The New Rules
by Patrick Griffin

If you work in or around the juvenile justice system in Pennsylvania, you've probably heard some talk—or at least some vague rumbling—about "the New Rules."

It's true: statewide Rules of Juvenile Court Procedure for Delinquency Matters were officially adopted in April by the Supreme Court of Pennsylvania, and will go into effect in stages, starting this fall. They'll override all local court rules governing delinquency practice and procedure. And they'll make lots of changes—small, medium, and large—in the way delinquency cases are routinely processed from here on out.

The Rules have been duly published, of course, in the Pennsylvania Bulletin (35 Pa.B. 2214). But if you haven't seen them yet, this issue of Pennsylvania Progress will give you a sense of their broad purposes, the thinking that went into them, the innovations they introduce, and the impact they are likely to have on day-to-day practice.

The Rules have been a long time in the making. The Pennsylvania Supreme Court, pursuant to its rulemaking authority under Article V, Section 10 of the Pennsylvania Constitution, initiated the Juvenile Court Procedural Rules Project in 1998, at a time when it was already evident that uniform statewide rules were needed to bring everyday juvenile justice practice into line with a series of significant changes in the Juvenile Act. The landmark 1995 statute known as Act 33 had both redrawn the boundaries of the juvenile justice system and reformulated its basic purposes. Proceedings in juvenile cases were being opened up. A victims' rights movement was gaining strength and recognition. The juvenile justice landscape had changed fundamentally, and juvenile court practice had to start changing with it.

The Rules Project began with an extended period of research on national standards, statutory and case law, and local practice, which laid the groundwork for the establishment of a nine-member advisory Juvenile Court Procedural Rules Committee at the start of 2001. Under the chairmanship of F. Barry McCarthy of the University of Pittsburgh School of Law, who had led the Pennsylvania Supreme Court's Criminal Procedural Rules Committee during the 1990s, the Juvenile Court Procedural Rules Committee was entrusted with the task of "conducting a formal review of procedural practice in juvenile court and...developing a comprehensive set of statewide rules for the [Supreme] Court's consideration." The Committee's membership over the next few years included judges from Philadelphia, Allegheny, Lehigh, Cumberland and Butler Counties, prosecutors from...
Philadelphia and Montgomery Counties, and several attorneys and court administrators.

After getting a sense of the range of local practice variations by canvassing juvenile court judges, masters, administrators, probation officials, police, prosecutors, defenders, and others involved in juvenile justice across the Commonwealth, as well as examining a variety of models and source materials—including the Pennsylvania Rules of Criminal Procedure, the Juvenile Court Judges’ Commission Juvenile Court Standards, and precedents established by decades of Pennsylvania case law—the Committee drafted a set of proposed Rules and published them on March 29, 2003. Following a period of public comment, the Committee reconvened to reconsider its proposed Rules, then formally recommended them to the Supreme Court, which formally adopted them on April 1, 2005.

The final product of all this work, in the words of the Committee’s “Explanatory Report,” is “a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and disposition of juveniles.”

ONE BOMBSHELL

In some cases, the new Rules simply codify what is already the practice of most if not all courts throughout the Commonwealth. In others, they clarify points that had been doubtful. But in a few areas, the Rules make big substantive changes.

By far the biggest has to do with the role of juvenile court masters.

In recent years, a combination of tight budgets, busy judges and overbooked juvenile courtrooms in many Pennsylvania counties has led to increased reliance on masters—attorneys appointed to serve, in effect, as surrogates for judges—to help do the routine work of processing delinquency cases. In fact, the Juvenile Act places no real limits on the use of masters in place of judges, authorizing courts to “direct that hearings in any case or class of cases be conducted in the first instance” by attorneys appointed as masters (42 Pa.C.S.§6305). Technically, in counties that use masters, the right to a hearing before a real judge is still available—juveniles must be informed of the right at the outset of every master hearing, and either the prosecution or the defense can have the matter heard by a judge simply by asking—and a master’s findings and recommendations become final only when confirmed in writing by a judge. But in practice, the Rules Committee found, juvenile justice in some parts of the state has become a “master-run” system.

