

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 462, 470, 702, 704, 705.1, 706, 1002, and 1030, adoption of Pa.R.Crim.P. 454.1, 456.1, 456.2, 702.1, 705.2, and 706.1, and rescission and replacement of Pa.R.Crim.P. 456

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the proposed amendment of Pa.R.Crim.P. 403 (Contents of Citation), 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas – Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation – Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas – Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Summons), 423 (Not Guilty Pleas – Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 462 (Trial *De Novo*), 470 (Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs), 702 (Aids in Imposing Sentence), 704 (Procedure at Time of Sentencing), 705.1 (Restitution), 706 (Fines or Costs), 1002 (Procedure in Summary Cases), and 1030 (Scope of Summary Municipal Court Traffic Division Rules), adoption of Pa.R.Crim.P. 454.1 (Sentencing in Summary Cases), 456.1 (Ability to Pay Determination), 456.2 (Commonwealth Request for Ability to Pay Hearing), 702.1 (Ability to Pay Determination), 705.2 (Fines – Sentencing), and 706.1 (Commonwealth Request for Ability to Pay Hearing), and rescission and replacement of Pa.R.Crim.P. 456 (Default Procedures: Restitution, Fines, and Costs) for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **April 24, 2024**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee,

Stefanie J. Salavantis
Chair

Rule 403. Contents of Citation.

[(A)](a) Every citation shall contain:

- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
- (2) the name and address of the defendant;
- (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge **[(s)]**;
- (4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) the date of issuance;
- (8) a notation if criminal laboratory services are requested in the case;
- (9) 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 therein are made subject to the penalties of **[the Crimes Code,]** 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and
- (10) a certification that the citation complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

[(B)](b) The copy delivered to the defendant shall also contain a notice to the defendant **that**:

- (1) **[that]** the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and
- (2) **[that]** the defendant shall, within **[10] 30** days after issuance of the citation:

[(a)](i) plead not guilty by:

[(i)](A) notifying the proper issuing authority in writing of the plea and **[forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial] providing a current mailing address and telephone number**; or

[(ii)](B) appearing before the proper issuing authority[,] **and entering the plea[, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea]**; or

[(b)](ii) plead guilty by:

[(i)](A) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

[(ii)](B) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation, **or when an installment payment plan is sought**, or when required to appear pursuant to Rule **[409(B)(3), 414(B)(3), or 424(B)(3)] 409(b)(3), 414(b)(3), 424(b)(3)**; or

[(c)](iii) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

(3) **[that]** all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) **[that]** failure to respond to the citation as provided above within the time specified:

[(a)](i) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

[(b)](ii) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) **[that]** failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) **[that,]** if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial *de novo*.

Comment: A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

[See] See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

[Paragraph (A)(3) Subdivision (a)(3)] requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. **See [the Judicial Code,] 42 Pa.C.S. § 1522[, concerning] (requiring** parental notification in certain summary cases involving juveniles).

[Paragraph (A)(8) Subdivision (a)(8)] requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the magisterial district judge that, in addition to any fines, restitution, or costs, the magisterial district judge may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 **[which requires that] (requiring** a defendant **to** be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case).

As provided in **[paragraph (B)(2)(b)(i) subdivision (b)(2)(ii)(A)]**, the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine.

[Paragraph (B)(4)(a) Subdivision (b)(4)(i)] provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

[Paragraph (B)(4)(b) Subdivision (b)(4)(ii)] provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

[Paragraph (B)(5) Subdivision (b)(5)] provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See **[Rule] Pa.R.Crim.P.** 407.

[Paragraph (B)(6) was amended in 2000 to make it clear] Subdivision (b)(6) is intended to make clear that a defendant in a summary criminal case **[that the defendant]** may file an appeal for a trial *de novo* following the entry of a guilty plea. See **[Rule] Pa.R.Crim.P.** 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by **[paragraph (B) subdivision (b)]** to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

[See] See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

[Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; *Comment* revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

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

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

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Final Report explaining the February 6, 2003 *Comment* revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

Amendments regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).]

Rule 407. Pleas in Response to Citation.

Within **[10] 30** days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Comment: For the consequences of failure to respond as provided in this rule, see Rules 430 and 431.

To notify the issuing authority of the plea, the defendant should sign and return the citation. **[When] If** a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See **[Rule 403(B)(5)] Pa.R.Crim.P. 403(b)(5)**.

[Official Note: Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411-414 and 421-424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001.]

Committee Explanatory Reports:

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

Rule 408. Not Guilty Pleas - Notice of Trial.

[(A)](a)A defendant may plead not guilty by:

- (1) appearing before the issuing authority[,] **and** entering the plea[, and depositing such collateral for appearance at trial as the issuing authority shall require]; or
- (2) notifying the issuing authority in writing of the plea and **[forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial] providing a current mailing address and telephone number.**

[(B)](b)The issuing authority, upon receiving a plea of not guilty, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and, if the defendant is found guilty, **[the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and]** the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment: [It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.]

When fixing the date and hour for trial, the issuing authority should determine whether 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.

[Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See] See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

[Official Note: Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3235 (June 25, 2016).]

Rule 409. Guilty Pleas.

[(A)](a) A defendant may plead guilty by:

- (1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or
- (2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:
 - (i)** the fine and costs are not specified in the citation **[or];**
 - (ii)** after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to **[paragraph (B)(3).] subdivision (b)(3); or**
 - (iii) the defendant is without the financial means immediately to pay the fine and costs specified in the citation and seeks an installment payment plan.**

[(B)](b) When the defendant pleads guilty pursuant to **[paragraph (A)(1)] subdivision (a)(1):**

- (1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**
- (2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.
- (3) Restrictions on the acceptance of guilty plea by mail:

[(a)](i) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

[(b)](ii) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

[(c)](iii)In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

[(C)](c)When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to **[paragraph (A)(2)] subdivision (a)(2)**, the issuing authority shall:

- (1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;
 - (2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;
 - (3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; **and**
 - (4) impose sentence **pursuant to Rule 454.1**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment[; **and**].
- [(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.]**

Comment: The rule **[was amended in 2007 to make it clear (1)]** **makes clear** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment[, **and (2) in] or (2) when the defendant is without the financial means immediately to pay the fine and costs. In** those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in **[paragraph (C)] subdivision (c)** when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to

[paragraphs (A)(1) and (B)] subdivisions (a)(1) and (b). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

[Paragraph (C)(4) was added in 2007 to permit] Subdivision (c)(4) permits an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

[When] 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 sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

[See] See Rule **[454(F)] 454.1** for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

[Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; *Comment* revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4323 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).]

Rule 411. Procedures Following Filing of Citation -- Issuance of Summons.

[(A)](a) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within **[10] 30** days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

[(B)](b) A copy of the citation shall be served with the summons, except in cases charging parking violations when the parking violation information is electronically filed.

[(C)](c) In cases charging parking violations in which the parking violation information is electronically filed, the summons shall also include:

- (1) the date, time, and location of the parking violation;
- (2) a description of the vehicle and the license number; and
- (3) a description of the parking violation.

Comment: No fine or costs should be specified in the summons in cases in which the issuing authority determines that there is a likelihood of imprisonment.

This rule facilitates the electronic transmission of parking violation information by (1) eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 401(A), and (2) requiring additional information be added to the summons. See **[Rule] Pa.R.Crim.P.** 401 (Proceedings in Summary Cases Charging Parking Violations). However, nothing in this rule or Rule 401 is intended to preclude a municipality from continuing to have its officers prepare a citation in addition to electronically transmitting the parking violation information.

[Official Note: Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 431. Present Rule 61 adopted July 12, 1985,

effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and *Comment* revised March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003.

Committee Explanatory Reports:

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 1996).

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

Final Report explaining the February 6, 2003 amendments concerning electronic transmission of citation and parking violation information published with the Court's Order at 33 Pa.B. 969 (February 22, 2003).]

Rule 412. Pleas in Response to Summons.

Within **[10] 30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Comment: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See **[Rule 403(B)(5)] Pa.R.Crim.P. 403(b)(5)**.

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

[Official Note: Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001.]

Committee Explanatory Reports:

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

Rule 413. Not Guilty Pleas -- Notice of Trial.

[(A)](a) A defendant may plead not guilty by:

- (1) appearing before the issuing authority[,] **and** entering the plea[, and depositing such collateral for appearance at trial as the issuing authority shall require]; or
- (2) notifying the issuing authority in writing of the plea and **[forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial] providing a current mailing address and telephone number.**

[(B)](b) The issuing authority, upon receiving a plea of not guilty, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and, if the defendant is found guilty, **[the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and]** the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment: [It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.]

When fixing the date and hour for trial, the issuing authority should determine whether 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.

[Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

[Official Note: Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3235 (June 26, 2016).]

Rule 414. Guilty Pleas.

[(A)](a) A defendant may plead guilty by:

- (1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or
- (2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:
 - (i)** the fine and costs are not specified in the summons **[or];**
 - (ii)** after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to **[paragraph (B)(3).] subdivision (b)(3); or**
 - (ii) the defendant is without the financial means immediately to pay the fine and costs specified in the citation and seeks an installment payment plan.**

[(B)](b) When the defendant pleads guilty pursuant to **[paragraph (A)(1)] subdivision (a)(1):**

- (1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**
- (2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.
- (3) Restrictions on the acceptance of guilty plea by mail:

[(a)](i) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

[(b)](ii) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

[(c)](iii)In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

[(C)](c)When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to **[paragraph (A)(2)] subdivision (a)(2)** the issuing authority shall:

- (1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;
 - (2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;
 - (3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; **and**
 - (4) impose sentence **pursuant to Rule 454.1**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment**[; and]**.
- [(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.]**

Comment: The rule **[was amended in 2007 to make it clear (1)] makes clear** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment**[, and (2) in] or (2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in **[paragraph (C)] subdivision (c)** when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to

[paragraphs (A)(1) and (B)] subdivisions (a)(1) and (b). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

[Paragraph (C)(4) was added in 2007 to permit] Subdivision (c)(4) permits an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and §9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When 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 sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

[See] See Rule **[454(F)] 454.1** for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

[Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; *Comment* revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4323 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).]

Rule 422. Pleas in Response to Summons.

Within **[10] 30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

Comment: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See **[Rule 403(B)(5)] Pa.R.Crim.P. 403(b)(5)**.

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

[Official Note: Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001.]

Committee Explanatory Reports:

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

Rule 423. Not Guilty Pleas -- Notice of Trial.

[(A)](a) A defendant may plead not guilty by:

- (1) appearing before the issuing authority[,] **and** entering the plea[, and depositing such collateral for appearance at trial as the issuing authority shall require]; or
- (2) notifying the issuing authority in writing of the plea and **[forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial] providing a current mailing address and telephone number.**

[(B)](b) The issuing authority, upon receiving a plea of not guilty, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the affiant of the date and hour fixed for the trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and, if the defendant is found guilty, **[the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and]** the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment: [It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.]

When fixing the date and hour for trial, the issuing authority should determine whether 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 offenses charged.

[Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

[Official Note: Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3235 (June 26, 2016).]

Rule 424. Guilty Pleas.

[(A)](a) A defendant may plead guilty by:

- (1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or
- (2) appearing before the issuing authority for the entry of the plea and imposition of sentence **[when] if:**
 - (i)** the fine and costs are not specified in the summons **[or];**
 - (ii)** after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to **[paragraph (B)(3).] subdivision (b)(3); or**
 - (iii) the defendant is without the financial means immediately to pay the fine and costs specified in the citation and seeks an installment payment plan.**

[(B)](b) When the defendant pleads guilty pursuant to **[paragraph (A)(1)] subdivision (a)(1):**

- (1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**
- (2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.
- (3) Restrictions on the acceptance of guilty plea by mail:

[(a)](i) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

[(b)](ii) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

[(c)](iii) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

[(C)](c) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to **[paragraph (A)(2)] subdivision (a)(2)**, the issuing authority shall:

- (1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;
 - (2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;
 - (3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly; **and**
 - (4) impose sentence **pursuant to Rule 454.1**, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment[; **and**].
- [(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.]**

Comment: The rule **[was amended in 2007 to make it clear (1)] makes clear** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment[, **and (2) in] or (2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in **[paragraph (C)] subdivision (c)** when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to

[paragraphs (A)(1) and (B)] subdivisions (a)(1) and (b). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

[Paragraph (C)(4) was added in 2007 to permit] Subdivision (c)(4) permits an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When 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 sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

[See] See Rule **[454(F)] 454.1** for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

[Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008;

Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4323 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).]

