

RULES OF JUVENILE COURT PROCEDURE

DELINQUENCY MATTERS

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PART A BUSINESS OF COURTS

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RULE 120. DEFINITIONS.

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ADULT is any person, other than a juvenile, eighteen years old or older.

MINOR is any person, other than a juvenile, under the age of eighteen.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006). Final Report explaining the amendments to Rule 120 published with the Court's Order at 37 Pa.B. 1485 (April 7, 2007). **Final Report explaining the amendments to Rule 120 published with the Court's Order at 38 Pa.B. - (- 2008).**

RULE 123. SUBPOENAS

A. **Contents.** A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

1) **Method of Service.** A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested, or
- c) by first-class mail.

2) **Proof of Service.** The following shall be *prima facie* evidence of service of the subpoena:

- a) A completed return receipt;
- b) Hand signed receipt of personal delivery; or
- c) Affidavit of in-person delivery signed by a process server.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the **[court] judge** may issue a bench warrant **pursuant to Rule 140.**

E. Parental notification.

1) Generally. If a witness is a minor, the witness's guardian shall be notified that the minor has been subpoenaed.

2) Exception. Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained ex parte.

COMMENT

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishing juveniles for contempt.

Official Note: Rule 123 adopted April 1, 2005, effective October 1, 2005. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). **Final Report explaining the amendments to Rule 123 published with the Court's Order at 38 Pa.B. - (- 2008).**

RULE 124. SUMMONS AND NOTICE

A. Requirements of the summons. The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B. Method of Service. Summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

C. Bench Warrant. If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the **[court] judge** may issue a bench warrant **pursuant to Rule 140.**

COMMENT

[Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (C), the judge is to find a summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.]

See Rules 360(A), 500(A), and 600(A) for service of the guardian for a proceeding. Nothing in these rules gives the guardians of juveniles legal standing in the matter being heard by the court or creates a right for juveniles to have their guardians present. See 42 Pa.C.S. § 6310(e). See Rule 140 for procedures on bench warrants.

Official Note: Rule 124 adopted April 1, 2005, effective October 1, 2005. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 124 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). **Final Report explaining the amendments to Rule 124 published with the Court's Order at 38 Pa.B. - (- 2008).**

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR

A. Issuance of warrant.

- 1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.**
- 2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.**

B. 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 designated by the President Judge to hear bench warrants.**
- b) If the juvenile is not brought before a judge, the juvenile shall be released unless:**
 - i) the warrant specifically orders detention of the juvenile; or**
 - ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.**
- c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.**

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 designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.**
- b) If the juvenile is not brought before a judge within this time, the juvenile shall be released.**

3) Notification of guardian. If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

4) Out-of-county custody.

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge of the county where the juvenile is found.

d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

5) Time requirements. The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

C. 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 designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, 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 detention of the witness pending a hearing.

1) Minor. If a detained witness is a minor, the witness shall be detained in a detention facility.

2) Adult. If a detained witness is an adult, the witness shall be detained at the county jail.

2) Prompt hearing.

a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) Notification of guardian. If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) Out-of-county custody.

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) Minor. If the witness is a minor, the witness may be detained in an out-of-county detention facility.

ii) Adult. If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

D. Return & execution of the warrant for juveniles and witnesses.

1) The bench warrant shall be executed without unnecessary delay.

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

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

COMMENT

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from

recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to paragraph (B), 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 (B) for alleged delinquents and paragraph (C) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (B)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(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 (B)(2)(b).

Under paragraphs (B)(2) and (B)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240 (C).

Pursuant to paragraph (B)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (B)(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 (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. See paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge 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 judge who issued the bench warrant by the next business day. See paragraph (C)(4)(f).

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

Pursuant to paragraph (D)(4), the bench warrant is to be vacated after the return of the warrant is executed so the juvenile or witness is not taken into custody on the same warrant if the juvenile or witness is released. “Vacated” is to mean that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

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

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008.

Committee Explanatory Reports:

**Final Report explaining the provisions of Rule 140 published with the Court's Order at 38 Pa.B. -
(--, 2008).**

RULE 360. SUMMONS AND NOTICE

A. **Summons.** The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the adjudicatory hearing.

B. **Notice.** The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. **Requirements.** The general summons and notice procedures of Rule 124 shall be followed.

COMMENT

Section 6335 of the Juvenile Act provides that the court **[shall] is to** direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335.

The guardian's failure to appear should not prevent the adjudicatory hearing from proceeding.

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P.S. § 11.201.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 360 adopted April 1, 2005, effective October 1, 2005. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 360 published with the Court's Order at 38 Pa.B. - (--, 2008).

RULE 364. FAILURE TO APPEAR ON THE SUMMONS

If any summoned person fails to appear for the adjudicatory hearing and the **[court] judge** finds that sufficient notice was given, the **[court] judge** may issue a bench warrant **pursuant to Rule 140.**

COMMENT

See Rule 140 for issuance of a bench warrant.

Official Note: Rule 364 adopted April 1, 2005, effective October 1, 2005. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 364 published with the Court's Order at 38 Pa.B. - (-, 2008).

CHAPTER 8 SUSPENSIONS

RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

- 1) The Act of November 21, 1990, P.L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P., Rule 211, through Pa.R.J.C.P., Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P., Rules 205, 206, 211.
- 2) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124 and 140, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.
- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.
- 4) The Public Defender Act, Act of December 2, 1968, P.L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P.L. 830, No. 277, § 1, 16 P.S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.
- 5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.
- 6) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

- 7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.
- 8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.
- 9) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.
- 10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.
- 11) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.
- 12) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

- 13) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.
- 14) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1)&(2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.
- 15) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See *also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. **Amended February 26, 2008, effective June 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006). Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1485 (April 7, 2007). **Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. - (--, 2008).**