Is there anything wrong with that? There are certainly capable and experienced masters, just as there are capable and experienced judges. If the law allows them to do what judges do—at less expense, with more flexibility—why not employ masters? And more to the point, if your county is faced with high delinquency caseloads and limited judicial resources, what other choice is there?

The Rules Committee considered these objections, but essentially overruled them. After reviewing what it called “a significant number of comments from the bench, bar, and public” concerning proposed restrictions on the use of masters, the Committee concluded that, with limited exceptions, juvenile hearings should be presided over by judges. Real judges.

As the Committee’s Explanatory Report noted, “judges are elected by the public to hear cases and set forth ‘judgments.’ Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges’ primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the ‘judgments’ with the judges’ rubber-stamped order…The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.”

In the words of Rules Committee member John Delaney, Deputy District Attorney for the City of Philadelphia, “If you’re an adult offender, your case gets heard by an elected judge. Why are juvenile cases seen as somehow less important?” The Committee did recognize the useful role masters play, Delaney says, “but there were going to have to be some limits placed on it.” So for example, with the parties’ consent, masters will be allowed to preside over detention hearings, hearings in cases involving only misdemeanors, and uncontested disposition reviews, among other matters.
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**RULE 187. Authority of Master.**

A. *Cases to be heard by Master.* A master shall have the authority to preside over only the following:

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

B. *No authority.* A master shall not have the authority to:

1) conduct transfer hearings pursuant to Rule 394;
2) issue warrants; and
3) hear requests for writs of habeas corpus.

C. *Right to hearing before judge.* Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile’s guardian(s), if present, the juvenile’s attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the master, the case shall proceed before the judge.

(See sidebar, “Rule 187. Authority of Master.”) But except in these limited instances, as Delaney puts it bluntly, “the work is too important to leave to masters.”

“I personally think it’s a good rule,” says Jim Rieland, Director of Court Services for Allegheny County. “Major life decisions should be made by a judge.” But Rieland admits that Allegheny is not one of the counties that have come to rely heavily on masters to fill in for judges.

Elsewhere in the state, this one change is liable to be dramatic, says Jim Anderson, Executive Director of the Juvenile Court Judges’ Commission. Acknowledging this reality, the Supreme Court has pushed back the effective date of the new limits: while the rest of the new Rules go into effect October 1, 2005, those relating to masters will not be effective until April 1, 2006.

“There certainly will be a lot of scrambling by next April in some jurisdictions,” Anderson says.

The new Rules also make a couple of significant—and potentially costly—changes with regard to attorney involvement in juvenile proceedings. One places new restrictions on juvenile waivers of the assistance of counsel. And the other expands the practical scope and duration of that assistance.

While the Juvenile Act affords juveniles in delinquency proceedings the right to counsel, including court-appointed counsel if necessary (42 Pa.C.S.§6337), waiver of the right is fairly widespread. According to Juvenile Court Judges’ Commission data, counsel was waived in 2,298 cases formally disposed in 2003, or 7.9% of the total that year. Critics charge that juvenile waiver decisions are often ill-informed and irrational, and may be affected by such factors as “the desire to go home, faulty advice, confusion, ignorance, and the pressure of family or adverse parties….“ For that reason, it is sometimes argued that juvenile waivers of counsel should not be allowed at all.
New Rule 152 doesn’t go that far, but it does tighten up the requirements for waiver in three important ways. First, it mandates that the court conduct a question-and-answer session with the juvenile, on the record, in order to establish that the juvenile is “knowingly, intelligently, and voluntarily” waiving the assistance of an attorney. (In the Official Comment to the Rule, a recommended colloquy specifies eight questions that the court should explore; see sidebar, “A Recommended Waiver Colloquy.”) Second, even when waiver is permitted under Rule 152, it is good only for the current hearing—so that any juvenile wishing to waive counsel must do so (and go through the colloquy procedure) at every succeeding court appearance. And third, the new Rule prohibits the practice—permitted under the Juvenile Act—of allowing a juvenile’s guardian to waive counsel on the juvenile’s behalf.

