, brought in bad faith, maliciously, or otherwise without probable cause and primarily for a purpose unrelated to seeking legal redress, constitutes a breach of the landlord's covenant of quiet enjoyment."	819 (Pa. Super. 1977), <i>reversed on other grounds</i>, 912 A.2d 237 (Pa. 2006)). <i>Kohl v. PNC Bank, N.A.</i>, 863 A.2d 23, 28 (Pa. Super. 2004) (quoting <i>Pollock v. Morelli</i>, 369 A.2d 458, 460 (Pa. Super. 1976), <i>reversed on other grounds</i>, 912 A.2d 237 (Pa. 2006)). <i>Kohl v. PNC Bank, N.A.</i>, 863 A.2d 23, 28 (Pa. Super. 2004), <i>reversed on other grounds</i>, 912 A.2d 237 (Pa. 2006). <i>Kohl v. PNC Bank, N.A.</i>, 863 A.2d 23, 31 (Pa. Super. 2004), <i>reversed on other grounds</i>, 912 A.2d 237 (Pa. 2006).
--	--

5. Security Deposit

The Landlord/Tenant Act (Act) provides procedures by which a residential landlord can keep all or part of the tenant's security deposit upon termination of the lease or surrender and acceptance of the leasehold premises. 68 P.S. § 250.512. Failure of a landlord to comply with the provisions of the Act may give the tenant a claim in assumpsit against the landlord for double the amount by which the escrowed amount exceeds the actual damages to the premises. 68 P.S. § 250.512(c). In addition, improper withholding of a security deposit may make a landlord liable under the Unfair Trade Practices and Consumer Protection Law (UTCPL), 73 P.S. § 201-1 *et seq.* *Wallace v. Pastore*, 742 A.2d 1090 (Pa. Super. 1999), *appeal denied*, 764 A.2d 1071 (Pa. 2000).

Checklist 7-21: Security Deposit	Authority/Notes
☐ 1. Landlord's duties. Within 30 days of termination of a residential lease or surrender and acceptance of residential leasehold premises, a landlord shall provide a written list of damages to the premises for which the landlord holds the tenant liable. Along with the list the landlord shall provide payment of the difference between the security deposit in escrow and the amount of damages caused by the tenant. The landlord is not precluded from refusing to return the escrow fund, including any unpaid interest, for nonpayment of rent or the breach of any other condition of the lease. ☐ 2. Consequences of landlord's failure to fulfill duties. ☐ a. Failure to provide list. If a landlord fails to provide the list mentioned in Checklist 7-21(1), the landlord shall forfeit all rights to withhold any portion of the escrowed monies, including any unpaid interest, or to bring a suit against the tenant for damages to the premises. ☐ b. Failure to pay. If the landlord fails to pay the tenant the difference between the sum deposited (including any unpaid interest) and the actual damages to the premises caused by the tenant within 30 days after termination/surrender and acceptance, the landlord shall be liable to the tenant for double the amount by which the sum deposited exceeds the actual damages to the premises caused by the tenant, as determined by any court having jurisdiction over civil actions at law. The burden of proof as to the actual damages caused by the tenant shall be on the landlord. ☐ 3. No waiver. Any attempt at waiver of the tenant's rights under the foregoing provisions of the Act shall be void and unenforceable. ☐ 4. Tenant's failure to provide new address. The failure of the tenant to provide the landlord with his/her new address in writing upon termination of the lease or upon surrender and acceptance of the leasehold premises shall relieve the landlord from any liability under these provisions of the Act.	68 P.S. § 250.512(a). 68 P.S. § 250.512(b). 68 P.S. § 250.512(c). 68 P.S. § 250.512(d). 68 P.S. § 250.512(e).

☐ 5. Unfair Trade Practices and Consumer Protection Law (UTPCPL). The UTPCPL has been found to be applicable to residential leases and allows a tenant to recover treble damages and attorney's fees for an improperly retained security deposit if the landlord misrepresents the amount of damages, costs of repair, etc. The remedies under the UTPCPL may be sought along with other causes of action or remedies the tenant may have.	<i>Wallace v. Pastore</i> , 742 A.2d 1090 (Pa. Super. 1999), <i>appeal denied</i> , 764 A.2d 1071 (Pa. 2000)
--	--

6. Plain Language Act

Under the Plain Language Consumer Contract Act (Act), 73 P.S. § 2201 *et seq.*, consumer contracts must be easy to read and understand. Leases for residential property are considered to be consumer contracts for the purposes of the Act, but commercial leases are not. 73 P.S. §§ 2203 & 2204. Violation of the Act may make the landlord liable for damages under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* 73 P.S. § 2207.

Checklist 7-22: Plain Language Act	Authority/Notes
☐ 1. Requirements of the act. Consumer contracts such as a residential lease shall be easy to read and understandable.	73 P.S. § 2205(a).
☐ 2. Interpretation. The Act shall be liberally interpreted to protect the consumer.	73 Pa.C.S. § 2204(c).
☐ 3. Determining readability (language guidelines). In determining whether a contract meets the requirements of the Act, a court shall consider the following guidelines.	73 Pa.C.S. § 2205(b)
☐ a. The lease should use short words, sentences, and paragraphs.	73 Pa.C.S. § 2205(b)(1).
☐ b. The lease should use active verbs.	73 Pa.C.S. § 2205(b)(2).
☐ c. The lease should not use technical legal terms, other than commonly understood legal terms (for example "mortgage," "warranty," and "security interest")	73 Pa.C.S. § 2205(b)(3).
☐ d. The lease should not use Latin and foreign words or any other word whenever its use requires reliance upon an obsolete meaning.	73 P.S. § 2205(b)(4).

☐ e. If the lease defines words, the words should be defined by using commonly understood meanings. ☐ f. When the lease refers to the parties to the lease, the reference should use personal pronouns, the actual or shortened names of the parties, the terms "seller" and "buyer" or the terms "lender" and "borrower." ☐ g. The lease should not use sentences that contain more than one condition. ☐ h. The lease should not use cross-references, except cross-references that briefly and clearly describe the substances of the item to which reference is made. ☐ i. The lease should not use sentences with double negatives or exceptions to exceptions. ☐ 4. Determining readability (visual guidelines). In determining whether a contract meets the requirements of the Act, a court shall consider the following guidelines. ☐ a. The lease should have type size, line length, column width, margins, and spacing between lines and paragraphs that make the contract easy to read. ☐ b. The lease should caption sections in boldface type. ☐ c. The lease should use ink that contrasts sharply with the paper. ☐ 5. Language required by other laws. The use of language required, recommended, or approved by a federal or state statute, rule, regulation, commentary, or official interpretation of these, (including, but not limited to, the Truth in Lending Act, 15 U.S.C. § 1601 <i>et seq.</i>), or the use of model forms required, authorized, approved or recommended by federal or state authorities does not violate this act.	73 Pa.C.S. § 2205(b)(5). 73 Pa.C.S. § 2205(b)(6). <u>Note:</u> This language is taken from the Act; presumably "lessor" and "lessee" or "landlord" and "tenant" would also be acceptable. 73 P.S. § 2205(b)(7). 73 P.S. § 2205(b)(8). 73 Pa.C.S. § 2205(b)(9). 73 Pa.C.S. § 2205(c). 73 Pa.C.S. § 2205(c)(1). 73 Pa.C.S. § 2205(c)(2). 73 Pa.C.S. § 2205(c)(3). 73 Pa.C.S. § 2206.
--	--

☐ 6. Rights under the Act cannot be waived. A consumer may not waive his/her rights under the Act and any purported waiver is void.	73 Pa.C.S. § 2210.
---	--------------------

7. Bankruptcy Stay

The filing of a petition for bankruptcy under the United States Bankruptcy Code will automatically stay the proceedings against the tenant under certain circumstances. 11 U.S.C. § 362. The automatic stay, however, is subject to exceptions that are applicable in the landlord/tenant context. The automatic stay and the relevant exceptions to it are discussed in Checklist 7-23 below.

Checklist 7-23: Bankruptcy Stay	Authority/Notes
☐ 1. Automatic stay. Generally, the filing of a bankruptcy petition acts to stay judicial actions, including a landlord/tenant action. Relief. Relief from the automatic stay shall be sought in the bankruptcy court by the landlord or, in rare cases, the tenant.	11 U.S.C. § 362(a).
☐ 2. Exceptions to automatic stay. There are several exceptions to the automatic stay requirement that are pertinent to the landlord/tenant context. A bankruptcy petition does not act as a stay:	<u>Note:</u> Although the Bankruptcy Code uses the terms "lessor" and "lessee" the terms "landlord" and "tenant" are used herein for the sake of clarity.
☐ a. Of any act by the landlord to the tenant under a commercial lease that has terminated by the expiration of the term of the lease prior to the commencement of, or during, a bankruptcy case to obtain possession of the leased property;	11 U.S.C. § 362(b)(10).
☐ b. Of the continuation of any eviction or similar proceeding by a landlord against a debtor/tenant involving a residential property in which the tenant resides under a lease or rental agreement and to which the landlord has obtained a judgment for possession prior to the filing of the bankruptcy petition; and (see c. below).	11 U.S.C. § 362(b)(22).
Limitation on exception. Except as otherwise provided, the exception of 11 U.S.C. § 362(b)(22) shall apply 30 days after the date the bankruptcy petition is	11 U.S.C. § 362(l)(1).

filed if the tenant files a certification with the bankruptcy court (and serves it on the landlord) that the non-bankruptcy law allows him/her to cure the default giving rise to the judgment for possession after said judgment has been entered and the debtor has deposited with the clerk rent that has come due following the filing of the bankruptcy petition. If, within 30 days after the filing of the bankruptcy petition, a tenant complies with the preceding paragraph and files with the bankruptcy court (and serves on the landlord) an additional certification that the tenant has cured the default giving rise to the judgment under which possession is sought, 11 U.S.C. § 362(b)(22) shall not apply, unless the bankruptcy court orders it to apply. ☐ c. Of an eviction seeking possession of residential property in which the tenant resides under a lease or rental agreement based on the endangerment of the property or the illegal use of controlled substances on the property, but only if the landlord files with the bankruptcy court (and serves upon the debtor) a certification that such an eviction has been filed or that the tenant during the 30 day period preceding the filing of the certification has endangered the property or illegally used, or allowed to be used, a controlled substance on the property. Limitation on the exception. The exception of 11 U.S.C. § 362(b)(23), except as stated below, shall apply 15 days after the lessor files the aforementioned certification. The tenant may file an objection to the certification. ☐ 3. Duration of the stay. The stay continues until the property at issue is no longer part of the bankruptcy estate (if applicable), or until the bankruptcy case is	11 U.S.C. § 362(l)(2). 11 U.S.C. § 362(b)(23). 11 U.S.C. § 362(m)(1)&(2). 11 U.S.C. § 362(c)-(f).
--	---

dismissed or closed, or until the bankruptcy court grants relief from the automatic stay.	
---	--

8. Disposition of Abandoned Personal Property

When a lease is terminated or the tenant relinquishes possession of the real property, he/she is required to remove all personal property from the premises. 68 P.S. § 250.505a(a). Any abandoned personal property remaining on the premises may be disposed of at the landlord's discretion subject to the provisions discussed in Checklist 7-24 below. *Id.*

Checklist 7-24: Disposition of Abandoned Personal Property	Authority/Notes
☐ 1. Abandonment. Personal property left on the premises will be deemed abandoned if any of the following apply: (1) tenant has vacated following termination of a written lease; (2) an eviction order or order for possession for the landlord has been entered and tenant has vacated and removed substantially all personal property; (3) an eviction order or order for possession for the landlord has been executed; (4) tenant has provided landlord with written notice of a forwarding address and vacated and removed substantially all personal property; or (5) tenant has vacated without communicating an intent to return, the rent is more than 15 days past due and, subsequent to these events, landlord has posted notice of tenant's rights regarding the personal property.	68 P.S. § 250.505a(b)
☐ 2. Deceased tenants. Where a tenant is deceased and leaves personal property, the provisions of 68 P.S. § 250.505a shall not apply. The disposition shall be governed by 20 Pa.C.S. §§ 711(1) and 3392.	68 P.S. § 250.505a(c).
☐ 3. Notice; storage. Prior to removing/disposing the personal property, landlord must give written notice of tenant's rights. Tenant shall have 10 days from the postmark date to retrieve the property or request that it be stored for an additional 30-day period from the date of the notice. Storage will be at a place of landlord's choosing and tenant is responsible for costs. The landlord shall exercise ordinary care in handling and securing tenant's property and make it reasonable available for retrieval.	68 P.S. § 250.505a(d).

Notice shall be sent by first class mail to the tenant at the address of the leased premises and to any forwarding address provided, including any address provided for emergency purposes. The notice shall be in substantially the following form: “Personal property remaining at (address) is now considered to have been abandoned. Within ten days of the postmark date of this notice, you must retrieve any items you wish to keep or contact your landlord at (telephone number and address) to request that the property be retained or stored. If requested, storage will be provided for up to thirty days from the postmark date of this notice at a place of your landlord’s choosing, and you will be responsible for costs of storage.”	68 P.S. § 250.505a(e).
☐ 4. Inhabited premises. A landlord is not permitted to dispose of or otherwise exercise control over personal property remaining upon inhabited premises without the express permission of tenant. If the conditions under which the personal property is deemed abandoned no longer exist, landlord has not right to dispose of or otherwise exercise control over it.	68 P.S. § 250.505a(f).
☐ 5. Tenant with a Protection from Abuse (PFA) order. If a landlord proceeding under the provisions of 68 P.S. 250.505a(b)(3) (an eviction order or order for possession in favor of the landlord has been executed) has actual knowledge or has been notified of a PFA order entered for the protection of tenant or a member of his/her immediate family, landlord shall refrain from disposing of or otherwise exercising control over tenant’s personal property for 30 days from the date of notice. If requested, storage shall be provided for up to 30 days from the request.	68 P.S. § 250.505a(h).
☐ 6. Conflict between lease and 68 P.S. § 250.505a. Except as regards 68 P.S. § 250.505a(h) (see 5. above), if there is a conflict between the statute and the terms of the written lease, the terms of the lease shall control.	68 P.S. § 250.505a(g).
☐ 7. Damages for violation. A landlord who violated the provisions of 68 P.S. § 250.505a shall be subject to treble damages, reasonable attorney fees and court costs.	68 P.S. § 250.505a.

VIII. PROTECTION FROM ABUSE ORDERS

A. INTRODUCTION

This section discusses four types of emergency protection orders that an MDJ may issue: emergency orders under the Protection From Abuse (PFA) Act; emergency protection orders under the Older Adults Protective Services Act (OAPSA); emergency protection orders under the Adult Protective Services Act (APSA), and emergency relief under the Protection of Victims of Sexual Violence or Intimidation Act (PVSVI). The PFA Act, 23 Pa.C.S. § 6101 *et seq.*, is designed to protect the victim of domestic abuse and prevent further domestic abuse by removing the alleged perpetrator of the abuse from the household and/or the presence of the victim for some time. *McCance v. McCance*, 908 A.2d 905, 908 (Pa. Super. 2006). Although most proceedings under the PFA Act will be within the jurisdiction of the court of common pleas, the PFA Act provides that a MDJ may grant emergency relief under certain circumstances. 23 Pa.C.S. § 6110. Subsections B through E outline the procedure by which the MDJ may grant such relief.

The OAPSA, 35 P.S. § 10225.101 *et seq.*, provides a mechanism by which an MDJ may issue a protective order in the case of imminent risk of death or serious physical harm to an older adult. 35 P.S. § 10225.307. Subsection F outlines the procedure by which the MDJ may grant such relief.

The APSA, 35 P.S. § 10210.101 *et seq.*, is similar to OAPSA except it is designed to protect adults between the ages of 18 and 59 who have physical or mental impairments that substantially limit one or more major life activities. Subsection G outlines the procedures by which the MDJ may grant emergency relief under the APSA.

The PVSVI Act, 42 Pa.C.S. § 62A01 *et seq.*, is designed to provide victims of sexual violence and intimidation a civil remedy requiring an offender to stay away from the victim and other appropriate relief. 42 Pa.C.S. § 62A02. Subsection H outlines the procedures by which an MDJ may grant emergency relief under the PVSVI Act.

CAVEAT: The following section is based primarily upon the general rules of court, case law, and

statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that also affect these procedures. In addition, OAPSA and APSA actions and requirements are governed by statute and local procedures. The MDJ should familiarize him/herself with any such rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. PFA EMERGENCY ORDERS: JURISDICTION, VENUE, AND STANDING TO SEEK RELIEF

Checklist 8-1: Jurisdiction, Venue, and Standing	Authority/Notes
☐ 1. Jurisdiction, generally. An MDJ may grant emergency relief under the PFA Act when the court of common pleas is unavailable to do so.	23 Pa.C.S. § 6110; Pa.R.Civ.P.M.D.J. 1203. <u>Note:</u> Section 6110 actually uses the term "hearing officer," which includes an MDJ, Philadelphia Municipal Court judge, arraignment court magistrate, master or master for emergency relief. 23 Pa.C.S. § 6102. As this bench book is geared toward MDJs, that term alone is used herein.
☐ 2. Jurisdiction, criteria. The criteria for determining whether the court of common pleas is available varies depending on the number of common pleas judges in the county.	23 Pa.C.S. § 6110(a).
☐ a. Counties with fewer than four judges. The MDJ may grant certain emergency relief upon petition if the court of common pleas is unavailable:	23 Pa.C.S. § 6110(a)(1).
☐ i. From the close of business at the end of each day to the resumption of business the next morning;	23 Pa.C.S. § 6110(a)(1)(i).
☐ ii. From the end of the business week to the beginning of the next business week; and	23 Pa.C.S. § 6110(a)(1)(ii).
☐ iii. During the business day by reason of duties outside the county, illness, or vacation.	23 Pa.C.S. § 6110(a)(1)(iii).

☐ b. Counties with at least four judges. The MDJ may grant certain emergency relief upon petition if the court of common pleas is unavailable: ☐ i. From the close of business at the end of each day to the resumption of business the next morning; and ☐ ii. From the end of the business week to the beginning of the next business week. ☐ c. Court of common pleas unavailable by local rule. The MDJ may also grant emergency relief if the court of common pleas makes itself unavailable pursuant to local rule.	23 Pa.C.S. § 6110(a)(2). 23 Pa.C.S. § 6110(a)(2)(i) 23 Pa.C.S. § 6110(a)(2)(ii). Pa.R.Civ.P.M.D.J. 1203.
☐ 3. Venue, generally. Except as provided in Checklist 8-1(4) below, a proceeding for emergency relief may be brought in an MDJ district within the county in which the plaintiff resides, either temporarily or permanently, or where the abuse, sexual violence, or intimidation occurred.	Pa.R.Civ.P.M.D.J. 1204(A). <u>Note:</u> This rule is intended to provide maximum flexibility to a plaintiff who may have to flee the county of permanent residence to escape further abuse. Comment to Pa.R.Civ.P.M.D.J. 1204.
☐ 4. Venue where exclusive possession of residence/household is sought. If the relief sought includes possession of the residence/household to the exclusion of the defendant, the action may be brought only in the MDJ district within the county in which the residence/household is located.	Pa.R.Civ.P.M.D.J. 1204(B). <u>Note:</u> This provision only applies to actions brought under § 6110. Comment to Pa.R.Civ.P.M.D.J. 1204.
☐ 5. Standing to seek emergency relief. The following persons may seek emergency relief from abuse under the PFA Act: ☐ a. An adult or emancipated minor may seek emergency relief from abuse, sexual violence, or intimidation for him/herself. ☐ b. Any parent, adult household member, or guardian <i>ad litem</i> may seek emergency relief from abuse, sexual violence, or intimidation on behalf of minor children. Family or household members are spouses or persons who have been spouses; persons living	23 Pa.C.S. § 6106(a); Pa.R.Civ.P.M.D.J. 1205. 23 Pa.C.S. § 6106(a); Pa.R.Civ.P.M.D.J. 1205. 23 Pa.C.S. § 6102.

as spouses or who lived as spouses, parents, and children; other persons related by consanguinity or affinity; current or former sexual or intimate partners, or persons who share biological parenthood. ☐ c. An adult household member or guardian of the person of an incapacitated person (as defined in 20 Pa.C.S. § 5501) may seek emergency relief from abuse on behalf of the incapacitated person. An incapacitated person is "an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety."	23 Pa.C.S. § 6106(a); Pa.R.Civ.P.M.D.J. 1205. 20 Pa.C.S. § 5501.
---	--

C. PFA EMERGENCY ORDERS: COMMENCEMENT OF PROCEEDINGS

Checklist 8-2: Commencement of Proceedings	Authority/Notes
☐ 1. Petition. An emergency proceeding for relief from abuse shall be commenced by the filing of a petition with the MDJ on a form prescribed by the court administrator of Pennsylvania. ☐ 2. Contents of the petition. The petition shall be signed by the plaintiff and set forth: ☐ a. The names and addresses of the plaintiff and defendant; ☐ b. The names, addresses, and ages of any person on whose behalf the plaintiff is seeking relief; and ☐ c. General allegations of the cause for seeking relief from abuse. ☐ 3. Fees and costs. The plaintiff seeking relief under the PFA Act is not to be charged any fees or costs associated with filing a petition, motion, complaint, order, or any other filing. Prohibited costs also include those associated with modifying, withdrawing, dismissing, or certifying copies of the petition, motion, complaint, or other filing as well as any judicial surcharge or computer	Pa.R.Civ.P.M.D.J. 1206(A). <u>Note:</u> MDJS Form 307A is the Emergency PFA petition form. Pa.R.Civ.P.M.D.J. 1206(A). 23 Pa.C.S. § 6106(b); Pa.R.Civ.P.M.D.J. 1206(C). <u>Note:</u> MDJS Form 307B is the <i>In Forma Pauperis</i> Petition for Emergency Relief form.

system fee. Nor shall any plaintiff be charged any fees or costs in connection with filing a motion for reconsideration or appeal from any order or action taken under the PFA Act.	
☐ 4. Assessment of fees and costs against defendant. When an order is granted under the PFA Act, fees and costs shall be assessed against the defendant. The MDJ court shall waive fees and costs upon a showing of good cause or when the court finds defendant is unable to pay.	23 Pa.C.S. § 6106(c).

