

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 241, 242, 311, 312, 500, 600, 610, and 632 be adopted and prescribed. These proposed modifications address the victim's rights to: 1) be notified of a hearing; 2) attend a hearing and offer testimony; and 3) submit a victim-impact statement.

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 Tuesday, January 18, 2011.

11/29/2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

Under the Purposes Clause of the Juvenile Act, the court shall make findings and enter an order consistent with the protection of the public interest that provides balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community. See 42 Pa.C.S. § 6301(b)(2).

Part of the juvenile's accountability is confronting the victim and seeking to repair the harm inflicted. Restitution owed to the victim should be included in the dispositional order or as a condition of an informal adjustment or a consent decree. See Rules 312 and 512.

These proposed rule changes further emphasize that the victim shall be part of the court process. The victim must receive notice of hearings and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at hearings. See Rules 132, 241, 242, 311, 312, 360, 370, 371, 390, 500, 512, 513, 600, 610, and 632.

When there is a proposed change in the dispositional order pursuant to Rule 610, the victim shall be given notice and an opportunity to be heard. This is especially important if the change is substantially different from the original court order. See Rule 610.

Additionally, the victim may object to a motion for early termination of the court's supervision of the juvenile. If the court schedules a hearing to terminate court supervision, the victim must be afforded an opportunity to be heard before the court enters its final order. See Rule 632.

RULE 241. NOTICE OF DETENTION HEARING

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; **[and]**
- 6) **the victim; and**
- 7)** any other appropriate persons.

COMMENT

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005.

RULE 242. DETENTION HEARING

A. Informing juvenile of rights. Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. Manner of hearing.

- 1) **Conduct.** The hearing shall be conducted in an informal but orderly manner.
- 2) **Recording.** If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.
- 3) **Testimony and evidence.**
 - a)** All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.
 - b)** The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.
 - c) The victim may be present and offer testimony.**
- 4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:
 - a) cross-examine witnesses offered against the juvenile; and
 - b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. Findings. The court shall determine whether:

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

2) detention of the juvenile is warranted.

D. Filing of petition. If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

COMMENT

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The victim, counsel for the victim, and other persons accompanying the victim for his or her assistance are permitted to attend the detention hearing pursuant to Rule 132. See also 42 Pa.C.S. § 6336 and 18 P.S. § 11.201 et seq.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 311. INTAKE CONFERENCE

- A. **Generally.** The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.
- B. **Juvenile probation officer's duties.** Before proceeding with an intake conference, the juvenile probation officer shall:
- 1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and
 - 2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and
 - 3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.
- C. **Rescheduling.** If a juvenile fails to appear for an intake conference, the juvenile probation officer may attempt to reschedule the conference.
- D. **Bench Warrants.**
- 1) If the juvenile fails to appear for an intake conference, the juvenile probation officer may notify the court that the juvenile has failed to appear for the conference.
 - 2) If a judge finds that sufficient notice of the intake conference was given, the judge may issue a bench warrant. The judge may not find notice solely based on first-class mail service.
 - 3) If a bench warrant is issued, the case shall proceed pursuant to Rules 140 and 240.
- E. **Notice, motion, and hearing.**
- 1) The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference.
 - 2) Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action.
 - 3) The court shall conduct a hearing on the motion.

COMMENT

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. *See* 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Pursuant to paragraphs (C) & (D), if a juvenile fails to appear for an intake conference, juvenile probation officers should use their discretion in determining whether to reschedule the intake conference or ask the court to issue a bench warrant.

Pursuant to paragraph (D)(2), in determining sufficient notice, the judge may not find notice solely based on first-class mail service. *See also* Rule 140 (A)(2) and its *Comment*.

Under paragraph (E), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend an intake conference. **If the attorney for the Commonwealth objects pursuant to paragraph (E)(2), the court is to conduct a hearing on the motion. The victim is to receive notice of the hearing and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at the hearing. See also Rule 132 and the Victim's Bill of Rights, 18 P.S. § 11.201 et seq.**

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Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005. Amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 311 with the Court's Order at 39 Pa.B. 6029 (October 17, 2009).