Rule 454. Trial in Summary Cases.

[(A)](a) Immediately prior to trial in a summary case:

- (1) the defendant shall be advised of the charges in the citation or complaint;
- (2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

[(a)](i) upon request, the defendant shall be given a reasonable opportunity to secure counsel, or

[(b)](ii) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

- (3) the defendant shall enter a plea.

[(B)](b) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

[(C)](c) The attorney for the Commonwealth may appear and assume charge of the prosecution. **[When] If** the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. **[When] If** no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

[(D)](d) The verdict **[and sentence, if any,]** shall be announced in open court immediately upon the conclusion of the trial[, **except as provided in paragraph (E)**].

(e) Any sentence shall be imposed pursuant to Rule 454.1. The issuing authority may delay imposing sentence pending a determination of the defendant's ability to pay pursuant to Rules 454.1 and 456.1.

[(E)](f) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

[(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due.

(2) advise the defendant of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the *de novo* trial or the appeal may be dismissed;

- (3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and
- (4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.]

Comment: No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002)[,]; *Scott v. Illinois*, 440 U.S. 367 (1979)[,]; and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See also [Rules] Pa.R.Crim.P. 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See **[Rule] Pa.R.Crim.P.** 457 (Withdrawal of Charges in Summary Cases).

[Paragraph (F)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.]

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth or on behalf of a municipality pursuant to **[paragraph (C)] subdivision (c)**, the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth, or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question **[Commonwealth] the Commonwealth's** witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. **[When] If** a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

[When] 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 sentence of imprisonment as prescribed by statute, the issuing authority **[is required to] shall** conduct the summary trial but **[may] shall** not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

[Under paragraph (F)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph (F)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460-462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iii), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).]

[Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; *Comment* revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; *Comment* revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and *Comment* revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

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

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning Alabama v. Shelton published with the Court's Order at 34 Pa.B. 1929 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4323 (August 3, 2013).

Final Report explaining the March 9, 2016 amendments to paragraph (F) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 3235 (March 26, 2016).]

—The following text is entirely new—

Rule 454.1. Sentencing in Summary Cases.

- (a) **Order.** The issuing authority shall issue and sign a written order imposing sentence including the information specified in subdivision (b) and any financial obligations and payment schedule. A copy of the order shall be given to the defendant.
- (b) **Advisement of Rights.** The issuing authority shall advise the defendant of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and, if an appeal is filed:
 - (1) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and
 - (2) the defendant must appear for the *de novo* trial or the appeal may be dismissed.
- (c) **Imprisonment.** If a sentence of imprisonment is imposed, the issuing authority shall direct the defendant to appear for the execution of sentence on a date certain and, if the defendant fails to appear on that date, a warrant for the defendant's arrest shall be issued unless the defendant appeals pursuant to Rule 460.
- (d) **Intermediate Punishment.** If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.
- (e) **Discretionary Fines and Costs.** In deciding the amount of any discretionary fines or discretionary costs to be imposed and whether the defendant is unable to pay in a single remittance, the issuing authority shall first determine the defendant's ability to pay pursuant to Rule 456.1 unless the defendant waives that determination.
- (f) **Mandatory Fines and Costs.** In deciding whether the defendant is unable to pay mandatory fines and mandatory costs in a single remittance, the issuing authority shall first determine the defendant's ability to pay pursuant to Rule 456.1 unless the defendant waives that determination.
- (g) **Restitution.** In deciding whether the defendant is unable to pay restitution in a single remittance, the issuing authority shall first determine the

defendant's ability to pay pursuant to Rule 456.1 unless the defendant waives that determination.

(h) **Financial Obligations.** If the issuing authority determines that a defendant does not have an inability to pay all fines, costs, and restitution in a single remittance or the defendant waives that determination, the issuing authority shall state:

- (1) the amount of the fine and costs;
- (2) the amount of restitution, including:
 - (i) the identity of the payee,
 - (ii) to whom the restitution payment shall be made, and
 - (iii) whether any restitution has been paid and in what amount; and
- (3) the date on which payment is due.

(i) **Inability to Pay.** If the issuing authority determines that a defendant has an inability to pay all fines, costs, and restitution in a single remittance, the court may establish a payment schedule for any fines, costs, and restitution based upon the defendant's ability to pay that:

- (1) states the date on which each installment is due; and
- (2) advises the defendant of the procedures in Rule 456 in the event of any default in payment.

Comment: No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *See Alabama v. Shelton*, 535 U.S. 654 (2002); *Scott v. Illinois*, 440 U.S. 367 (1979); *Argersinger v. Hamlin*, 407 U.S. 25 (1972). *See also* Pa.R.Crim.P. 121 and 122.

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 sentence of imprisonment as prescribed by statute, the issuing authority shall conduct the summary trial but shall not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Pursuant to subdivision (b), the issuing authority shall explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed. Subdivision (b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to subdivision (c), the issuing authority should set the earliest possible date for sentencing after the appeal period expires. If a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant remains able to pursue an appeal under Rules 460-462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726. For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iii) (prohibiting the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay).

Before imposing both a fine and restitution, the issuing authority shall determine whether the fine will prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Certain costs are mandatory and shall be imposed. See, e.g., 18 P.S. § 11.1101. For the manner of distribution of any funds applied to the outstanding restitution, fees, fines, and costs owed by the defendant, see 204 Pa. Code § 29.353 (General Principles).

Subdivision (d) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

Subdivision (i) is intended to implement 42 Pa.C.S. § 9730(b)(3)(i). See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

[For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.]

[Rule 456. Default Procedures: Restitution, Fines, and Costs.

- (A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.**
- (B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.**
- (C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.**

 - (1) If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.**
 - (2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.**
 - (3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.**
- (D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):**

- (1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.**
 - (2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.**
 - (3) At the conclusion of the hearing, the issuing authority shall:**
 - (a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;**
 - (b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:**
 - (i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and**
 - (ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;**
 - (c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and**
 - (d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.**
- (E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.**

Comment: The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 15 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). See 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

If the defendant is 18 years or older when the default in payment occurs, the

issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

Under paragraph (D)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rules 121 and 122 (dealing with appearance or waiver of counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph (E), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from

imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; *Comment* revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; *Comment* revised September 21, 2012, effective November 1, 2012; *Comment* revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; *Comment* revised December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the September 21, 2012 Comment revision correcting the

typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6247 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 654 (February 2, 2013).

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court's Order at 45 Pa.B. 2040 (April 25, 2015).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).]

—The following text is entirely new—

Rule 456. Default of Payment of Costs, Fines, or Restitution.

- (a) **Ability to Pay Hearing.** The court shall schedule a hearing to determine a defendant's ability to pay outstanding costs, fines, or restitution imposed as a result of a sentence if:
 - (1) a defendant has defaulted by failing to timely pay the amount due;
 - (2) a defendant has advised the court prior to the due date that timely payment is not possible; or
 - (3) a defendant's delinquent account was previously turned over to a private collection agency or the county's collection enforcement unit and the defendant has requested a hearing. The defendant shall be responsible for notifying the collection entity that a hearing has been requested.

- (b) **Hearing Notice.** Notice of the ability to pay hearing shall be provided to the defendant in person or by first class mail, and advise the defendant:
 - (1) If a defendant has defaulted, unless the defendant pays the amount due as ordered within ten days of the date on the hearing notice, the defendant shall appear at the hearing before the issuing authority to explain why the defendant should not be imprisoned for nonpayment;
 - (2) The defendant has the burden of proving an inability to pay;
 - (3) The failure to appear at the hearing may result in the issuance of a bench warrant for the defendant's arrest; and
 - (4) The failure to appear at the hearing may result in the delinquent account being turned over to a private collection agency or the county's collection enforcement unit, and, if the delinquent account was previously turned over to a private collection agency or the county's collection enforcement unit, collection efforts may resume.

- (c) **Hearing.**
 - (1) When a defendant appears before the issuing authority pursuant to the hearing notice or following arrest on the bench warrant pursuant

to subdivision (b)(2), the issuing authority shall conduct a hearing to determine the defendant's ability to pay.

(2) If a hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523 subject to the following:

(i) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(ii) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

(d) **Determination.** The issuing authority shall determine a defendant's ability to pay pursuant to Rule 456.1.

(1) If the defendant is in default and the court determines the defendant is able to pay outstanding costs, fines, and restitution, as imposed, the court may permit the defendant to pay the outstanding amount due or the court may enter an order for wage attachment, turn the delinquent account over for collections, or, as provided by law, impose imprisonment or other sanctions.

(2) If the court determines the defendant is unable to pay outstanding costs, fines, and restitution, as imposed, the court:

(i) may order a new payment plan for installments reasonably calculated to the defendant's ability to pay;

(ii) may re-sentence the defendant to a period of community service;

(iii) may reduce or waive any fines and costs, except costs imposed under 18 P.S. § 11.1101, to the extent the defendant would be unable to pay in a single remittance or pursuant to

a new payment schedule as provided for in subdivision (d)(2)(i); and

- (iv) shall waive any existing collection fee not previously collected from the defendant.
- (e) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

Comment: The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs. See 42 Pa.C.S. § 9730(b). For a court's ability to reduce or waive fines and costs see 42 Pa.C.S. § 9730(b)(3)(ii).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, subdivision (b)(1) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within ten days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Pa.R.Crim.P. 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. §§ 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice required by subdivision (b)(1) must inform the defendant and the defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the ten-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. §§ 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by subdivision (b)(1) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and the defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the ten-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-

1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority should not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority shall proceed under these rules.

Pursuant to subdivision (c), the issuing authority must conduct a hearing when a defendant responds to the ten-day notice as provided in subdivision (b)(1), or when the defendant is arrested for failing to respond to the ten-day notice. If the hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when the issuing authority has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

Pursuant to subdivision (d)(1), if a defendant is in default and the issuing authority determines that the defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. §§ 9730(b)(1)-(b)(2). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at the default hearing. See Pa.R.Crim.P. 122(A)(1) ("Counsel shall be appointed...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..."); *Alabama v. Shelton*, 535 U.S. 654 (2002); *Scott v. Illinois*, 440 U.S. 367 (1979). See also Pa.R.Crim.P. 121 (waiver of counsel). In addition, delinquent restitution, fines, or costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

If a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default.

When a rehearing is held on a payment schedule for fines or costs, and restitution, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to subdivision (e), the case would remain with the clerk of courts for collection.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs

in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

—The following text is entirely new—

Rule 456.1. Ability to Pay Determination.