D. PFA EMERGENCY ORDERS: HEARING PROCEDURE

Checklist 8-3: Hearing Procedure	Authority/Notes
☐ 1. Hearing date. The hearing shall be held as soon as possible after the filing of the petition.	Pa.R.Civ.P.M.D.J. 1207.
☐ 2. Hearing procedure. Since the hearing is <i>ex parte</i>, there is no requirement that the defendant be given notice of the hearing or that the defendant be present.	23 Pa.C.S. § 6110(a); Pa.R.Civ.P.M.D.J. 1207 and Note. <u>Note:</u> If the plaintiff is a person with limited English proficiency or is deaf, an interpreter must be present. 42 Pa.C.S. § 4401 <i>et seq.</i> Checklist 11-4.
☐ 3. Witnesses. The plaintiff may present witnesses but cannot be compelled to disclose the permanent or temporary residence of the plaintiff or minor children.	Pa.R.Civ.P.M.D.J. 1207.
☐ 4. What the MDJ must determine. The MDJ shall, after hearing plaintiff's evidence, decide whether an order is necessary to protect the plaintiff or minor children from abuse upon good cause shown. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause.	23 Pa.C.S. § 6110(a); Pa.R.Civ.P.M.D.J. 1208(A).
☐ 5. Advanced communication technology. The MDJ may authorized the use of advanced communication technology during any civil proceeding or action governed by the MDJ Civil Rules including <i>ex parte</i> actions like those under the PFA Act.	Pa.R.Civ.P.M.D.J. 215 & Comment.
Advanced communication technology is defined as “any communication equipment that is used as a link between parties in physically separate locations.”	Pa.R.Civ.P.M.D.J. 202.

E. PFA EMERGENCY ORDERS: FINDINGS AND PROTECTION ORDERS

Checklist 8-4: Findings and Protection Orders	Authority/Notes
☐ 1. Findings. If the MDJ, upon good cause shown, finds it necessary to protect the plaintiff or minor children, he/she may grant the relief specified in Checklist 8-4(2) below and make any protection orders necessary to effectuate that relief. The MDJ shall enter his/her findings and any protection orders made or other action taken on the petition form.	Pa.R.Civ.P.M.D.J. 1208(A). Pa.R.Civ.P.M.D.J. 1208(B).
☐ 2. Relief MDJ may grant. If the MDJ finds a protective order is necessary, he/she may issue an order that: ☐ a. Directs defendant to refrain from abusing the plaintiff or minor children; ☐ b. Grants plaintiff possession of the residence or household to the exclusion of the defendant by evicting defendant or restoring possession to the plaintiff if the residence or household is jointly owned or leased by the parties, is owned or leased by the entireties, or is owned or leased solely by the plaintiff; and/or ☐ c. Prohibits the defendant from having any contact with the plaintiff or minor children, including, but not limited to, restraining the defendant from entering the place of employment, business, or school of the plaintiff or minor children, and from harassing the plaintiff or plaintiff's relatives or minor children.	23 Pa.C.S. § 6110(a); Pa.R.Civ.P.M.D.J. 1208(A). 23 Pa.C.S. § 6108(a)(1). 23 Pa.C.S. § 6108(a)(2). 23 Pa.C.S. § 6108(a)(6).
☐ 3. Instructions to plaintiff. Upon issuance of the emergency order, the MDJ shall: ☐ a. Provide the plaintiff with instructions regarding the commencement of proceedings in the court of common pleas at the beginning of the next business day; ☐ b. Provide the plaintiff with instructions regarding the procedure for initiating a contempt charge if the defendant violates the emergency order;	23 Pa.C.S. § 6110(d); Pa.R.Civ.P.M.D.J. 1206(B).

☐ c. Advise the plaintiff of the existence of programs for victims of domestic violence in the county or in nearby counties; and ☐ d. Inform the plaintiff of the existence of the availability of legal assistance without cost if the plaintiff is unable to pay for them. ☐ 4. Service and execution of emergency protection order. ☐ a. Service on plaintiff. The MDJ shall provide the plaintiff a copy of the protection order. ☐ b. Service on defendant. A copy of the order shall be delivered for service to a police officer, police department, sheriff, or constable for service upon the defendant and execution. Service shall be made without prepayment of costs. ☐ c. Unsuccessful service. If after reasonable efforts the executing officer is unable to serve the order on the defendant in a timely fashion, he/she shall leave a service copy of the petition form containing the order with the police department with jurisdiction over the area in which the plaintiff resides and shall advise the department that the order could not be served. ☐ 5. Duration of emergency protection order. Protection orders expire at the end of the next business day the court of common pleas deems itself available. ☐ 6. Certification to the court of common pleas. Any protection order, along with supporting documentation, shall be immediately certified to the court of common pleas by the MDJ. Certification shall be accomplished by sending to the prothonotary of the court of common pleas by first class mail or messenger a certified copy of the petition form containing the order, with any supporting documentation attached.	Pa.R.Civ.P.M.D.J. 1209. <u>Note:</u> The MDJ may provide the plaintiff with more than one copy. Note to Pa.R.Civ.P.M.D.J. 1209. Pa.R.Civ.P.M.D.J. 1209 and Note. <u>Note:</u> Rule 1209 provides for the plaintiff to deliver the order to the executing officer for service, not that the plaintiff is to serve the order. Service of a PFA order by the plaintiff is--for obvious reasons--not advisable. Pa.R.Civ.P.M.D.J. 1209. <u>Note:</u> The MDJ should make every effort to have the order served by a law enforcement officer in a timely fashion. Note to Pa.R.Civ.P.M.D.J. 1209. 23 Pa.C.S. § 6110(b); Pa.R.Civ.P.M.D.J. 1210. 23 Pa.C.S. § 6110(c); Pa.R.Civ.P.M.D.J. 1211(A). Pa.R.Civ.P.M.D.J. 1211(B).
--	---

The effect of certification shall be to commence PFA proceedings. Practice varies among judicial districts as to what the plaintiff must do to continue a protection order in the court of common pleas following certification. Therefore, the MDJ should provide clear instructions to the plaintiff as to what must be done to continue in effect the protection order in the court of common pleas in his/her county.	23 Pa.C.S. § 6110(c). Note to Pa.R.Civ.P.M.D.J. 1210.
---	---

F. EMERGENCY PROCEEDINGS UNDER THE OLDER ADULTS PROTECTIVE SERVICES ACT (OAPSA)

The OAPSA, 35 P.S. § 10225.101 *et seq.*, is designed to protect adults 60 years of age or older from abuse and neglect. Among other protections, the OAPSA provides for involuntary emergency intervention by court order and requires that the courts of common pleas of each judicial district make available a judge or an MDJ to decide petitions for emergency orders. 35 P.S. § 10225.307(a). As a result, an MDJ so designated by the court of common pleas may be faced with such a petition. Actions under the OAPSA are governed by statute and local procedures and not the Rules of Civil Procedure for MDJs. Note to Pa.R.Civ.P.M.D.J. 1201. The following checklist outlines the procedure for petitions for emergency orders set forth in the statute.

In addition, in matters involving older adults, MDJs are encouraged to consult the Pennsylvania Elder Abuse and Neglect Bench Card which has been distributed to all MDJs. If you require a copy of the bench card contact the Office of Elder Justice in the Courts at <http://www.pacourts.us/judicial-administration/court-programs/office-of-elder-justice-in-the-courts>.

Checklist 8-5: Emergency Order under the OAPSA	Authority/Notes
☐ 1. Petition. A petition for an emergency order to provide necessary services may be filed by the agency if there is clear and convincing evidence that the person to be protected is at imminent risk of death or serious physical harm if protective services are not provided.	35 P.S. § 10225.307(a).
Agency is defined as the local provider of protective services, which is the Area Agency on Aging (AAA) or	35 P.S. § 10225.103.

the agency designated by the AAA to provide protective services, or an independent contractor. ☐ 2. Standard. The MDJ shall determine if in fact clear and convincing evidence exists that the person to be protected is at imminent risk of death or serious physical harm if protective services are not provided. ☐ 3. Order. If the court finds that clear and convincing evidence of the need for an emergency order exists, it shall order only such services as are necessary to remove the conditions creating the established need for protection. ☐ 4. Counsel. To protect the rights of an older adult for whom protective services are sought, the emergency order shall also provide that the older adult has the right to legal counsel. An older adult is defined as "a person within the jurisdiction of the Commonwealth who is 60 years of age or older." ☐ 5. Forcible entry. Where forcible entry is necessary to enter premises after the order is obtained, a peace officer may do so accompanied by a representative of the agency. Peace officer is defined as: "[a]ny person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active state duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term 'peace officer' shall also include any member of any park police department of any county of the third class." ☐ 6. Other remedies. Nothing in the OAPSA shall be interpreted to deny any older adult access to emergency medical services or police protection that would be provided to anyone, regardless of age, in similar circumstances.	35 P.S. § 10225.307(a). 35 P.S. § 10225.307(b). <u>Note:</u> MDJS Form 635 is the Order Granting Emergency Relief from Abuse of the Elderly Petition form. 35 P.S. § 10225.307(c). 35 P.S. § 10225.103. 35 P.S. § 10225.307(d). 18 Pa.C.S. § 501 (footnote omitted). 35 Pa.C.S. § 10225.307(f).
--	--

G. EMERGENCY PROCEEDINGS UNDER THE ADULT PROTECTIVE SERVICES ACT (APSA)

The APSA, 35 P.S. § 10210.101 *et seq.*, is designed to protect adults between 18 and 59 years of age from abuse and neglect. Among other protections, the APSA provides for involuntary emergency intervention by court order and requires that the courts of common pleas of each judicial district make available a judge or an MDJ to decide petitions for emergency orders. 35 P.S. § 10210.307(a)(2). As a result, an MDJ so designated by the court of common pleas may be faced with such a petition. Actions under the APSA are governed by statute and local procedures and not the Rules of Civil Procedure for MDJs. Note to Pa.R.Civ.P.M.D.J. 1201. The following checklist outlines the procedure for petitions for emergency orders set forth in the statute.

Checklist 8-6: Emergency Order Under the APSA	Authority/Notes
☐ 1. Petition. A petition for an emergency order to provide necessary services may be filed by the agency if there is clear and convincing evidence that the person to be protected is at imminent risk of death, serious injury or serious bodily injury if protective services are not provided.	35 P.S. § 10210.307(a).
Agency is defined as a local contracted provider of protective services.	35 P.S. § 10210.103.
☐ 2. Standard. The MDJ shall determine if in fact clear and convincing evidence exists that the person to be protected is at imminent risk of death, serious injury or serious bodily injury if protective services are not provided.	35 P.S. § 10210.307(a) - (b).
☐ 3. Order. If the court finds that clear and convincing evidence of the need for an emergency order exists, it shall order only such services as are necessary to remove the conditions creating the established need for protection.	35 P.S. § 10210.307(b). <u>Note:</u> MDJS Form 636 is the Abuse of Adult Emergency Relief Order.
☐ 4. Counsel. To protect the rights of an adult for whom protective services are sought, the emergency order shall also provide that the older adult has the right to legal counsel.	35 P.S. § 10210.307(c).

An adult is defined as "a resident of the Commonwealth between 18 and 59 years of age who has a physical or mental impairment that substantially limits one or more major life activities."	35 P.S. § 10210.103.
☐ 5. Forcible entry. Where it is necessary to forcibly enter premises, law enforcement shall obtain a court order and may be accompanied by a representative of the agency.	35 P.S. § 10210.307(d).
☐ 6. Other remedies. Nothing in the APSA shall be interpreted to deny any the adult access to emergency medical services or police protection that would be provided to anyone, regardless of age, in similar circumstances.	35 Pa.C.S. § 10210.307(g).

H. EMERGENCY RELIEF UNDER THE PROTECTION OF VICTIMS OF SEXUAL VIOLENCE OR INTIMIDATION ACT (PVSVI)

The PVSVI Act is designed to protect victims of sexual violence and intimidation. One form of relief offered under the Act is an emergency protective order. 42 Pa.C.S. § 62A09. The following checklist outlines the procedure for petitions for emergency orders set forth in the statute. In addition, the same rules that apply to emergency relief under the PFA discussed above also apply to emergency relief under the PVSVI Act. Pa.R.Civ.P.M.D.J. 1201.

Checklist 8-7: Emergency Relief Under the PVSVI Act	Authority/Notes
☐ 1. When an MDJ can grant emergency relief. An MDJ can grant emergency relief under the PVSVI Act when the court of common pleas is “unavailable” during certain times.	42 Pa.C.S. § 62A09.
☐ a. Counties with fewer than four judges. In counties with fewer than four judges, the period of unavailability are: from close of business at the end of the day to the resumption of business the next morning; from the end of the business week to the beginning of the next business week; and during the business day by reason of duties outside the county, illness, or vacation.	42 Pa.C.S. § 62A09(a)(1).
☐ b. Counties with four or more judges. In counties with at least four judges, the periods of	42 Pa.C.S. § 62A09(a)(2).

unavailability are: from close of business at the end of the day to the resumption of business the next morning; and from the end of the business week to the beginning of the next business week.	
☐ c. Court of common pleas unavailable by local rule. The MDJ may also grant emergency relief if the court of common pleas makes itself unavailable pursuant to local rule.	Pa.R.Civ.P.M.D.J. 1203.
☐ 2. Standard. The MDJ may grant emergency relief if he/she deems it necessary to protect the victim upon good cause shown in an <i>ex parte</i> hearing. An immediate and present danger posed by the defendant shall constitute good cause.	42 Pa.C.S. § 62A09(a). Pa.R.Civ.P.M.D.J. 1208(A)(2).
☐ 3. Relief. If the court finds good cause, it may grant relief pursuant to 42 Pa.C.S. § 62A07, which allows the court to issue an order or approve a consent agreement to protect the plaintiff or another individual from the defendant.	42 Pa.C.S. § 62A09(a).
☐ 4. Duration of order. An emergency order expires at the end of the next business day the court deems itself available.	42 Pa.C.S. § 62A09(b).
☐ 5. Certification of the order to court. The emergency order and any documentation in support of it shall be immediately certified to the court which shall have the effect of commencing proceedings under 42 Pa.C.S. § 62A05.	42 Pa.C.S. § 62A09(c).
☐ 6. Instructions to the plaintiff. Upon issuing the emergency order, the MDJ shall plaintiff with instructions regarding commencement of proceedings in the court at the next business day and procedures for initiating a contempt charge if the defendant violates the order. The MDJ shall also advise the plaintiff of existence of rape crisis centers in the county or nearby counties in the case of sexual violence and inform plaintiff of availability of free legal assistance.	42 Pa.C.S. § 62A09(d).

IX. CONTEMPT POWERS OF MAGISTERIAL DISTRICT JUDGES

A. INTRODUCTION

This section discusses the power of an MDJ to punish for contempt that occurs both in and outside the presence of the MDJ as provided in the Judicial Code. An MDJ's contempt powers are more limited than those of a common pleas court judge.

Subsection B outlines the scope of the MDJ's contempt power and the punishments that can be imposed. Subsection C outlines the procedure for a contempt finding. Finally, subsection D outlines the procedure for handling defaults in payments of fines imposed as punishment for contempt.

CAVEAT: The following section is based primarily upon the general rules of court, case law, and statutes. There may, however, be local rules and/or directives from the president judge of your judicial district that also affect these procedures. The MDJ should familiarize him/herself with any such rules or directives. It is important to note that any local rule or directive must be consistent with statutes and statewide rules of procedure. Pa.R.J.A. 103.

B. SCOPE OF CONTEMPT POWERS AND PUNISHMENT

Checklist 9-1: Scope of Contempt Powers and Punishment	Authority/Notes
☐ 1. Scope. MDJs have a limited power "to issue attachments and impose summary punishments for criminal contempts" of court in the following situations.	42 Pa.C.S. § 4137(a). <u>Note:</u> Criminal contempt is a term which describes acts done in disrespect of a court or its process or which obstruct the administration of justice or bring the court into disrepute. Black's Law Dictionary (10th ed. 2014). In contrast, civil contempt consists of failing to do something the court has ordered to be done for the benefit or advantage of another party.
☐ a. Misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.	42 Pa.C.S. § 4137(a)(1). <u>Note:</u> Misbehavior in the presence of the MDJ is also referred as summary contempt. Comment to Pa.R.Crim.P. 140. Contempt outside the MDJ's

	presence is referred to as indirect contempt. <i>Id.</i>
☐ b. Failure of a person to obey lawful process in the nature of a subpoena issued by an MDJ.	42 Pa.C.S. § 4137(a)(2).
☐ c. Failure to comply with an order of an MDJ directing a defendant in a criminal proceeding to compensate the victim of the criminal conduct for the damage or injury sustained by the victim.	42 Pa.C.S. § 4137(a)(3).
☐ d. Failure to comply with an order of an MDJ directing a defendant in a criminal proceeding to pay fines and costs in accordance with an installment payment order.	42 Pa.C.S. § 4137(a)(4).
Limitation on scope. The MDJ's contempt power shall not include system or related personnel, attorneys, or law enforcement officers when performing official duties or acting as officers of the court.	42 Pa.C.S. § 4137(b).
☐ 2. Punishment for contempt. The permissible punishments for contempt vary depending on the conduct being punished.	
☐ a. § 4137(a)(1) (Misbehavior in the presence of the court): a fine of not more than \$100, or imprisonment for not more than 30 days, or both.	42 Pa.C.S. § 4137(c).
☐ b. § 4137(a)(2) (Failure to obey lawful process): a fine of not more than \$100 and the failure to pay the fine within a reasonable time could result in imprisonment for not more than 10 days.	42 Pa.C.S. § 4137(c).
☐ c. § 4137(a)(3) (Failure of criminal defendant to comply with a compensation order): a fine of not more than \$100 or imprisonment for not more than 30 days, or both.	42 Pa.C.S. § 4137(c).
☐ d. § 4137(a)(4) (Failure of a criminal defendant to pay fines or costs pursuant to an installment payment order): imprisonment for not more than 90 days.	42 Pa.C.S. § 4137(c).

C. PROCEDURE FOR A FINDING OF CONTEMPT

An MDJ has the power to issue an attachment by means of a warrant and to conduct a hearing prior to imposing punishment for contempt. 42 Pa.C.S. § 4137(d). All contempt proceedings are to be entered on the court's miscellaneous docket, and a separate docket transcript is to be prepared. Comment to Pa.R.Crim.P. 140. The procedure for conducting contempt proceedings is determined by whether the contempt occurred in or outside the presence of the court. Checklist 9-2 below sets forth the appropriate procedure for each type of contempt.

Checklist 9-2: Procedure for Contempt Finding	Authority/Notes
☐ 1. Contempt in the presence of the court (summary or direct contempt). ☐ a. Basis of summary or direct contempt finding. An MDJ may summarily hold an individual in contempt for misbehavior in the court's presence that "obstructs the administration of justice" after affording him/her an opportunity to be heard and impose punishment of a fine of not more than \$100 or imprisonment for not more than 30 days or both. ☐ b. Procedure prior to a finding: ☐ i. Warning that the person's conduct is considered contumacious so as to allow them an opportunity to conform their behavior to accepted court norms; ☐ ii. Reasonable notice of the charges; and ☐ iii. A summary opportunity to offer evidence or argument relevant to either guilt or punishment.	Pa.R.Crim.P. 140(A)(1). Comment to Pa.R.Crim.P. 140; <i>cf. Ricci v. Geary</i>, 670 A.2d 190, 193 n.1 (Pa.Super. 1996) (discussing procedural safeguards required before a summary contempt conviction in the court of common pleas). <u>Note:</u> A formal hearing may be held unless prompt action is needed to "maintain order in the courtroom and to protect the authority and dignity of the court." Comment to Pa.R.Crim.P. 140 (citing <i>Commonwealth v. Stevenson</i>, 393 A.2d 386 (Pa. 1978)). Even if immediate action is taken by the court, the alleged contemnor should

	be given an opportunity to be heard before the imposition of punishment. <i>Id.</i>
☐ c. Right to appeal. If the individual is found in contempt, the MDJ must advise the contemnor of his/her right to appeal within 30 days for a trial <i>de novo</i> in the court of common pleas.	Pa.R.Crim.P. 140(A)(2).
☐ d. Stay pending appeal/counsel/ <i>de novo</i> trial. In addition, the MDJ must advise that:	Pa.R.Crim.P. 140(A)(2).
☐ i. Any punishment will be automatically stayed for 30 days from the date of imposition;	Pa.R.Cim.P. 140(A)(2)(a).
☐ ii. If the contemnor files a timely appeal, the stay will remain in effect until disposition of the appeal;	Pa.R.Crim.P. 140(A)(2)(b).
☐ iii. If imprisonment is imposed, the contemnor has the right to assistance of counsel for the trial <i>de novo</i> and that if the individual cannot afford counsel one will be assigned as provided in Pa.R.Crim.P. 122;	Pa.R.Crim.P. 140(A)(2)(c).
☐ iv. The contemnor must appear for the trial <i>de novo</i> or the appeal may be dismissed; and	Pa.R.Crim.P. 140(A)(2)(d).
☐ v. Unless a notice of appeal is filed within 30 days, the contemnor must pay any fine imposed and appear before the MDJ for execution of any punishment of imprisonment on the date specified by the MDJ.	Pa.R.Crim.P. 140(A)(2)(e).
☐ e. Order. After making a contempt finding, the MDJ must issue a written order which shall:	
☐ i. Set forth the facts of the case constituting contempt;	Pa.R.Crim.P. 140(A)(3)(a).
☐ ii. Certify that the MDJ saw or heard the conduct constituting the contempt and	Pa.R.Crim.P. 140(A)(3)(b).

that it was committed in the actual presence of the MDJ; ☐ iii. Set forth the punishment imposed and the date on which the contemnor is to pay any fine or appear for the execution of any punishment of imprisonment; ☐ iv. Set forth the information specified in Pa.R.Crim.P. 140(A)(2) (relating to contemnor's appeal rights); and ☐ v. The contempt order must also be signed by the MDJ and a copy given to the contemnor. ☐ 2. Contempt outside the presence of the court (indirect criminal contempt). ☐ a. Institution of proceedings. If an individual is alleged to have violated any of the provisions of 42 Pa.C.S. § 4137(a)(2),(3), or (4), or failed to comply with the MDJ in any situation where the MDJ is empowered by statute to find the individual in contempt, contempt proceedings can be instituted in one of two ways: ☐ i. First, the MDJ may give written notice to the alleged contemnor specifying the time, date, and place of the contempt hearing. The notice must also: ☐ A. Specify the acts, omissions, and essential facts constituting the charged contempt; advise what the punishment may be if contempt is found; ☐ B. Advise the alleged contemnor of the right to counsel and assignment of counsel pursuant to Pa.R.Crim.P. 122 if there is a likelihood of imprisonment; and	Pa.R.Crim.P. 140(A)(3)(c). Pa.R.Crim.P. 140(A)(3)(d). Pa.R.Crim.P. 140(A)(4). Pa.R.Crim.P. 140(B)(1)(a). Pa.R.Crim.P. 140(B)(1)(a)(1). <u>Note:</u> MDJS Form 659 is the Notice of Criminal Contempt Charge form. Pa.R.Crim.P. 140(B)(1)(b). Pa.R.Crim.P. 140(B)(1)(b)(1)&(2). Pa.R.Crim.P. 140(B)(1)(b)(3).
---	--

