

JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

JUVENILE DELINQUENCY AND DEPENDENCY: JUVENILE ACT REVISIONS AND REVIEW OF JUVENILE LIFE WITHOUT PAROLE

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REPORT

*Juvenile Delinquency and Dependency:
Juvenile Act Revisions and Review of Juvenile Life Without Parole*

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.¹

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.² Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

¹ Act of July 1, 1937 (P.L.2460, No.459) (46 P.S. § 65), amended by the act of June 26, 1939 (P.L.1084, No.380); the act of March 8, 1943 (P.L.13, No.4); the act of May 15, 1956 (1955 P.L.1605, No.535); the act of December 8, 1959 (P.L.1740, No.646); and the act of November 20, 1969 (P.L.301, No.128).

² Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. However, it does, at a minimum, reflect the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth of Pennsylvania receives the financial benefit of such volunteerism, along with the expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used in determining the intent of the General Assembly.³

Since its inception, the Commission has published more than 350 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

³ 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").



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The Joint State Government Commission is pleased to announce the release of the Advisory Committee report on ***Juvenile Delinquency and Dependency: Juvenile Act Revisions and Review of Juvenile Life Without Parole***, written in response to Senate Resolution 304, Pr's No. 1827 of 2014.

The resolution directed the Commission to appoint an Advisory Committee to reconcile Pennsylvania's Juvenile Act with the Pennsylvania Rules of Juvenile Court Procedure and to review Pennsylvania's response to the U.S. Supreme Court's decision in *Miller v. Alabama*. The Advisory Committee included experts from the judiciary, prosecution, defense, law enforcement, probation and parole victim assistance, and private and public organizations involved in juvenile justice issues. In addition to their own experiences and knowledge, members gathered information from other sources, such as clinical and academic researchers. The report's recommendations are divided into three categories: substantive, procedural, and technical.

The Commission thanks the Advisory Committee members for their hard work and dedication. The full report is also available on our website, <http://jsg.legis.state.pa.us>.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

2014 Senate Resolution 304, Pr.'s No. 1827

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EXECUTIVE SUMMARY

Pursuant to Senate Resolution 304, Printer's No. 1827, introduced by Senator Stewart J. Greenleaf and adopted May 1, 2014, the Joint State Government Commission assembled an Advisory Committee that was given three charges: to reconcile the Juvenile Act to the Pennsylvania Rules of Juvenile Court Procedure to make them consistent, to review Pennsylvania's response to *Miller v. Alabama*, 567 U.S. ____ 132 S.Ct. 2455 (2012) in light of the responses of other states and determine whether changes should be made to Pennsylvania law regarding the use of life imprisonment without the possibility of parole for juveniles, and to otherwise review the Juvenile Act and related issues. The Advisory Committee was composed of experts, including representatives from those groups most likely to make useful and insightful contributions, such as representatives of the judiciary, prosecution, defense, law enforcement, victim assistance, and private and public organizations involved in juvenile justice issues.

The Advisory Committee convened ten times between July 2014 and June 2015. Following much lively debate and delicate consensus building, the Advisory Committee agreed to the presentation of this report containing its recommendations and observations to the General Assembly. The Advisory Committee's recommendations can be divided into three categories: substantive, procedural, and technical.

Substantive Recommendations

- Amend the Juvenile Act to establish a minimum age of 15 years or older for the direct filing of criminal charges of murder against a juvenile.
- Amend 42 Pa.C.S. §1102.1(c) to provide a mechanism by which a lower mandatory minimum sentence may apply to certain juveniles facing second degree murder (felony murder) charges.
- Amend the Juvenile Act to acknowledge the role of scientific studies relating to neurological and psychological development of youth.
- Advise the Department of Human Services to prevent long-term isolation of youth by amending the definition of "exclusion" at 55 Pa. Code § 3800.212 and applying these new protections, through regulations or policy, to all facilities licensed or operated by the Department.
- Amend the Public Welfare Code to require the Department of Human Services to provide reimbursement for the expenses of juveniles placed in juvenile detention centers who are the subject of direct file criminal charges.

- Advise the Pennsylvania Commission on Crime and Delinquency, in consultation with other law enforcement entities, to develop statewide protocols for the electronic recording of custodial interrogations.
- Advise the Supreme Court’s Juvenile Court Procedural Rules Committee to review Section 6353 of the Juvenile Act and clarify how many times a juvenile commitment can be extended.
- With respect to the question of retroactivity of the *Miller v Alabama* holding, the Advisory Committee has chosen not to make a formal recommendation. The issue of retroactivity will be before the United States Supreme Court in October 2015, and any recommendation made prior to the court’s ruling could easily become moot when the court issues its decision.
- Advise the Juvenile Court Judges’ Commission, in consultation with the Department of Human Services, the Pennsylvania District Attorneys Association, and others to explore alternatives to automatic termination of Juvenile Court jurisdiction at age 21 in all cases.

Procedural Recommendations

- Advise the Supreme Court’s Juvenile Court Procedural Rules Committee to compare the definitions of “juvenile” in the rules and “delinquent child” and “dependent child” in the Juvenile Act to attempt to make them more consistent.
- Amend Sections 6302 (definitions), 6303 (scope of chapter), 6304 (powers and duties of probation officers), 6305 (masters), 6311 (guardian ad litem for child in court proceedings), 6321 (commencement of proceedings), 6323 (informal adjustment), 6324 (taking into custody), 6326 (release or delivery to court), 6331 (release from detention or commencement of proceedings), 6334 (petition), 6335 (release or holding of hearing), 6336 (conduct of hearings), 6336.1 (notice and hearing), 6337.1 (right to counsel for children in dependency and delinquency proceedings), 6340 (consent decree), 6341 (adjudication), 6351 (disposition of dependent child), 6353 (dispositional review hearing, limitation on commitment and change in place of commitment), and 6355 (transfer to criminal proceedings) of the Juvenile Act as set forth in the draft legislation to reconcile them to the Pennsylvania Rules of Juvenile Court Procedure.
- Amend the Juvenile Act to create Section 6366 (role of Interstate Compacts).

Technical Amendments

- Amend Sections 6302, 6322, 6336, 6342, 6352, and 6355 of the Juvenile Act as set forth in the draft legislation to update terminology and cross-references to other statutes.

INTRODUCTION

*. . . the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment.*⁴

The treatment of youth who violate the criminal laws has evolved over time as understanding of the variances in the culpability and criminal intent of youth has evolved. Under 17th century English common law (also the law of Pennsylvania and the English colonies of the time), youth under the age of 7 were believed incapable of fully understanding their actions and therefore could not be guilty of a serious crime. Youth over the age of 14 were considered adults and faced the same consequences as an adult if found guilty of a criminal act. Youth between the ages of 7 and 14 were presumed incapable of committing a crime, unless it was shown that they understood the difference between right and wrong, in which case, they too would be treated as adults. In the 19th century, growing movements in educational and prison reform led to the development of separate reform schools for juveniles, and courts in the United States began to recognize that criminal justice procedures that were applicable to adults were not compatible with the needs of youth.⁵

Pennsylvania introduced its first juvenile court act in 1901. Although found unconstitutional due to concerns about jury trial requests, a constitutional version was enacted in 1903.⁶ The introductory language of the 1903 law provides a glimpse into the intent of the legislature to deal with juveniles in a way that balances criminal justice concerns with the best interests of the child:

Whereas, the welfare of the State demands that children should be guarded from association and contact with crime and criminals, and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child;

⁴ William Blackstone, *Commentaries on the Laws of England*, Book IV, Chapter 2 ("Of the Persons Capable of Committing Crimes"). Reproduced in *The History of Juvenile Justice, Part 1*, American Bar Association Division for Public Education.

<http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJpart1.authcheckdam.pdf>

⁵ Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. 1999 National Report Series, Juvenile Justice Bulletin, *Juvenile Justice: A Century of Change*.

⁶ Jim Anderson, "Pennsylvania's Juvenile Justice System: A Rich Heritage, Clear Mission and Bright Future," *Pennsylvania Juvenile Justice*, Vol. 8, No. 3, March 1999.

And Whereas, experience has shown that children, lacking proper parental care or guardianship, are led into courses of life which may render them liable to the pains and penalties of the criminal law of the State, although in fact the real interests of such child or children require that they be not incarcerated in penitentiaries and jails, as members of the criminal class, but be subjected to wise care, treatment and control, that their evil tendencies may be checked and their better instincts may be strengthened;

And Whereas, To that end, it is important that the powers of the courts, in respect to the care, treatment and control over dependent, neglected, delinquent and incorrigible children, should be clearly distinguished from the powers exercised in the administration of the criminal law...⁷

A new Juvenile Court Law enacted in 1933 gave the juvenile court jurisdiction over all crimes except murder committed by children under the age of 16.⁸ It also added ungovernability and truancy to the definition of “delinquent act.” Amendments in 1939 extended jurisdiction until age 18.⁹ The juvenile courts acted without many of the procedural safeguards that adult criminal courts imposed and this led to a series of U.S. Supreme Court cases requiring such safeguards. In 1968, the National Conference of Commissioners on Uniform State Laws developed a Uniform Juvenile Court Act that incorporated many of these procedural safeguards, and it was adopted in Pennsylvania in 1972.¹⁰ Additional reforms were made in the 1970s and 1980s, including an amendment in 1977 to remove “ungovernable behavior” from the definition of “delinquent act” and create a new definition of “dependent child.”¹¹

In 1992, the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention issued a grant to implement a new project, to be known as the “Balanced and Restorative Justice Project” to develop model systems for community supervision of juvenile offenders based on a balanced approach mission and restorative justice philosophy. This program/philosophy attempts to address the needs of offenders, victims, and the community. Objectives include accountability and development by offenders of competencies to function as responsible, productive citizens, enhancing community protection, and repairing the harm done to victims and the community.¹²

⁷ Act of April 23, 1903, P.L. 274, No. 205.

⁸ Act of June 2, 1933, P.L. 1433, No. 311.

⁹ Act of June 15, 1939, P.L. 394, No. 226.

¹⁰ *Supra*, note 2.

¹¹ Act of August 3, 1977, P.L. 155, No. 41.

¹² G. Bazemore and M.S. Umbreit, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. *Balanced and Restorative Justice: Program Summary*, 1994 NCJ 149727.

In 1995, major revisions were made to the Juvenile Act that, among other things, adopted the concept of balanced and restorative justice.¹³ The juvenile delinquency-related purpose clause of the act was amended to read:

Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.¹⁴

Additionally, a number of violent crimes that are committed by youth over the age of 15 that involved the use of a deadly weapon or were committed by youth over the age of 15 who had previously been adjudicated delinquent were excluded from the definition of ‘delinquent act,’ thereby requiring the youth to be criminally charged as adults in those circumstances.

Following these amendments, the Juvenile Advisory Committee (now known as the Juvenile Justice and Delinquency Prevention Committee) of the Pennsylvania Commission on Crime and Delinquency (“PCCD”) developed a mission statement and guiding principles for the Pennsylvania juvenile justice system that emphasizes community protection, victim restoration, and youth redemption.¹⁵ The Juvenile Court Judges’ Commission and the Pennsylvania Council of Chief Juvenile Probation Officers worked together with PCCD to implement that system.

In the 20 years since the major revisions of 1995, the Juvenile Act has been amended numerous times. In addition, in 2005 the Pennsylvania Supreme Court adopted Rules of Juvenile Court Procedure with terminology and procedures inconsistent with the Juvenile Act, including the suspension of a dozen provisions of the Juvenile Act.¹⁶

Concurrent with these changes, the United States Supreme Court dealt with a series of challenges to the treatment of juveniles in the criminal justice system. In doing so, the Court found that a number of adult procedures and punishment, when applied to youth, violated their Eighth Amendment rights against cruel and unusual punishment. The decisions were justified, for the most part, by the conclusions of the Court that children are different from adults in their psychological and neurological development and therefore need additional safeguards as well as specific consideration of their age and other factors relating to their maturity and background. The latest in the series, *Miller v Alabama*, declared that juveniles cannot be sentenced to life imprisonment without parole without a hearing on the impact of the juvenile’s age and other related factors.¹⁷

¹³ Act of November 17, 1995, Sp. Sess. 1, P.L. 1127, No. 33.

¹⁴ 42 Pa.C.S. § 6301(b)(2).

¹⁵ Juvenile Court Judges’ Commission, Balanced and Restorative Justice monograph, *Juvenile Justice in Pennsylvania: Mission-Driven, Performance-Based and Outcome-Focused*, 2005.

http://www.jcjc.state.pa.us/portal/server.pt/community/balanced_and_restorative_justice/5032

¹⁶ These provisions can be found in the chapter entitled *Juvenile Court Rules Suspending Portions of the Juvenile Act*, beginning at page 167, *infra*.

¹⁷ 567 U.S. ____ 132 S.Ct. 2455 (2012).

Like many states that had imposed life without the possibility of parole for murder, regardless of the age of the perpetrator, the Pennsylvania General Assembly hurried to enact a constitutional version of its sentencing provisions governing juvenile murderers following the *Miller* holding.¹⁸

On May 1, 2014, the Senate of Pennsylvania adopted Senate Resolution 304, Printer's No. 1827. SR 304 called for the Joint State Government Commission to establish an Advisory Committee of experts, including representatives from those groups most likely to make useful and insightful contributions, such as representatives of the judiciary, prosecution, defense, law enforcement, probation and parole, victim assistance and private and public organizations involved in juvenile justice issues. It is the policy of the Joint State Government Commission to carefully balance the membership on all advisory committees to ensure that all viewpoints are represented, in order to promote fair and realistic consensus reports, and this study was no exception. James Anderson, retired director of the Juvenile Court Judges' Commission, served as chairman. The Advisory Committee was given three charges: to reconcile the Juvenile Act to the Rules of Juvenile Court Procedure to make them consistent; to review Pennsylvania's response to *Miller v. Alabama* in light of the responses of other states and determine whether changes should be made to Pennsylvania law as a result; and to otherwise review the Juvenile Act and related issues.

The Advisory Committee convened ten times over the course of the study.¹⁹ Following much lively debate and delicate consensus building, the Advisory Committee agreed to the presentation of this report containing their recommendations and observations to the General Assembly.

While the Advisory Committee reached consensus on many issues, there was some disagreement with respect to recommendations regarding mandatory minimum sentences in second degree murder cases involving juveniles. Those concerns are set forth in the dissent included as Appendix B of this report.

¹⁸ 18 Pa.C.S. §1102.1, added by the act of October 25, 2012 (P.L.1655, No.204).

¹⁹ July 30, 2014, September 12, 2014, October 23, 2014, December 5, 2014, January 7, 2015 (teleconference), February 13, 2015, March 9, 2015 (teleconference), March 19, 2015, May 4, 2015 and June 15, 2015 (teleconference).

RECOMMENDATIONS

The recommendations of the Juvenile Act Advisory Committee can be divided into three categories. Some proposals make substantive changes to the Juvenile Act and related statutes. Other proposed amendments update Juvenile Act procedures to bring them in line with the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.). Yet others make merely technical amendments to the Juvenile Act consistent with updating the terminology and references in the 20-year-old law.

Substantive Recommendations

Establish A Minimum Age for “Direct File” Murder Charges

Under current Pennsylvania law, a child who is charged with murder is subject to initial criminal court jurisdiction and is usually tried as an adult in criminal proceedings, regardless of the age of the child.²⁰ These are referred to as “direct file” cases. This rule can be traced back as far as the Juvenile Act of 1933. This position is an anomaly among the 50 states; only two other states do not provide for a minimum age for criminal charges.²¹ The majority of states provide for discretionary transfer to criminal proceedings if the child charged with murder is 14 years of age or older. A majority of states further provide for the mandatory direct filing of criminal charges against a child charged with murder, with starting ages ranging between 14 and 16 years of age.

Generally, for other felony crimes in Pennsylvania, discretionary transfer to criminal proceedings may occur at age 14 or older, and direct filing in criminal court must occur at age 15 or older for designated felonies. Based on the rarity of the offense of murder by younger children, the Commonwealth’s approach to other felonies committed by children, including crimes involving physical violence, and the anomalous nature of Pennsylvania’s law, the Advisory Committee proposed that children 14 years of age and younger who are charged with murder would be better served by a proceeding under the Juvenile Act to determine whether the public interest would be served by the transfer of the case for criminal prosecution.

Additionally, the Advisory Committee believed that discretionary transfer and direct filing of criminal charges in murder cases should be treated the same way as provided for other felonies. Accordingly, the members recommended that the definition of “delinquent act” should be amended in §6302(2)(i), and §§6322(a) (relating to transfer from criminal proceedings) and 6355(e) and (g) (relating to transfer to criminal proceedings) should also be amended for consistency.

²⁰ The crime of murder is excluded from the original jurisdiction of the juvenile court, but such cases may be transferred from criminal proceedings to juvenile proceedings (“decertified”) if the judge in a criminal proceeding determines, pursuant to §§ 6322 and 6355 of the Juvenile Act, that the transfer will serve the public interest.

²¹ Florida Stat. 985.56(1) and Maine Rev. Stat. tit.17A § 1251.

Reduce the Mandatory Minimum Sentence for Juveniles Convicted of Second Degree Murder (Felony Murder)

This recommendation is more fully described, along with the debate among the Advisory Committee members as to its desirability, in the section titled “Second Degree Murder (Felony Murder)” in the next chapter, “Life Imprisonment Without the Possibility of Parole for Juvenile Offenders,” *infra*.

Acknowledge the Role of Scientific Studies Relating to Neurological and Psychological Development of Youth

Scientific studies have played an instrumental role in the recent U.S. Supreme Court rulings on juvenile justice matters. This report explores this issue at length in the chapter titled “The Role of Neuroscience in Determining Juvenile Culpability,” *infra*. Based on these developments, the Advisory Committee recommends that §6301(b)(1.1) (purpose) of the Juvenile Act be amended to acknowledge U.S. Supreme Court findings that scientific studies of children and adolescents have reported significant differences between the behavior of adults and children based on both neurological and psychological factors.

Additionally, a comment should be added to § 6301 to provide further guidance on the meaning of “evidence-based” practices in § 6301(b)(3)(i).

Use Of “Exclusion” In Facilities Serving Youth

In recent years, the U.S. Supreme Court and the federal Department of Justice have come to the conclusion that punishments that may be effective when applied to adults of ordinary intelligence and mental capacity can prove to be cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution when applied to select classes of individuals whose criminal capacity may be diminished because of the scientifically posited differences between their constituent groups and the “average” adult.²² Age and mental capacity have been the primary categories of interest in this evolving field of interest. The imposition of the death penalty for intellectually disabled persons (formerly referred to as “mentally retarded”) was prohibited by the Court in 2002,²³ and the prohibition further defined in 2014.²⁴ In 2005, the Court declared that capital punishment of juveniles was a violation of their rights under the Eighth Amendment to the U.S. Constitution.²⁵ Five years later, the court further expanded its reasoning to declare that the Eighth Amendment prohibits life without parole for juveniles convicted of non-homicide offenses.²⁶ In 2012 the court held that mandatory life without parole for juvenile offenders, including those convicted of homicides, violates the Eighth Amendment to the U.S. Constitution.

²² “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Constitution, Amendment VIII,

http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.

²³ *Atkins v. Virginia*, 536 U.S. 304 (2002).

²⁴ *Hall v. Florida*, 572 U.S. ___, Slip Opinion No. 12-10882 (5/27/2014).

²⁵ *Roper v. Simmons*, 543 U.S. 551 (2005).

²⁶ *Graham v. Florida*, 560 U.S. 48 (2010).

Under this holding, life without parole is still a possible sentence for a juvenile, but the sentencing court must consider factors relating to defendant's age before imposing such a sentence.²⁷

Under the federal Prison Rape Elimination Act of 2003 ("PREA")²⁸ national standards have been issued on a variety of topics related to juveniles, including the use of isolation to prevent sexual abuse:

28 C.F.R. § 115.342 Placement of residents in housing, bed, program, education, and work assignments.

(a) The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.

(b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

Additionally, the proposed federal Record Expungement Designed to Enhance Employment Act ("REDEEM Act")²⁹ would restrict the use of solitary confinement against anyone under the age of 18. Introduced on March 9, 2015 as S.675³⁰, that act would prohibit the use of juvenile solitary confinement except in the most extreme circumstances in which it is necessary to protect a juvenile detainee or those around them.

Other states are beginning to restrict the use of solitary confinement of juveniles as well, including Alaska, Connecticut, Maine, Massachusetts, Missouri, Nevada, Oklahoma, and West Virginia.³¹ In September 2014, the New York City Department of Corrections announced that it would no longer be using solitary confinement for its 16- and 17-year-olds confined to the prison at Rikers Island.³²

²⁷ *Miller v. Alabama*, 567 U.S. ____, 132 S.Ct. 2455 (2012).

²⁸ 42 U.S.C. § 15601 et seq.

²⁹ Record Expungement Designed to Enhance Employment Act.

³⁰ The bill was referred to the Committee on the Judiciary, where it resided as of June 15, 2015.

³¹ "Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities," American Civil Liberties Union Report, June 2014, at p. 8.

³² Michael Winerip and Michael Schwartz, "Rikers to Ban Isolation for Inmates 21 and Younger," *The New York Times*, January 13, 2015. www.nytimes.com/2015/01/14/nyregion/new-york-city-to-end-solitary-confinement-for-inmates-21-and-younger-at-rikers.html.

While Pennsylvania has specific restrictions on the use of exclusion in child residential and child day treatment facilities,³³ two issues in this regard have come to the attention of the Advisory Committee. First, the regulations governing exclusion do not apply to facilities operated directly by the Department of Human Services, and thus Youth Development Centers and Youth Forestry Camps are not subject to these rules.

Second, removal of a child from the immediate environment and restricting the child alone to a room or area is not considered exclusion “[i]f a staff person remains in the exclusion area with the child.” This exemption from inclusion provides an opportunity for facilities to isolate children outside the limits of the regulations so long as a staff person is monitoring the child. The Advisory Committee recommends that the Department of Human Services revise the rules governing exclusion to make them applicable to all Youth Development Centers and Youth Forestry Camps and to eliminate the exemption from the definition of “exclusion” of situations in which a staff person is present.

Reimbursement By Department Of Human Services For Expenses Of Direct File Youth Placed In Juvenile Facilities

Under § 6327(c.1) (place of detention) of the Juvenile Act a child who has had criminal charges directly filed against him, and who therefore is not alleged to be a “delinquent child” under the definitions of the Juvenile Act, may be held in a juvenile detention facility if he has not been released on bail and may seek or is seeking transfer to juvenile proceedings. Act 148 of 1976 amended the Public Welfare Code to add § 704.1, under which counties may seek partial reimbursement of the costs of caring for children committed by the Juvenile Court to detention facilities.³⁴ However, because the “direct file” children referred to in Section 6327(c.1) are not alleged to have committed a delinquent act, the Department of Human Services has not reimbursed the counties for the costs of caring for these children. The Advisory Committee recommends that the Public Welfare Code be amended to allow reimbursement of these expenses at the same level as those of alleged and adjudicated delinquent youth.

The proposed amendment would read as follows:

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code to authorize the Department of Human Services to reimbursement counties for services rendered to certain youth charged with criminal charges and held in a juvenile detention facility.

Section 1. Section 704.1 of the act of June 12, 1967 (P.L.31, No.21), known as the Public Welfare Code, is hereby amended to read as follows:

³³ 55 Pa.Code § 3800.212.

³⁴ Act of July 9, 1976 (P.L.846, No.148), § 704.1; 62 P.S. § 704.1.

§ 704.1. Payments to counties for services to children

(a) The department shall reimburse county institution districts or their successors for expenditures incurred by them in the performance of their obligation pursuant to this act and the act of December 6, 1972 (P.L. 1464, No. 333), known as the “Juvenile Act,” in the following percentages:

(1) Eighty percent of the cost of an adoption subsidy paid pursuant to subdivision (e) of Article VII of this act.

(2) No less than seventy-five percent and no more than ninety percent of the reasonable cost including staff costs of child welfare services, informal adjustment services provided pursuant to section 8 of the act of December 6, 1972 (P.L. 1464, No. 333), known as the “Juvenile Act,” and such services approved by the department, including but not limited to, foster home care, group home care, shelter care, community residential care, youth service bureaus, day treatment centers and service to children in their own home and any other alternative treatment programs approved by the department.

(3) Sixty percent of the reasonable administrative costs approved by the department except for those staff costs included in clause (2) of this section as necessary for the provision of child welfare services.

(4) Fifty percent of the actual cost of care and support of a child placed by a county child welfare agency or a child committed by a court pursuant to the act of December 6, 1972 (P.L. 1464, No. 333), known as the “Juvenile Act,” to the legal custody of a public or private agency approved or operated by the department other than those services described in clause (2), including the cost of detention services ordered by a court pursuant to 42 Pa.C.S. § 6327 (c.1) (relating to place of detention) for a child who is subject to criminal proceedings and who may

seek or is seeking transfer to juvenile proceedings. The Auditor General shall ascertain the actual expense for fiscal year 1974-1975 and each year thereafter by the Department of Public Welfare for each of the several counties and each city of the first class whose children resident within the county or city of the first class directly received the benefit of the Commonwealth's expenditure. The Auditor General shall also ascertain for each Commonwealth institution or facility rendering services to delinquent or deprived children the actual average daily cost of providing said services. The Auditor General shall certify to each county and city of the first class the allocated Commonwealth expenditures incurred on behalf of its children and notify the Secretary of Public Welfare and each county and city of the first class of same.

(5) Fifty percent of the reasonable cost of medical and other examinations and treatment of a child ordered by the court pursuant to the act of December 6, 1972 (P.L. 1464, No. 333), known as the "Juvenile Act," and the expenses of the appointment of a guardian pendente lite, summons, warrants, notices, subpoenas, travel expenses of witnesses, transportation of the child, and other like expenses incurred in proceedings under the act of December 6, 1972 (P.L. 1464, No. 333), known as the "Juvenile Act."

(6) Effective July 1, 1991, the department shall reimburse county institution districts or their successors one hundred percent of the reasonable costs of providing adoption services.

(7) Effective July 1, 1993, the department shall reimburse county institution districts or their successors eighty percent of the reasonable costs of providing foster home care, community residential care, supervised independent living and community-based alternative treatment programs.

(8) The department shall reimburse county institution districts or their successors for the reasonable costs of institutional services for dependent and delinquent children other than detention services for delinquents in accordance with the following schedule:

(i) Effective July 1, 1992, fifty-five percent.

(ii) Effective July 1, 1993, sixty percent.

* * *

Videotaping of Custodial Interrogations

In 2011, the Joint State Government Commission released *The Report of the Advisory Committee on Wrongful Convictions*, the culmination of a multi-year study on the causes of wrongful convictions.³⁵ The Advisory Committee at that time recommended that neutral, contemporaneous recordings of interrogations would be beneficial to both suspects and law enforcement. Numerous benefits have been touted for electronic recording of custodial interrogations, including decreases in suppression motions alleging police and prosecutorial misconduct and increases in guilty pleas.

[R]ecording protects officers from claims of misconduct, and practically eliminate motions to suppress based on alleged police use of overbearing, unlawful tactics; remove the need for testimony about what was said and done during interviews; allow officers to concentrate on the suspects' responses without the distraction of note taking; permit fellow officers to view interviews by remote hookup and make suggestions to those conducting the interview; disclose previously overlooked clues and leads during later viewings; protect suspects who are innocent; make strong, often invincible cases against guilty suspects who confess or make guilty admissions by act or conduct; increase guilty pleas; serve as a training tool for the officers conducting interviews, as well as for officers aspiring to become detectives; and provide protection against civil damage awards based on police misconduct.³⁶

The Juvenile Act Advisory Committee endorses the use of electronic recording of custodial interrogations, and specifically recommends that the Pennsylvania Commission on Crime and Delinquency, in consultation with the Pennsylvania Chiefs of Police Association, the Public Defenders Association of Pennsylvania and the Pennsylvania District Attorneys Association develop a best practices procedure that can be used statewide. Funding assistance to counties to help with costs of implementation should also be considered.

³⁵ http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=212.

³⁶ Thomas P. Sullivan, *The Time Has Come for Law Enforcement Recordings of Custodial Interviews, Start to Finish*, 37 Golden Gate U. L. Rev. 175, 178-79 (2006).

Clarification of Time Limitations

Section 6353 of the Juvenile Act provides for the timing and recurrence of dispositional review hearings for juveniles who have been committed to an institution. There is some confusion with respect to the sentence: “The initial commitment may be extended for a similar period of time, or modified, if the court finds after hearing that the extension or modification will effectuate the original purpose for which the order was entered.” There was debate among the Advisory Committee as to whether this sentence permitted one, single extension, or if multiple extensions were permitted. The Advisory Committee was divided on the interpretation of this provision and recommends that the Supreme Court’s Juvenile Court Procedural Rules Committee provide clarification of this provision.

Expand the Upper Age Limit for Juvenile Court Jurisdiction

In addition to the latest research findings regarding adolescent brain development, there are additional reasons why the prosecution of juveniles in criminal court should be the subject of further consideration. It is well established that juveniles who are subject to criminal prosecution and tried as adults are more likely to reoffend than comparable youth who are retained in the juvenile system, even when controlling for offense history and other factors. The Centers for Disease Control and Prevention Task Force on Community Preventive Services³⁷ found that juveniles who are transferred from the juvenile court system to the criminal system are approximately 34 percent more likely than youth retained in the juvenile court system to be re-arrested for a violent or other crime. Similar findings are detailed in the monograph “*Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*”, which was released in 2010 by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP).³⁸

Moreover, juveniles who are in an adult pretrial correctional setting face increase risks of self-harm and abuse by other detainees. According to a federal Bureau of Justice Statistics (BJS) studies in 2005 and 2006, 21 percent and 13 percent, respectively, of the victims of inmate-on-inmate sexual violence in jails were youth under the age of 18³⁹ – especially significant considering that only one percent of all jail inmates are juveniles.⁴⁰ However, separating youth from adults in these facilities can also have serious consequences, especially for youth with mental health problems. According to BJS, 75 percent of all deaths of youth under 18 in adult jails were recorded as to suicide.⁴¹

³⁷ Center for Disease Control and Prevention (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. A Report on Recommendations of the Task Force on Community Preventive Services. MMWR 2007; 56 (No. RR-9)

³⁸ Redding, Richard E. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency*. (2010). Washington, D.C.: U.S. Justice Department, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

³⁹ Beck, A.J., Harrison, P.M., Adams, D.B. (2007, August). *Sexual Violence Reported by Correctional Authorities, 2006*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics and Beck, A.J., Harrison, P.M. (2006, July). *Sexual Violence Reported by Correctional Authorities, 2005*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

⁴⁰ Snyder, H.N., Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁴¹ Margaret E. Noonan (2010, October). *Deaths in Custody: Local Jail Deaths, 2000-2007 – Statistical Tables*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

The Juvenile Court Judges' Commission, in consultation with the Department of Human Services, the Pennsylvania District Attorneys Association, the Juvenile Defender Association of Pennsylvania, and the Pennsylvania Council of Chief Juvenile Probation Officers, should explore alternatives to the automatic termination of juvenile court jurisdiction at age 21 in all cases.

One option could be to provide for extended juvenile court jurisdiction to age 25 in any case that was transferred from criminal proceedings, having been subject to original criminal court jurisdiction pursuant to the Juvenile Act's so-called "direct file" exclusions from the definition of delinquent act. Another option could include providing for "blended sentencing" in some form in a limited class of cases. Under a typical blended-sentencing model, a judge may impose both a juvenile delinquency disposition and a concurrent adult criminal sentence.

Reconcile Conflicting Definitions of "Juvenile," "Delinquent Child," and "Dependent Child"

The Rules of Juvenile Court Procedure refer to persons subject to juvenile delinquency jurisdiction as "juveniles." The Juvenile Act uses the terms "delinquent child" and "dependent child." This can cause confusion as to the actual status of the juvenile in question, and it is recommended that the Juvenile Court Procedural Rules Committee consider ways to bring these definitions into alignment.

Other Substantive Issues

During the earliest meetings of the Advisory Committee, various members proposed topics that might be considered by the group if time permitted.⁴² Some of these issues were addressed to a degree as part of a larger issue that they affect. This section contains a list of other topics that the Advisory Committee chose not to address at this time. However, the General Assembly may wish to consider them for future study.

At the beginning of the study, the Advisory Committee had determined that the lifetime registration of juvenile sex offenders should be addressed. However, since the inception of this study, the Pennsylvania Supreme Court has found the requirement unconstitutional, and thus the Advisory Committee believes at this time that no further action is needed.

The Advisory Committee also looked into the possibility of including summary offenses in original juvenile court jurisdiction. States around the country are divided evenly on whether or not summary offenses are excluded from delinquent acts. The Advisory Committee concluded that the current process for summary offenses committed by juveniles works well in Pennsylvania and any attempt to bring them under juvenile court jurisdiction could overwhelm juvenile court dockets.

⁴² Additionally, Commission staff received suggestions of related topics for study and review that it did not have time to consider. An example of this type of suggestion is the impact on traumatic brain injury on the behavior of juveniles. Other studies are considering this issue.

Victims of juvenile crimes and their families desire greater involvement in the juvenile justice system. Information about, and an opportunity to provide input regarding the disposition of juvenile offenders is particularly important to allow family members to ascertain that appropriate justice is imposed.

Local governments, especially smaller municipalities, report difficulties in providing age-appropriate services to juveniles. Federal sight and sound separation regulations prevent juveniles from participating in social services with adult prisoners. However, maintaining two separate lines of services, one for adults and one for juveniles, especially if the juvenile population is a very small percentage of the total inmates in the local jail, can create a severe financial drain on a local government budget.

Although the Pennsylvania juvenile justice system is well-known for the quality and breadth of data collected, there is room for improvement. The Juvenile Court Judges' Commission and the Juvenile Justice and Delinquency Committee of the Pennsylvania Commission on Crime and Delinquency should continue to prioritize data collection regarding youth at all stages in the juvenile justice process, and continue to study and address racial and ethnic disparities wherever they may be occurring in the system. Particular focus should include an effort to improve the quality of data relating to cases subject to transfer between criminal and juvenile court, as well as the availability and quality of treatment services.⁴³

Procedural Recommendations

Among the Advisory Committee's directives in SR 304 was to reconcile the Juvenile Act to the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.). The following recommendations for amendments to the Juvenile Act attempt to do so.

- Amend Section 6302 (definitions) to add definitions of "juvenile probation officer," "law enforcement officer," and "police officer" to be consistent with Pa.R.J.C.P. Rule 120.
- Amend Section 6302 definition of "delinquent act," paragraph (1) to clarify that only the failure of a child to comply with the lawful sentence imposed for a summary offense is a delinquent act, consistent with Pa.R.J.C.P. Rule 200(3).
- Amend Section 6303 (scope of chapter) to reconcile it to the Pa.R.J.C.P. Subsection (b) was suspended by Pa.R.J.C.P. 800(8), amended December 30, 2005, insofar as it is inconsistent with Rule 210 relating to arrest warrants. Rule 210 provides that a magisterial district judge may order the juvenile to be taken into custody pursuant to the laws of arrest. The amendment to subsection (b) allows a magisterial district judge to issue an arrest warrant, which may lead to detention in limited circumstances, consistent with Rule 210.

⁴³ The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, continues in its mission to address bias in all three branches of Pennsylvania government and ensure the fair delivery of justice in Pennsylvania.

- Amend Section 6304 (powers and duties of probation officers) to reconcile it to the Pa.R.J.C.P. Subsection (a)(2) was suspended by Pa.R.J.C.P. 800(10), amended December 30, 2005, insofar as it is inconsistent with Rules 231. Under Rule 231, the District Attorney has the option to require that an attorney for the Commonwealth receive and approve of written allegations. Once the District Attorney has filed a certification with the court under Rule 231 electing such requirement, any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure created the option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. The amendment to subsection (a)(2) incorporates this rule of procedure into the act.
- Amend Section 6305 (masters) to reconcile it to the Pa.R.J.C.P. Subsection (b) was suspended by Pa.R.J.C.P. 800(6), amended December 30, 2005, insofar as it is inconsistent with Rule 187 relating to authority of master. Subsection (b) was also suspended by Pa.R.J.C.P. 1800(5), adopted August 21, 2006, insofar as it is inconsistent with Rule 1187 relating to authority of master. Rules 187 and 1187 of the Pa.R.J.C.P. limits the authority of a court-appointed master to the following cases:
 - Detention hearings, detention review hearings, or shelter-care hearings
 - Discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors
 - Any hearing in which the petition alleges only misdemeanors
 - Uncontested dispositional review hearings and uncontested probation revocation hearings

Masters are specifically denied authority to conduct transfer hearings pursuant to Rule 394; issue warrants; and hear requests for writs of habeas corpus. Subsection (b) is amended to incorporate this rule into the act.

