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for Common Pleas
& Magisterial District Judge Courts
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RULES OF CRIMINAL PROCEDURE

RULE 102 CITATION OF RULES.

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure. They may be cited as "Sch.R.Crim.P. No. ____".

RULE 106 CONTINUANCES.

All motions for continuance of trial shall be in writing, upon forms approved by the Court, and served on the opposing party. A motion by the Defendant must be signed by the Defendant and his or her attorney, if any. All such motions shall be heard by the Court each Criminal Term on the date and at the time established by the published Court Calendar.

The Commonwealth must be represented at the hearing for all continuance motions. The presence in Continuance Court of the Defendant and his or her counsel is only required in response to a Commonwealth motion for continuance when the Defendant opposes the motion; however, lack of opposition from the Defendant will not automatically result in the Commonwealth's motion being granted. Their presence may also be excused in Continuance Court for an unopposed first continuance motion by the Defendant. A Defendant's first continuance motion will be deemed unopposed if filed with the Clerk of Courts and contemporaneously served on the Commonwealth before the close of business on the Monday preceding Continuance Court as set forth in the Court Calendar, and if the District Attorney

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has not notified the Defendant and Court Administrator of the Commonwealth's opposition within 48 hours after receipt of the Defendant's motion. For all later filed, opposed and subsequent continuance motions by the Defendant, defense counsel and the Defendant must be present at the hearing on the motion.

In no event shall a continuance motion be filed and served on the opposing party less than 24 hours prior to Continuance Court.

RULE 120 DUTIES OF COUNSEL.

Every counsel of record in a criminal case shall be timely present for each hearing, conference or other court proceeding involving his or her client as scheduled pursuant to the provisions of these rules, or as the Court may otherwise direct. It shall further be the duty of counsel to promptly notify the client of the date, time, place and duty to be present at each proceeding involving the client's case until such time as the case has been completed. Counsel who fail to comply with this rule may be subject to sanctions, including a finding of contempt.

Unless otherwise relieved by Order of Court, counsel of record in a criminal proceeding shall be responsible for representing the defendant to the conclusion of the case including post-sentence motions and the filing of a direct appeal if requested to do so by the defendant. A motion to withdraw representation may be filed simultaneously with the filing of a direct appeal, but the filing of such motion does not relieve counsel from continuing to diligently represent the defendant's interests until relieved of representation by Order of Court.

RULE 310 MOTION FOR A.R.D. DISPOSITION.

(a) In all cases in which a defendant charged with violation of 75 Pa.C.S.A. §3731 (Driving Under the Influence) seeks a special handling by way of A.R.D., the District Attorney shall arrange with (1) the Drug and Alcohol Clinic at the Good Samaritan Hospital for examination and evaluation, and (2) the Adult Probation Department for an investigation of prior criminal history.

Reports prepared by the Drug and Alcohol Clinic and the Adult Probation Department shall be delivered to the District Attorney and shall be subject to inspection by the District Attorney and defense counsel. Such reports shall become part of the defendant's probation department file. All such reports shall be submitted along with the necessary A.R.D. forms to the Criminal Court Administrator.

(b) The A.R.D. motions for defendants who have been recommended by the District Attorney for the Fast Track A.R.D. Program shall be heard on the dates published for Fast Track A.R.D. in the Court Calendar.

Adopted 7/29/16; effective 9/13/16

RULE 319 PROCEDURE FOR OBTAINING DISMISSAL AND EXPUNGEMENT ORDER UPON SUCCESSFUL COMPLETION OF A.R.D. PROGRAM.

(a) Whenever a defendant is placed under the Accelerated Rehabilitation Disposition Program and shall have satisfactorily completed the program and complied with its conditions, the

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Adult Probation Office shall notify the defendant in writing of his/her eligibility to petition the court for dismissal of the charges and expungement of the arrest record.

(b) A motion for dismissal of the charges and expungement of the arrest record shall be filed on a form approved by the court and available at the office of the Adult Probation Department. Every motion so filed shall include a certification from the Adult Probation Department that the defendant has satisfactorily completed the program and complied with all its conditions and shall further include a proposed order in compliance with Pa.R.Crim.P. Rule 722.