☐ C. Advise the alleged contemnor that failure to appear at the contempt hearing may result in the issuance of a bench warrant. The notice must be either be served in person or by both first class and certified mail, return receipt requested. ☐ ii. The second way a MDJ can institute proceedings for contempts that occur outside of the presence of the court is to issue an attachment by means of a warrant, if appropriate. ☐ b. Procedural prerequisites to a contempt finding. The contempt hearing "shall be conducted in open court, and the alleged contemnor shall be given a reasonable opportunity to defend." "The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel [if there is a likelihood of imprisonment]." Contemnor must be present. The MDJ is not permitted to conduct the contempt hearing in the absence of the alleged contemnor; if he/she fails to appear for the hearing, the MDJ may continue the hearing and issue a bench warrant. ☐ c. Finding. At the hearing's conclusion, the MDJ shall announce his/her decision and, if contempt is found, impose any punishment. ☐ d. Right to appeal. If contempt is found and punishment imposed, the MDJ must advise the contemnor of his/her right to appeal within 30 days for a trial <i>de novo</i> in the court of common pleas. ☐ e. Stay pending appeal/counsel/trial <i>de novo</i>. In addition, the MDJ must advise that:	Pa.R.Crim.P. 140(B)(1)(b)(4). Pa.R.Crim.P. 140(B)(1)(c). Pa.R.Crim.P. 140(B)(1)(a)(2). Pa.R.Crim.P. 140(B)(2)(a). Comment to Pa.R.Crim.P. 140. Pa.R.Crim.P. 140(B)(2)(c). Pa.R.Crim.P. 140(B)(2)(b)(1). Pa.R.Crim.P. 140(B)(2)(b)(2). Pa.R.Crim.P. 140(B)(2)(b)(2).
--	--

☐ i. Any punishment will be automatically stayed for 30 days from the date of imposition; ☐ ii. If the contemnor files a timely appeal, the stay will remain in effect until disposition of the appeal; ☐ iii. If imprisonment is imposed, the contemnor has the right to assistance of counsel for the trial <i>de novo</i>, and that if the individual cannot afford counsel one will be assigned as provided in Pa.R.Crim.P. 122; ☐ iv. The contemnor must appear for the trial <i>de novo</i> or the appeal may be dismissed; and ☐ v. Unless a notice of appeal is filed within 30 days, the contemnor must pay any fine imposed and appear before the MDJ for execution of any punishment of imprisonment on the date specified by the MDJ.	Pa.R.Crim.P. 140(B)(2)(b)(2)(a). Pa.R.Crim.P. 140(B)(2)(b)(2)(b). Pa.R.Crim.P. 140(B)(2)(b)(2)(c). Pa.R.Crim.P. 140(B)(2)(b)(2)(d). Pa.R.Crim.P. 140(B)(2)(b)(2)(e).
☐ f. Order. If the MDJ finds contempt and imposes punishment, he/she shall issue a written contempt order setting forth: ☐ i. The facts of the case constituting contempt; ☐ ii. The punishment imposed and the date on which the contemnor is to pay any fine or appear for the execution of any punishment of imprisonment; and ☐ iii. The information specified in Pa.R.Crim.P. 140(B)(2)(b)(2) regarding stay and appeal. ☐ iv. The contempt order must also be signed by the MDJ and a copy given to the contemnor. ☐ g. Altering the original order without a finding of contempt. In situations involving an	<u>Note:</u> MDJS Form 658 is the Order of Criminal Contempt Pa.R.Crim.P. 140(B)(2)(b)(3)(a). Pa.R.Crim.P. 140(B)(2)(b)(3)(b). Pa.R.Crim.P. 140(B)(2)(b)(3)(c). Pa.R.Crim.P. 140(B)(2)(b)(4). Pa.R.Crim.P. 140(B)(2)(b)(5).

allegation that an individual failed to pay restitution or fines and costs, the MDJ may alter or amend the underlying order even if he/she does not find the individual in contempt. If the MDJ chooses to alter or amend the order he/she must: ☐ i. Issue a written order setting forth the changes and the reasons for them; ☐ ii. Make the order part of the transcript and give a copy to the defendant; and ☐ iii. Advise the defendant of his/her right to file an appeal from the amended order within 30 days as provided in Pa.R.Crim.P. 141. ☐ h. Limits on punishments. The punishment for contempt may not exceed the following limits. ☐ i. For failure to obey a subpoena, the punishment may be a fine of not more than \$100. Failure to pay this fine within a reasonable time may result in imprisonment of not more than 10 days. ☐ ii. For failure to comply with an order of the MDJ directing a defendant to pay fines and costs pursuant to an installment payment order, punishment may be imprisonment for not more than 90 days. ☐ iii. For failure to comply with an order of the MDJ directing a defendant to compensate a victim, punishment may be a fine of not more than \$100 or imprisonment for not more than 30 days or both. ☐ 3. Appeal and stay. ☐ a. Appeal.	Pa.R.Crim.P. 140(B)(2)(b)(5). Pa.R.Crim.P. 140(B)(2)(b)(5)(a). Pa.R.Crim.P. 140(B)(2)(b)(5)(a). Pa.R.Crim.P. 140(B)(2)(b)(5)(b). Pa.R.Crim.P. 140(B)(3). Pa.R.Crim.P. 140(B)(3)(a). Pa.R.Crim.P. 140(B)(3)(b). Pa.R.Crim.P. 140(B)(3)(a).
---	---

☐ i. Time and place for filing the notice of appeal. A contemnor has 30 days from the MDJ's action on a contempt proceeding to file a notice of appeal with the clerk of courts for a trial <i>de novo</i> in the court of common pleas. ☐ ii. Contents of the notice of appeal. The notice of appeal must contain: name and address of appellant; name and address of the MDJ who heard the case; the magisterial district number; date of imposition of punishment; punishment imposed; type or amount of bail furnished, if any; and the name and address of the attorney, if any, filing the notice of appeal. ☐ iii. Duties of the MDJ. Within 5 days of the filing of the notice of appeal, the clerk of courts shall serve a copy, either personally or by mail, on the MDJ. The MDJ then has 20 days to file the transcript, the notice of hearing or copy of the attachment, the contempt order, and any bench warrant with the clerk of courts. ☐ iv. <i>De novo</i> trial. Once the MDJ files the transcript and other papers related to the appeal, the matter will be heard <i>de novo</i> by the court of common pleas. ☐ A. Due process. On appeal, the accused has the right to be notified of the accusation and reasonable time to make a defense, but there is no right to a jury trial. ☐ B. Counsel. The defendant has the right to counsel at the <i>de novo</i> hearing if imprisonment is imposed.	Pa.R.Crim.P. 141(A). Pa.R.Crim.P. 141(C)(1)-(7). Pa.R.Crim.P. 141(D). Pa.R.Crim.P. 141(E)(1)-(4). Pa.R.Crim.P. 141(F). 42 Pa.C.S. § 4137(d). <i>See, e.g., Alabama v. Shelton</i>, 535 U.S. 654 (2002) (stating that defendant has a right to counsel in any prosecution that leads to imprisonment).
---	--

☐ C. Punishment. If the common pleas court judge finds contempt and imposes punishment, the matter will remain in that court for execution of punishment, including the collection of fines and costs.	Pa.R.Crim.P. 141(F)(1).
☐ D. Failure to appear. If the defendant does not appear for the trial <i>de novo</i>, the court of common pleas may dismiss the appeal and enter judgment on the MDJ's contempt judgment.	Pa.R.Crim.P. 141(F)(2).
☐ E. Withdrawal of appeal. If the defendant withdraws the appeal, the common pleas court judge may dismiss it and enter judgment on the MDJ's contempt judgment.	Pa.R.Crim.P. 141(F)(3).
☐ b. Stay. Any punishment imposed by a MDJ shall be automatically stayed for a period of 30 days from the date of imposition and, if an appeal is filed during this time period, the stay will remain in effect pending disposition of the appeal.	Pa.R.Crim.P. 141(B).
☐ 4. Bail as a condition of release. An MDJ may not impose bail as a condition of release of any person accused of contempt specified in § 4137(a)(1), (a)(2), or (a)(3) during the period that punishment is stayed during appeal. An MDJ may, however, impose bail as a condition of release of any person who has committed contempt under § 4137(a)(4) and (a)(5).	42 Pa.C.S. § 4137(e).

D. PROCEDURE FOR DEFAULTS IN PAYMENT OF FINES IMPOSED AS PUNISHMENT FOR CONTEMPT

Checklist 9-3: Default Procedure	Authority/Notes
☐ 1. Notice of default. If a contemnor defaults on a fine imposed as a punishment for contempt, the MDJ shall notify the contemnor in person or by first class mail that within 10 days from the date of default the contemnor must either pay the amount due or appear before the MDJ to explain why he/she should not be imprisoned for	Pa.R.Crim.P. 142(A).

nonpayment, or else a bench warrant for the contemnor's arrest shall be issued. ☐ 2. Hearing. Once the contemnor appears, either in response to the notice to appear and explain or following arrest pursuant to a warrant, the MDJ shall conduct a hearing to determine if the contemnor is financially able to pay. ☐ 3. Bail. If the default hearing cannot be held immediately, the MDJ can set bail pursuant to Pa.R.Crim.P. 520 (see Checklist 5-5 of Section V). ☐ 4. Punishment. If the MDJ determines that the contemnor is able to pay, he/she may impose imprisonment as provided by law. If the MDJ determines that the contemnor is unable to pay, he/she may order a schedule of installment payments. ☐ 5. Appeal. The contemnor may appeal the MDJ's determination within 30 days and the appeal will proceed in the same manner as the appeals made pursuant to Pa.R.Crim.P. 141 described in section (C) (Checklist 9-2(3)) above.	Pa.R.Crim.P. 142(B). Comment to Pa.R.Crim.P. 142. Pa.R.Crim.P. 142(B)(1); See 42 Pa.C.S. § 4137(a)(4) (violation for installment plan for paying a fine, a violation which is punishable by a term of imprisonment of up to 90 days). Pa.R.Crim.P. 142(B)(2). Pa.R.Crim.P. 142(C).
--	---

X. EVIDENCE

A. INTRODUCTION

The law of evidence is governed by the United States and Pennsylvania constitutions as well as the Pennsylvania Rules of Evidence, procedural rules, and statutes. Comment to Pa.R.E. 101. The Rules of Evidence determine what information a court may or may not consider when rendering its decision, and they "govern proceedings in all courts in the Commonwealth of Pennsylvania's unified judicial system, except as otherwise provided by law." Pa.R.E. 101(a). The Rules of Evidence are to be interpreted in such a way as to secure fairness in administration, eliminate unjustifiable expense and delay, and promote the development of the law of evidence to the end of ascertaining the truth and securing a just determination. Pa.R.E. 102.

The law of evidence is somewhat relaxed with regard to proceedings like preliminary hearings, bail hearings, extradition hearings, etc. Comment to Pa.R.E. 101. As a consequence, some evidentiary rules may not apply, or may not apply with equal force, in proceedings before MDJs as they would in jury trials in the court of common pleas. For the sake of completeness, this section contains provisions that may have little or no application to MDJ proceedings. These provisions are noted for the reader when they are discussed.

B. GENERAL EVIDENTIARY PRINCIPLES

The basic means by which one party seeks to prevent another party from putting evidence before the court is by making an objection. When an objection is made, the court must make a ruling on the evidence's admissibility. Checklist 10-1 discusses the general evidentiary principles surrounding the procedure for determining the admissibility of evidence.

Checklist 10-1: General Evidentiary Principles	Authority/Notes
☐ 1. Rulings on evidence.	Pa.R.E. 103.
☐ a. Preserving a claim of error.	Pa.R.E. 103(a).

☐ i. Objection. If the ruling is one admitting evidence, a timely objection is made on the record, stating the specific grounds of the objection, if the specific ground was not apparent from the context of the objection; or ☐ ii. Offer of proof. If a ruling excludes evidence, the substance of the evidence excluded is made known to the court by offer or was apparent from the context of the objection. ☐ iii. Renewal not required. Once the court rules on objection or offer on the record, the party need not renew it to preserve the claim. ☐ b. Record of the offer and ruling. The MDJ may add any other or additional statement showing the character of the evidence, the form in which it was offered, the objection made and the ruling. The MDJ can also direct that the offer of proof be made in question-and-answer format. ☐ c. Decision. If the MDJ agrees with the objection it is sustained. If the MDJ disagrees with the objection it is said to be overruled. See the Table of Objections (at the end of this section) for a representative list of objections. ☐ 2. Preliminary questions. ☐ a. Admissibility questions in general. Preliminary questions as to the qualifications of a potential witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court. In making this determination, the court is not bound by the rules of evidence (except those with respect to privileges), but may consider any relevant evidence, including the allegedly inadmissible evidence itself.	Pa.R.E. 103(a)(1). <u>Note:</u> Rule 103 pertains to what a party must do to preserve an evidentiary issue for appeal. For a discussion of what constitutes the "record" in an MDJ court see Checklist 6-1 (Civil) or Checklist 3-1(7) (Criminal). Pa.R.E. 103(a)(2). Pa.R.E. 103(b). Pa.R.E. 103(c). <u>Note:</u> For a discussion of what constitutes the "record" see Checklist 6-1 (Civil) or Checklist 3-1(7) (Criminal). Pa.R.E. 104. Pa.R.E. 104(a). Pa.R.E. 104(a); Comment to Pa.R.E. 104.
---	---

☐ b. Relevancy of evidence conditioned on fact. When the relevancy of evidence (see Checklist 10-2(1)) depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of sufficient evidence to support a finding that the condition has been fulfilled. ☐ c. Testimony of the defendant on a preliminary question. The mere fact that the defendant testifies on a preliminary evidentiary question does not make him/her subject to cross-examination as to other issues in the case. ☐ d. Weight and credibility. Although the court has ruled evidence admissible, a party may still offer evidence relevant to its weight or credibility.	Pa.R.E. 104(b). Pa.R.E. 104(d). Pa.R.E. 104(e). <u>Note:</u> The credibility of witnesses, however, is not at issue in a preliminary hearing. <i>Liciaga v. CCP of Lehigh County</i>, 566 A.2d 246, 248 (Pa. 1989) (MDJ precluded from considering credibility of a witness at a preliminary hearing); <i>Commonwealth v. Fox</i>, 619 A.2d 327, 332 (Pa. Super. 1993) (MDJ may limit cross-examination at preliminary hearing regarding credibility).
☐ 3. Limited admissibility. When evidence is admitted against one party or for one purpose but is not admissible as to another party or for another purpose, the court, upon motion or on its own, may restrict the evidence to its proper scope.	Pa.R.E. 105. <u>Note:</u> This rule would likely be inapplicable in the MDJ context; it appears geared toward the jury trial context.
☐ 4. Remainder of related writings or recorded statements. When a writing or a recorded statement, or a part thereof, is introduced by one party, an adverse party may require the introduction at that time of any other part or any other writing which should, in fairness, be considered along with it.	Pa.R.E. 106.
☐ 5. Judicial notice. ☐ a. Definition. "A court may take judicial notice of an indisputable adjudicative fact. A fact is	<i>Kinley v. Bierly</i>, 876 A.2d 419, 421 (Pa. Super. 2005), (quoting <i>Interest of D.S.</i>, 622 A.2d 954, 957 (Pa.

indisputable if it is so well established as to be a matter of common knowledge." "Judicial notice is intended to avoid the formal introduction of evidence in limited circumstances where the fact sought to be proved is so well known that evidence in support thereof is unnecessary." ☐ b. Scope. Judicial notice may only be taken of adjudicative facts. Rule 201 does not apply to judicial notice of the law. Judicial notice of the law is regulated by statute, case law, and rule. ☐ c. Facts subject to judicial notice. A judicially noticed fact shall be one that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the court or is capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned. ☐ d. When judicial notice is at the court's discretion. A court may take judicial notice, whether requested to do so or not. ☐ e. When judicial notice is mandatory. The court shall take judicial notice if requested by a party and supplied with the necessary information. ☐ i. Contents of Pa. Code and Pa. Bulletin. The contents of the Pa. Code and Bulletin shall be judicially noted. ☐ f. Opportunity to be heard. A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter being noticed.	Super. 1993)); <i>see also Commonwealth v. Brown</i>, 839 A.2d 433 (Pa. Super. 2003). <i>Kinley v. Bierly</i>, 876 A.2d 419, 421 (Pa. Super. 2005), (citing 220 <i>Partnership v. Phila. Electric Co.</i>, 650 A.2d 1094 (Pa. Super. 1994)). Pa.R.E. 201(a). <u>Note:</u> Adjudicative facts are facts about the events, persons, places, or other subjects relevant to the matter before the court. Comment to Pa.R.E. 201 citing 1 West's Pa. Prac., Evidence §§ 201-1, 201-2 (4th ed. 2021). Comment to Pa.R.E. 201. <u>Note:</u> See e.g., Pa.R.Civ.P.M.D.J. 242 (Citation to Authorities). Pa.R.E. 201(b). Pa.R.E. 201(c). Pa.R.E. 201(d). 45 Pa.C.S. § 506. Pa.R.E. 201(e). <u>Note:</u> There is no formal procedure for taking judicial notice. Comment to Pa.R.E. 201.
---	--

Absent prior notification, the request may be made after judicial notice has been taken. ☐ g. Time of taking judicial notice. Judicial notice may be taken at any stage of the proceedings. ☐ 6. Presumptions. Presumptions are not actually evidence but are rules governing the effect to be given certain evidence. "A presumption is a judicial declaration that the establishment of one fact (The Basic Fact) requires the assumption of the existence of a second fact (The Presumed Fact)." The Pennsylvania Rules of Evidence make clear that they are not intended to affect any presumptions. As a consequence, whether a particular presumption applies is governed by the law of the specific subject matter before the court.	Pa.R.E. 201(d). 1 West's Pa.Prac., Evidence (Packel & Poulin) § 326 (4th ed.), (citing <i>Waters v. New Amsterdam Cas. Co.</i>, 144 A.2d 354 (Pa. 1958)). <i>Waters v. New Amsterdam Cas. Co.</i>, 144 A.2d 354, 356 (Pa. 1958). Pa.R.E. 301.
--	---

C. RELEVANCY

The first test of whether evidence is admissible is whether it is relevant. Evidence that is not relevant is not admissible. Evidence that is relevant may be admissible if not objectionable on other grounds. Checklist 10-2 below discusses relevance as a basis for admission or exclusion of evidence.

Checklist 10-2: Relevancy and its Limits	Authority/Notes
☐ 1. Relevant evidence defined. Relevant evidence is evidence with any tendency to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. Whether evidence has a tendency to make a fact more or less probable is to be determined by the MDJ in light of reason, experience, scientific principles, and other testimony offered in the matter. Conditional relevance. As discussed in Checklist 10-1(2)(b), the relevance of evidence may be conditional or dependent upon facts not yet of record and may be admitted subject to the introduction of additional	Pa.R.E. 401. Comment to Pa.R.E. 401. Pa.R.E. 104(b); Comment to Pa.R.E. 401.

evidence demonstrating that all conditions necessary to a finding of relevance have been met. ☐ 2. Admissibility: generally. All relevant evident evidence is admissible (except as otherwise provided by law) and evidence that is not relevant is not admissible. ☐ 3. Prejudice, confusion, or waste of time. Relevant evidence may nonetheless be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or if admitting it would create undue delay, waste time or result in unnecessary repetition of cumulative evidence. "Probative value" refers to evidence's tendency to prove an issue. Concerns about unfairly prejudicial evidence are greater in jury trials than non-jury trials as it is presumed that a judge can disregard improper evidence. ☐ 4. Character evidence. ☐ a. Generally. Evidence of a person's character or a character trait is not admissible for the purpose of proving the person acted in conformity with that character or character trait on a specific occasion, except: ☐ i. Defendant's character. In criminal cases, a defendant can offer evidence of a pertinent character trait and if admitted the prosecution may offer evidence to rebut it. ☐ ii. Alleged victim's character. ☐ A. Criminal cases. Subject to the limitations of statute, a defendant may offer evidence of an alleged victim's pertinent character trait and if the evidence is admitted the	Pa.R.E. 402. <u>Note:</u> The exceptions to the general rule of admissibility of relevant evidence are products of constitutional law, statutes, case law, the Rules of Evidence or other rules of court. Comment to Pa.R.E. 402. Pa.R.E. 403. <u>Note:</u> Concerns related to misleading the jury obviously are not a concern for MDJs. BLACK'S LAW DICTIONARY (10th ed. 2014). <i>Commonwealth v. O'Brien</i>, 836 A.2d 966, 972 (Pa. Super. 2003), <i>appeal denied</i>, 845 A.2d 817 (Pa. 2004). Pa.R.E. 404(a). <u>Note:</u> For a discussion of what constitutes the "record," see Checklist 6-1 (Civil) or Checklist 3-1(7) (Criminal). Pa.R.E. 404(a)(2)(A). Pa.R.E. 404(a)(2)(B). <u>Note:</u> An example of a statutory limitation is the Rape Shield statute, 18 Pa.C.S. § 3104.
---	---

prosecution may offer evidence to rebut it and offer evidence of the defendant's same trait.	
☐ B. Homicide cases. Where the defendant has offered evidence that the deceased was the first aggressor, evidence of a character trait of the deceased for peacefulness is admissible when offered to rebut the defendant's offer.	Pa.R.E. 404(a)(2)(C).
☐ C. Civil action for assault and battery. Evidence of a plaintiff's character for violence is admissible when offered by the defendant to rebut evidence that the defendant was the first aggressor.	Pa.R.E. 404(a)(4).
☐ iii. Witness's character. Evidence of a pertinent character trait of a witness may be admissible pursuant to Pa.R.E. 607 (impeachment), 608 (character and conduct of witness), and 609 (evidence of criminal conviction).	Pa.R.E. 404(a)(3).
☐ b. Evidence of other crimes, wrongs, or acts.	
☐ i. Not admissible to show conformity to character. Evidence of crimes, wrongs, or acts is not admissible to prove the character of the person in order to show that he/she acted in conformity with that character.	Pa.R.E. 404(b)(1).
☐ ii. Admissible for other purposes. Evidence of other crimes, wrongs, or acts may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, preparation, knowledge, identity, or absence of mistake or accident.	Pa.R.E. 404(b)(2).
☐ A. Criminal cases. Evidence offered pursuant to Pa.R.E.	Pa.R.E. 404(b)(2).