- Amend Section 6311 (guardian ad litem for child in court proceedings) to reconcile it with the Pa.R.J.C.P. Subsection (b)(9) was suspended by Pa.R.J.C.P. 1800(3), adopted August 21, 2006, insofar as it is inconsistent with Rule 1151 relating to appointment of guardian ad litem and counsel. Subsection (b)(9) is amended to be consistent with Rules 1151 and 1154, which allows for appointment of separate legal counsel and a guardian ad litem when the guardian ad litem determines there is a conflict of interest between the child's legal interest and best interest. Subsection (c) is added to reinforce the requirement in Section 6337 that a child may not waive the right to a guardian ad litem.

- Amend Section 6321 (commencement of proceedings) to reconcile it with the Pa.R.J.C.P. Section 6321 was suspended by Pa.R.J.C.P. 800(7), amended December 30, 2005, insofar as it is inconsistent with Rule 200 relating to commencing proceedings. Subsection (a)(4) is added to incorporate the concept of the written allegation as provided in the rules. It is important to recognize that the initiation of dependency and delinquency proceedings is significantly different. Delinquency proceedings are initiated via written allegation; dependency proceedings, absent the court's approval of an application to file a private petition, are initiated via the filing of a petition with the court.

Under Pa.R.J.C.P. Rule 200, a delinquency proceeding may be commenced by the submission of a written allegation. A "written allegation" is defined in Rule 120 as the document that initiates juvenile delinquency proceedings. A law enforcement officer usually submits the written allegation and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed. A private citizen may submit a written allegation to a juvenile probation officer or attorney for the Commonwealth under Rule 233, and the allegation will then be investigated and pursued in the same manner as a written allegation presented by a law enforcement officer. A private citizen may not submit a petition to initiate delinquency proceedings.

- Amend Section 6323 (informal adjustment) to reconcile it to the Pa.R.J.C.P. Section 6323(a)(2) was suspended by Pa.R.J.C.P. 800(13), adopted February 12, 2010, insofar as it is inconsistent with Rule 312 which relates to informal adjustment. Under Rule 312, only an "alleged" delinquent child may be referred for informal adjustment because a filing of informal adjustment must occur prior to the filing of a petition. Subsection (a)(2) is amended to recognize that distinction.
- Amend Section 6324 (taking into custody) to reconcile it to the Pa.R.J.C.P. Section 6324 was suspended by Pa.R.J.C.P. 1800(6), adopted August 21, 2006, insofar as it is inconsistent with Rule 1202 which provides for police officers and juvenile probation officers taking a child into custody. Paragraphs (3), (4) and (5) are re-written to reflect the limitations on who make take a child into custody.

Under Rule 1202, the police officer's or juvenile probation officer's duty is to protect the child and remove the child safely. A police officer or juvenile probation officer may take the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's or juvenile probation officer's duty is to take a child into protective custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his or her surroundings, and that protective custody is necessary, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child when

necessary. Only a police officer or juvenile probation officer may take custody of the child without a court order.

- Amend Section 6326 (release or delivery to court) to reconcile it to the Pa.R.J.C.P. By letter dated July 15, 2014 the Federal Office of Juvenile Justice and Delinquency Prevention provided “Revised Guidance on Jail Removal and Separation Core Requirements.” That guidance provided a reinterpretation of the terms “detain” or “hold in custody” with respect to nonsecure custody situations. In essence, the revised guidance indicates that nonsecure custody is subject to the same separation requirements (namely, separation by “sight and sound” from incarcerated adults) as secure custody. Subsection (d)(4) is revised to reflect this reinterpretation.
- Amend Section 6331 (release from detention or commencement of proceedings) to reconcile it to the Pa.R.J.C.P. Section 6331 was suspended by Pa.R.J.C.P. 800(11), amended December 30, 2005, insofar as it is inconsistent with Rule 242 relating to detention hearing and Pa.R.J.C.P. 1800(7), adopted August 21, 2006, insofar as it is inconsistent with Rules 1242 and 1330(A) relating to general conduct of shelter care hearing and petition: filing, contents, function, aggravated circumstances.

Under Rules 242, 1242 and 1330(A), 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 or shelter hearing if the juvenile is detained. 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.

- Amend Section 6334 (petition) to reconcile it to the Pa.R.J.C.P. Section 6334 was suspended by Pa.R.J.C.P. 800(9), amended December 30, 2005, insofar as it is inconsistent with Rules 231, 233 and 330 relating to written allegation, approval of private written allegations and petition: filing, contents, function, and Pa.R.J.C.P. 1800(8), adopted August 21, 2006, insofar as it is inconsistent with Rules 1320, 1321 and 1330 relating to application to file a private petition, hearing on application for private petition and petition: filing, contents, function, aggravated circumstances.

Under the rules, only a juvenile probation officer or attorney for the Commonwealth may file a petition for a delinquency hearing. A private citizen has the right to file a written allegation, not a petition. The written allegation commences the proceedings in the juvenile system. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas.

A dependency petition may only be filed by the county agency. Any other person shall file an application to file a petition.

Subsection (a) is re-written to clarify who may file each type of petition. Subsection (a.1) is amended to remove the list of specific items to be included in the petition and to reference the Pa.R.J.C.P. The list in subsection (a.1) combines both dependency and delinquency requirements, making it difficult to read and it is not consistent with the rules. The contents of the petition vary between dependency and delinquency petitions under the rules, A table is provided in the comments to the proposed amendment to Section 6334 that compares the provisions of Rules 330 (relating to contents of delinquency petition) to Rule 1330 (relating to contents of dependency petition).

Subsection (b) is amended to clarify that the aggravated circumstances set forth in the subsection apply only in dependency proceedings.

- Amend Section 6335 (release or holding of hearing) to reconcile it to the Pa.R.J.C.P. Section 6335 was suspended by Pa.R.J.C.P. 800(16), amended February 12, 2010, insofar as it is inconsistent with Rule 391 relating to time restrictions for detention for juveniles scheduled for transfer hearing. Subsection (a) and paragraph (f)(1) are amended to reflect Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed. Section 6335 was suspended by Pa.R.J.C.P. 1800(10), adopted August 11, 2006, insofar as it is inconsistent with Rule 1360 relating to adjudicatory summons.

Section 6335 provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper and necessary parties to the proceedings. It also provides for ordering the person having the physical custody or control of the child to bring the child to the proceeding. Under Rule 1360 all parties, defined as a person or county agency with standing to participate in the proceedings, should receive a summons. Pursuant to Rule 1361, all parents and relatives providing care for the child are to receive notice of the hearing. The last paragraph of subsection (a) is amended to clarify this summons requirement.

Pa.R.J.C.P. Rules 1360 and 1363 provide that the summons is to include a copy of the petition unless the petition has been previously served. The last sentence of subsection (a) is amended to reflect this rule.

Subsection 6335(c) was suspended by Pa.R.J.C.P. 800(2) and 1800(1), amended March 19, 2009, insofar as it is inconsistent with Rules 124, 140, 1124, 1140 and 1364 relating to summons and notice. Rules 140, 1124 and 1140 provide that the judge must find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure are to be followed if a juvenile is detained. Subsection (c) is amended to clarify when a warrant may be issued.

- Amend Section 6336 (conduct of hearings) to reconcile it to the Pa.R.J.C.P. Subsection (b) was suspended by Pa.R.J.C.P. 800(12) insofar as the Act is inconsistent with Rules 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth. Subsection (b) is amended to remove the language that made the district attorney's role optional at the discretion of the court.

Subsection (c) was suspended by Pa.R.J.C.P. 800(3), amended December 30, 2005, 1800(2), adopted August 21, 2006, insofar as it is inconsistent with Rules 127(A), 1127(A) and 1242(B)(2) relating to recording and transcribing juvenile court proceedings and general conduct of shelter care hearing. No substantive change in law is intended by these rule changes and this amendment to subsection (c); rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Detention hearings may be recorded under Rule 242(B)(2) at the request of the juvenile or the Commonwealth or upon the court's order. Shelter care hearings may be recorded under Rule 1242(B)(2) at the request of the juvenile or the Commonwealth or upon the court's order. If recording of a detention or shelter care hearing is not done, full minutes are to be kept. Full minutes are not recordings.

Subsection (e)(2) is amended to make the age reference consistent with the references in §§ 6307 (relating to inspection of court files and records) and 6308 (relating to law enforcement records). This is a technical change only and is not meant to change the intent or interpretation of that paragraph.

- Amend Section 6336.1 (notice and hearing) to reconcile it to the Pa.R.J.C.P. Section 6336.1(b)(1) was suspended by Pa.R.J.C.P. 1800(11), amended September 16, 2009, insofar as it is inconsistent with Rule 1604 relating to submission of reports. Rule 1604, which requires the report to be submitted to a court designee who files the report and submits it to the judge, attorneys, parties, and if appointed, a court appointed special advocate. The amendment to subsection (b)(1) of this section incorporates this requirement.
- Amend Section 6337.1 (right to counsel for children in dependency and delinquency proceedings) to reconcile to the Pa.R.J.C.P. Section 6337 was suspended by Pa.R.J.C.P. 800(5), amended December 30, 2005, and 1800(4), adopted August 21, 2006, insofar as it is inconsistent with Rules 152 and 1152 relating to waiver of counsel. These rules allow only the juvenile the ability to waive the right to counsel. The authority to waive counsel is set forth in § 6337.1(b)(3). A guardian may not waive the juvenile's right to counsel.
- Amend Section 6340 (consent decree) to reconcile it to the Pa.R.J.C.P. Subsection (c) was suspended by Pa.R.J.C.P. 800(15), amended February 12, 2010, insofar as it is inconsistent with the requirement of Rule 373 relating to conditions of consent decree. Rule 373 allows for early dismissal or extension of the period of the consent decree upon motion. Rule 373 does not provide for early discharge by probation services. Subsections (c), (d) and (e) are amended to recognize that both early dismissal and

extension of the consent decree require the filing of a motion with the court. While a district attorney, counsel for the child or juvenile probation officer may file a motion for modification of the consent decree, the district attorney retains the right to veto the modification.

- Amend Section 6341(b.1)(1.1) to reconcile it to the Pa.R.J.C.P. Amendments to the Rules of Juvenile Court Procedure adopted August 16, 2014 affect the interpretation of subsection (a), especially with regards to the destruction of fingerprints and photographs. Rule 170 provides that any party may file a motion to expunge or destroy records, files, fingerprints or photographs, or the court may commence such proceedings *sua sponte*. Rule 172 deals with the specifics of the court order directing the destruction of fingerprints or photographs. Rule 408 directs to the court to order the destruction of fingerprints and photographs if it finds the juvenile committed none of the alleged delinquent acts set forth in the delinquency petition.

Subsection (b.1)(1.1) is added to incorporate the school notification requirements added to Rule 163 of the Rules of Juvenile Court Procedure adopted August 16, 2014. The Advisory Committee deemed it important to replicate these requirements in statute, as they are directives to school districts and should be legislatively imposed.

- Amend Section 6351 (disposition of dependent child) to reconcile it to the Pa.R.J.C.P. Subsection 6351(e)(3)(i)(B) was suspended by Pa.R.J.C.P. 1800(12), amended September 16, 2009, insofar as it is inconsistent with Rule 1607 relating to regular scheduling of permanency hearings. Rule 1607 requires the court is to hold a permanency hearing every six months in every case until the child is removed from the jurisdiction of the court. This includes cases when the child is not removed from the home or the child was removed and subsequently returned to the guardian, but the child is under the court's supervision. Subsection 6351(e)(3)(i) is amended to reflect this requirement.
- Amend Section 6353 (disposition review hearing, limitation on commitment and change in place of commitment). Subsection (a) was suspended by Pa.R.J.C.P. 800(18), amended February 12, 2010, insofar as it is inconsistent with the requirement of Rule 610 relating to dispositional and commitment review. Rule 610 requires dispositional review hearings to be held at least every six months. Subsection (a) is amended to change the statutory requirement of nine months to six months, consistent with Rule 610. Subsection (a) is also amended to clarify that any time a hearing is to be held under Section 6353, the delinquent child should receive notice of the hearing.
- Amend Section 6355 (transfer to criminal proceedings) to reconcile it to the Pa.R.J.C.P. Subsection (g) was suspended by Pa.R.J.C.P. 800(18), amended February 12, 2010, insofar as it is inconsistent with the Rule 394 which provides only the burden of establishing by a preponderance of the evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.

The partial suspension of subsection (g) was due to the redundancy of proving the juvenile is not amenable to treatment, supervision, and rehabilitation, which is a factor already considered by the court in 42 Pa.C.S. § 6355(a)(4)(iii)(G). Pursuant to 42 Pa.C.S. § 6355(a)(4)(iii)(G), the court must find that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution while considering whether the juvenile is amenable to treatment, supervision, and rehabilitation among other enumerated factors. Because the court considers amenability to treatment, supervision, and rehabilitation as one of many enumerated factors, the court does not need to hear additional evidence later in the proceedings. Subsection (g) is amended to remove both references found therein to the potential for treatment, supervision and rehabilitation of the juvenile, to be consistent with Rule 394.

- Add Section 6366 (role of interstate compacts) to recognize the primacy of the various juvenile law-related interstate compacts that affect the disposition of delinquent and dependent children across state lines.

Technical Amendments

As part of the Advisory Committee’s review of the Juvenile Act, several references were found to be outdated or archaic. The following amendments were made to provide internal consistency, and current statutory references. They are self-explanatory.

- Amend Section 6302 – definition of “shelter care,” Sections 6307(a)(6.5); 6308(a)(6); 6327(a)(3), (a)(4), (c.1)(1), (e) and (f); 6336.1(b)(3); 6352(a)(3) and (a)(4); 6353(c) to change the reference from “Department of Public Welfare” to “Department of Human Services.”
- Amend Section 6322 to remove the reference to a specific rule of court, recognizing that rules of court may change more frequently than statutes.
- Amend Section 6336(e)(2) to add the phrase “or 13” to make this section regarding open court proceedings consistent with §§ 6307 and 6308 regarding release of information to the public.
- Amend Section 6342(f) to delete the reference to the 1959 statute establishing the Juvenile Court Judges’ Commission (the act was repealed in 2007) and replace it with the current reference for JCJC found in 42 Pa.C.S. Ch. 63, Subch. F.
- Amend Sections 6351.1 and 6358 to correct cross-references to other consolidated statute sections whose names have changed.

- Amend Section 6352(a)(6) to delete the reference to the 1915 Child Labor Law (the act was repealed in 2013) and replace it with the current reference for the Child Labor Act.
- Amend Sections 6355(a)(2)(iv) and 6356 to change the reference from the phrase “mentally retarded” to “intellectually disabled.”

LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR JUVENILE OFFENDERS

In 2012, the Pennsylvania General Assembly revised its penalties for juveniles who commit murder in response to the opinion of the United States Supreme Court that life imprisonment without the possibility of parole for juvenile offenders could not be imposed without first considering the impact of various factors related to the age of the defendant.⁴⁴ One of the directives of Senate Resolution 304 (2014) was for the Advisory Committee to review “how Pennsylvania and other states have responded to *Miller v. Alabama*, and whether changes should be made to Pennsylvania law as a result of that review.” Changes to Pennsylvania law in this regard would have a significant impact, given that Pennsylvania has the largest number of juveniles serving life without parole in the nation.⁴⁵ The Juvenile Law Center has identified 524 individuals who are currently serving life without the possibility of parole (LWOP) in Pennsylvania. Their demographics are broken down in the following charts.

There are several crimes for which juveniles may be sentenced to life imprisonment without the possibility of parole under current law: criminal homicide, murder in the first or second degree, murder in the first or second degree of an unborn child, and murder in the first or second degree of a law enforcement officer. Second degree murder is also known as felony murder. The number of juveniles serving LWOP sentences increases with age at the time of offense. For example, of the 524 juveniles currently sentenced, almost half (46.8 percent) were age 17. Two of the 524 were age 13 at the time they committed the crime for which they were sentenced. See Table 1.

Table 1
Juvenile Offenders Serving Life Without Parole in Pennsylvania
By Age at Time of Offense, 2010

Age	Number of Juveniles	Overall Percentage
17	245	46.8%
16	153	29.2
15	63	12.0
14	19	3.6
13	2	0.4
Unknown	42	8.0
Total	524	100.0

Source: Pennsylvania Department of Corrections
and the Juvenile Law Center.

⁴⁴ *Supra*, note 17.

⁴⁵ Joshua Rovner, “*Juvenile Life Without Parole: An Overview*,” The Sentencing Project, 2014.
http://www.sentencingproject.org/doc/publications/jj_Juvenile%20Life%20Without%20Parole.pdf.

Table 2 presents the count of juveniles, by race or ethnicity, serving LWOP. Of the races or ethnicities recorded in the data, which include Black, White, Hispanic, Asian, and Unidentified, the 366 Black juveniles serving LWOP sentences make up about two-thirds of all juvenile LWOP inmates. Sixty juveniles are serving LWOP for crimes other than first degree or second degree murder.

Table 2
Juvenile Offenders Serving Life Without Parole in Pennsylvania
By Race or Ethnicity, By Offense, 2010

Race	Total Number of Juveniles	Overall Percentage	Convicted of First Degree Murder	Convicted of Second Degree Murder	Convicted of Other Crimes
Black	366	69.8%	200	129	37
White	103	19.7	62	26	15
Hispanic	50	9.5	28	17	5
Asian	2	0.4	2	0	0
Unidentified	3	0.6	0	0	3
Totals	524	100.0	292	172	60

Source: Pennsylvania Department of Corrections and the Juvenile Law Center.

By way of comparison, data for adult inmates show that Whites received, on average, about 23 percent of the LWOP sentences during the years 2003 to 2013. The category Non-White averaged 77 percent.⁴⁶

Table 3 shows the different offenses for which juveniles may receive LWOP sentences in Pennsylvania. Slightly more than half of the juveniles received LWOP sentences for 1st degree murder. Third degree murder, aggravated assault, robbery, and “undesigned” offenses each accounted for less than one percent of LWOP sentences.

⁴⁶ See Table 11, page 11 of Pa, DOC 2013 Annual Statistical Report.
<http://www.cor.pa.gov/Administration/Statistics/Documents/Reports/2013%20Annual%20Statistical%20Report.pdf>.

Table 3
Juvenile Offenders Serving Life Without Parole in Pennsylvania
By Offense, 2010

Offense	Number of Juveniles	Overall Percentage
1 st Degree Murder	292	55.7%
2 nd Degree Murder	173	33.0
3 rd Degree Murder	5	0.9
Unspecified Murder	27	5.1
Criminal Homicide	19	3.6
Aggravated Assault	3	0.6
Robbery	1	0.2
Undesignated	4	0.8
Totals	524	100.0

Source: Pennsylvania Department of Corrections and the Juvenile Law Center.

Slightly more than half of the LWOP sentences, 292 of 524, were handed down for first degree murder convictions when juvenile inmates are shown by age at the time of the offense. In absolute terms, the number of 17 year olds convicted of first degree murder was markedly higher than for the other age groups, and exceeds the number of first degree murder convictions for all other age groups combined. Juveniles age 17 were convicted of first degree murder at a rate almost twice that of second degree murder. When the numbers of first and second degree murder convictions are compared to each other for each age group, however, the convictions come closer into balance as the juveniles' ages decrease. In other words, the numbers of young teenagers convicted of first degree murder is almost the same as the number convicted of second degree murder. See Table 4.

Table 4
Juvenile Offenders Serving Life Without Parole in Pennsylvania
By Age, By Offense, 2010

Age	Number of Juveniles Convicted of First Degree Murder	Number of Juveniles Convicted of Second Degree Murder
17	142	75
16	89	51
15	33	22
14	8	6
13	1	1
Unknown	19	17
Totals	292	172

Source: Pennsylvania Department of Corrections and the Juvenile Law Center.

Restriction

The United States Supreme Court Holdings

The United States Supreme Court has reviewed and opined on the degree of punishment appropriate for children (*i.e.* individuals under the age of 18) who commit criminal acts over the course of the past 10 years. In 2005, in *Roper v. Simmons*,⁴⁷ the Court declared that capital punishment of juveniles was a violation of their rights under the Eighth Amendment to the U.S. Constitution.⁴⁸ The *Roper* decision recognized three significant gaps between juveniles and adults:

- Children have a lack of maturity and underdeveloped sense of responsibility that leads to recklessness, impulsivity and heedless risk-taking.
- Children are more vulnerable to negative influences and outside pressures including from family and peers; have limited control over their own environment; and lack the ability to extricate themselves from horrific, crime-producing settings.
- A child's character is not as well-formed as an adult's, his or her traits are less fixed and, actions less likely to be evidence of irretrievable depravity.⁴⁹

The decision further relied on studies that show that only a relatively small proportion of youth who engage in illegal activities develop entrenched patterns of problem behavior.

Five years later, the Court in *Graham v. Florida*,⁵⁰ further expanded the reasoning in *Roper* to declare that the Eighth Amendment prohibits life without parole for juveniles convicted of non-homicide offenses. As part of its analysis, and drawing on conclusions made in *Roper*, the Court discussed the various penological justifications for sentencing and concluded that none of those purposes were served by the incarceration for life of juveniles for non-homicide crimes. These justifications include:

- *Retribution*. Because retribution relates to blameworthiness, the case for it is not as strong for a juvenile.
- *Deterrence*. The same characteristics that render juveniles less culpable (their immaturity, recklessness and impetuosity) make them less likely to consider potential punishment.
- *Incapacitation*. Deciding that a juvenile will forever be a danger to society would require making a judgment of incorrigibility, which is inconsistent with youth.
- *Rehabilitation*. Life without parole makes rehabilitation meaningless.⁵¹

⁴⁷ 543 U.S. 551 (2005).

⁴⁸ "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Constitution, Amendment VIII, http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.

⁴⁹ *Supra*, note 25 at p. 8.

⁵⁰ 560 U.S. 48 (2010).

⁵¹ *Supra*, note 26 at pp. 9-10.

Building on the opinions in *Roper* and *Graham*, in 2012 the Court in *Miller v Alabama* held that mandatory life without parole for juvenile offenders, including those convicted of homicides, violates the Eighth Amendment to the U.S. Constitution. Under this holding, life without parole is still a possible sentence for a juvenile, but the sentencing court must consider factors relating to defendant's age before imposing such a sentence.

We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. Cf. *Graham*, 560 U. S., at ___ (slip op., at 24) (“A State is not required 17 Cite as: 567 U. S. ___ (2012) to guarantee eventual freedom,” but must provide “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation”). By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between “the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper*, 543 U. S., at 573; *Graham*, 560 U. S., at ___ (slip op., at 17). Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.⁵²

Simply put, the Court stated:

Graham, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.”⁵³

⁵² Supra, note 27 at p. 17.

⁵³ *Ibid.*, at p 27.

State Responses to Miller

States have responded in various ways to the *Miller* holding. Not including Pennsylvania, at least eighteen states have enacted statutes to address the issue of life imprisonment without parole for juveniles,⁵⁴ while the highest courts in another eight states have ruled on the issue.⁵⁵ Additionally, another six states have had both the legislature and the courts weigh in on the matter.⁵⁶ In the case of Texas, this has resulted in a conflict between a statute that is not retroactive and a court ruling that *Miller*, as applied in Texas, is retroactive. The Connecticut General Assembly passed Senate Bill 796, which retroactively allowed juveniles serving life without parole the opportunity of parole after serving a minimum sentence. The bill was transmitted to the Governor on June 15, 2015 for approval. The legislatures in at least four states have abolished juvenile life without possibility of parole sentences.⁵⁷

With respect to retroactivity, 12 states, either legislatively or judicially, have declared their responses to be retroactive,⁵⁸ and five (not including Pennsylvania) have declared them to not be retroactive.⁵⁹ In at least six other states, the legislatures and the courts have been silent on the issue of retroactivity.⁶⁰

Legislative responses have tended to fall into three categories:

- Eliminate life without possibility of parole as a possible sentence for juveniles who commit homicides but otherwise applying the same terms of confinement as for adults.
- Make life without possibility of parole a discretionary sentence, imposed after the judge or jury had an opportunity to review mitigating factors relating to the youth of the defendant.
- Convert life without possibility of parole to a term of years, ranging from 15 to 60 years' imprisonment before becoming eligible for parole, with several falling in the 20-30 year range. This response may or may not pass constitutional muster. Sentences of 60, 70 or more years have sometimes been held to be the equivalent of LWOP and thus fail to qualify under *Miller*.

The following two tables outline the legislative and judicial responses of those states that have taken a position on the *Miller* ruling.

⁵⁴ Arizona, Arkansas, California, Delaware, Florida, Hawaii, Kansas, Louisiana, Michigan, Nebraska, Nevada, North Carolina, South Dakota, Texas, Utah, Washington, West Virginia, and Wyoming.

⁵⁵ Alabama, Colorado, Illinois, Iowa, Massachusetts, Minnesota, Mississippi, and Ohio.

⁵⁶ Florida, Louisiana, Michigan, Nebraska, Texas, and Wyoming.

⁵⁷ Hawaii, Kansas, West Virginia, and Wyoming. These states have abolished JLWOP after the decision in *Miller*; five other states, Alaska, Colorado, Kentucky, Montana, and New Mexico had abolished it prior to *Miller*.

⁵⁸ Colorado, Delaware, Florida, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, Nevada, North Carolina, Texas, and Washington.

⁵⁹ Arkansas, California, Louisiana, Michigan, and Minnesota.

⁶⁰ Arizona, Kansas, Ohio, South Dakota, Utah, and Wyoming.

**TABLE I: TABLE OF STATE STATUTORY
RESPONSES TO *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ____ (2012)
As of June 16, 2015**

State	Statute	Status	Response
Arizona	Ariz. Rev. Stat. §§ 13-716, 13-751 and 13-752	HB 2373, enacted April 5, 2012 (§§ 13-751, 13-752) and HB 2593 (§ 13-716), enacted April 22, 2014	Juveniles sentenced to life are eligible for parole in 25 years if the victim was 15 years of age or older; eligible in 35 years if victim was under 15 years of age or an unborn child; eligible for lifetime parole upon completion of minimum sentence.
Arkansas	Ark. Code Ann. § 5-4-104	Act 1490, April 22, 2013	Persons under age 18 convicted of capital murder can be sentenced to LWOP or life, with a 28-year minimum sentence; prospective only
California	Cal. Penal Code §§ 1170(d)(2) and 3051	§ 1170(d)(2), enacted Sept. 30, 2012 and § 3051(b), enacted Sept. 16, 2013	Any person who was under the age of 18 and sentenced to LWOP on or after October 1, 2011 may petition for a review of their sentence and consideration of a new sentence that permits parole after 15 years. The statute become operative on January 1, 2014. Determinate sentence – eligible in 15 years; sentence of less than 25 years to life – eligible in 20 years; sentence of 25 years to life – eligible in 25 years
Delaware	Del. Code §§ 4204(d)(2) and 3409A	Effective June 4, 2013	Persons convicted of murder when under age 18 sentence is 25 years to LWOP. After serving 30 years, may petition for a sentence reduction. Retroactive.
Florida	Fla. Stat. §§775.082, 921.1401	Ch. 2014-220, enacted June 20, 2014	Provides for consideration of youth factors and sentencing reviewing hearings; effective on or after July 1, 2014
Hawaii	Haw. Rev. Stat. §§ 706-656, 706-669	HB 2116 (2014), enacted July 2, 2014	Abolishes life without parole for juvenile homicide offenders; effective for all proceedings begun but not concluded on July 1, 2014. Minimum term of no longer than 20 years or such shorter period as may be applicable.
Kansas	Kan. Stat. § 21-6618	Effective July 1, 2011	JLWOP abolished

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RESPONSES TO *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ____ (2012)
As of June 16, 2015**

State	Statute	Status	Response
Louisiana	La.R.S. § 15.574.4(e) & La.C.Cr.P. Art. 878.1	Act 239 of 2013, effective August 1, 2013	Presentencing hearing for juveniles convicted of 1 st or 2 nd degree murder to determine if life imprisonment with or without parole. Must serve a minimum of 35 years. La. Supreme Court ruled prospective only, but fiscal note to final version of underlying bill assumes statute to be retroactive.
Michigan	Mich. Comp. Law §§ 769.1 to 777.69	Act 22 of 2014, effective March 4, 2014	Presentencing hearing; JLWOP, or sentence of minimum 25-40 years and maximum 60 years. Not retroactive; applies to cases on direct appeal on or before June 24, 2012.
Nebraska	Neb. Rev. Stat. § 28-105.02	LB44 (2013), effective May 8, 2013	Penalty for murder for persons under age 18 is max. of life imprisonment, min. of 40 years. Court to consider mitigating factors relevant to youth in determining sentence. Statute was silent but state supreme court has ruled it retroactive.
Nevada	Nev. Rev. Stat. Chap. 176 and 213	Assembly Bill No. 267, effective October 1, 2015	Persons who are serving a sentence of life without parole for an offense resulting in the death of one victim may be paroled after 20 years. Retroactive.
North Carolina	N.C. Gen. Stat. § 15A-1340.19A et seq.	SL 2012 – 148, enacted July 12, 2012	Life imprisonment with parole for minors means serving a minimum of 25 years before parole eligibility; JLWOP permissible after presentence hearing. Retroactive.
South Dakota	S.D. Codified Laws §§ 22-6-1	SL 2013, ch. 105, enacted March 20, 2013	Maximum sentence for juvenile convicted of Class A or B felony is life imprisonment; presentence hearing required.
Texas	Tex. Penal Code	SB2 (2013), effective July 22, 2013	JLWOP changed to life imprisonment for capital felonies. Statute says not retroactive; Texas Criminal Appeals Court said <i>Miller</i> WAS retroactive in <i>Ex Parte Terrell Maxwell</i> , 424 S.W.3d 66 (Tex. Crim. App. 2014) provides that if a defendant was younger than 18 years of age at the time the offense, aggravated murder is not a capital felony; and JLWOP abolished for felonies subject to LWOP.

**TABLE I: TABLE OF STATE STATUTORY
RESPONSES TO *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ____ (2012)
As of June 16, 2015**

State	Statute	Status	Response
Utah	Utah Code Ann. §§ 76-2-207.7, 76-5-202(3)(e), 76-5-203	SB228 (2013) signed by Governor March 22, 2013	Aggravated murder is not a capital felony if committed by a juvenile – penalty is JLWOP or 25 years to life penalty for aggravated murder; penalty for murder is 15 years to life; no JLWOP for other felonies
Washington	Wash. Rev. Code §§ 9.94A.540, 10.95.030	SL 2014, Ch. 130 (SB5064)	Juveniles convicted of aggravated first degree murder to serve min. of 25 years; if crime committed prior to 16 th birthday, min. of 25 yrs. to life; if between 16 and 18 at time of crime, min. of 25 yrs. to life, with life as a possible min. Sentencing determination subject to review of <i>Miller</i> factors. Effective June 1, 2014. Retroactive, but if serving JLWOP, must have served at least 20 yrs. Petition for resentencing.
West Virginia	W. Va. Code §§ 61-11-23 and 62-12-13b	HB4210, signed by Governor March 28, 2014, effective June 6, 2014	Abolishes life without parole for juvenile offenders; makes all juvenile offenders eligible for parole after 15 years
Wyoming	Wyo. Stat. §§ 6- 2-101, 6-10-301	Act 16, 2013 (HB23), effective July 1, 2013.	JLWOP abolished. Juveniles sentenced to life imprisonment are eligible for parole if Governor commutes the sentence to a term or years or if the person serves 25 yrs.

TABLE II: TABLE OF STATE JUDICIAL
RESPONSES TO *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ____ (2012)
As of June 16, 2015

State	Case Citation	Retroactive Application
Alabama	<i>In re Jimmy Williams, Jr.</i> , No. 1131160 (Ala., March 27, 2015)	No
Arkansas	<i>Kelley v. Gordon</i> , 2015 Ark. 277 (June 18, 2015)	Yes
Colorado	<i>People v. Wilder</i> , 2015 COA 14 (Co. Feb. 26, 2015)	Yes
Florida	<i>Falcon v. State</i> , No. SC13-865 (Fl. May 19, 2015)	Yes
Illinois	<i>People v. Davis</i> , 2014 IL 115595 (Ill. 2014)	Yes
Iowa	<i>State v. Ragland</i> , 836 N.W.2d (Iowa 2013)	Yes
Louisiana	<i>State v. Tate</i> , 130 So.3d 829, 2013-2763 (La. Nov. 5, 2013), cert. denied 2014 WL 834279 (Mem.) (U.S. May 27, 2014) and <i>State v. Jones</i> , 134 So.3d 1164 (La. Feb. 28, 2014)	No retroactivity for collateral attacks; retroactive as to cases in direct line of appeal only
Massachusetts	<i>Diatchenko v. District Attorney for the Suffolk County</i> , 466 Mass. 655 (2013)	Yes
Michigan	<i>People v. Carp</i> , Docket No. 146478, <i>People v. Davis</i> , Docket No. 146819 and <i>People v. Eliason</i> , Docket No. 147428 (Mich. July 8, 2014)	No
Minnesota	<i>Chambers v. State</i> , 831 N.W.2d 311 (Minn. 2013)	No
Mississippi	<i>Jones v. State</i> , 122 So 3d 698 (2013)	Yes
Nebraska	<i>State v. Castaneda</i> , 287 Neb. 289, <i>State v. Mantich</i> , 287 Neb. 320 and <i>State v. Ramirez</i> , 287 Neb. 356 (Neb. 2014)	Yes
Ohio	<i>State v. Long</i> , Slip Opinion No. 2014-Ohio-849 (Ohio 2014)	<i>Miller</i> applies to both mandatory and discretionary sentences

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RESPONSES TO *Miller v. Alabama*, 132 S. Ct. 2455, 567 U.S. ____ (2012)
As of June 16, 2015

State	Case Citation	Retroactive Application
Pennsylvania	<i>Commonwealth v. Cunningham</i> , 81 A.3d 1 (Pa. 2013), cert. denied 573 U.S.--- (June 9, 2014)	No
Texas	<i>Ex Parte Terrell Maxwell</i> , 424 S.W.3d 66 (Tex. Crim. App. 2014)	Yes
Wyoming	<i>Bear Cloud v. State</i> , 2013 Wy. 18, 294 P.3d 36 (Wyo. 2013)	Not discussed; Sentencing court must set minimum term to serve before eligible for parole
U.S. District Court, Court of Eastern Michigan, Southern Division	<i>Hill v. Snyder</i> , 2013 WL 364198, E.D. Mich. (Jan. 30, 2013)	Yes
U.S. District Court, Southern District, New York	<i>Alejandro v. U.S.</i> , 2013 WL 4574066, S.D.N.Y. (Aug. 22, 2013)	Yes
U.S. District Court, Eastern District, Virginia	<i>Johnson v. Ponton</i> , 2013 WL 5663068, E.D. Va. (Oct. 16, 2013) and <i>Contreras v. Davis</i> , 2013 WL 6504654, E.D. Va. (Dec. 11, 2013)	No
U.S. Court of Appeals, 5 th Circuit	<i>Craig v. Cain</i> , 2013 WL 69128, C.A. 5 (La.) 2013	No
U.S. Court of Appeals, 9 th Circuit	<i>Moore v. Biter</i> , 724 F.3d 1184, C.A. 9 (Cal.) 2013	Yes
U.S. Court of Appeals, 11 th Circuit	<i>In re Morgan</i> , 713 F.3d 1365, C.A. 11 (Fla.) 2013	No

Pennsylvania's Statutory Response to Miller

In the fall of 2012, the Pennsylvania General Assembly amended the Crimes Code to recognize the requirements of *Miller*.⁶¹ 18 Pa.C.S. § 1102.1 was added to address the crimes of murder, murder of an unborn child, and murder of a law enforcement officer and set forth the following sentencing scheme for juvenile offenders:

Level of Crime	Age of Defendant	Potential Sentence
First Degree	Defendant 15 years of age or older	Life imprisonment with the possibility of parole (LWOP) or minimum sentence of 35 years to life
	Defendant under 15 years of age	LWOP or minimum sentence of 25 years to life
Second Degree	Defendant 15 years of age or older	Minimum sentence of 30 years to life
	Defendant under 15 years of age	Minimum sentence of 20 years to life

Under 18 Pa.C.S. § 1102.1(d), the sentencing court is required to consider and make findings regarding multiple factors, specifically including those relating to age as specified by the U.S. Supreme Court.

Retroactivity

The Supreme Court in *Miller* did not discuss whether the opinion was retroactive to cases in which all appeals have been exhausted. This has led to a difference of opinion among the federal circuit courts and the individual state supreme courts, with some jurisdictions ruling that the holding is retroactive and others denying retroactivity. If the holding is determined to be retroactive, cases that are “closed” (that is, the time and opportunities for appeal have been exhausted) may be reopened to determine the constitutionality of the sentences imposed.

