

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422,
423, 424, 454, 456, and 470**

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 403 (Contents of Citation), Rule 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas - Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation - Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas - Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Citation), 423 (Not Guilty Pleas - Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 456 (Default Procedures: Restitution, Fines, and Costs), 470 (Procedures Related to License Suspension after Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

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

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

*Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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e-mail: criminalrules@pacourts.us*

All communications in reference to the proposal should be received by **no later than Friday, February 23, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

January 9, 2018

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Brian W. Perry
Chair

RULE 403. CONTENTS OF CITATION.

(A) Every citation shall contain:

- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
- (2) the name and address of the defendant;
- (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);
- (4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) the date of issuance;
- (8) a notation if criminal laboratory services are requested in the case;
- (9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

- (1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and
- (2) that the defendant shall, within **[10] 30** days after issuance of the citation:
 - (a) plead not guilty by:

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

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law, or

(b) forwarding as collateral for appearance at trial the sum of \$50 if the fine and costs are not specific on the citation, or

(c) certifying in writing that they do not have the financial means to deposit the amount of collateral specified in the citation, or \$50 when no amount is specified; or

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

(b) plead guilty by:

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

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

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

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

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

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

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

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

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

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

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

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

sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

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

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

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

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

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

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

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

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

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation

information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

NOTE: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; *Comment* revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30

Pa.B. 1478 (March 18, 2000).

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

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

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

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

Report explaining the proposed amendments regarding responses in writing asserting an inability to pay published for comment at 48 Pa.B. (, 2018).

RULE 407. PLEAS IN RESPONSE TO CITATION.

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

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

To notify the issuing authority of the plea, the defendant should sign and return the citation. When a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See Rule 403(B)(5).

NOTE: Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411-414 and 421-424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001 **[.] ; amended _____, 2018, effective _____, 2018.**

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COMMITTEE EXPLANATORY REPORTS:

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

Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. (_____, 2018).

RULE 408. NOT GUILTY PLEAS - NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law [.] ;

(b) [If] **if** the fine and costs are not specified, **[the defendant shall forward] forwarding** the sum of \$50 as collateral for appearance at trial [.] ; **or**

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

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

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

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

When fixing the date and hour for trial, the issuing authority

should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

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

NOTE: Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. (_____, 2018).

RULE 409. GUILTY PLEAS.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation;
or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; **[or]**

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) **[.] ; or**

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

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

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

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

Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay **the full amount of the fine, [and] costs, and restitution. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

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

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff

should record receipt of the plea and monies in the same manner as those received by mail.

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

In determining whether a defendant is without the financial means immediately to pay the fine, costs, and restitution, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

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

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

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

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

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

NOTE: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present

Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; *Comment* revised March 9, 2016, effective July 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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

Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. (_____, 2018).

RULE 411. PROCEDURES FOLLOWING FILING OF CITATION -- ISSUANCE OF SUMMONS.

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

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

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

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

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

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

NOTE: Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and

amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 431. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and *Comment* revised March 1, 2000, effective April 1, 2001; amended _____, 2003, effective 2003 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. (_____, 2018).

RULE 412. PLEAS IN RESPONSE TO SUMMONS.

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

COMMENT: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

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

NOTE: Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989 ; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001[.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. (_____, 2018).

RULE 413. NOT GUILTY PLEAS -- NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law [.] ;

(b) [If] **if** the fine and costs are not specified, **[the defendant shall forward] forwarding** the sum of \$50 as collateral for appearance at trial [.] ; **or**

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

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

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

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

When fixing the date and hour for trial, the issuing authority

should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

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

NOTE: Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. (_____, 2018).

RULE 414. GUILTY PLEAS.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; **[or]**

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) **[.] ; or**

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

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

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

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

Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay **the full amount of the fine, [and] costs, and restitution. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

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

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff

should record receipt of the plea and monies in the same manner as those received by mail.

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

In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

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

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

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

For arrest warrant procedures, see Rules 430 and 431.

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

NOTE: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by

present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; *Comment* revised March 9, 2016, effective July 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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

Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. (_____, 2018).