404(b)(2) may be admitted in a criminal case only if its probative value outweighs its potential for prejudice. ☐ B. Reasonable notice. In criminal cases, the prosecution shall provide reasonable written notice prior to trial (or during trial if the court excuses pretrial notice based on good cause shown) of the specific nature, permitted use, and reasoning for the use of any such evidence it intends to introduce at trial so that the defendant has a fair opportunity to meet it. ☐ 5. Methods of proving character. ☐ a. Reputation. Where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation. On cross-examination of the reputation witness, inquiry may be made into specific instances of conduct that are probative of the character trait in question. In a criminal case, however, no inquiry may be made into allegations of other criminal misconduct by the defendant that did not result in a conviction. ☐ b. Specific instances of conduct. Specific instances of conduct are not admissible to prove character or a character trait, except: ☐ i. In civil cases, where character or a character trait is admissible as an element of a claim or defense, character may be proved by specific instances of conduct; or ☐ ii. In criminal cases, where character or a character trait is admissible under Pa.R.E. 404(a)(2)(B) (see Checklist 10-2(4)(a)(ii)), the defendant may prove the complainant's character or a character trait by specific instances of conduct.	Pa.R.E. 404(b)(3). Pa.R.E. 405(a) <u>Note:</u> Character may not be proven by opinion evidence. Comment to Pa.R.E. 405. Pa.R.E. 405(b). Pa.R.E. 405(b)(1). Pa.R.E. 405(b)(2).
--	--

☐ 6. Habit or routine practice. Evidence of a person or organization's routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that the person or organization's conduct on a particular occasion was in conformity with that habit or routine practice.	Pa.R.E. 406.
☐ 7. Subsequent remedial measures. If, following an injury/harm, measures are taken which, if taken previously would have made the injury/harm less likely to occur, evidence of such subsequent remedial measures is not admissible to prove: negligence; culpable conduct; a defect in the product or its design. Or a need for a warning or instruction. Subsequent remedial measures may be inquired into for impeachment purposes or to prove other disputed matters, such as ownership, control, or feasibility of precautionary measures.	Pa.R.E. 407.
☐ 8. Compromise and offers to compromise. Evidence of furnishing, promising, or offering (or accepting, promising to accept, or offering to accept) valuable consideration in compromising or attempting to compromise the claim as well as evidence of conduct or statements made during the course of compromise negotiations is not admissible. This rule does not require exclusion of evidence that is offered for another purpose such as proving bias or prejudice of a witness, refuting a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.	Pa.R.E. 408(a). <u>Note:</u> The term compromise in this context refers to a settlement of a claim by mutual agreement of the parties. Pa.R.E. 408(b).
☐ 9. Payment of medical and similar expenses. Evidence of providing, offering or promising to pay medical, hospital, or like expenses caused by an injury is not admissible to prove liability for the injury.	Pa.R.E. 409.
☐ 10. Pleas, plea discussions, and related statements. ☐ a. Generally. Except as provided in 10-2(10)(b) below, evidence of the following is not admissible in any civil or criminal proceeding against the person who made the plea or participated in the plea discussions: ☐ i. A guilty plea that was subsequently withdrawn;	Pa.R.E. 410(a). Pa.R.E. 410(a)(1).

☐ ii. A plea of <i>nolo contendere</i>; ☐ iii. Any statement made during the course of any proceedings under Pa.R.Crim.P. 311 (ARD application), 313 (ARD hearing), 409 (summary plea where citation issued to defendant), 414 (summary plea where citation is filed), 424 (summary plea where complaint is filed) or 590 (court case plea), or Federal Rule of Criminal Procedure 11 (pleas), or similar rule of any other jurisdiction; or ☐ iv. Any statement made during the course of plea discussions with an attorney for the prosecution that does not result in a guilty plea, or results in a guilty plea which is later withdrawn. ☐ b. Exceptions. A statement made in the course of a plea, proceedings, or discussions identified in 10-2(10)(a)(iii)&(iv) above is admissible in: ☐ i. Any proceeding where another statement made during the course of the same plea or plea discussions has been introduced and the statement should in fairness be considered together with it; or ☐ ii. A criminal proceeding for perjury, false swearing or unsworn falsifications to authorities if the statement was made by the defendant under oath and in the presence of counsel. ☐ c. Pleas in motor vehicle cases. ☐ i. General rule. A plea of guilty or <i>nolo contendere</i>, or payment of fines or costs associated with such a plea made in any summary motor vehicle proceeding shall not be admissible as evidence in any civil matter arising out of the same violation or under the same facts or circumstances.	Pa.R.E. 410(a)(2). Pa.R.E. 410(a)(3). Pa.R.E. 410(a)(4). Pa.R.E. 410(b). Pa.R.E. 410(b)(1). Pa.R.E. 410(b)(2). 42 Pa.C.S. § 6142(a).
--	---

☐ ii. Exception. The exclusion set forth in 10-2(10)(c)(i) above shall not apply to administrative or judicial proceedings involving the suspension of motor vehicle/tractor operating privileges, or the suspension of a certificate of appointment as an official inspection station, or the suspension of a motor vehicle, tractor, or trailer registration.	42 Pa.C.S. § 6142(b).
☐ 11. Liability insurance. Evidence that a person was or was not insured against liability is not admissible on the issue of whether or not that person acted negligently or wrongfully. Such evidence may be offered for other purposes such as proof of agency, ownership, or control, or bias or prejudice of a witness.	Pa.R.E. 411.
☐ 12. Evidence of immigration status.	Pa.R.E. 413.
☐ a. Criminal or delinquency matters. Evidence of a party or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the offense, to show motive, or bias or prejudice of a witness. This provision shall not be construed to exclude evidence that would result in the violation of a defendant's or a juvenile's constitutional rights.	Pa.R.E. 413(a).
☐ b. Civil matters. Evidence of a party or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the action, or to show bias or prejudice of a witness.	Pa.R.E. 413(b).
☐ c. Procedure. Unless a party did not know, and with due diligence could not have known, that evidence of immigration status would be necessary, the following procedure shall apply prior to any such proposed use of immigration status evidence: ☐ i. The proponent shall file under seal and serve a written pretrial motion containing an offer of proof of the relevancy of the proposed evidence supported by an affidavit.	Pa.R.E. 413(c).

☐ ii. If the court finds the offer of proof is sufficient, it shall order an in camera hearing. ☐ iii. The court may admit evidence of immigration status pursuant to paragraph (a) or paragraph (b) if it finds the evidence is reliable and relevant, and that its probative value outweighs the prejudicial nature of evidence of immigration status. ☐ d. Voluntary revelation. Rule 413 does not prohibit a person, or the person's attorney, from voluntarily revealing his or her immigration status to the court.	Pa.R.E. 413(d).
---	-----------------

D. PRIVILEGES

Privileged communications are statements made by persons within a relationship (i.e., spousal, attorney-client, etc.) which the law protects from forced disclosure at the option of the witness, spouse, etc. BLACK'S LAW DICTIONARY (10th ed. 2014). Evidentiary privileges are generally disfavored and "[t]hus, courts should accept testimonial privileges 'only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.'" *Commonwealth v. Stewart*, 690 A.2d 195, 197 (Pa. 1997) (quoting *Trammel v. United States*, 445 U.S. 40, 46 (1980)).

Once the party asserting a privilege demonstrates that it applies, the burden shifts to the party seeking disclosure to show either that privilege has been waived or that the information sought will not violate the privilege. 1 West's Pennsylvania Practice, *Evidence* (Packel & Poulin) (4th ed.), § 501-1. Privileges are created by statute or case law, not by the Rules of Evidence. Pa.R.E. 501. Checklist 10-3 below contains a list of common privileges. This list, however, is not exhaustive.

Checklist 10-3: Privileges	Authority/Notes
☐ 1. Attorney-client. In a criminal or civil proceeding, counsel shall not be competent or permitted to testify to confidential communications made to him/her by his/her	42 Pa.C.S. § 5916 (criminal); 42 Pa.C.S. § 5928 (civil).

client, nor shall the client be compelled to disclose the same, unless in either case this privilege is waived by the client. ☐ 2. Husband-wife (spousal). ☐ a. Criminal proceedings. ☐ i. Spouses as witnesses. Generally, a person has a privilege, which may be waived, not to testify against his/her then-lawful spouse, except there is no privilege: ☐ A. In proceedings for desertion or maintenance; ☐ B. In any criminal proceeding against either spouse for bodily injury or violence attempted, done, or threatened upon the other spouse, or their minor children, or any of either one of them, or any minor children in their care or custody or the care and custody of either one of them; ☐ C. Applicable to proof of the fact of marriage, in support of a criminal charge of bigamy; or ☐ D. In any criminal proceeding in which one of the charges against the defendant includes murder, involuntary deviate sexual intercourse, or rape. ☐ ii. Confidential communications. In a criminal proceeding neither husband nor wife shall be competent or permitted to testify to confidential communications made by one to the other, unless this privilege is waived at trial.	42 Pa.C.S. §§ 5913. 42 Pa.C.S. § 5913(1). 42 Pa.C.S. § 5913(2). 42 Pa.C.S. § 5913(3). 42 Pa.C.S. § 5913(4). 42 Pa.C.S. § 5914.
--	--

☐ iii. Rebuttal testimony by spouse. In any criminal proceeding brought against the husband or wife, if the defendant bases his/her defense at trial upon any ground which attacks the character or conduct of his/her spouse, the spouse attacked shall be a competent witness in rebuttal for the Commonwealth.	42 Pa.C.S. § 5915.
☐ b. Civil proceedings.	
☐ i. Spouses as witnesses. Neither husband nor wife shall be competent or permitted to testify against each other except in the following actions/proceedings: ☐ A. For divorce, including ancillary proceedings for the partition or division of property; ☐ B. For support or relating to the protection or recovery of marital or separate property; ☐ C. For custody or care of children, including actions or proceedings relating to visitation rights and similar matters; ☐ D. Arising under 23 Pa.C.S. Ch. 61 (protection from abuse); and ☐ E. When a statute applicable to the action or proceeding provides either expressly or by necessary implication that spouses may testify against each other.	42 Pa.C.S. § 5924(a). <u>Note:</u> Several of the following exceptions would not apply to proceedings before MDJs; they are presented here for informational purposes only. 42 Pa.C.S. § 5924(b)(1). 42 Pa.C.S. § 5924(b)(2). 42 Pa.C.S. § 5924(b)(3). 42 Pa.C.S. § 5924(b)(4). 42 Pa.C.S. § 5924(b)(5).
☐ ii. Confidential communications. Neither husband nor wife shall be competent or permitted to testify to confidential communications made by one to the other, unless this privilege is waived at trial.	42 Pa.C.S. § 5923.

□ iii. Rebuttal testimony by spouse. In a civil action against a married person, if the defendant bases his/her defense at the trial upon any ground which attacks the character or conduct of the spouse, the spouse shall be a competent witness in rebuttal for the plaintiff.	42 Pa.C.S. § 5925.
□ iv. Testimony after attack on credibility. In all civil actions brought by either the husband or wife, either the husband or the wife shall be a competent rebuttal witness when his/her character or conduct is attacked upon the trial thereof, but only in regard to the matter of his/her character or conduct.	42 Pa.C.S. § 5926.
□ v. Actions to recover separate property. In an action brought by either the husband or wife to protect and recover the separate property of either, both shall be fully competent witnesses, except that neither may testify to confidential communications made by one or the other, unless the privilege is waived at trial.	42 Pa.C.S. § 5927.
□ 3. Physician-patient privilege. In any civil matter, a physician shall not disclose any information which he/she acquired in treating the patient in a professional capacity, and which was necessary to enable him/her to act in that capacity, which shall tend to blacken the character of the patient, without the patient's consent. An exception to this rule exists in civil matters brought by the patient, for damages on account of personal injuries.	42 Pa.C.S. § 5929.
□ 4. Psychiatrist/psychologist-patient privilege. No psychiatrist or person who has been licensed under 63 P.S. § 1201 <i>et seq.</i> to practice psychology shall be, without the written consent of his/her client, examined in any civil or criminal matter as to any information acquired in the course of his/her professional services on behalf of such client. The confidential relations and communications between a psychologist or psychiatrist and client shall be on the same basis as the attorney-client privilege.	42 Pa.C.S. § 5944.

☐ 5. Clergy privilege. No clergyman, priest, rabbi, or minister of the gospel of any regularly established church or religious organization (except clergymen or ministers who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers) who, while in the course of his/her duties, acquires information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial, or investigation before any government unit.	42 Pa.C.S. § 5943.
☐ 6. Confidential communications to school personnel. A guidance counselor, school nurse, school psychologist, or home and school visitor in the public, private, or parochial schools or other educational institutions providing elementary or secondary education, including any clerical worker of such schools and institutions, who, while in the course of his/her professional or clerical duties has acquired information from a student in confidence, shall not be compelled or allowed to disclose such information in any legal proceeding, trial or investigation before any government unit without the consent of the student, if the student is 18 years of age or over, or without the consent of his parent or guardian, if the student is under the age of 18 years. Exception. Notwithstanding the foregoing provision, no such person shall be excused or prevented from complying with 23 Pa.C.S. Ch. 63 (relating to the Child Protective Services law).	42 Pa.C.S. § 5945(a)(1)-(2). 42 Pa.C.S. § 5945(b).
☐ 7. Sexual assault counselors. ☐ a. Counselor or interpreter. No sexual assault counselor or an interpreter translating the communication between the counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding. ☐ b. Co-participant. No co-participant who is present during counseling may disclose a victim's confidential communication made	42 Pa.C.S. § 5945.1(b)(1). 42 Pa.C.S. § 5945.1(b)(2).

during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim.	<u>Note:</u> "Co-participant" is defined as "a victim participating in group counseling." 42 Pa.C.S. §5945.1(a).
☐ 8. Communications to news reporters. ☐ a. Generally. No person engaged by, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing, or publishing news, shall be required to disclose the source of any information procured or obtained by them in any legal proceeding, trial, or investigation before any government unit. ☐ b. Exception. The general rule set forth above as it relates to radio or television stations shall not apply unless the radio or television station maintains and keeps open for inspection, for a period of at least one year from the date of the actual broadcast or telecast, an exact recording, transcription, film, or certified written transcript of the actual broadcast or telecast.	42 Pa.C.S. § 5942(a). 42 Pa.C.S. § 5942(b).
☐ 9. Domestic violence counselor/advocate confidentiality. Unless a victim waives the privilege in a signed writing prior to testimony/disclosure, a domestic violence counselor/advocate or a co-participant who is present during domestic violence counseling/advocacy shall not be competent nor permitted to testify or to otherwise disclose confidential communications made to or by the counselor/advocate by or to a victim. The privilege terminates upon the victim's death. The domestic violence counselor/advocate for the victim does not waive the privilege by reporting facts of physical or sexual assault under Chapter 63 (relating to the Child Protective Services law), a federal or state mandatory reporting statute or a local mandatory reporting ordinance.	23 Pa.C.S. § 6116. <u>Note:</u> "Co-participant" is defined as "a victim participating in group counseling." 42 Pa.C.S. §5945.1(a); 23 Pa.C.S. § 102(b). 23 Pa.C.S. § 6116.
☐ 10. Critical incident stress management team member/peer support member. A critical incident stress management team member or peer support	42 Pa.C.S. §§ 5950(a); 5951(a); and 5952(a).

member who acquires information, while in the course of duty, from any law enforcement officer, public safety responder, or corrections officer in confidence, may not be compelled or allowed, without consent of the law enforcement officer, public safety responder, or corrections officer, to disclose that information in a legal proceeding, trial or investigation before any governmental unit. Exceptions. The foregoing privilege shall not apply if: (1) the communication indicates a clear and present danger to person receiving the critical incident stress management or peer support services or other individuals; (2) the person who received the services gives express consent to the disclosure; or (3) the person who received the services is deceased and the surviving spouse or executor or administrator of the estate gives express consent to the disclosure. ❑ 11. Interpreters. An interpreter cannot be compelled to testify as to any statement made by a person with limited English proficiency or a person who is deaf or hard of hearing interpreted by the interpreter when the speaker is engaged in a confidential communication as provided by statute or general rule.	<u>Note:</u> A "critical incident stress management team member" is an individual specially trained to provide critical incident stress management services as a member of a police agency or critical incident stress management team that holds membership in the Commonwealth's critical incident stress management network. 42 Pa.C.S. §§ 5950(d) & 5951(d). 42 Pa.C.S. §§ 5950(c); 5951(c); & 5952(c). 42 Pa.C.S. §§ 4415 & 4436; <i>See also</i> Checklist 11-4(7).
---	--

E. WITNESSES

Witnesses are an important means by which evidence is brought into a trial or hearing. A preliminary concern regarding witnesses is whether they are competent--that is, legally fit and qualified--to testify. In addition, there are proper and improper means by which a witness's credibility may be attacked or supported. Finally, the Rules prescribe a proper procedure for handling of witnesses during court proceedings. This section examines each of these subject areas.

1. Competency of Witnesses

Before a witness is permitted to testify, the MDJ should determine whether he/she is competent to testify. Generally, every person is competent to be a witness unless prevented by statute or the Rules of

Evidence. Pa.R.E. 601(a). Checklist 10-4 examines the statutory and rule-based provisions that would bar a person from testifying.

Checklist 10-4: Competency	Authority/Notes
☐ 1. Disqualification by specific defects. A person is incompetent to testify if the court finds that because of a mental condition or immaturity the person: ☐ a. Is, or was at any relevant time, incapable of perceiving accurately; ☐ b. Is unable to express him/herself so as to be understood either directly or through an interpreter; ☐ c. Has an impaired memory; or ☐ d. Does not sufficiently understand the duty to tell the truth. Standard and burden of proof. Application of the standards of Pa.R.E. 601(b) is a preliminary factual question to be determined by the court pursuant to Pa.R.E. 104 (see Checklist 10-1(2) above). The party challenging competency has the burden of proving incompetency by clear and convincing evidence. ☐ 2. Disqualification due to privilege. The existence of a statutory privilege may also render a person incompetent to testify. Privileges are discussed in Checklist 10-3 above. ☐ 3. Lack of personal knowledge. A witness cannot testify about a matter unless sufficient evidence is introduced to support a finding that he/she has personal knowledge of the matter. Evidence of personal knowledge may, but does not have to, consist of the witness's own testimony. Expert witnesses are subject to additional requirements set forth in Pa.R.E. 703 (see Checklist 10-7(3) below).	Pa.R.E. 601(b). Pa.R.E. 601(b)(1). Pa.R.E. 601(b)(2). Pa.R.E. 601(b)(3). Pa.R.E. 601(b)(4). Comment to Pa.R.E. 601. Comment to Pa.R.E. 601 (citing <i>Commonwealth v. Delbridge</i>, 855 A.2d 27, 40 (Pa. 2003)). Pa.R.E. 601(a). Pa.R.E. 602.

Burden of proof. The party calling the witness has the burden of proving that the witness has personal knowledge. ☐ 4. Competency of a judge as a witness. The MDJ presiding at a trial or other proceeding may not testify as a witness at that same trial or proceeding. ☐ 5. Qualification of a child witness. ☐ a. Competency inquiry. A child's competency to testify is a threshold question. Competency is presumed where a child is 14 years or older; for younger children, the MDJ must conduct an inquiry-also known as a <i>voir dire</i>- to determine whether the child possesses: ☐ i. The capacity to communicate, including the ability to understand questions and frame and express intelligent answers; ☐ ii. The mental capacity to observe the occurrence and the capacity to remember what it is the witness is being called to testify about; and ☐ iii. A consciousness of the duty to speak the truth. Thoroughness of the inquiry. The inquiry into the child's mental capacity should be more searching in proportion to the child's chronological immaturity. Other criteria. The MDJ may consider criteria in addition to the answers to the <i>voir dire</i> questions such as the child's demeanor, alertness, thoughtfulness, sincerity, and general responses and testimony.	Comment to Pa.R.E. 602. Pa.R.E. 605. <i>Commonwealth v. Dowling</i>, 883 A.2d 570, 576 (Pa. 2005). <i>Rosche v. McCoy</i>, 156 A.2d 307, 310 (Pa. 1959). <u>Note:</u> The inquiry itself may be handled by counsel; however, the MDJ should ensure that sufficient questions are asked to allow him/her to make an informed competency determination. <i>Rosche v. McCoy</i>, 156 A.2d 307, 310 (Pa. 1959). <i>Rosche v. McCoy</i>, 156 A.2d 307, 310 (Pa. 1959). <i>Rosche v. McCoy</i>, 156 A.2d 307, 310 (Pa. 1959). <i>Rosche v. McCoy</i>, 156 A.2d 307, 310 (Pa. 1959). <i>Commonwealth v. Dowling</i>, 883 A.2d 570, 577 (Pa. 2005).
--	---

2. Procedure for Witness Interrogation and Evidence Presentation

Checklist 10-5: Procedure for Witness Interrogation and Evidence Presentation	Authority/Notes
☐ 1. Oath or affirmation. Before any witness may testify, he/she shall declare that he/she will testify truthfully, by oath or affirmation administered in a form "designed to impress that duty on the witness's conscience." Oaths and affirmations are discussed in Checklist 11-1. ☐ 2. Interpreters. Rule 604 requires that an interpreter be qualified and make an oath or affirmation to make a true translation. Therefore, prior to allowing an interpreter to begin his/her duties in a proceeding, the MDJ shall conduct an inquiry into the interpreter's qualifications and shall administer the oath for interpreters. For matters relating to interpreters, see Checklist 11-4. ☐ 3. Mode and order of witness interrogation and presentation. ☐ a. Court's role. The MDJ shall exercise reasonable control over the mode and order of interrogation of witnesses and presentation of evidence with the goals of: making the interrogation and presentation effective for ascertaining the truth, avoiding unnecessary use of time, and protecting witnesses from harassment or undue embarrassment. ☐ i. Form of question objections. In exercising this role, the MDJ may have to decide objections made to the form of questions. Some form objections and suggested actions if the objections are sustained are: ☐ A. Ambiguous. The question is confusing and capable of more than one meaning. If sustained, direct counsel to rephrase the question.	Pa.R.E. 603. <u>Note:</u> Even attorneys are required to take an oath/affirmation before testifying. See <i>Dunsmore v. Dunsmore</i>, 455 A.2d 723, 724 (Pa. Super. 1983) (finding error in the court's failure to administer an oath to the father in a custody action--the father's status as an attorney entitled him to no special consideration). Pa.R.E. 604; 42 Pa.C.S. § 4401 <i>et seq.</i> Pa.R.E. 611(a). Pa.R.E.611(a).

☐ B. Argumentative. Do not permit the question and can ask counsel to rephrase it. ☐ C. Asked and answered. Question is repetitive. Direct counsel to move on. ☐ D. Assumes a fact not in evidence. Do not allow the question and may direct counsel to rephrase it. ☐ E. Compound question. More than one question is being asked at a time. Direct counsel to rephrase the question. ☐ F. Confusing. Direct counsel to rephrase the question to clarify it. ☐ G. Cumulative. The question is repetitive, unnecessary, and/or time wasting. Direct counsel to move on to another question. ☐ H. Non-responsive answer. The answer supplied by the witness does not respond to the question that was asked. Direct the witness to answer the question.	Pa.R.E. 611(a). Pa.R.E. 611(a). Pa.R.E. 611(a). Pa.R.E. 611(a). Pa.R.E. 611(a). Pa.R.E. 611(a). Pa.R.E. 611(a).
☐ b. Scope of cross-examination. ☐ i. Civil case. ☐ A. Party witness. A party-witness in a civil case may be cross-examined by an adverse party on any matter relevant to any issue in the case including credibility, unless the MDJ limits the cross-examination regarding matters not testified to on direct examination in the interests of justice.	Pa.R.E. 611(b).