According to Bob Schwartz of the Juvenile Law Center in Philadelphia, more could have been done to rule out ill-advised waivers on the part of Pennsylvania juveniles. Minnesota, for example, requires that before waiving counsel, a juvenile must consult privately with an attorney, who must thereafter stand up with the juvenile in court and “inform the court that such consultation has occurred.”

“We’d really hoped that there would be an unwaivable right to counsel,” Schwartz says. “These days in particular, there are just too many consequences.”

John Delaney disagrees. He points to situations in which a rule that absolutely prohibited waiver might be unfair, impractical, or onerous to the juvenile. “I think the Rule is a good example of a middle ground,” he says. “The right to counsel is waivable, but it’s pretty hard to do….My sense is we will not see many waivers.”

“There’s something for everybody in these rules,” Delaney adds. He admits there’s room for argument.

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A RECOMMENDED WAIVER COLLOQUY

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1) Whether the juvenile understands the right to be represented by counsel;

2) Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;

3) Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;

4) Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

5) Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;

6) Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;

7) Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and

8) Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

Source: Comment, Pa.R.J.C.P. 152.
about whether Rule 152 achieves the perfect balance. “But it’s far better than what we had.”

EXPANDING ATTORNEY INVOLVEMENT

The new restrictions on waiver may have an impact on the quantity of juveniles represented by attorneys in delinquency matters. But what about the quality and duration of that representation?

New Rule 150, governing attorney appearances and withdrawals, addresses the latter issue by requiring that attorneys for juveniles stick with their cases until they’re finally closed, or else formally seek court permission to withdraw. What they won’t be able to do is just fade away. According to John Delaney, the Rules Committee’s surveys of county practice, as well as similar surveys conducted previously by other bodies, made it clear that attorney involvement in juvenile cases too often ends at the initial disposition hearing. Juveniles ordered into residential programs, for example, often have no further contact with their attorneys, even when their cases come up again for the routine disposition review hearings required by Pennsylvania law. The Committee uncovered “multiple instances of kids without lawyers at review hearings,” Delaney says, as well as cases in which lawyers having no familiarity with the facts were “appointed for the day” for review hearing purposes.

“Kids’ rights are important throughout their stay in the juvenile justice system,” Delaney points out. “They don’t become less important in the post-disposition stage. Sometimes they become more important.” That’s why Rule 150 specifies that representation of juveniles in delinquency cases extends beyond disposition through case-closing, puts the onus on attorneys to withdraw by formal motion, and allows withdrawals only for cause. “The new Rule puts lawyers on notice,” Delaney says. “If you enter an appearance, you’re in until the court lets you out or the case is over.”

“Rule 150 to us is extremely important,” says the Juvenile Law Center’s Bob Schwartz. He sees it as a step towards a system in which “lawyers are involved in every aspect of a case. I don’t know if it’s in response to our study, but it’s consistent with our study.”

The study Schwartz is referring to—a statewide assessment of access to counsel and quality of representation in Pennsylvania delinquency cases undertaken jointly by the Juvenile Law Center and the American Bar Association Juvenile Justice Center, and funded in part by the PCCD—found that legal representation past the point of disposition is “virtually non-existent” in most places in Pennsylvania. Even when juveniles are represented in disposition review hearings, a survey of county public defender offices revealed that nine out of ten did not usually interview committed juveniles in advance of those hearings; more than seven out of ten did not usually look over treatment reports beforehand; and more than eight out of ten did not routinely conduct pre-hearing interviews with probation officers assigned to their clients in institutions. No public defender office reported routinely interviewing residential facility staff regarding client progress in treatment. And almost none reported ever writing, phoning, or physically visiting youth in placement facilities, period.

