

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the modifications to Rules 120 and 140 with this Recommendation. These changes are effective November 1, 2011.

EXPLANATORY REPORT SEPTEMBER 2011

Rule 120 - Definitions

A new definition of “judge” has been added to clarify that when using that term throughout the Rules, it is referring to a judge of the Court of Common Pleas. The term includes Senior Judges when they are properly certified by the Administrative Office of Pennsylvania Courts. The term does NOT include masters or magisterial district judges.

Rule 140 - Bench Warrants for Failure to Appear at Hearings

The term “master” was added in several places in this rule to allow masters to hear cases if the President Judge has designated the master to hear bench warrant cases in his or her judicial district. See paragraphs (C), (D), and (E).

At the bench warrant hearing, the judge or master determines whether: 1) the juvenile willfully failed to attend the hearing for which the bench warrant was issued; and 2) the juvenile should continue to be detained until further court proceedings.

Only a judge has the authority to issue a bench warrant. However, once the juvenile is detained, the master may conduct the detention hearing when so designated by the President Judge.

Also, several provisions were added to the *Comment* to explain the intent of the rule. This rule was designed to not only allow a judge to issue a bench warrant to detain a juvenile or witness until a hearing in which the juvenile failed to show is rescheduled but to also allow the judge to postpone any hearing until later in the same day while a police officer, sheriff, or juvenile probation officer retrieves and transports the juvenile or witness to court for the hearing. For example, a juvenile is scheduled for an adjudicatory hearing at 9:00 a.m. but fails to show for the hearing. If all the witnesses are present, the judge may issue a bench warrant and order the juvenile to be brought directly to the courtroom for the adjudicatory hearing on the same day.

This provision represents the current practice in some judicial districts. If all court participants are present and ready to proceed except the juvenile or witness, the

police officer, sheriff, or juvenile probation officer can retrieve and transport the juvenile or witness to court, thereby alleviating the need of a continuance.

In addition, the Committee firmly believes that juveniles and witnesses must be brought to court without unnecessary delay, and that warrants must specifically authorize detention. Witnesses are to appear before a judge or master by the next business day, whereas, the juvenile must appear within seventy-two hours. This time difference distinguishes witnesses from juveniles.

Witnesses should be treated with higher priority and should be released unless the judge or master finds that the witness willfully failed to appear or needs protective custody. Even if the judge or master finds that the witness willfully failed to appear, a witness may be released at the court's discretion.