(c) The defendant shall file the motion in the office of the Clerk of Courts and shall contemporaneously serve a copy on the District Attorney. The Clerk of Courts shall forward the motion to the Court Administrator for assignment to a judge. If the District Attorney objects to dismissal of the charges or to automatic expungement of the arrest record, the objections shall be filed within thirty (30) days after service of the motion for dismissal and expungement. A copy of the objections shall be served on the defendant or the defendant's attorney. If objections are filed, the court shall conduct a hearing affording all parties an opportunity to be heard. If no objections are filed, the Court may order dismissal of the charges and expungement of the arrest record without hearing.

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**RULE 507 APPROVAL OF POLICE COMPLAINTS AND
ARREST WARRANT AFFIDAVITS BY
ATTORNEY FOR THE COMMONWEALTH**

The District Attorney of Schuylkill County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging:

- A. Murder (all types) -18 Pa.C.S.A. §2502,
- B. Voluntary Manslaughter -18 Pa.C.S.A. §2503,
- C. Involuntary Manslaughter 18 Pa.C.S.A. §2504,
- D. Causing or Aiding Suicide 18 Pa.C.S.A. §2505,
- E. Drug Delivery Resulting in Death 18 Pa.C.S.A. §2506,
- F. Murder of an Unborn Child (all types) 18 Pa.C.S.A. §2604,
- G. Voluntary Manslaughter of Unborn Child -18 Pa.C.S.A. §2605,
- H. Kidnapping -18 Pa.C.S.A. §2901
- I. Arson -18 Pa.C.S.A. §3301
- J. Homicide by Vehicle 75 Pa.C.S.A. §3732,
- K. Homicide by Vehicle while DUI 75 Pa.C.S.A. §3735,
- L. Homicide by Watercraft while Operating Under Influence -30 Pa.C.S.A. §5502.1
- M. Homicide by Watercraft -30 Pa.C.S.A. §5502.2; or
- N. Any inchoate form of the foregoing -Criminal Attempt 18 Pa.C.S.A. §901, Criminal Solicitation -18 Pa.C.S.A. §902, Criminal Conspiracy -18 Pa.C.S.A. §903
- O. Rape-18 Pa.C.S.A. §3121,
- P. Statutory Sexual Assault -18 Pa.C.S.A. §3122.1,
- Q. Involuntary Deviate Sexual Intercourse 18 Pa.C.S.A. §3123,
- R. Sexual Assault -18 Pa.C.S.A. §3124.1,

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- S. Institutional Sexual Assault -18 Pa.C.S.A. §3124.2,
- T. Aggravated Indecent Assault 18 Pa.C.S.A. §3125

shall not hereafter be accepted by any judicial officer unless the complaint and affidavit have the approval of an Attorney for the Commonwealth prior to filing.

RULE 528 TYPES OF BAIL: PERCENTAGE CASH BAIL.

(a) In the event the Magisterial District Judge accepts a sum of U.S. Currency equal to ten percent (10%) of the full amount of the monetary condition, the sum of money furnished shall be receipted for, deposited, accounted for, forfeited or returned in accordance with Pa.R.Crim.P. No. 535.

(b) After the final disposition of the case, and provided there has been no forfeiture, the money constituting percentage cash bail shall be returned to the defendant, less a retention fee for administering the percentage cash bail program of ten percent (10%) of the money entered as bail, and in no event shall the retention fee be less than Ten Dollars (\$10.00). The retention fee withheld shall be for the use of the County and shall be received and accounted for by the Clerk of Courts.

(c) When a defendant or a third party surety has deposited a sum of money under the percentage cash bail program, then upon full and final disposition of the case, the deposit less the retention fee for administrative costs, shall be returned to the person who originally posted the deposit. Notice of the full and final disposition shall be sent by the Clerk of Courts to the

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person who originally posted money at his address of record. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Schuylkill.

RULE 530 DESIGNATION, DUTIES AND POWERS OF COUNTY BAIL AGENCY

- (a) The Schuylkill County Bail Release Program, which shall be administered by the Schuylkill County Adult Probation Department, is hereby designated as the county bail agency pursuant to Pa.R.Crim.P. 530.
- (b) The county bail agency shall have all the duties and powers specified in Pa.R.Crim.P. 530, which shall include, but not be limited to:
- (1) the authority to make recommendations to the bail authorities concerning the conditions of release on bail;
 - (2) the authority to supervise defendants released on bail pursuant to conditions approved by the bail authorities;
 - (3) the power to subject defendants released on bail under its supervision to reasonable rules and regulations to implement the bail agency's functions; and
 - (4) upon issuance of a bail piece, to apprehend and detain a defendant for the purpose of bringing the defendant before the bail authority pursuant to Pa.R.Crim.P. 536(B).