Several courts have noted that while the *Miller* case was on direct appeal, and thus still “open,” its companion case, *Jackson v. Hobbs*, arose out of a state petition on habeas corpus,⁶² filed after opportunity for direct appeal had lapsed. Several state courts have

⁶¹ Act of October 25, 2012 (P.L.1655, No.204)

⁶² A writ of habeas corpus directs a person, usually a prison warden, to produce the prisoner and justify the prisoner's detention. If the prisoner argues successfully that the incarceration is in violation of a constitutional right, the court may order the prisoner's release. Habeas corpus relief also may be used to obtain custody of

concluded that the *Miller* court implied that its decision should be applied retroactively on collateral review when it vacated Jackson's sentence and remanded to the state court.

The determination of whether the holding in *Miller* is retroactive or not revolves around a rule of judicial interpretation, referred to as the *Teague* rule. *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060 (1989) (plurality), delineated a general rule of non-retroactivity for new procedural, constitutional rules announced by the Court. Two exceptions are made to this rule: (1) rules prohibiting a certain category of punishment for a class of defendants because of their status or offense or (2) watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. Recent rulings appear to hold that new substantive rules generally apply retroactively, with "substantive" used to describe rules that alter the range of conduct or the class of persons that the law punishes.⁶³

In *Commonwealth v Cunningham*, the Pennsylvania Supreme Court held that *Miller* is a new procedural constitutional rule and therefore not retroactive. The decision in *Cunningham* was appealed to the U.S. Supreme Court, where *certiorari* was denied on June 9, 2014. On April 6, 2015, House Bill 892 was introduced in the General Assembly, where it was referred to the House Judiciary Committee. The bill would, in essence, apply *Miller* retroactively in Pennsylvania by allowing any person who was under 18 years of age when he committed a crime for which he received a minimum sentence of no less than ten years imprisonment or who was sentenced to life without the possibility of parole to petition the sentencing court for a sentence reduction.

Table II provides details of those cases that have applied or denied retroactivity of the *Miller* holding to cases on collateral review. The supreme courts of Arkansas, Colorado, Florida, Illinois, Iowa, Florida, Massachusetts, Mississippi, Nebraska, and Texas have ruled in favor of retroactivity. The supreme courts of Alabama, Louisiana, Michigan, Minnesota and Pennsylvania have rejected retroactivity.

The U.S. Supreme Court granted *certiorari* in December 2014 in the case of *Toca v. Louisiana*,⁶⁴ and was expected to issue an opinion on the retroactivity question sometime during the summer of 2015. *Toca*, however, was settled and the case rendered moot. On March 23, 2015, the Supreme Court agree to hear another Louisiana case on the subject of retroactivity.⁶⁵ A decision in favor of retroactivity could potentially lead to resentencing hearings for approximately 2,100 convicted murderers, including over 500 in Pennsylvania. Pennsylvania is often cited as having more offenders serving life without

a child or to gain the release of a detained person who is insane, is a drug addict, or has an infectious disease. Usually, however, it is a response to imprisonment by the criminal justice system. A writ of habeas corpus is authorized by statute in federal courts and in all state courts. An inmate in state or federal prison asks for the writ by filing a petition with the court that sentenced him or her.

In most states, and in federal courts, the inmate is given the opportunity to present a short oral argument in a hearing before the court. He or she also may receive an evidentiary hearing to establish evidence for the petition. Explanation found at: <http://legal-dictionary.thefreedictionary.com/writ+of+habeas+corpus>.

⁶³ *Commonwealth v Cunningham*, 81 A.3d 1 (Pa. 2013), at 5-6.

⁶⁴ No. 14-6381, 2013-KK-1880.

⁶⁵ *Henry Montgomery v. Louisiana*, USSC No. 14-280, cert. granted 3/23/15.

parole for murders committed as juveniles than any other state.⁶⁶ Oral arguments in *Henry Montgomery v. Louisiana* are expected to occur in October 2015.⁶⁷

As described above, the debate on retroactivity rages on, and the Advisory Committee decided that it would not take a position on the issue under the current circumstances.

Second Degree Murder (Felony Murder)

As part of the General Assembly's response to the *Miller* holding, mandatory minimum sentences were established for minors who commit felony murder. Felony murder occurs when an individual dies during the commission of a felony, whether the defendant is the actual actor or perpetrator of the crime or is an accomplice in the perpetration of the felony. The phrase "perpetration of a felony" is defined as "[T]he act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping."⁶⁸ Under the sentencing scheme found in the *Miller* response, a person 15 years of age or older who commits felony murder shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life. If the defendant was under 15 years of age at the time of the felony murder, the minimum sentence is at least 20 years to life.⁶⁹

On September 22, 2008, Senator Stewart J. Greenleaf convened a hearing of the Senate Judiciary Committee to discuss inmates serving life without parole for crimes committed as juveniles. Senator Greenleaf cited a May 2008 report by Human Rights Watch that identified Pennsylvania as having the largest number of teen lifers in the country. Several theories were advanced as to why Pennsylvania holds this distinction, among them that Pennsylvania requires all juveniles charged with homicides to be automatically subject to criminal court jurisdiction. Pennsylvania (at the time) was unique in its use of life without parole for both first- and second-degree (felony) murder. The level of participation required to meet a felony murder charge varies. Witnesses testified that many convicted teens were never in possession of a weapon and in some cases, were not physically present at the time of the murder. These circumstances can occur in an accomplice situation where assistance was rendered prior to or after the murder, but not during the actual commission of the murder. The concept of felony murder, however, subjects accomplices to the same potential punishment as the principal perpetrator on the theory that the accomplice's assistance, however minimal, resulted in the death of another

⁶⁶ Gary Gately, "Supreme Court to Weigh Retroactivity of Mandatory JLWOP," *Juvenile Justice Information Exchange*, <http://jjie.org/supreme-court-to-weigh-retroactivity-of-mandatory-jlwop>, April 5, 2015.

⁶⁷ Bridget Mire, "Thibodaux attorney to present case to U.S. Supreme Court," *houmatoday.com*, <http://www.houmatoday.com/article/20150407/ARTICLES/150409712>, April 7, 2015.

⁶⁸ 18 Pa.C.S. § 2502(b) and (d).

⁶⁹ 42 Pa.C.S. §1102.1(c).

human being.⁷⁰ Additionally, in July 2012, Senator Greenleaf convened a hearing to consider testimony on the best ways to implement the *Miller* decision in Pennsylvania.⁷¹

There is a strong contingent within the Advisory Committee that believes that the aforementioned mandatory minimum sentences are too high, especially for those accomplices whose involvement in the felony that led to the death of the victim was minimal. However, there is a small but vocal contingent that believes that because a death occurred and the defendant was involved in the underlying crime, regardless of how marginally, all of the perpetrators should face the same penalty. Several reasons drive their position: they believe that a lengthy minimum sentence provides a deterrent to would-be accomplices, provides prosecutors with leverage to negotiate plea agreements with lesser-involved parties in an effort to obtain a conviction of the principal actor(s) in the crime, gives the families of victims a sense of justice and retribution, and is of sufficient gravity to recognize and acknowledge the value of the life of the victim. The concerns of those persons opposed to changing the mandatory minimum sentences and other aspects of the Advisory Committee report for juveniles have been more fully expressed in their dissent found at Appendix B of this report.

The Advisory Committee examined the minimum sentences applicable in Pennsylvania for other offenses in order to put the felony murder minimums into perspective.

Offense	Minimum Sentence
Felony murder, juvenile offender 15 years of age or older	30 years to life
Felony murder, juvenile offender under 15 years of age	20 years to life
Second offense, crime of violence	10 years
Third offense, crime of violence	25 years or life
Second offense, sexual offender	25 years
Third offense, sexual offender	Life ⁷²
Crime of violence involving a firearm	5 years
Trafficking drugs to a minor	One year
Second offense, illegal transfer of firearms	5 years
Providing a controlled substance to a confined person	2 years
Fleeing the scene of an accident involving death or personal injury	90 days
Same, but if the victim dies	3 years
Various drug trafficking offenses	One year to 8 years
Manufacturing meth – based on the amount of drugs involved	5, 10 or 15 years

⁷⁰ Moriah Balingit, “Nearly 500 teens serving life terms in Pa. prisons,” *The Pittsburgh Post-Gazette*, post-gazette.com, September 29, 2008, <http://www.post-gazette.com/local/neighborhoods/2008/09/29/Nearly-500-teens-serving-life-terms-in-Pa-prisons/stories/200809290121>. Accessed June 5, 2015.

⁷¹ “Senate Judiciary Committee will hold Hearing on Supreme Court’s Decision Regarding Mandatory Life Sentences for Juveniles,” Media Advisory, Office of Senator Stewart J. Greenleaf, July 3, 2012, <http://www.senatorgreenleaf.com/2012/07/03/senate-judiciary-committee-will-hold-hearing-on-supreme-courts-decision-regarding-mandatory-life-sentences-for-juveniles/>

⁷² The constitutionality of this sentence is in question.

The Advisory Committee considered two proposals that would reduce the mandatory minimum sentence for persons convicted of second degree murder who were under the age of 18 at the time of the commission of the offense. The first proposal would modify the mandatory minimum for all such persons, with aggravating factors increasing the minimum. The second proposal would allow the district attorney to “de-minimize” the mandatory minimum at his or her discretion in particular cases. The majority of the members favor the proposal to modify the mandatory minimum sentences for all persons who are under the age of 18 at the time of the commission of the offense, and it is the chosen recommendation of the Advisory Committee. However, a smaller group of members have vigorously opposed any attempt to reduce the mandatory minimum sentences.

Proposal to Modify and Broaden the Sentencing Options for Juveniles Convicted of Second Degree Murder

It is the recommendation of the Advisory Committee that a mandatory minimum “floor” should be established for juvenile felony murder, at the level of 15 years and 10 years, depending on the age of the offender. This floor would be the minimum sentence that could be imposed on a juvenile who meets the bare minimum standards of culpability to be charged and convicted of felony murder. The minimum sentence could be enhanced under special circumstances, such as carrying a deadly weapon during the commission of the offense, using a deadly weapon during the course of the offense or supplying a deadly weapon.

The proposed statutory language would read as follows:

§ 1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.

(a) First degree murder.--A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.--A person who has been convicted after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows, except as provided in subsection (c.1):

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least [30] 15 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least [20] 10 years to life.

(c.1) Second degree murder under special circumstances.--A person who has been convicted of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense and who violated any of the elements set forth in subsection (c.2), shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years.

(c.2) Enhanced minimum sentence under special circumstances.—The minimum sentence for second degree murder under special circumstances shall apply if at trial the prosecution proves beyond a reasonable doubt any of the following elements:

(1) The defendant committed the homicidal act or in any way solicited, requested, commanded or directed the commission thereof.

(2) The defendant possessed or used a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury.

(3) The defendant had reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

(c.3) Notice of special circumstances.—The attorney for the Commonwealth shall provide notice that the Commonwealth intends to seek the enhanced minimum sentence under special circumstances pursuant to subsection (c.2) at the sentencing hearing and contemporaneously provide the defendant with a copy of such notice. Notice shall be filed at or before the time of arraignment, unless the attorney for the Commonwealth becomes aware of the existence of special circumstances after arraignment or the time for filing is extended by the court for cause shown.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

(1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.

(2) The impact of the offense on the community.

(3) The threat to the safety of the public or any individual posed by the defendant.

(4) The nature and circumstances of the offense committed by the defendant.

(5) The degree of the defendant's culpability.

(6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

(v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.

(vi) Probation or institutional reports.

(vii) Other relevant factors.

(e) Minimum sentence.--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.

(f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Prosecutorial Discretion Proposal

Currently, 18 Pa. C.S. §1102.1 requires the imposition of a mandatory sentence of either 20 years for a defendant under the age of 15 or 30 years for a defendant age 15 or over when convicted of second degree murder. No one, including the prosecutor, has the ability to deviate from these mandatory terms. When faced with facts that warrant a sentence of less than the mandatory, prosecutors may seek a conviction for a different charge, but that option is lost when a case goes to trial. This recommendation gives prosecutors the ability to return sentencing discretion to the court, in appropriate cases. Whenever the Commonwealth gives notice of its intention to proceed under the mandatory provisions of §1102.1(c)(1) or (2), the mandatory sentences would apply. Absent notice, the court will be allowed to consider a sentence under the mandatory minimum. There would no longer be a need to reduce the charges to seek a sentence less than the mandatory minimum and such could be the case even after a bench trial or jury verdict.

The proposed statutory language would read as follows:

§1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.

(a) First degree murder.--A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.-- Upon reasonable notice provided after conviction and before sentencing of the Commonwealth's intention to proceed under sections (c)(1) or (2), a person who has been convicted [after June 24, 2012,] of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows,:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

(1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.

(2) The impact of the offense on the community.

(3) The threat to the safety of the public or any individual posed by the defendant.

(4) The nature and circumstances of the offense committed by the defendant.

(5) The degree of the defendant's culpability.

(6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

(v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.

(vi) Probation or institutional reports.

(vii) Other relevant factors.

(e) Minimum sentence.--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.

(f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Public Opinion

Public opinion on the issue of felony murder also varies greatly. Frequently, when the Joint State Government Commission conducts a study of a particular topic area, private citizens with an interest in the area will contact us. The Juvenile Act study is no exception, and we have heard from several people, primarily on the topic of juveniles serving life imprisonment without possibility of parole. We received correspondence from seven individuals, several of whom are currently serving sentences of life without the possibility of parole resulting from offenses committed as juveniles. Their recommendations and comments are as follows:

- Anyone arrested before age 21 should be eligible for parole after serving 25 years.

- Life imprisonment is too long for juveniles.
- Many juvenile “lifers” feel guilt and remorse and spend their time in prison trying to reform and redeem themselves by serving others.
- Courts should consider age appropriate punishment and rehabilitation.
- The authority of the juvenile court should be extended to age 25.
- Most juveniles do not understand “Miranda” warnings or the consequences of interrogations.
- There should be an intermediate judicial proceeding, more than a juvenile court proceeding but less than a full criminal proceeding that allows for grand jury style fact-finding, evaluations of offenders and consideration of victim/survivor impact.
- The maximum sentence for juveniles should be double the age of the offender.
- Reduce felony murder to third degree murder for those offenders who did not kill or intend to kill the victim.

The Pennsylvania Office of Victim Advocate conducted a survey regarding juvenile life without parole in January 2015. Surveys were sent to 317 registered victims whose offenders are serving life sentences. Responses were received from 97 individuals. Respondents agreed that life without the possibility of parole should remain a sentencing option for juveniles convicted of first (81.1%) and second (84.5%) degree (felony) murder. Age of the offender should not be considered as a factor in determining the sentence according to 69.1% of the respondents, although 26.2% agreed that it should be considered. Conversely, a recent national survey found that juvenile offenders should be treated differently from adult offenders.⁷³ In the victims’ survey, there was also strong support for the treatment of juvenile murderers as adults, even those under the age of 15 (approximately 75% support for murder one and felony murder). Support was even stronger to prosecute juveniles over the age of 15 as adults (88.1% for murder one and 84.5% for felony murder). Additionally, most (68.7%) persons felt that accomplices should receive the same sentence as the perpetrator, although 19.3% expressed neutrality on this issue.

⁷³ “Public Opinion on Juvenile Justice in America,” A Brief from The Pew Charitable Trusts, Nov. 2014. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/public-opinion-on-juvenile-justice-in-america>.

THE ROLE OF NEUROSCIENCE IN DETERMINING JUVENILE CULPABILITY

Recent Findings on Adolescent Brain Development

The notion that the period between childhood and adulthood is a time of rash decision making with little concern for others is nothing new. Even William Shakespeare wrote “I would there were no age between ten and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting” (Winter’s Tale, 3.3.267). For a long time, this period was considered to be a relatively tumultuous time of social adjustment. However, scientists now believe that this period is one of significant positive developmental progress, not simply ill considered behavior or angst connected with the establishment of an identity.

New noninvasive brain imaging technologies, specifically magnetic resonance imaging (MRI) and functional magnetic resonance imaging (fMRI), have allowed scientists to study the brain in ways never thought possible. MRI provides detailed images of the brain using magnetic field and radio waves, while fMRI measures brain activity. This is done by detecting the changes in blood oxygenation and flow that occur in response to neural activity. When a brain area is more active it consumes more oxygen and to meet this increased demand blood flow increases to the active area and registers on the fMRI image.⁷⁴

This technology allows scientists to study which parts of the brain are included in specific mental processes and how they develop. In light of this growing body of brain research scientists now know that the brain is not fully developed until the early to mid-twenties. These studies have enabled scientists to better map out the systematic changes that occur in the functioning of adolescent brains over time. From early adolescence through early adulthood, there are both structural and functional changes to the brain. The evidence about the regularity and pervasiveness of these developmental changes has highly influenced several landmark Supreme Court cases over the past ten years, changing the way the courts can sentence juvenile offenders.⁷⁵ In order to understand these cases, and make appropriate policy and case decisions in the future, it is important to understand what is currently known about the structure of the brain and how it develops.

⁷⁴ Hannah Devlin, “What is Functional Magnetic Resonance Imaging (fMRI)?”, *Psych Central*. (2007) <http://psychcentral.com/lib/what-is-functional-magnetic-resonance-imaging-fmri/0001056>.

⁷⁵ Laurence Steinberg, “The influence of neuroscience on US Supreme Court decisions about adolescents’ criminal culpability,” *Neuroscience*, Vol. 14 (July 2013) 513-518.

Anatomy of the Brain

The human brain is divided into three main parts: the cerebrum, the cerebellum, and the brain stem. The cerebellum and the brain stem control many of the most basic functions of the body, like breathing and motion. For the purpose of this report only the cerebrum will be discussed further.

The cerebrum, comprising most of the brain, is divided into the left and right hemispheres. Each hemisphere is further divided into four sections that are responsible for the majority of the brain's functions. These sections are called lobes which are each responsible for their own specific functions. They include: the temporal lobe, the occipital lobe, the parietal lobe, and the frontal lobe.

The temporal lobe controls both visual and auditory memories, while the occipital lobe helps to control vision. The parietal lobe focuses on comprehension. Finally, and most importantly here, the frontal lobe controls executive functions such as problem solving, intellect, judgment, behavior, attention, abstract thinking, physical reactions, muscle movements, coordinated movements, and personality. Additionally, the prefrontal cortex, taking up the majority of the frontal lobe, is responsible for the majority of skills that require intelligence and making rational choices.⁷⁶

Another important part of the brain that plays a major role in behavior is the limbic system. The limbic system, made up of the amygdala, hippocampus, hypothalamus, and thalamus, contains glands that help relay emotions. The amygdala helps the body react to emotions, memories, and fear. The hippocampus is used for learning memory and analyzing and remembering spatial relationships. The hypothalamus contains glands that control the hormonal processes throughout the body, in addition to controlling mood, thirst, hunger, and temperature. Finally, the thalamus helps control attention span and keeps track of the sensations the body is feeling.⁷⁷

Structural Changes

According to developmental neuroscience, there are four specific changes in the brain that occur during adolescence, some continuing into the early to mid-twenties. Many of the changes seen occur in different parts of the brain that control different functions. These changes include: a decrease in gray matter in the prefrontal regions of the brain, changes in activity involving the neurotransmitter dopamine, an increase in white matter in the prefrontal cortex, and finally an increase in efficiency of connections between prefrontal cortex and the limbic system.⁷⁸ These changes will be explained in further depth in order to gain an understanding of their implications.

⁷⁶ "Parts of the Brain and Their Functions," MDhealth.com. (2014). <http://www.md-health.com/Parts-Of-The-Brain-And-Function.html>.

⁷⁷ Ibid.

⁷⁸ Laurence Steinberg, "Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine," *Journal of Medicine and Philosophy*, April, 21, 2013.

During preadolescence and early adolescence, there is a decrease in gray matter in the prefrontal regions of the brain. This decrease reflects the process of synaptic pruning; in which unused connections between neurons are eliminated, while those that are used are strengthened. This important process creates a more efficient information processing network, which partially explains the major improvement in basic cognitive abilities and logical reasoning seen throughout this period.⁷⁹ Additionally, during this time the brain is thought to be highly malleable. Due to this period of increased ability to change and be influenced by cognitive activities (when the brain is getting rid of connections it is not using and strengthening other), it is believed that teenagers have the opportunity to work their brains to strengthen important cognitive functions.⁸⁰

In addition to synaptic pruning in early adolescence, changes in dopamine activity are also occurring at the same time. Specifically, these are changes in the density and distribution of dopamine receptors in the pathways that connect the limbic system and the prefrontal cortex. Due to these changes, there is more brain activity involving dopamine. Since dopamine plays a critical role in one's experience of pleasure, it helps to explain why there is often a spike in sensation-seeking behavior at this time in development.⁸¹

Furthermore, while gray matter in the brain is decreasing, it is making way for white matter in the brain. However, though the decrease in gray matter is typically complete during early adolescence, the increase in white matter continues into late adolescence and early adulthood. The increase in white matter occurs in the prefrontal cortex of the brain and is largely a result of a process called myelination. During myelination nerve fibers become covered in myelin, a white fatty substance that improves the efficiency of brain circuits. Until this process is complete, improvements are being made to many aspects of executive functioning, which were mentioned earlier.^{82 83}

Increased efficiency of connections in the brain is occurring well into late adolescence. These connections allow brain systems to communicate with each other and are important for emotion regulation. This regulation is facilitated by increased connectivity between the prefrontal cortex, which is responsible for self-control, and the limbic system. Therefore, when comparing a young teen's brain to a young adult's, there is a much more extensive network of myelinated cables connecting brain regions in the young adult's brain.⁸⁴

⁷⁹ Ibid.

⁸⁰ Uta Frith, and Sarah-Jayne Blakemore, "The Learning Brain: Lessons for Education," *Blackwell Publishing*. (2005)

⁸¹ Laurence Steinberg, "Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?," *Journal of Medicine and Philosophy*, April, 21, 2013.

⁸² Ibid.

⁸³ Brenda Madson, "Risky Business: Developmental Neuroscience and the Culpability of Young Killers." *Psychiatry, Psychology & Law* 19.5 (2012): 692-710. Academic Search Complete. Web. 6 June 2014.

⁸⁴ Laurence Steinberg, "Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?," *Journal of Medicine and Philosophy*, April, 21, 2013.

Correspondence between Brain Functional Changes and Behavioral Changes

In addition to the structural changes, the brain also undergoes changes in how it functions and processes information, integrating more parts of the brain in this task. Most importantly, during adolescence and early adulthood, the brain systems involving self-regulation strengthen and coordinate more effectively. This change helps to distribute work across multiple areas of the brain when a situation requiring self-control arises. Since adolescent brains have not yet developed these complete systems, their brains are overtaxing a smaller number of regions in the brain compared to an adult faced with the same situation.⁸⁵ It is believed that this lack of integration is demonstrated in several aspects of adolescent behavior.

One example is the way that adolescents respond to reward. During adolescence the brain's reward sensors seem to be more activated than those of children or adults. For example, when shown a rewarding stimulus prior to playing a game, adolescents' reward centers are activated more than other age groups. Also, studies show that when adolescents are anticipating rewards the differences between age groups was markedly different than when they were actually receiving the reward. The difference was especially prominent when adolescents were among friends. This heightened sensitivity is thought to be the motivator behind the rise in risky behavior during one's teen years.⁸⁶

Furthermore, it seems that during adolescence, individuals have a more difficult time taking other people into consideration. One study showed that when tasked with making a decision requiring another's perspective to be taken into consideration, adolescents made more errors than did adults. However, when tasked with something that did not require another person's perspective, adolescents were just as likely to make errors as were adults. This experiment suggests that due to their underdeveloped working memory and response inhibition, adolescents do not have the same ability to take others into account compared to adults, despite having the same ability to complete tasks not requiring concern for others.⁸⁷

Finally, prior to adulthood, there is less cross-talk between the prefrontal cortex and the limbic system. Over the course of adolescence there is an increase in the "simultaneous involvement of multiple brain regions in response to arousing stimuli, like pictures of angry or terrified faces."⁸⁸ Due to these undeveloped pathways, strong feelings are less likely to be controlled. This also helps to explain the heightened susceptibility to peer pressure prior to adulthood.⁸⁹

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Iroise Apperly Dumontheil, Ian A. Blakemore, Sarah-Jayne. 2010. "Online usage of theory of mind continues to develop in late adolescence." *Developmental Science* 13, no. 2: 331-338. Psychology and Behavioral Sciences Collection, EBSCOhost (accessed December 15, 2014).

⁸⁸ Laurence Steinberg, "Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine", *Journal of Medicine and Philosophy*, April, 21, 2013.

⁸⁹ Ibid.

Behavioral and laboratory studies have shown that there is a gradual but steady increase in self-control throughout adolescence, continuing into late adolescence and young adulthood. Though the phenomenon occurs primarily in males, gains seen in self-control throughout this period have been linked to a variety of positive adjustments, including less aggressive and delinquent behavior. One of the most recent studies found that emotional control was slower to develop than other forms of self-control, with males having the most difficulty suppressing a response to an emotional cue.⁹⁰ Furthermore, there was a similar delay in development of self-control in the context of positive social cues, such as happy faces. These findings are particularly relevant to the current discussion because delinquent behavior often occurs in emotionally charged situations.

Adolescents are also highly influenced by incentives, particularly those that imply immediate reward. One observational study showed that adolescents, when compared to adults, participated in more risky gambling, but only in the immediately rewarded condition. Other studies have shown that this regularity steadily increases from late childhood, peaking during adolescence, and declining from late adolescence to adulthood. The sensitivity to rewards appears to peak between the ages of 13 and 17, where adolescents make more commission errors to rewarding social cues than both children and adults.

These findings have implications for motivating adolescents. Given these regularities, rewards can be used effectively to incentivize positive behavior, rather than just facilitating negative behavior. One study showed that when there was an immediate monetary reward for performing tasks, increases in positive performance were more marked for adolescents than the corresponding increases in performance for adults.⁹¹ The effect was significantly higher for adolescents when compared to that seen in adults.

Peer acceptance is also a demonstrated powerful reward and influence during this developmental period. Various studies show that when compared to adults, adolescents are more likely to engage in reckless driving, substance abuse, and other criminal offenses while in groups. More recent studies have shown that simply the presence of peers has a strong influence on adolescent behavior. For example, one study examining the risk taking tendencies while driving found that youth took substantially more risks when observed by peers. This effect was not seen in adults.⁹²

⁹⁰ Tottenham, N., Hare, T.A., and Casey, B.J. (2011). Behavioral assessment of emotion discrimination, emotion regulation, and cognitive control in childhood, adolescence, and adulthood. *Frontiers in Psychology*, 2, 39.

⁹¹ Figner, B., Mackinlay, B.J., Wilkening, F., and Weber, E.U. (2009). Affective and deliberative processes in risky choice: Age differences in risk taking in the Columbia Card Task. *Journal of Experimental Psychology: Learning Memory and Cognition*, 35(3), 709-730.

⁹² Bonnie, Richard J., and (U.S.) National Research Council. *Reforming Juvenile Justice: A Developmental Approach*. Washington, District of Columbia: National Academies Press, 2013. eBook Collection (EBSCOhost), EBSCOhost (accessed May 26, 2015).

Conclusion

From early adolescence through early adulthood, there are both structural and functional changes to the brain. Importantly, these structural and functional changes do not occur at the same time in all parts of the brain. In early adolescence, there is an increase in basic cognitive abilities and logical reasoning due to synaptic pruning in the areas related to these activities. There are also significant changes in dopamine activity in the brain over adolescence, thought to cause the increase sensation-seeking behavior.

There are, however, significant changes in the brain that do not occur until late adolescence and early adulthood. The prefrontal cortex, responsible for impulse control, risk assessment, decision-making, and emotion, takes the longest to fully develop and is most susceptible to change processes during later adolescence and early adulthood. During this period, the brain is increasing the efficiency of its connections. These connections, which allow brain systems to communicate with each other and distribute work across multiple areas of the brain, a function that is particularly essential when faced with situations requiring self-control or taking other people into consideration. These delays in development help to explain why teens are often quick to act, but unable to see the potential consequences to those actions.

Current science demonstrates that adolescents are often more intellectually mature, with generally functional cognitive capacities, well before they are socially or emotionally mature. When faced with a decision that allows an adolescent time to reason, they are likely to be just as capable of mature decision making as adults. On the other hand, when faced with situations involving emotionally laden judgment, such as those related to peer pressure or risky behavior, adolescent brains are less capable of seeing the consequences of their actions or looking at the long term outcome. This state of incomplete judgment abilities progresses over adolescence and early adulthood, but it is far from fully formed and is highly malleable by the experiences of the adolescent during this developmental period.

PROPOSED JUVENILE ACT AMENDMENTS

The entire Juvenile Act is reproduced below, including those sections that are not amended. This is to allow the reader to read all amendments in context. Those sections that have not been amended are specifically identified as such for ease of use.

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes by amending the provisions of Chapter 63 to reconcile its provisions to the Pennsylvania Rules of Juvenile Court Procedure, by establishing a minimum age at which a child may be charged as an adult for murder.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

§ 6301. Short title and purposes of chapter.

(a) Short title.--This chapter shall be known and may be cited as the "Juvenile Act."

(b) Purposes.--This chapter shall be interpreted and construed as to effectuate the following purposes:

(1) To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.

(1.1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter, recognizing that the ongoing neurological and psychological development of children and adolescents, as well as the more pronounced impact of experiences and external influences, differentiates them qualitatively from adults, in their capacities and decision-making processes.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety, by doing all of the following:

(i) employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child; and

(ii) imposing confinement only if necessary and for the minimum amount of time that is consistent with the purposes under paragraphs (1), (1.1) and (2).

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Comment to § 6301

The amendment to paragraph (b)(1.1) is intended to recognize the legal findings expressed by the United States Supreme Court, in a series of decisions culminating in 2012 with *Miller v Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012). The court recognized that scientific studies of children and adolescents have reported significant differences between the behavior of adults and children based on both neurological and psychological factors.

The reference to “evidence-based practices” in paragraph (b)(3)(i) is intended to encourage the progressive, organizational use of direct, current scientific evidence to guide and inform efficient and effective services. Evidence-based practices include practices that are scientifically sound and based on data, and continue to develop based on scientific research and experiment.

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Aggravated circumstances.” Any of the following circumstances:

(1) The child is in the custody of a county agency and either:

(i) the identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody; or

(ii) the identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months.

(2) The child or another child of the parent has been the victim of physical abuse resulting in serious bodily injury, sexual violence or aggravated physical neglect by the parent.

(3) The parent of the child has been convicted of any of the following offenses where the victim was a child:

(i) criminal homicide under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

(ii) a felony under 18 Pa.C.S. § 2702 (relating to aggravated assault), 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to

involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) or 3125 (relating to aggravated indecent assault).

(iii) A misdemeanor under 18 Pa.C.S. § 3126 (relating to indecent assault).

(iv) An equivalent crime in another jurisdiction.

(4) The attempt, solicitation or conspiracy to commit any of the offenses set forth in paragraph (3).

(5) The parental rights of the parent have been involuntarily terminated with respect to a child of the parent.

“Aggravated physical neglect.” Any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning.

“Assessment.” An individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological and psychiatric evaluation, records review, clinical interview and the administration of a formal test and instrument.

“Board.” The State Sexual Offenders Assessment Board.

“Child.” An individual who:

(1) is under the age of 18 years;

(2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or

(3) is under the age of 21 years and was adjudicated dependent before reaching the age of 18 years, who has requested the court to retain jurisdiction and who remains

under the jurisdiction of the court as a dependent child because the court has determined that the child is:

- (i) completing secondary education or an equivalent credential;
- (ii) enrolled in an institution which provides postsecondary or vocational education;
- (iii) participating in a program actively designed to promote or remove barriers to employment;
- (iv) employed for at least 80 hours per month; or
- (v) incapable of doing any of the activities described in subparagraph (i), (ii), (iii) or (iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child.

“County agency.” The term as defined in 23 Pa.C.S. § 6303 (relating to definitions).

“Court.” The court of common pleas.

“Court-appointed special advocate” or “CASA.” An individual appointed by the court to participate as an advocate for a child who is dependent or alleged to be dependent.

“Custodian.” A person other than a parent or legal guardian, who stands in loco parentis to the child, or a person to whom legal custody of the child has been given by order of a court.

“Delinquent act.”

(1) The term means:

- (i) an act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law, [or under local ordinances or]

(ii) an act which constitutes indirect criminal contempt under Chapter 62A (relating to protection of victims of sexual violence or intimidation) with respect to sexual violence or 23 Pa.C.S. Ch. 61 (relating to protection from abuse), or

(iii) the failure of a child to comply with a lawful sentence imposed for a summary offense, in which event notice of that fact shall be certified to the court.

(2) The term shall not include:

(i) The crime of murder when the child was 15 years of age or older at the time of the alleged murder.

(ii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used during the commission of the offense which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(C) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(D) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(E) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Kidnapping as defined in 18 Pa.C.S. § 2901 (relating to kidnapping).

(H) Voluntary manslaughter.

(I) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901 (relating to criminal attempt), 902 (relating to criminal solicitation) and 903 (relating to criminal conspiracy).

(iii) Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct and has been previously adjudicated delinquent of any of the following prohibited conduct which, if committed by an adult, would be classified as:

(A) Rape as defined in 18 Pa.C.S. § 3121.

(B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123.

(C) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(D) Robbery of motor vehicle as defined in 18 Pa.C.S. § 3702.

(E) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125.

(F) Kidnapping as defined in 18 Pa.C.S. § 2901.

(G) Voluntary manslaughter.

(H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§ 901, 902 and 903.

(iv) Summary offenses[, unless the child fails to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court].

(v) A crime committed by a child who has been found guilty in a criminal proceeding for other than a summary offense.

“Delinquent child.” A child ten years of age or older whom the court has found to have committed a delinquent act and is in need of treatment, supervision or rehabilitation.

“Dependent child.” A child who:

(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;

(2) has been placed for care or adoption in violation of law;

(3) has been abandoned by his parents, guardian, or other custodian;

(4) is without a parent, guardian, or legal custodian;

(5) while subject to compulsory school attendance is habitually and without justification truant from school;

(6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;

(7) has committed a delinquent act or crime, other than a summary offense, while under the age of ten years;

(8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6);

(9) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6); or

(10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

“Facility designed or operated for the benefit of delinquent children.” A facility that either identifies itself by charter, articles of incorporation or program description as solely for delinquent children.

“Juvenile probation officer.” A person who has been appointed by the court or employed by a county’s juvenile probation office, and who has been properly commissioned by being sworn in as an officer of the court to exercise the powers and duties set forth in Rule 195 of the Pennsylvania Rules of Juvenile Court Procedure, 23 Pa.C.S. Chapter 63 (relating to Child Protective Services) and this chapter.

“Law enforcement officer.” A person who is by law given the power to enforce the law when acting within the scope of that person’s employment.

“Police officer.” A person, who is by law given the power to arrest when acting within the scope of the person’s employment.

“Protective supervision.” Supervision ordered by the court of children found to be dependent.

“Screening.” A process, regardless of whether it includes the administration of a formal instrument, that is designed to identify a child who is at increased risk of having mental

health, substance abuse or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention or more comprehensive assessment.

“Serious bodily injury.” Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

“Sexual violence.” Rape, indecent contact as defined in 18 Pa.C.S. § 3101 (relating to definitions), incest or using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined in 18 Pa.C.S. § 6312(a) (relating to sexual abuse of children) or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, depicting on computer or filming involving the child.

“Shelter care.” Temporary care of a child in physically unrestricted facilities. A facility approved by the Department of [Public Welfare] Human Services to provide shelter care may be located in the same building as a facility approved to provide secure detention services provided that children receiving shelter care services are segregated from the children receiving secure detention services as required by the department.

Comment to § 6302

Paragraph (1) of the definition of “delinquent act” is amended to clarify that most summary offenses do not fall under the jurisdiction of the juvenile court system.

Paragraph (2) of the definition of “delinquent act” lists the acts that are excluded from juvenile court jurisdiction. Under Pennsylvania prior law, a child who is charged with murder must be tried as an adult in criminal proceedings, regardless of the age of the child. This position is an anomaly among the 50 states; only two other states do not provide for a minimum age for criminal charges. The majority of states provide for discretionary transfer to criminal proceedings if the child charged with murder is 14 years of age or older. A majority of states further provide for the direct filing of criminal charges against a child charged with murder, with starting ages ranging between 14 and 16 years of

age. Generally, for other felony crimes in Pennsylvania, discretionary transfer may occur at age 14 or older and direct file will occur at age 15 or older. Based on the rarity of the offense of murder by younger children, the Commonwealth's approach to other felonies committed by children, including crimes involving physical violence, and the anomalous nature of Pennsylvania's law, the Advisory Committee proposed that children 14 years of age and younger who commit murder would be better served by a proceeding under the Juvenile Act to determine if they are delinquent or dependent, and where rehabilitation treatment and services can be ordered and provided. Additionally, discretionary transfer and direct filing of criminal charges in murder cases should be treated the same way as provided for other felonies. Accordingly, the definition of "delinquent act" is amended, and Sections 6322(a) (relating to transfer from criminal proceedings) and 6355(g) (relating to transfer to criminal proceedings) are also amended.

