

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 160, 161, 166, 340, and 800 be adopted and prescribed. These proposed modifications distinguish the official court record from the juvenile probation file.

The following *Explanatory Report* highlights the intent of these Rules. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the Rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the *Explanatory Reports*.

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

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

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

All comments shall be received no later than Monday, Sept. 20, 2010.

08/10/2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

Background

In December of 2009, the Court adopted changes to Rules 120 and 160 which eliminated the inspection of juvenile probation records from the Rules of Court. The scope of Rule 160 was changed from Inspection of Juvenile File/Records to Inspection of the Official Court Record as defined by Rule 120.

It was important to define the official court record, and provide for who oversees the record, and how the record is viewed. The Committee deferred addressing juvenile probation files until a future date.

In early 2010, judges and probation officers from various judicial districts inquired as to whether the Rules addressed the copying and inspection of juvenile probation records.

Now, in these Rule changes, the official court record is further being distinguished from juvenile probation files. These proposed changes provide for the inspection and/or copying of juvenile probation files.

Rule 120 - Definitions

The definition of juvenile probation files explains what is included in the juvenile probation file and distinguishes it from the official court record. Copies of documents contained in the official court record may, however, also be included in the juvenile probation file.

Rule 160 - Inspection of the Official Court Record

The *Comment* explains that the inspection of the record does not include copying the record. It is important that the court order clearly articulate whether copying is permitted. The court order should specify: 1) the exact information a person may receive; 2) that the information shall not be disseminated to any person, agency, or department not specified in the court order; and 3) that any dissemination is a violation of the court order.

The court must balance the importance of sharing critical information with a specific individual, agency, or department with the potential inappropriate use of information once released.

This Rule limits the distribution of the information and provides that it is unlawful to further disseminate court information concerning a juvenile.

Rule 161 - Inspection of Juvenile Probation Files

This proposed Rule provides for the inspection and/or copying of juvenile probation files by the party's attorneys. If the court determines if any other person, agency, or department needs the information in the probation file, the court specifically shall order it.

The Rule also provides for the sharing of records in paragraph (C). The

sharing of information is controlled by the juvenile probation office. The Rule gives the probation office discretion to share information with service providers, placement facilities, and courts of other jurisdictions. This is necessary for the juvenile probation office to perform its daily operations and carry out its responsibilities in maintaining its services for its juveniles.

The Rule also mandates that when the juvenile probation office shares information, it will not be further disseminated. Dissemination of information received, unless specifically authorized, is a violation of the court order.

Rule 166 - Maintaining Records in the Clerk of Courts

Juvenile probation records are not a part of the Official Court Record; therefore, this *Comment* is being deleted. Prior to the changes of Rule 160 in December of 2009, many judicial districts interpreted juvenile probation files as a part of the “files and records of the court.” See Rule 800 for suspension of 42 Pa.C.S. § 6307.

Rule 340 - Pre-adjudicatory Discovery and Inspection

The new Rule 161 has been cited in the *Comment* to this Rule.

Rule 800 - Suspension of Acts of Assembly

This Rule suspends § 6307 of the Juvenile Act only to the extent that it conflicts with new Rule 161. “All files and records of the court” does not include juvenile probation files.

RULE 120. DEFINITIONS

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JUVENILE PROBATION FILES are those records maintained by the juvenile probation office and its officers, including, but not limited to, copies of information contained in the official juvenile court record; social studies; school records and reports; health evaluations, records, and reports, including psychological and psychiatric evaluations and reports, drug and alcohol testing, evaluations, and reports; placement reports and documents; employment records; and probation notes and evaluations.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 120 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 120 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendment to Rule 120 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 120 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

**PART C
RECORDS**

**PART C(1)
ACCESS TO JUVENILE RECORDS**

- 160. Inspection of the Official Court Record
- 161. Inspection of Juvenile Probation Files**
- 163. Release of Information to School

RULE 160. INSPECTION OF THE OFFICIAL COURT RECORD

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COMMENT

The term “inspection” in paragraph (A) does not include the copying of the official court record. The court may order that any person, agency, or department listed in paragraph (A) receive a copy of all or portions of the record. The court order is to state: 1) the specific information the person may receive; 2) that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and 3) that any dissemination of the information received is a violation of the court order.

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

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Official Note: Rule 160 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately. Amended August 20, 2007, effective December 1, 2007. Amended May 12, 2008, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 160 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 160 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 160 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007). Final Report explaining the amendments to Rule 160 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008). Final Report explaining the amendments to Rule 160 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

RULE 161. INSPECTION AND SHARING OF JUVENILE PROBATION FILES

A. Generally. Juvenile Probation Files shall be open to inspection and/or copying only by:

- 1) the juvenile's attorney;**
- 2) the attorney for the Commonwealth; or**
- 3) any other person, agency, or department by order of court.**

B. Contents of order. The order shall:

- 1) specify who shall be permitted to inspect the record or any portion of the record;**
- 2) specify who shall be permitted to copy the record;**
- 3) state that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and**
- 4) state that any dissemination of the information received is a violation of the court order.**

C. Sharing. The juvenile probation office has discretion to share its records with service providers; placement facilities; and courts and courts' professional staff of other jurisdictions when facilitating placement or transfer to another jurisdiction. Any dissemination of the information received, unless specifically authorized by court order, is a violation of that order.

COMMENT

Juvenile probation can place documents from its files into the official court record. Those documents placed in the official court record are governed by Rule 160.

RULE 166. MAINTAINING RECORDS IN THE CLERK OF COURTS

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COMMENT

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This rule is not intended to include items contained in the juvenile probation records or reports. [See **Rule 160 (Inspection of the Official Court Record)** and its *Comment* for items contained in juvenile probation records or reports.]

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Official Note: Rule 166 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 166 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 166 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

RULE 340. PRE-ADJUDICATORY DISCOVERY AND INSPECTION

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COMMENT

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In addition to information requested under this rule, an attorney has the right to inspect all court records and files, including probation records and reports. See Rules 160 **and 161**.

Official Note: Rule 340 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 340 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 8 SUSPENSIONS

RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

- 1) The Act of November 21, 1990, P.L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, and 211.
- 2) **The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6307, which provides that all files and records of the court in a proceeding are open to inspection by the specified persons, agencies, or departments, is suspended only insofar as the Act is inconsistent with Rules 120 and 161, which provides that only the parties' attorneys may inspect and copy juvenile probation files without order of court.**
- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.
- [3]4) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.
- [4]5) The Public Defender Act, Act of December 2, 1968, P.L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P.L. 830, No. 277, § 1, 16 P.S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.
- [5]6) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.
- [6]7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases

be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

[7]8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

[8]9) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

[9]10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

[10]11) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

[11]12) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

[12]13) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[13]14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay

disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[14]15)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[15]16)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1)&(2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[16]17)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).