- (a) **Statement of Financial Ability.** For the purposes of determining a defendant's ability to pay fines, costs, and restitution, the defendant shall complete and provide the issuing authority a statement of financial ability, as set forth in subdivision (f).
- (b) **Evidence.** In addition to the statement of financial ability, the issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial ability.
- (c) **Presumption – Single Remittance.** A defendant is presumed to be unable to pay fines, costs, and restitution in a single remittance if the defendant:
 - (1) receives needs-based public assistance including, but not limited to, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), or Temporary Assistance to Needy Families (TANF); or
 - (2) meets the following income and asset requirement:
 - (i) gross income (*i.e.*, before taxes and other deductions) that is 200% or less than the federal poverty guidelines for the party's household size; and
 - (ii) assets less than \$10,000, excluding the party's home and one vehicle; or
 - (3) is represented by a Public Defender or other appointed counsel.
- (d) **No Presumption.** The presumption set forth in subdivision (c) shall be inapplicable if:
 - (1) a defendant willfully fails to complete and provide the issuing authority with a statement of financial ability; or
 - (2) the issuing authority deems the information contained in the statement of financial ability to be inaccurate or misstated.
- (e) **Unable to Pay.** A defendant shall be unable to pay fines, costs, and restitution if it would cause the defendant to suffer a substantial financial

hardship, which means the defendant would be unable to fully meet their basic human needs or obligations including, but not limited to, nutrition, housing, utilities, health, transportation, care of dependents, or other areas of essential need, by based upon:

- (1) the party’s gross income, assets, and expenses;
 - (2) the number of minor children or adult children, who are incapable of self-support due to a physical or mental disability, that the party is supporting, including a child support obligation;
 - (3) employment history;
 - (4) other available financial resources, including resources from individuals who have a duty of support to the party; and
 - (5) other factors affecting the party’s income, assets, or expenses.
- (f) **Statement of Financial Ability Form.** The statement of financial ability required by subdivision (b) shall be substantially in the following form:

(Caption)

Statement of Financial Ability

Defendant’s Name: _____
First
Middle
Last

Residence: _____

City, State, Zip: _____

Check the box if you are currently without a house or apartment.

Do you currently receive one or more of the following public benefits?

- Supplemental Nutrition Assistance Program (SNAP) (food stamps)
- Medicaid
- Supplemental Security Income (SSI) (Not Social Security Disability Insurance (SSDI))
- Temporary Assistance to Needy Families (TANF)

- Public Housing or Section 8 Housing
- Needs-based VA Pension
- Low-Income Energy Assistance
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Other need-based federal, state, or local program: _____ *What program?*

Yes No

Are you supporting other people who live with you:

I support _____ adults (not counting myself) who live with me.

I support _____ children under 18 who live with me.

GROSS MONTHLY INCOME (income before paying taxes and other deductions):

\$ _____ monthly gross wages. I work as a _____ *(job title/description)* for _____ *(name of employer)*.

\$ _____ unemployment compensation. I have been unemployed since _____ *(date)*. My last employer was _____ *(name of employer)*.

\$ _____ money received from other people.

\$ _____

| | |
|--|---|
| <input type="checkbox"/> Retirement/Pension | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Workers Comp | <input type="checkbox"/> Social Security |
| <input type="checkbox"/> Child/Spousal support | <input type="checkbox"/> Other sources: _____ <i>(describe sources)</i> |

\$ _____ Total monthly gross income

ASSETS (Current Value):

\$ _____ Cash

\$ _____ Bank accounts or other financial assets

\$ _____ Primary vehicle

\$ _____ Other vehicles
\$ _____ House
\$ _____ Other real estate
\$ _____ Other property: _____ *(describe)*

\$ _____ Total value of property

MONTHLY EXPENSES YOU PAY:

\$ _____ Rent/mortgage payment
\$ _____ Food and household supplies
\$ _____ Utilities, including cell phone
\$ _____ Clothing and other personal expenses
\$ _____ Medical and dental expenses/insurance
\$ _____ Child care
\$ _____ Transportation, including car payments and repairs
\$ _____ Child and spousal support or alimony
\$ _____ Other expenses: _____ *(describe)*

\$ _____ Total monthly expenses

Are there other facts that you would like the court to know about your circumstances that may help the court decide your ability to pay fines, costs, and restitution, such as you are experiencing homelessness or you have health issues?

VERIFICATION

I understand that I have a continuing obligation to inform the court of an improvement in my financial circumstances that would permit me to pay fines, costs, and restitution in this case.

I verify that the statements made in this application are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date

Defendant's Signature

Comment: This rule is applicable to all summary cases including those in the Philadelphia Municipal Court as well as summary appeals in the court of common pleas.

The burden is on the defendant to provide the issuing authority with information about the defendant's financial ability. In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that payment of fines, costs, and restitution will have on the defendant's finances. Each defendant's situation with regard to their ability to pay case assessments is unique and the issuing authority must tailor the determination to the individual defendant.

If a defendant is determined to be unable to pay fines, costs, and restitution, the issuing authority may sentence or resentence the defendant in accordance with Rule 454.1 or Rule 456.

—The following text is entirely new—

Rule 456.2. Commonwealth Request for Ability to Pay Hearing.

(a) **Motion.**

- (1) The Commonwealth may file a motion requesting a hearing to determine a defendant's ability to pay costs, fines, or restitution imposed as a result of a sentence.
- (2) Upon good cause shown of a substantial change in the defendant's ability to pay, the court shall schedule a hearing.

(b) **Hearing Notice.** Notice of the ability to pay hearing shall be provided to the defendant in person or by first class mail.

(c) **Hearing and Determination.**

- (1) At a hearing on the Commonwealth's motion, the burden to prove a substantial change in the defendant's ability to pay shall be on the Commonwealth.
- (2) If the court determines the Commonwealth has proven by a preponderance of the evidence a substantial change in the defendant's ability to pay, the court may order a new payment plan reasonably calculated to the defendant's ability to pay.

Comment: The purpose of this rule is to permit the Commonwealth to seek an increase in a defendant's monthly payment towards previously imposed costs, fines, and restitution if the Commonwealth has good cause to believe the defendant's financial circumstances have substantially changed.

Rule 462. Trial *De Novo*.

[(A)](a)**[When] If** a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas sitting without a jury.

[(B)](b)The attorney for the Commonwealth may appear and assume charge of the prosecution. **[When] If** the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. **[When] If** no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

[(C)](c)In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

- (1) the defendant waives the presence of the law enforcement officer in open court on the record;
- (2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant **[if proceeding *pro se*] is self-represented**, with the clerk of courts; or
- (3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

[(D)](d)If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

[(E)](e)If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(F)](f)If the defendant has petitioned the trial judge to permit the taking of an appeal *nunc pro tunc* and this petition is denied, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(G)](g) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.

[(H)](h) At the time of sentencing, the trial judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

[(a)](i) the amount of the fine and the obligation to pay costs;

[(b)](ii) the amount of restitution ordered, including

[(i)](A) the identity of the payee**[(s)]**,

[(ii)](B) to whom the restitution payment shall be made, and

[(iii)](C) whether any restitution has been paid and in what amount; and

[(c)](iii) the date on which payment is due.

If, **pursuant to 456.1**, the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the trial judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the trial judge. The order shall include the information specified in **[paragraphs**

(H)(1) through (H)(3)] subdivisions (h)(1) through (h)(3), and a copy of the order shall be given to the defendant.

- (l) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

Comment: This rule is derived from former Rule 86(G) and former Rule 1117(c).

[This rule was amended in 2000 to make it clear] Subdivision (a) is intended, in part, to make clear that a defendant in a summary criminal case [that the defendant] may file an appeal for a trial *de novo* following the entry of a guilty plea.

“Entry,” as used in **[paragraph (A)] subdivision (a)** of this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in **[paragraphs (B), (G), and (H)] subdivisions (b), (g), and (h)** are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to **[paragraph (B)] subdivision (b)**, the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of **[paragraph (C)] subdivision (c)** that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).

[Paragraph (D)] Subdivision (d) makes **[it]** clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

[New paragraph (F) was added in 2017 to clarify] Subdivision (f) is intended to clarify that in a case in which a defendant seeks to file an appeal *nunc pro tunc*, and the common pleas judge denies that petition, the case will remain at the court of common

pleas. **[This is consistent with the long-standing policy under the rules that once a case has moved from the minor judiciary to the court of common pleas, the case remains at common pleas.]**

[Paragraph (G) was amended in 2008 to permit] Subdivision (g) permits a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. §1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to **[paragraph (H)] subdivision (h)**, if the defendant is convicted, the trial judge **[must] shall** impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. **Rule 456 regarding procedures for default and Rule 456.1 regarding determination of a defendant's means to pay are applicable to summary appeal cases in the courts of common pleas.** See **[Rule] Pa.R.Crim.P.** 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002)**[,];** *Scott v. Illinois*, 440 U.S. 367 (1979)**[, and];** *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Certain costs are mandatory and must be imposed. See, e.g., **[Section 1101 of the Crime Victims Act,]** 18 P.S. § 11.1101.

Once sentence is imposed, **[paragraph (I)] subdivision (i)** makes **[it]** clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

For the procedures for appeals from the Philadelphia Municipal Court Traffic Division, see Rule 1037.

[Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective

April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; *Comment* revised October 16, 2009, effective February 1, 2010; *Comment* revised May 7, 2014, effective immediately; amended March 9, 2016, effective July 1, 2016; amended December 29, 2017, effective April 1, 2018.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 *Comment* revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 523 (February 3, 2007).

Final Report explaining the December 16, 2008 amendments to permit delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. 8 (January 3, 2009).

Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327 (October 31, 2009).

Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).

Final Report explaining the March 9, 2016 amendments to paragraph (G) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).

Final Report explaining the December 29, 2017 amendments regarding appeals *nunc pro tunc* published with the Court's Order at 48 Pa.B. 224 (January 13, 2018).]

Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.

[(A)](a) **If a defendant fails to [comply with the 10-day response period set forth] respond within 30 days as required** in Rules 407, 412, **and 422, [and 456,]** the issuing authority shall notify the defendant in writing that, pursuant to **[Section 1533 of the Vehicle Code] 75 Pa.C.S. § 1533,** the defendant's license will be suspended if, **within 15 days of the date of the notice,** the defendant fails to respond to the citation or summons **[or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs within 15 days of the date of the notice].**

(b) **If a defendant defaults on the payment of fines, costs, or restitution as ordered, the issuing authority shall notify the defendant in writing that, pursuant to 75 Pa.C.S. § 1533, the defendant's license will be suspended if, within 15 days of the date of the notice, the defendant fails to pay all fines, costs, and restitution imposed or enter into an agreement to make installment payments for fines, costs, and restitution and the issuing authority determines that the defendant has the financial ability to pay.**

[(B)](c) Service of the notice required in **[paragraph (A)] subdivisions (a) and (b)** shall be by first class mail, and a copy shall be made part of the record.

[(C)](d) If the defendant does not respond by the **[fifteenth] 15th** day, the issuing authority shall **[so]** notify the Pennsylvania Department of Transportation. The notice shall be sent by electronic transmission in the form prescribed by the Pennsylvania Department of Transportation. The issuing authority shall print **[out]** and sign a copy of the notice, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

(e) **If the defendant responds by the 15th day and requests a trial, pays all fines, costs, and restitution imposed, enters into an agreement to make installment payments for fines, costs, and restitution, or is determined to be financially unable to pay pursuant to Rule 456, the issuing authority shall not notify the Pennsylvania Department of Transportation as provided in subdivision (d).**

(f) **If the defendant responds by the 15th day and fails to pay all fines, costs, and restitution imposed or fails to enter into an agreement to make installment payments for fines, costs, and restitution, a notice**

issued pursuant to subdivision (d) shall be sent to the Pennsylvania Department of Transportation only if the issuing authority first has held a hearing pursuant to Rule 456 and determined that the defendant has the financial ability to pay. The notice shall not be sent during the pendency of any appeal from that hearing.

~~[(D)]~~**(g)** If the defendant responds to the citation or summons, or pays all fines and costs imposed, or enters into an agreement to make installment payments for the fines and costs imposed, or has been determined to be financially unable to pay pursuant to Rule 456 after notice has been sent pursuant to ~~[paragraph (C)]~~ **subdivision (d)**, the issuing authority shall **[so]** notify the Pennsylvania Department of Transportation and request the withdrawal of the defendant's license suspension. The notice and request shall be sent by electronic transmission. The issuing authority shall print **[out]** and sign a copy of the notice and request, which shall include the date and time of the transmission and the signed copy shall be made part of the record.

(h) In determining whether a defendant is without the financial means to pay fines, costs, and restitution, the issuing authority shall consider the defendant's ability to pay as provided in Rule 456. If the issuing authority determines that the defendant is unable to pay outstanding costs, fines, and restitution and, pursuant to Rule 456(d)(2), waives any outstanding fines and costs, such waiver shall constitute payment in full of the waived fines and costs for purposes of this rule.