RULE 312. INFORMAL ADJUSTMENT

A. Participation. At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

- 1) an adjudication would not be in the best interest of the public and the juvenile;
- 2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and
- 3) the admitted facts bring the case within the jurisdiction of the court.

B. Completion.

- 1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.
- 2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

COMMENT

Pursuant to paragraph (A), informal adjustments may not occur after the filing of a petition. *See* Rule 800 (12), which suspends 42 Pa.C.S. § 6323(a) only to the extent that it conflicts with this rule. *See also Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. *See* 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. *See* 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. *See* 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment **and to submit a victim-impact statement if the victim so chooses. The juvenile probation officer is to include any payment of restitution determined to be owed to the victim as a condition of successful completion of an informal adjustment by a juvenile. If the victim is not present [In addition]**, the victim is to be notified of the final outcome of the hearing. *See* Victim's Bill of Rights, 18 P.S. §11.201 *et seq.*

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 312 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Part A

SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

RULE 500. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

- A. **Summons.** The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.
- B. **Notice.** ~~[The court shall give n]~~Notice of the dispositional hearing **shall be given** to:
- 1) the attorney for the Commonwealth;
 - 2) **the victim;**
 - 3)** the juvenile's attorney; and
 - ~~[3]~~**4)** the juvenile probation office.
- C. **Requirements.** The general summons and notice procedures of Rule 124 shall be followed.

COMMENT

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. *See* 42 Pa.C.S. § 6333.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005.

PART A
SUMMONS AND NOTICE

**RULE 600. SUMMONS AND NOTICE OF THE COMMITMENT REVIEW,
DISPOSITIONAL REVIEW, AND PROBATION REVOCATION
HEARING**

- A. **Summons.** The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.
- B. **Notice.** ~~[The court shall give n]~~Notice of the hearing shall be given to:
- 1) the attorney for the Commonwealth;
 - 2) the victim;
 - 3) the juvenile's attorney; and
 - ~~[3]~~4) the juvenile probation office; and
 - ~~[4]~~5) the placement facility staff, if the juvenile is in placement.
- C. **Requirements.** The general summons and notice procedures of Rule 124 shall be followed.

COMMENT

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Other persons may be subpoenaed to appear for the hearing. *See* 42 Pa.C.S. § 6333.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005.

RULE 610. DISPOSITIONAL AND COMMITMENT REVIEW

A. Dispositional Review Hearing.

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. Change in dispositional order. Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, **[the court] notice and an opportunity to be heard** shall **be given to** the parties **and the victim** **[notice of the request and an opportunity to be heard]**.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. Advanced Communication Technology. If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

COMMENT

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months. *See* Rule 800.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

RULE 632. EARLY TERMINATION OF COURT SUPERVISION BY MOTION

- A. **Motion.** Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.
- B. **Notice.** In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer **and the other party.**
- C. **Objection.**
- 1)** A party, **victim,** or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.
 - 2)** Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.
 - 3) The court shall make a determination as to whether it will schedule a hearing on the objections or make findings without a hearing.**
- D. **Hearing.** If objections have been made pursuant to paragraph (C) **and the court has determined a hearing is necessary,** the court shall hold a hearing and give each party, **the victim,** and the juvenile probation officer an opportunity to be heard before the court enters its final order.
- E. **Court's motion.** The court, *sua sponte*, may schedule a hearing for early termination of court supervision [**upon a request by the juvenile probation officer**]. All parties shall receive notice of the hearing.
- F. **Termination.** When the requirements of paragraphs (A) through (D) have been met or pursuant to its own motion under paragraph (E) and the court is satisfied that there are compelling reasons to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

COMMENT

If a party is moving for early termination of court supervision of a juvenile pursuant to paragraph (A), or the court, *sua sponte*, has scheduled a hearing pursuant to paragraph (E), the victim of the offense is to be notified, by the attorney for the Commonwealth or the juvenile probation officer, of the motion for early termination and/or the scheduled hearing.

The victim is permitted to: 1) request and attend a hearing; 2) submit a victim-impact statement; and 3) object to the early termination.

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See *a/so*, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008).