The definitions of "juvenile probation officer," "law enforcement officer," and "police officer" are derived from Rule 120 of the Pa.R.J.C.P.

§ 6303. Scope of chapter.

(a) General rule.--This chapter shall apply exclusively to the following:

- (1) Proceedings in which a child is alleged to be delinquent or dependent.
- (2) Transfers under section 6322 (relating to transfer from criminal proceedings).
- (3) Proceedings arising under Subchapter E (relating to dispositions affecting other jurisdictions).
- (4) Proceedings under the Interstate Compact on Juveniles, as set forth in section 731 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.
- (5) Proceedings in which a child is charged with a summary offense arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed under this chapter. The summary offense shall be included in any petition regarding the accompanying delinquent act. Upon finding a child to have committed a summary offense, the court may utilize any disposition available to the

minor judiciary where a child is found to have committed a summary offense, including a finding of guilt on the summary offense.

(b) Minor judiciary.—[No]

(1) Except as provided in paragraph (2), no child shall be detained, committed or sentenced to imprisonment by a magisterial district judge or a judge of the minor judiciary unless the child is charged with an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in section 6302 (relating to definitions).

(2) A magisterial district judge may issue an arrest warrant for a child, as authorized under the Pennsylvania Rules of Juvenile Court Procedure, which may lead to detention of the child in limited circumstances.

(c) Summary offenses generally.--In addition to the provisions of subsection (a)(5) and notwithstanding the exclusion of summary offenses generally from the definition of "delinquent act" under section 6302, the provisions of sections 6307 (relating to inspection of court files and records) and 6336(d) (relating to conduct of hearings), insofar as section 6336(d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary, the Philadelphia Municipal Court or a court of common pleas.

Comment to § 6303

Subsection (b) was suspended by Pa.R.J.C.P. 800(8), amended December 30, 2005, insofar as it is inconsistent with Rule 210 relating to arrest warrants. Rule 210 provides that a magisterial district judge may order the juvenile to be taken into custody pursuant to the laws of arrest. The amendment to subsection (b) allows a magisterial district judge to issue an arrest warrant, which may lead to detention in limited circumstances, consistent with Rule 210.

§ 6304. Powers and duties of probation officers.

(a) General rule.--For the purpose of carrying out the objectives and purposes of this chapter, and subject to the limitations of this chapter or imposed by the court, a probation officer shall:

- (1) Make investigations, reports, and recommendations to the court.
- (2) [Receive] Subject to any required prior submission to an attorney for the Commonwealth required under the Pennsylvania Rules of Juvenile Court Procedure, receive and examine complaints and charges of delinquency or dependency of a child for the purpose of considering the commencement of proceedings under this chapter.
- (3) Supervise and assist a child placed on probation or in his protective supervision or care by order of the court or other authority of law.
- (4) Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
- (5) Take into custody and detain a child who is under his supervision or care as a delinquent or dependent child if the probation officer has reasonable cause to believe that the health or safety of the child is in imminent danger, or that he may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter or that he violated the conditions of his probation.
- (6) Perform all other functions designated by this chapter or by order of the court pursuant thereto.

(a.1) Authority to search.--

(1) Probation officers may search the person and property of children:

(i) under their supervision as delinquent children or pursuant to a consent decree in accordance with this section;

(ii) taken into custody pursuant to subsection (a) and section 6324 (relating to taking into custody); and

(iii) detained pursuant to subsection (a) and section 6325 (relating to detention of child) or during the intake process pursuant to subsection (a) and section 6331 (relating to release from detention or commencement of proceedings) and in accordance with this section.

(2) Nothing in this section shall be construed to permit searches or seizures in violation of the Constitution of the United States or section 8 of Article I of the Constitution of Pennsylvania.

(3) No violation of this section shall constitute an independent ground for suppression of evidence in any proceeding.

(4) (i) A personal search of a child may be conducted by any probation officer:

(A) If there is a reasonable suspicion to believe that the child possesses contraband or other evidence of violations of the conditions of supervision.

(B) When a child is transported or taken into custody.

(C) When a child enters or leaves a detention center, institution or other facility for alleged or adjudicated delinquent children.

(ii) A property search may be conducted by any probation officer if there is reasonable suspicion to believe that the real or other property in the possession of

or under the control of the child contains contraband or other evidence of violations of the conditions of supervision.

(iii) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances or unless the search is being conducted by a supervisor. No prior approval shall be required for a personal search.

(iv) A written report of every property search conducted without prior approval shall be prepared by the probation officer who conducted the search and filed in the child's case record. The exigent circumstances shall be stated in the report.

(v) The child may be detained if he is present during a property search. If the child is not present during a property search, the probation officer in charge of the search shall make a reasonable effort to provide the child with notice of the search, including a list of the items seized, after the search is completed.

(vi) The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with that case law, the following factors, where applicable, may be taken into account:

- (A) The observations of officers.
- (B) Information provided by others.
- (C) The activities of the child.
- (D) Information provided by the child.
- (E) The experience of the probation officer with the child.
- (F) The experience of probation officers in similar circumstances.
- (G) The prior delinquent and supervisory history of the offender.

(H) The need to verify compliance with the conditions of supervision.

(b) Foreign jurisdictions.--Any of the functions specified in subsection (a) may be performed in another jurisdiction if authorized by the court of this Commonwealth and permitted by the laws of the other jurisdiction.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Conditions of supervision.” A term or condition of a child's supervision, whether imposed by the court or a probation officer, including compliance with all requirements of Federal, State and local law.

“Contraband.” An item that a child is not permitted to possess under the conditions of supervision, including an item whose possession is forbidden by any Federal, State or local law.

“Court.” The court of common pleas or a judge thereof.

“Exigent circumstances.” The term includes, but is not limited to, reasonable suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used.

“Personal search.” A warrantless search of a child's person, including, but not limited to, the child's clothing and any personal property which is in the possession, within the reach or under the control of the child.

“Probation officer.” A probation officer appointed or employed by a court or by a county probation department.

“Property search.” A warrantless search of real property, vehicle or personal property which is in the possession or under the control of a child.

"Supervisor." An individual acting in a supervisory or administrative capacity.

Comment to § 6304

Subsection (a)(2) was suspended by Pa.R.J.C.P. 800(10), amended December 30, 2005, insofar as it is inconsistent with Rules 231. Under Rule 231, the District Attorney has the option to require that an attorney for the Commonwealth receive initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the court under Rule 231 electing such requirement, any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure creates a new option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. The amendment to subsection (a)(2) incorporates this rule of procedure into the act.

NO AMENDMENTS MADE TO 6304.1

§ 6304.1. Summary offenses.

(a) Review.--Upon notice being certified to the court that a child has failed to comply with a lawful sentence imposed for a summary offense, a probation officer shall review the complaints and charges of delinquency pursuant to section 6304 (relating to powers and duties of probation officers) for the purpose of considering the commencement of proceedings under this chapter.

(b) Administration of money.--Any money subsequently paid by the child pursuant to the disposition of the charges shall be administered and disbursed in accordance with written guidelines adopted by the president judge of the court of common pleas. The court may direct that any portion of the money received from the child shall be deposited into a restitution fund established by the president judge of the court of common pleas pursuant to section 6352(a)(5) (relating to disposition of delinquent child).

§ 6305. Masters.

(a) General rule.--The governing authority may promulgate rules for the selection and appointment of masters on a full-time or part-time basis. A master shall be a member of the bar of this Commonwealth. The number and compensation of masters shall be fixed by the governing authority, and their compensation shall be paid by the county.

(b) Hearings before masters.—[The court of common pleas may direct that hearings in any case or class of cases be conducted in the first instance by the master in the manner provided in this chapter.]

(1) Before commencing the hearing the master shall inform the parties who have appeared that they are entitled to have the matter heard by a judge. If a party objects, the hearing shall be conducted by a judge.

(3) Masters in juvenile proceedings may only hear any case or class of cases specifically authorized by the Pennsylvania Rules of Juvenile Court Procedure.

(c) Recommendations of masters.--Upon the conclusion of a hearing before a master, he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.

(d) Rehearing before judge.--A rehearing before the judge may be ordered by the judge at any time upon cause shown. Unless a rehearing is ordered, the findings and recommendations become the findings and order of the court when confirmed in writing by the judge.

Comment to § 6305

Subsection (b) was suspended by Pa.R.J.C.P. 800(6), amended December 30, 2005, insofar as it is inconsistent with Rule 187 relating to authority of master. Subsection (b) was also suspended by Pa.R.J.C.P. 1800(5), adopted August 21, 2006, insofar as it is inconsistent with Rule 1187 relating to authority of master.

Rules 187 and 1187 of the Pa.R.J.C.P. limits the authority of a court-appointed master to the following cases:

- detention hearings, detention review hearings, or shelter-care hearings;
- discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- any hearing in which the petition alleges only misdemeanors; and
- uncontested dispositional review hearings and uncontested probation revocation hearings.

Masters are specifically denied authority to conduct transfer hearings pursuant to Rule 394; issue warrants; and hear requests for writs of habeas corpus. Subsection (b) is amended to incorporate this rule into the act.

NO AMENDMENTS TO 6306

§ 6306. Costs and expenses of care of child.

The costs and expenses of the care of the child shall be paid as provided by sections 704.1 and 704.2 of the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

§ 6307. Inspection of court files and records.

(a) General rule.--All files and records of the court in a proceeding under this chapter are open to inspection only by:

- (1) The judges, officers and professional staff of the court.

(2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court.

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under this chapter.

(4.1) A court in determining custody, as provided in 23 Pa.C.S. §§ 5328 (relating to factors to consider when awarding custody) and 5329.1 (relating to consideration of child abuse and involvement with protective services).

(5) A judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions and petitions relating thereto, orders resulting from disposition review hearings and histories of bench warrants and escapes.

(6) The Administrative Office of Pennsylvania Courts.

(6.1) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties.

(6.2) Officials of the Department of Corrections or a State Correctional Institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under this chapter has been committed, but the persons in

this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(6.3) A parole board, court or county probation official in considering an individual's parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under this chapter, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(6.4) The board for use in completing assessments.

(6.5) The Department of [Public Welfare] Human Services for use in determining whether an individual named as the perpetrator of an indicated report of child abuse should be expunged from the Statewide database.

(7) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

(b) Public availability.--

(1) The contents of court records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph (1), then the court shall disclose the name, age and address of the child, the offenses charged and the disposition of the case. The judge who adjudicates a child delinquent shall specify the particular offenses and counts thereof which the child is found to have committed, and such information shall be inserted on any court or law enforcement records or files disclosed to the public as provided for in this section or in section 6308(b)(2) (relating to law enforcement records).

(c) Summary offenses.--The provisions of this section shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary, the Philadelphia Municipal Court or a court of common pleas.

NO AMENDMENTS TO 6308

§ 6308. Law enforcement records.

(a) General rule.--Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is

transferred for criminal prosecution under section 6355 (relating to transfer to criminal proceedings), the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection or their contents disclosed to the public except as provided in subsection (b); but inspection of the records and files is permitted by:

(1) The court having the child before it in any proceeding.

(2) Counsel for a party to the proceeding.

(3) The officers of institutions or agencies to whom the child is committed.

(4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties.

(5) A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him.

(6) The Department of [Public Welfare] Human Services for use in determining whether an individual named as the perpetrator of an indicated report of child abuse should be expunged from the Statewide database.

(b) Public availability.--

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public unless any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed alleging that the child has committed an act or acts subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings) and the child previously has been adjudicated delinquent by a court as a result of an act or acts committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(2) If the conduct of the child meets the requirements for disclosure as set forth in paragraph (1), then the law enforcement agency shall disclose the name, age and address of the child, the offenses charged and the disposition of the case.

(c) Fingerprints and photographs.--

(1) Law enforcement officers shall have the authority to take or cause to be taken the fingerprints or photographs, or both, of any child who is alleged to have committed an act designated as a misdemeanor or felony under the laws of this Commonwealth or of another state if the act occurred in that state or under Federal law. If a child is found

to be a delinquent child pursuant to section 6341 (relating to adjudication) on the basis of an act designated as a misdemeanor or felony or the child's case is transferred for criminal prosecution pursuant to section 6355, the law enforcement agency that alleged the child to be a delinquent child shall take or cause to be taken the fingerprints and photographs of the child, if not previously taken pursuant to this case, and ensure that these records are forwarded to the central repository pursuant to section 6309(c) (relating to juvenile history record information). If a child was alleged to be delinquent by other than a law enforcement agency, the court shall direct the juvenile probation department to ensure that the delinquent child's fingerprints and photographs are taken by a law enforcement agency.

(2) Fingerprint and photographic records may be disseminated to law enforcement officers of other jurisdictions, the Pennsylvania State Police and the Federal Bureau of Investigation and may be used for investigative purposes.

(3) Fingerprints and photographic records of children shall be kept separately from adults and shall be immediately destroyed upon notice of the court as provided under section 6341(a) (relating to adjudication) by all persons and agencies having these records if the child is not adjudicated delinquent or not found guilty in a criminal proceeding for reason of the alleged acts.

(d) Pennsylvania State Police registry.--

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public except if the child is 14 years of age or older at the time of the alleged conduct and if any of the following apply:

(i) The child has been adjudicated delinquent by a court as a result of any offense enumerated in 18 Pa.C.S. § 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed any offense enumerated in 18 Pa.C.S. § 6105 and the child previously has been adjudicated delinquent by a court as a result of an act or acts which included the elements of one of such crimes.

(iii) (Deleted by amendment).

(2) (Repealed).

NO AMENDMENTS TO 6309

§ 6309. Juvenile history record information.

(a) Applicability of Criminal History Record Information Act.--Except for 18 Pa.C.S. §§ 9105 (relating to other criminal justice information), 9112(a) and (b) (relating to mandatory fingerprinting), 9113 (relating to disposition reporting by criminal justice agencies) and 9121(b) (relating to general regulations), the remaining provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information) shall apply to all alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to section 6308(c) (relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information. The disclosure to the public of the contents of law enforcement records and files concerning a child shall be governed by section 6308(b).

(b) Central repository.--The Pennsylvania State Police shall establish a Statewide central repository of fingerprints, photographs and juvenile history record information of

alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to section 6308(c).

(c) Fingerprints and photographs.--The arresting authority shall ensure that the fingerprints and photographs of alleged and adjudicated delinquents whose fingerprints and photographs have been taken by the arresting authority pursuant to section 6308(c) are forwarded to the central repository as required by the Pennsylvania State Police.

(d) Disposition reporting.--The division or judge of the court assigned to conduct juvenile hearings shall, within seven days after disposition of a case where the child has been alleged to be delinquent, notify the arresting authority of the disposition of the case. The disposition of cases where a child has been alleged to be delinquent, including the disposition of cases resulting in an adjudication of delinquency shall be provided to the Pennsylvania State Police for inclusion in the central repository as determined by the Administrative Office of Pennsylvania Courts in consultation with the Juvenile Court Judges' Commission. In addition, the Juvenile Court Judges' Commission shall be provided with information pertaining to the cases of children who have been alleged to be delinquent as the commission determines necessary to fulfill its responsibilities under section 6373 (relating to powers and duties).

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Criminal history record information." In addition to the meaning in 18 Pa.C.S. § 9102 (relating to definitions), the term includes the meaning of juvenile history record information as defined in this subsection.

"Juvenile history record information." Information collected pursuant to this section concerning alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to section 6308(c) and arising from an allegation of delinquency, consisting of identifiable descriptions, dates and notations of arrests or other delinquency charges and any adjudication of delinquency or preadjudication disposition other than dismissal arising therefrom. This information shall also include the last known location and the juvenile court jurisdiction status of each adjudicated delinquent. Juvenile history record information shall not include intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information or presentence investigation information.

NO AMENDMENTS TO 6310

§ 6310. Parental participation.

(a) General rule.--In any proceeding under this chapter, a court may order a parent, guardian or custodian to participate in the treatment, supervision or rehabilitation of a child, including, but not limited to, community service, restitution, counseling, treatment and education programs.

(b) Presence at proceedings.--The court may, when the court determines that it is in the best interests of the child, order a parent, guardian or custodian of a child to be present at and to bring the child to any proceeding under this chapter.

(c) Contempt.--A person who, without good cause, fails to comply with an order issued under this section may be found in contempt of court. The court may issue a bench warrant

for any parent, guardian or custodian who, without good cause, fails to appear at any proceeding.

(d) Intent.--The General Assembly hereby declares that every parent, guardian or custodian of a child who is the subject of a proceeding under this chapter and a court-ordered program under this chapter should attend the proceeding and participate fully in the program.

(e) Limitation.--Nothing in this section shall be construed to create a right of a child to have his parent, guardian or custodian present at a proceeding under this chapter or participate in a court-ordered program.

§ 6311. Guardian ad litem for child in court proceedings.

(a) Appointment.--When a proceeding, including a master's hearing, has been initiated alleging that the child is a dependent child under paragraph (1), (2), (3), (4) or (10) of the definition of "dependent child" in section 6302 (relating to definitions), the court shall appoint a guardian ad litem to represent the legal interests and the best interests of the child. The guardian ad litem must be an attorney at law.

(a.1) Conflict of interest.--Pursuant to the of the Pennsylvania Rules of Juvenile Court Procedure, a guardian ad litem who comes into possession of information that may result in a conflict between the legal interests of the child and the best interest of the child may file a motion with the court for the appointment of separate persons as legal counsel and guardian ad litem.

(b) Powers and duties.--The guardian ad litem shall be charged with representation of the legal interests and the best interests of the child at every stage of the proceedings and shall do all of the following:

(1) Meet with the child as soon as possible following appointment pursuant to section 6337 (relating to right to counsel) and on a regular basis thereafter in a manner appropriate to the child's age and maturity.

(2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the parents or other custodian of the child pursuant to this chapter and medical, psychological and school records.

(3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child.

(4) Conduct such further investigation necessary to ascertain the facts.

(5) Interview potential witnesses, including the child's parents, caretakers and foster parents, examine and cross-examine witnesses and present witnesses and evidence necessary to protect the best interests of the child.

(6) At the earliest possible date, be advised by the county agency having legal custody of the child of:

(i) any plan to relocate the child or modify custody or visitation arrangements, including the reasons therefor, prior to the relocation or change in custody or visitation; and

(ii) any proceeding, investigation or hearing under 23 Pa.C.S. Ch. 63 (relating to child protective services) or this chapter directly affecting the child.

(7) Make specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety.

(8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition and emotional condition.

(9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court. A difference between the child's wishes under this paragraph and the recommendations under paragraph (7) shall not be considered a conflict of interest for the guardian ad litem.

(c) Waiver of right.--A child may not waive the right to a guardian ad litem under any circumstances.

Comment to § 6311

Subsection (b)(9) was suspended by Pa.R.J.C.P. 1800(3), adopted August 21, 2006, insofar as it is inconsistent with Rule 1151 relating to appointment of guardian ad litem and counsel.

Subsection (b)(9) is amended to be consistent with Rules 1151 and 1154, which allows for appointment of separate legal counsel and a guardian ad litem when the guardian ad litem determines there is a conflict of interest between the child's legal interest and best interest.

Subsection (c) is added to reinforce the requirement in Section 6337 that a child may not waive the right to a guardian ad litem.

SUBCHAPTER B
JURISDICTION AND CUSTODY

Sec.

- 6321. Commencement of proceedings.
- 6322. Transfer from criminal proceedings.
- 6323. Informal adjustment.
- 6324. Taking into custody.
- 6325. Detention of child.
- 6326. Release or delivery to court.
- 6327. Place of detention.

§ 6321. Commencement of proceedings.

(a) General rule.--A proceeding under this chapter may be commenced:

(1) By transfer of a case as provided in section 6322 (relating to transfer from criminal proceedings).

(2) By the court accepting jurisdiction as provided in section 6362 (relating to disposition of resident child received from another state) or accepting supervision of a child as provided in section 6364 (relating to supervision under foreign order).

(2.1) By taking a child into custody in accordance with the provisions of section 6324 (relating to taking into custody).

(3) [In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding shall be entitled "In the interest of....., a minor," and shall be captioned and docketed as provided by general rule.] In a delinquency case, except as otherwise provided, by the submission of a written allegation pursuant to the Pennsylvania Rules of Juvenile Court Procedure.

(4) In a dependency case, as provided for pursuant to the Pennsylvania Rules of Juvenile Court Procedure.

(b) Venue.--A proceeding under this chapter may be commenced:

(1) In the county in which the child resides.

(2) If delinquency is alleged, in the county in which the acts constituting the alleged delinquency occurred.

(3) If dependency is alleged, in the county in which the child is present when it is commenced.

(c) Transfer to another court within this Commonwealth.--

(1) If the child resides in a county of this Commonwealth and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion made after the adjudicatory hearing or at any time prior to final disposition, may transfer the proceeding to the county of the residence of the child for further action. Like transfers may be made if the residence of the child changes during the proceeding. The proceeding may be transferred if the child has been adjudicated delinquent and other proceedings involving the child are pending in the court of the county of his residence.

(2) Certified copies of all legal and social documents and records pertaining to the case on file with the court shall accompany the transfer.

Comment to § 6321

Section 6321 was suspended by Pa.R.J.C.P. 800(7), amended December 30, 2005, insofar as it is inconsistent with Rule 200 relating to commencing proceedings. Subsection (a)(4) is added to incorporate the concept of the written allegation as provided in the rules. It is important to recognize that the initiation of dependency and delinquency proceedings are significantly different. Delinquency proceedings are initiated via written allegation; dependency proceedings are initiated via the filing of a petition with the court.

Under Rule 200 of the Pa.R.J.C.P., a delinquency proceeding may be commenced by the submission of a written allegation. A “written allegation” is defined in Rule 120 as the document that initiates

juvenile delinquency proceedings. A law enforcement officer usually submits the written allegation and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

A private citizen may submit a written allegation to a juvenile probation officer or attorney for the Commonwealth under Rule 233, and the allegation will then be investigated and pursued in the same manner as a written allegation presented by a law enforcement officer. A private citizen may not submit a petition to initiate dependency proceedings.

§ 6322. Transfer from criminal proceedings.

(a) General rule.--Except as provided in 75 Pa.C.S. § 6303 (relating to rights and liabilities of minors) or in the event the child is age 15 years of age or older and is charged with murder or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302 (relating to definitions) or has been found guilty in a criminal proceeding, if it appears to the court in a criminal proceeding that the defendant is a child, this chapter shall immediately become applicable, and the court shall forthwith halt further criminal proceedings, and, where appropriate, transfer the case to the division or a judge of the court assigned to conduct juvenile hearings, together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. If it appears to the court in a criminal proceeding charging murder by a child 15 years of age or older or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302, that the defendant is a child, the case may similarly be transferred and the provisions of this chapter applied. In determining whether to transfer a case charging murder by a child 15 years of age or older or any of the offenses

excluded from the definition of "delinquent act" in section 6302, the child shall be required to establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the factors contained in section 6355(a)(4)(iii) (relating to transfer to criminal proceedings).

(b) Order.--If the court finds that the child has met the burden under subsection (a), the court shall make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order. If the court does not make its finding within 20 days of the hearing on the petition to transfer the case, the defendant's petition to transfer the case shall be denied by operation of law.

(c) Expedited review of transfer orders.--The transfer order shall be subject to the same expedited review applicable to orders granting or denying release or modifying the conditions of release prior to sentence, as provided in [Rule 1762 of] the Pennsylvania Rules of Appellate Procedure.

(d) Effect of transfer order.--Where review of the transfer order is not sought or where the transfer order is upheld the defendant shall be taken forthwith to the probation officer or to a place of detention designated by the court or released to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the court at a time to be designated. The accusatory pleading may serve in lieu of a petition otherwise required by this chapter, unless the court directs the filing of a petition.

(e) Transfer of convicted criminal cases.--If in a criminal proceeding, the child is found guilty of a crime classified as a misdemeanor, and the child and the attorney for the

Commonwealth agree to the transfer, the case may be transferred for disposition to the division or a judge of the court assigned to conduct juvenile hearings.

Comment to § 6322

The reference in subsection (c) to Rule 1762 of the Pennsylvania Rules of Appellate Procedure is intended to be a technical “cleanup” only. Reference to specific rules of court is to be avoided, in the event the rules are amended or renumbered, which could result in an incorrect citation and potentially inconsistent interpretation of this section. Subsection (c) requires expedited review of transfer orders as is currently provided for in Rule 1762.

Subsection (a) is amended to bring the section into conformity with the establishment of a minimum age for direct file murder charges set forth in Section 6302.

§ 6323. Informal adjustment.

(a) General rule.--

(1) Before a petition is filed, the probation officer or other officer of the court designated by it, subject to its direction, shall, in the case of a dependent child where the jurisdiction of the court is premised upon the provisions of paragraph (1), (2), (3), (4), (5) or (7) of the definition of "dependent child" in section 6302 (relating to definitions) and if otherwise appropriate, refer the child and his parents to any public or private social agency available for assisting in the matter. Upon referral, the agency shall indicate its willingness to accept the child and shall report back to the referring officer within three months concerning the status of the referral.

(2) Similarly, the probation officer may in the case of [a] an alleged delinquent child, or a dependent child where the jurisdiction of the court is permitted under paragraph (6) of the definition of "dependent child" in section 6302, refer the child and his parents to an agency for assisting in the matter.

(3) The agency may return the referral to the probation officer or other officer for further informal adjustment if it is in the best interests of the child.

(b) Counsel and advice.--Such social agencies and the probation officer or other officer of the court may give counsel and advice to the parties with a view to an informal adjustment if it appears:

(1) counsel and advice without an adjudication would be in the best interest of the public and the child;

(2) the child and his parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory; and

(3) in the case of the probation officer or other officer of the court, the admitted facts bring the case within the jurisdiction of the court.

(c) Limitation on duration of counsel and advice.--The giving of counsel and advice by the probation or other officer of the court shall not extend beyond six months from the day commenced unless extended by an order of court for an additional period not to exceed three months.

(d) No detention authorized.--Nothing contained in this section shall authorize the detention of the child.

(e) Privileged statements.--An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant over objection in any criminal proceeding or hearing under this chapter.

(f) Terms and conditions.--The terms and conditions of an informal adjustment may include payment by the child of reasonable amounts of money as costs, fees or restitution,

including a supervision fee and contribution to a restitution fund established by the president judge of the court of common pleas pursuant to section 6352(a)(5) (relating to disposition of delinquent child).

Comment to § 6323

Section 6323(a)(2) was suspended by Pa.R.J.C.P. 800(13), adopted February 12, 2010, insofar as it is inconsistent with Rule 312 which relates to informal adjustment. Under Rule 312, only an “alleged” delinquent child may be referred for informal adjustment because a filing of informal adjustment must occur prior to the filing of a petition. Subsection (a)(2) is amended to recognize that distinction.

§ 6324. Taking into custody.

A child may be taken into custody:

(1) Pursuant to an order of the court under this chapter. Prior to entering a protective custody order removing a child from the home of the parent, guardian or custodian, the court must determine that to allow the child to remain in the home is contrary to the welfare of the child.

(2) Pursuant to the laws of arrest.

(3) By a [law enforcement] police officer or [duly authorized officer of the court] juvenile probation officer if there are reasonable grounds to believe that the child [is]:

(i) Is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary.

[(4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has]

(ii) Has run away from his parents, guardian, or other custodian.

[(5) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has]

(iii) Has violated conditions of his probation.

Comment to § 6324

Section 6324 was suspended by Pa.R.J.C.P. 1800(6), adopted August 21, 2006, insofar as it is inconsistent with Rule 1202 which provides for police officers and juvenile probation officers taking a child into custody. Paragraphs (3), (4) and (5) are re-written to reflect the limitations on who make take a child into custody.

Under Rule 1202, the police officer's or juvenile probation officer's duty is to protect the child and remove the child safely. A police officer or juvenile probation officer may bring the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's or juvenile probation officer's duty is to take a child into protective custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his or her surroundings, and that protective custody is necessary, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child when necessary. Only a police officer or juvenile probation officer may take custody of the child without a court order.

NO AMENDMENTS MADE TO 6325

§ 6325. Detention of child.

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this chapter.

§ 6326. Release or delivery to court.

(a) General rule.--A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:

(1) notify the parent, guardian or other custodian of the apprehension of the child and his whereabouts;

(2) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 6325 (relating to detention of child);

or

(3) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

Any temporary detention or questioning of the child necessary to comply with this subsection shall conform to the procedures and conditions prescribed by this chapter and other provisions of law.

(b) Detention in police lockup generally prohibited.--Unless a child taken into custody is alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency, the child may not be detained in a municipal police lockup or cell or otherwise held securely within a law enforcement facility or structure which houses an adult lockup. A child shall be deemed to be held securely only when physically detained or confined in a locked room or cell or when secured to a cuffing rail or other stationary object within the facility.

(c) Detention in police lockup under certain circumstances.--A child alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency may be held securely in a municipal police lockup or other facility which houses an adult lockup only under the following conditions:

(1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the child to a parent, guardian, other custodian, or juvenile court or county children and youth official, or to a shelter care or juvenile detention center;

(2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (1), but in no case may such holding exceed six hours; and

(3) if so held, a child must be separated by sight and sound from incarcerated adult offenders and must be under the continuous visual supervision of law enforcement officials or facility staff.

(d) Conditions of detention.--Notwithstanding other provisions of law, a child held in nonsecure custody in a building or facility which houses an adult lockup may be so held only under the following conditions:

(1) the area where the child is held is an unlocked multipurpose area which is not designated or used as a secure detention area or is not part of a secure detention area; or, if the area is a secure booking or similar area, it is used only for processing purposes;

(2) the child is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

(3) the area is limited to providing nonsecure custody only long enough for the purposes of identification, investigation, processing or release to parents or for arranging transfer to another agency or appropriate facility; and

(4) the child must be under continuous visual supervision by a law enforcement officer or other facility staff during the period of nonsecure custody and wherever possible, shall be separated by sight and sound from incarcerated adults.

(e) Reports regarding children held in custody.--Law enforcement agencies shall provide information and reports regarding children held in secure and nonsecure custody under subsections (c) and (d) as requested by the Pennsylvania Commission on Crime and Delinquency.

(f) Enforcement of undertaking to produce child.--If a parent, guardian, or other custodian, when requested, fails to bring the child before the court as provided in subsection (a), the court may issue its warrant directing that the child be taken into custody and brought before the court.

Comment to § 6326

By letter dated July 15, 2014 the Federal Office of Juvenile Justice and Delinquency Prevention provided “Revised Guidance on Jail Removal and Separation Core Requirements.” That guidance provided a reinterpretation of the terms “detain” or “hold in custody” with respect to nonsecure custody situations. In essence, the revised guidance indicates that nonsecure custody is subject to the same separation requirements (namely, separation by “sight and sound” from incarcerated adults) as secure custody. Paragraph (d)(4) is revised to reflect this reinterpretation.

§ 6327. Place of detention.

(a) General rule.--A child alleged to be delinquent may be detained only in:

(1) A licensed foster home or a home approved by the court.

(2) A facility operated by a licensed child welfare agency or one approved by the court.

(3) A detention home, camp, center or other facility for delinquent children which is under the direction or supervision of the court or other public authority or private agency, and is approved by the Department of [Public Welfare] Human Services.

(4) Any other suitable place or facility, designated or operated by the court and approved by the Department of [Public Welfare] Human Services.

Under no circumstances shall a child be detained in any facility with adults, or where the child is apt to be abused by other children.

(b) Report by correctional officer of receipt of child.--The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility and shall bring him before the court upon request or deliver him to a detention or shelter care facility designated by the court.

(c) Detention in jail prohibited.--It is unlawful for any person in charge of or employed by a jail knowingly to receive for detention or to detain in the jail any person whom he has or should have reason to believe is a child unless, in a criminal proceeding, the child has been charged with or has been found guilty of an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in section 6302 (relating to definitions).

(c.1) Detention of child.--

(1) A child who is subject to criminal proceedings having been charged with an act set forth under paragraph (2)(i), (ii) or (iii) of the definition of "delinquent act" in section 6302, who has not been released on bail and who may seek or is seeking transfer to juvenile proceedings under section 6322 (relating to transfer from criminal proceedings) may be detained in a secure detention facility approved by the Department of [Public Welfare] Human Services for the detention of alleged and adjudicated delinquent children if the attorney for the Commonwealth has consented to and the court has ordered the detention.

(2) Secure detention ordered under this subsection shall not affect a child's eligibility for or ability to post bail.

(3) For a child held in secure detention under this subsection, the court shall order the immediate transfer of the child to the county jail if any of the following apply:

(i) The court determines that the child is no longer seeking transfer under section 6322.

(ii) The court denies the motion filed under section 6322.

(iii) The child attains 18 years of age. This subparagraph does not apply if:

(A) the court has granted the motion filed under section 6322; or

(B) the child is otherwise under order of commitment to the secure detention facility pursuant to the jurisdiction of the court in a delinquency matter.

(d) Transfer of child subject to criminal proceedings.--If a case is transferred for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.

The court in making the transfer may order continued detention as a juvenile pending trial if the child is unable to provide bail.

(e) Detention of dependent child.--A child alleged to be dependent may be detained or placed only in a Department of [Public Welfare] Human Services approved shelter care facility as stated in subsection (a)(1), (2) and (4), and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses, but may be detained in the same shelter care facilities with alleged or adjudicated delinquent children.

(f) Development of approved shelter care programs.--The Department of [Public Welfare] Human Services shall develop or assist in the development in each county of this Commonwealth approved programs for the provision of shelter care for children needing these services who have been taken into custody under section 6324 (relating to taking into custody) and for children referred to or under the jurisdiction of the court.

SUBCHAPTER C PROCEDURES AND SAFEGUARDS

Sec.

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§ 6331. Release from detention or commencement of proceedings.

If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required under section 6325 (relating to detention of child). The release of the child shall not prevent the subsequent filing of a petition as provided in this chapter. If he is not so released, a petition shall be promptly made and presented to the court within 24 hours or the next court business day [of the admission of the child to detention or shelter care] following the detention hearing or shelter care hearing.

Comment to § 6331

Section 6331 was suspended by Pa.R.J.C.P. 800(11), amended December 30, 2005, insofar as it is inconsistent with Rule 242 relating to detention hearing and Pa.R.J.C.P. 1800(7), adopted August 21, 2006, insofar as it is inconsistent with Rules 1242 and 1330(A) relating to general conduct of shelter care hearing and petition: filing, contents, function, aggravated circumstances.

Under Rules 242, 1242 and 1330(A), 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 or shelter hearing if the juvenile is detained. 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.

NO AMENDMENTS TO 6332

§ 6332. Informal hearing.

(a) General rule.--An informal hearing shall be held promptly by the court or master and not later than 72 hours after the child is placed in detention or shelter care to determine whether his detention or shelter care is required under section 6325 (relating to detention

of child), whether to allow the child to remain in the home would be contrary to the welfare of the child and, if the child is alleged to be delinquent, whether probable cause exists that the child has committed a delinquent act. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the hearing shall be given to the child and if they can be found, to his parents, guardian, or other custodian. Prior to the commencement of the hearing the court or master shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the right of the child to remain silent with respect to any allegations of delinquency. If the child is alleged to be a dependent child, the court or master shall also determine whether reasonable efforts were made to prevent such placement or, in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family.

(b) Rehearing.--If the child is not so released and a parent, guardian or other custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court or master shall rehear the matter without unnecessary delay and order release of the child, unless it appears from the hearing that his detention or shelter care is required under section 6325.

NO AMENDMENTS TO 6333

§ 6333. Subpoena.

(a) General rule.--Upon application of a child, parent, guardian, custodian, probation officer, district attorney, or other party to the proceedings, the court, master, or the clerk of the court shall issue, or the court or master may on its own motion issue, subpoenas

requiring attendance and testimony of witnesses and production of papers at any hearing under this chapter.

(b) Copy to parents, guardians and custodians.--

(1) A copy of the subpoena requiring attendance and testimony of a witness who is under 18 years of age shall be issued to the parent, guardian or other custodian of the witness in addition to the issuance of the subpoena for the witness.

(2) The court may waive issuance of the copy under paragraph (1) for cause shown in a specific case.

§ 6334. Petition.

(a) Who may file a petition.—

(1) A delinquency petition shall be filed by:

(i) A juvenile probation officer.

(ii) An attorney for the Commonwealth if one has been appointed by the district attorney for that purpose under the Pennsylvania Rules of Juvenile Court Procedure.

(2) A dependency petition shall be filed by a county agency. Any other person shall file an application with the court for authorization to file a private petition.

(a.1) Contents of petition.--A petition, which shall be verified and may be on information and belief, [may be brought by any person including a law enforcement officer.