~~[(E)]~~**(i)** Upon request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of any notices or any request form required by this rule.

Comment: This rule **[was adopted in 1993, and amended in 2011,]** is intended to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. See, e.g., **[paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs)]** Pa.R.Crim.P. 430(B)(1)(a) and 456 (Default of Payment of Costs, Fines, or Restitution). In cases involving default on the payment of fines and costs, or restitution, the 15-day notice of the license suspension may be sent at the time of default and not subsequent to the expiration of the 10-day bench warrant notice under Rules 430(B)(3)(b) and 456(b).

In determining whether a defendant is without the financial means to pay the fine, costs, and restitution, the issuing authority shall consider the defendant's financial ability as provided in Rule 456.1.

This rule is not intended to address the admissibility of evidence. **[See See** the Pennsylvania Rules of Evidence and 42 Pa.C.S. §§ 6101 *et seq.* concerning the **[Rules of Evidence for] admissibility of** documents.

Under **[paragraph (E)] subdivision (i)**, the issuing authority **[is required to] shall** provide a certified copy of the report, but only if the request is made within the period that the issuing authority is required to retain the records.

Electronic transmissions are to be made from the Magisterial District Judge System or other computer system used by issuing authorities.

[Official Note: Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 2811 (June 19, 1993).

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

Final Report explaining the February 18, 2011 amendments to paragraphs (A) and (D) adding failure to pay fines and costs published with the Court's Order at 41 Pa.B. 1167 (March 5, 2011).]

Rule 702. Aids in Imposing Sentence.

[(A)](a) Pre-Sentence Investigation Report.

- (1) The sentencing judge may, in the judge's discretion, order a pre-sentence investigation report in any case.
- (2) The sentencing judge shall place on the record the reasons for dispensing with the pre-sentence investigation report if the judge fails to order a pre-sentence report in any of the following instances:
 - [(a)](i)** when incarceration for one year or more is a possible disposition under the applicable sentencing statutes;
 - [(b)](ii)** when the defendant is less than 21 years old at the time of conviction or entry of a plea of guilty; or
 - [(c)](iii)** when a defendant is a first offender in that he or she has not heretofore been sentenced as an adult.
- (3) The pre-sentence investigation report shall include information regarding the circumstances of the offense and the character of the defendant sufficient to assist the judge in determining sentence.
- (4) The pre-sentence investigation report shall also include a victim impact statement as provided by law.

[(B)](b) Psychiatric or Psychological Examination. After a finding of guilt and before the imposition of sentence, after notice to counsel for both parties, the sentencing judge may, as provided by law, order the defendant to undergo a psychiatric or psychological examination. For this purpose the defendant may be remanded to any available clinic, hospital, institution, or state correctional diagnostic and classification center for a period not exceeding 60 days.

(c) Ability to Pay Determination. The judge shall order the defendant to complete and provide the judge a statement of financial ability pursuant to Rule 702.1 to aid the judge in determining the amount of any discretionary fines to be imposed. A defendant may waive this requirement.

Comment: For purposes of **[paragraph (A)(2)(c)] subdivision (a)(2)(iii)**, whether the defendant has a prior juvenile adjudication is immaterial. **[Paragraph (A)(3)]**

Subdivision (a)(3) indicates in general terms what the contents of the pre-sentence investigation report **[must] shall** include. With respect to the particularized contents of such reports, see *Commonwealth v. Martin*, 351 A.2d 650 (Pa. 1976). Concerning other information that would be helpful for the sentencing judge to have in the pre-sentence investigation report, see 18 Pa.C.S. § 1106(c)(2)(iv) (the judge, when determining the amount of restitution, must consider “any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title”).

For the victim’s right to have information included in the pre-sentence report concerning the impact of the crime on the victim, as provided in **[paragraph (A)(4), see 71 P. S. § 180-9.3] subdivision (a)(4), see 18 P.S. § 11.201(5)**.

A psychiatric or psychological examination may be ordered on an outpatient or inpatient basis as provided by law. See 50 P. S. § 7405. Because the 1976 Mental Health Procedures Act excludes issues related to mental retardation, 50 P. S. § 7502, see also the Mental Health and Mental Retardation Act of 1966, 50 P. S. § 4101 *et seq.*

When an incarcerated defendant has undergone any period of voluntary or involuntary confinement for the purpose of examination pursuant to this rule, credit for the period of confinement should be given toward the sentence ultimately imposed. See, e.g., 50 P.S. §§ 7401(b) and 7407(f).

Subdivision (c) is intended, in part, to aid the judge in determining an appropriate fine at the time of sentencing. “In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.” 42 Pa.C.S. § 9726(d) (Financial resources). Unless it appears of record that the defendant “is or will be able to pay the fine[] and the fine will not prevent the defendant from making restitution or reparations to the victim,” the judge shall not impose a fine. 42 Pa.C.S. 9726(c) (Exception).

Additional pre-sentence procedures may be required by statute. For example, see 42 Pa.C.S. §§ 9791—9799.5 (concerning persons convicted of sexually violent offenses) for pre-sentence assessment and hearing procedures. See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.

Under the provisions of Rule 703 (Disclosure of Pre-Sentence Reports), full disclosure of reports to defense counsel and the Commonwealth is required. See **[Rule] Pa.R.Crim.P. 703(A)(2)**. Reports may also be disclosed under Rule 703 to other designated persons or agencies, unless the sentencing judge otherwise orders. See **[Rule] Pa.R.Crim.P. 703(C), (D), and (E)**.

[Official Note: Rule 1403 adopted July 23, 1973, effective 90 days hence; amended June 28, 1976, effective January 1, 1977; amended November 1, 1991, effective January 1, 1992; amended March 22, 1993, effective January 1, 1994; Comment revised April 18, 1997, effective immediately; renumbered Rule 702 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003.]

Committee Explanatory Reports:

Report explaining the January 1, 1992 amendments published at 20 Pa.B. 1697 (March 24, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the April 18, 1997 Comment revision published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the March 27, 2003 Comment revision adding a cross-reference to 18 Pa.C.S. § 1106 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).]

—The following text is entirely new—

Rule 702.1. Ability to Pay Determination.

- (a) **Statement of Financial Ability.** For the purposes of determining a defendant's ability to pay fines, costs, and restitution, the defendant shall complete and provide the judge a statement of financial ability, as set forth in subdivision (f).
- (b) **Evidence.** In addition to the statement of financial ability, the judge may require the defendant to present documents or other evidence to verify the defendant's financial ability.
- (c) **Presumption – Single Remittance.** A defendant is presumed to be unable to pay fines, costs, and restitution in a single remittance if the defendant:
 - (1) receives needs-based public assistance including, but not limited to, Supplemental Nutrition Assistance Program (SNAP), Medicaid, Supplemental Security Income (SSI), or Temporary Assistance to Needy Families (TANF); or
 - (2) meets the following income and asset requirement:
 - (i) gross income (*i.e.*, before taxes and other deductions) that is 200% or less than the federal poverty guidelines for the party's household size; and
 - (ii) assets less than \$10,000, excluding the party's home and one vehicle; or
 - (3) is represented by a Public Defender or other appointed counsel.
- (d) **No Presumption.** The presumption set forth in subdivision (c) shall be inapplicable if:
 - (1) a defendant willfully fails to complete and provide the judge with a statement of financial ability; or
 - (2) the judge deems the information contained in the statement of financial ability to be inaccurate or misstated.
- (e) **Unable to Pay.** A defendant shall be unable to pay fines, costs, and restitution if it would cause the defendant to suffer a substantial financial

hardship, which means the defendant would be unable to fully meet their basic human needs or obligations including, but not limited to, nutrition, housing, utilities, health, transportation, care of dependents, or other areas of essential need, by based upon:

- (1) the party’s gross income, assets, and expenses;
- (2) the number of minor children or adult children, who are incapable of self-support due to a physical or mental disability, that the party is supporting, including a child support obligation;
- (3) employment history;
- (4) other available financial resources, including resources from individuals who have a duty of support to the party; and
- (5) other factors affecting the party’s income, assets, or expenses.

(f) **Statement of Financial Ability Form.** The statement of financial ability required by subdivision (b) shall be substantially in the following form:

(Caption)

Statement of Financial Ability

Defendant’s Name: _____
 First Middle Last

Residence: _____

City, State, Zip: _____

Check the box if you are currently without a house or apartment.

Do you currently receive one or more of the following public benefits?

- Supplemental Nutrition Assistance Program (SNAP) (food stamps)
- Medicaid
- Supplemental Security Income (SSI) (Not Social Security Disability Insurance (SSDI))
- Temporary Assistance to Needy Families (TANF)

- Public Housing or Section 8 Housing
- Needs-based VA Pension
- Low-Income Energy Assistance
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Other need-based federal, state, or local program: _____ *What program?*

Yes No

Are you supporting other people who live with you:

I support _____ adults (not counting myself) who live with me.

I support _____ children under 18 who live with me.

GROSS MONTHLY INCOME (income before paying taxes and other deductions):

\$ _____ monthly gross wages. I work as a _____ *(job title/description)* for _____ *(name of employer)*.

\$ _____ unemployment compensation. I have been unemployed since _____ *(date)*. My last employer was _____ *(name of employer)*.

\$ _____ money received from other people.

\$ _____

| | |
|--|--|
| <input type="checkbox"/> Retirement/Pension | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Workers Comp | <input type="checkbox"/> Social Security |
| <input type="checkbox"/> Child/Spousal support | <input type="checkbox"/> Other sources: _____ <i>(describe sources)</i> |

\$ _____ Total monthly gross income

ASSETS (Current Value):

\$ _____ Cash

\$ _____ Bank accounts or other financial assets

\$ _____ Primary vehicle

\$ _____ Other vehicles
\$ _____ House
\$ _____ Other real estate
\$ _____ Other property: _____ *(describe)*

\$ _____ Total value of property

MONTHLY EXPENSES YOU PAY:

\$ _____ Rent/mortgage payment
\$ _____ Food and household supplies
\$ _____ Utilities, including cell phone
\$ _____ Clothing and other personal expenses
\$ _____ Medical and dental expenses/insurance
\$ _____ Child care
\$ _____ Transportation, including car payments and repairs
\$ _____ Child and spousal support or alimony
\$ _____ Other expenses: _____ *(describe)*

\$ _____ Total monthly expenses

Are there other facts that you would like the court to know about your circumstances that may help the court decide your ability to pay fines, costs, and restitution, such as you are experiencing homelessness or you have health issues?

VERIFICATION

I understand that I have a continuing obligation to inform the court of an improvement in my financial circumstances that would permit me to pay fines, costs, and restitution in this case.

I verify that the statements made in this application are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date

Defendant's Signature

Comment: This rule is applicable to all court cases including those in the Philadelphia Municipal Court.

The burden is on the defendant to provide the judge with information about the defendant's financial ability. In determining whether the defendant has the ability to pay, the judge must consider the totality of the defendant's financial resources and the nature of the burden that payment of fines, costs, and restitution will have on the defendant's finances. Each defendant's situation with regard to their ability to pay case assessments is unique and the judge must tailor the determination to the individual defendant.

If a defendant is determined to be unable to pay fines, costs, and restitution, the judge may sentence or resentence the defendant in accordance with Rules 704 and 705 or Rule 706.

Rule 704. Procedure at Time of Sentencing.

[(A) TIME FOR SENTENCING.](a) Time for Sentencing.

- (1) Except as provided by Rule **[702(B)] 702(b)**, sentence in a court case shall ordinarily be imposed within 90 days of conviction or the entry of a plea of guilty or *nolo contendere*.
- (2) When the date for sentencing in a court case must be delayed, for good cause shown, beyond the time limits set forth in this rule, the judge shall include in the record the specific time period for the extension.
- (3) In a summary case appeal, sentence shall be imposed immediately following a determination of guilt at a trial *de novo* in the court of common pleas.

[(B) ORAL MOTION FOR EXTRAORDINARY RELIEF.](b) Oral Motion for Extraordinary Relief.