☐ B. Other witnesses. Cross-examination of a witness other than a party in a civil case should be limited to the subject matter of the direct examination and matters affecting the witness's credibility. The court may, however, at its discretion, allow questioning on additional matters as if on direct examination. ☐ ii. Criminal defendant. When a criminal defendant is a witness and testifies generally to facts that negate or raise doubts about the prosecution's case, he/she has waived the privilege against self-incrimination and may not use it to prevent the prosecution from cross-examining every circumstance relating to those facts. If, however, the defendant's testimony on direct examination is more limited, the waiver is only limited to the scope of direct testimony. ☐ A. Preliminary hearing: credibility. A criminal defendant's cross-examination of the Commonwealth's witnesses concerning their credibility may also be limited at the preliminary hearing as credibility is not an issue at a preliminary hearing. ☐ c. Leading questions. Leading questions should not be used on direct or re-direct examination of a witness except as necessary to develop the witness's testimony. A leading question is one which indicates or suggests the answer desired by the questioner.	Pa.R.E. 611(b). Comment to Pa.R.E. 611 (citing <i>Commonwealth v. Green</i>, 581 A.2d 544 (Pa. 1990)). Comment to Pa.R.E. 611 (citing <i>Commonwealth v. Camm</i>, 277 A.2d 325 (Pa. 1971) and <i>Commonwealth v. Ulen</i>, 607 A.2d 77 (Pa. Super. 1992), <i>rev'd on other grounds</i>, 650 A.2d 416 (Pa. 1994)). <i>Liciaga v. CCP of Lehigh County</i>, 566 A.2d 246, 248 (Pa. 1989) (MDJ precluded from considering credibility of a witness at a preliminary hearing); <i>Commonwealth v. Fox</i>, 619 A.2d 327, 332 (Pa. Super. 1993) (MDJ may limit cross-examination at preliminary hearing regarding credibility). Pa.R.E. 611(c). <i>Commonwealth v. Chambers</i>, 599 A.2d 630, 640 (Pa. 1991); <i>Commonwealth v. Dreibelbis</i>, 426 A.2d 1111, 1116 (Pa. 1981)).
--	---

When allowed. Leading questions should be allowed: ☐ i. on cross-examination of a witness; and ☐ ii. if a party calls a hostile witness, adverse party, or a witness identified with an adverse party. Such a witness should be interrogated by all other parties to whom the witness is not hostile as if under redirect examination.	Pa.R.E. 611(c).
☐ 4. Use of writings or other items to refresh memory. ☐ a. Right to refresh memory and production of refreshing materials. A witness may use a writing or other item to refresh his/her memory either before or during testifying. ☐ b. Right of adverse party. If a witness uses a writing or other item to refresh his/her memory, either while testifying or before testifying, an adverse party is entitled to have the writing or other material produced at the proceeding to inspect it, cross-examine the witness about it, and introduce into evidence those portions relating to the witness's testimony. If a witness uses a writing or other item to refresh memory before testifying, and the court in its discretion finds it is necessary in the interests of justice, an adverse party is entitled to have the writing or other material produced at the proceeding to inspect it, cross-examine the witness about it, and introduce into evidence those portions relating to the witness's testimony. ☐ c. Right of the producing party. If the producing party asserts that the writing or other item includes an unrelated matter, the MDJ shall examine it <i>in camera</i> and delete any unrelated matter and order the rest be delivered to the adverse party. Any part deleted over objection must be preserved for the record.	Pa.R.E. 612(a). <u>Note:</u> An item may be used to refresh memory even if the item itself is inadmissible. Comment to Pa.R.E. 612. Pa.R.E. 612(b)(1). Pa.R.E. 612(b)(2). Pa.R.E. 612(c). <u>Note:</u> It is unclear how often, if ever, this provision would apply to proceedings before an MDJ.

☐ d. Failure to produce or deliver. If the writing or other item is not delivered or produced as ordered, the court may issue any appropriate order. ☐ 5. Calling and examining witnesses by the court. ☐ a. Calling. The court--with notice to the parties--may, on its own or at the suggestion of a party, call witnesses, and all parties may cross-examine any witness called by the court. ☐ b. Examination. The court may examine witnesses, whether called by itself or by a party, when the interest of justice requires. ☐ c. Objection. An objection to the court's calling or examination of a witness shall be made at the time it gives notice of its intent to call the witness. An objection to a question asked by the court shall be made at the time the question is asked. ☐ 6. Sequestration of witnesses. The court may order that witnesses be sequestered at the request of a party or on its own motion so that they cannot learn the testimony of other witnesses. ☐ a. Persons who may <u>not</u> be sequestered. ☐ i. Party. A party who is a natural person; ☐ ii. Representative. An officer/employee of a party that is not a natural person (including the Commonwealth) designated as entity's representative by its attorney;	Pa.R.E. 612(d). <u>Note:</u> It is unclear how often, if ever, this provision would apply to proceedings before an MDJ. Pa.R.E. 614(a). Pa.R.E. 614(b). Pa.R.E.614(c). Pa.R.E. 615. Pa.R.E. 615(a). <u>Note:</u> A natural person is a human being. Natural persons differ from other types of "persons" such as corporations and other business entities. BLACK'S LAW DICTIONARY (10th ed. 2014). Pa.R.E. 615(b).
--	---

☐ iii. Essential persons. A person whose presence is shown by a party to be essential to the presentation of the party's case; or	Pa.R.E. 615(c).
☐ iv. Others. A person whose presence is authorized by statute or rule.	Pa.R.E. 615(d).
☐ 7. Preliminary hearings: limitation on defense witnesses. The defendant at a preliminary hearing is limited to calling his/her own witnesses for the purpose of negating the existence of a <i>prima facie</i> case, and not as a means of discovering the Commonwealth's case. Defendant may also not call character witnesses.	Pa.R.Crim.P. 542(C)(3); Comment to Pa.R.Crim.P. 542.
☐ 8. Emergency PFA hearing. Plaintiff in an emergency PFA hearing may present witnesses but may not be compelled to disclose the temporary or permanent residence of the plaintiff or minor children.	Pa.R.Civ.P.M.D.J. 1207.

3. Impeachment or Support of Witness Credibility

There are certain ways a witness's credibility may be impeached or supported under the rules. Checklist 10-6 below sets forth these means in detail. It should be noted that the credibility of witnesses is not at issue at a preliminary hearing. *Liciaga v. CCP of Lehigh County*, 566 A.2d 246, 248 (Pa. 1989) (MDJ precluded from considering credibility of a witness at a preliminary hearing); *Commonwealth v. Fox*, 619 A.2d 327, 332 (Pa. Super. 1993) (MDJ may limit cross-examination at preliminary hearing regarding credibility). Therefore, this section is not applicable to preliminary hearings.

Checklist 10-6: Impeachment/Support of Witness	Authority/Notes
☐ 1. Generally.	
☐ a. Who may impeach. Any party may attack the credibility of any witness, including the party that called the witness.	Pa.R.E. 607(a).
☐ b. Evidence used to impeach. A witness's credibility may be attacked by any evidence relevant to that issue, except as may be otherwise provided by statute or the Rules of Evidence.	Pa.R.E. 607(b).
☐ 2. Character and conduct of witness.	

☐ a. Reputation evidence of character. A witness's credibility may be attacked or supported by evidence in the form of his/her reputation as to character of truthfulness, but limited in the following manner: ☐ i. Evidence of a truthful character is only admissible after the witness's character for truthfulness has been attacked either by reputation evidence or otherwise; and ☐ ii. Opinion testimony about the witness's character for truthfulness/untruthfulness is not admissible. ☐ b. Specific instances of conduct. Except as provided in Pa.R.E. 609 (evidence of criminal conviction, Checklist 10-6(3) below), a witness's character for truthfulness may not be attacked or supported by cross-examination or extrinsic evidence of specific instances of the witness's conduct. The MDJ, however, may at his/her discretion, allow the credibility of a witness testifying as to another witness's reputation to be attacked by cross-examination concerning specific instances of conduct (but not arrests) of the other witness, if they are probative of truthfulness/untruthfulness. Extrinsic evidence of these specific instances, however, is not admissible. ☐ 3. Impeachment by criminal conviction. ☐ a. General rule. Evidence that a witness has been convicted of a crime (by either verdict, guilty plea, or plea of <i>nolo contendere</i>) shall be admitted to attack the witness's credibility, but only if the crime involved dishonesty or false statements. Crimes involving dishonesty or false statements are also referred to as <i>crimen falsi</i>. ☐ b. Time limit. Evidence of a criminal conviction is not admissible if more than 10 years have elapsed since the date of conviction or the date	Pa.R.E. 608(a). Pa.R.E. 608(a). Pa.R.E. 608(a). Pa.R.E. 608(b)(1). Pa.R.E. 608(b)(2). <u>Note:</u> In determining whether to allow such cross-examination, the MDJ should conduct a balancing test pursuant to Pa.R.E. 403 (see Checklist 10-2(3) above) to determine whether to allow it. Comment to Pa.R.E. 608. Pa.R.E. 609(a). <u>Note:</u> Evidence of such verdicts or pleas may not be admitted until sentence has been pronounced. Comment to Pa.R.E. 609. Pa.R.E. 609(b).
--	---

the witness was released from confinement (whichever is later), unless: ☐ i. the court determines that the conviction's probative value substantially outweighs its prejudicial effect; and ☐ ii. the proponent gives an adverse party reasonable written notice of the intent to use it so the party has a fair opportunity to contest its use. ☐ c. Effect of pardon or equivalent procedure or successful completion of a rehabilitation procedure. Evidence of a criminal conviction is not admissible if it has been the subject of: a pardon or other equivalent procedure based on a specific finding of innocence, or a pardon or other equivalent procedure based on a specific finding of rehabilitation of the convicted person, and that person has not been convicted of a similar crime. ☐ d. Juvenile adjudications. In criminal cases only, evidence of a juvenile delinquency adjudication may be used to impeach the credibility of a witness if conviction of the offense would be admissible to attack the credibility of an adult. ☐ e. Appeal pending. The fact that an appeal of the conviction is still pending does not render evidence of the conviction inadmissible. Evidence that the appeal is pending may be admitted. ☐ 4. Religious beliefs or opinions. Evidence concerning a witness's religious beliefs or opinions is not admissible to attack or support his/her credibility. ☐ 5. Prior statements of witnesses. ☐ a. Using a witness with a prior inconsistent statement to impeach. A witness may be questioned about a prior inconsistent statement he/she made. The prior inconsistent statement need not be shown or its contents revealed to the	Pa.R.E. 609(b)(1). Pa.R.E. 609(b)(2). Pa.R.E. 609(c)(1)-(2). Pa.R.E. 609(d). Pa.R.E. 609(e). Pa.R.E. 610. Pa.R.E. 613(a).
--	--

witness at the time, but shall be shown or disclosed to opposing counsel upon request.	
☐ b. Extrinsic evidence of a witness's prior inconsistent statement. Unless the interests of justice require otherwise, extrinsic evidence of a witness's prior inconsistent statement is admissible only if, during the course of examination: ☐ i. The statement is shown to the witness (if written) or its contents are disclosed to the witness (if not written); ☐ ii. The witness is given the opportunity to explain or deny making the statement; and ☐ iii. The adverse party is given the opportunity to question the witness.	Pa.R.E. 613(b). Pa.R.E. 613(b)(1). Pa.R.E. 613(b)(2). Pa.R.E. 613(b)(3).
The provisions of Pa.R.E. 613(b) do not apply to admissions of a party opponent pursuant to Pa.R.E. 803(25) discussed in Checklist 10-8(1)(p) below.	Pa.R.E. 613(b).
☐ c. Evidence of a witness's prior consistent statement. Evidence of a witness's prior consistent statement is admissible to rehabilitate the witness's credibility if the opposing party is given the opportunity to cross-examine the witness about the prior consistent statement and the statement is offered to rebut an express or implied charge of: ☐ i. Fabrication, bias, improper influence, or motive, or faulty memory, and the prior consistent statement was made before that which has been charged (i.e., bias, improper influence, etc.) existed or arose; or ☐ ii. After having made a prior inconsistent statement, which the witness has denied or explained, and the consistent statement supports the denial or explanation.	Pa.R.E. 613(c). Pa.R.E. 613(c)(1); Comment to Pa.R.E. 613. Pa.R.E. 613(c)(2).

4. Opinions and Expert Testimony

Witnesses, whether experts or laypersons, may give opinion testimony under certain circumstances.

Checklist 10-7 below discusses opinion and expert testimony.

Checklist 10-7: Opinion and Expert Testimony	Authority/Notes
☐ 1. Opinion testimony by a lay (non-expert) witness. If the witness is not testifying as an expert, any testimony in the form of an opinion is limited to opinions rationally based on the witness's perception that are helpful to a clear understanding of the witness's testimony, or a clear understanding of the fact at issue, and that is not based on scientific, technical, or other specialized knowledge within the scope of Pa.R.E. 702 (expert testimony, see Checklist 10-7(2) below).	Pa.R.E. 701.
☐ 2. Expert witness testimony. A witness qualified as an expert by knowledge, skill, experience, training, or education may testify as an expert in the form of opinion or otherwise if: his/her scientific, technical or other specialized knowledge is beyond that possessed by an average layperson; the expert's knowledge will assist the MDJ court to understand the evidence or determine a fact at issue; and his/her methodology is generally accepted in the relevant field.	Pa.R.E. 702.
☐ a. Test for qualifying an expert. In deciding whether to qualify a witness as an expert, the court shall determine if the witness has "any reasonable pretension to specialized knowledge on the subject under investigation." If so, the witness may testify and the weight to be given the testimony is for the trier of fact (the MDJ) to determine.	<i>Miller v. Brass Rail Tavern, Inc.</i> , 664 A.2d 525, 528 (Pa. 1995).
☐ b. Duration of expert qualification. The qualification lasts for the duration of the proceeding for which the witness was qualified as an expert. The fact that a witness may have been qualified as an expert on the same subject by a different judge/MDJ or in a different proceeding does not bar the MDJ from making his/her own determination as to whether to qualify that witness as an expert. The MDJ may consider any prior occasions when the witness	<i>See Miller v. Brass Rail Tavern, Inc.</i> , 664 A.2d 525, 528 (Pa. 1995) (qualifying an expert witness is within the sound discretion of the court).

gave expert testimony and give that fact whatever weight he/she deems proper. ☐ c. Sample qualification questions. There is no required set of questions for qualifying an expert. In fact, no single set of questions would be sufficient as experts testify on a variety of topics and the questions must be tailored accordingly. The following questions for qualifying a drug expert in an intent-to-deliver case are given for illustrative purposes only. ☐ i. Please state your name. ☐ ii. By whom are you employed and what is your position? ☐ iii. Have you had any specialized training in the field of illegal narcotics activity? ☐ iv. What did that training consist of? ☐ v. Have you participated in the investigation of illegal narcotics activities? How often? ☐ vi. Have you participated in the execution of search warrants pertaining to illegal drug activities? How often? ☐ vii. Have you participated in the arrests of people engaged in illegal drug activities? How often? ☐ viii. Have you ever been involved in the seizure of illegal drugs or drug paraphernalia? How often? ☐ ix. Have you ever spoken to people involved with illegal drug activities? How often? Have you spoken with said people specifically concerning identity and use of drugs, the value of drugs, and packaging of drugs for distribution? ☐ x. Have you familiarized yourself with drugs and drug paraphernalia used by	<u>Note:</u> This questioning of a witness to determine qualification is sometimes referred to as a <i>voir dire</i>. The <i>voir dire</i> may be conducted by counsel offering the witness with the MDJ asking additional questions as necessary.
--	---

persons involved with illegal drug distribution activities? ☐ xi. Have you ever conducted tests on suspected illegal drugs and if so, which tests? ☐ xii. Have you ever bought drugs in an undercover capacity? How often? ☐ xiii. Have other law enforcement personnel ever asked you to examine and give an opinion as to whether a particular item was drug paraphernalia? ☐ xiv. Have you ever been qualified as an expert in the field of illegal drugs and drug paraphernalia in the court of common pleas or any other court? If so, how many times? ☐ 3. Bases of the expert opinion. The expert may base his/her opinion on facts or data that the expert has been made aware of or personally observed. If the facts/data are of a type reasonably relied upon by experts in the particular field for forming opinions or inferences, then the facts/data do not have to be themselves admissible in evidence. ☐ 4. Opinion on the ultimate issue. Opinion testimony is not objectionable because it encompasses an ultimate issue to be addressed by the trier of fact.	<u>Note:</u> The fact that a witness has been qualified as an expert on the same subject by a different judge/MDJ or in a different proceeding does not bar the MDJ from making his/her own determination as to whether to qualify that witness as an expert. The MDJ may consider any prior occasions when the witness gave expert testimony and give that fact whatever weight he/she deems proper. See <i>Miller v. Brass Rail Tavern, Inc.</i>, 664 A.2d 525, 528 (Pa. 1995) (qualifying an expert witness is within the sound discretion of the court). Pa.R.E. 703. <u>Note:</u> The determination as to whether the facts/data are of the type reasonably relied upon by other experts is a preliminary question to be determined under Pa.R.E. 104(a) (see Checklist 10-1(2)). Comment to Pa.R.E. 703. Pa.R.E. 704.
---	---

☐ 5. Disclosure of facts/data underlying the expert opinion. If an expert states an opinion, he/she must give the facts and data on which it is based.	Pa.R.E. 705.
☐ 6. Court-appointed experts. A court-appointed expert must advise the parties of his/her findings. The court-appointed witness may be called to testify by the court or any party and shall be subject to cross-examination by any party (including the one that called him/her).	Pa.R.E. 706. <u>Note:</u> Although the Rules allow the court to appoint an expert witness, it would be extremely rare for an MDJ to need to do so.

F. HEARSAY

1. Hearsay Generally Not Admissible

Hearsay is defined as "a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement."

Pa.R.E. 801(c). A statement is either an oral/written assertion or a person's nonverbal conduct that is intended by the person to be an assertion. Pa.R.E. 801(a). The statement at issue must have been made out of court in order to be considered hearsay. Comment to Pa.R.E. 801. Hearsay is generally not admissible except in the circumstances discussed below. Pa.R.E. 802.

2. Exceptions to the Inadmissibility of Hearsay

Although hearsay is generally not admissible, there are exceptions created by rules and statutes. These exceptions are discussed in Checklist 10-8 below. Perhaps the most relevant of these to the MDJ is that under Pa.R.Crim.P. 542(E) (see Checklist 10-8(7) below) which allows the use of hearsay at a preliminary hearing.

Checklist 10-8: Hearsay Exceptions	Authority/Notes
☐ 1. Hearsay exceptions where the declarant's availability is immaterial. ☐ a. Present sense impression. A statement that describes or explains an event/condition made while the declarant was perceiving the event/condition, or immediately afterwards, is admissible hearsay. If the declarant is unidentified, the proponent must show by	Pa.R.E. 803. Pa.R.E. 803(1).

independent corroborating evidence that the declarant actually perceived the event/condition.	
☐ b. Excited utterance. A statement relating to a startling event/condition made while the declarant was under the stress of excitement caused by the event/condition is admissible hearsay. If the declarant is unidentified, the proponent must show by independent corroborating evidence that the declarant actually perceived the startling event/condition.	Pa.R.E. 803(2).
☐ c. Existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition such as intent, plan, motive, design, mental feeling, pain, and bodily health is admissible hearsay. A statement of memory or belief offered to prove a fact remembered or believed is not admissible under this exception except insofar as it relates to the execution, revocation, identification, or terms of the declarant's will.	Pa.R.E. 803(3).
☐ d. Statements for medical diagnosis or treatment. A statement that is: made for, and reasonably pertinent to, medical treatment or diagnosis; and that describes medical history, past or present symptoms, pain, sensations, or inception or general character of the cause or external source of same, to the extent reasonably pertinent to treatment or diagnosis.	Pa.R.E. 803(4).
☐ e. Records of regularly conducted activity. A memorandum, report, record, or data compilation of acts/events/conditions is admissible if: ☐ i. it was made at or near the time by, or from information transmitted by, someone with knowledge; ☐ ii. it was kept in the course of a regularly conducted activity of a “business” is admissible unless the source of the information or other circumstances indicate lack of trustworthiness.	Pa.R.E. 803(6). Pa.R.E. 803(6)(A). Pa.R.E. 803(6)(B). <u>Note:</u> For purposes of this rule, the term "business" includes businesses, institutions, associations, professions, occupations, and callings of every kind regardless of

☐ iii. the making of it was a regular practice of that activity; ☐ iv. the conditions of Pa.R.E. 803(6)(A)-(C) (i. – iii. immediately above) are shown by testimony of a records custodian or other qualified witness, or a certification that complies with Pa.R.E. 902(11), 902(12), or a statute permitting certification; and ☐ v. the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness. If offered against a defendant in a criminal case, the record may be excluded if its admission would violate the defendant's right to confront the witnesses against him/her. However, forensic laboratory reports may be admissible in lieu of testimony pursuant to Pa.R.Crim.P. 574. Exception for civil or landlord-tenant cases. In civil or landlord-tenant matters before an MDJ, a bill, estimate, receipt, or statement of account which appears to have been made in the regular course of business may be introduced into evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity. ☐ f. Public records. A record of a public office is admissible if: it describes the facts and actions taken or the matter observed; the recording of the action or matter was an official public duty; and the opponent does not show that the source of the information, or other circumstances, indicate a lack of trustworthiness. ☐ g. Non-existence of a public record. Testimony or a certification that a diligent search failed to disclose a public record is admissible if: the testimony/certification is admitted to prove that either the record does not exist or a matter did	whether they are conducted for profit or not. Pa.R.E. 803(6). Pa.R.E. 803(6)(C). Pa.R.E. 803(6)(D). Pa.R.E. 803(6). <u>Note:</u> Checklists 10-9(2)(k) & (l) discuss such certifications. Pa.R.E. 803(6)(E). Comment to Pa.R.E. 803(6) (citing <i>Melendez-Diaz v. Mass.</i>, 557 U.S. 305 (2009)). Pa.R.Civ.P.M.D.J. 321 & 512. Pa.R.E. 803(8). Pa.R.E. 803(10).
---	---

not occur or exist, if a public office regularly kept a record for a matter of that kind. In criminal cases a Commonwealth intending to offer such evidence must give 20 days' written notice. The defendant has 10 days to serve a written demand for testimony in lieu of certification.	
☐ h. Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in the regularly kept records of a religious organization, are admissible.	Pa.R.E. 803(11).
☐ i. Marriage, baptismal, and similar certificates. Statements of fact on a certificate: made by a person authorized by a religious organization or by law to perform the act; attesting that the person performed a marriage or similar ceremony or administered a sacrament; and purporting to have been issued at the time of the act or within a reasonable time thereafter, are admissible.	Pa.R.E. 803(12).
☐ j. Family records. Statements of fact regarding personal or family history contained in family records such as Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, tombstones, etc., are admissible.	Pa.R.E. 803(13).
☐ k. Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property offered as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to be executed, is admissible if it is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.	Pa.R.E. 803(14).
☐ l. Statements in documents affecting an interest in property. A statement in a document (other than a will) that purports to establish or affect an interest in property, if the matter stated is	Pa.R.E. 803(15).