By itself, new Rule 150 doesn’t fix all that. Requiring that attorneys “be there until the case ends” is important, as Schwartz says. “But there are issues with respect to compensation of counsel,” he adds. “We can’t expect folks to do this for free.” And public defenders are obviously already stretched thin—a major finding of the ABA/JLC study was that their caseloads are excessive, their resources inadequate.

Still, if Rule 150 has the effect of getting attorneys more involved in the post-disposition phase, Schwartz believes, that’s all to the good. Particularly for a juvenile in placement, an active, informed advocate could contribute a great deal to the airing of the issues presented at a typical disposition review hearing. Is the juvenile currently healthy and safe? Are needed services being provided as ordered? Have disposition goals been met? Is out-of-home placement still necessary? If not, have adequate steps been taken to prepare for a return to the community? “It is realistic to expect defenders to play a useful role in [post-disposition] planning and follow-through,” Schwartz says. “If they’re doing their jobs.”

INCLUDING VICTIMS

Of all the changes in Pennsylvania juvenile justice that necessitated the issuance of the new Rules, among the biggest was the reorientation of the system in line with the goals and values of balanced and restorative justice, and particularly the
recognition of the importance of holding juveniles accountable to victims. Restitution, as a practical as well as symbolic expression of that accountability, has now acquired a central place in the juvenile justice process. So two of the new Rules are designed to strengthen and standardize the juvenile court’s approach to imposing restitution obligations on juvenile offenders and ensuring that they are met. A third will help ensure that victim interests are not ignored in informally adjusted cases.

Rule 515, which governs Disposition Orders, requires that a court order imposing restitution indicate “a specific amount of restitution to be paid by the juvenile,” rather than leave the amount to be determined by the probation department. According to the Committee’s Explanatory Report, its county surveys turned up dispositional orders that were not always clear and specific concerning restitution—as though it were a matter of secondary importance. Not only does this vagueness leave the way open to misunderstanding and dispute, it sends an equivocal message to the juvenile and the victim as well. “This Rule is a recognition that restitution is as important an element of a disposition as any other element,” says John Delaney.

What about cases in which victims’ losses can’t yet be fully determined at the time of disposition? This, Allegheny County’s Jim Rieland points out, is an example of the “practical side” of implementing the new Rules, with which counties will have to grapple in the coming months. In Allegheny County, Rieland says, when restitution cannot be specified exactly in the original disposition order, the juvenile probation department collects victim loss information when it becomes available, and submits a later motion to have restitution formally ordered in an exact amount. If one of the parties objects, a hearing is held on the motion.

New Rule 613 in turn prohibits the closing of a juvenile case before “restitution, fines, and costs have been paid in full.” As the Committee’s Explanatory Report points out, that’s been the law since 1995: “The current practice of terminating supervision of the juvenile when restitution, fines, and costs are still outstanding is inconsistent with this rule and the Juvenile Act, 42 Pa.C.S. § 6352. Courts may change how they supervise juveniles in these situations but the case must be administratively kept open.”

“The Rule is designed to effectuate the Juvenile Act,” John Delaney says simply. “The Supreme Court is making it clear….A victim’s loss doesn’t go away just because the kid doesn’t pay.”

In addition, under new Rule 311, before any intake conference is held at the start of a juvenile case, the juvenile probation officer must “afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.” The Rule also for the first time requires that the District Attorney be given notice of the outcome of any intake conference, and the opportunity to seek review of the outcome in court. Taken together, these provisions give further substance to the Victims’ Bill of Rights, which mandates that victim interests be taken into account in the informal adjustment process.

THE CRIMINAL MODEL

According to the Juvenile Court Judges’ Commission’s Jim Anderson, it’s too early to say what impact some of these changes will have on practice. For instance, he wonders about some new Rules that expand the powers of District Attorneys in juvenile matters, at the expense of juvenile probation departments. Not just Rule 311, enabling the DA to intervene to set aside informal adjustments, but also the new Rules governing the initial handling and screening of allegations against juveniles. Rules 231 through 233 establish a uniform procedure and terminology for commencing juvenile cases, under which the original document alleging delinquency—generally submitted by law enforcement, but occasionally by a private citizen—is dubbed the “Written Allegation.” (All cases from now on will be commenced with Written Allegations, whether or not they afterwards proceed to petitioning.) The job of receiving, reviewing, and approving or rejecting Written Allegations for further action generally belongs to juvenile probation, but new Rule 231 authorizes any District Attorney’s office to take over that function, in whole or in part, simply by filing a certification to that effect with the court.