RULE 422. PLEAS IN RESPONSE TO SUMMONS.

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

COMMENT: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

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

NOTE: Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; *Comment* revised April 24, 1981, effective July 1, 1981; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001[.]; **amended _____, 2018, effective _____, 2018.**

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COMMITTEE EXPLANATORY REPORTS:

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

Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. (_____, 2018).

RULE 423. NOT GUILTY PLEAS -- NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number,** and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law [.] ;

(b) [If] if the fine and costs are not specified, [the defendant shall forward] forwarding the sum of \$50 as collateral for appearance at trial [.] ; or

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

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

(1) fix a date and hour for trial;

(2) notify the defendant and the affiant of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

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

When fixing the date and hour for trial, the issuing authority

should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

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

NOTE: Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. (_____, 2018).

RULE 424. GUILTY PLEAS.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; **[or]**

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) **[.] ; or**

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[must] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

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

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

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

Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay **the full amount of the fine, [and] costs, and restitution. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

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

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff

should record receipt of the plea and monies in the same manner as those received by mail.

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

In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

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

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

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

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

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

NOTE: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; *Comment*

revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; *Comment* revised March 9, 2016, effective July 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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

Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. (_____, 2018).

RULE 454. TRIAL IN SUMMARY CASES.

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

(1) the defendant shall be advised of the charges in the citation or complaint;

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

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

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

(3) the defendant shall enter a plea.

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

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

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

(E) In determining the amount of the discretionary fine, if any, or discretionary costs, if any, that is to be imposed and the payment schedule, if any, the issuing authority shall consider the defendant's ability to pay. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.

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

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

- (1) if the defendant's sentence includes restitution, a fine, or costs, state:
 - (a) the amount of the fine and the obligation to pay costs;
 - (b) the amount of restitution ordered, including
 - (i) the identity of the payee(s),
 - (ii) to whom the restitution payment shall be made, and
 - (iii) whether any restitution has been paid and in what amount; and
 - (c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority **[may] shall** provide for installment payments and shall state the date on which each installment is due **and shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

- (2) advise the defendant of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:
 - (a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and
 - (b) the defendant must appear for the *de novo* trial or the appeal may be dismissed;
- (3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

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

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

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

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

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

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

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

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

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

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

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

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

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

In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

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

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

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

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

NOTE: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; *Comment* revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; *Comment* revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and *Comment* revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; *Comment* revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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

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

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

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

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

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

Report explaining the proposed amendments related to determining the defendant's ability to pay case assessments published for comment at 48 Pa.B. (, 2018).

RULE 456. DEFAULT PROCEDURES: RESTITUTION, FINES, AND COSTS.

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.

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

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

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

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

(1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

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

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

(ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, **state in writing the reason(s) why a sentence of imprisonment was deemed appropriate and the facts that support a determination that the defendant has the ability to pay as ordered, and** direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

(E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

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

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

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

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

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

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

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

In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

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

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded **[at trial] at the default hearing. See Rule 122(A)(1) ("Counsel shall be appointed...in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed....")**. See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rule[s] 121 **[and 122]** (dealing with **[appearance or]** waiver of counsel).

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

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

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

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

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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

Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6247 (October 6, 2012).

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

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

Report explaining the proposed amendment concerning factors to be considered when determining a defendant's ability to pay published for comment at 48 Pa.B. (_____ , 2018).

RULE 470. PROCEDURES RELATED TO LICENSE SUSPENSION AFTER FAILURE TO RESPOND TO CITATION OR SUMMONS OR FAILURE TO PAY FINE AND COSTS.

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

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

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

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

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

COMMENT: This rule was adopted in 1993, and amended in 2011, to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. See, e.g., paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). **This rule was amended in 2018 to clarify that, in cases involving default on the**

payment of fines and costs, or restitution, the 15-day notice of the license suspension may be sent at the time of default and not subsequent to the expiration of the 10-day bench warrant notice under Rules 430(B)(3)(b) and 456(B).