relevant to the purpose of the document, is admissible unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the meaning of the document. ☐ m. Statements in ancient documents. Statements made in a document that has been in existence for 30 years or more are admissible if the document has been authenticated (see Checklist 10-9(1)(b)(viii)). ☐ n. Market reports/commercial publications. Market quotations, lists, directories, or other compilations that are generally used and relied upon by the public or by persons in particular occupations are admissible. ☐ o. Reputation: personal or family history. Reputation among members of a person's family (by blood, adoption, or marriage) or in the community concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal/family history, is admissible. ☐ p. Reputation: boundaries and general history. Reputation in a community as to boundaries of, or customs affecting lands in the community, and reputation as to events of general history important to the community where the land is located, is admissible if the reputation arose prior to the controversy. ☐ q. Reputation: character. Reputation of a person's character among their associates or in the community is admissible. ☐ r. Admissions by a party-opponent. Admissions by a party-opponent are exceptions to the hearsay rule. An admission by a party-opponent is a statement offered against a party that is: ☐ i. The party's own statement in either an individual or representative capacity;	Pa.R.E. 803(16). Pa.R.E. 803(17). Pa.R.E. 803(19). Pa.R.E. 803(20). Pa.R.E. 803(21). Pa.R.E. 803(25)(A).
--	--

☐ ii. A statement about which the party has manifested an adoption or belief in its truth; ☐ iii. A statement by a person who the party authorized to make a statement about the subject; ☐ iv. A statement made by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the agency or employment relationship; or ☐ v. A statement made by a co-conspirator of a party during the course and in furtherance of the conspiracy.	Pa.R.E. 803(25)(B). Pa.R.E. 803(25)(C). Pa.R.E. 803(25)(D). Pa.R.E. 803(25)(E).
The contents of the statement may be considered sufficient but are alone not sufficient to establish: the declarant's authority under subsection iii.; the agency or employment relationship and scope thereof under subsection iv. above; or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subsection v. above.	Pa.R.E. 803(25).
☐ 2. Hearsay exceptions where the declarant's testimony is necessary. The following hearsay statements are admissible, but only if the declarant testifies at the trial/hearing and is subject to cross-examination regarding the prior statement.	Pa.R.E. 803.1.
☐ a. Prior inconsistent statement of a declarant-witness. A prior statement by the declarant that is inconsistent with the declarant's testimony and that: was given under oath subject to penalty of perjury at a trial, hearing, or other proceeding or in a deposition; is a writing signed and adopted by the declarant; or is a verbatim contemporaneous electronic, audiotaped, or videotaped recording of an oral statement, is admissible.	Pa.R.E. 803.1. <u>Note:</u> See Checklist 10-6(5) for impeachment with prior a witness's prior statements.
☐ b. Prior statement of identification by a declarant-witness. A prior statement of identification by a declarant-witness of a person or thing, made after perceiving the person or	Pa.R.E. 803.1(2).

thing, is admissible provided the declarant-witness testifies to the making of the prior identification. ☐ c. Recorded recollection of declarant-witness. A memorandum or record made or adopted by a declarant-witness concerning a matter about which the declarant-witness once had knowledge (but now has insufficient recollection to testify fully and accurately), which was made or adopted by the declarant-witness when it was fresh in his/her memory, is admissible provided the declarant-witness testifies that the record accurately reflects his/her knowledge at the time it was made. ☐ d. Declarant claims inability to recall. A prior statement of a declarant-witness who testifies that he/she is unable to remember the subject matter of the statement unless the court finds the claimed inability to remember is credible and: was given under oath subject to penalty of perjury at a trial, hearing, or other proceeding or in a deposition; is a writing signed and adopted by the declarant; or is a verbatim contemporaneous electronic, audiotaped, or videotaped recording of an oral statement. ☐ 3. Hearsay exceptions where the declarant is unavailable. Certain hearsay statements are admissible even if the declarant is not available to testify. ☐ a. Unavailability criteria. A declarant is considered unavailable if he/she: ☐ i. is exempted by court ruling from testifying concerning the subject matter of declarant's statement on the grounds of privilege; ☐ ii. persists in refusing to testify about the subject matter of the declarant's statement despite a court order to do so; ☐ iii. testifies to a lack of memory of the subject matter of the declarant's statement;	Pa.R.E. 803.1(3). <u>Note:</u> See Checklist 10-5(4) for refreshing recollection. Pa.R.E. 803.1(4). Pa.R.E. 804. Pa.R.E. 804(a). Pa.R.E. 804(a)(1). <u>Note:</u> See Checklist 10-3 for discussion of privilege. Pa.R.E. 804(a)(2). Pa.R.E. 804(a)(3).
---	---

☐ iv. is unable to be present or testify because of death or a then-existing physical or mental illness or infirmity; or	Pa.R.E. 804(a)(4).
☐ v. is absent from the hearing/trial and the proponent of the statement has been unable to procure the declarant's attendance (in the case of exceptions under Pa.R.E. 804(b)(1) or (6)) or the declarant's attendance or testimony (in the case of exceptions under Pa.R.E. 804(b)(2)-(4)) by process or other reasonable means.	Pa.R.E. 804(a)(5).
The declarant is not unavailable if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the hearsay statement for the purpose of preventing the witness from attending or testifying.	Pa.R.E. 804(a).
☐ b. Hearsay exceptions. The following statements are not excluded if the declarant is unavailable as a witness:	Pa.R.E. 804(b).
☐ i. Former testimony. Testimony the declarant gave at a trial, hearing, or lawful deposition, in the same or different proceeding, that is now offered against a party (or, in a civil case, a predecessor in interest) who had an adequate opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.	Pa.R.E. 804(b)(1).
☐ ii. Statement under belief of imminent death (dying declaration). A statement made by a declarant while believing that his/her death was imminent that concerns the cause or circumstances of what the declarant believed to be his/her impending death is admissible.	Pa.R.E. 804(b)(2).
☐ iii. Statement against interest. A statement is admissible if at the time it was made, so far contrary to the declarant's pecuniary or proprietary	Pa.R.E. 804(b)(3).

interest, or so far might subject the declarant to civil or criminal liability or render invalid a claim the declarant had against another, such that a reasonable person in the declarant's position would not have made the statement unless he/she believed it was true and, if the statement tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate the trustworthiness of the statement is admissible. ☐ iv. Statement of personal or family history. A statement made before the controversy arose: ☐ A. Concerning the declarant's birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history is admissible even though the declarant had no means of acquiring personal knowledge of the matter stated; or ☐ B. Concerning statements of personal and family history (including death) of another person, the statement is admissible if the declarant was related to the other person by blood, adoption, or marriage, or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter. ☐ v. Statement against party wrongfully causing declarant's unavailability. A statement offered against a party wrongfully causing (or acquiescing in wrongfully causing) the declarant's	Pa.R.E. 804(b)(4). Pa.R.E. 804(b)(4)(A). Pa.R.E. 804(b)(4)(B). Pa.R.E. 804(b)(6).
--	---

unavailability and did so intending that result is admissible. ☐ 4. Statutory and other rule exceptions. In addition to the hearsay exceptions discussed above, hearsay may be admissible pursuant to other rules of court (<i>see e.g.</i>, Pa.R.Crim.P. 542(E) (hearsay at preliminary hearing, Cecklist 10-8(7) below) or statute (<i>see e.g.</i>, 42 Pa.C.S. § 6104 (public records) and 75 Pa.C.S. § 3368(d) (certificate of accuracy of speed timing device)). ☐ 5. Hearsay within hearsay (layered hearsay). Hearsay included within hearsay is not to be excluded under the hearsay rule as long as each part of the combined statements conforms to an exception provided in the Rules of Evidence. ☐ 6. Attacking/supporting a declarant's credibility. When a hearsay statement is admitted into evidence, the credibility of the declarant may be attacked and, if attacked, supported by any evidence that would have been admissible for that purpose if the declarant had testified as a witness. Evidence of a statement or conduct of the declarant at any time which is inconsistent with the hearsay statement, is not subject to any requirement that the declarant may have been given the opportunity to deny or explain. If the party against whom the hearsay has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination. ☐ 7. Preliminary hearing: hearsay admissible. Hearsay evidence shall be considered by the MDJ in determining whether a prima facie case has been established. "Hearsay evidence shall be sufficient to establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property."	Comment to Pa.R.E. 802. Pa.R.E. 805. Pa.R.E. 806. <u>Note:</u> Credibility is not an issue at a preliminary hearing. <i>Liciaga v. CCP of Lehigh County</i>, 566 A.2d 246, 248 (Pa. 1989) (MDJ precluded from considering credibility of a witness at a preliminary hearing); <i>Commonwealth v. Fox</i>, 619 A.2d 327, 332 (Pa. Super. 1993) (MDJ may limit cross-examination at preliminary hearing regarding credibility). Pa.R.Crim.P. 542(E).
--	--

G. AUTHENTICATION AND IDENTIFICATION

Generally, an item that is offered into evidence must be authenticated by evidence other than the item itself to establish a connection between it and the parties and events of the litigation. *Commonwealth*

v. Pollock, 606 A.2d 500, 506 (Pa. Super. 1992). Checklist 10-9 below discusses the means of authenticating and identifying evidence.

Checklist 10-9: Authentication and Identification	Authority/Notes
☐ 1. Requirement of authentication or identification.	Pa.R.E. 901.
☐ a. General rule. Unless stipulated, to authenticate or identify an item the proponent must produce evidence sufficient to support a finding that the item is what it claims it to be.	Pa.R.E. 901(a).
☐ b. Examples. The following examples are intended to illustrate proper methods of authentication and identification and are not meant to be exhaustive:	Pa.R.E. 901(b).
☐ i. Testimony of a witness with knowledge that the matter is what it is claimed to be.	Pa.R.E. 901(b)(1).
☐ ii. Non-expert opinion on handwriting. Non-expert opinion testimony as to the genuineness of handwriting, based on familiarity that is not acquired solely for the purposes of litigation.	Pa.R.E. 901(b)(2).
☐ iii. Comparison by the trier of fact or expert witness. Comparison by the MDJ or by expert witnesses with specimens that have been authenticated.	Pa.R.E. 901(b)(3).
☐ iv. Distinctive characteristics. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.	Pa.R.E. 901(b)(4).
☐ v. Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it to the alleged speaker.	Pa.R.E. 901(b)(5).
☐ vi. Telephone conversations. Telephone conversations may be authenticated or	Pa.R.E. 901(b)(6).

identified by evidence that a call was made to the number assigned at the time to a particular person or business by the telephone company if, in the case of a person, circumstances including self-identification, show the person answering to be the one called, or, in the case of a business, the call was made to a business and the conversation related to business reasonably transacted over the phone. ☐ vii. Public records/reports. Evidence that: a document was recorded or filed in a public office as authorized by law; or a purported public record or statement is from a public office where items of this nature are kept. ☐ viii. Ancient documents or data compilation. Evidence that a document or data compilation in any form is in such condition as to create no suspicion about its authenticity and was in a place where it would likely be if it was authentic, and has been in existence 30 years or more at the time it is offered. ☐ ix. Process or systems. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result. ☐ x. Any other method provided by law. ☐ xi. Digital evidence. What is required to connect digital evidence to a person or entity? (1) Direct evidence such as testimony of an individual with personal knowledge; or (2) circumstantial evidence such as "identifying content or proof of ownership, possession, control, or access to a device or account at the relevant time when corroborated by circumstances indicating authorship."	Pa.R.E. 901(b)(7). <u>Note:</u> Some public records are self-authenticating per Pa.R.E. 902 (see Checklist 10-9(2) below). Pa.R.E. 901(b)(8). Pa.R.E. 901(b)(9). Pa.R.E. 901(b)(10). Pa.R.E. 901(b)(11).
---	---

Digital evidence includes "a communication, statement, or image existing in an electronic medium. This includes emails, text messages, social media postings, and images." The proponent is not required to prove that no one else could be the author, but must produce sufficient evidence to support a finding that a particular person or entity was the author. Direct evidence can include an admission by a party-opponent and expert testimony. Circumstantial evidence of content may be sufficient to connect the digital evidence to its author. Circumstantial evidence may include self-identification or other distinctive characteristics, including a display of knowledge only possessed by the author. Circumstantial evidence of ownership, possession, control, or access to a device or account alone is insufficient for authentication of authorship. This evidence is, however, probative of the author's identity in combination with other evidence.	Comment to Pa.R.E. 901. Comment to Pa.R.E. 901. Comment to Pa.R.E. 901. Comment to Pa.R.E. 901. Comment to Pa.R.E. 901. Comment to Pa.R.E. 901.
☐ 2. Self-authentication. Extrinsic evidence of authenticity is not required with regard to the following: ☐ a. Domestic public documents under seal. A document bearing a seal purporting to be that of the United States or any state, territory, district,	Pa.R.E. 902. <u>Note:</u> Even though evidence is admitted through this rule, an opposing party may still contest its authenticity. Comment to Pa.R.E. 902. In such a case, the fact finder (i.e., the MDJ) is to determine its authenticity. Pa.R.E. 902(1).

Commonwealth, etc., thereof or a political subdivision of same, and that also contains a signature purporting to be an attestation or execution.	
☐ b. Domestic public documents not under seal. Documents purporting to bear the signature of an officer or employee (in his/her official capacity) of any entity described in Pa.R.E. 902(1)(A) without a seal, if a public officer having a seal and official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.	Pa.R.E. 902(2).
☐ c. Foreign public documents. Documents purporting to be executed/attested in an official capacity by a person authorized by the laws of a foreign country to do so which are accompanied by a final certification as to the genuineness of the signature and official position of the executing/attesting person (or of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation) are considered to be self-authenticated.	Pa.R.E. 902(3).
Final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification, or permit them to be evidenced by an attested summary with or without final certification.	Pa.R.E. 902(3).
☐ d. Certified copies of public records. A copy of an official record or report, or an entry within same, or of any document authorized to be	Pa.R.E. 902(4). <u>Note:</u> Admission of a self-authenticating record of a prior

recorded or filed and actually is recorded or filed in a public office. This definition includes data compilations certified as correct by the custodian or other person authorized to make the certification, by way of a certificate complying with Pa.R.E. 902(1), (2), or (3), or any statute or Supreme Court rule.	conviction also requires sufficient evidence--either direct or circumstantial--to prove that the subject of the record is the same person for whom the record is being offered. Comment to Pa.R.E. 902.
E-signature; seal. The certificate may include a handwritten signature, copy of a handwritten signature, a computer-generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization. A seal may—but does not have to be—raised.	Pa.R.E. 902(4).
☐ e. Official publications. Publications that purport to be issued by public authority.	Pa.R.E. 902(5).
☐ f. Newspapers and periodicals.	Pa.R.E. 902(6).
☐ g. Trade inscriptions. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business that indicate ownership, control, or origin.	Pa.R.E. 902(7).
☐ h. Acknowledged documents. Documents that are accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer legally authorized to take such acknowledgments.	Pa.R.E. 902(8).
☐ i. Commercial paper and related documents. Commercial paper, the signatures on it, and documents relating to it, to the extent allowed by general commercial law.	Pa.R.E. 902(9).
☐ j. Statutory presumptions. Any signature, document or other matter that is declared by statute to be presumptively or prima facie genuine or authentic.	Pa.R.E. 902(10).
☐ k. Certified domestic records of regularly conducted activity. The original or a copy of a domestic record of a regularly conducted activity that would be admissible under Pa.R.E. 803(6) (see Checklist 10-8(1)(e) above) as	Pa.R.E. 902(11).

shown by a written certification of authenticity of its custodian or other qualified person, that is verified as provided in Pa.R.Civ. P. 76. The proponent intending to offer a record into evidence under this exception shall provide reasonable written notice of that intention to all adverse parties, and shall make the record and certification available for inspection sufficiently in advance of his/her offer into evidence to provide an adverse party with a fair opportunity to challenge them. ☐ l. Certified foreign records of regularly conducted activity. The original or a copy of a foreign record of regularly conducted activity that meets the requirements of Pa.R.E. 902(11), with the following modifications: the certification must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where it was signed. The notice requirements of Pa.R.E. 902(11) must also be met. ☐ m. Certified records generated by electronic process/system. A record generated by an electronic process/system that produces an accurate result, as shown by a certification of a qualified person that complies with the requirements of Pa.R.E. 902(11) or (12). The proponent must also meet the notice requirements of Pa.R.E. 902(11). ☐ n. Certified data copied from electronic device, storage medium, or file. Data copied from an electronic device, storage medium, or file, if authenticated by process of digital identification, as shown by a certification of a qualified person complying with the certification requirements of Pa.R.E. 902(11) or (12). The proponent must also meet the notice requirements of Pa.R.E. 902(11). ☐ o. Certificate of non-existence of a public record. A certificate that a document was not recorded or filed in a public office as authorized by law is self-authenticating if certified by the custodian or another person authorized to make the certificate.	Pa.R.E. 902(12). Pa.R.E. 902(13). Pa.R.E. 902(14). Pa.R.E. 902(15).
--	---

☐ 3. Business records in civil matters before MDJs. A bill, estimate, receipt, or statement of account which appears to have been made in the regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity.	Pa.R.Civ.P.M.D.J. 321.
☐ 4. Business records in landlord-tenant matters. A bill, estimate, receipt, or statement of account which appears to have been made in the regular course of business may be introduced in evidence by any party without affidavit or other evidence of its truth, accuracy, or authenticity.	Pa.R.Civ.P.M.D.J. 512(B).
☐ 5. Subscribing witness's testimony unnecessary. A subscribing witness's testimony is not necessary to authenticate a writing unless it is required by the laws of the jurisdiction whose laws govern the validity of the writing.	Pa.R.E. 903. <u>Note:</u> A subscribing witness is one who witnessed the execution of the document and signed it as a witness.
☐ 6. Certificates of accuracy and calibration of breath testing devices. Breath testing machine results are admissible in preliminary hearings for Driving Under the Influence (DUI) cases if conducted by qualified persons using approved equipment.	75 Pa.C.S. § 1547(c); 67 Pa.Code §§ 77.25(c), 77.26(d).

H. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Writings, recordings, and photographs have special rules governing their admissibility. Writings are letters, words, or numbers, or their equivalent, set down in any form. Pa.R.E. 1001(a). Recordings are letters, words, or numbers, or their equivalent, recorded in any manner. Pa.R.E. 1001(b). Photographs are photographic images, or their equivalent, stored in any form. Pa.R.E. 1001(c). Checklist 10-10 outlines the requirements concerning writings, recordings and photographs.

Checklist 10-10: Content of Writings, Recordings, and Photographs	Authority/Notes
☐ 1. Requirement of original writing, recording, or photograph. To prove the content of a writing, recording or photograph, the original is required, except as provided in other Supreme Court rules or statute.	Pa.R.E. 1002.
☐ a. "Original" defined. "An 'original' of a writing or recording means the writing or recording	Pa.R.E. 1001(d).

itself or any counterpart intended to have the same effect by a person who executed or issued it. For electronically stored information, 'original' means any printout—or other output readable by sight—if it accurately reflects the information. An 'original' of a photograph includes the negative or a print from it." ☐ b. Best Evidence Rule. Generally, if the contents of a writing are at issue, the original must be produced unless it is unavailable through no fault of the party seeking to admit it. In addition, Pa.R.E. 1003, 1004, 1005, 1006 (Checklist 10-10(2)- (6)) provide exceptions. ☐ 2. Duplicates: when admissible. A duplicate is admissible to the same extent as an original, unless a genuine issue is raised as to the authenticity of the original or under the circumstances make it unfair to admit the duplicate in lieu of the original. ☐ a. "Duplicate" defined. "A 'duplicate' means a copy produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original." ☐ 3. Admissibility of other evidence of the contents. An original is not required, and other evidence of the contents of a writing, recording or photograph is admissible in the following situations: ☐ a. Original is lost or destroyed, unless the proponent of the evidence lost or destroyed them in bad faith. ☐ b. Original is not obtainable by any available judicial process or procedure. ☐ c. Original is in the possession of an opponent, if the opponent was given notice, by pleadings or otherwise, that the contents would be subject of proof at the hearing, and the opponent does not subsequently produce the original at the hearing.	<i>Commonwealth v. Fisher</i>, 764 A.2d 82 (Pa. Super. 2000). Pa.R.E. 1003. Pa.R.E. 1001(e). Pa.R.E. 1004. <u>Note:</u> In situations under this rule where the original is not required the proffering party need not offer a duplicate but may instead present any evidence including oral testimony. Comment to Pa.R.E. 1004. Pa.R.E. 1004(a). Pa.R.E. 1004(b). Pa.R.E. 1004(c).
--	--

☐ d. Collateral matters, that is, the writing, recording, or photograph is not closely related to a controlling issue. ☐ 4. Public records. The proponent may use a copy to prove the content of an official record or a document recorded or filed in a public office as authorized by law if: the record/document is otherwise admissible; and the copy is certified in accordance with Pa.R.E. 902(4) (see Checklist 10-9(2)(d)) or is testified to as being correct by a witness who has compared it to the original. If no such evidence can be obtained by reasonable diligence, the proponent may use other evidence to prove the content of the record. ☐ 5. Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. In which case, the originals or duplicates shall be made available for examination or copying by the other parties at a reasonable time and place, and the court may order that they be brought to court. ☐ 6. Testimony or statement of a party. Contents of writings, recordings, or photographs can be proved by testimony, deposition or written statement of the party against whom they are offered, without accounting for the non-production of the original.	Pa.R.E. 1004(d). Pa.R.E. 1005. Pa.R.E. 1006. Pa.R.E. 1007.
--	--