“That was really an important step that they took,” Anderson says. DA screening of initial allegations already occurs in some counties—including Philadelphia—but Anderson believes it’s possible that the practice could delay early case processing in jurisdictions where DAs have not been involved in screening before.

“There were some concerns that the Rules Committee began with a criminal procedural rules
model,” Anderson adds. He worries that the result could be a less flexible, more adversarial approach to juvenile justice.

“It’s an important point. We don’t know how it’s going to play out. Maybe practice won’t change much in most jurisdictions, but we don’t know that.”

OTHER CHANGES

The new Rules make lots of other, smaller changes and clarifications in juvenile court procedures, too many to describe in detail here. For instance, while the Juvenile Act has never required all hearings in juvenile delinquency cases to be recorded or transcribed, as long as minutes of the proceedings were kept, new Rule 127 provides that all hearings except detention hearings must at a minimum be recorded. The purpose of the new requirement, according to the Comment to the Rule, is “to permit meaningful consideration of claims of error and effective appellate review.”

Rule 210 sets up a uniform arrest warrant procedure for juveniles. “Some counties never did that,” John Delaney says of the practice of seeking warrants for juvenile arrests. “It’s better that the Rules provide for that. Instead of having a police officer make the decision, he can go to a judicial official, who can take a look at it and determine probable cause. A rule like that helps to formalize the process. You don’t have probation officers, police, and lawyers trying to invent procedures.”

The new Rules don’t cover everything. In fact, in some cases the Rules Committee decided against imposing a uniform rule for the whole state. For example, the Committee expressly declined to set a “speedy trial” time limit for adjudication of a non-detained juvenile. (Rule 404 requires that a hearing in such a case “be held within a reasonable time.”) In other instances, faced with “procedural areas the Committee believes may necessitate statewide procedural rules,” the Committee nevertheless decided against acting now. In the words of the Explanatory Report: “We have reserved consideration of these areas for later discussion, and possible adoption and promulgation by the Supreme Court. Rules that may be developed at a later date include, for example, Rule 129 (Open Proceedings), Rule 384 (DNA Testing), Rule 520 (Transfer of Disposition and Supervision of Juvenile to Another State), Rule 521 (Disposition and Supervision of a Juvenile Received from Another State), Rule 616 (Post-Disposition Procedures; Appeals), and Rule 617 (Release of Juvenile Pending Appeal).”

GROWING PAINS

“The initial discussion was about fear,” Jim Rieland says of the period immediately after the issuance of the new Rules. Now that there’s been an opportunity to digest them, though, the fear has subsided. Rieland’s juvenile probation department has established a committee, along with the public defender’s office and other pertinent Allegheny County agencies, to review the new Rules one by one in advance of their effective date, and determine what forms, procedures, and institutional routines will have to be changed. Now Rieland looks forward to October 1, and the prospect of “structure and consistency for the juvenile courts in the state.”

“We think that they’re 35 years overdue,” says the Juvenile Law Center’s Bob Schwartz. Despite the formal establishment of a “unified justice system” all those years ago, Schwartz says, “Pennsylvania practice has been fairly ad hoc. This is a legal system. It should be a lot less random and a lot more uniform.”

John Delaney agrees on the goal. “The overall intent of the Rules was to make the juvenile justice system in Pennsylvania fair, impartial, efficient and uniform,” he says.

Not that we’ll get there in a day. “I think there are going to be growing pains,” Delaney says. “But after a while, I think people are going to look back and say, ‘How did we ever operate without these?’”

ENDNOTES

3 Minn.R.Juv.P. 3.04.
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