- (1) Under extraordinary circumstances, when the interests of justice require, the trial judge may, before sentencing, hear an oral motion in arrest of judgment, for a judgment of acquittal, or for a new trial.
- (2) The judge shall decide a motion for extraordinary relief before imposing sentence[,] and shall not delay the sentencing proceeding in order to decide it.
- (3) A motion for extraordinary relief shall have no effect on the preservation or waiver of issues for post-sentence consideration or appeal.

[(C) SENTENCING PROCEEDING.](c) Sentencing Proceeding.

- (1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.
- (2) The judge shall colloquy the defendant on the record regarding the defendant's ability to pay any fines, costs, or restitution imposed.**

(3) A defendant's failure to complete and provide a statement of financial ability as required by Rule 702(c) shall not preclude the judge from proceeding with sentencing.

[(2)](4) The judge shall state on the record the reasons for the sentence imposed.

[(3)](5) The judge shall determine on the record that the defendant has been advised of the following:

[(a)](i) of the right to file a post-sentence motion and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal;

[(b)](ii) of the rights,

[(i)](A) if the defendant is indigent, to proceed in forma pauperis and to proceed with appointed counsel as provided in Rule 122, or,

[(ii)](B) if represented by retained counsel, to proceed with retained counsel unless the court has granted leave for counsel to withdraw pursuant to Rule 120(B);

[(c)](iii) of the time limits within which post-sentence motions must be decided;

[(d)](iv) that issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion; and

[(e)](v) of the defendant's qualified right to bail under Rule 521(B).

[(4)](6) The judge shall require that a record of the sentencing proceedings be made and preserved so that it can be transcribed as needed. The record shall include:

[(a)](i) the record of any stipulation made at a pre-sentence conference; and

[(b)](ii) a verbatim account of the entire sentencing proceeding.

Comment: The rule is intended to promote prompt and fair sentencing procedures by providing reasonable time limits for those procedures, and by requiring that the defendant be fully informed of his or her post-sentence rights and the procedural requirements which must be met to preserve those rights.

Rule 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) governs sentencing procedures after a revocation of probation, intermediate punishment, or parole.

[TIME FOR SENTENCING] Time for Sentencing

As a general rule, the date for sentencing should be scheduled at the time of conviction or the entry of a plea of guilty or *nolo contendere*.

Under **[paragraph (A)(1)] subdivision (a)(1)**, sentence should be imposed within 90 days of conviction or the entry of a plea of guilty or *nolo contendere*, unless the court orders a psychiatric or psychological examination pursuant to Rule **[702(B)] 702(b)**. Such an order should extend the time for sentencing for only as much time as is reasonably required, but in no event should sentencing be extended for more than 30 days beyond the original 90-day limit. In summary appeal cases, however, sentence must be imposed immediately at the conclusion of the *de novo* trial.

[Paragraph (A)(2)] Subdivision (a)(2) is not intended to sanction *pro forma* requests for continuances. Rather, it permits the judge to extend the time limit for sentencing under extraordinary circumstances only. For example, additional pre-sentence procedures may be required by statute. See 42 Pa.C.S. §§ 9799.11—9799.41 for pre-sentence assessment and hearing procedures for persons convicted of sexually violent offenses.

Because such extensions are intended to be the exception rather than the rule, the extension **[must] shall** be for a specific time period, and the judge **[must] shall** include in the record the length of the extension. A hearing need not be held before an extension can be granted. Once a specific extension has been granted, however, some provision should be made to monitor the extended time period to **[insure] ensure** prompt sentencing when the extension period expires.

Failure to sentence within the time specified in **[paragraph (A)] subdivision (a)** may result in the discharge of the defendant. See *Commonwealth v. Anders*, 725 A.2d 170 (Pa. 1999) (discharge is appropriate remedy for violation of Rule 704 time limits, but only if the defendant can demonstrate that the delay in sentencing was prejudicial to the defendant).

[ORAL MOTION FOR EXTRAORDINARY RELIEF] Oral Motion for Extraordinary Relief

Under **[paragraph (B)] subdivision (b)**, **[when] if** there has been an error in the proceedings that would clearly result in the judge's granting relief post-sentence, the judge should grant a motion for extraordinary relief before sentencing occurs. Although trial errors may be serious and the issues addressing those errors meritorious, this rule is intended to allow the trial judge the opportunity to address only those errors so manifest that immediate relief is essential. It would be appropriate for counsel to move for extraordinary relief, for example, when there has been a change in case law, or, in a multiple count case, when the judge would probably grant a motion in arrest of judgment on some of the counts post-sentence. Although these examples are not all-inclusive, they illustrate the basic purpose of the rule: when there has been an egregious error in the proceedings, the interests of justice are best served by deciding that issue before sentence is imposed. Because the relief provided by this **[section] subdivision** is extraordinary, boilerplate motions for extraordinary relief should be summarily denied.

Under **[paragraph (B)(2)] subdivision (b)(2)**, the motion **[must] shall** be decided before sentence is imposed, and sentencing may not be postponed **[in order]** to dispose of the motion. The judge may summarily deny the motion or decide it on the merits.

[Paragraph (B)(3)] Subdivision (b)(3) is intended to make it clear that a motion for extraordinary relief is neither necessary nor sufficient to preserve an issue for appeal. The failure to make a motion for extraordinary relief, or the failure to raise a particular issue in such a motion, does not constitute a waiver of any issue. Conversely, the making of a motion for extraordinary relief does not, of itself, preserve any issue raised in the motion, nor does the judge's denial of the motion preserve any issue.

[SENTENCING PROCEDURES] Sentencing Procedures

[Paragraph (C)(1) retains the former requirement that] Subdivision (c)(1) requires the judge **to** afford the defendant an opportunity to make a statement and counsel the opportunity to present information and argument relative to sentencing. The defendant's right to allocution at sentencing is well established, and the trial judge must inform the defendant of that right. See *Commonwealth v. Thomas*, 553 A.2d 918 (Pa. 1989).

The duty of the judge to explain to the defendant the rights set forth in **[paragraph (C)(3)] subdivision (c)(5)** is discussed in *Commonwealth v. Wilson*, 241 A.2d 760, 763 (Pa. 1968), and *Commonwealth v. Stewart*, 241 A.2d 764, 765 (Pa. 1968).

The judge should explain to the defendant, as clearly as possible, the timing requirements for making and deciding a post-sentence motion under Rule 720. The judge

should also explain that the defendant may choose whether to file a post-sentence motion and appeal after the decision on the motion, or to pursue an appeal without first filing a post-sentence motion.

[Paragraph (C)(3) Subdivision (c)(5)] requires the judge to ensure the defendant is advised of his or her rights concerning post-sentence motions and appeal, and the right to proceed with counsel. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. 2002).

The rule **[permits] does not prohibit** the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the sentencing proceeding. This written colloquy must be supplemented by an on-the-record oral examination to determine that the defendant has been advised of the applicable rights enumerated in **[paragraph (C)(3) subdivision (c)(5)]** and that the defendant has signed the form.

Other, additional procedures are required by statute. **[See, e.g.] For example**, 42 Pa.C.S. § 9756(b)(3) **[that]** imposes requirements on the judge **[when] if** a defendant may be eligible to participate in a re-entry plan, **[and]** 42 Pa.C.S. § 9756(b.1) **[that]** imposes requirements on the judge **[when] if** a defendant may be eligible for a recidivism risk reduction incentive (RRRI) minimum sentence[;], 42 Pa.C.S. § 9799.23 **[that]** requires the judge to inform certain offenders of the duty to register[;], and 42 Pa.C.S. § 9813 **[that]** imposes requirements on the judge **[when] if** a defendant may be eligible for work release.

After sentencing, following a conviction in a trial *de novo* in a summary case, the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right to proceed *in forma pauperis* and with appointed counsel to the extent provided in Rule 122(A), and of the qualified right to bail under Rule 521(B). See **[paragraphs (C)(3)(a), (b), and (e)] subdivisions (c)(5)(i), (ii), and (v)**. See also Rule 720(D) (no post-sentence motion after a trial *de novo*).

After sentencing, the judge should inquire whether the defendant intends to file a post-sentence motion or to appeal, and if so, should determine the defendant's bail status pursuant to **[paragraph (C)(3)(e)] subdivision (c)(5)(v)** and Rule 521. It is recommended, when a state sentence has been imposed, that the judge permit a defendant who cannot make bail to remain incarcerated locally, at least for the 10-day period during which counsel may file the post-sentence motion. **[When] If** new counsel has been appointed or entered an appearance for the purpose of pursuing a post-sentence motion or appeal, the judge should consider permitting the defendant to remain incarcerated locally for a longer period to allow new counsel time to confer with the defendant and become familiar with the case. **[See also Rule] See also Pa.R.Crim.P. 120** (Attorneys—Appearances and Withdrawals).

[It is difficult to set forth all the standards that a judge must utilize and consider in imposing sentence. It is recommended that, at a minimum, the judge look to the standards and guidelines as specified by statutory law.] For statutory standards and guidelines regarding sentencing, [See the Judicial Code,] see 42 Pa.C.S. §§ 9701 et seq. See also *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977); [and] *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988). The judge also should consider other preexisting orders imposed on the defendant. See 18 Pa.C.S. § 1106(c)(2)(iv)[. **And see]; 42 Pa.C.S. § 9728.**

For procedures in cases in which restitution is imposed, see Rule 705.1.

For the right of a victim to have information included in the pre-sentence investigation report concerning the impact of the crime upon him or her, see 18 P.S. § 11.201(4)—(5) and Rule 702(A)(4).

For the duty of the sentencing judge to state on the record the reasons for the sentence imposed, see *Commonwealth v. Riggins*, 377 A.2d 140 (Pa. 1977); **[and] *Commonwealth v. Devers*, 546 A.2d 12 (Pa. 1988).** If the sentence initially imposed is modified pursuant to Rule 720(B)(1)(a)(v), the sentencing judge should ensure that the reasons for the ultimate sentence appear on the record. See also Sentencing Guidelines, 204 Pa. Code **[§§ 303.1(d)—(e) and 303.13(c)], Part VIII. Criminal Sentencing.**

In cases in which a mandatory sentence is provided by law, **[when] if** the judge decides not to impose a sentence greater than the mandatory sentence, regardless of the number of charges on which the defendant could be sentenced consecutively, and when no psychiatric or psychological examination is required under Rule **[702(B)] 702(b)**, the judge may immediately impose that sentence. But see Rule **[702(A)(2)] 702(a)(2)**, which requires that the court state on the record the reasons for dispensing with a pre-sentence report under the circumstances enumerated therein. See also 42 Pa.C.S. §§ 9721 et seq.

No later than 30 days after the date of sentencing, a Pennsylvania Commission on Sentencing Guideline Sentence Form must be completed at the judge's direction and made a part of the record. In addition, **[a copy of]** the form must be **[forwarded] electronically submitted** to the Commission on Sentencing. 204 Pa. Code **[§ 303.1(e)], Part VIII. Criminal Sentencing.**

With respect to the recording and transcribing of court proceedings, including sentencing, see Rule 115.

[Official Note: Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended

May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; Comment revised April 18, 1997, effective immediately; Comment revised January 9, 1998, effective immediately; amended July 15, 1999, effective January 1, 2000; renumbered Rule 704 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003; amended April 28, 2005, effective August 1, 2005; Comment revised March 15, 2013, effective May 1, 2013; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the 1995 amendment to paragraph (C)(3) published with the Court's Order at 25 Pa.B. 236 (January 21, 1995).

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

Final Report explaining the December 22, 1995 Comment revision on restitution published with the Court's Order at 26 Pa.B. 13 (January 6, 1996).

Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Final Report explaining the April 18, 1997 Comment revisions published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).

Final Report explaining the January 9, 1998 Comment revisions concerning Guideline Sentence Forms, and summary case appeal notice, published with the Court's Order at 28 Pa.B. 481 (January 31, 1998).

Final Report explaining the July 15, 1999 amendments concerning the time for sentencing published with the Court's Order at 29 Pa.B. 4059 (July 31, 1999).