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(i) A defendant taken into custody pursuant to a bail piece issued by a judge of the Court shall be processed in accordance with the procedure set forth in Pa.R.Crim.P. 150.

(c) The county bail agency shall, in all cases, be qualified and empowered to act as the supervisory agency over all defendants committed to supervised bail if so designated by the Court or other bail authority; but the county bail agency shall incur no financial liability by acting as the supervisory agency.

(d) Designation by the bail authority of the county bail agency as the supervisory agency in a bail case shall subject the defendant to the supervisory rules and regulations of the county bail agency.

(e) The county bail agency is hereby authorized to charge the defendant such fees for the performance of its supervisory duties as may be authorized from time to time by administrative order of the Court. The fees so charged to the defendant shall be payable to the County of Schuylkill.

(f) Nothing in this rule shall prohibit the posting of any other type of bail permitted by Pa.R.Crim.P. 527 or 528 by a private or licensed surety.

(g) Any designation of the Schuylkill County Bail Release Program as the supervisory agency shall be listed on the bail bond as a condition of bond pursuant to Pa.R.Crim.P. 526.

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RULE 542 PRELIMINARY HEARING: TRANSCRIPTS.

(a) Whenever a court stenographer prepares a transcript of the testimony of witnesses at a preliminary hearing, said stenographer shall furnish a copy of the transcript to the District Attorney.

RULE 545 COMPULSORY PROCESS OF INCARCERATED WITNESSES.

(a) Whenever the Commonwealth or the defendant require the attendance at a court proceeding of a witness who is known to be incarcerated, the party seeking to compel the witness' appearance shall petition the court for an order directing the transport of that witness from his or her place of incarceration for the purpose of testifying at the court proceeding. The petition for transport shall be submitted to the court not later than three weeks prior to the date of the proceeding for which the witness' appearance is required. If the court provides the parties with less than three weeks notice of the proceeding, the petition for transport shall be submitted to the court immediately upon receiving notice of the date and time when the proceeding will be conducted. Failure to file a timely petition may result in the unavailability of the witness.

RULE 560 INFORMATION: FILING, CONTENTS, FUNCTIONS.

(e) Promptly after receipt of transcripts in court cases, the Clerk of Courts shall forward copies of the same to the District

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Attorney. The District Attorney shall make such investigation as he deems appropriate and shall then prepare the informations

for filing against the defendants. The District Attorney shall file with the Clerk of Courts on the second and last Mondays of each month the informations he has prepared by said dates.

(f) Murder Cases. – Whenever the District Attorney files a criminal information against a defendant alleging the commission of murder as defined in 18 Pa.C.S.A. §2502, the District Attorney shall contemporaneously forward a copy of the information to the Criminal Court Administrator. Upon receipt of the information, the Court Administrator shall assign the case to a member of the Court and shall notify the Clerk of Courts and counsel for the parties as to which judge the case has been assigned. Thereafter, all pre-trial and trial matters occurring in the case shall be referred to the assigned judge for disposition. That judge shall also set the date for trial independent of the Court Calendar. Either party may at any time request that a trial date be set.

RULE 570.1 CERTIFICATION OF TRIAL LIST/ PRE-TRIAL CONFERENCE.

On or before the date established by the Court Calendar, the District Attorney shall submit the Trial List consisting of those cases to be attached for trial during the next Criminal Term. The Court will promptly enter an order for each case on the list, attaching the parties and counsel for trial and giving notice of the important dates for the Criminal Term for which the case is attached. A Defendant may, by motion filed with the Clerk of Courts, at any time request that a case be added to the next

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available Trial List. (*Note:* Cases in which the Commonwealth has charged murder as defined in 18 Pa.C.S.A. §2502 shall not be included on the Trial List, but shall, instead, proceed pursuant to Sch.R.Crim.P. 560(f).)

Motions for continuances shall be heard and pretrial conferences shall be conducted on the dates and times established by the Court Calendar. The pretrial conference with a member of the Court shall be conducted for all cases that were attached for trial and not removed by the granting of a continuance, the filing of a timely guilty plea petition or motion for an A.R.D., or by entry of an order of Court removing the case. For those cases remaining on the Trial List, the conference shall be attended by the attorneys who will try the case and by the defendants.

