

RULE 120. DEFINITIONS

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JUDGE is a judge of the Court of Common Pleas.

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COMMENT

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“Health care” includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treatment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the juvenile.

The term “judge” refers to a judge of the Court of Common Pleas, including senior judges when they are properly certified. It does not include masters or magisterial district judges. Magisterial district judges, however, are included within the definition of “court” when they have the power to issue arrest warrants pursuant to Rule 210. See discussion *supra* under definition of “court.” Arrest warrants are distinguished from bench warrants pursuant to Rules 140 and 141. Only judges of the Court of Common Pleas may issue bench warrants if the juvenile: 1) fails to appear at a hearing; or 2) absconds from the court’s supervision.

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The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation[’s reports and] files unless they are made a part of the official **court** record by being filed with the clerk of courts.

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Official Note:

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Amended September 20, 2011, effective November 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 with the Court’s Order at 41 Pa.B. - (-).

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR AT HEARINGS

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C. Juvenile.

1) *Where to take the juvenile.*

- a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge **or master** designated by the President Judge to hear bench warrants.
- b) If the juvenile is not brought before a judge **or master**, the juvenile shall be released unless:

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2) *Prompt hearing.*

- a) If a juvenile is detained [**pursuant to a specific order in the bench warrant**], the juvenile shall be brought before the judge who issued the warrant, a judge **or master** designated by the President Judge to hear bench warrants, or an out-of-county judge **or master** pursuant to paragraph (C)(4) within seventy-two hours.
- b) If the juvenile is not brought before a judge **or master** within this time, the juvenile shall be released.

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4) *Out-of-county custody.*

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- c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge **or master** of the county where the juvenile is found.
- d) The judge **or master** will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order **or recommend** that arrangements be made to transport the juvenile to the county of issuance.

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D. Witnesses.

1) *Where to take the witness.*

- a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge or master designated by the President Judge to hear bench warrants.
- b) If the witness is not brought before a judge or master, the witness shall be released unless the warrant specifically orders detention of the witness.
- c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order or the master may recommend detention of the witness pending a hearing.

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2) *Prompt hearing.*

- a) If a witness is detained pursuant to paragraph (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge or master by the next business day.
- b) If the witness is not brought before a judge or master within this time, the witness shall be released.

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4) *Out-of-county custody.*

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- b) The witness shall be taken without unnecessary delay and within the next business day to a judge or master of the county where the witness is found.
- c) The judge or master will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.

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F. Return and execution of the warrant for juveniles and witnesses.

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- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear bench warrants.

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COMMENT

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Pursuant to paragraph (C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. See paragraph (C) for alleged delinquents and paragraph (D) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of that county to hear bench warrants. **This provision allows the judge or master the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to be brought immediately before the court for the hearing. However, p[P]** Pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, **or there are circumstances apparent at the time of the surrender or apprehension that merit detention of the juvenile**, the juvenile may be detained without having to be brought before the judge or master until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph (C)(2)(b).

At the seventy-two hour hearing, the judge or master may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

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Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge or master designated by the President Judge of that county to hear bench warrants. **This provision allows the judge or master the discretion to postpone a hearing, for example, an adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to be brought immediately before the court for the hearing. However, p[P]** Pursuant to paragraph (D)(1)(b), if the judge or master is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. See paragraph (D)(2)(b).

At the hearing pursuant to paragraph (D)(2)(a), the judge or master may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or master has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge or master by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the **court [judge who issued the bench warrant]** by the next business day. See paragraph (D)(4)(f).

Pursuant to paragraph (F)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge or master designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (F)(3).

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See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

If there is a bench warrant issued, masters may hear cases in which the petition alleges only misdemeanors. See Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to paragraph (C)(2)(a) or the hearing for witnesses pursuant to paragraph (D)(2)(a) is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.

Pursuant to Rule 191, the master is to submit his or her findings and recommendation to the court. In bench warrant cases, the master should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. See Rule 191(C).

If the findings and recommendation are not taken immediately to the judge, the master is to submit the recommendation within one business day. See Rule 191(B).

Official Note:

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Amended September 20, 2011, effective November 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 140 with the Court's Order at 41 Pa.B. - (-).