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

Final Report explaining the March 27, 2003 Comment revision adding cross-references to 18 Pa.C.S. § 1106 and 42 Pa.C.S. § 9728 published with the Court's Order at 33 Pa.B. 1928 (April 19, 2003).

Final Report explaining the April 28, 2005 amendments to paragraph (C)(3)(b) concerning retained counsel's obligations published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

Final Report explaining the March 15, 2013 revision of the Comment adding citations to the Sentencing Code published with the Court's Order at 43 Pa.B. 1705 (March 30, 2013).

Final Report explaining the March 9, 2016 revision of the Comment adding a cross-reference to Rule 705.1 concerning restitution published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).]

Rule 705.1. Restitution - Sentencing.

[(A)](a) At the time of sentencing, the judge shall determine what restitution, if any, shall be imposed.

[(B)](b) In any case in which restitution is imposed, the judge shall state in the sentencing order:

- (1) the amount of restitution ordered;
- (2) the details of a payment plan, if any, including when payment is to begin;
- (3) the identity of the payee**[(s)]**;
- (4) to which officer or agency the restitution payment shall be made;
- (5) whether any restitution has been paid and in what amount; and
- (6) whether the restitution has been imposed as a part of the sentence **[and/or] or** as a condition of probation.

Comment: This rule provides the procedures **[for] implementing** the statutory requirement for the judge to impose restitution. In all cases in which restitution is imposed, the sentencing judge **[must] shall** state on the record the amount of restitution at the time of sentencing. See 18 Pa.C.S. § 1106; **[and]** 42 Pa.C.S. §§ 9721, 9728.

The extent of restitution also may be provided by statute. See, e.g., 18 Pa.C.S. § 1107 (restitution for timber theft); § 1107.1 (restitution for identity theft); **[and]** § 1110 (restitution for cleanup of clandestine labs).

When imposing restitution, the sentencing judge should consider whether the defendant has received notice of the intention to seek restitution prior to the hearing and whether the defendant intends to object to the imposition of restitution. The sentencing hearing may need to be continued as a result.

[Paragraph (B)(6)] Subdivision (b)(6) requires that the sentencing order make clear whether any restitution is being imposed as a part of the sentence pursuant to 18 Pa.C.S. § 1106 or as a condition of probation pursuant to 42 Pa.C.S. § 9754. Unlike restitution imposed under § 1106 that is penal in nature, restitution imposed as a condition of probation is primarily aimed at rehabilitation. Sentences of probation give a trial court the flexibility to determine all the direct and indirect damages caused by a defendant. *Commonwealth v. Harner*, 617 A.2d 702 (Pa. 1992); *Commonwealth v. Hall*, 80 A.3d 1204

(Pa. 2013). Because a term of probation may not exceed the maximum term for which the defendant could be confined, and a court cannot enforce a restitution sentence past the statutory maximum date, a court may not require that restitution imposed as a condition of probation be paid beyond the statutory maximum date. *Commonwealth v. Karth*, 994 A.2d 606 (Pa. Super. 2010).

Certain costs are mandatory and must be imposed. **[See, e.g.] See, e.g.**, Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

[Official Note: New Rule 705.1 adopted March 9, 2016, effective July 1, 2016.]

Committee Explanatory Reports:

Final Report explaining new Rule 705.1 concerning sentences of restitution published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).]

—The following text is entirely new—

Rule 705.2. Fines - Sentencing.

- (a) At the time of sentencing, the judge shall determine what fine, if any, shall be imposed.
- (b) The judge may not order a defendant to pay a fine unless, after review of the defendant's statement of financial ability, see Rule 702(c) and Rule 704(c)(3), and after conducting a colloquy on the record as to the defendant's ability to pay, the judge determines:
 - (1) the defendant has the financial ability to pay the fine; and
 - (2) the fine will not prevent the defendant from making restitution.

Comment: This rule provides the procedures for the imposition of a fine at the time of sentencing. See 42 Pa.C.S. § 9726.

Rule 706. [Fines or Costs] Default of Payment of Costs, Fines, or Restitution.

[(A)](a) A court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after a hearing that the defendant is financially able to pay the fine or costs.

[(B) When the court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of the fines or costs in such installments and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose, as set forth in paragraph (D) below.

(C) The court, in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, consider the burden upon the defendant by reason of the defendant's financial means, including the defendant's ability to make restitution or reparations.

(D) In cases in which the court has ordered payment of a fine or costs in installments, the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. Thereupon the court may extend or accelerate the payment schedule or leave it unaltered, as the court finds to be just and practicable under the circumstances of record. When there has been default and the court finds the defendant is not indigent, the court may impose imprisonment as provided by law for nonpayment.]

(b) Hearing. In cases in which the court has ordered payment of a fine, costs, or restitution in installments, the defendant may request a hearing on the payment schedule:

(1) if the defendant is in default of a payment;

**(2) if the defendant advises the court that such default is imminent;
or**

(3) if the defendant's delinquent account was previously turned over to a private collection agency or the county's collection

enforcement unit. The defendant shall be responsible for notifying the collection entity that a hearing has been requested.

At the hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the financial means to meet the payment schedule.

(c) Determination. The judge shall determine a defendant's ability to pay pursuant to Rule 702.1.

(1) If the defendant is in default and the court determines the defendant is able to pay outstanding costs, fines, and restitution, as imposed, the court may permit the defendant to pay the outstanding amount due or the court may enter an order for wage attachment, turn the delinquent account over for collections, or, as provided by law, impose imprisonment or other sanctions.

(2) If the court determines the defendant is unable to pay outstanding costs, fines, and restitution, as imposed, the court:

(i) may order a new payment plan for installments reasonably calculated for the defendant's ability to pay;

(ii) may re-sentence the defendant to a period of community service;

(iii) may reduce or waive any fines and costs, except costs imposed under 18 P.S. § 11.1101, to the extent the defendant would be unable to pay in a single remittance or pursuant to a new payment schedule as provided for in subdivision (c)(2)(i); and

(iv) shall waive any existing collection fee not previously collected from the defendant.

Comment: This rule provides the procedures governing defaults in the payment of restitution, fines, and costs. See 42 Pa.C.S. § 9730(b). For a court's ability to reduce or waive fines and costs see 42 Pa.C.S. § 9730(b)(3)(ii).

See generally *Commonwealth ex rel. Benedict v. Cliff*, [451 Pa. 427,] 304 A.2d 158 (Pa. 1973).

Under this rule, when a defendant fails to pay the fine and costs, the common pleas court judge may issue a bench warrant for the collection of the fine and costs. **[When] If** a “failure to pay” bench warrant is issued, the bench warrant **[must] shall** be executed by a police officer following the procedures set forth in Rule 431(C)(1)(c) and (C)(2), or, if the defendant is unable to pay, the police officer must proceed as provided in Rule 150 (Bench Warrants).

Pursuant to subdivision (c)(1), if a defendant is in default and the judge determines that the defendant is able to pay as ordered, the judge may, as provided by law, impose imprisonment or other sanctions. Before a judge may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. §§ 9730(b)(1)-(b)(2). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at the default hearing. See *Alabama v. Shelton*, 535 U.S. 654 (2002); *Scott v. Illinois*, 440 U.S. 367 (1979). See also Pa.R.Crim.P. 121 (waiver of counsel). In addition, delinquent restitution, fines, or costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

Nothing in this rule is intended to abridge any rights the Commonwealth may have in a civil proceeding to collect a fine or costs.

For suspension of Acts of Assembly, see Rule 1101(F).

[Official Note: Rule 1407 approved July 23, 1973, effective 90 days hence; renumbered Rule 706 and amended March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective August 1, 2006.

Committee Explanatory Reports:

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

Final Report explaining the March 9, 2006 Comment revision concerning fine and cost warrants published with the Court’s Order at 36 Pa.B. 1396 (March 25, 2006).]

—The following text is entirely new—

706.1. Commonwealth Request for Ability to Pay Hearing.

(a) **Motion.**

- (1) The Commonwealth may file a motion requesting a hearing to determine a defendant's ability to pay costs, fines, or restitution imposed as a result of a sentence.
- (2) Upon good cause shown of a substantial change in the defendant's ability to pay, the court shall schedule a hearing.

(b) **Hearing Notice.** Notice of the ability to pay hearing shall be provided to the defendant in person or by first class mail.

(c) **Hearing and Determination.**

- (1) At a hearing on the Commonwealth's motion, the burden to prove a substantial change in the defendant's ability to pay shall be on the Commonwealth.
- (2) If the court determines the Commonwealth has proven by a preponderance of the evidence a substantial change in the defendant's ability to pay, the court may order a new payment plan for installments reasonably calculated to the defendant's ability to pay.

Comment: The purpose of this rule is to permit the Commonwealth to seek an increase in a defendant's monthly payment towards previously imposed costs, fines, and restitution when the Commonwealth has good cause to believe the defendant's financial circumstances have substantially changed.

Rule 1002. Procedure In Summary Cases.

[(A)](a) Except as provided in this rule, **[or]** by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

[(B)](b) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or **[arresting] an arrest** without a warrant **[when] if** arrest is specifically authorized by law.

(1) Issuance of Citation.

[(a)](i) The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to **[paragraph (B)(1)(e)] subdivision (b)(1)(v)**. The notice to appear shall:

[(i)](A) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, and

[(ii)](B) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

[(b)](ii) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule **[403(A)] 403(a)** (Contents of Citation) and a notice to appear. The notice to appear shall:

[(i)](A) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, and

[(ii)](B) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

[(c)](iii) Within **[5] five** days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

[(d)](iv) When the defendant appears before the judge or trial commissioner, as provided in **[paragraph (B)(1)(a) or (B)(1)(b)] subdivision (b)(1)(i) or (b)(1)(ii)**, the judge or trial commissioner shall explain the process to the defendant.

[(i)](A) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.

[(ii)](B) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant. The judge or trial commissioner shall advise the defendant that failure to appear at the trial shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

[(iii)](C) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record **shall** automatically **[will]** be expunged.

[(e)](v) When required by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. Thereafter,

the law enforcement officer, without unnecessary delay, shall transport the defendant to the Municipal Court for proceedings before a judge, and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

[(f)](vi) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant.

[(a)](i) [When] If an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

[(b)](ii) Except when the police officer is required to proceed pursuant to **[paragraph (B)(1)(e)] subdivision (b)(1)(v)**, or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

[(c)](iii) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room. The notice to appear shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

[(d)](iv) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

[(C)](c) If the defendant fails to appear pursuant to the notice to appear issued as required by **[paragraphs (B)(1)(a), (B)(1)(b) or (B)(2)(c)] subdivision (b)(1)(i), (b)(1)(ii), or (b)(2)(iii)**, or a subpoena issued as required by **[paragraph (B)(1)(d)(ii)] subdivision (b)(1)(iv)(B)**, the case shall proceed as provided in **[paragraph (D)] subdivision (d)**.

[(D)](d) If the defendant fails to appear as required in **[(C)] subdivision (c)**, the trial shall be conducted in the defendant's absence, unless the judge

determines that there is a likelihood that the sentence will be imprisonment or that 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 judge shall issue a bench warrant for the defendant's arrest.

(1) At trial, the judge shall proceed to determine the facts and render a verdict in the same manner as trials in criminal cases are conducted in the Common Pleas Court when a jury trial has been waived; however, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant. The allegations in the citation may be recited on behalf of the observing law enforcement officer by his or her representative or designee. The failure of the defendant to appear will be deemed to be a waiver of the right to present defense witnesses.

(2) If the defendant is found guilty, the judge shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, of the right to file an appeal within 30 days for a trial *de novo*, and of the consequences for failing to pay the costs and fines imposed.