It shall be the duty of each party, **prior to the pretrial conference**, to verify the availability of all necessary witnesses for trial and to notify the Court at the conference of all scheduling problems, contemplated motions and other matters that may affect the scheduling of the trial. The Court may decline to consider scheduling problems and requests which are not brought to the Court's attention at the pretrial conference.

RULE 571 ARRAIGNMENT.

The Court will notify the District Attorney of the dates and times when it will be available for the arraignment of defendants. The District Attorney shall provide the Court and the Public Defender with the defendants' names and docket numbers for the cases to be called for arraignment on a specific date. At the same time, the District Attorney shall serve a copy of the Information on the defendant in

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accordance with Pa.R.Crim.P. 576(B). The District Attorney shall file the Information within ten (10) days preceding the date of arraignment. The Court will issue to each defendant a Notice of the date and time of arraignment.

If a defendant who is represented by counsel desires to waive appearance at arraignment, the defendant and the defendant's attorney shall execute and file a waiver of arraignment. The waiver of arraignment can be completed at the preliminary hearing by the defendant and the defendant's attorney executing the form provided for that purpose by the Magisterial District Judge, and said form shall be returned to Court with the transcript of the case. The date of arraignment will begin the running of the time for the exercise of the defendant's pre-trial rights. Presentation by counsel of a waiver of arraignment to the Magisterial District Judge shall constitute an entry of appearance pursuant to Pa.R.Crim.P. 120(A)(3).

If the defendant does not waive arraignment, the defendant and the defendant's attorney must attend the arraignment at the date and time set forth in the Notice from the Court.

The Public Defender shall assign an Assistant Public Defender to represent those defendants who are not represented by counsel. Such representation shall be solely for the purpose of arraignment and shall not constitute an entry of appearance.

If a defendant fails to appear for arraignment and has not waived arraignment, the Court may issue a bench warrant for the defendant.

RULE 573 PRE-TRIAL DISCOVERY AND INSPECTION.

Defense counsel desiring pre-trial discovery and inspection under Pa.R.Crim.P. No. 573 shall make an appointment and hold an informal conference with the District Attorney's Office within fourteen (14) days after arraignment for that purpose. The District Attorney's Office shall make available all information not in dispute to the defendant. Should the defendant request copies of any items of information, same shall be at the expense of the defendant. At that conference, in addition to discussing discovery sought, the parties may discuss possible plea negotiations.

RULE 578 CONTENTS OF OMNIBUS PRE-TRIAL MOTIONS.

(a) All omnibus pre-trial motions shall state specifically and with particularity the following:

- (1) type of relief requested;
- (2) grounds for relief requested;
- (3) facts and events in support thereof; and
- (4) citations or law in support thereof.

All motions for pre-trial disclosure or discovery shall set forth the fact that an informal conference to discuss the requested material has taken place and proved unsuccessful.

RULE 579 TIME FOR OMNIBUS PRE-TRIAL MOTIONS.

All omnibus pre-trial motions shall be filed within thirty (30) days after arraignment in accordance with Pa.R.Crim.P. No. 579. The defendant shall file the original with the Clerk of Courts and contemporaneously serve a copy on the District Attorney. The Clerk of Courts shall forward all motions to the Court Administrator for assignment to a judge.

RULE 590.1 PLEAS AND PLEA AGREEMENTS.

(a) The District Attorney shall prepare the sentencing guideline forms provided by the Court as soon as practicable after the informations are lodged, setting forth the sentences required by the guidelines if a plea of guilty is entered by the defendant, and shall forward this material to defense counsel. Counsel for defendants who wish to engage in plea negotiations shall promptly thereafter schedule a meeting with the District Attorney.

(b) In those cases where no plea agreement has been made, a plea negotiation conference shall be held. At said conference, the District Attorney assigned to the case and prosecuting officer or an officer from his department with authority to resolve the case shall meet with the defendant and defense counsel with the end in view to determine whether they can arrive at a plea agreement. The victim shall be notified and given an opportunity to attend and participate in the negotiations.

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(c) If the parties arrive at a plea agreement, the defense counsel or defendant shall complete the form for entry of a written guilty plea available at the office of the District Attorney and promptly return it to that office. The District Attorney shall promptly attach to the written guilty plea a copy of the information against the defendant, a report of the defendant's prior criminal record, and a list of maximum penalties and sentence guidelines for each charge. The District Attorney shall file the written guilty plea with attachments in the office of the Clerk of Courts, who shall promptly forward the guilty plea and attachments to the Criminal Court Administrator. When the charge is D.U.I., a copy of the CRN shall also be provided to the Court.