It] shall set forth plainly[:

(1) The facts which bring the child within the jurisdiction of the court and this chapter, with a statement that it is in the best interest of the child and the public that the

proceeding be brought and, if delinquency is alleged, that the child is in need of treatment, supervision or rehabilitation.

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought.

(3) The names and residence addresses, if known to the petitioner, of the parents, guardian, or custodian of the child and of the spouse, if any, of the child. If none of his parents, guardian, or custodian resides or can be found within this Commonwealth, or if their respective places of residence address are unknown, the name of any known adult relative residing within the county, or if there be none, the known adult relative residing nearest to the location of the court.

(4) If the child is in custody and, if so, the place of his detention and the time he was taken into custody.] all information required under the Pennsylvania Rules of Juvenile Court Procedure.

(b) Aggravated circumstances in dependency proceedings.--

(1) An allegation that aggravated circumstances exist may be brought:

(i) in a petition for dependency with regard to a child who is alleged to be a dependent child; or

(ii) in a petition for a permanency hearing with regard to a child who has been determined to be a dependent child.

(2) The existence of aggravated circumstances may be alleged by the county agency or the child's attorney. If the county agency reasonably believes that aggravated circumstances exist, it shall file the appropriate petition as soon as possible but no later

than 21 days from the determination by the county agency that aggravated circumstances exist.

(3) A petition for dependency or a permanency hearing that alleges aggravated circumstances shall include a statement of the facts the county agency or the child's attorney intends to prove to support the allegation. A criminal conviction shall not be required to allege the existence of aggravated physical neglect or physical abuse resulting in serious bodily injury or sexual violence committed by the parent.

Comment to §6334

Section 6334 was suspended by Pa.R.J.C.P. 800(9), amended December 30, 2005, insofar as it is inconsistent with Rules 231, 233 and 330 relating to written allegation, approval of private written allegations and petition: filing, contents, function, and Pa.R.J.C.P. 1800(8), adopted August 21, 2006, insofar as it is inconsistent with Rules 1320, 1321 and 1330 relating to application to file a private petition, hearing on application for private petition and petition: filing, contents, function, aggravated circumstances.

Under the rules, only a juvenile probation officer or attorney for the Commonwealth may file a petition for a delinquency hearing. A private citizen has the right to file a written allegation, not a petition. The written allegation commences the proceedings in the juvenile system. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas.

A dependency petition may only be filed by the county agency. Any other person shall file an application to file a petition.

Subsection (a) is re-written to clarify who may file each type of petition. Subsection (a.1) is amended to remove the list of specific items to be included in the petition and to reference the Pa.R.J.C.P.. The list in subsection (a.1) combines both dependency and delinquency requirements, making it difficult to read and it is not consistent with the rules. The contents of the petition vary between dependency and delinquency petitions under the rules, and the table below compares the provisions of Rules 330 (relating to contents of delinquency petition) to Rule 1330 (relating to contents of dependency petition).

Subsection (b) is amended to clarify that the aggravated circumstances set for in the subsection apply only in dependency proceedings.

Item Required	Rule 330 (Delinquency)	Rule 1330 (Dependency)
<i>Petitioner ID</i>	Name of petitioner	Same
<i>Child ID</i>	Name, DOB and address of juvenile If unknown, description of juvenile	Same
	*****	If child is Native American, the child's Native American history or affiliation with a tribe
<i>Statements</i>	Statement that it is in the best interest of the juvenile and the public for the proceeding to be brought	Same
	*****	Statement that the child is or is not currently under the supervision of the county agency
	Statement that the juvenile is in need of treatment, supervision or rehabilitation	*****
<i>Information about the case</i>	Date and place offense was alleged to have occurred/been committed	*****
	Summary of facts sufficient to advise the juvenile of the nature of the offense alleged	Concise statement of facts in support of the allegations – facts for each allegation set forth separately
<i>Statutory citation</i>	Citation to statute alleged to be violated	Relevant statutory citation set for specifically for each allegation
<i>Procedure</i>	If applicable, a certification that the juvenile has not complied with a sentence imposed for a summary offense	*****
	Name and age of any conspirators	*****
	Statement that the acts were against the peace and dignity of the Commonwealth or in violation of local ordinance	*****
	Notation as to whether or not the juvenile has been fingerprinted and photographed and if criminal laboratory services are requested	*****
<i>Verification</i>	Dated verification with signature of petitioner	Same
<i>Location of child</i>	Whereabouts of juvenile – if taken into custody, date and time	Whereabouts of child unless disclosure prohibited by court order – if taken into custody, date and time
<i>ID of parent or guardian</i>	Name and address of juvenile's guardian or if unknown, nearest adult relative	Same
<i>Confidentiality</i>	Averment as to whether the case is eligible for limited release of information to public	*****

§ 6335. Release or holding of hearing.

(a) General rule.--After the petition has been filed alleging the child to be dependent or delinquent, the court shall fix a time for hearing thereon, which, if the child is in detention or shelter care shall not be later than ten days after the filing of the petition. The child may be detained for an additional ten days after the filing of a request to transfer to criminal proceedings. Except as provided in subsection (f), if the detention, shelter care or transfer hearing is not held within [such] the allotted time, the child shall be immediately released from detention or shelter care. A child may be detained or kept in shelter care for an additional single period not to exceed ten days where:

(1) the court determines at a hearing that:

(i) evidence material to the case is unavailable;

(ii) due diligence to obtain such evidence has been exercised; and

(iii) there are reasonable grounds to believe that such evidence will be available

at a later date; and

(2) the court finds by clear and convincing evidence that:

(i) the life of the child would be in danger;

(ii) the community would be exposed to a specific danger; or

(iii) the child will abscond or be removed from the jurisdiction of the court.

The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary [parties] to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the

child if he is 14 or more years of age or is alleged to be a delinquent. A copy of the petition shall accompany the summons, unless the petition has already been served.

(b) Personal appearance.--The court may endorse upon the summons an order:

(1) Directing the parents, guardian, or other custodian of the child to appear personally at the hearing.

(2) Directing the person having the physical custody or control of the child to bring the child to the hearing.

(c) Warrant of arrest.—

[If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the court notwithstanding the service of the summons, the] The court may issue a warrant of arrest pursuant to the Pennsylvania Rules of Juvenile Court Procedure.

(d) Form.--A summons and warrant of arrest shall be in such form and shall be served as prescribed by general rules.

(e) Waiver of service.--A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in his behalf.

(f) Limitations on release.--The child shall not be released from detention or shelter care under authority of subsection (a) if the failure to hold a hearing within ten days after the filing of the petition or the filing of the request for transfer to criminal proceedings is

the result of delay caused by the child. Delay caused by the child shall include, but not be limited to:

- (1) Delay caused by the unavailability of the child or his attorney.
- (2) Delay caused by any continuance granted at the request of the child or his attorney.
- (3) Delay caused by the unavailability of a witness resulting from conduct by or on behalf of the child.

At the conclusion of any court proceeding in which the scheduled hearing is not held, the court shall state on the record whether the failure to hold the hearing resulted from delay caused by the child. Where the court determines that failure to hold a hearing is the result of delay caused by the child, the child may continue to be held in detention or shelter care. However, the additional period of detention shall not exceed ten days, provided that such detention may be continued by the court for successive ten-day intervals.

Comment to § 6335

Section 6335 was suspended by Pa.R.J.C.P. 800(16), amended February 12, 2010, insofar as it is inconsistent with Rule 391 relating to time restrictions for detention for juveniles scheduled for transfer hearing. Subsection (a) and paragraph (f)(1) are amended to reflect Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

Section 6335 was suspended by Pa.R.J.C.P. 1800(10), adopted August 11, 2006, insofar as it is inconsistent with Rule 1360 relating to adjudicatory summons.

Section 6335 provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper and necessary parties to the proceedings. It also provides for ordering the person having the physical custody or control of the child to bring the child to the proceeding. Under Rule 1360 all parties, defined as a person or county agency with standing to participate in the

proceedings, should receive a summons. Pursuant to Rule 1361, all parents and relatives providing care for the child are to receive notice of the hearing. The last paragraph of subsection (a) is amended, and a definition of “party” is added to section 6302 to clarify this summons requirement.

Pa.R.J.C.P. Rules 1360 and 1363 provide that the summons is to include a copy of the petition unless the petition has been previously served. The last sentence of subsection (a) is amended to reflect this rule.

Subsection 6335(c) was suspended by Pa.R.J.C.P. 800(2) and 1800(1), amended March 19, 2009, insofar as it is inconsistent with Rules 124, 140, 1124, 1140 and 1364 relating to summons and notice. Rules 140, 1124 and 1140 provide that the judge must find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure are to be followed if a juvenile is detained. Subsection (c) is amended to clarify when a warrant may be issued.

§ 6336. Conduct of hearings.

(a) General rule.--Hearings under this chapter shall be conducted by the court without a jury, in an informal but orderly manner, and separate from other proceedings not included in section 6303 (relating to scope of chapter).

(b) Functions of district attorney.--The district attorney [, upon request of the court,] shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.

(c) Record.--If requested by the party or ordered by the court the proceedings of the detention or shelter care hearing shall be recorded by appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court. All other proceedings shall be recorded. Full minutes are not considered a recording.

(d) Proceeding in camera.--Except in hearings to declare a person in contempt of court and in hearings as specified in subsection (e), the general public shall be excluded from hearings under this chapter. Only the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding or in the work of the court shall be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.

(e) Open proceedings.--The general public shall not be excluded from any hearings under this chapter:

(1) Pursuant to a petition alleging delinquency where the child was 14 years of age or older at the time of the alleged conduct and the alleged conduct would be considered a felony if committed by an adult.

(2) Pursuant to a petition alleging delinquency where the child was 12 or 13 years of age or older at the time of the alleged conduct and where the alleged conduct would have constituted one or more of the following offenses if committed by an adult:

(i) Murder.

(ii) Voluntary manslaughter.

(iii) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(iv) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(v) Involuntary deviate sexual intercourse.

(vi) Kidnapping.

(vii) Rape.

(viii) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(ix) Robbery of motor vehicle.

(x) Attempt or conspiracy to commit any of the offenses in this paragraph.

Notwithstanding anything in this subsection, the proceedings shall be closed upon and to the extent of any agreement between the child and the attorney for the Commonwealth.

(f) Discretion of court.--The court at any disposition proceeding under subsection (e) shall have discretion to maintain the confidentiality of mental health, medical or juvenile institutional documents or juvenile probation reports.

(g) Summary offenses.--The provisions of subsection (d), insofar as subsection (d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary, the Philadelphia Municipal Court or a court of common pleas.

(h) Adjudication alternative.--The magisterial district judge may refer a child charged with a summary offense to an adjudication alternative program under section 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure.

Comment to § 6336

Subsection (b) was suspended by Pa.R.J.C.P. 800(12) insofar as the Act is inconsistent with Rules 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth. Subsection (b) is amended to remove the language

that made the district attorney's role optional at the discretion of the court.

Subsection (c) was suspended by Pa.R.J.C.P. 800(3), amended December 30, 2005, 1800(2), adopted August 21, 2006, insofar as it is inconsistent with Rules 127(A), 1127(A) and 1242(B)(2) relating to recording and transcribing juvenile court proceedings and general conduct of shelter care hearing. No substantive change in law is intended by these rule changes and this amendment to subsection (c); rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Detention hearings may be recorded under Rule 242(B)(2) at the request of the juvenile or the Commonwealth or upon the court's order. Shelter care hearings may be recorded under Rule 1242(B)(2) at the request of the juvenile or the Commonwealth or upon the court's order. If recording of a detention or shelter care hearing is not done, full minutes are to be kept. Full minutes are not recordings.

Paragraph (e)(2) is amended to make the age reference consistent with the references in §§ 6307 (relating to inspection of court files and records) and 6308 (relating to law enforcement records). This is a technical change only and is not meant to change the intent or interpretation of that paragraph.

§ 6336.1. Notice and hearing.

(a) General rule.--The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the right to be heard at any hearing under this chapter. Unless a foster parent, preadoptive parent or relative providing care for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent or relative providing care for the child legal standing in the matter being heard by the court.

(b) Permanency hearings.--

(1) Prior to a permanency hearing under section 6351(e) (relating to disposition of dependent child), a child's foster parent or parents, preadoptive parent or relative providing care for the child may submit [to the court] a report in regard to the child's adjustment, progress and condition. The report shall be submitted to a designee of the court appointed by the president judge or the president judge's designee in accordance with the Pennsylvania Rules of Juvenile Court Procedure who shall file the report and submit it to the judge, attorneys, parties, and if appointed, a court appointed special advocate.

(2) The county agency shall notify the foster parent or parents, preadoptive parent or relative providing care for the child of the right to submit a report under this subsection to the court on a form under paragraph (3). The county agency shall provide the foster parent or parents, preadoptive parent or relative providing care for the child with information identifying the name of the judge or officer of the court, along with mailing address, to whom the report is to be submitted.

(3) The Department of [Public Welfare] Human Services shall develop a form for use by a foster parent or parents, preadoptive parent or relative providing care for the child, including, but not limited to, the following information:

(i) Date of completion.

(ii) Name and address of child.

(iii) Name and address of foster parent or parents, preadoptive parent or relative providing care for the child. The information under this subparagraph shall be considered confidential except at the discretion of the court.

(iv) Name of primary caseworker and agency.

(v) Description of child's adjustment in the home.

(vi) Description of child's interaction with foster parent or parents, preadoptive parent or relative providing care and with family members of individuals referred to in this subparagraph.

(vii) Description of child's interaction with others.

(viii) Evaluation of child's respect for property.

(ix) Description of physical and emotional condition of child.

(x) Description of child's interaction with the primary caseworker.

(xi) Description of caseworker's interaction with the child and foster parent or parents, preadoptive parent or relative providing care for the child and with family members of individuals referred to in this paragraph.

(xii) Description of educational status, grades, attendance and behavior of child in school or child's experience in a child day-care setting or early childhood development program.

(xiii) Description of child's experience involving visitation with birth parents, specifying if visitation is supervised or unsupervised and any significant events which occurred.

(xiv) Opinion on overall adjustment, progress and condition of the child.

(xv) Other concerns, comments or recommendations.

(4) The report shall be reviewed by the court and is subject to review by other persons and agencies under sections 6307 (relating to inspection of court files and records) and 6342(d)(1) (relating to court-appointed special advocates).

(5) A county agency or a private agency as defined under 23 Pa.C.S. § 6303 (relating to definitions) shall not take any retaliatory action against a foster parent, preadoptive parent or relative for any information, comments or concerns provided in good faith in a report under this subsection. This paragraph shall not be construed to prevent any agency from taking any action if the report contains information that the foster parent, preadoptive parent or relative has engaged in any conduct that is contrary to any regulation or law or is not in the child's best interest.

Comment to § 6336.1

Section 6336.1(b)(1) was suspended by Pa.R.J.C.P. 1800(11), amended September 16, 2009, insofar as it is inconsistent with Rule 1604 relating to submission of reports.

Rule 1604, which requires the report to be submitted to a court designee who files the report and submits it to the judge, attorneys, parties, and if appointed, a court appointed special advocate. The amendment to (b)(1) of this section incorporates this requirement.

NO AMENDMENT MADE TO 6336.2

§ 6336.2. Use of restraints on children during court proceedings.

(a) Use of restraints.--Except as provided for in subsection (b), restraints such as handcuffs, chains, shackles, irons or straitjackets shall be removed prior to the commencement of a court proceeding.

(b) Exception.--Restraints may be used during a court proceeding if the court determines on the record, after providing the child with an opportunity to be heard, that they are necessary:

- (1) to prevent physical harm to the child or another person;
- (2) to prevent disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- (3) to prevent the child, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

§ 6337. Right to counsel.

Except as provided under this section and in section 6311 (relating to guardian ad litem for child in court proceedings), a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party other than a child appears at a hearing without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable. The court may continue the proceeding to enable a party to obtain counsel. Except as provided under section 6337.1 (relating to right to counsel for children in dependency and delinquency proceedings), counsel must be provided for a child. If the interests of two or more parties may conflict, separate counsel shall be provided for each of them.

§ 6337.1. Right to counsel for children in dependency and delinquency proceedings.

(a) Children in dependency proceedings.--Legal counsel shall be provided for a child who is alleged or has been found to be a dependent child in accordance with the Pennsylvania Rules of Juvenile Court Procedure. A child may not waive the right to a guardian ad litem under any circumstances.

(b) Children in delinquency proceedings.--

(1) In delinquency cases, all children shall be presumed indigent. If a child appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing. The presumption that a child is indigent may be rebutted if the court ascertains that the child has the financial resources to retain counsel of his choice at his own expense. The court may not consider the financial resources of the child's parent, guardian or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.

(2) Although a child alleged to be delinquent may appear with counsel at the intake conference conducted by a juvenile probation officer following the submission of a written allegation, counsel shall not be mandatory at the proceeding.

(3) Notwithstanding paragraph (1), a child who is 14 years of age or older may waive the right to counsel if the court has determined that the waiver is knowingly, intelligently and voluntarily made after having conducted a colloquy with the child on the record, in accordance with the Pennsylvania Rules of Juvenile Court Procedure, and the hearing for which waiver is sought is not one of the following:

(i) An informal detention or shelter hearing under section 6332 (relating to informal hearing).

(ii) A hearing to consider transfer to criminal proceedings under section 6355 (relating to transfer to criminal proceedings).

(iii) A hearing to consider evidence on the petition or accept an admission to an alleged delinquent act under section 6341 (relating to adjudication).

(iv) A hearing to consider evidence as to whether the child is in need of treatment, supervision or rehabilitation under section 6341.

(v) A disposition hearing under section 6341 or 6352 (relating to disposition of delinquent child).

(vi) A hearing to modify or revoke probation or other disposition entered under section 6352.

(4) The court may assign stand-by counsel if the child waives counsel at any hearing.

(5) If a child waives counsel for any hearing, the waiver shall only apply to that hearing and the child may revoke the waiver of counsel at any time. At any subsequent hearing, the child shall be informed of the right to counsel.

Comment to § 6337.1

Section 6337 was suspended by Pa.R.J.C.P. 800(5), amended December 30, 2005, and 1800(4), adopted August 21, 2006, insofar as it is inconsistent with Rules 152 and 1152 relating to waiver of counsel. These rules allow only the juvenile the ability to waive the right to counsel. The authority to waive counsel is set forth in § 6337.1(b)(3). A guardian may not waive the juvenile's right to counsel.

NO AMENDMENTS MADE TO 6338

§ 6338. Other basic rights.

(a) General rule.--A party is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses.

(b) Self-incrimination.--A child charged with a delinquent act need not be a witness against or otherwise incriminate himself. An extrajudicial statement, if obtained in the course of violation of this chapter or which could be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him. A

confession validly made by a child out of court at a time when the child is under 18 years of age shall be insufficient to support an adjudication of delinquency unless it is corroborated by other evidence.

(c) Statements and information obtained during screening or assessment.--

(1) No statements, admissions or confessions made by or incriminating information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceeding.

(2) The provisions of paragraph (1) are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

NO AMENDMENTS MADE TO 6339

§ 6339. Investigation and report.

(a) General rule.--If the allegations of a petition are admitted by a party or notice of hearing under section 6355 (relating to transfer to criminal proceedings) has been given, the court, prior to the hearing on need for treatment or disposition, may direct that a social study and report in writing to the court be made by an officer of the court or other person designated by the court, concerning the child, his family, his environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under section 6355 has not been given, the court shall not direct the

making of the study and report until after the court has held a hearing on the petition upon notice of hearing given pursuant to this chapter and the court has found that the child committed a delinquent act or is a dependent child.

(b) Physical and mental examinations and treatment.--During the pendency of any proceeding the court may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment.

§ 6340. Consent decree.

(a) General rule.--At any time after the filing of a petition and before the entry of an adjudication order, the court may, on motion of the district attorney or of counsel for the child, suspend the proceedings, and continue the child under supervision in his own home, under terms and conditions negotiated with the probation services and agreed to by all parties affected. The order of the court continuing the child under supervision shall be known as a consent decree.

(b) Objection.--Where the child or the district attorney objects to a consent decree, the court shall proceed to findings, adjudication and disposition.

(c) Duration of decree.--A consent decree shall remain in force for no longer than six months unless [the child is discharged sooner by probation services with the approval of the court. Upon application of the probation services or other agency supervising the child, made before expiration of the six-month period, a consent decree may be extended by the

court for an additional six months.] modified upon motion pursuant to the Rules of Juvenile Court Procedure. Upon motion, the court may discharge the juvenile at an earlier time or extend the time period not to exceed an additional six months. If the district attorney objects to a modification of the consent decree under this subsection, the court shall dismiss the motion.

(c.1) Terms and conditions.--Consistent with the protection of the public interest, the terms and conditions of a consent decree may include payment by the child of reasonable amounts of money as costs, fees or restitution, including a supervision fee and contribution to a restitution fund established by the president judge of the court of common pleas pursuant to section 6352(a)(5) (relating to disposition of delinquent child), and shall, as appropriate to the circumstances of each case, include provisions which provide balanced attention to the protection of the community, accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.

(d) Reinstatement of petition.--If prior to [discharge by the probation services or] expiration of the consent decree, including any modifications made under subsection (c), a new petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may, in the discretion of the district attorney following consultation with the probation services, be reinstated and the child held accountable as if the consent decree had never been entered.

(e) Effect of decree.--A child who [is discharged by the probation services, or who] completes a period of supervision without reinstatement of the original petition, shall not

again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct.

Comment to § 6340

Subsection (c) was suspended by Pa.R.J.C.P. 800(15), amended February 12, 2010, insofar as it is inconsistent with the requirement of Rule 373 relating to conditions of consent decree. Rule 373 allows for early dismissal or extension of the period of the consent decree upon motion. Rule 373 does not provide for early discharge by probation services. Subsections (c), (d) and (e) are amended to recognize that both early dismissal and extension of the consent decree both require the filing of a motion with the court.

While a district attorney, counsel for the child or juvenile probation officer may file a motion for modification of the consent decree, the district attorney retains the right to veto the modification.

§ 6341. Adjudication.

(a) General rule.--After hearing the evidence on the petition the court shall make and file its findings as to whether the child is a dependent child. If the petition alleges that the child is delinquent, within seven days of hearing the evidence on the petition, the court shall make and file its findings whether the acts ascribed to the child were committed by him. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding. If the court finds that the child is not a dependent child or that the allegations of delinquency have not been established it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding. [For] Subject to the Pennsylvania Rules of Juvenile Court Procedure, in cases involving allegations of delinquency where fingerprints or photographs or both have been taken by a

law enforcement agency and where it is determined that acts ascribed to the child were not committed by him, the court shall direct that those records be immediately destroyed by law enforcement agencies.

(b) Finding of delinquency.—If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent it shall enter such finding on the record and shall specify the particular offenses, including the grading and counts thereof which the child is found to have committed. The court shall then proceed immediately or at a postponed hearing, which shall occur not later than 20 days after such finding if the child is in detention or not more than 60 days after such finding if the child is not in detention, to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding. [In the absence of evidence to the contrary,] Unless evidence is produced to show that a child is not in need of treatment, supervision or rehabilitation, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation. If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the proceeding and discharge the child from any detention or other restriction theretofore ordered.

(b.1) School notification.—

(1) Upon finding a child to be a delinquent child, the court shall, through the juvenile probation department, provide the following information to the building

principal or his or her designee of any public, private or parochial school in which the child is enrolled:

- (i) Name and address of the child.
- (ii) The delinquent act or acts which the child was found to have committed.
- (iii) A brief description of the delinquent act or acts.
- (iv) The disposition of the case.

(1.1) In addition to the information provided in paragraph (1), the juvenile probation office shall provide notice of the following information:

(i) A statement informing the building principal or his or her designee that information received under this section:

(A) Shall be maintained separately from the juvenile's official school record.

(B) Is for the limited purposes of:

(I) protecting school personnel and students; and

(II) arranging for appropriate counseling and education for the juvenile.

(C) May not be used for school disciplinary decisions concerning the juvenile unless:

(I) the juvenile was under the supervision of the school board of directors at the time of the incident;

(II) the act or acts that were substantiated by the court took place on or within 1,500 feet of the school property; and

(III) the school has complied with all other statutory, regulatory, and constitutional provisions relative to the imposition of school discipline.

(D) Shall be shared with the juvenile's teachers.

(ii) A statement informing the building principal or his or her designee of the requirement to:

(A) Maintain a log of all school district employees, or building principals or their designees from other school districts, to whom this information was subsequently provided when a juvenile was transferred to another school.

(B) Provide a copy of the notice as listed in subparagraph (i) to the new school.

(2) If the child is adjudicated delinquent for an act or acts which if committed by an adult would be classified as a felony, the court, through the juvenile probation department, shall additionally provide to the building principal or his or her designee relevant information contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history and the supervision plan of the delinquent child.

(3) Notwithstanding any provision set forth herein, the court or juvenile probation department shall have the authority to share any additional information regarding the delinquent child under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision or rehabilitation of the delinquent child.

(4) Information provided under this subsection is for the limited purposes of protecting school personnel and students from danger from the delinquent child and of arranging appropriate counseling and education for the delinquent child. The building principal or his or her designee shall inform the child's teacher of all information received under this subsection. Information obtained under this subsection may not be used for admissions or disciplinary decisions concerning the delinquent child unless the act or acts surrounding the adjudication took place on or within 1,500 feet of the school property.

(5) Any information provided to and maintained by the building principal or his or her designee under this subsection shall be transferred to the building principal or his or her designee of any public, private or parochial school to which the child transfers enrollment.

(6) Any information provided to the building principal or his or her designee under this subsection shall be maintained separately from the child's official school record. Such information shall be secured and disseminated by the building principal or his or her designee only as appropriate in paragraphs (4) and (5).

(b.2) Evidence on the finding of delinquency.—

(1) No statements, admissions or confessions made by or incriminating information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceeding.

(2) The provisions of paragraph (1) are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

(c) Finding of dependency.—If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed immediately or at a postponed hearing, which shall occur not later than 20 days after adjudication if the child has been removed from his home, to make a proper disposition of the case.

(c.1) Aggravated circumstances.—If the county agency or the child’s attorney alleges the existence of aggravated circumstances and the court determines that the child is dependent, the court shall also determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as required in section 6351(e)(3) (relating to disposition of dependent child).

(d) Evidence on issue of disposition.—

(1)

(i) In disposition hearings under subsections (b) and (c) all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition.

(ii) Subparagraph (i) includes any screening and assessment examinations ordered by the court to aid in disposition, even though no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

(2) The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of information given in confidence need not be disclosed.

(e) Continued hearings.—On its motion or that of a party the court may continue the hearings under this section for a reasonable period, within the time limitations imposed by this section, to receive reports and other evidence bearing on the disposition or the need for treatment, supervision or rehabilitation. In this event the court shall make an appropriate order for detention of the child or his release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his home before an order of disposition has been made.

Comment to § 6341

Amendments to the Rules of Juvenile Court Procedure adopted August 16, 2014 affect the interpretation of subsection (a), especially with regards to the destruction of fingerprints and photographs. Rule 170 provides that any party may file a motion to expunge or destroy records, files, fingerprints or photographs, or the court may commence such proceedings *sua sponte*. Rule 172 deals with the specifics of the court order directing the destruction of fingerprints or photographs. Rule 408 directs to the court to order the destruction of fingerprints and photographs if it finds the juvenile committed none of the alleged delinquent acts set forth in the delinquency petition.

Paragraph (b.1)(1.1) is added to incorporate the school notification requirements added to Rule 163 of the Rules of Juvenile Court Procedure adopted August 16, 2014. The Advisory Committee deemed

it important to replicate these requirements in statute, as they are directives to school districts and should be legislatively imposed.

§ 6342. Court-appointed special advocates.

(a) General rule.--The court may appoint or discharge a CASA at any time during a proceeding or investigation regarding dependency under this chapter.

(b) Immunity.--A court-appointed special advocate shall be immune from civil liability for actions taken in good faith to carry out the duties of the CASA under this chapter except for gross negligence, intentional misconduct or reckless, willful or wanton misconduct.

(c) Qualifications.--Prior to appointment, a CASA shall:

(1) Be 21 years of age or older.

(2) Successfully pass screening requirements, including criminal history and child abuse background checks.

(3) Successfully complete the training requirements established under subsection (f) and by the court of common pleas of the county where the CASA will serve.

(d) Powers and duties.--Following appointment by the court, the CASA shall:

(1) have full access to and review all records, including records under 23 Pa.C.S. Ch. 63 (relating to child protective services) relating to the child and other information, unless otherwise restricted by the court;

(2) interview the child and other appropriate persons as necessary to develop its recommendations;

(3) receive reasonable prior notice of all hearings, staff meetings, investigations or other proceedings relating to the child;

(4) receive reasonable prior notice of the movement of the child from one placement to another placement, the return of a child to the home, the removal of a child from the home or any action that materially affects the treatment of the child;

(5) submit written reports to the court to assist the court in determining the disposition best suited to the health, safety and welfare of the child; and

(6) submit copies of all written reports and recommendations to all parties and any attorney of a party.

(e) Confidentiality.--All records and information received under this section shall be confidential and only used by the CASA in the performance of his duties.

(f) Standards.--The Juvenile Court Judges' Commission established [under the act of December 21, 1959 (P.L.1962, No.717), entitled "An act providing for the creation and operation of the Juvenile Court Judges' Commission in the Department of Justice; prescribing its powers and duties; and making an appropriation,"] in Subchapter F (relating to Juvenile Court Judges' Commission) shall develop standards governing the qualifications and training of court-appointed special advocates.

SUBCHAPTER D
DISPOSITION OF CHILDREN GENERALLY

Sec.

- 6351. Disposition of dependent child.
- 6351.1. Authority of court upon petition to remove child from foster parent.
- 6352. Disposition of delinquent child.
- 6352.1. Treatment records.
- 6353. Limitation on and change in place of commitment.
- 6354. Effect of adjudication.
- 6355. Transfer to criminal proceedings.
- 6356. Disposition of mentally ill or [mentally retarded] intellectually disabled child.
- 6357. Rights and duties of legal custodian.
- 6358. Assessment of delinquent children by the State Sexual Offenders Assessment Board.

§ 6351. Disposition of dependent child.

(a) General rule.--If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

(2) Subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) Any individual resident within or without this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

(ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

(iii) A public agency authorized by law to receive and provide care for the child.

(2.1) Subject to conditions and limitations as the court prescribes, transfer permanent legal custody to an individual resident in or outside this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child. A court order under this paragraph may set forth the temporary visitation rights of the parents. The court shall refer issues related to support and continuing visitation by the parent to the section of the court of common pleas that regularly determines support and visitation.

(3) Without making any of the foregoing orders transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 6363 (relating to ordering foreign supervision).

(b) Required preplacement findings.--Prior to entering any order of disposition under subsection (a) that would remove a dependent child from his home, the court shall enter findings on the record or in the order of court as follows:

(1) that continuation of the child in his home would be contrary to the welfare, safety or health of the child; and

(2) whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home, if the child has remained in his home pending such disposition; or

(3) if preventive services were not offered due to the necessity for an emergency placement, whether such lack of services was reasonable under the circumstances; or

(4) if the court has previously determined pursuant to section 6332 (relating to informal hearing) that reasonable efforts were not made to prevent the initial removal of the child from his home, whether reasonable efforts are under way to make it possible for the child to return home; and

(5) if the child has a sibling who is subject to removal from his home, whether reasonable efforts were made prior to the placement of the child to place the siblings together or whether such joint placement is contrary to the safety or well-being of the child or sibling.

The court shall not enter findings under paragraph (2), (3) or (4) if the court previously determined that aggravated circumstances exist and no new or additional reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family are required.

(b.1) Visitation for child and sibling.--If a sibling of a child has been removed from his home and is in a different placement setting than the child, the court shall enter an order that ensures visitation between the child and the child's sibling no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

(c) Limitation on confinement.--Unless a child found to be dependent is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

(d) County programs.--Every county of this Commonwealth shall develop programs for children under paragraph (5) or (6) of the definition of "dependent child" in section 6302 (relating to definitions).

(e) Permanency hearings.--

(1) The court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child. In any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity. If the court does not consult personally with the child, the court shall ensure that the views of the child regarding the permanency plan have been ascertained to the fullest extent possible and communicated to the court by the guardian ad litem under section 6311 (relating to guardian ad litem for child in court proceedings) or, as appropriate to the circumstances of the case by the child's counsel, the court-appointed special advocate or other person as designated by the court.

(2) If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child has been adjudicated dependent, the court shall then determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the child's parent, guardian or custodian or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as provided in paragraph (3).

(3) The court shall conduct permanency hearings as follows:

(i) Within six months of:

(A) the date of the child's removal from the child's parent, guardian or custodian for placement under section 6324 (relating to taking into custody) or 6332 or pursuant to a transfer of temporary legal custody or other disposition under subsection (a)(2) or the date of the order of disposition, whichever is the earliest; or

(B) each previous permanency hearing until the child is [returned to the child's parent, guardian or custodian or] removed from the jurisdiction of the court.

(ii) Within 30 days of:

(A) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made;

(B) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

(C) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent, filed under section 6334(b) (relating to petition); or

(D) a petition alleging that the hearing is necessary to protect the safety or physical, mental or moral welfare of a dependent child.

(iii) If the court resumes jurisdiction of the child pursuant to subsection (j), permanency hearings shall be scheduled in accordance with applicable law until court jurisdiction is terminated, but no later than when the child attains 21 years of age.

(f) Matters to be determined at permanency hearing.--At each permanency hearing, a court shall determine all of the following:

- (1) The continuing necessity for and appropriateness of the placement.
- (2) The appropriateness, feasibility and extent of compliance with the permanency plan developed for the child.
- (3) The extent of progress made toward alleviating the circumstances which necessitated the original placement.
- (4) The appropriateness and feasibility of the current placement goal for the child.
- (5) The likely date by which the placement goal for the child might be achieved.
 - (5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.
- (6) Whether the child is safe.
- (7) If the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child.
- (8) The services needed to assist a child who is 16 years of age or older to make the transition to independent living.

(8.1) Whether the child continues to meet the definition of "child" and has requested that the court continue jurisdiction pursuant to section 6302 if the child is between 18 and 21 years of age.

(8.2) That a transition plan has been presented in accordance with section 475 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 675(5)(H)).

(9) If the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

(i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.

(10) If a sibling of a child has been removed from his home and is in a different placement setting than the child, whether reasonable efforts have been made to place

the child and the sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling.

(11) If the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling.

For children placed in foster care on or before November 19, 1997, the county agency shall file or join a petition for termination of parental rights under this subsection in accordance with section 103(c)(2) of the Adoption and Safe Families Act of 1997 (Public Law 105-89, 111 Stat. 2119).

(f.1) Additional determination.--Based upon the determinations made under subsection (f) and all relevant evidence presented at the hearing, the court shall determine one of the following:

(1) If and when the child will be returned to the child's parent, guardian or custodian in cases where the return of the child is best suited to the safety, protection and physical, mental and moral welfare of the child.

(2) If and when the child will be placed for adoption, and the county agency will file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(3) If and when the child will be placed with a legal custodian in cases where the return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(4) If and when the child will be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(5) If and when the child will be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where the county agency has documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative.

(f.2) Evidence.--Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

(g) Court order.--On the basis of the determination made under subsection (f.1), the court shall order the continuation, modification or termination of placement or other disposition which is best suited to the safety, protection and physical, mental and moral welfare of the child.

(h) Certain hearings discretionary.--(Deleted by amendment).

(i) Assignment to orphans' court.--A judge who adjudicated the child dependent or who has conducted permanency hearings or other dependency proceedings involving the

child may be assigned to the orphans' court division for the purpose of hearing proceedings relating to any of the following:

(1) Involuntary termination of parental rights of a parent of the dependent child under 23 Pa.C.S. Ch. 25 Subch. B (relating to involuntary termination).

(2) A petition to adopt the dependent child.

(j) Resumption of jurisdiction.--At any time prior to a child reaching 21 years of age, a child may request the court to resume dependency jurisdiction if:

(1) the child continues to meet the definition of "child" pursuant to section 6302;

and

(2) dependency jurisdiction was terminated:

(i) within 90 days prior to the child's 18th birthday; or

(ii) on or after the child's 18th birthday, but before the child turns 21 years of age.

Comment to § 6351

Section 6351(e)(3)(i)(B) was suspended by Pa.R.J.C.P. 1800(12), amended September 16, 2009, insofar as it is inconsistent with Rule 1607 relating to regular scheduling of permanency hearings.

Rule 1607 requires the court is to hold a permanency hearing every six months in every case until the child is removed from the jurisdiction of the court. This includes cases when the child is not removed from the home or the child was removed and subsequently returned to the guardian, but the child is under the court's supervision. Subsection 6351(e)(3)(i) is amended to reflect this requirement.

§ 6351.1. Authority of court upon petition to remove child from foster parent.

