

## INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 800, 1120, 1123, 1124, 1364, 1800, and new Rule 1140. The changes are effective June 1, 2009.

## EXPLANATORY REPORT MARCH 2009

### **Rule 800 - Suspensions of Acts of Assembly**

Rule 364 has been added to paragraph two, which suspends 42 Pa.C.S. § 6335(c) only insofar as the Act is inconsistent with the Rules. The Rules require that a summoned person must fail to appear for the hearing and the court must find the summoned person received sufficient notice.

### **Rule 1120 - Definitions**

The definition of a child was modified by adding that the child is the subject of the dependency proceeding. This will help clarify the difference between a child and a minor.

A definition for an “adult” was added. An “adult” includes anyone eighteen years or older, except a child who has requested the court to retain jurisdiction while in the course of instruction or treatment.

A definition for a “minor” was added. A “minor” is a person under the age of eighteen. This definition includes a dependent child, a minor witness, or other minor party. Therefore, a “child” can be a “minor” but a “minor” is not a “child” because a “child” must also be the subject of the dependency proceeding.

### **Rule 1123 - Subpoenas**

The Committee modified paragraph (D) because a master is not permitted to issue a bench warrant.

The Committee added paragraph (E) to Rule 1123. The Committee felt that it was important that the guardian of a minor witness receive a copy of the subpoena to impress upon their child the importance of a subpoena. It also allows the guardian to ensure his or her child is present for a hearing.

### **Rule 1124 - Summons**

The Committee modified paragraph (D) because a master is not permitted to issue a bench warrant.

The additions in the *Comment* reference the rules for service of parties for a proceeding and the new Bench Warrant Rule.

### **Rule 1140 - Bench Warrants**

This new rule provides for procedures when a bench warrant is issued for failing to appear for a hearing. There are separate procedures when the warrant is issued for a party to the proceedings and a witness to the proceeding.

Pursuant to paragraph (B)(1), if a party is arrested on a bench warrant, the party must be brought immediately to the judge who issued the warrant unless the judge specifically authorized detention in the warrant. Pursuant to paragraph (B)(2), if detention was authorized in the warrant, the party must have a hearing before the judge within seventy-two hours or the party must be released.

Pursuant to paragraph (B)(3), if a party is a minor and is arrested on a bench warrant, the guardian of the minor must be notified immediately of the minor's whereabouts and the reason for the issuance of the bench warrant. This provision ensures that the guardian is informed about the detention and the reasons for the detention.

Under paragraph (B)(4), if a party is arrested in another county, the party must be transported immediately back to the county of issuance. If transportation is not arranged immediately, the party must be taken to a judge of the county where the party is found. The judge must decide: 1) if the person is the subject of the warrant; 2) if detention of the party is warranted; and 3) what arrangements for transporting the party back to the county of issuance are necessary.

If a witness is arrested on a bench warrant pursuant to paragraph (C)(1), the witness must be brought to the judge immediately. If the witness is not brought before a judge, the witness must be released unless a motion to detain the witness has been filed. Pursuant to paragraph (C)(2), if a motion has been filed, the witness must appear before a judge no later than the next business day or must be released.

A motion to detain a witness can be filed by any party. The motion should aver the necessity of the witness's detention. This averment should be supported by facts leading to this necessity.

When the witness is brought before the judge, the judge must address the motion and the reasons for the necessity of the witness's detention. For example, the witness may be harmed if the witness is not taken into protective custody or the witness may flee the jurisdiction because of threats of bodily injury or fear of implication in a crime or delinquent act.

Pursuant to paragraph (C)(3), if a witness is a minor, the witness's guardian must be notified immediately of the witness's whereabouts and the reasons for the issuance of the bench warrant. This provision ensures that the guardian is told about the bench warrant and the place of detention.

Pursuant to paragraph (C)(4), if a bench warrant is executed in another county, the county of issuance must be notified immediately and the witness must be transported to the county of issuance. If transportation is not arranged immediately, the witness must be released unless a motion to detain the witness has been filed.

If a motion to detain the witness has been filed, the witness must appear before a judge within twenty-four hours or the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. The out-of-county judge must determine: 1) if the witness is the subject of the warrant; 2) if detention is warranted; and 3) what arrangements for transporting the witness back to the county of issuance are necessary. The witness must not be kept in another county for more than seventy-two hours of the execution of the warrant under any circumstances.

Pursuant to paragraph (D), in all cases, the bench warrant must be executed without unnecessary delay. When the bench warrant is executed, the bench warrant must be returned to the issuing judge. Upon the return of the warrant, the judge must vacate the bench warrant. The bench warrant must be marked as executed in the system to ensure the subject of the warrant is not arrested again on the same warrant.

### **Rule 1364 - Failure to Appear on the Summons**

A reference to the new Bench Warrant Rule 1140 was added to this Rule.

### **Rule 1800 - Suspensions of Acts of Assembly**

The new Bench Warrant Rule 1140 and Rule 1364 have been added to paragraph one, which suspends 42 Pa.C.S. § 6335(c) only insofar as the Act is inconsistent with the Rules. The Rules require that a summoned person must fail to appear for the hearing and the court must find the summoned person received sufficient notice.