(3) In appeals from the summary conviction, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

[(a)](i) the defendant waives the presence of the law enforcement officer in open court on the record;

[(b)](ii) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

[(c)](iii) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

[(E)](e)[When] If the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

Comment: This rule[, which replaced former Rule 1002 in 2005, was developed] **is intended** to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia, to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. See also [Rule 462 and its Comment] **Pa.R.Crim.P. 462 and cmt.**

[The 2009 amendments to paragraph (B) conform] Subdivision (b) conforms the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. See [Rules] **Pa.R.Crim.P. 405** (Issuance of Citation) and 440 (Arrest Without Warrant). **[The amendments require the] The** police officer **is required** to issue a citation as provided in Rule 405 and proceed pursuant to **paragraph (B)(1)(a) or (B)(1)(b) subdivision (b)(1)(i) or (b)(1)(ii)**, unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule **[403(A)] 403(a)**. The notice to appear required by **[paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c)] subdivisions (b)(1)(i), (b)(1)(ii), and (b)(2)(iii)** may be added to the citation form.

Nothing in this rule is intended to permit the admission of double hearsay.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or **[when] if** the defendant fails to produce identification, or **[when] if** there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

[The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court’s Nuisance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).]

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. See, e.g., 18 Pa.C.S. § 3929(g) **[[concerning] regarding fingerprinting in retail theft cases for the purpose of grading the offense].**

[The 2010 amendments added new paragraph (D) and related changes] Subdivision (d) is intended to clarify that summary trials in Philadelphia courts may be conducted in the defendant's absence, conforming Philadelphia practice with the statewide procedures governing trials in the defendant's absence. Compare **[Rules] Pa.R.Crim.P.** 454, 455 and 462.

Nothing in **[paragraph (D)] subdivision (d)** requires that the trial *in absentia* be conducted immediately.

Rule 456 regarding procedures for default and Rule 456.1 regarding determination of a defendant’s means to pay are applicable to cases in the Philadelphia Municipal Court.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Municipal Court Traffic Division, the successor of the Philadelphia Traffic Court, see Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

[Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 6, 2009, effective February 1, 2010; Comment revised February 12, 2010, effective April 1, 2010; amended December 22, 2010, effective February 20, 2011; Comment revised May 7, 2014, effective immediately.

Committee Explanatory Reports:

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

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

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. 2568 (May 23, 2009).

Final Report explaining the February 12, 2010 Comment revision concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Final Report explaining the December 22, 2010 amendments published with the Court's Order at 41 Pa.B. 216 (January 8, 2011).

Final Report explaining the May 7, 2014 Comment revisions concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).]

Rule 1030. Scope of Summary Municipal Court Traffic Division Rules.

Except as provided in these rules or by local rule authorized by these rules, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused of one or more summary traffic offenses only or violations of municipal traffic ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

Comment: These rules **[were developed in 2005]** **are intended** to accommodate the procedures Philadelphia Traffic Court implemented to address the issues in summary traffic cases unique to Philadelphia, to more efficiently handle the vast number of summary traffic cases, and to protect the defendants' rights to a fair and prompt disposition of their cases.

Rule 456 and Rule 456.1 regarding determination of a defendant's means to pay are applicable to cases in the Philadelphia Municipal Court Traffic Division.

The jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division in 2013, see Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

[See] See Rule 105 for the procedures for promulgating local rules.

[Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.]

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5329 (September 24, 2005).

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).]

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 462, 470, 702, 704, 705.1, 706, 1002, and 1030, adoption of Pa.R.Crim.P. 454.1, 456.1, 456.2, 702.1, 705.2, and 706.1, and rescission and replacement of Pa.R.Crim.P. 456

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 403 (Contents of Citation), 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas – Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation – Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas – Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Summons), 423 (Not Guilty Pleas – Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 462 (Trial *De Novo*), 470 (Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs), 702 (Aids in Imposing Sentence), 704 (Procedure at Time of Sentencing), 705.1 (Restitution), 706 (Fines or Costs), 1002 (Procedure in Summary Cases), and 1030 (Scope of Summary Municipal Court Traffic Division Rules), adoption of Pa.R.Crim.P. 454.1 (Sentencing in Summary Cases), 456.1 (Ability to Pay Determination), 456.2 (Commonwealth Request for Ability to Pay Hearing), 702.1 (Ability to Pay Determination), 705.2 (Fines – Sentencing), and 706.1 (Commonwealth Request for Ability to Pay Hearing), and rescission and replacement of Pa.R.Crim.P. 456 (Default Procedures: Restitution, Fines, and Costs) in order to permit the reduction or waiver of costs and fines as permitted by 42 Pa.C.S. § 9730 as amended by Act 163 of 2022, to eliminate the requirement of collateral in certain summary matters, to enlarge the time for responding to a summary citation or summons from ten days to 30 days, and to consolidate summary sentencing procedures.¹

Background

In 2018 and 2019, the Committee published for comment a proposal aimed at addressing issues related to the incarceration of possibly indigent defendants for failing to pay case assessments in summary cases. See 48 Pa.B. 496 (January 20, 2018) and 49 Pa.B. 1122 (March 16, 2019). That proposal sought to extend the time for responding to a summary citation or summons, to permit a defendant to avoid payment of collateral by certifying he or she is without the financial means to deposit the mandated amount, to provide more guidance to magisterial district judges when assessing a defendant's ability

¹ Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

to pay, to require a magisterial district judge to consider a defendant's ability to pay in determining the amount of a fine and discretionary costs, and to create a procedure for an administrative hold on collection actions if the issuing authority determines that the defendant does not have an ability to pay. Since the prior proposal was published for comment, the Act of November 3, 2022, P.L. 2175, No. 163 (Act 163) was enacted. Act 163 substantially amended 42 Pa.C.S. § 9730 (Payment of court costs, restitution, and fines). Specifically, Act 163 revised § 9730 to: 1) expand the remedies available upon default or in anticipation of default; 2) authorize courts to refer accounts to collections if a defendant fails to appear for a financial determination hearing; and 3) include additional procedures related to defaulted accounts that have been turned over to collections.

With respect to additional remedies, amended § 9730(b)(3)(i) now provides for the reduction or waiver of costs or fines — except costs imposed under the Crime Victim Act, 18 P.S. § 11.1101 — if the court determines that a defendant does not have an ability to pay in a single remittance. Prior to its amendment by Act 163, § 9730(b)(3)(i) only provided for payment in installments when a defendant was deemed unable to pay immediately or in a single remittance.

Additionally, if a defendant has already been ordered to make payments in installments and defaults on those payments or advises the court that default is imminent, § 9730(b)(3)(ii) now permits the court to reduce or waive costs or fines — except costs imposed under the Crime Victims Act, 18 P.S. § 11.1101 — depending on the court's determination of a defendant's ability to pay after a rehearing. 42 Pa.C.S. § 9730(b)(3)(ii). Previously, a court was limited to ordering a new payment plan, leaving the payment plan unaltered, or re-sentencing the defendant to community service. *Id.* § 9730(b)(3)(ii). If the defendant's delinquent account was in collections at the time of the rehearing, and the court determines that the defendant lacks the financial ability to pay, the court shall waive any collection fee not previously paid by the defendant. *Id.* § 9730(b)(3)(iii).

Regarding collection efforts, § 9730(b)(2) permits an "issuing authority, senior judge, or senior magisterial district judge" to, *inter alia*, send a delinquent account to a private collection agency if a defendant defaults in the payment of costs, restitution, or fines and the court determines the defendant has an ability to pay. As amended, § 9730(b) now permits an issuing authority, senior judge, or senior magisterial district judge to send a delinquent account to collection if an ability to pay hearing has been scheduled and the defendant fails to appear for the hearing. *Id.* § 9730(b)(2.1)(i). As a result, the delinquent account can be sent to collections without a determination that a defendant has the ability to pay. If a delinquent account has been sent to collections, § 9730(b), as amended, requires the collection agency to inform the defendant that a new ability to pay hearing can be requested. *Id.* § 9730(b)(2.1)(ii). If the defendant requests a new hearing, collection efforts are held in abeyance. *Id.* § 9730(b)(2.2)(iii). If the defendant fails to appear for the requested hearing, then collections efforts may resume. *Id.* § 9730(b)(2.2)(iv).

Proposed Rule Changes

The proposed rule changes published here provide procedures for determining a defendant's ability to pay as well as procedures for courts to reduce or waive fines and costs as permitted by 42 Pa.C.S. §§ 9730(b)(3)(i) and (b)(3)(ii) as amended. Although subdivision (D)(2) of Rule 456 authorizes a court to avail itself of the remedies provided for by §§ 9730(b)(3)(i) and (b)(3)(ii),² the Committee believes uniform procedures governing ability to pay determinations and specifically incorporating a court's ability to reduce or waive fines and costs would be beneficial. Accompanying these proposed changes are many of those initially published in 2018 and 2019. See *supra*. However, those earlier proposals have been further modified in light of Act 163.

Response to a Summary Citation or Summons

As with the previous proposal, the Committee is here proposing to increase the time for a defendant to respond to a summary citation or summons from ten days to 30 days. This increase in the time to respond will provide a defendant with additional time to obtain the necessary funds to pay any assessments, such as fines and costs, and will thus likely reduce the number of not guilty pleas. Fewer not guilty pleas, in turn, will result in fewer warrants issued due to defendants not appearing for summary trials as there will simply be fewer summary trials scheduled. Rules 403, 407, 411, 412, and 422 would be amended to reflect this change. Additionally, defendants would be required to provide a current mailing address and telephone number with any written response to a citation or summons. Requiring defendants to provide current contact information will also help reduce the number of warrants issued as defendants will be more likely to timely receive court notices. Rules 408, 409, 413, 414, 423, and 424 would be amended to include this requirement.

Rules 409, 414, and 424 would be amended to require a defendant who wishes to plead guilty but cannot afford to pay the entirety of the fines and costs imposed to appear in person for sentencing to establish a payment plan.

Requirements for the posting of collateral for appearance at trial, whether the fines and costs specified in the citation or \$50 when the fines and costs are not specified, would be removed from Rules 408, 413, and 423. Additionally, Rule 403 would be amended to remove the notice requirement regarding the posting of collateral. See Pa.R.Crim.P. 403(b)(2)(i). Currently, the posting of collateral is only required when a defendant pleads not guilty by mail. See Pa.R.Crim.P. 408(a)(2), 413(a)(2), and 423(a)(2). When a defendant pleads not guilty in person, the imposition of collateral is discretionary. See

² Subdivision (D)(2) provides, in part: "Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may . . . alter or amend the order as otherwise *provided by law*." Pa.R.Crim.P. 456(D)(2) (emphasis added).

Pa.R.Crim.P. 408(a)(1), 413(a)(1), and 423(a)(1). After much discussion of this requirement, the Committee concluded that the prepayment of fines and costs, prior to a finding of guilt, was fundamentally unfair, particularly given that a defendant who has been found guilty may enter into a payment plan to pay those same fines and costs over time. Additionally, no individualized assessment of a defendant's likelihood to appear, *compare* Pa.R.Crim.P. 523 (Release Criteria), is required when a defendant is pleading not guilty by mail and required to pay \$50 collateral. Instead, the requirement is applicable to all defendants. In the Committee's view, a defendant responding by mail to enter a not guilty plea, or appearing in person to enter a not guilty plea, is sufficient assurance that the defendant will appear for trial.

Sentencing in Summary Cases

Currently, sentencing provisions in summary cases are contained in several rules throughout Chapter 4. See Pa.R.Crim.P. 409(C)(5), 414(C)(5), 424(C)(5), and 454(F). Proposed Rule 454.1 (Sentencing in Summary Cases) would replace these subdivisions with a single rule governing sentencing in all summary cases regardless of how the proceedings were initiated. Subdivisions (a) through (d) of proposed Rule 454.1 would largely incorporate current procedure. Subdivision (e) through (g) would govern an issuing authority's determination of whether any financial obligations imposed at sentencing should be paid immediately in a single remittance or subject to a payment plan. In making this determination, the issuing authority would be required to assess a defendant's ability to pay pursuant to proposed Rule 456.1 (Ability to Pay Determination), unless the defendant were to waive that determination. Waiver is intended as an option for defendants who have the financial wherewithal to immediately pay all financial obligations in a single remittance. Subdivision (h) is derived from current procedures. See Pa.R.Crim.P. 454(F). Subdivision (i) sets forth the option of establishing a payment plan if the defendant is unable to pay all financial obligations in a single remittance. The defendant would also be advised of the default procedures found in Rule 456.