(a) Order required.--Notwithstanding sections 6324 (relating to taking into custody) and 6351(a) (relating to disposition of dependent child), if a county agency petitions the court for removal of a child because the foster parent has been convicted of an offense set forth in 23 Pa.C.S. § 6344(c) (relating to [information relating to prospective child-care personnel] employees having contact with children; adoptive and foster parents), the court shall immediately enter an order removing the child from the foster parent.

(b) Limitation on placement.--If a court enters an order under subsection (a), the following apply:

(1) Except as set forth in paragraph (2), the court may, under section 6351(a), enter an order of disposition best suited to the child's safety; protection; and physical, mental and moral welfare.

(2) Notwithstanding section 6351(a), if the court finds that the foster parent has been convicted of an offense set forth in 23 Pa.C.S. § 6344(c), the court has no authority to place or return the child to the foster parent who was named in the petition filed by the county agency under subsection (a).

§ 6352. Disposition of delinquent child.

(a) General rule.--If the child is found to be a delinquent child the court may make any of the following orders of disposition determined to be consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation and welfare, which disposition shall, as appropriate to the individual circumstances of the child's case, provide balanced attention to the protection of the community, the imposition

of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community:

(1) Any order authorized by section 6351 (relating to disposition of dependent child).

(2) Placing the child on probation under supervision of the probation officer of the court or the court of another state as provided in section 6363 (relating to ordering foreign supervision), under conditions and limitations the court prescribes.

(3) Committing the child to an institution, youth development center, camp, or other facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Department of [Public Welfare] Human Services.

(4) If the child is 12 years of age or older, committing the child to an institution operated by the Department of [Public Welfare] Human Services.

(5) Ordering payment by the child of reasonable amounts of money as fines, costs, fees or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child, including a contribution to a restitution fund. The president judge of the court of common pleas shall establish a restitution fund for the deposit of all contributions to the restitution fund which are received or collected. The president judge of the court of common pleas shall promulgate written guidelines for the administration of the fund. Disbursements from the fund shall be made, subject to the written guidelines and the limitations of this chapter, at the discretion of the president judge and used to reimburse crime victims for financial losses resulting from delinquent acts. For an order made under this subsection,

the court shall retain jurisdiction until there has been full compliance with the order or until the delinquent child attains 21 years of age. Any restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties).

(6) An order of the terms of probation may include an appropriate fine considering the nature of the act committed or restitution not in excess of actual damages caused by the child which shall be paid from the earnings of the child received through participation in a constructive program of service or education acceptable to the victim and the court whereby, during the course of such service, the child shall be paid not less than the minimum wage of this Commonwealth. In ordering such service, the court shall take into consideration the age, physical and mental capacity of the child and the service shall be designed to impress upon the child a sense of responsibility for the injuries caused to the person or property of another. The order of the court shall be limited in duration consistent with the limitations in section 6353 (relating to dispositional review hearing, limitation on commitment and change in place of commitment) and in the act of [May 13, 1915 (P.L.286, No.177), known as the Child Labor Law] October 24, 2012 (P.L.1209, No.151), known as the Child Labor Act. The court order shall specify the nature of the work, the number of hours to be spent performing the assigned tasks, and shall further specify that as part of a plan of treatment and rehabilitation that up to 75% of the earnings of the child be used for restitution in order to provide positive reinforcement for the work performed.

In selecting from the alternatives set forth in this section, the court shall follow the general principle that the disposition imposed should provide the means through which the provisions of this chapter are executed and enforced consistent with section 6301(b) (relating to purposes) and when confinement is necessary, the court shall impose the minimum amount of confinement that is consistent with the protection of the public and the rehabilitation needs of the child.

(b) Limitation on place of commitment.--A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of adults convicted of a crime.

(c) Required statement of reasons.--Prior to entering an order of disposition under subsection (a), the court shall state its disposition and the reasons for its disposition on the record in open court, together with the goals, terms and conditions of that disposition. If the child is to be committed to out-of-home placement, the court shall also state the name of the specific facility or type of facility to which the child will be committed and its findings and conclusions of law that formed the basis of its decision consistent with subsection (a) and section 6301, including the reasons why commitment to that facility or type of facility was determined to be the least restrictive placement that is consistent with the protection of the public and best suited to the child's treatment, supervision, rehabilitation and welfare.

NO AMENDMENTS TO 6352.1

§ 6352.1. Treatment records.

Notwithstanding any other provision of law, drug and alcohol treatment records or related information regarding a child who is alleged or who has been found to be dependent or delinquent, or the child's parent, shall be released to the county agency, court or juvenile probation officer upon the consent of the child or the child's parent or upon an order of the court. The disclosure of drug and alcohol treatment records under this section shall be obtained or ordered in a manner that is consistent with the procedures, limitations and criteria set forth in regulations adopted by the Department of Health and Human Services relating to the confidentiality of drug and alcohol treatment records. The county agency, court or juvenile probation officer shall only use the records to carry out the purposes of this chapter and shall not release the records to any other person. The court may order the participation of the county agency or juvenile probation officer in the development of a treatment plan for the child as necessary to protect the health, safety or welfare of the child, to include discussions with the individual, facility or program providing treatment and the child or the child's parent in furtherance of a disposition under section 6351 (relating to disposition of dependent child) or 6352 (relating to disposition of delinquent child).

§ 6353. [Limitation] Dispositional review hearing, limitation on commitment and change in place of commitment.

(a) [General rule.--] Dispositional review hearings.--In all cases, a disposition review hearing shall be held at least every six months.

(a.1). Limitation on initial commitment.--No delinquent child shall initially be committed to an institution for a period longer than four years or a period longer than he

could have been sentenced by the court if he had been convicted of the same offense as an adult, whichever is less. The initial commitment may be extended for a similar period of time, or modified, if the court finds after hearing that the extension or modification will effectuate the original purpose for which the order was entered. The delinquent child shall have notice of the extension or modification hearing and shall be given an opportunity to be heard. The committing court shall review each commitment at least every six months [and shall hold a disposition review hearing at least every nine months].

(b) Transfer to other institution.--After placement of the child, and if his progress with the institution warrants it, the institution may seek to transfer the child to a less secure facility, including a group home or foster boarding home. The institution shall give the committing court written notice of all requests for transfer and shall give the attorney for the Commonwealth written notice of a request for transfer from a secure facility to another facility. If the court, or in the case of a request to transfer from a secure facility, the attorney for the Commonwealth, does not object to the request for transfer within ten days after the receipt of such notice, the transfer may be effectuated. If the court, or in the case of a request to transfer from a secure facility, the attorney for the Commonwealth, objects to the transfer, the court shall hold a hearing within 20 days after objecting to the transfer for the purpose of reviewing the commitment order. The institution shall be notified of the scheduled hearing, at which hearing evidence may be presented by any interested party on the issue of the propriety of the transfer. If the institution seeks to transfer to a more secure facility the child shall have a full hearing before the committing court. At the hearing, the court may reaffirm or modify its commitment order.

(c) Notice of available facilities and services.--Immediately after the Commonwealth adopts its budget, the Department of [Public Welfare] Human Services shall notify the courts and the General Assembly, for each Department of [Public Welfare] Human Services region, of the available:

- (1) Secure beds for the serious juvenile offenders.
- (2) General residential beds for the adjudicated delinquent child.
- (3) The community-based programs for the adjudicated delinquent child.

If the population at a particular institution or program exceeds 110% of capacity, the department shall notify the courts and the General Assembly that intake to that institution or program is temporarily closed and shall make available equivalent services to children in equivalent facilities.

Comment to § 6353

Subsection (a) was suspended by Pa.R.J.C.P. 800(18), amended February 12, 2010, insofar as it is inconsistent with the requirement of Rule 610 relating to dispositional and commitment review. Rule 610 requires dispositional review hearings to be held at least every six months. Subsection (a) is amended to change the statutory requirement of nine months to six months, consistent with Rule 610.

Subsection (a) is also amended to clarify that any time a hearing is to be held under section 6353, the delinquent child should receive notice of the hearing.

NO AMENDMENT MADE TO 6354

§ 6354. Effect of adjudication.

(a) General rule.--An order of disposition or other adjudication in a proceeding under this chapter is not a conviction of crime and does not impose any civil disability ordinarily

resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

(b) Effect in subsequent judicial matters.--The disposition of a child under this chapter may only be used against him:

(1) in dispositional proceedings after conviction for the purposes of a presentence investigation and report if the child was adjudicated delinquent;

(2) in a subsequent juvenile hearing, whether before or after reaching majority;

(3) if relevant, where he has put his reputation or character in issue in a civil matter;

or

(4) in a criminal proceeding, if the child was adjudicated delinquent for an offense, the evidence of which would be admissible if committed by an adult.

§ 6355. Transfer to criminal proceedings.

(a) General rule.--After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, of this Commonwealth, the court before hearing the petition on its merits may rule that this chapter is not applicable and that the offense should be prosecuted, and transfer the offense, where appropriate, to the division or a judge of the court assigned to conduct criminal proceedings, for prosecution of the offense if all of the following exist:

(1) The child was 14 or more years of age at the time of the alleged conduct.

(2) A hearing on whether the transfer should be made is held in conformity with this chapter.

(3) Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing.

(4) The court finds:

(i) that there is a prima facie case that the child committed the delinquent act alleged;

(ii) that the delinquent act would be considered a felony if committed by an adult;

(iii) that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factors:

(A) the impact of the offense on the victim or victims;

(B) the impact of the offense on the community;

(C) the threat to the safety of the public or any individual posed by the child;

(D) the nature and circumstances of the offense allegedly committed by the child;

(E) the degree of the child's culpability;

(F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and

(G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:

(I) age;

(II) mental capacity;

(III) maturity;

(IV) the degree of criminal sophistication exhibited by the child;

(V) previous records, if any;

(VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;

(VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;

(VIII) probation or institutional reports, if any;

(IX) any other relevant factors; and

(iv) that there are reasonable grounds to believe that the child is not committable to an institution for the [mentally retarded] intellectually disabled or mentally ill.

(b) Chapter inapplicable following transfer.--The transfer terminates the applicability of this chapter over the child with respect to the delinquent acts alleged in the petition.

(c) Transfer at request of child.--The child may request that the case be transferred for prosecution in which event the court may order this chapter not applicable.

(d) Effect of transfer from criminal proceedings.--No hearing shall be conducted where this chapter becomes applicable because of a previous determination by the court in a criminal proceeding.

(e) Murder and other excluded acts.--Where the petition alleges conduct which if proven would constitute murder by a child 15 years of age or older, or any of the offenses excluded by paragraph (2)(ii) or (iii) of the definition of "delinquent act" in section 6302 (relating to definitions), the court shall require the offense to be prosecuted under the criminal law and procedures, except where the case has been transferred pursuant to section

6322 (relating to transfer from criminal proceedings) from the division or a judge of the court assigned to conduct criminal proceedings.

(f) Transfer action interlocutory.--The decision of the court to transfer or not to transfer the case shall be interlocutory.

(g) Burden of proof.--The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court [and that a child is not amenable to treatment, supervision or rehabilitation as a juvenile] shall rest with the Commonwealth unless the following apply:

(1)

(i) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the child was 14 years of age at the time of the offense; or

(ii) the child was 15 years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; or

(iii) the child was 14 years of age or older at the time of the offense and is charged with murder; and

(2) there is a prima facie case that the child committed a delinquent act which, if committed by an adult, would be classified as murder, rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy or solicitation to commit

any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in section 6302.

If [either] of the preceding criteria are met, the burden of establishing by a preponderance of the evidence that retaining the case under this chapter serves the public interest [and that the child is amenable to treatment, supervision or rehabilitation as a juvenile] shall rest with the child.

Comment to § 6355

Subsection (g) was suspended by Pa.R.J.C.P. 800(18), amended February 12, 2010, insofar as it is inconsistent with the Rule 394 which provides *only* the burden of establishing by a preponderance of the evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.

The partial suspension of subsection (g) was due to the redundancy of proving the juvenile is not amenable to treatment, supervision, and rehabilitation, which is a factor already considered by the court in 42 Pa.C.S. § 6355(a)(4)(iii)(G). Pursuant to 42 Pa.C.S. § 6355(a)(4)(iii)(G), the court must find that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution while considering whether the juvenile is amenable to treatment, supervision, and rehabilitation among other enumerated factors. Because the court considers amenability to treatment, supervision, and rehabilitation as one of many enumerated factors, the court does not need to hear additional evidence later in the proceedings. Subsection (g) is amended to remove both references found therein to the potential for treatment, supervision and rehabilitation of the juvenile, to be consistent with Rule 394.

§ 6356. Disposition of mentally ill or [mentally retarded] intellectually disabled child.

If, at a dispositional hearing of a child found to be a delinquent or at any hearing, the evidence indicates that the child may be subject to commitment or detention under the provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and [Mental Retardation] Intellectual Disability Act of 1966," or the act of

July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," the court shall proceed under the provisions of the appropriate statute.

NO AMENDMENT TO 6357

§ 6357. Rights and duties of legal custodian.

A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child. An award of legal custody shall be subject to the conditions and limitations of the order and to the remaining rights and duties of the parents or guardian of the child as determined by the court. The court may award legal custody under this section on a temporary basis to an individual or agency under section 6351(a)(2) (relating to disposition of dependent child) or permanent basis to an individual under section 6351(a)(2.1).

§ 6358. Assessment of delinquent children by the State Sexual Offenders Assessment Board.

(a) General rule.--A child who has been found to be delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest) who is committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and who remains in any such institution or facility as a result of that adjudication of delinquency upon attaining 20 years of age shall be subject to an assessment by the board.

(b) Duty of probation officer.--Ninety days prior to the 20th birthday of the child, the probation officer shall have the duty to notify the board of the status of the delinquent child and the institution or other facility where the child is presently committed. The probation officer shall assist the board in obtaining access to the child and any information required by the board to perform the assessment, including, but not limited to, the child's official court record and complete juvenile probation file.

(b.1) Notification to board.--The probation officer shall, within five days of the effective date of this subsection, notify the board of any child whose age precludes compliance with subsection (b) provided the child has not yet attained 21 years of age.

(c) Assessment.--The board shall conduct an assessment, which shall include the board's determination of whether or not the child is in need of commitment for involuntary treatment due to a mental abnormality as defined in section 6402 (relating to definitions) or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior. Upon the completion of the assessment pursuant to this section, the board shall provide the assessment to the court. In no case shall the board file the assessment later than 90 days after the child's 20th birthday unless notification of the board was delayed under subsection (b.1), in which case the assessment shall be filed no later than 180 days after the child's 20th birthday.

(d) Duty of court.--The court shall provide a copy of the assessment by the board to the probation officer, the district attorney, county solicitor or designee and the child's attorney.

(e) Dispositional review hearing.--Where the board has concluded that the child is in need of involuntary treatment pursuant to the provisions of Chapter 64 (relating to court-

ordered involuntary treatment of certain sexually violent persons), the court shall conduct a hearing at which the county solicitor or a designee, the probation officer and the child's attorney are present. The court shall consider the assessment, treatment information and any other relevant information regarding the delinquent child at the dispositional review hearing pursuant to section 6353 (relating to disposition review, limitation on commitment and change in place of commitment), which shall be held no later than 180 days before the 21st birthday of the child. Where the submission of the report was delayed pursuant to subsection (c), the dispositional review hearing shall be held no later than 90 days before the 21st birthday of the child.

(f) Subsequent proceeding.--If, at the conclusion of the dispositional review hearing required in subsection (e), the court finds there is a prima facie case that the child is in need of involuntary treatment under the provisions of Chapter 64, the court shall direct that the county solicitor or a designee file a petition to initiate proceedings under the provisions of that chapter.

SUBCHAPTER E DISPOSITIONS AFFECTING OTHER JURISDICTIONS

Sec.

- 6361. Disposition of nonresident child.
- 6362. Disposition of resident child received from another state.
- 6363. Ordering foreign supervision.
- 6364. Supervision under foreign order.
- 6365. Powers of foreign probation officers.
- 6366. Role of interstate compacts.

NO AMENDMENTS TO 6361

§ 6361. Disposition of nonresident child.

(a) General rule.--If the court finds that a child who has been adjudged to have committed a delinquent act or to be dependent is or is about to become a resident of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar law which includes provisions corresponding to this section and section 6362 (relating to disposition of resident child received from another state), the court may defer hearing on need of treatment and disposition and request by any appropriate means the appropriate court of the county or parish of the residence or prospective residence of the child to accept jurisdiction of the child.

(b) Change of residence under court order.--If the child becomes a resident of another state while on probation or under protective supervision under order of a court of this Commonwealth, the court may request the court of the state in which the child has become a resident to accept jurisdiction of the child and to continue his probation or protective supervision.

(c) Procedure for transfer.--Upon receipt and filing of an acceptance the court of this Commonwealth shall transfer custody of the child to the accepting court and cause him to be delivered to the person designated by that court to receive his custody. It also shall provide the accepting court with certified copies of the order adjudging the child to be a delinquent, or dependent child, of the order of transfer, and if the child is on probation or under protective supervision under order of the court, of the order of disposition. It also shall provide the accepting court with a statement of the facts found by the court of this Commonwealth and any recommendations and other information or documents it considers

of assistance to that court in making a disposition of the case or in supervising the child on probation or otherwise.

(d) Effect of transfer to accepting court.--Upon compliance with subsection (c) the jurisdiction of the court of this Commonwealth over the child is terminated.

NO AMENDMENTS TO 6362

§ 6362. Disposition of resident child received from another state.

(a) General rule.--If a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar law which includes provisions corresponding to section 6361 (relating to disposition of nonresident child) and this section, requests a court of this Commonwealth to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or dependent child, and the court of this Commonwealth finds, after investigation that the child is, or is about to become, a resident of a county for which the court is established, the court shall promptly and not later than 14 days after receiving the request issue its acceptance in writing to the requesting court and direct its probation officer or other person designated by it to take physical custody of the child from the requesting court and bring him before the court of this Commonwealth or make other appropriate provisions for his appearance before the court.

(b) Hearing on further disposition.--Upon the filing of certified copies of the orders of the requesting court:

- (1) determining that the child committed a delinquent act or is an unruly or dependent child; and
- (2) committing the child to the jurisdiction of the court of this Commonwealth;

the court of this Commonwealth shall immediately fix a time for a hearing on the need for treatment, supervision or rehabilitation and disposition of the child or on the continuance of any probation or protective supervision.

(c) Further proceedings.--The hearing and notice thereof and all subsequent proceedings are governed by this chapter. The court may make any order of disposition permitted by the facts and this chapter. The orders of the requesting court are conclusive that the child committed the delinquent act or is an unruly or dependent child and of the facts found by the court in making the orders. If the requesting court has made an order placing the child on probation or under protective supervision, a like order shall be entered by the court of this Commonwealth.

NO AMENDMENTS TO 6363

§ 6363. Ordering foreign supervision.

(a) General rule.--Subject to the provisions of this chapter governing dispositions and to the extent that funds are available the court may place a child in the custody of a suitable person in another state. On obtaining the written consent of a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar law, which includes provisions corresponding to this section and section 6364 (relating to supervision under foreign order), the court of this Commonwealth may order that the child be placed under the supervision of a probation officer or other appropriate official designated by the accepting court. One certified copy of the order shall be sent to the accepting court and another filed with the clerk of the requesting court of this Commonwealth.

(b) Costs and expenses.--The reasonable cost of the supervision, including the expenses of necessary travel, shall be borne initially by the county of the requesting court

of this Commonwealth. Upon receiving a certified statement signed by the judge of the accepting court of the cost incurred by the supervision the court of this Commonwealth shall certify if it so appears that the sum so stated was reasonably incurred and file it with the county for payment. The county shall thereupon make payment of the sum approved to the appropriate officials of the county or parish of the accepting court.

NO AMENDMENTS TO 6364

§ 6364. Supervision under foreign order.

(a) General rule.--Upon receiving a request of a juvenile court of another state which has adopted the Uniform Juvenile Court Act, or a substantially similar law which includes provisions corresponding to section 6363 (relating to ordering foreign supervision) and this section to provide supervision of a child under the jurisdiction of that court, a court of this Commonwealth may issue its written acceptance to the requesting court and designate its probation or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

(b) Supervision and report.--Upon the receipt and filing of a certified copy of the order of the requesting court placing the child under the supervision of the officer so designated the officer shall arrange for the reception of the child from the requesting court, provide supervision pursuant to the order and this chapter, and report thereon from time to time together with any recommendations he may have to the requesting court.

(c) Costs and expenses.--The court of this Commonwealth from time to time shall certify to the requesting court the cost of supervision that has been incurred and request payment therefor from the appropriate officials of the county or parish of the requesting court to the county of the accepting court.

(d) Termination of supervision.--The court of this Commonwealth at any time may terminate supervision by notifying the requesting court. In that case, or if the supervision is terminated by the requesting court, the probation officer supervising the child shall return the child to a representative of the requesting court authorized to receive him.

NO AMENDMENTS TO 6365

§ 6365. Powers of foreign probation officers.

If a child has been placed on probation or protective supervision by a juvenile court of another state which has adopted the Uniform Juvenile Court Act or a substantially similar law which includes provisions corresponding to this section, and the child is in this Commonwealth with or without the permission of that court, the probation officer of that court or other person designated by that court to supervise or take custody of the child has all the powers and privileges in this Commonwealth with respect to the child as given by this chapter to like officers or persons of this Commonwealth including the right of visitation, counseling, control, and direction, taking into custody, and returning to that state.

§ 6366. Role of interstate compacts.

In any disposition under this Subchapter E, any conflict between these provisions and the following interstate compacts shall be resolved in favor of the interpretation set forth in the compact:

The Interstate Compact for Juveniles, The Interstate Compact for Juveniles Act, act of July 2, 2004, P.L.468, No.54.

The Interstate Compact on the Placement of Children, sections 746 et seq. of the Public Welfare Code, act of June 13, 1967, P.L. 31, No. 21.

To the extent it relates to minors, the Interstate Compact for the Supervision of Adult Offenders, 61 Pa.C.S. § 7111 et seq.

SUBCHAPTER F

JUVENILE COURT JUDGES' COMMISSION

Sec.

- 6371. Definitions.
- 6372. Juvenile Court Judges' Commission.
- 6373. Powers and duties.
- 6374. Power to make grants.
- 6375. Funding.

NO AMENDMENTS TO 6371

§ 6371. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Commission.” The Juvenile Court Judges' Commission created pursuant to section 6372(a) (relating to Juvenile Court Judges' Commission).

“Commissioner.” A member appointed to the Juvenile Court Judges' Commission pursuant to section 6372(b) (relating to Juvenile Court Judges' Commission).

NO AMENDMENTS TO 6372

§ 6372. Juvenile Court Judges' Commission.

(a) Establishment.--There is hereby established in the Office of General Counsel the Juvenile Court Judges' Commission.

(b) Composition.--The commission shall consist of nine judges who shall be appointed by the Governor from a list of judges, serving in the juvenile courts, selected and submitted by the Chief Justice of Pennsylvania.

(c) Tenure.--Of the first nine appointees to the commission, three shall serve for three years, three for two years and three for one year. After the initial term, the term for all members shall be three years.

(d) Officers.--The commission shall annually select one of its members as chairman and one member as secretary.

(e) Staff.--The chairman, with the approval of the majority of the commission, may appoint and fix the compensation of assistants, clerks and stenographers as he deems necessary to enable the commission to perform its powers and duties. During his term of employment, no assistant shall engage, directly or indirectly, in the practice of law in any juvenile court in this Commonwealth.

(f) Staff compensation.--The compensation of the assistants, clerks and stenographers shall be fixed within limitations fixed by the Executive Board and shall be eligible to apply for membership in the State Employees' Retirement System.

(g) Meetings.--Each year there shall be quarterly meetings of the commission and such additional meetings as the chairman shall deem necessary. Each commissioner attending the meetings shall be paid only his necessary expenses incurred in attending the meetings. Five members of the commission shall constitute a quorum at meetings.

NO AMENDMENTS TO 6373

§ 6373. Powers and duties.

The commission shall have the power and is required to do the following:

(1) Advise the juvenile court judges of this Commonwealth in all matters pertaining to the proper care and maintenance of delinquent and dependent children.

(2) Examine the administrative methods and judicial procedure used in juvenile courts throughout this Commonwealth, establish standards and make recommendations on the same to the courts presiding over juvenile proceedings within this Commonwealth.

(3) Examine the personnel practices and employment standards used in probation offices in this Commonwealth, establish standards and make recommendations on the same to courts presiding over juvenile proceedings within this Commonwealth.

(4) Collect and analyze data to identify trends and to determine the effectiveness of programs and practices to ensure the reasonable and efficient administration of the juvenile court system, make recommendations concerning evidence-based programs and practices to judges, the Administrative Office of Pennsylvania Courts and other appropriate entities and post related information on the commission's publicly accessible Internet website.

NO AMENDMENTS TO 6374

§ 6374. Power to make grants.

The commission shall have the power, and its duty shall be to make annual grants to political subdivisions for the development and improvement of probation services for juveniles.

NO AMENDMENTS TO 6375

§ 6375. Funding.

The General Assembly shall annually appropriate such sums as it deems to be necessary for the operation and expenses of the commission.

APPENDIX A:

**RULES OF JUVENILE COURT PROCEDURE
SUSPENDING PORTIONS OF THE JUVENILE ACT**

This chapter contains Pennsylvania Rules of Juvenile Court Procedure 800 and 1800, which suspend various sections of the Juvenile Act to the extent they are inconsistent with specific juvenile rules. Each juvenile rule cited and the commentary to that rule is included.

General Rules of Suspension

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. § 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. 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. 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 require separate counsel if there is a conflict of interest.
5. 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. 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. 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. 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. 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. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that juvenile 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. 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. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(b), which provides that the district attorney, *upon request of the court*, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth, is suspended only insofar as the Act is inconsistent with Rules 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.
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.

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.
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.
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.
17. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6355(g), which provides the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court *and* that a child is not amenable to treatment, supervision, or rehabilitation as a juvenile shall rest with the Commonwealth unless the exceptions of paragraphs (g)(1) and (2) apply, is suspended only insofar as the Act is inconsistent with Rule 394, which provides *only* the burden of establishing by a preponderance of the evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.
18. 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 when a juvenile is removed from the home, 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.

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.

The partial suspension of 42 Pa.C.S. § 6355(g) in paragraph (17) is due to the redundancy of proving the juvenile is not amenable to treatment, supervision, and rehabilitation, which is a factor already considered by the court in 42 Pa.C.S. § 6355(a)(4)(iii)(G). Pursuant to 42 Pa.C.S. § 6355(a)(4)(iii)(G), the court must find that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution while considering whether the juvenile is amenable to treatment, supervision, and rehabilitation among other enumerated factors. Because the court considers amenability to treatment, supervision, and rehabilitation as one of many enumerated factors, the court does not need to hear additional evidence later in the proceedings. As provided in 42 Pa.C.S. § 6355(a)(4)(iii)(G), the standard of proof is reasonable grounds.

RULE 1800. SUSPENSIONS OF ACTS OF ASSEMBLY.

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

1. 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 child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 1124, 1140, and 1364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.
2. 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 Rules 1127(A) & 1242(B)(2), which require all proceedings to be recorded, except for shelter care hearings.
3. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provides that there is not a conflict of interest for the guardian ad litem in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rules 1151 and 1154, which allows for appointment of separate legal counsel and a guardian ad litem when the guardian ad litem determines there is a conflict of interest between the child's legal interest and best interest.
4. 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 child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian ad litem.
5. 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 classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.
6. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers and juvenile probation officers taking a child into custody.
7. 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 child to 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 shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).

8. 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 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.
9. The Act of December 19, 1990, P. L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 et seq., is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.
10. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides that a copy of the petition is to accompany a summons, is suspended only insofar as the Act is inconsistent with Rule 1360, which provides that the summons is to include a copy of the petition unless the petition has been previously served.
11. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336.1(b)(2), which provides that the foster parent or parents, preadoptive parent or relative providing care for the child has a right to submit a report to the court, is suspended only insofar as the Act is inconsistent with Rule 1604, which requires the report to be submitted to a court designee who files the report and submits it to the judge, attorneys, parties, and if appointed, a court appointed special advocate.
12. The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6351(e)(3)(i)(B), which provides for permanency hearings within six months of each previous permanency hearing until the child is returned home or removed from the jurisdiction of the court, is suspended only insofar as the Act is inconsistent with Rule 1607, which requires permanency hearings in all cases until the child is removed from the jurisdiction of the court.

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 1102.

Specific Rules Affecting Juvenile Act Suspensions

RULE 124. SUMMONS AND NOTICE

- A. **Requirements of the summons.** The summons shall:
- 1) be in writing;
 - 2) set forth the date, time, and place of the hearing;
 - 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
 - 4) give a warning stating that the failure to appear for the hearing may result in arrest.
- B. **Method of Service.** Summons or notice shall be served:
- 1) in-person; or
 - 2) by first-class mail.
- C. **Bench Warrant.** If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

Comment

See Rules 360(A), 500(A), and 600(A) for service of the guardian for a proceeding. Nothing in these rules gives the guardians of juveniles legal standing in the matter being heard by the court or creates a right for juveniles to have their guardians present. *See* 42 Pa.C.S. § 6310(e). *See* Rule 140 for procedures on bench warrants.

RULE 127. RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS

- A. **Recording.** There shall be a recording of all juvenile delinquency proceedings, including proceedings conducted by masters, except as provided in Rule 242(B)(2).
- B. **Transcribing.** Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.
- C. **Modifying.** At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

Comment

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. *See, e.g.*, Pa.R.A.P. 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). No substantive change in law is intended by this rule; rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Under Rule 800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that proceedings are to be recorded, except as provided in Rule 242(B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all juvenile delinquency proceedings and to ensure all proceedings are recorded, including proceedings before masters, with the exception of detention hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

RULE 140. BENCH WARRANTS FOR FAILURE TO APPEAR AT HEARINGS.

A. Issuance of warrant.

- 1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.
- 2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Juvenile.

- 1) *Where to take the juvenile.*
 - a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge or master designated by the President Judge to hear bench warrants.
 - b) If the juvenile is not brought before a judge or master, the juvenile shall be released unless:
 - i) the warrant specifically orders detention of the juvenile; or
 - ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) *Prompt hearing.*

a) If a juvenile is detained, the juvenile shall be brought before the judge who issued the warrant, a judge or master designated by the President Judge to hear bench warrants, or an out-of-county judge or master pursuant to paragraph (C)(4) within seventy-two hours.

b) If the juvenile is not brought before a judge or master within this time, the juvenile shall be released.

3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge or master of the county where the juvenile is found.

d) The judge or master will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order or recommend that arrangements be made to transport the juvenile to the county of issuance.

5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

D. Witnesses.

1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge or master designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge or master, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order or the master may recommend detention of the witness pending a hearing.

1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.

2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

- a) If a witness is detained pursuant to paragraph (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge or master by the next business day.
- b) If the witness is not brought before a judge or master within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

- a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
- b) The witness shall be taken without unnecessary delay and within the next business day to a judge or master of the county where the witness is found.
- c) The judge or master will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.
- d) Arrangements to transport the witness shall be made immediately.
- e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.
 - i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.
 - ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.
- f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.
- g) If the time requirements of this paragraph are not met, the witness shall be released.

E. Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

F. Return and execution of the warrant for juveniles and witnesses.

- 1) The bench warrant shall be executed without unnecessary delay.
- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear bench warrants.
- 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
- 4) Upon the return of the warrant, the judge shall vacate the bench warrant.
- 5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. *See* Chapter Two, Part D.

Pursuant to paragraph (C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. *See* paragraph (C) for alleged delinquents and paragraph (D) for witnesses. *See also* Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of that county to hear bench warrants. This provision allows the judge or master the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to be brought immediately before the court for the hearing. However, pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility or there are circumstances apparent at the time of the surrender or apprehension that merit detention of the juvenile, the juvenile may be detained without having to be brought before the judge or master until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. *See* paragraph (C)(2)(b).

At the seventy-two hour hearing, the judge or master may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements provided elsewhere in these rules. *See* Rules 240, 391, 404, 510 and 605.

Under paragraphs (C)(2) and (C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. *See* Rule 240(C).

Pursuant to paragraph (C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. *See, e.g.*, Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of

that county to hear bench warrants. This provision allows the judge or master the discretion to postpone a hearing, for example, an adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to be brought immediately before the court for the hearing. However, pursuant to paragraph (D)(1)(b), if the judge or master is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (D)(2)(b).

At the hearing pursuant to paragraph (D)(2)(a), the judge or master may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or master has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements provided elsewhere in these rules. *See* Rules 240, 391, 404, 510 and 605.

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge or master by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the court by the next business day. *See* paragraph (D)(4)(f).

Pursuant to paragraph (F)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph (F)(3).

Pursuant to paragraph (F)(4), the bench warrant is to be vacated after the return of the warrant is executed. “Vacated” is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (F)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses. If there is a bench warrant issued, masters may hear cases in which the petition alleges only misdemeanors. *See* Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to paragraph (C)(2)(a) or the hearing for witnesses pursuant to paragraph (D)(2)(a) is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.

Pursuant to Rule 191, the master is to submit his or her findings and recommendation to the court. In bench warrant cases, the master should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. *See* Rule 191(C).

If the findings and recommendation are not taken immediately to the judge, the master is to submit the recommendation within one business day. *See* Rule 191(B).

RULE 152. WAIVER OF COUNSEL.

A. Waiver requirements. A juvenile who has attained the age of fourteen may waive the right to counsel if:

- 1) the waiver is knowingly, intelligently, and voluntarily made; and
- 2) the court conducts a colloquy with the juvenile on the record.
- 3) the proceeding for which waiver is sought is not one of the following:
 - a) detention hearing pursuant to Rule 242;
 - b) transfer hearing pursuant to Rule 394;
 - c) adjudicatory hearing pursuant to Rule 406, including the acceptance of an admission pursuant to Rule 407;
 - d) dispositional hearing pursuant to Rule 512; or
 - e) a hearing to modify or revoke probation pursuant to Rule 612.

B. Stand-by counsel. The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. Notice and revocation of waiver. If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

Comment

Because of the ramifications of a juvenile record, it is important that every safeguard is taken to ensure that all constitutional and procedural guarantees and rights are preserved. Juveniles should not feel pressured to waive counsel or be the subject of any proactive pursuit for obtaining a waiver.

In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made, the court, on the record, is to ask the juvenile questions to elicit: 1) the reasons why the juvenile wants to waive counsel; 2) information regarding the juvenile's: a) age; b) maturity; c) education; d) mental health issues, if any; and e) any current alcohol or drug issues that may impair the juvenile's decision-making skills; 3) the juvenile's understanding of the: a) right to an attorney, including the provisions of Rule 151; b) juvenile's role when proceeding *pro se*; c) allegations in the petition against the juvenile; d) possible consequences if the juvenile is found delinquent; 4) whether the juvenile consulted with the juvenile's guardian; and 5) whether the juvenile consulted with an attorney.

If it is determined that the juvenile has not knowingly, intelligently, and voluntarily waived counsel, the court immediately is to appoint counsel for the juvenile. If it is determined that the juvenile has made a knowing, intelligent and voluntary waiver, the court may appoint stand-by counsel for all proceedings.

This rule is not meant to preclude the guardian's presence at any hearing. Indeed, the presence and active participation of a guardian should be welcomed. During the colloquy which is the subject of this rule, the court should feel free to elicit information from the guardian. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. § § 6310,

6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interest of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Additionally, Rule 150(B) provides that once an appearance is entered or the court assigns counsel, counsel is to represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw. *See* Pa.R.J.C.P. 150(B).

Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation.

Pursuant to paragraph (C), if waiver of counsel is revoked, the court is to appoint counsel before proceeding.

RULE 187. AUTHORITY OF MASTER.

A. Cases to be heard by Master. A master shall have the authority to preside over only the following:

- 1) detention hearings, detention review hearings, or shelter-care hearings;
- 2) discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- 3) any hearing in which the petition alleges only misdemeanors; and
- 4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. No authority. A master shall not have the authority to:

- 1) conduct transfer hearings pursuant to Rule 394;
- 2) issue warrants; and
- 3) hear requests for writs of habeas corpus.

C. Right to hearing before judge. Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the master, the case shall proceed before the judge.

Comment

A master's authority is limited under paragraph (A) to specifically those types of cases provided. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (B)(2), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), *see* 42 Pa.C.S. § 6305(b).

See Rule 127 for recording of proceedings before a master.

RULE 200. COMMENCING PROCEEDINGS.

Juvenile delinquency proceedings within a judicial district shall be commenced by:

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
 - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
 - b) upon probable cause when the offense is a felony; or
 - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;
- 3) the filing of a certification with the court that a juvenile has failed to comply with a lawful sentence imposed for a summary offense;
- 4) transfer of a case from a criminal proceeding pursuant to Pa.R.Crim.P. 597 and 42 Pa.C.S. § 6322;
- 5) the court accepting jurisdiction of a resident juvenile from another state; or
- 6) the court accepting supervision of a juvenile pursuant to another state's order.