Each written guilty plea shall be accompanied by a "Guilty Plea Certification" completed and signed by the District Attorney and defense counsel, certifying to the Court that the defendant's guilty plea has not previously been presented to the Court, or specifying the date when the plea was presented and identifying the judge who rejected the plea. Counsel who fail to comply with this rule may be held in contempt of Court.

The Criminal Court Administrator shall assign all guilty pleas and motions for A.R.D. among the judges who will hear those cases. Except for a plea of guilty entered after commencement of trial, the Court shall accept no guilty plea or A.R.D. motion unless scheduled and assigned by the Criminal Court Administrator.

(d) All guilty pleas and motions for A.R.D. received by the Criminal Court Administrator shall be heard on one of the dates scheduled for guilty pleas in the published Court Calendar unless otherwise scheduled by the Court.

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(1) The pleas of incarcerated defendants and those defendants represented by the Public Defender or who have no counsel shall be heard at 9:30 a.m. on a published plea date.

(2) The pleas of all defendants who are not incarcerated and have retained private counsel shall be heard on the published guilty plea date at 1:30 p.m.

Adopted 7/29/16; effective 9/13/16

RULE 606 JUDGMENT OF ACQUITTAL MOTION.

(a) Any motion for judgment of acquittal shall follow the procedure set forth at Sch.R.Crim.P. 704.

RULE 704 PROCEDURE AT SENTENCING.

(a) Motions for extraordinary relief.--Any defendant seeking to present an oral motion for extraordinary relief pursuant to

Pa.R.Crim.P. 704(B) shall file of record and serve upon the Commonwealth a written request briefly setting forth the rationale for the relief including an explanation as to why immediate relief is essential. Only upon a prima facie showing that alleged errors are so manifest that immediate relief is essential will leave be granted to present the oral motion for judgment of acquittal/arrest of judgment/new trial. The application to the Court shall be captioned "Application for Leave to Argue Oral Motion for Extraordinary Relief" and shall ask for leave to present and argue the merits set forth in the application.

RULE 706 FINES OR COSTS OR RESTITUTION.

(a) If at the time of sentencing the Court determines the defendant is without the financial means to pay the fines or costs or restitution immediately or in a single remittance, the Court may provide for payment of said monies in such installments and over such period of time as is deemed just and practicable by the Adult Probation Office and/or Schuylkill Collection Bureau, taking into account the financial resources of the defendant and nature of the burden its payments will impose.

(b) In any case in which the court has ordered payment of a fine or cost or restitution in installments, the defendant may request a re-hearing on his payment schedule as established by the Adult Probation Office and/or Schuylkill Collection Bureau, or when he is in default of a payment, or when such default is imminent.

RULE 707 APPLICATIONS FOR PAROLE.

(a) Upon serving the minimum sentence as ordered by the Court, a defendant may be considered for parole.

(b) The Warden, District Attorney and Adult Probation Department shall indicate on the application any objection to the defendant's parole.

(c) The Court may in its discretion, or in the event any of the above said parties object to the application schedule a hearing on the application for parole.

RULE 708 POST-SENTENCE MOTIONS.

(a) Post-sentence motions shall be filed and served promptly on the Trial Judge and opposing counsel. The Trial Judge may schedule a conference to review the record and fix a briefing schedule.

(b) All motions requesting the appointment of a panel sitting as a court en banc shall be presented to the President Judge.

(1) Transcript of Court Trial. When directed by the Court, the transcript of the testimony of the trial of a criminal case shall be filed with the Clerk of Courts. The clerk shall make said transcript available to defense counsel and to the District Attorney, respectively, for a two (2) week period of time for preparation of briefs.

RULE 722 PETITIONS FOR EXPUNGEMENT

(a) Every motion for expungement shall have attached a proposed order of expungement in compliance with Pa.R.Crim.P. 722.

(b) A defendant shall file the original motion for expungement with the Clerk of Courts and contemporaneously serve a copy on the District Attorney. The Clerk of Courts shall forward the motion to the Court Administrator for assignment to a judge. If the District Attorney objects to expungement, the objections shall be filed within thirty (30) days after service of the motion. A copy of the objections shall be served on the defendant or the defendant's attorney. If objections are filed, the court shall conduct a hearing affording all parties an opportunity to be heard. If no objections are filed, the court may order expungement of the arrest record without hearing.