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

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

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

NOTE: Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011 **[.] ; amended _____, 2018, effective _____, 2018.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30

Pa.B. 1478 (March 18, 2000).

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

Report explaining the proposed amendments to paragraphs (A) regarding the timing of the notice of suspension for failure to pay fines and costs published for comment at 48 Pa.B. (, 2018).

REPORT

Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470

INCARCERATION OF THE INDIGENT FOR FAILURE TO PAY IN SUMMARY CASES

BACKGROUND

The Committee has been studying issues related to the incarceration of defendants for failure to pay case assessments in summary cases when there is a question regarding their ability to pay. The Committee's efforts were prompted by a March 14, 2016 letter from the Civil Rights Division of the U.S. Department of Justice to state courts nationwide. This letter raised constitutional concerns regarding the imposition and methods of enforcement of case assessments on the poor in non-felony matters. Shortly thereafter, the Committee received communications from representatives of the American Civil Liberties Union ("ACLU") who made a number of suggested rule changes related to these issues. The suggestions addressed two perceived problems: (1) the absence of an explicit mechanism for reducing or waiving fees and costs for those who cannot pay; and (2) the lack of guidance provided to MDJs as to how to evaluate a defendant's ability to pay.

The Committee concluded that legislative action was the more appropriate means of addressing the first problem; the Committee agreed that rule changes could be formulated to address the second problem. The Committee has developed a series of rule changes that fall into three main areas:

- (1) increasing the amount of time a defendant has to respond to a citation from the current 10 days to 30 days;
- (2) permitting a defendant who wishes to plead not guilty but who cannot afford to post collateral to assert the inability to pay when responding in writing to the citation;
- (3) provide guidance to the issuing authority regarding the factors to be considered when assessing a defendant's ability to pay at time of sentencing and default.

PROPOSED RULE CHANGES

With regard to increasing the response time to a citation to 30 days, the Committee concluded that this would allow for additional time for a defendant to obtain the necessary funds for payment of the assessments in the citation. This may result in fewer numbers of not guilty pleas. This increase to the time to respond to the citation to 30 days would be included in Rule 403. Similar changes also would be made to Rules 407, 411, 412 and 422.

The Committee had received the suggestion from the ACLU to remove the requirement to post collateral for not guilty pleas entered by mail. The Committee noted that there are a significant number of summary cases in which a not guilty plea had been entered by mail and the defendant failed to appear. Under current practice, these resulted in a guilty finding with forfeiture of the collateral to pay the assessed fines. Completely eliminating the collateral requirement likely would result in a large increase in the number of arrest warrants having to be issued in these cases with the associated costs to the defendant for these warrants. However, the Committee also considered it strange that collateral is required in all summary cases while bail is not required in the often more serious court cases that are initiated by summons.

As an intermediate step, the Committee agreed to an alternative that would still require the posting of collateral in most cases but would permit a defendant to assert in his or her response to the citation that they do not have the financial means to post the collateral. This is contained in new paragraph (A)(3) in Rule 408. Language regarding the requirement to appear personally when unable to deposit collateral would be removed from the *Comment* to Rule 408. Similar changes also would be repeated in Rules 413 and 423.

Associated with this proposal would be the requirement that defendants would have to provide a current mailing address and telephone number in their response to the citation. The Committee concluded that this requirement should also be included with any written response to a citation. It is therefore included in Rules 408, 409, 413, 414, 423, and 424.

The Committee also concluded there was merit in providing more guidance to the MDJs in assessing a defendant's ability to pay. The Committee developed language to provide that guidance derived from several sources including the IFP application contained in Pennsylvania Rule of Civil Procedure 240. This language would be included in the *Comments* to Rule 454 (Trial in Summary Cases) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). Among the elements included in consideration would be a defendant's financial assets and obligations, including recurring expenses and actual contribution to support of dependents. A statement also would be included indicating that the issuing authority may require the defendant to produce documentation regarding his or her ability to pay.