Comment

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. This procedure departs from the Juvenile Act, which provides that the filing of a petition commences a proceeding. Rule 800 suspends 42 Pa.C.S. § 6321 only to the extent that it is inconsistent with the procedures of this rule. Petitions filed by any person circumvent the juvenile probation's office ability to divert the case through informal adjustment as provided in 42 Pa.C.S. § 6323. Probation officers may "receive and examine complaints and charges of delinquency . . . of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," *see* Rule 120.

The Juvenile Act provides that "a child may be taken into custody . . . pursuant to the laws of arrest." 42 Pa.C.S. § 6324. Paragraph (2) states the laws of arrest without a warrant in Pennsylvania. *See* Pa.R.Crim.P. 502.

A proceeding may be commenced pursuant to paragraph (3) by filing a certification that attests that the juvenile has failed to comply with a lawful sentence imposed for a summary offense, bypassing the need for a written allegation pursuant to Rule 231.

Under paragraph (4), when a case is transferred from a criminal proceeding pursuant to 42 Pa.C.S. § 6322 to juvenile court, the entire case file is to be transferred. The case file is governed by the disclosure requirements of Rule 160. *See* Rule 337 for the filing of petition after case has been transferred from a criminal proceeding. *See* Rule 404 for prompt adjudicatory hearing.

Paragraph (5) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (6) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

For procedures for when the juvenile is alleged to have violated probation, *see* Rule 612.

For inter-county transfer of juveniles, *see* Rule 302.

RULE 210. ARREST WARRANTS.

- A. **Application.** An application for an arrest warrant shall be made by submitting a written allegation supported by a probable cause affidavit with the president judge or any issuing authority designated by the president judge of each judicial district. The president judge shall ensure twenty-four hour availability of a designated issuing authority.
- B. **Approval of Commonwealth.** When a certification is filed by the District Attorney pursuant to Rule 231, no application for an arrest warrant shall be submitted to the issuing authority unless an attorney for the Commonwealth has approved the application.
- C. **Arrest procedures.** When a juvenile is arrested pursuant to a warrant, the case shall proceed in the same manner as a warrantless arrest in accordance with Rule 220.
- D. **Transmission of file.** If a magisterial district judge issues an arrest warrant for a juvenile pursuant to paragraph (A), the magisterial district judge shall forward the juvenile case file to the clerk of courts immediately or no later than the next business day.
- E. **Return of arrest warrant.** Once the arrest warrant has been executed, it shall be returned to the juvenile probation office. The juvenile probation office shall, immediately and no later than the next business day, notify the magisterial district judge that the warrant has been executed.
- F. **Case closed by magisterial district judge.** Once a magisterial district judge has been notified that the arrest warrant has been executed pursuant to paragraph (E), the magisterial district judge shall mark the arrest warrant as served and close the case.

Comment

For the contents of a written allegation, *see* Rule 232.

See <http://www.pacourts.us/Forms/Default.htm> for a copy of the written allegation form.

For the requirements of the issuance of an arrest warrant, *see* Rule 211. The arrest warrant form may be accessed by a judge in the Magisterial District Judge System (MDJS) or the Common Pleas Criminal Court Case Management System (CPCMS).

Under paragraph (A), the president judge of each judicial district may designate a juvenile court judge, another common pleas judge, or other issuing authorities to receive applications for arrest warrants. The president judge also is to designate an issuing authority to receive applications after normal business hours and on holidays. For the definition of “issuing authority,” *see* Rule 120.

When issuing an arrest warrant, a magisterial district judge is included in the definition of court pursuant to Rule 120, and as such, the magisterial district judge is to maintain the confidentiality of records as required by Rule 160. For access to court records, *see* Rule 160.

Paragraph (A) provides that a magisterial district judge may order the juvenile to be taken into custody pursuant to the laws of arrest. Pursuant to the Juvenile Act, 42 Pa.C.S. § 6303(b), a district judge of the minor judiciary may not detain a juvenile. This rule allows a magisterial district judge to issue an arrest warrant, which may lead to detention in limited circumstances. *See* Rule 800 (8).

Paragraph (D) provides that if the president judge of a judicial district has appointed a magisterial district judge to accept applications for arrest warrants and the magisterial district judge issues an arrest warrant for the juvenile, the magisterial district judge is to send the juvenile case file, including the written allegation supported by a probable cause affidavit, a copy of the arrest warrant, and any other information contained in the juvenile file, to the clerk of courts. For definition of clerk of courts, *see* Rule 120.

Paragraph (E) provides that the return of the arrest warrant is to be made with the juvenile probation office. The juvenile probation office immediately is to notify the magisterial district judge of the execution of the arrest warrant so the arrest warrant may be marked as executed in their computer system. This is extremely important so the juvenile does not get rearrested on the same warrant.

RULE 231. WRITTEN ALLEGATION.

A. Submission. In every delinquency case, the law enforcement officer shall submit a written allegation to the juvenile probation office.

1. **Juvenile not under arrest.** When a juvenile is not under arrest, a written allegation shall be submitted to the juvenile probation office and a copy shall be forwarded to the attorney for the Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).
2. **Juvenile under arrest.** When a juvenile is under arrest, a written allegation shall be submitted promptly to the court or detention facility, and copies shall be immediately forwarded to the juvenile probation office and the attorney for the

Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

B. Approval by the District Attorney. The District Attorney of any county may require initial receipt and approval of written allegations by an attorney for the Commonwealth before a delinquency proceeding is commenced.

1) **Certification.** If the District Attorney elects to require initial receipt and approval of written allegations in his or her county, the District Attorney shall file a certification with the court of common pleas. The certification shall specifically state the classes, grading, or types of cases that the police officer shall submit to the attorney for the Commonwealth.

2) **Timeliness.** All written allegations shall be approved or disapproved without unreasonable delay. An attorney for the Commonwealth shall be available at all times for this purpose unless the District Attorney has specified otherwise in the certification pursuant to (B)(1).

C. Procedures Following the Attorney for the Commonwealth's Approval.

1) **Juvenile not under arrest.** If a juvenile is not under arrest and an attorney for the Commonwealth approves the written allegation, notice of the approval and a copy of the written allegation shall be forwarded immediately to the juvenile probation office.

2) **Juvenile under arrest.** If a juvenile is under arrest, the written allegation shall be submitted to the attorney for the Commonwealth and approved prior to taking the juvenile to a detention facility. If the written allegation is approved, it shall be submitted promptly to the court or detention facility. A copy of the notice of the approval and the written allegation shall be forwarded to the juvenile probation office.

D. Attorney for the Commonwealth's Disapproval. If the written allegation has been disapproved for prosecution, it shall nevertheless be transmitted to the juvenile probation office with notice of the disapproval. If the juvenile is in custody, the juvenile shall be released immediately unless there are other grounds for the juvenile's detention.

Comment

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

See Rules 210 (Arrest Warrants) and 220 (Procedures in Cases Commenced by Arrest Without Warrant) for the procedures on submitting written allegations for arrests.

Under paragraphs (A)(2) and (C)(2), the police officer is to submit the written allegation promptly to the intake staff at the court or the detention facility.

As used in this rule, “District Attorney” is the District Attorney of each county.

This rule gives the District Attorney of each county the option of requiring that written allegations and /or arrest warrant affidavits filed in that county by police officers have the prior approval of an attorney for the Commonwealth. Under the rule, the District Attorney may elect to require prior approval of written allegation, or arrest warrant affidavits (*see* Rule 210), or both. In addition, the District Attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the District Attorney may specify that prior approval will be required only if a felony is alleged, or that prior approval will be required for all cases.

Under paragraph (B), the District Attorney decides whether an attorney for the Commonwealth receives initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the court under paragraph (B)(1), any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure creates a new option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. To implement this procedure, Rule 800 suspends 42 Pa.C.S. § 6304, only to the extent that probation officers may have to seek approval of any attorney for the Commonwealth.

Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending allegations.

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. *See* Rule 120 and its Comment for definition of “detention facility.”

RULE 233. APPROVAL OF PRIVATE WRITTEN ALLEGATIONS.

A. **Submission of written allegation.** When the person making the allegation is not a law enforcement officer, the written allegation shall be submitted to the juvenile probation officer for approval, unless the District Attorney has elected to require initial receipt and approval under Rule 231(B). The juvenile probation officer or the attorney for the Commonwealth shall approve or disapprove the written allegation without unreasonable delay.

B. **Requirements.**

- 1) Approval. If the private written allegation is approved, the case shall proceed as any other written allegation under Rule 231(C) and (D).
- 2) Disapproval. If the written allegation is disapproved, the attorney for the Commonwealth or the juvenile probation officer shall state the reasons on the written allegation form and return it to the person making the allegation. The person making the allegation may file a motion for review of the disapproval by the court.

Comment

For the contents of a written allegation, *see* Rule 231.

In all cases where the affiant is not a law enforcement officer, the written allegation should be submitted for approval or disapproval by the juvenile probation officer or the attorney for the Commonwealth. Once the allegation is approved, the case should proceed as any other written allegation would proceed. *See* Rule 231.

When the person filing a document alleging a juvenile committed a delinquent act is a private citizen, he or she should follow the same process and proceedings as probation officers and law enforcement officers. Private citizens are not to be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of the Juvenile Act, 42 Pa.C.S. § 6334, is achieved by providing an avenue for the private citizen to commence a delinquency proceeding by submitting a written allegation. If the written allegation is disapproved, the private citizen has the right to challenge the decision by motion to the court of common pleas. If the court of common pleas overturns the decision of the attorney for the Commonwealth or the juvenile probation officer, the court should direct the attorney for the Commonwealth or the juvenile probation officer to approve the written allegation and proceed with the case in the same manner as any other case. This procedure ensures informal action is not precluded, such as, informal adjustment. Once a petition is filed, informal adjustment is not allowed. *See Comment* to Rule 312. In addition, Rule 800 suspends 42 Pa.C.S. § 6334 only to the extent that a private citizen may not submit a petition.

For motions and service, *see* Rules 344 and 345.

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 retain private counsel or to be 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.
 - a) The hearing shall be conducted in an informal but orderly manner.
 - b) The attorney for the Commonwealth shall:
 - i) attend the hearing; and
 - ii) present such evidence as the Commonwealth deems necessary to support the written allegation and the need for detention.
- 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 the juvenile has waived counsel pursuant to Rule 152, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.
- 4) Juvenile's rights. The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if the juvenile has waived counsel pursuant to Rule 152, 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.
- 5) Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

C. Findings. The court shall determine whether:

- 1) there is probable cause that a delinquent act was committed by the juvenile;
- 2) detention of the juvenile is warranted; and
- 3) there are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

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.

E. Court's order. At the conclusion of the detention hearing, the court shall enter a written order setting forth its findings pursuant to paragraph (C).

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.

An additional determination is required in paragraph (C)(3) although this is not a third stage of the detention hearing. It is important that the court address any special needs of the juvenile while the juvenile is in detention. The juvenile's attorney, the juvenile probation officer, or detention staff is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. Special needs may include needs for special education, remedial services, health care, and disability. If the court determines

a juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

When addressing the juvenile's needs concerning health care and disability, the court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

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 330 for petition requirements, Rule 331 for service of the petition, and Rule 363 for time of service.

The victim may be present at the hearing. *See* Rule 132 and 18 P. S. § 11.201 *et seq.* Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. *See* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.* *See* 42 Pa.C.S. § § 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

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 submit an oral and/or written victim-impact statement if the victim so chooses. The juvenile probation officer is to include the payment of restitution agreed 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, the victim is to be notified of the final outcome of the proceeding. *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.

RULE 330. PETITION: FILING, CONTENTS, FUNCTION.

A. Certification. The District Attorney of any county may require that an attorney for the Commonwealth shall file all petitions. If the District Attorney elects to require an attorney for the Commonwealth to file the petition, the District Attorney shall file a certification with the court of common pleas. The certification shall:

- 1) state that an attorney for the Commonwealth shall file petitions; and
- 2) specify any limitations on the filing or classes of petitions.

B. Filings. In every delinquency proceeding, the attorney for the Commonwealth or the juvenile probation officer shall file a petition with the clerk of courts if it has been determined that informal adjustment or another diversionary program is inappropriate.

C. Petition contents. Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
 - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
 - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;
- 6)
 - a)
 - i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and
 - ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or
 - b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense.
- 7) the name and age of any conspirators, if known;
- 8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 9) a notation indicating whether the juvenile has or has not been fingerprinted and photographed;
- 10) a notation if criminal laboratory services are requested in the case;
- 11) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 12) the signature of the petitioner and the date of the execution of the petition;
- 13) the whereabouts of the juvenile and if taken into custody, the date and time thereof;
- 14) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative; and
- 15) an averment as to whether the case is eligible pursuant to 42 Pa.C.S. § 6307(b)(1)(ii) for limited public information.

Comment

Under paragraph (A), the District Attorney may file a certification with the court of common pleas stating that only an attorney for the Commonwealth may file a petition. If a certification has not been filed, then an attorney for the Commonwealth or a juvenile probation officer may file a petition.

A private citizen has the right to file a written allegation, not a petition. *See* Rule 800. The written allegation commences the proceedings in the juvenile system. *See* Rule 200. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas. *See* Comment to Rule 233.

Informal adjustment or other diversionary programs should be considered before a petition is filed. Once a petition is filed, informal adjustment is not permitted. *See* Comment to Rule 312 and *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

Petitions should be filed without unreasonable delay. *See Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

See 42 Pa.C.S. § 6308 for the taking of fingerprints and photographs pursuant to paragraph (C)(9).

The contents of a petition are the same as a written allegation except for the additional requirements in paragraphs (C)(6)(b), (13), and (15).

Pursuant to paragraph (15), the petitioner is to designate whether the allegations in the juvenile's petition make the case eligible for limited public information. *See* 42 Pa.C.S. § 6307(b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

RULE 364. FAILURE TO APPEAR ON THE SUMMONS.

If any summoned person fails to appear for the adjudicatory hearing and the judge finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

Comment

See Rule 140 for issuance of a bench warrant.

RULE 373. CONDITIONS OF CONSENT DECREE.

A. **Terms and conditions.** The court may place upon the juvenile any reasonable conditions that are consistent with the protection of the public interest. The conditions of the consent decree shall provide a balanced attention to:

- 1) the protection of the community;
- 2) the juvenile's accountability for the offenses committed; and
- 3) the development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community.

B. Duration of consent decree. A consent decree shall remain in force for no more than six months as agreed upon unless the juvenile is discharged sooner upon motion. Upon motion, the court may:

- 1) discharge the juvenile at an earlier time; or
- 2) extend the time period not to exceed an additional six months.

Comment

If the juvenile fails to accept the conditions required by the court pursuant to paragraph (A), the case should proceed to findings, adjudication, and disposition. *See* Comment to Rule 371.

Nothing in this rule is intended to prevent the juvenile probation officer from being the movant for consent decree. For rule on motions, *see* Rule 344.

Paragraph (B) requires a motion to be filed for early dismissal from consent decree. The procedures of Rule 344 are to be followed to ensure all parties are properly notified of the request and appropriate objections can be made. Rule 800 suspends 42 Pa.C.S. § 6340(c) only to the extent that there is an additional requirement that a motion is to be filed. *See* Rule 800.

RULE 391. TIME RESTRICTIONS FOR DETENTION OF JUVENILES SCHEDULED FOR TRANSFER HEARING.

A. Generally. The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing except for the time restrictions provided in paragraph (B) of this rule.

B. Time Restrictions. If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines:

- a) that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;
- b) that due diligence to obtain such evidence or evaluation has been exercised;
- c) that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and
- d) that the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or

- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). *See* Rule 800.

Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.

RULE 394. TRANSFER HEARING.

A. Scheduling. The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. Advanced communication technology.

- 1) **Juvenile.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile only if the parties consent.
- 2) **Witness.** A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of a witness unless good cause is shown otherwise.

C. Burden of proof. Unless the provisions of 42 Pa.C.S. § 6355 (g)(1) and (2) apply, the attorney for the Commonwealth shall have the burden of establishing:

- 1) a *prima facie* case that the juvenile committed a felony delinquent act; and
- 2) by a preponderance of the evidence that the public interest is served by transfer of the case to criminal proceedings.

D. Findings.

- 1) **Transfer.** At the hearing, the court shall transfer the case to the division or a judge assigned to conduct criminal proceedings if the court finds:
 - a) the juvenile is fourteen years old or older at the time of the alleged delinquent act;
 - b) notice has been given pursuant to Rule 390;
 - c) the Commonwealth has met its burden of proof pursuant to paragraph (C); and
 - d) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill.
- 2) **No Transfer.** If the required findings of paragraph (C)(1) have not been met, the court shall schedule an adjudicatory hearing pursuant to Rule 404.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the “prima facie phase.” The court is to determine whether the Commonwealth has established a *prima facie* showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a *prima facie* showing of evidence is found, the court proceeds to the second phase, known as the “public interest phase.” During the “public interest phase,” the court is to determine what is in the public’s interest.

In determining public interest, the court is to consider balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile’s culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a prima facie case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of “delinquent act” in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. *See* 42 Pa.C.S. § 6355 and Rule 800 for suspension of a portion of § 6355(g).

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

RULE 406. ADJUDICATORY HEARING.

A. Manner of hearing.

- 1) The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.
- 2) The attorney for the Commonwealth shall:
 - a) attend the hearing; and
 - b) have the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s).

B. Recording. The adjudicatory hearing shall be recorded.

C. Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or witness only if the parties consent.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U. S. 528 (1971).

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333.

RULE 512. DISPOSITIONAL HEARING.

A. Manner of hearing. The court shall conduct the dispositional hearing in an informal but orderly manner.

- 1) *Evidence.* The court shall receive any oral or written evidence from both parties and the juvenile probation officer that is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to be heard.
- 3) *Advanced communication technology.* A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or the witness only if the parties consent.
- 4) *Prosecutor's presence.* The attorney for the Commonwealth shall attend the hearing.

B. Recording. The dispositional hearing shall be recorded.

C. Duties of the court. The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;
- 2) the right to file an appeal;
- 3) the time limits for a post-dispositional motion and appeal;

- 4) the right to counsel to prepare the motion and appeal;
- 5) the time limits within which the post-dispositional motion shall be decided; and
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

D. Court's findings. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

- 1) its disposition;
- 2) the reasons for its disposition;
- 3) the terms, conditions, and limitations of the disposition; and
- 4) if the juvenile is removed from the home:
 - a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile, and
 - b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. § § 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare;
- 5) whether any evaluations, tests, counseling, or treatments are necessary;
- 6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and
- 7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

Comment

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. *See* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

Under paragraph (A)(2), prior to deciding disposition, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses.

Before deciding disposition, the court may hear oral argument from the parties' attorneys.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile. Pursuant to paragraph (C), the court is to advise the juvenile of his or her appellate rights orally in the courtroom on the record. The court is to explain the right to retain private counsel or be appointed counsel for an appeal if a juvenile is without counsel. *See* 42 Pa.C.S. § 6337; *see also* Rule 150(B) for duration of counsel and Rule 151 for assignment of counsel.

Pursuant to paragraph (D), when the court has determined the juvenile is in need of treatment, supervision, and rehabilitation, the court is to place its findings and conclusions of law on the record by announcing them orally in the courtroom, followed by written order. The court is to consider the following factors: a) the protection of the community; b) the treatment needs of the juvenile; c) the supervision needs of the juvenile; d) the development of competencies to enable the juvenile to become a responsible and productive member of the community; e) accountability for the offense(s) committed; and f) any other factors that the court deems appropriate.

Nothing in this rule is intended to preclude the court from further explaining its findings in the dispositional order pursuant to Rule 515.

Pursuant to paragraph (D)(4), when out-of-home placement is necessary, the court is to explain why the placement is the least restrictive type of placement that is consistent with the protection of the public and the rehabilitation needs of the child. *See* 42 Pa.C.S. § 6352.

Pursuant to paragraph (D)(6), the court should address the juvenile's educational needs. The court's order should address the right to: 1) an educational decision maker pursuant to Rule 147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; and 2) an appropriate education, including any necessary special education or remedial services, 24 P. S. § § 13-1371, 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*

The court should also address the juvenile's needs concerning health care and disability. The court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

See Rule 127 for recording and transcribing of proceedings.

See Rule 136 for *ex parte* communications.

Rule 610. Dispositional and Commitment Review.

A. Dispositional review hearing. The court shall review its disposition and conduct dispositional review hearings for the purpose of ensuring that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.

- 1) In all cases, the court shall conduct dispositional review hearings at least every six months.
- 2) In all cases, the juvenile shall appear in person at least once a year.
- 3) The court may schedule a review hearing at any time.

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, notice and an opportunity to be heard shall be given to the parties and the victim.

- 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. A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

Comment

At any hearing, if it is determined that the juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

Under paragraph (A), the court is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. *See* Rule 800. When conducting a dispositional review hearing, the court is to ensure that the disposition continues to provide 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.

Nothing in this rule prohibits the juvenile from requesting an earlier review hearing. The juvenile may file a motion requesting a hearing when there is a need for change in treatment or services.

Additionally, 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.

Under paragraph (B), the attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the review hearing. Prior to ordering the change in the dispositional order, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. *See* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

Any persons may be subpoenaed to appear for the hearing. *See* Rule 123 and 42 Pa.CS. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing 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.

If a juvenile is detained or placed, the juvenile is to be placed in a detention facility or placement facility, which does not include a county jail or state prison. *See* Rule 120 and its Comment for definitions of “detention facility” and “placement facility.”

RULE 1124. SUMMONS.

A) Requirements of the summons. The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the parties about the right to counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B) Method of Service. The summons shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

C) Exception to service. If service cannot be accomplished pursuant to paragraph (B), the party may move for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the person sought to be served and the reasons why service cannot be made.

D) Bench Warrant. If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

Comment

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

In paragraph (D), this rule provides that a summoned person is to fail to appear and the court is to find that sufficient notice was given before a bench warrant may be issued. The Juvenile Act, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended to the extent that it conflicts with this rule. See Rule 1800 for suspensions.

See Rules 1360(A), 1500(A), and 1600(A) for service of the parties for a proceeding.

See Rule 1140 for procedures on bench warrants.

RULE 1127. RECORDING AND TRANSCRIBING JUVENILE COURT PROCEEDINGS.

A. **Recording.** There shall be a recording of all dependency proceedings, including proceedings conducted by masters, except as provided in Rule 1242(B)(2).

B. **Transcribing.** Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.

C. **Modifying.** At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

Comment

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). See, e.g., Pa.R.A.P. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 478 Pa. 479, 387 A.2d 83 (1978); *Commonwealth v. Shields*, 477 Pa. 105, 383 A.2d 844 (1978). This rule is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Pursuant to Rule 1800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that all proceedings are to be recorded, except as provided in Rule 1242 (B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all dependency proceedings and to ensure all proceedings are recorded, including proceedings before masters, except for shelter care hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

RULE 1140. BENCH WARRANTS FOR FAILURE TO APPEAR.

A. Issuance of warrant.

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Party.

- 1) *Where to take the party.*
 - a) When a party is taken into custody pursuant to a bench warrant, the party shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.
 - b) If the party is not brought before a judge, the party shall be released unless the warrant specifically orders detention of the party.
 - c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.
 - i) *Minor.* If the party is a minor, the party shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.
 - ii) *Adult.* If the party is an adult, the witness shall be detained at the county jail.
- 2) *Prompt hearing.*
 - a) If a party is detained pursuant to a specific order in the bench warrant, the party shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.
 - b) If the party is not brought before a judge within this time, the party shall be released.
- 3) *Notification of guardian.* If a party is a child and is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the child's guardian of the child's whereabouts and the reasons for the issuance of the bench warrant.
- 4) *Out-of-county custody.*
 - a) If a party is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.
 - b) Arrangements to transport the party shall be made immediately.
 - c) If transportation cannot be arranged immediately, then the party shall be taken without unnecessary delay to a judge of the county where the party is found.
 - d) The judge will identify the party as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the party to the county of issuance.
- 5) *Time requirements.* The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

C. Witnesses.

- 1) *Where to take the witness.*
 - a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.
 - b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

i) *Minor*. If a detained witness is a minor, the witness shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.

ii) *Adult*. If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing*.

a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian*. If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody*.

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor*. If the witness is a minor, the witness may be detained in an out-of-county shelter care facility or other placement as deemed appropriate by the judge.

ii) *Adult*. If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

D. Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 1129 unless good cause is shown otherwise.

E. Return & execution of the warrant for parties and witnesses.

- 1) The bench warrant shall be executed without unnecessary delay.
- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.
- 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
- 4) Upon the return of the warrant, the judge shall vacate the bench warrant.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 1800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a child is detained. *See* Chapter Twelve, Part D.

Pursuant to paragraph (B)(1)(a), the party is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the party may be detained, the party may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(2)(a). Pursuant to this paragraph, if a hearing is not held promptly, the party is to be released. *See* paragraph (B)(2)(b).

In paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i), “other placement as deemed appropriate by the judge” does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. *See* 42 Pa.C.S. § § 6302 & 6327(e).

Under paragraphs (B)(2) and (B)(4), a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. *See* Rule 1242(D).

Pursuant to paragraph (B)(4), the party may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (B)(5), the time requirements of all other rules are to apply to children who are detained. *See, e.g.*, Rules 1242, 1404, 1510, and 1607.

Pursuant to paragraph (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness

may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. *See* paragraph (C)(4)(f).

Pursuant to paragraph (E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph (E)(3).

Pursuant to paragraph (E)(4), the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. “Vacated” is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

See 42 Pa.C.S. § 4132 for punishment of contempt for children and witnesses.

Throughout these rules, the “child” is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a “minor.” When “minor” is used, it may include a child. This distinction is made to differentiate between children who are alleged dependents and other minors who are witnesses. *See also* Rule 1120 for the definitions of “child” and “minor.”

Rule 1151. Assignment of Guardian *Ad Litem* and Counsel.

A. Guardian ad litem for child. The court shall assign a guardian *ad litem* to represent the legal interests and the best interests of the child if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

- 1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;
- 2) has been placed for care or adoption in violation of law;
- 3) has been abandoned by parents, guardian, or other custodian;
- 4) is without a parent, guardian or legal custodian; or
- 5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

B. *Counsel for child.* The court shall appoint legal counsel for a child:

1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

a) while subject to compulsory school attendance is habitually and without justification truant from school;

b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment, or supervision;

c) is under the age of ten years and has committed a delinquent act;

d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b);

e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634; or

2) upon order of the court.

C. **Counsel and Guardian ad litem for child.** If a child has legal counsel and a guardian *ad litem*, counsel shall represent the legal interests of the child and the guardian *ad litem* shall represent the best interests of the child.

D. **Time of appointment.**

1) *Child in custody.* The court shall appoint a guardian *ad litem* or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.

2) *Child not in custody.* If the child is not in custody, the court shall appoint a guardian *ad litem* or legal counsel for the child when a dependency petition is filed.

E. **Counsel for other parties.** If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

Comment

See 42 Pa.C.S. § § 6302, 6311, and 6337.

The guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem*, when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rule 1800. See also Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel.

Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child. Nothing in these rules anticipates that a guardian *ad litem* for an adult is to be appointed by these rules. For appointment of a guardian of the person, see 20 Pa.C.S. § 5501 *et seq.* and Pa.O.C. Rules 14.2—14.5.

Pursuant to paragraph (E), the court is to inform all parties of the right to counsel if they appear at a hearing without counsel. If a party is without financial resources or otherwise unable to employ counsel, the court is to appoint counsel prior to the proceeding. Because of the nature of the proceedings, it is extremely important that every “guardian” has an attorney. Therefore, the court is to encourage the child’s guardian to obtain counsel. Pursuant to Rule 1120, a guardian is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding. *See* Pa.R.J.C.P. 1120.

RULE 1152. WAIVER OF COUNSEL.

A. Children.

- 1) *Guardian ad litem.* A child may not waive the right to a guardian *ad litem*.
- 2) *Legal Counsel.* A child may waive legal counsel if:
 - a) the waiver is knowingly, intelligently, and voluntarily made; and
 - b) the court conducts a colloquy with the child on the record.

B. Other parties. Except as provided in paragraph (A), a party may waive the right to counsel if:

- 1) the waiver is knowingly, intelligently, and voluntarily made; and
- 2) the court conducts a colloquy with the party on the record.

C. Stand-by counsel. The court may assign stand-by counsel if a party waives counsel at any proceeding or stage of a proceeding.

D. Notice and revocation of waiver. If a party waives counsel for any proceeding, the waiver only applies to that proceeding, and the party may revoke the waiver of counsel at any time. At any subsequent proceeding, the party shall be informed of the right to counsel.

Comment

Under paragraph (A), a child may not waive the right to a guardian *ad litem*. The right of waiver to legal counsel belongs to the child, not the guardian. *See* Rule 1800, which suspends 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child.

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1. Whether the party understands the right to be represented by counsel;
2. Whether the party understands the nature of the dependency allegations and the elements of each of those allegations;

3. Whether the party is aware of the dispositions and placements that may be imposed by the court, including foster care placement and adoption;
4. Whether the party understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;
5. Whether the party understands that counsel may be better suited to defend the dependency allegations; and
6. Whether the party understands that the party has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the party, the ability to correct these errors may be lost permanently.

RULE 1187. AUTHORITY OF MASTER.

A. **No authority.** A master shall not have the authority to:

- 1) preside over:
 - a) termination of parental rights hearings;
 - b) adoptions;
 - c) any hearing in which any party seeks to establish a permanency goal of adoption or change the permanency goal to adoption;
- 2) enter orders for emergency or protective custody pursuant to Rules 1200 and 1210;
- 3) issue warrants; and
- 4) issue contempt orders.

B. **Right to hearing before judge.**

- 1) Prior to the commencement of any proceeding, the master shall inform all parties of the right to have the matter heard by a judge. If a party objects to having the matter heard by the master, the case shall proceed before the judge.
- 2) If a party objects to having the matter heard by the master pursuant to paragraph (B)(1), the master or the court's designee for scheduling cases shall immediately schedule a hearing before the judge. The time requirements of these rules shall apply.

Comment

A master's authority is limited under this rule. To implement this rule, Rule 1800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (A)(1)(c), once the permanency goal has been approved for adoption by a judge, all subsequent reviews or hearings may be heard by the master unless a party objects pursuant to paragraph (B).

Under paragraph (A)(3), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (B), see 42 Pa.C.S. § 6305(b).

Under paragraph (B)(2), it should be determined whenever possible before the date of the hearing whether there will be an objection to having the matter heard before a master. If it is anticipated that there will be an objection, the case is to be scheduled in front of the judge, rather than the master to prevent continuances and delays in the case.

See Rule 1127 for recording of proceedings before a master.

RULE 1202. PROCEDURES FOR PROTECTIVE CUSTODY BY A POLICE OFFICER, JUVENILE PROBATION OFFICER, AND COUNTY AGENCY.

A. Protective custody.

1) No court order.

a) A police officer or a juvenile probation officer may take a child into protective custody pursuant to Rule 1200 if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from the surroundings and removal is necessary.

b) Without unnecessary delay, but no more than twenty-four hours after a child is taken into custody, an application for a protective custody order shall be made to provide temporary emergency supervision of a child pending a hearing pursuant to Rule 1242. The president judge of each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

2) Court order.

a) A police officer, juvenile probation officers or county agency may obtain a protective custody order removing a child from the home pursuant to Rule 1210 if the court finds that remaining in the home is contrary to the welfare and the best interests of the child.

b) Pursuant to 23 Pa.C.S. § 6315 and after a court order, the county agency shall take the child into protective custody for protection from abuse. No county agency may take custody of the child without judicial authorization based on the merits of the situation.

B. Notice.

1) In all cases, the person taking the child into custody immediately shall notify the guardian and the county agency of:

a) the whereabouts of the child, unless disclosure is prohibited by court order; and

b) the reasons for taking the child into custody.

2) *Notice may be oral.* The notice shall be reduced to writing within twenty-four hours.

C. Placement. A child shall be placed in an appropriate shelter care facility or receive other appropriate care pending a shelter care hearing pursuant to Rule 1242.

Comment

A properly commissioned juvenile probation officer has the authority to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to Rule 195. *See also* 23 Pa.C.S. § 6315.

Under paragraph (A)(1)(a) & (A)(2)(a), the police officer's or juvenile probation officer's duty is to protect the child and remove the child safely. A police officer or juvenile probation officer may bring the child to the county agency for supervision of the child pending a court order that should be given immediately. The police officer's or juvenile probation officer's duty is to take a child into protective custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his or her surroundings, and that protective custody is necessary, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child when necessary. Only a police officer or juvenile probation officer may take custody of the child without a court order. *See* Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides that law enforcement officers may take a child into custody.

Paragraph (B) is to ensure that if the guardian is not present when the child is removed, the guardian knows the whereabouts of the child and the reasons the child is taken into custody. If the person removing the child is not a caseworker, the county agency is to be notified to commence proceedings in juvenile court.

Under paragraph (C), a child taken into protective custody is to be placed during the protective custody in an appropriate shelter care facility or receive other appropriate care.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of: 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian when protective custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. § § 6337, 6338.

See 42 Pa.C.S. § § 6324 & 6326 and 23 Pa.C.S. § 6369.

RULE 1242. SHELTER CARE HEARING.

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

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. Manner of hearing.

- 1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.
- 2) *Recording.* If requested, 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.* 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. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

4) *Advanced communication technology*. Upon good cause shown, a court may utilize advanced communication technology pursuant to Rule 1129.

C. Findings. The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) custody of the child is warranted after consideration of the following factors:
 - a) remaining in the home would be contrary to the welfare and best interests of the child;
 - b) reasonable efforts were made by the county agency to prevent the child's placement;
 - c) the child's placement is the least restrictive placement that meets the needs of the child, supported by reasons why there are no less restrictive alternatives available; and
 - d) the lack of efforts was reasonable in the case of an emergency placement where services were not offered;
- 3) a person, other than the county agency, submitting a shelter care application, is a party to the proceedings; and
- 4) there are any special needs of the child that have been identified and that the court deems necessary to address while the child is in shelter care.

D. Prompt hearing. The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. Court order. At the conclusion of the shelter care hearing, the court shall enter a written order set forth:

- 1) its findings pursuant to paragraph (C);
- 2) any conditions placed upon any party;
- 3) any orders for placement or temporary care of the child;
- 4) any findings or orders necessary to ensure the stability and appropriateness of the child's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147;
- 5) any findings or orders necessary to identify, monitor, and address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed; and
- 6) any orders of visitation.

Comment

Pursuant to paragraph (B)(4), it is expected that the parties be present. Only upon good cause shown should advanced communication technology be utilized.

Pursuant to paragraph (C), the court is to make a determination that the evidence presented with the shelter care application under Rule 1240 is supported by sufficient facts. After this determination, the court is to determine whether the custody of the child is warranted by requiring a finding that: 1) remaining in the home would be contrary to the health and welfare of the child; 2) reasonable efforts were made by the county agency to prevent the placement of the child; 3) the child was placed in the least restrictive placement available; and 4) if the child was taken into emergency placement without services being offered, the lack of efforts by the county agency was reasonable. Additionally, the court is to state the reasons why there are no less restrictive alternatives available.

Pursuant to paragraph (C)(3), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing.

See 42 Pa.C.S. § 6332.

Pursuant to paragraph (E), the court is to enter a written order. It is important that the court address any special needs of the child while the child is in shelter care. The child's attorney or the county agency is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. These needs may include a child's educational stability, needs concerning early intervention, remedial services, health care, and disability. If the court determines a child is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 1147.

The court's order should address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. § 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa. C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P. S. § § 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*; 4) the educational services necessary to support the child's transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older ; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

When addressing the child's health and disability needs, the court's order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a child with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from

a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

RULE 1320. APPLICATION TO FILE A PRIVATE PETITION.

A. *Application contents.* Any person, other than the county agency, may present an application to file a private petition with the court. The application shall include the following information:

- 1) the name of the person applying for a petition;
- 2) the name of the alleged dependent child;
- 3) the relationship of the person presenting this application to the child and to any other parties;
- 4) if known, the following:
 - a) the date of birth and address of the child;
 - b) the name and address of the child's guardian, or the name and address of the nearest adult relative;
 - c) if a child is Native American, the child's Native American history or affiliation with a tribe;
 - d) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;
- 5) a concise statement of facts in support of the allegations for which the application for a petition has been filed;
- 6) a statement that the applying person has reported the circumstances underlying this application to the county agency or a reason for not having reported the circumstances underlying the application;
- 7) a verification by the person making the application that the facts set forth in the application are true and correct to the person's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and
- 8) the signature of the person and the date of the execution of the application for a petition.