I. TABLE OF OBJECTIONS

Objection	Rule(s)	Checklist(s)	Possible Disposition(s) if Objection is Sustained
Ambiguous (question is confusing and capable of more than one meaning)	611(a)	10-5(3)(a)	Direct counsel to rephrase the question.
Argumentative	102, 611(a)	10-5(3)(a)	Direct counsel to rephrase the question.
Asked and answered	102, 611(a)	10-5(3)(a)	Direct counsel to move on. Such a question may be acceptable on cross-examination.
Assumes a fact not in evidence (question contains or assumes a fact that has not been admitted into evidence)	611(a)	10-5(3)(a)	Direct counsel to rephrase the question.
Authentication lacking	901	10-9	Do not admit unless it fits an exception, is self-authenticating (Checklist 10-9(2)), or authenticity has been stipulated to.
Best Evidence Rule (original document required)	1002	10-10	Do not admit unless it fits an exception.
Beyond scope of direct/cross examination	611(b)	10-5(3)(b)	Do not permit question.
Character evidence--improper	405	10-2(5)	If the means of attacking the witness's character is not proper under the rules it should not be permitted.
Compound question (more than one question is being asked at the same time)	611(a)	10-5(3)(a)	Direct counsel to rephrase the question.
Conclusion (witness is being asked to draw a conclusion)	602, 701	10-4(3), 10-7(1)	Direct counsel to rephrase the question or do not permit the question.
Confusing	611(a)	10-5(3)(a)	Direct counsel to rephrase the question.
Cumulative (repetitive, unnecessary, and/or time wasting)	102, 611(a)	10-5(3)(a)	Do not permit the question and ask counsel to move on.
Foundation not established (no proper foundation for testimony or exhibit, no authentication, chain of custody, or personal knowledge)	602, 901	10-4(3), 10-9	Direct counsel to lay proper foundation.
Hearsay (a statement made out of court is being offered to prove the truth of the matter asserted. Need to determine if an exception makes it admissible)	801, 802, 803, 803.1, 804, 805, 806	10-8	If question asks for hearsay, do not permit it unless it fits an exception discussed in Checklist 10-8. Hearsay may be permitted in a preliminary hearing, see Checklist 10-8(7).
Immigration status – evidence of party's	413	10-2(12)	Allow if the requirements of Pa.R.E. 413 are met, see Checklist 10-2(12).
Impeachment-- improper (counsel is trying to impeach the witness through an improper means)	607, 608, 609, 610, 613	10-6	Do not allow the impeachment.
Incompetent witness (witness is not competent to testify due to age, mental capacity, lack of personal knowledge, privilege, etc.)	601, 602, 605	10-4	Conduct <i>voir dire</i> questioning, if necessary, to ascertain competence. If you determine witness is not competent, do not permit the witness to testify.
Irrelevant evidence (the proffered evidence does not have any tendency to make the	401	10-2(1)-(2)	Do not permit the irrelevant testimony or physical evidence.

existence of any fact of consequence to the determination of the matter more or less probable)			
Leading the witness (the question suggests an answer. Leading questions should usually be permitted on cross-examination or on direct examination if the witness is being treated as hostile)	611(c)	10-5(3)(c)	Do not permit such questions. Direct counsel to rephrase the question.
Misquoting witness (counsel's question misstates the prior testimony)	103	10-1(1)	Do not permit the question.
Narrative (the question is phrased in such an open-ended manner as to allow the witness to present an unfocused answer that might contain inadmissible testimony or the witness supplies such an answer)	611	10-5(3)	May direct counsel to rephrase the question.
Non-responsive answer (the witness's answer does not respond to the question asked)	611	10-5(3)(a)	Direct the witness to answer the question.
Opinion (the question calls for impermissible opinion from the witness)	701, 702, 703, 704	10-7	Do not permit the question. Require proper foundation.
Prejudice (the evidence's probative value is outweighed by its potential for unfair prejudice, confusion of issues, misleading, undue delay, or repetition. Prejudice or misleading of fact finder are less of a concern in proceedings before MDJs as there is no jury)	403	10-2(3)	Do not permit the evidence.
Privilege (question seeks privileged information. Determine if the applicable statute contains an exception)	501	10-3	Do not permit the question or allow the physical evidence that violates the privilege.
Speculation (question requires a witness to speculate or conjecture because he/she lacks personal knowledge)	602, 701	10-4(3), 10-7(1)	Do not permit the question.

XI. MISCELLANEOUS

A. OATHS AND AFFIRMATIONS

1. Introduction

Oaths and affirmations administered by an MDJ take two forms: judicial oaths/affirmations and oaths/affirmations of office. A judicial oath is administered in a court proceeding to affirm the truth of the information to be asserted by a witness. Pa.R.E. 603. An oath/affirmation of office is a prerequisite for an official to exercise the powers of the office to which he/she is elected or appointed. Pa.Const. Art. VI, § 3 (refusal to take oath/affirmation shall result in forfeiture of the office).

2. Judicial Oaths/Affirmations

A judicial oath is one that is administered in a court proceeding to affirm the truth of the information to be asserted by a witness. Pa.R.E. 603. The person making the oath implicitly invites punishment in the form of a perjury charge if a statement made under oath is false. *See e.g.*, 18 Pa.C.S. § 4902 (making false statement under oath/affirmation or swearing/affirming the truth of a previous statement when the statement is material and the maker does not believe it to be true). Perjury is a third degree felony. *Id.* In addition, error may result if a testifying witness is not given the oath/affirmation. *See Dunsmore v. Dunsmore*, 455 A.2d 723, 724 (Pa. Super. 1983) (finding error in court's failure to administer oath to father in custody action as father's status as an attorney entitled him to no special consideration).

In situations where young children are testifying, their competence to testify may be challenged. Pa.R.E. 601(b)(4). In this situation, the MDJ may have to conduct questioning also known as a *voir dire* examination to determine if the witness has sufficient capacity to communicate, observe, and remember, and whether he/she is conscious of the duty to speak the truth. *Commonwealth v. Washington*, 722 A.2d 643, 646 (Pa. 1998). The *voir dire* of child witnesses is discussed in Evidence (Section X).

Checklist 11-1: Judicial Oath/Affirmation	Authority/Notes
☐ 1. Judicial oath--statutory language. The statute requires that prior to giving testimony, every witness	

take an oath in the usual and common form, by laying a hand upon a bible and/or lifting his/her right hand and pronouncing or assenting: "I, A.B., do swear by almighty God, the searcher of all hearts, that I will [testify truthfully], and that as I shall answer to God at the last great day." The foregoing language, which dates to the 1700s, need not be used, and in fact is seldom used today. The oath/affirmation used shall require the witness to declare that he/she will testify truthfully and be administered in a form designed to impress upon the witness's conscience the duty to testify truthfully. As a result, many variations of judicial oaths may exist that comport with the basic requirements of Pa.R.E. 603. An example of one such oath is: "Please stand and place your right hand on the bible. Please state your full name and spell your last name. Do you swear that the testimony you are about to give the court in this matter will be the truth, the whole truth, and nothing but the truth, so help you God? You may be seated."	42 Pa.C.S. § 5901(a). Pa.R.E. 603.
□ 2. Judicial affirmation. A witness need not take an oath but may instead be administered an affirmation which shall have the same effect and consequences as the oath (i.e., perjury). Any witness who desires to affirm shall be permitted to do so. As with judicial oaths, judicial affirmations need not follow one particular form, but the affirmation administered shall require the witness to declare that he/she will testify truthfully and be administered in a form designed to impress upon the witness's conscience the duty to testify truthfully. An example of such an affirmation is: "Do you honestly, sincerely and truthfully declare the testimony you are about to give the Court in this matter will be the truth, the whole truth and nothing but the truth, so you do affirm?"	42 Pa.C.S. § 5901(b). Pa.R.E. 603.

☐ 3. Interpreter oath/affirmation. Oaths/affirmations are also to be administered to interpreters pursuant to Pa.R.E. 603 to ensure that they will make a true interpretation. Before commencing interpreter duties, the interpreter should take the following oath/affirmation set forth in the administrative regulations governing the Interpreter Certification Program: "Do you solemnly swear or affirm that you will make an accurate, complete and impartial interpretation from the English language into the (target language), and vice-versa, of any communication put through you using your best skill, judgment and ability, and that you will abide by the Rules of Conduct and Professional Responsibility for judiciary interpreters, and so you do swear or affirm?"	Pa.R.E. 603. 204 Pa.Code. § 106. <u>Note:</u> A copy of the administrative regulations and the Rules of Conduct and Professional Responsibility for Judiciary Interpreters can be found on the Interpreter Certification website: http://www.pacourts.us/judicial-administration/court-programs/interpreter-program.
--	---

3. Oaths/Affirmations of Office for Local Officials

In addition to judicial oaths/affirmations, MDJs may also be asked to administer oaths/affirmations of office to local officials.

Checklist 11-2: Oaths/Affirmations of Office	Authority/Notes
☐ 1. Form oath/affirmation. The form oath/affirmation of office is derived from the Pennsylvania Constitution and it states: "I (name of person) do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity." ☐ 2. Municipal officials. Although the constitutional and statutory provisions cited above only refer specifically to state and county officials, the same oath/affirmation can be used to swear in municipal officials as well. ☐ 3. Filing of the oath/affirmation. An oath/affirmation administered to a county official is filed subsequently in	Pa. Const. Art. VI, § 3; 16 P.S. § 403. 53 Pa.C.S. § 1141; <i>see e.g.</i>, 8 Pa.C.S. § 10A03 (providing MDJs the power to administer oaths/affirmations of mayor of a borough). 16 P.S. § 403(b).

the office of the prothonotary for the county in which it was administered. An oath/affirmation administered to a municipal official will typically be filed with the secretary of the municipality.	<i>See e.g., 8 Pa.C.S. § 10A03.</i>
--	--

B. MARRIAGE CEREMONY

1. Introduction

Among the powers of an MDJ is the power to solemnize marriages by performing a marriage ceremony. 23 Pa.C.S. § 1503(a)(1) & (2). Pennsylvania statutes do not prescribe a specific form that a marriage ceremony must take. The essential first step is that the parties obtain a marriage license. 23 Pa.C.S. §§ 1301(a); 1503(c). The parties obtain a license by application, which is typically made to the clerk of the orphans' court. 23 Pa.C.S. § 1302 (discussing the application for a marriage license).

2. Marriage Ceremony

Checklist 11-3: Marriage Ceremony	Authority/Notes
☐ 1. License. Before the MDJ performs the marriage ceremony, he/she shall first determine that the parties seeking to be married have obtained a valid marriage license. ☐ a. Form of the license. The MDJ should examine the license to determine if it is properly signed and sealed by the issuing court. In addition, the license should have attached to it two certificates, one marked "original" and one marked "duplicate" that state: "I hereby certify that on (date), at (city, borough or town), Pennsylvania, (name) and (name) were by me united in marriage, in accordance with license issued by the court of common pleas of (name) numbered Signed (Title of person solemnizing marriage)	<i>See 23 Pa.C.S. § 1503(c) (stating that a license is necessary before ceremony can be performed).</i> 23 Pa.C.S. § 1310. 23 Pa.C.S. § 1501.

Address" ☐ b. Duration of the license. A marriage license is only valid for 60 days from the date it is issued. ☐ 2. Marriage ceremony. ☐ a. Witnesses. There is no statutory requirement that witnesses be present for the marriage ceremony when it is performed by an MDJ. ☐ b. Form of marriage ceremony. There is no specified form a marriage ceremony must take "but it must be evinced by words said in the present tense, articulated with the purpose of forming a spousal relationship." ☐ c. Sample ceremony and ring exchange. As mentioned previously, there is no prescribed marriage ceremony and thus the MDJ and the parties have great leeway in formulating it. The following short sample is provided for illustrative purposes only and is not legally mandated. MDJ: "We are gathered together in the presence of this company, to join together this man and this woman in matrimony, which is to be honored among all people and is not to be entered into lightly." [Audience is seated] MDJ: "<u>(Groom)</u>, will you take this woman to be your wife, to live together in the covenant of marriage? Will you love her, comfort her, honor and keep her, in sickness and in health, and, forsaking all others, be faithful to her as long as you both shall live?" Groom: "I will." MDJ: "<u>(Bride)</u>, will you take this man to be your husband, to live together in the covenant of marriage? Will you love him, comfort him, honor and keep him,	23 Pa.C.S. § 1310. 23 Pa.C.S. § 1501. <i>Devlin v. City of Philadelphia</i>, 809 A.2d 980, 987 n.11 (Pa. Commw. 2002), <i>reversed in part on other grounds</i>, 862 A.2d 1234 (Pa. 2004).
--	---

in sickness and in health, and, forsaking all others, be faithful to him as long as you both shall live?" Bride: "I will." [Groom facing bride, taking her right hand in his, repeats the following after the MDJ] MDJ: "I, <u>groom</u>, take you (<u>bride</u>) to be my wife, to have and to hold from this day forward, for better or for worse, for richer or for poorer, in sickness and in health, to love and cherish until death do us part. This is my solemn vow." [Bride now repeats the following after the MDJ] Bride: "I, (<u>bride</u>), take you (<u>groom</u>) to be my husband, to have and to hold from this day forward, for better or for worse, for richer or for poorer, in sickness and in health, to love and to cherish until death do us part. This is my solemn vow." [Bride and groom loosen their hands and turn to the MDJ] MDJ: [To groom] "What token do you offer this woman that you will be true to this vow?" Groom: "I offer this ring." MDJ: [To bride] "Do you accept this ring as a pledge to be true to his vow?" Bride: "I do." [The groom places the ring on the ring finger of the bride's left hand and repeats the following after the MDJ] MDJ: "Accept this ring as a pledge and token of my love."	
--	--

MDJ: [To bride] "What token do you offer this man that you will be true to this vow?" Bride: "I offer this ring." MDJ: [To groom] "Do you accept this ring as a pledge to be true to her vow?" Groom: "I do." [The bride places the ring on the ring finger of the groom's left hand and repeats the following after the MDJ] MDJ: "Accept this ring as a pledge and token of my love." [Bride and groom join their right hands] MDJ: "For as much as <u>(bride)</u> and <u>(groom)</u> have now joined together in holy matrimony, and having witnessed before this company, I do by virtue of the authority vested in me by the Commonwealth of Pennsylvania pronounce them husband and wife." "You may kiss each other." "May I present Mr. and Mrs. _____" ☐ d. Location of marriage ceremony. The marriage ceremony may be conducted in any county of the Commonwealth. ☐ 3. Fee for marriage ceremony. An MDJ may not personally charge the parties a fee for performing a marriage ceremony. There are, however, other fees charged (<i>e.g.</i>, 42 Pa.C.S. § 1725.1(c)(2) (fee for marrying couple and issuing certificate). ☐ 4. Return of marriage certificate. The original marriage certificate shall be signed and sealed by the MDJ and given to the parties. The duplicate marriage certificate shall also be signed and sealed by the MDJ and returned for recording to the issuing court within 10 days.	23 Pa.C.S. § 1301(b). See 42 Pa.C.S. § 3303 (stating that a judicial officer may not be paid for the performance of any judicial duty or for any service connected with his/her office, any fee, emolument, or perquisite other than the salary and expenses provided by law). 23 Pa.C.S. § 1504(a); Pa.R.S.M.D.J. 111(a).
---	---

C. INTERPRETERS

If a principal party in interest or a witness has a limited ability to speak or understand English or is deaf or hard of hearing and requests an interpreter, or the MDJ determines that a principal party in interest or witness has a limited ability to speak or understand English or is deaf or hard of hearing, he/shall appoint an interpreter. 42 Pa.C.S. § 4412, 4432. One important aspect of the court interpreter laws is that there are certain standards and procedures that must be followed. Checklist 11-4 outlines the important features of the laws requiring appointment of interpreters. The Interpreter Certification Program (ICP) website, <http://www.pacourts.us/judicial-administration/court-programs/interpreter-program>, contains important information on interpreters including interpreter request and waiver forms, a bench card for working with interpreters, and bilingual forms.

Checklist 11-4: Court Interpreters	Authority/Notes
☐ 1. Who is entitled to a court interpreter? Any principal party in interest or witness who has limited English proficiency or who is deaf or hard of hearing is entitled to an interpreter as provided in 42 Pa.C.S. § 4401 <i>et seq.</i> and the Rules of Judicial Administration.	42 Pa.C.S. §§ 4412 & 4432.
☐ 2. When are they entitled to a court interpreter? The aforementioned persons are entitled to a court interpreter at any judicial proceeding. A judicial proceeding is defined as "[a]n action, appeal or proceeding in any court of this Commonwealth."	42 Pa.C.S. § 4402.
☐ 3. MDJ's responsibilities. Once the need for an interpreter has become apparent, a certified interpreter must be obtained, a process that may require some time depending on the circumstances. Therefore, the MDJ should contact the court administrator's office for the judicial district as soon as he/she becomes aware of the need for an interpreter. The court administrator's office can then obtain an interpreter in the manner prescribed by the interpreter statutes and the Rules of Judicial Administration.	42 Pa.C.S. § 4401 <i>et seq.</i> <u>Note:</u> The ICP website contains detailed information on finding an interpreter and <i>voir dire</i> questions for determining the need for an interpreter and for ascertaining the prospective interpreter's qualifications.
☐ 4. Appointment of the interpreter. Once an interpreter has been obtained, the MDJ shall appoint him/her by administering the oath set forth in Checklist 11-1(3).	42 Pa.C.S. §§ 4414 & 4435. <u>Note:</u> The interpreter oath is also contained in §106 of the administrative regulations on the ICP website.

☐ 5. Interpreter's role. The interpreter's role is to render an accurate and complete interpretation without omitting anything or interjecting their own words. ☐ 6. Rules of Conduct and Professional Responsibility. The interpreter must be familiar with and abide by the Rules of Conduct and Professional Responsibility for Judiciary Interpreters. ☐ 7. Confidentiality. An interpreter cannot be compelled to testify as to any statements made by the person with LEP or person who is deaf or hard of hearing interpreted by the interpreter when the speaker is engaged in a confidential communication as provided by statute or general rule.	<u>Note:</u> Schedule F of the administrative regulations on the ICP website contains the Rules of Conduct. 42 Pa.C.S. §§ 4415 & 4436.
--	--

D. OFFICIAL SEAL AND FACSIMILE SEAL

Every magisterial district shall have and use a seal which shall be in the custody of the MDJ who has been elected or appointed for that district.

42 Pa.C.S. § 1512; Pa.R.S.M.D.J. 111(A). All official acts of the MDJ shall be authenticated with this seal. *Id.* The seal itself shall be engraved with the same design as the great seal of Pennsylvania and contain the words "Commonwealth of Pennsylvania," the name of the county, the magisterial district number, and the words "magisterial district judge." *Id.* In addition, a facsimile or pre-printed seal can be used for all purposes in place of the original seal. *Id.*; Pa.R.S.M.D.J. 111(B). A facsimile seal is an exact copy of the original seal. *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining a facsimile as an "exact copy, preserving all marks of the original").

E. SELF-SERVICE STORAGE FACILITIES

The Self-Service Storage Facility Act, 73 P.S. § 1901 *et seq.*, governs the actions the owner of a self-service storage facility may take in the event that the occupant defaults on rent payments. Checklist 11-5 discusses portions of the Act.

Checklist 11-5: Self-Service Storage Facilities	Authority/Notes
☐ 1. Owner's lien. The Act give the facility owner a lien on all personal property while it is located in the storage	73 P.S. § 1904.

facility for rent, labor, or other charges incurred for storing, preserving or--if allowed under the Act--selling it to satisfy the charges.	<u>Note:</u> A "lien" is claim or right to property for payment of a debt or charge. BLACK'S LAW DICTIONARY (10th ed. 2014).
☐ 2. Enforcement of lien. ☐ a. Default. An enforcement action may not be taken by the owner until the occupant been in default continuously for a period of 30 days. ☐ b. Rights of owner. After 20 days the owner shall have the right to deny the occupant access to the leased space. The owner may also enter and remove the personal property from the leased space to another suitable storage space pending its sale or other disposition after the occupant has been in default continuously for 30 days. ☐ c. Towing. If the property upon which a lien is claimed is a motor vehicle, trailer, or watercraft and has been in default for 60 days, the owner may have it towed. The owner shall not be liable for any damages to the towed property not caused by owner's negligence once an adequately insured or bonded tower takes possession of it. ☐ d. Late fee. The owner may charge a reasonable late fee for each month occupant does not pay rent of \$20/month or 20% of the monthly rent, whichever is greater. The owner must disclose the late fee in the rental agreement. A late fee may not be charged or collected if the occupant pays the rent and other charges in full by the fifth day after the due date in the agreement.	73 P.S. § 1905(a). 73 P.S. § 1905(b). 73 P.S. § 1905(c). 73 P.S. § 1904(b).
☐ 3. Notice. ☐ a. Service of notice. The owner shall give written notice of the default and any other action taken regarding the property to the occupant by personal service, verified mail, electronic mail (email), or certified mail, return receipt requested, sent to the occupant's last known address. Email may be used if all of the following occur: (1) occupant is informed in original rental agreement, or a subsequent	73 P.S. § 1906(a).

modification thereto, that notification by email is an authorized means of communication; (2) occupant affirmatively consents to be contacted by email and promptly notifies owner of any change in his/her email address; and (3) occupant's affirmation consenting to email communication and to promptly advise of any change is occupant's email address is printed in bold or underlined in the rental agreement. Notice is presumed to be served when deposited with the U.S. Postal Service or private delivery service with proper address and postage.	
☐ b. Content of the notice. The notice shall contain: ☐ i. An itemized statement of the claim showing the sum due at the time of the notice and the date it became due; ☐ ii. a demand for payment within at least 30 days from the date of notice; ☐ iii. a statement that the contents of the leased space are subject to the owner's lien; ☐ iv. the name, address, and telephone number of the owner or his/her designated agent to which the occupant can respond; and ☐ v. a conspicuous statement in bold print that if the claim isn't paid within the time and place stated, the property will advertised for sale or otherwise disposed of at a specified time and place.	73 P.S. § 1906(b)(1). 73 P.S. § 1906(b)(2). 73 P.S. § 1906(b)(3). 73 P.S. § 1906(b)(4). 73 P.S. § 1906(b)(5).
☐ c. Notice of denial of space, entry, or removal. If owner elects to deny occupant access to the leased space or elects to enter and or remove/property, a statement advising the occupant that the owner entered and/or removed the occupant's personal property shall be included with the notice.	73 P.S. § 1906(c).
☐ 4. Payment and satisfaction. Before the sale or disposition of personal property, the occupant may pay	73 P.S. § 1909.

the amount necessary to satisfy the owner's lien and other reasonable expenses and redeem the personal property. Once the owner returns the personal property the owner shall have no liability to any person with respect to it. □ 5. Sale. A buyer in good faith of the property takes it free any claims of the person against whom the lien was asserted. The owner may buy at any sale of personal property to enforce the owner's lien. Any sales proceeds in excess of the amount of the lien shall be held by the owner for the occupant. If the occupant does not claim the proceeds, the owner shall forward them to the Pennsylvania Department of Revenue.	73 P.S. § 1911. 73 P.S. § 1912. 73 P.S. § 1913.
---	--

XII. GLOSSARY

A

**Accelerated Rehabilitative
Disposition (ARD):**

A pretrial diversionary program typically for "first offenders who lend themselves to treatment and rehabilitation rather than punishment and that the crime charged is relatively minor and does not involve a serious breach of the public trust." Explanatory Comment to Chapter 3 of the Pa.R.Crim.P.