Additionally, language would be added to the text of Rule 454 that would require the judge to consider a defendant's ability to pay in determining the amount of fine and discretionary costs when sentencing the defendant. This would be added as a new paragraph (E) to Rule 454. Language also would be added to current Rule 454(F) that requires the defendant be advised of the opportunity to seek a modification of the payment plan in the event of default, referencing the procedures in Rule 456.

The Committee also is proposing to add language to Rule 454 to permit the MDJ to delay sentencing to have time for the defendant to present proof of financial ability in the same way that current paragraph (E) provides for a delay for determination of eligibility for intermediate punishment. This would consist of a second sentence to new paragraph (E).

The Committee rejected the inclusion of some specific standard for the inability to pay, such as an income at a certain percentage of the Federal Poverty Level, as was suggested by the ACLU. They believed that the circumstances of each case will differ and should be examined individually. However, the Committee thought it might be helpful if the MDJ had to explain his or her rationale for finding an ability to pay in writing when the defendant was to be incarcerated for failure to pay. This provision would be included in Rule 456(D)(3)(c).

Although implied, the Committee noted that the rules do not specifically state that a defendant who wishes to plead guilty but cannot afford to pay the full case assessments must appear before the MDJ for the establishment of a payment plan.

Rule 409 (Guilty Pleas) would be amended to specifically provide that a defendant who

desires to plead guilty but cannot afford to pay the entire fine and costs must appear for sentencing before the MDJ and the establishment of a payment plan as provided in Rule 409(C)(5). Additionally, since the MDJ may impose sentence when the defendant appears to enter the guilty plea because he or she can't afford to pay the fine in single payment, the same language regarding delay in sentencing and determining a defendant's ability to pay that is proposed for Rules 454 and 456 would be added to Rule 409 and its *Comment*. Similar amendments would also be made to the other summary case guilty plea rules, Rules 414 and 424.

Rule 470 License Suspension

During the discussion of changes to these summary case procedures, the Committee examined a subsidiary issue related to Rule 470, which provides the procedures for license suspension in failure to respond and failure to pay situations. Rule 470 was adopted, as Rule 91, in 1993 to provide procedures to implement Section 1533 of the Motor Vehicle Code, 75 Pa.C.S. §1533. Section 1533 originally provided that a defendant who fails to respond to a citation or summons shall have his or her driver's license suspended but subsequently was amended in 1994 to add the failure to pay case assessment to the categories of cases for which license suspension was authorized. The statute requires that notice of impending license suspension be served on the defendant at least 15 days before the suspension becomes effective.

Rule 470 originally provided that the license suspension notice could be sent out if the defendant failed to respond to a citation or summons within 10 days of issuance or receipt after which, as provided in Rule 430(B), a bench warrant may be issued. Rule 470 was amended in 2011 to add failure to pay as one of the grounds for which license suspension was authorized. Rule 456 provides that, once a defendant is in default, notice shall be sent that the defendant has 10 days to pay or appear before the issuing authority to explain the non-payment or else a bench warrant will be issued. The amendments added failure-to-pay to the existing procedures for failure-to-respond situation. As a result, under the current rule, when the defendant is in default, there is a 10-day notice that a bench warrant will be issued. At the expiration of that 10-day notice, the bench warrant would be issued and the 15-day notice of license suspension

would be sent, effectively providing 25 days after the default before the license suspension becomes effective.

Prior to the 2011 amendments, it was the practice in failure-to-pay cases to issue the 10-day notice of bench warrant and the notice of license suspension simultaneously. The suggestion was made to the Committee to change Rule 470 to permit the service of the suspension notice with the 10-day notice. Sending the defendant's notice of license suspension prior to issuing a bench warrant, in many cases, encourages a response or payment from the defendant before incurring additional monetary charges to the defendant that would arise with the issuance of a warrant. The Committee concluded that the original practice should be permitted. Therefore, paragraph (A) of Rule 470 would be amended to remove the linkage between the notice of license suspension and the bench warrant notice in default cases. *Comment* language would describe this further.