Comment

Rule 1330 requires that the county agency file a petition. Any person, other than the county agency, is to file an application to file a petition under this Rule. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

See Rule 1321 for hearing on application and finding that a petition is to be filed by the county agent.

RULE 1321. HEARING ON APPLICATION FOR PRIVATE PETITION.

A. Hearing. The court shall conduct a hearing within fourteen days of the presentation of the application for a petition to determine:

- 1) if there are sufficient facts alleged to support a petition of dependency; and
- 2) whether the person applying for the petition is a proper party to the proceedings.

B. Findings.

- 1) If the court finds sufficient facts to support a petition of dependency, a petition may be filed pursuant to Rule 1330.
- 2) If the court finds the person making the application for a petition is a proper party to the proceedings, the person shall be afforded all rights and privileges given to a party pursuant to law.

Comment

Under paragraph (A), at a hearing, the court is to determine if: 1) there are sufficient facts alleged to support a petition of dependency; and 2) the applying person is a proper party to the proceedings. A petition of dependency may go forward whether or not the applying person is determined to be a party to the proceedings.

If a child is in custody, the hearing under paragraph (A) may be combined with the shelter care hearing pursuant to Rule 1242.

Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.

A. Filings.

- 1) A dependency petition may be filed at any time; however, if a child is taken into custody, the requirements of paragraph (A)(2) shall be met.
- 2) Within twenty-four hours of the shelter care hearing, the county agency shall file a dependency petition with the clerk of courts when:
 - a) the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or
 - b) the child is not in protective custody but it is determined at a shelter care hearing pursuant to Rule 1242 that the filing of a dependency petition is appropriate.

B. Petition contents. Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) if a child is Native American, the child's Native American history or affiliation with a tribe;
- 5) a statement that:
 - a) it is in the best interest of the child and the public that the proceedings be brought;
 - b) the child is or is not currently under the supervision of the county agency;
- 6) a concise statement of facts in support of the allegations for which the petition has been filed;
 - a) facts for each allegation shall be set forth separately;
 - b) the relevant statute or code section shall be set forth specifically for each allegation;
- 7) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 8) the signature of the petitioner and the date of the execution of the petition; and
- 9) the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

C. Aggravated circumstances. A motion for finding of aggravated circumstances may be brought in the petition pursuant to Rule 1701(A).

Comment

Petitions should be filed without unreasonable delay.

Under paragraph (A)(2), a petition is to be filed twenty-four hours after the shelter care hearing if the requirements of (A)(2)(a) and (b) are met. Rule 1800 suspends 42 Pa.C.S. § 6331 only as to the time requirement of when a petition is to be filed.

Additionally, paragraph (A)(2) requires that the county agency file a petition. Any other person, other than the county agency, is to file an application to file a petition under Rule 1320. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

For the safety or welfare of a child or a guardian, the court may order that the addresses of the child or a guardian not be disclosed to specified individuals.

A motion for finding of aggravated circumstances may be brought in a dependency petition. See Rule 1701(A). If aggravated circumstances are determined to exist after the filing of a petition, a written motion is to be filed pursuant to Rules 1701 and 1344.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

RULE 1340. DISCOVERY AND INSPECTION.

A. Informal. Before any party can seek any disclosure or discovery under these rules, the parties or their counsel shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. Mandatory disclosure.

1) *By the county agency.* In all cases, on request by a party and subject to any protective order which the county agency might obtain under this rule, the county agency shall disclose to a party, all of the following requested items or information, provided they are material to the instant case. The county agency shall, when applicable, permit a party to inspect and copy or photograph such items:

- a) the name and last known address of each witness to the occurrence that forms the basis of allegations of dependency unless disclosure is prohibited by law;
- b) the name and last known address of each witness who did not witness the occurrence but is expected to testify;
- c) copies of any written statements made by any party or witness unless disclosure is prohibited by law;
- d) any results or reports of scientific tests or expert opinions that are within the possession or control of the county agency that the county agency intends to use as evidence at a hearing;
- e) any police reports, records of prior county agency involvement, or records of current or prior reports involving the Child Protective Services Law, 23 Pa.C.S. § 6301 et seq., that the county agency intends to use as evidence at a hearing;
- f) if any physical or mental condition of a party is in controversy, any physical or mental examinations, including oral or written reports that a party intends to use as evidence at the hearing;
- g) any tangible objects, including documents, photographs, or other tangible evidence unless disclosure is prohibited by law;
- h) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and
- i) any other evidence that is material to adjudication, disposition, dispositional review, or permanency unless disclosure is prohibited by law, and is within the possession or control of the county agency;

2) **By all other parties.** All other parties shall provide discovery to the county agency and all other parties and shall disclose, all of the following requested items or information that the party intends to use at a hearing, provided they are material to the instant case unless disclosure is prohibited by law. The party shall, when applicable, permit the county agency to inspect and copy or photograph such items:

- a) the names and last known addresses of each witness who is expected to testify;
- b) copies of any written statements made by any party or witness;
- c) any tangible objects, including documents, photographs, or other tangible evidence;
- d) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and
- e) any other evidence that a party intends to introduce at a hearing.

C. Discretionary. Upon motion of any party for discovery, the court may order any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

D. Continuing Duty to Disclose. If, prior to or during a hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

E. Remedy. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

F. Protective orders. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate to protect the best interests of the child. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

G. Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for a party, or members of their legal staffs.

Comment

Discovery under this rule applies to discovery for the adjudicatory hearing, dispositional hearing, dispositional review hearings, or permanency hearings of dependency proceedings governed by the Juvenile Act. See Rule 1100 for scope of rules. See Rule 1123 for production of documents pursuant to a subpoena duces tecum. See also *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000).

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a genuine dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 1344.

The items listed in paragraph (B) are to be disclosed to ensure a party has the ability to prepare adequately for the hearing. See *In re J.C.*, 412 Pa. Super. 369, 603 A.2d 627 (1992).

See Rule 1800 for suspension of 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 et seq., which is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child. It is important to note that this section is only suspended if the reports are going to be used as evidence during a hearing. If the reports are not going to be used, the confidentiality requirements of 23 Pa.C.S. § 6339 still apply. In addition, confidential sources are protected and the name of the source does not have to be disclosed. See 23 Pa.C.S. § 6340 (c) for protection of confidential sources reporting allegations of abuse under the Child Protective Services Law. 23 Pa.C.S. § 6301 et seq.

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case, but the list is not meant to be exhaustive: 1) domestic violence treatment records; 2) drug and alcohol treatment records; 3) mental health records; 4) medical records; 5) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case. Items listed in this paragraph are subject to rules of confidentiality and this rule is not intended to subrogate those rules.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at a hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

It is intended that the remedies provided in paragraph (E) apply equally to all parties, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon any party any right of appeal not presently afforded by law.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files. See Rule 1160.

RULE 1360. ADJUDICATORY SUMMONS.

A. Summons. The court shall issue a summons compelling all parties to appear for the adjudicatory hearing.

B. Order appearance. The court may order the person having the physical custody or control of the child to bring the child to the hearing.

C. Requirements. The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the child and the guardian about their rights to counsel, and if the child's guardian is without financial resources or otherwise unable to employ counsel, the right to assigned counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
- 5) include a copy of the petition unless the petition has been previously served.

Comment

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper and necessary parties to the proceedings. It also provides for ordering the person having the physical custody or control of the child to bring the child to the proceeding. 42 Pa.C.S. § 6335. Pursuant to Rule 1361, all parents and relatives providing care for the child are to receive notice of the hearing. Under paragraph (A), the custodial guardian is to receive a summons.

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

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a). Under paragraph (C)(5), a petition is to be included with the summons and served pursuant to Rule 1363 unless the petition has already been served pursuant to Rule 1331. See Rule 1800 for suspension of 42 Pa.C.S. § 6335, only to the extent that it conflicts with this rule.

See Rule 1128 for presence at proceedings. See Rule 1124 for general summons procedures.

Rule 1364. Failure to Appear on the Summons.

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

Comment

See Rule 1140 for issuance of a bench warrant.

RULE 1604. SUBMISSION OF REPORTS.

A. Generally.

- 1) A foster parent, preadoptive parent, or relative providing care for a child may submit a report regarding the child's adjustment, progress, and condition for review by the court.
- 2) The report shall be submitted to the court designee at least seven days prior to the permanency hearing.

B. Designation by President Judge. The President Judge of each judicial district shall appoint a designee, other than a judge or party, to receive these reports.

C. Duties of the County Agency. Upon placement of the child with a foster parent, preadoptive parent, or relative providing care for a child, the county agency shall inform such person of:

- 1) the right to submit a report;
- 2) the name and address of the court designee who shall receive the reports; and
- 3) the requirement to submit the report at least seven days prior to the permanency hearing.

D. Duties of Designee. Within one business day of receiving the report, the court designee shall:

- 1) file a copy of the report with the clerk of courts; and
- 2) distribute copies to the judge, attorneys, parties, and if appointed, the court-appointed special advocate.

E. Examination of Report. Pursuant to Rule 1608(C), the court shall examine this report and consider its contents as it would consider any other evidence in the case.

Comment

The county agency is to provide the form designed by the Department of Public Welfare to the foster parent, preadoptive parent, or relative providing care for the child.
See 42 Pa.C.S. § 6336.1(b).

See also 42 Pa.C.S. § 6341(d).

Pursuant to paragraph (E), the court is to examine this report and consider its contents as it would consider any other evidence. Evidence is to be properly entered into the record before the court will consider it. Evidence submitted directly to the court is considered an *ex parte* communication and is strictly prohibited. *See* Rule 1136 on *ex parte* communications.

Rule 1607. Regular Scheduling of Permanency Hearings.

A. Thirty days. The court shall conduct permanency hearings within thirty days of:

- 1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;
- 2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;
- 3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or
- 4) a motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. Six months. The court shall conduct a permanency hearing within six months of:

- 1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. § § 6324 or 6332, or pursuant to a transfer of legal custody, or other disposition pursuant to Rule 1515, whichever is earliest; or
- 2) each previous permanency hearing until the child is removed from the jurisdiction of the court pursuant to Rule 1613.

Comment

See 42 Pa.C.S. § 6351(e)(3).

Paragraph (A) provides when permanency hearings are to be held within thirty days. If the requirements of paragraph (A) do not apply, the court is to hold a permanency hearing every six months in every case until the child is removed from the jurisdiction of the court pursuant to paragraph (B). This includes cases when the child is not removed from the home or the child was removed and subsequently returned to the guardian, but the child is under the court's supervision.

See Rule 1800(11).

**Dissent of the
Pennsylvania District Attorneys Association
and the Office of Victim Advocate
to the Joint State Government Commission
Advisory Committee Report on the Juvenile Act**

The text of the dissent begins on the next page.

I. INTRODUCTION

The Joint State Government Commission convened a Juvenile Act Advisory Committee (the “JAAC”). The JAAC’s main task was to review and harmonize the Pennsylvania Juvenile Act and the Pennsylvania Juvenile Rules of Court Procedure. The JAAC’s secondary assignment was to review Pennsylvania’s statutory response to Miller v. Alabama, 132 S. Ct. 2455, 567 U.S. ____ (2012), which resulted in the Pennsylvania legislature passing new laws to address the punishment for juvenile murderers.

The JAAC has successfully worked to make the Juvenile Act and Juvenile Rules of Court Procedure consistent. Those changes are non-controversial and should be adopted as soon as possible.

However, in addressing the punishment for juvenile murderers, the JAAC is now proposing to radically re-structure criminal law. For instance, the JAAC is recommending that the mandatory sentence for murder be reduced from life to a mere 10 years in certain cases. Other changes recommended by the JAAC are equally large in scope.

The reason for these radical proposals is straightforward -- this JAAC was stacked with people with a strong bias for criminal defendants, excluding the views of the professionals who actually deal with juvenile murderers. As one glaring example, there was not a single police officer on the JAAC. Thus, the very professionals who have to deal with juvenile murderers on the street were left out of this committee. On the other hand, the JAAC was heavily stocked with social workers, reformers, and defense-oriented experts who have a clear prejudice against being tough on criminals, even murderers.

This restructuring of criminal laws and procedures is strongly opposed by the Pennsylvania District Attorneys Association, the Pennsylvania Office of the Victim Advocate, and other individuals on the committee. These proposed changes devalue the loss of life caused by a murder, leave the justice system open to rampant inconsistencies across the Commonwealth, and undermine the ability of prosecutors to investigate and prosecute murderers. These issues are discussed in greater detail below.

II. RECOMMENDATIONS

The JAAC is recommending that the mandatory minimum sentences for juvenile murderers be reduced to as low as ten (10) years imprisonment in certain cases. The legislature should reject any such reduction. First, the legislature only recently established the new juvenile mandatory sentences in light of the Supreme Court's Miller decision. Immediately reopening this issue and further reducing such murder sentences is premature, unnecessary, and unwise. Second, such reductions are poor policy choices. Lessening the penalty for juvenile murderers ignores the loss of life for victims' families, handcuffs prosecutors, and leaves murder sentences open to wide geographic and racial disparities across the Commonwealth. Third, the scheme proposed by the JAAC to implement these changes simply does not work in the real world of murder investigations and prosecutions.

A. Reducing Juvenile Murder Mandatories Again is Premature.

In 2012, the United States Supreme Court decided Miller v. Alabama, 132 S. Ct. 2455, 567 U.S. ____ (2012). In Miller, the court held that a mandatory life without parole sentence for juvenile murderers is unconstitutional.

In response to Miller, Pennsylvania legislators, prosecutors, criminal defense lawyers, and other advocacy groups debated how to reshape Pennsylvania law for juvenile murderers. After extensive debate on all sides, a new statutory scheme was enacted. The current Pennsylvania law in this area is as follows:

Crime	Age of Juvenile	Sentence
First Degree Murder (pre-meditated murder)	15-17	35 year mandatory minimum, up to life
	14 and under	25 year mandatory minimum, up to life
Second Degree Murder (murder committed during course of a felony)	15-17	30 year mandatory minimum, up to life
	14 and under	20 year mandatory minimum, up to life

The JAAC has recommended a drastic restructuring of these punishments for second degree murder cases. The JAAC would like to reduce the mandatory minimum sentence for murderers under the age of 14 to 10 years imprisonment and the mandatory minimum sentence for 15-17 year old murderers to 15 years imprisonment, absent special circumstances that prosecutors would be required to prove in a bifurcated proceeding. To make it starkly clear, the JAAC believes that a 14 year old who is responsible for taking the life of a human being should be back on the street by the time the murderer is 24 years old.

Before even addressing the logical flaws with this approach, one obvious point must be made. The JAAC's proposal is premature. The legislature just addressed this entire issue two years ago in response to Miller, resulting in the current statutory system. All of the interested parties fully debated this issue only a short time ago and reached a hard-fought compromise. Attempting to reopen this Pandora's box of an issue so soon is

inappropriate. There has been insufficient time to evaluate the new statutory system. The general public has no interest in seeing the legislature reduce the punishment for murderers again.⁹³

Therefore, the JAAC's recommendation should be set aside and revisited after an appropriate time. However, as discussed below, the JAAC's proposal would be objectionable at any time.

B. Reducing Juvenile Murder Mandatory Sentences is a Bad Idea.

Separate and apart from the prematurity of the JAAC's proposal, the concept of reducing mandatory sentences is unwise and poorly reasoned. The logical flaws with this proposal can be set forth in summary fashion, as most of these points are plain common sense.

1. Reducing Murder Mandatories Ignores the Value of the Victim's Life.

The JAAC's proposal to reduce murder mandatory sentences to 10 or 15 years both devalues the victim's life and disrespects the surviving family members. Does the value of the victim's life decrease because the murderer was 17 instead of 18? Does the victim's family feel any less devastation because the murderer was 16 years old? The JAAC needs to stop focusing solely on the defendant's "needs" and start focusing on the father or mother, son or daughter, brother or sister whose death was caused by the juvenile defendant. The JAAC proposal callously ignores the victims of juvenile murderers.

⁹³ The JAAC report states that multiple people contacted the JAAC to express support for these reductions. The people actually were almost all convicted criminals who were serving a life sentence. To say that these people do not constitute a fair sampling of public opinion may be the understatement of the century.

The lowest current mandatory minimum sentence for a juvenile murderer is 20 years incarceration. Even that figure is too low from the standpoint of the victims' families, but the Office of the Victim Advocate and the Pennsylvania District Attorneys Association agreed to the current sentencing structure and will honor that agreement. However, the immediate attempt by the JAAC to cut that figure in half is reprehensible.

The Office of the Victim Advocate surveyed registered victim representatives from juvenile murder cases. The victims strongly supported treating juvenile murderers as adults and retaining life without parole as an option. In fact, the majority of victim representatives disagreed with reducing the mandatory sentence to less than the former requirement of life imprisonment; a suggestion of a 10 year mandatory would have been met with extreme anger.

The JAAC, on the other hand, appears to have given equal or more weight to the opinion of juvenile murderers already serving life sentences. Not surprisingly, these convicted killers strongly believe that they should be serving less time in prison. See JAAC report, pp. 36-37 (citing as "public opinion" the views of convicted murderers).

The current statutory format for juvenile murderers is constitutional and adequate. The JAAC's proposal to reduce juvenile murder mandatories is a slap in the face of victims.

One of the victims responding to the OVA survey put it eloquently: "It is unfortunate the persons making/changing these laws probably never prosecuted a violent crime case, never had a family member be a victim of violent crime and therefore shouldn't be making these decisions. They just have no idea what we're going through. The pain does not go away."

2. Early Extreme Violence is a Strong Predictor of Extreme Future Violence.

Any experienced cop on the street can tell you a simple truth: criminals who are extremely violent as juveniles evolve into even more violent adults. Put into the language of social science, extreme early violence is a strong predictor of even more extreme future violence.⁹⁴ Of course, since the JAAC excluded any police officers from the Committee, this view may not have been understood by the JAAC.

One of the main reasons that we lock up murderers for a lengthy period of time is because they represent a compelling danger to society. Having demonstrated a willingness to kill before, they will kill other innocent victims. Under the JAAC's proposal for a 10 year minimum mandatory, imagine a 14 year old murderer getting out when he is 24. Does anybody doubt that this 24 year old convicted murderer, now at the height of his physical powers, is even more capable of killing another victim? Now imagine telling the first victim's family that the murderer has killed again. Then imagine telling the second victim's family that the murderer had killed before.

Early violence and aggression by juveniles is a strong predictor of violence in adulthood. A juvenile who has been convicted of murder, the ultimate act of violence, is an extreme risk for future violence. Thus, the mandatory sentence for such murderers should remain where they are.

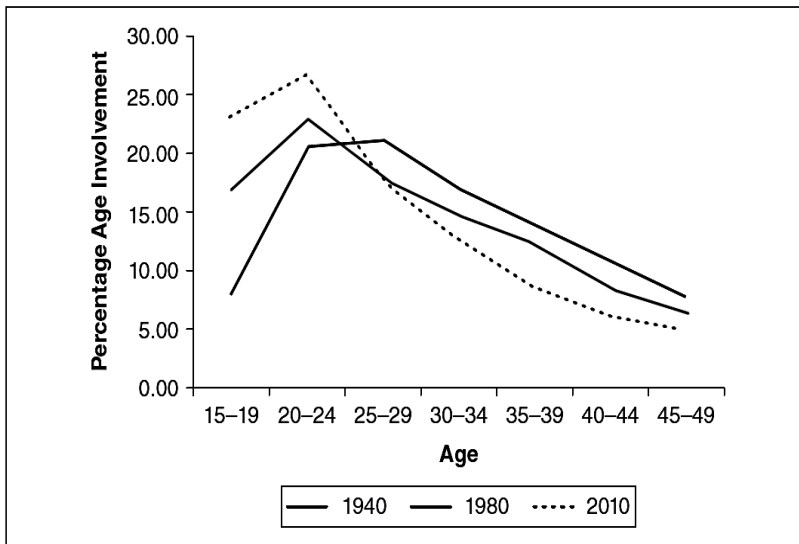
⁹⁴ See "Childhood Aggression and Adult Violence: Early Precursors and Later-Life Outcomes," (Farrington, Cambridge University) ("This research demonstrates that there is a significant continuity in aggression and violence from childhood to adulthood. ..."). The Farrington study is one of the best known of many studies in this area.

3. **The Current Mandatories Keep Murderers Incarcerated Through Their Most Dangerous and Violent Years.**

Another fact of life that any experienced police officer can describe is that criminal defendants are at their peak of violence in their late teens and early 20's, declining as the defendants hit their 40's and 50's. As a simple matter of aging, criminals in their 40's and 50's begin to lose the drive and strength to compete on the streets. Again, information that the JAAC may have missed by excluding police officers from their one-sided discussions.

Academic research corroborates this police-eye view of the relationship between age and crime. The following two charts show the relationship for murderers specifically and then for crime in general:

Age Distribution of Homicide Offenders⁹⁵



⁹⁵ See “The Age and Crime Relationship” (Ulmer and Steffensmeier). Significantly, these statistics show an increase in murder rates by juveniles in recent years.

Age Distribution for All Crimes⁹⁶



This age-related arc of violent crimes has important consequences for juvenile murderers. Under the current mandatory sentencing scheme, a 15 year old murderer would not be eligible for parole until he was 50 years old (first degree murder) or 45 years old (second degree murder). Thus, the current sentencing scheme keeps the murderer incarcerated through his most violent and dangerous years.

By comparison, under the JAAC's proposal, murderers would be paroled while they were still in their 20's or early 30's. The JAAC is proposing unleashing murderers at the height of their physical power back into society.

The end result of the JAAC's proposal is simple. The decline in murders that we have witnessed over the past decade will end. We will have an increase in the murder rate and an increase in the number of innocent victims killed. And, as an added unintended consequence, these second-time murderers all will be death penalty eligible in

⁹⁶ See "Criminal Career Research: Its Value for Criminology" (Blumenstein, Cohen, and Farrington).

Pennsylvania, leading to more howls of outrage from the same “experts” who allowed these killers out in the first place, resulting in more expense for taxpayers and more work for prosecutors.

The current statutory scheme keeps convicted murderers out of society during their most dangerous years. That factor militates strongly against reducing the juvenile murder mandatory minimums.

**4. Maintaining the Current Level of Mandatory Minimums is
Important to Deter Violent Crime.**

One of the reasons that mandatory minimum sentences for murder are stiff is to deter the crime of murder. Murder is the ultimate crime, the taking of another human’s life. Before a criminal engages in a premeditated murder or a bank robbery where death could result, our society wants that criminal to stop and think: “Maybe I should not do this, because I could be going to jail for the rest of my life.”

By reducing the mandatory minimum sentence for murder to 10 or 15 years, as proposed by the JAAC, this deterrent effect will be reduced substantially. The potential for spending 10 or 15 years in jail is insufficient to stop people from dealing drugs, so it will have virtually no impact on stopping juveniles from committing a murder.

Some representatives of the JAAC claim that deterrence has less of an impact on juveniles because juveniles are less likely to plan ahead and more likely to act impulsively. There are two easy responses to this argument. First, it underestimates juveniles. Juveniles have a fairly well-developed understanding of morality and punishment by their teen years. As both a federal and local prosecutor, I have heard many juvenile criminals very coherently state their understanding that being involved in a

murder will get you a life sentence. Second, what social scientists are describing (impulse control issues and less likely to plan) effectively describes most violent criminals, regardless of age. That same psychological profile is exactly the type of criminal who only responds to a strong deterrent like a stiff mandatory minimum (or will not respond to any deterrent, which is the most dangerous criminal of all).

The deterrence provided by strong mandatory minimum murder sentences may only stop a certain percentage of potential juvenile murderers from killing someone. But for the people who are not killed, that deterrent effect is worth it.

5. Strict Mandatory Minimums Are Necessary For Effective Homicide Investigations and Prosecutions.

Strict mandatory minimum sentences are necessary for prosecutors to gain cooperation in murder cases. Without that cooperation, many murder cases would go unsolved or be unprosecutable. The reduced mandatory sentences recommended by the JAAC thus would lead to more murderers going free.

To demonstrate this dynamic, we can use a common murder scenario (and one that is similar to a recent case in Chester County). A Salvadoran immigrant is on his way home from work carrying a backpack. Three 16 year old juveniles approach him to rob him. Juvenile A grabs the victim. Juvenile B pulls out a gun and shoots the victim, killing him. Juvenile C grabs the backpack and runs away. The three juveniles split up the contents of the backpack.

In this scenario, all three defendants face 30 years to life imprisonment for second degree murder under the current statutory sentencing format. Juvenile C, who grabbed and ran away with the backpack, is the least culpable. Facing a 30 year mandatory, he has a strong incentive to cooperate with prosecutors. He is by far the most likely to report the crime, allowing the other two, including the shooter, to be arrested. Juvenile C also has a strong incentive to testify about how the robbery/homicide happened, allowing a successful prosecution. In exchange, Juvenile C can get a reduced charge and sentence at the prosecutor's discretion. Customarily, in a case like this, that sentence would be 15-30 years or 20-40 years for third degree murder, a substantial reduction for cooperation but still reflecting the fact that this was a murder. These are the traditional tools and incentives that good prosecutors use to solve and prosecute homicides.

Now apply the same scenario under the JAAC's proposal. The juvenile murderers might face only 15 years incarceration. This substantially lessens the chance of Juvenile C cooperating, reducing the chance of anybody being arrested and vastly reducing the chance of a successful prosecution. Even if Juvenile C did cooperate, Juvenile C logically would be expecting a sentence of maybe 8-16 years. Such a sentence is not commensurate with being party to the murder of an innocent victim.

The mandatory sentences for murder reflect the real-life need of prosecutors to gain cooperation and use prosecutorial discretion appropriately. These balances have evolved carefully over many years. The JAAC's proposal to vastly cut murder mandatories would upset this careful balance, leading to fewer solved homicides and fewer successful homicide prosecutions. Sometimes, being smart on crime requires being tough on crime.

6. The Current Murder Mandatories Prevent Potential Racial and Geographic Disparities in Sentences.

The current mandatory minimum sentences for juvenile murderers assures relatively consistent sentences across the Commonwealth of Pennsylvania, regardless of race, geography, gender, or socioeconomic factors. A 15 year old convicted of second degree murder would be facing a sentence of 30 years to life. In different counties across the Commonwealth, one 15 year old murderer might be sentenced to 32-64 years, one might be sentenced to 40-80 years, and one might be sentenced to life. All are strong and serious sentences, reflecting the seriousness of the offense of murder.

The JAAC is proposing a reduction in mandatory minimum sentences down to 10 or 15 years for murder. This creates the potential for wild disparities and inconsistencies across the Commonwealth.

Consider a white, upper class, 14 year old defendant in Crawford County who is sentenced to 10-20 years for a murder. Then consider an African-American, poor, 14 year old defendant from Philadelphia who is sentenced to life for essentially the same conduct.

Now consider a white, upper class, female victim, resulting in a life sentence for a juvenile murderer. Compare a Latino, poor, male victim, resulting in a 12-24 year sentence for a juvenile murderer for essentially the same conduct.

These are the type of disparate outcomes that are invited by the JAAC's proposal to reduce murder sentences. These are the inconsistent outcomes that will result across Pennsylvania.

These disparate outcomes will have multiple results. Defendants will claim racial disparities in sentences, based on both the defendant's race and victim's race. Victims' families will be frustrated by the lack of certainty and consistency. Defense lawyers, although happy in general with lower sentences, will claim unfairness based on variations of race, gender, geography, socioeconomic factors, sexual orientation, and everything else a creative lawyer can dream up. The public will view these disparate outcomes and lose respect for the court system.

Mandatory minimum sentences are intended to reflect the seriousness of certain offenses as determined by the Pennsylvania legislature, who represent the citizens. Mandatory minimum sentences starkly admit that there are some bad judges who need to be restricted from dropping below certain sentencing levels. This is a decision for the legislature. The legislature set the current juvenile mandatory minimum sentences for murder just a couple of years ago. These mandatory sentences should not be changed.

The potential disparities in murder sentences unleashed by the JAAC's proposal would be unfair to defendants and victims alike, and would erode public confidence in the courts. Such disparities should not be allowed.

C. The Specific Sentencing Scheme Proposed by the JAAC

Is Impractical and Unworkable.

The proposed sentencing scheme and procedures proposed by the JAAC to get to these mandatory sentences of 10 or 15 years are clumsy, impractical, and unworkable in the real world.

As an initial matter, the JAAC is trying to characterize these new mandatories as "broadening" sentencing options. This label is political double-speak. The JAAC

proposal is to **reduce mandatory minimum sentences for murderers**, a fact that the JAAC does not want to advertise. The truth of the matter is that when polled during discussions, a substantial majority of the JAAC would like to completely abolish mandatory minimum sentences for juvenile murderers. This scheme is just one step along that slippery slope.

The sentencing scheme proposed by the JAAC would work as follows. For second degree murder, a juvenile who is under 14 years old would be subject to a mandatory minimum sentence of 10 years (up to life imprisonment). A juvenile murderer who is 15-17 years old would be subject to a mandatory minimum sentence of 15 years (up to life).

After the Commonwealth has proved beyond a reasonable doubt that the juvenile is guilty of second degree murder, the JAAC proposes what is essentially a second trial where the Commonwealth would be required to prove certain “special circumstances” beyond a reasonable doubt. These “special circumstances” include proving who planned the killing, who pulled the trigger, who possessed the gun, or that a particular defendant “had reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.” If the Commonwealth can prove these “special circumstances,” then enhanced mandatory minimums (the current minimum mandatories) would apply.

This JAAC proposal is ridiculously cumbersome. It would turn every second degree murder case involving a juvenile into the bifurcated procedural morass that is the procedure for a death penalty trial. Straightforward second degree murder cases would become prolonged, complex, expensive, and confusing. If the goal is simply to pervert

and undermine the ability to prosecute juveniles for murder, this scheme is a good way to achieve that goal.

This JAAC proposal also ignores the reality of second degree murder prosecutions. Consider a bank robbery committed by five defendants, ages 13, 14, 15, 16, and 17. During the course of the robbery, one defendant shoots and kills a bank teller. Surveillance video shows all five defendants entering the bank, all dressed in black clothes and black masks. One defendant pulls out a gun and shoots the teller. Two other defendants are in charge of crowd control, telling everybody to get down. The final two defendants are in charge of grabbing the money out of the drawers. The defendants are similar in height and weight. The police catch the five defendants at an apartment 30 minutes after the robbery/homicide, all still in possession of their clothes/masks in the midst of dividing the money. The murder weapon already has been disposed of.

Under the current sentencing scheme, this is a relatively straightforward second degree murder case. All five defendants are guilty of second degree murder, having participated in a robbery where a victim was killed. Juveniles 15, 16, and 17 face a sentence of 30 years to life. Juveniles 13 and 14 face a sentence of 20 years to life. Because they all participated, they are all responsible for second degree murder. This is the bedrock philosophy of the “felony murder” rule.

Under the JAAC’s proposal, this case becomes chaos and mayhem. The Commonwealth does not have the ability to prove who fired the fatal shot, who planned or directed the robbery, or who knew that somebody was bringing a gun to the robbery. If no defendant takes the stand to testify, the jury will have no idea who did what in the robbery/homicide. If every defendant takes the stand and claims that: (1) he did not have

the gun; (2) he does not know who fired the shot; and (3) he did not know that anybody was bringing a gun, the jury still cannot draw any conclusions under the JAAC's proposed "special circumstances."

Under this scenario, the following sentencing would play out. Juveniles 13 and 14 would face a mandatory sentence of 10 years. Juveniles 15, 16, and 17 would face a mandatory sentence of 15 years.

Unfortunately, this lack of clarity regarding all of the underlying facts often occurs in second degree murder cases. But under the JAAC's proposal, the Commonwealth will have the impossible burden of proving these facts. In addition, the JAAC's proposal creates an incentive for the juveniles to stonewall, knowing that if they all keep quiet, they all will be subject to the lowest mandatory minimum sentence.

Incidentally, in the above bank robbery, the 14 year old fired the killing shot. But his sentence was determined solely by his age. Juvenile 14 essentially got away with murder.⁹⁷

Thus, the JAAC's proposal is cumbersome and unworkable. In addition, it creates an impossible burden for the Commonwealth. Finally, it creates perverse incentives for juvenile defendants to hide the truth, knowing that complete silence will guarantee the lowest mandatory minimum sentence possible. In fact, the JAAC proposal will fuel a continuation of the "stop snitching" culture that permeates many of our urban

⁹⁷ Criminals are not stupid. They adapt quickly to criminal laws. For instance, the fact that drug mandatory minimums do not apply to juveniles had a clear impact on the drug trade: adult drug dealers used and still use juveniles to hold and deliver drugs, knowing that the juveniles face minimal punishment. Similarly, it is a short leap to envision adult criminals, particularly gangs, using juveniles to commit murders under the JAAC's reduced mandatory minimum proposal. The JAAC's proposal lacks understanding of the hard realities that apply to street crime and dangerous criminals.

areas, as juvenile defendants and their families seek to enforce a code of silence that is in their best interests under the JAAC's proposal.

III. CONCLUSION

The JAAC proposal to reduce mandatory minimum sentences for juvenile murderers is ill-conceived, ill-timed, and ill-considered. This proposal demeans the value of a victim's life. This proposal undermines the ability of prosecutors to investigate and prosecute homicides. This proposal would lead to disparate and inconsistent sentences across the Commonwealth, opening up the system to claims of discrimination and bias. This proposal creates an unworkable scheme that will detract from the search for truth and justice in homicide cases.

For all of these reasons, the JAAC proposal to reduce mandatory minimum sentences for juvenile murderers should be rejected.

IV. OTHER AREAS OF DISSENT

The JAAC also has proposed multiple other fundamental changes to how the justice system deals with juvenile murderers and other issues. A few of these include making the minimum age to direct file a murder charge as 15 years old, extending the age of juvenile supervision to age 25, and various other proposals.

These proposals are notable for their consistency. Each proposal consistently makes the juvenile justice system more lenient on criminal juveniles, more favorable to criminal defense lawyers, and harder on law enforcement. There is not a single proposal

that is law enforcement friendly or reflects that fact that we are addressing criminal activity.

As discussed at the beginning of this dissent, the reasoning behind this slanted agenda is the natural bias of the majority of the JAAC's members. For these reasons, the JAAC report and these other recommendations should be read skeptically. They do not serve to make Pennsylvania a safer place from criminals.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 304 Session of
2014

INTRODUCED BY GREENLEAF, STACK, COSTA, RAFFERTY, BAKER AND
YUDICHAK, MARCH 13, 2014

REFERRED TO JUDICIARY, MARCH 13, 2014

A RESOLUTION

1 Directing the Joint State Government Commission to establish an
2 advisory committee to conduct a study of the Juvenile Act and
3 related issues.

4 WHEREAS, The Juvenile Act, 42 Pa.C.S. Ch. 63, enacted in
5 1976, governs proceedings in which a child is alleged to be
6 delinquent or dependent and determines whether a child is
7 subject to a proceeding in juvenile court or criminal court; and

8 WHEREAS, The Juvenile Act has been amended dozens of times
9 over nearly four decades; and

10 WHEREAS, In 2005, the Pennsylvania Supreme Court adopted
11 Rules of Juvenile Court Procedure with terminology and
12 procedures inconsistent with the Juvenile Act, including the
13 suspension of a dozen provisions of the Juvenile Act; and

14 WHEREAS, The Juvenile Act should be thoroughly reviewed to
15 determine whether there are substantive and procedural issues
16 that need to be addressed and whether revisions are necessary in
17 the Juvenile Act to make it and the judicial rules consistent;
18 and

1 WHEREAS, Since the United States Supreme Court decision in
2 *Miller v. Alabama*, 132 S. Ct. 2455 (U.S. 2012), there has been
3 interest nationwide in the sentencing of juveniles convicted of
4 murder; and

5 WHEREAS, During 2012, the General Assembly responded to
6 *Miller v. Alabama* by enacting the provisions of 18 Pa.C.S. §
7 1102.1 into law, and the Pennsylvania Supreme Court decided
8 *Commonwealth v. Cunningham*, 81 A.3d 1 (Pa. 2013), on the
9 retroactivity of *Miller*, therefore be it

10 RESOLVED, That the Senate direct the Joint State Government
11 Commission to establish an advisory committee to conduct a study
12 of the Juvenile Act and related issues; and be it further

13 RESOLVED, That in addition to considering revisions to the
14 Juvenile Act, the study include a review of how Pennsylvania and
15 other states have responded to *Miller v. Alabama*, and whether
16 changes should be made to Pennsylvania law as a result; and be
17 it further

18 RESOLVED, That the advisory committee have approximately 30
19 members and be comprised of representatives from those groups
20 most likely to make useful and insightful contributions, such as
21 representatives of the judiciary, prosecution, defense, law
22 enforcement, victim assistance and private and public
23 organizations involved in juvenile justice issues; and be it
24 further

25 RESOLVED, That the advisory committee report its findings and
26 recommendations to the Senate no later than one year after
27 adoption of this resolution.