Adjudicative Facts:

Facts about the events, persons, and places relevant to the matter before the court. Comment to Pa.R.E. 201 citing 2 McCormick, *Evidence* § 328 (6th ed. 2006).

Ad Litem:

See Guardian *Ad Litem*.

Admissible Evidence:

The evidence introduced is of such a character that the court is required to allow it to be introduced. BLACK'S LAW DICTIONARY 47 (6th ed. 1990).

**Advanced Communication
Technology:**

Advanced communication technology is defined as any communication equipment that is used as a link between parties in physically separate locations. Pa.R.Crim.P. 103; Pa.R.Civ.P.M.D.J. 202. Under the definition under the criminal rules, this technology includes, but is not limited to: systems providing for simultaneous two-way communication of image and sound; closed circuit television; telephone and facsimile equipment; and electronic mail. Pa.R.Crim.P. 103.

**Advanced Communication
Technology Site:**

"Any approved location within Pennsylvania designated by the president judge, or the president judge's designee, with advanced communication technology equipment that

is available for parties in a criminal matter to communicate with others in physically separate locations as provided in [the rules of criminal procedure]." Pa.R.Crim.P. 103.

Affiant:

Any responsible person capable of taking an oath who signs, swears to, or affirms, or who verifies a criminal complaint and appreciates the nature and quality of that person's act. Pa.R.Crim.P. 103.

Affidavit:

A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths. 1 Pa.C.S. § 1991. Also includes an unsworn document containing statements of fact and a statement by the signer that it is being made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities). 42 Pa.C.S. 102.

Appeal:

In the MDJ context, a trial *de novo* on the merits in the court of common pleas, without regard to any defects in the proceedings before the MDJ. Pa.R.Civ.P.M.D.J. 1001; Pa.R.Crim.P. 462.

Arraignment, Preliminary:

See Preliminary Arraignment.

Arrears:

Money that is overdue and unpaid. BLACK'S LAW DICTIONARY 109 (6th ed. 1990).

Assumpsit:

An old, now rarely used term for a contract action. BLACK'S LAW DICTIONARY 122 (6th ed. 1990).

Attachment:

The seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. BLACK'S LAW DICTIONARY 126 (6th ed. 1990).

B

Bail:

The security required and given for the release of a person in the custody of the law, conditioned upon a written undertaking that the person will appear when required and

fulfill all the other conditions of the bail bond.
Pa.R.Crim.P. 103.

Bail Authority:

"[T]he [MDJ], magistrate, Philadelphia arraignment court magistrate, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail." Pa.R.Crim.P. 103.

C

Certiorari:

An examination by the court of common pleas of the record of proceedings before an MDJ to determine questions of personal or subject matter jurisdiction, improper venue, or a procedural irregularity.
Pa.R.Civ.P.M.D.J. 1009.

Character Evidence:

"Evidence of a person's moral standing in [the] community based on reputation." BLACK'S LAW DICTIONARY 232 (6th ed. 1990). Character evidence is subject to special admissibility rules which are discussed in Section X.

Civil Action:

An action to enforce, protect, or redress private rights; generally, all types of actions other than criminal actions.
BLACK'S LAW DICTIONARY 245 (6th ed. 1990).

Civil Complaint:

The original pleading document by which a civil action is commenced. BLACK'S LAW DICTIONARY 285 (6th ed. 1990).

Civil Contempt of Court:

See Contempt of Court.

Collateral:

In the civil context: property that is pledged as security against a debt and subject to a security interest. Collateral encompasses both real and personal property such as land, cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents.
BLACK'S LAW DICTIONARY 261 (6th ed. 1990).

In the summary criminal context: Cash or a cash equivalent deposited in a summary case to insure a

defendant's appearance, and as such is analogous to bail, which is used for this purpose in court cases. Pa.R.Crim.P. 452.

Commonwealth Party:

"A Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment." 42 Pa.C.S. § 8501.

Contemnor:

A person who has committed contempt of court. BLACK'S LAW DICTIONARY 318 (6th ed. 1990).

Contempt of Court:

"Any act which is calculated to embarrass, hinder, or obstruct [a] court in administration of justice or which is calculated to lessen its authority or dignity." BLACK'S LAW DICTIONARY 318 (6th ed. 1990). Contempt can be divided into direct and indirect, civil, and criminal.

Civil Contempt: A contempt which consists of failing to do something which the court has ordered to be done for the benefit or advantage of another party. BLACK'S LAW DICTIONARY 318 (6th ed. 1990).

Criminal Contempt: Acts done in disrespect of the court or its process or which obstruct the administration of justice or bring the court into disrespect. BLACK'S LAW DICTIONARY 318 (6th ed. 1990).

Direct Contempt: Contempt committed in the court's presence or so near its presence as to obstruct or interrupt the due and orderly course of the proceedings. BLACK'S LAW DICTIONARY 318 (6th ed. 1990).

Indirect Contempt: Contempt which arises from matters outside the presence of the court but which tend to obstruct or defeat the administration of justice; usually associated with the refusal of a party to obey a court order. BLACK'S LAW DICTIONARY 318 (6th ed. 1990).

Continuance:

The adjournment or postponement of a session, hearing, trial, or other proceeding, made by either a written or oral motion. BLACK'S LAW DICTIONARY 321 (6th ed. 1990); Pa.R.Crim.P. 106; Pa.R.Civ.P.M.D.J. 209.

<u>Conversion:</u>	The unauthorized assumption and exercise of the right of ownership of goods or personal property of another, to the alteration of their condition or exclusion of the owner's rights. BLACK'S LAW DICTIONARY 332 (6th ed. 1990).
<u>Co-participant:</u>	"[A] victim participating in group counseling." 42 Pa.C.S. §5945.1(a).
<u>Corporation:</u>	"An artificial person or legal entity created by or under the authority of a state." BLACK'S LAW DICTIONARY 340 (6th ed. 1990). The corporation is treated as a person who can sue or be sued. <i>Id.</i>
<u>Criminal Complaint:</u>	The document used to formally initiate criminal charges that notifies the defendant of the offenses alleged to have been committed. Pa.R.Crim.P. 420, 503.
<u>Criminal Contempt of Court:</u>	See Contempt of Court.
<u>Crimen Falsi:</u>	Crimes that involve dishonesty such as perjury, subornation of perjury, embezzlement, fraud, etc. BLACK'S LAW DICTIONARY 372 (6th ed. 1990).
<u>Cross-Examination:</u>	The questioning of a witness by a party opposed to the party that called him/her. The questions must be within the scope of those asked on direct examination. BLACK'S LAW DICTIONARY 376 (6th ed. 1990).

D

<u>Deaf or Hard of Hearing:</u>	An impairment of hearing or speech which creates an inability to understand or communicate the spoken English language. 42 Pa.C.S. § 4402.
<u>Defendant:</u>	The person against whom a civil action is filed or the accused in a criminal case. BLACK'S LAW DICTIONARY 419 (6th ed. 1990).

De Novo Trial:

The trial of a case anew as if it had not been tried before. BLACK'S LAW DICTIONARY 435 (6th ed. 1990).

Direct Contempt of Court:

See Contempt of Court.

Direct Examination:

The first questioning of a witness by the party on whose behalf the witness is called. BLACK'S LAW DICTIONARY 460 (6th ed. 1990).

E

Evidence:

Any kind of proof or probative matter legally presented at a trial or hearing of an issue; it can be in the form of witnesses, records, documents, objects, etc. BLACK'S LAW DICTIONARY 555 (6th ed. 1990).

Execution:

The act of carrying out or putting into effect a court order; execution of contract includes completion of all acts necessary to render it complete; enforcement of a judgment. BLACK'S LAW DICTIONARY 568 (6th ed. 1990).

Execution Sale:

A sale by a sheriff or other ministerial officer under the authority of a writ of execution which he/she has levied on property of the debtor. BLACK'S LAW DICTIONARY 568 (6th ed. 1990).

Ex Parte:

A proceeding taken or granted at the instance and for the benefit of one party only, that has only one party present, and is usually without notice to or argument from the adverse party. BLACK'S LAW DICTIONARY 576 (6th ed. 1990).

Extradition:

"The surrender by one state to another of an individual accused or convicted of an offense outside of its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender." BLACK'S LAW DICTIONARY 585 (6th ed. 1990).

Extrinsic Evidence:

In the context of a contract: evidence that is not contained in the body of an agreement, contract, and the like but is drawn from other sources such as the parties' statements and the circumstances surrounding the transaction. BLACK'S LAW DICTIONARY 588 (6th ed. 1990).

F

Facsimile Seal:

An exact copy of the MDJ's official seal may be used for all purposes in place of the official seal. Pa.R.Civ.P.M.D.J. 111(B).

Felony:

A crime more serious than a misdemeanor. BLACK'S LAW DICTIONARY 616 (6th ed. 1990). In Pennsylvania, a felony is graded below murder and above a misdemeanor. 18 Pa.C.S. § 106.

Fiduciary:

"An executor, administrator, guardian, committee, receiver, trustee, assignee for the benefit of creditors, and any other person acting in a similar capacity." 1Pa.C.S. § 1991.

G

Government Agency:

"Any Commonwealth agency or political subdivision or municipal or other local authority, or any officer or agency of such political subdivision or local authority." 42 Pa.C.S. § 102.

Guardian:

"A fiduciary who legally has the care and management of the person, or of the estate, or both, of another under a legal disability." 1 Pa.C.S. § 1991.

Guardian Ad Litem:

A fiduciary who is appointed to represent another person who is under a legal disability in legal proceedings. 1 Pa.C.S. § 1991.

H

Habeas Corpus:

A writ directed to the person detaining another, and commanding him to produce the body of the prisoner. The purpose of the writ is to free someone from unlawful imprisonment. BLACK'S LAW DICTIONARY 709 (6th ed. 1990).

Hearing Officer:

An MDJ, Philadelphia Municipal Court judge, arraignment court magistrate, master, or master for emergency relief. 23 Pa.C.S. § 6102.

Hostile Witness:

A witness who displays such hostility or prejudice on direct examination that the party who called him/her is allowed to treat the witness as if he/she had been called by the adverse party, i.e., the witness may be cross-examined. BLACK'S LAW DICTIONARY 738 (6th ed. 1990).

I

Immediate Family:

Under the Rules of Criminal Procedure, immediate family includes only grandparents, parents, spouses, siblings, children, grandchildren, stepchildren, and like relatives-in-law. Comment to Pa.R.Crim.P. 531.

Impeachment Evidence:

Evidence that tends to call into question a witness's veracity. BLACK'S LAW DICTIONARY 752 (6th ed. 1990).

Impoundment:

To legally take an object into custody. BLACK'S LAW DICTIONARY 756 (6th ed. 1990). The term is often used in the context of seizure of a vehicle pursuant to 75 Pa.C.S. §§ 6309 and 6309.1, which is discussed in Checklist 4-5(9) of Section IV.

In Absentia:

A trial conducted in the absence of the defendant. Pa.R.Crim.P. 455.

In Camera:

A trial or hearing held in a place not open to the public, such as a judge's lobby, chambers, or the courtroom with all spectators excluded. A judge can also perform an in camera inspection to examine a document or witness

which counsel wishes to use at trial before ruling on its admissibility. BLACK'S LAW DICTIONARY 760 (6th ed. 1990).

Incapacitated Person:

"An adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety." 20 Pa.C.S. § 5501.

Indirect Criminal Contempt:

See Contempt of Court.

In Forma Pauperis:

Permission given to the plaintiff to proceed without payment of the filing costs, because he/she is financially unable to pay such costs. BLACK'S LAW DICTIONARY 779 (6th ed. 1990).

Issuing Authority:

"Any public official having power and authority of a magistrate, a Philadelphia arraignment court magistrate, or a magisterial district judge." Pa.R.Crim.P. 103.

J

Joinder:

The combination of summary cases involving more than one defendant or the same defendant and more than one charge. Pa.R.Crim.P. 453.

Judgment (Civil):

The decision made by the MDJ in a civil case entered for either the plaintiff or the defendant deciding the rights and claims of the parties to the dispute. BLACK'S LAW DICTIONARY 841 (6th ed. 1990).

Judicial Notice:

When a court takes notice of an indisputable adjudicative fact and thus does not require formal introduction of evidence to prove said fact. *Kinley v. Bierly*, 876 A.2d 419, 421 (Pa. Super. 2005). A fact is considered to be indisputable if it is so well established as to be a matter of common knowledge.

Judicial Oath/Affirmation:

An oath/affirmation administered in a court proceeding to affirm the truth of the information to be asserted by the witness. Pa.R.E. 603.

Judicial Proceeding:

In the context of court interpreters, an action, appeal, or proceeding in any court of the Commonwealth of Pennsylvania. 42 Pa.C.S. § 4402.

Jurisdiction (Personal):

The power of a court to render judgment against a party. BLACK'S LAW DICTIONARY 854 (6th ed. 1990).

Jurisdiction (Subject Matter):

Subject matter jurisdiction relates to the competency of a court to hear and decide controversies of the same general nature of the matter at issue and is conferred upon MDJ courts by statute in 42 Pa.C.S. § 1515.

L

Law Enforcement Officer:

Any person who is by law given the power to enforce the law when acting within the scope of that person's employment. Pa.R.Crim.P. 103.

Levy:

In the context of a civil judgment, a levy is the obtaining of money by legal process; raising money for which an execution has been issued. BLACK'S LAW DICTIONARY 906 (6th ed. 1990).

Lien:

A "lien" is claim or right to property for payment of a debt or charge. BLACK'S LAW DICTIONARY 922 (6th ed. 1990).

**Limited Ability to Speak
or Understand English:**

The ability to speak exclusively or primarily a language other than English and the inability to sufficiently speak or understand English. 42 Pa.C.S. § 4402.

Long Arm Statute:

A law which gives the courts of Pennsylvania personal jurisdiction over persons outside the Commonwealth under certain circumstances. 42 Pa.C.S. § 5322.

M

Misdemeanor:

A crime that is less serious than a felony and more serious than a summary offense. The maximum sentence of incarceration ranges between one and five years depending on the classification. 18 Pa.C.S. § 106.

Motion In Limine:

A motion *in limine* is a written motion usually made before or at the beginning of a jury trial for a protective order to prevent opposing counsel from referring to or offering inadmissible evidence. The purpose of a motion *in limine* is to avoid presentation of irrelevant, inadmissible and otherwise prejudicial matters. BLACK'S LAW DICTIONARY 1013 (6th ed. 1990).

Municipal Ordinance:

A law, rule, or ordinance enacted by a municipality for the proper conduct of its affairs or the conduct of its inhabitants. BLACK'S LAW DICTIONARY 1018 (6th ed. 1990).

N

Natural Person:

A human being. Natural persons differ from other types of "persons," which may include corporations and other business entities. BLACK'S LAW DICTIONARY 1142 (6th ed. 1990).

Nolo Contendre Plea:

A plea in a criminal case, having a similar legal effect as pleading guilty. Translated, the Latin phrase means "I will not contest it." When pleading *nolo contendere*, the defendant does not admit or deny the charges, yet a fine or sentence may be imposed pursuant to it. BLACK'S LAW DICTIONARY 1048 (6th ed. 1990).

O

Oath/Affirmation of Office:

A legally required oath administered to a public official before he/she may enter into the duties of that office. Pa. Const. art. VI, § 3.

Official Seal:

The seal in the MDJ's custody that is used to authenticate all of the MDJ's official acts. 42 Pa.C.S. § 1512; Pa.R.Civ.P.M.D.J. 111(A).

Order of Execution Sale:

The sale of defendant's property is sold to satisfy the judgment. Pa.R.Civ.P.M.D.J. 401 - 421.

P

Partnership:

A voluntary business association of two or more persons who jointly own and carry on a business for profit. BLACK'S LAW DICTIONARY 1120 (6th ed. 1990).

Party:

A person who begins a lawsuit, or a person against whom a lawsuit is brought. 42 Pa.C.S. § 102. In this context, the term person can be mean a natural person or legal person (e.g., a corporation) person. BLACK'S LAW DICTIONARY 1122 (6th ed. 1990).

Peace Officer:

"Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active state duty pursuant to section 311 of the act of May 27, 1949 (P.L. 1903, No. 568), known as 'The Military Code of 1949.' The term 'peace officer' shall also include any member of any park police department of any county of the third class." 18 Pa.C.S. § 501 (footnote omitted).

Personal Jurisdiction:

See Jurisdiction (personal), above.

Petition:

A formal written request presented to a court or other government body. BLACK'S LAW DICTIONARY 1145 (6th ed. 1990).

Plaintiff:

The person who sues in a civil case. BLACK'S LAW DICTIONARY 1150 (6th ed. 1990).

Political Subdivision:

A county, city, township, borough, incorporated town, township, school district, vocational school district, or county institution district. 1 Pa.C.S. § 1991.

Praecipe:

A writ commanding the defendant to do the action required, or show the reason why it has not been done. BLACK'S LAW DICTIONARY 1172 (6th ed. 1990).

Preliminary Arraignment:

A proceeding conducted following arrest in court cases, the purpose of which is to inform the defendant of his/her rights, inform him/her of the charges, give the defendant a copy of the complaint, and provide him/her an opportunity to post bail. The date for the preliminary hearing is also set at the preliminary arraignment, and the defendant is either admitted to bail or committed to jail until the preliminary hearing. Pa.R.Crim.P. 103, 519(A), and 540.

Preliminary Hearing:

A proceeding conducted in court cases. Its purpose is to determine whether a *prima facie* case exists against the defendant. The MDJ determines at the conclusion of the hearing whether the defendant shall be bound over to the court of common pleas or whether his/her case shall be dismissed. Pa.R.Crim.P. 543 & 544.

Prima Facie:

"A *prima facie* case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of the crime. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth shall show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury." *Commonwealth v. Keller*, 823 A.2d 1004, 1010 (Pa. Super. 2003), *appeal denied*, 832 A.2d 435 (Pa. 2003).

Probable Cause:

A reasonable ground to believe that someone should be arrested or searched. BLACK'S LAW DICTIONARY 1201 (6th ed. 1990).

Probation:

A criminal sentence that releases a convicted defendant into the community instead of sending the criminal to jail or prison subject to certain conditions. BLACK'S LAW DICTIONARY 1202 (6th ed. 1990).

Probative Value:

Evidence's tendency to prove an issue. BLACK'S LAW DICTIONARY 1203 (6th ed. 1990).

R

Recognizance:

An obligation taken by a criminal defendant to appear in court on a particular date and keep the peace. Used in bail context. BLACK'S LAW DICTIONARY 1271 (6th ed. 1990).

Recusal:

Removal of a judge in a particular matter, because of a conflict of interest, bias, or prejudice. BLACK'S LAW DICTIONARY 1277 (6th ed. 1990).

S

Sealed Search Warrant Affidavit:

The Rules of Criminal Procedure allow for the attorney for the Commonwealth to request that the search warrant affidavit be sealed for good cause shown. Pa.R.Crim.P. 211(A). The request to seal can only be brought before a common pleas or appellate court judge, it cannot be brought before an MDJ. Pa.R.Crim.P. 211(B)(1).

Solemnize:

To enter into marriage publicly; to perform a marriage ceremony. BLACK'S LAW DICTIONARY 1392 (6th ed. 1990).

Stay:

An order to suspend all or part of a judicial proceeding or the judgment resulting from that proceeding. BLACK'S LAW DICTIONARY 1413 (6th ed. 1990).

**Subject Matter
Jurisdiction:**

See Jurisdiction (subject matter), above.

<u>Subpoena:</u>	An order of an MDJ commanding a person to attend and testify at a particular time and place or requiring a person to produce documents or things which are under his/her possession, custody, or control. Pa.R.Civ.P.M.D.J. 202.
<u>Subscribing Witness:</u>	A person who witnesses the execution of a document and signs it as a witness. BLACK'S LAW DICTIONARY 1427 (6th ed. 1990).
<u>Summary Offense:</u>	An offense defined as a summary offense by statute or one for which the maximum punishment of incarceration is 90 days. Pa.C.S. § 106(c).
<u>Summons:</u>	An order issued, instead of warrant of arrest, directing a defendant to appear at a stated time and place. Pa.R.Crim.P. 411, 421, 510.
<u>Supersedeas:</u>	A writ commanding that proceedings be stayed. BLACK'S LAW DICTIONARY 1437 (6th ed. 1990).
<u>Supplementary Action:</u>	An action filed by one who owes a judgment against the judgment creditor if the creditor fails to have the judgment marked as satisfied within 90 days of service by the judgment debtor of a request to enter judgment. The judgment debtor may sue for monetary damages. 42 Pa.C.S. § 8104(b); Pa.R.Civ.P.M.D.J. 342(A).
<u>Surety:</u>	One who, at the request of another and for the purpose of securing for the other a benefit, agrees to become responsible for the other's performing some act. BLACK'S LAW DICTIONARY 1441 (6th ed. 1990).

T

<u>Tort:</u>	A private, civil wrong or injury for which the law provides a remedy in the form of a private action for damages. BLACK'S LAW DICTIONARY 1489 (6th ed. 1990).
<u>Tort-feasor:</u>	An individual or business that commits a tort. BLACK'S LAW DICTIONARY 1489 (6th ed. 1990).

Trespass:

In the civil case context, trespass is an old term for tort cases involving claims for injury to persons or property or a person's relationship with another. BLACK'S LAW DICTIONARY 1502 (6th ed. 1990).

Truancy:

Willful and unjustified failure to attend school in violation of mandatory attendance laws. BLACK'S LAW DICTIONARY 1508 (6th ed. 1990).

U

**Unincorporated
Association:**

A group of persons, lacking a charter, formed by mutual, voluntary consent for the purpose of promoting a common enterprise or objective. BLACK'S LAW DICTIONARY 1531 (6th ed. 1990).

V

Venue:

The magisterial district within which a criminal or civil action may be commenced. The right of a party to have a particular type of action brought and heard in a particular locality; venue is related to the convenience of the litigants. *Commonwealth v. Bethea*, 828 A.2d 1066. Venue is predominantly a procedural matter prescribed by the rules of court and it presumes the existence of jurisdiction. *Id.*

Verdict (Criminal):

The decision by the MDJ in a summary case in which the defendant is either adjudicated guilty and sentenced, adjudicated not guilty, or the charges are dismissed. Pa.R.Crim.P. 454.

Voir Dire:

In the evidence context, to conduct a preliminary examination of a witness (e.g., a child, a prospective expert, etc.) to determine their competence to testify.

W

Writ:

A written judicial order to perform a specified act.
BLACK'S LAW DICTIONARY 1608 (6th ed. 1990).