Rule 456, which governs default of payment of costs, fines, or restitution, would be rescinded and replaced. Subdivision (a) of proposed Rule 456 would provide three bases for a post-sentence ability to pay hearing: when the defendant has defaulted, when a defendant advises that default is imminent, and upon a defendant's request for a hearing after his or her account is in collections. Pa.R.Crim.P. 456(a)(1), (a)(2), and (a)(3) (proposed). If the defendant advises the court at sentencing that default is imminent, nothing in this proposal would prohibit the court from immediately conducting a hearing pursuant to subdivision (c). If a request is made pursuant to subdivision (a)(3), collection efforts are suspended. See 42 Pa.C.S. § 9730(2.2)(iii). However, the defendant is responsible for notifying the collection entity that a request for a hearing has been made. Pa.R.Crim.P. 456(a)(3) (proposed).

Subdivision (b) would govern the ability to pay hearing notice. Subdivision (b)(1) is intended for this notice to also serve as a default notice if that is the basis for the hearing. Subdivision (b)(3) would provide for an arrest warrant if the defendant does not attend the hearing. Subdivision (b)(4) would provide for a delinquent account to be turned over to collections if the defendant does not appear. The bench warrant under subdivision (b)(3) and collections under subdivision (b)(4) are not intended to be mutually exclusive.

Subdivision (c) governs the conducting of the hearing and is largely carried over from the current rule and prior proposal.

Subdivision (d) sets forth the options for the issuing authority depending upon the ability to pay determination. In subdivision (d)(1), if the defendant has the ability to pay, the court may order a wage attachment, turn the account over for collections, or impose imprisonment. Subdivision (d)(1) also permits a defendant to pay the outstanding amount due.

Subdivision (d)(2) sets forth the options if the defendant does not have the ability to pay the outstanding costs, fines, and restitution. The options under subdivision (d)(2) are derived from Act 163. 42 Pa.C.S. § 9730(3).

Proposed Rule 456.1 (Ability to Pay Determination) would govern ability to pay determinations and would apply at sentencing and at default hearings. Subdivision (a) would require the defendant to complete the form found at subdivision (f). Subdivision (b) would permit the issuing authority to require additional documentary or testimonial evidence. For example, the issuing authority could require the defendant to testify. However, subdivision (b) is not intended to require supporting documentation for every aspect of the form. For example, if a defendant indicates reasonable monthly utility expenses, the defendant should not be required to produce electric, water, gas, sewer, and trash bills. Requiring such documentation would be overly burdensome on the defendant while also rendering subdivision (f)'s verification subject to 18 Pa.C.S. § 4909 meaningless.

Subdivision (c) would set forth three presumptions that a defendant cannot pay all financial obligations in a single remittance. However, subdivision (d) would clarify that no such presumption applies if the defendant refuses to complete the application or the information on the application is inaccurate or misstated.

Subdivision (e) would set forth a definition of "inability to pay." A defendant may be presumed to be unable to pay all financial obligations in a single remittance pursuant to subdivision (c), but subdivision (e) would include other factors to determine whether any amount can be paid or whether a defendant has an ability to pay notwithstanding the absence of a presumption.

While proposed Rule 456, discussed above, would provide for a defendant to request an ability to pay hearing, Pa.R.Crim.P. 456(a)(2) and (3) (proposed), proposed Rule 456.2 would permit the Commonwealth to request an ability to pay hearing via motion. Pursuant to this proposed rule, the court must schedule a hearing upon good cause shown of a substantial change in the defendant's ability to pay. As explained in the Comment, "The purpose of this rule is to permit the Commonwealth to seek an increase in a defendant's monthly payment towards previously imposed costs, fines, and restitution when the Commonwealth has good cause to believe the defendant's financial circumstances have substantially changed." Rule 456.2, cmt. (proposed).

As summary sentencing will be governed by Rules 456 and 456.1, subdivision (h)(1) of Rule 462 (*Trial De Novo*) would be amended to reference proposed Rule 456.1. The Comment to Rule 462 would also be amended to advise that Rules 456 and 456.1 "are applicable to summary appeal cases in the courts of common pleas." Pa.R.Crim.P. 462, cmt. (proposed).

In addition to impacting the remedies available when a defendant defaults, a court's ability to reduce or waive costs and fines as a result of Act 163 also impacts the procedures related to suspending a defendant's driver's license when the defendant has defaulted. Rule 470 (Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs), which provides the procedures for notifying the Department of Transportation when a defendant has defaulted or failed to respond to a summary citation or summons, would be amended to incorporate the ability to pay procedures of proposed Rule 456 and to require an ability to pay determination to be made prior to notification being forwarded to the Department of Transportation.

In particular, if the issuing authority concludes that a defendant is financially unable to pay pursuant to proposed Rule 456, and the defendant did respond within the 15-day notice sent pursuant to proposed subdivision (b) of Rule 470, no notice would be sent to the Department of Transportation. Pa.R.Crim.P. 470(e) (proposed). If a notice had already been sent, the issuing authority would be required to notify the Department of Transportation and request the withdrawal of the license suspension. Pa.R.Crim.P. 470(g) (proposed).

Rule 470 would also be amended to require the notice of an impending license suspension to be sent upon default rather than at the expiration of the 10-day notice of Rule 456. Currently, when a defendant is in default, a 10-day notice that a bench warrant will be issued if the defendant fails to pay as ordered or fails to appear before the issuing authority is sent to the defendant. See Pa.R.Crim.P. 456(B). At the expiration of those 10 days, if the defendant has not responded, a bench warrant is issued, and the defendant is sent a second notice pursuant to Rule 470 advising that the defendant's license will be suspended in 15 days if the defendant fails to respond. See Pa.R.Crim.P. 470(a). As a

result of this double notice, a defendant who has defaulted is effectively provided 25 days after default before a license suspension could begin.

It was suggested to the Committee that Rule 470 should be revised to permit issuance of the suspension notice at the same time as the 10-day notice issued upon default pursuant to Rule 456. Sending the notices simultaneously would likely provide a stronger incentive to pay or appear before the issuing authority as the defendant would be made aware, at the time of default, of both the impending warrant and impending license suspension. Currently, a defendant is only made aware of a potential license suspension after the 10-day notice has already expired. Thus, a new subdivision (b) is proposed that would require the notice of an impending license suspension to be sent upon default rather than at the expiration of the 10-day notice of Rule 456.

Sentencing in Court Cases

In addition to proposing to amend rules governing sentencing in summary cases and proposing the adoption of several new rules addressing ability to pay determinations in summary cases, the Committee is similarly proposing to adopt several new rules and to amend existing rules governing sentencing in court cases. Like the proposed amendments and proposed new rules already discussed, the amendments and new rules proposed below would incorporate the authority to reduce or waive costs and fines granted to courts by 42 Pa.C.S. § 9730 as amended by Act 163. In concluding that § 9730 applies in court cases, the Committee was informed by the current practice of permitting common pleas judges to substitute community service for the payment of costs and fines pursuant to subdivision (b)(3)(ii) of § 9730. See 42 Pa.C.S. § 9730(b)(3)(ii) (permitting community service in lieu of costs and fines and amended by Act 163 to permit reduction or waiver of costs and fines). See also *Commonwealth v. Diaz*, 191 A.3d 850, 864 (Pa. Super. 2018) (recognizing the applicability of the procedures for failure to pay found in § 9730 to a defendant convicted of possessing drug paraphernalia, an ungraded misdemeanor).

Currently, to assist a judge in crafting an appropriate sentence, Rule 702 (Aids in Imposing Sentence) permits a judge to order a pre-sentence investigation report and to order a psychiatric or psychological examination of a defendant. To aid the judge in determining an appropriate fine at sentencing, Rule 702 would be amended to require a judge to order a defendant to complete a statement of financial ability pursuant to Rule 702.1 (proposed). See 42 Pa.C.S. § 9726(d). The Comment to the rule would also be amended to provide appropriate statutory citations related to the imposition of fines.

Proposed Rule 702.1 (Ability to Pay Determination) would contain the statement of financial ability form referenced in Rule 702. This rule is the court case analog of proposed Rule 456.1 and is identical to that rule with minor revisions necessitated by its applicability to court cases rather than summary cases.

To confirm and, if needed, supplement the information provided on a defendant's statement of financial ability, see Pa.R.Crim.P. 702.1 (proposed), a judge would be required to colloquy a defendant on the record at sentencing regarding the defendant's ability to pay fines, costs, and restitution pursuant to proposed subdivision (c)(2) of Rule 704 (Procedure at Time of Sentencing). The Committee is also proposing a new subdivision (c)(3) that would permit a judge to proceed with sentencing even if the defendant failed to provide a statement of financial ability pursuant to Rule 702(c) (proposed). The Committee concluded that sentencing should not necessarily be delayed because a defendant failed to complete the statement as ordered. For instance, a judge may conclude that the defendant's failure to complete the statement is not excusable and therefore the defendant has waived the benefit of the statement, e.g., a lower fine, and sentencing should proceed as scheduled.

With respect to the imposition of a fine at sentencing, the Committee is proposing new Rule 705.2 (Fines – Sentencing). This rule is intended to serve as a counterpart to Rule 705.1 (Restitution) and would include the requirements set forth in 42 Pa.C.S. § 9726 (Fine). Additionally, Rule 705.2 would prohibit a judge from imposing a fine unless the judge determines — after reviewing the defendant's statement of financial ability and colloquying the defendant on the record — that the defendant has the ability to pay and that a fine will not interfere with the defendant's ability to make restitution. See Pa.R.Crim.P. 702(c) (proposed) and 704(c)(2) (proposed); 42 Pa.C.S. § 9726(c). To more clearly indicate that these two rules govern the imposition of a fine and restitution at sentencing, the title of Rule 705.1 would be amended to “Restitution – Sentencing.”

Once a sentence has been imposed, any default in payments is governed by Rule 706 (Fines or Costs). To better reflect the rule's substance and prevent confusion over when the rule is applicable, the Committee is proposing retitling the rule “Default of Payment of Costs, Fines, and Restitution.” See *Commonwealth v. Lopez*, 280 A.3d 887, 898 (Pa. 2022) (“[I]t is apparent Rule 706(C), like the rest of the rule, pertains to post-sentencing proceedings.”) (emphasis added). The rule would also be substantially revised to mirror Rule 456, further emphasizing that this rule is the court case analog of that rule. The proposed revisions to the text of Rule 706, like the proposed retitling of the rule, would also help eliminate ambiguity regarding when its provisions apply.

The Comment to the rule would be amended to advise that a hearing or rehearing regarding a defendant's nonpayment must be held prior to a judge imposing imprisonment for a defendant's default. Additionally, the Comment would warn that a defendant may not be imprisoned for failure to pay if the defendant was not afforded counsel at the default hearing.

Like proposed Rule 456.2 in the summary case context, proposed Rule 706.1 would permit the Commonwealth to request an ability to pay hearing via motion in a court case. Pursuant to this rule, the court must schedule a hearing upon good cause shown

of a substantial change in the defendant's ability to pay. As explained in the Comment, "The purpose of this rule is to permit the Commonwealth to seek an increase in a defendant's monthly payment towards previously imposed costs, fines, and restitution when the Commonwealth has good cause to believe the defendant's financial circumstances have substantially changed." Proposed Rule 706.1, cmt.

First Judicial District

The Comment to Rule 1002 would be amended to explain that "Rule 456 regarding procedures for default and Rule 456.1 regarding determination of a defendant's means to pay are applicable to cases in the Philadelphia Municipal Court."

The Comment to Rule 1030 would be amended to explain that Rules 456 and 456.1 are applicable to cases in the Philadelphia Municipal Court Traffic Division.

* * *

The Committee invites all interested persons to submit comments, suggestions, or objections.