

FINAL REPORT¹

Adoption of New Pa.R.Crim.P. 151, and Approval of Revisions to the Comment to Pa.R.Crim.P. 150

BENCH WARRANT PROCEDURES FOR WITNESSES WHO ARE UNDER THE AGE OF 18 YEARS

On October 24, 2013, effective January 1, 2014, upon the recommendation of the Criminal Procedural Rules Committee (“Criminal Committee”), the Court adopted new Rule of Criminal Procedure 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) and approved the revision of the *Comment* to Pa.R.Crim.P. 150 (Bench Warrants). The new rule and correlative *Comment* revision establish new procedures for court cases after the execution of a bench warrant that was issued for a witness who is under the age of 18 years.

For the past several years, the Committee has been examining procedures governing the use of subpoenas in the courts of common pleas and in magisterial district courts.² The Committee agreed a comparable procedure should be included in the proposed changes to Rule 107 that were being developed. Correlative to this discussion, the Committee also discussed procedures for the issuance of bench

¹ The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

² See Committee explanatory *Report* at 35 *Pa.B.* 1557 (March 5, 2005) and *Supplemental Report* at 35 *Pa.B.* 5677 (October 15, 2005). During these discussions, Rule of Juvenile Court Procedure (“Juvenile Rule”) 123 was amended to require parental notification when a subpoena is issued for a minor witness. The Committee also looked at Act 98 of 2008 that amended 42 Pa.C.S. § 6333 to require notice to a parent or guardian of the subpoena issued to any witness who is under the age of 18 years. Changes correlative to this statutory provision also have been added to Civil Rule 234.2 and MDJ Rule 214. Although the Committee's work on Rule 107 is continuing, the members have agreed a comparable procedure should be included in the final version of any changes to Rule 107 that would be proposed.

warrants for witnesses under the age of 18 who have failed to appear when issued a subpoena. The Committee reviewed the provisions for bench warrants in Juvenile Rule 140 (Bench Warrants for Failure to Appear at Hearings), specifically in paragraph (D) for witnesses. The Committee agreed there should be comparable special procedures for bench warrants for minor witnesses in the Rules of Criminal Procedure, and that these special procedures should be set forth in a separate rule, new Rule 151.

Rule 151 sets forth the procedures after a bench warrant for a witness who is under the age of 18 years is issued and executed. Paragraph (A) establishes that, except as provided in Rule 151, the bench warrant procedures in Rule 150 govern cases in which the bench warrant is for a witness under the age of 18 years. Paragraph (B) requires the arresting officer to notify the judicial officer that the minor witness has been arrested on the bench warrant. The arresting officer also is required to notify the parent or guardian of the minor witness. This parental notification requirement is comparable to the requirements in Juvenile Rule 140(D)(3).

The Committee discussed at length the procedure when a minor witness is arrested on a bench warrant and the issuing judicial officer is not available. The issue was whether magisterial district judges (MDJs) are permitted to lodge juveniles in detention facilities. The consensus was that MDJs do not have the authority to lodge juveniles in a detention facility on these bench warrants.

The Committee also discussed the issue of detention of underage witnesses in common pleas court cases in judicial districts without easy access to detention facilities. The members opined that alternatives to detention should be considered such as release on an electronic monitor.

The Committee concluded that the best resolution of issues related to the detention of a minor witness when the issuing judicial officer is not available, whether the bench warrant was issued by an MDJ or by a common pleas court judge, is to require that the minor witness be taken before the on-call common pleas court judge for a bail decision, including release on an electric monitoring unit, or a detention decision. Paragraph (C)(1) and paragraph (C)(1)(a) require the minor witness to be taken to the on-call common pleas court judge for a determination whether to set bail or to detain the

witness pending the bench warrant hearing if the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee, is not available to conduct the bench warrant hearing without unnecessary delay. Paragraph (C)(1)(a) also limits the on-call judge's ability to release when the bench warrant specifically orders the detention of the minor witness. See *also* Juvenile Rule 140(D)(1)(b). If the on-call judge determines that the minor witness must be detained, paragraph (C)(1)(b) requires that the witness be detained in a detention facility.

Paragraph (C)(2) is taken from Juvenile Rule 140(D)(2) (Prompt Hearing) that requires the bench warrant hearing to be conducted "by the next business day" when the minor witness is detained, and if the hearing is not conducted within this time frame, the witness must be released. This language has been modified slightly in Rule 151(C)(2) to provide that the hearing be conducted "before the end of the next business day." The Committee believes this language is clearer.

Paragraph (D) (Execution of Bench Warrant Outside County of Issuance) is taken from Juvenile Rule 140(D)(4) (Out-of-County Custody). Rule 140(D)(4)(a) is addressed in Rule 151(B) by the requirement that the arresting officer notify the proper judicial officer of the arrest of the minor witness.

Paragraphs (D)(2), (D)(3), (D)(4), and (D)(5) follow the requirements in Rule 140(D)(4)(b), (c), (d), (e), (f), and (g). When a minor witness is arrested on a bench warrant out of the county of issuance, paragraph (D)(1) requires the minor witness to be taken before a judge of the county of arrest without unnecessary delay. In no case may there be a delay longer than the end of the next business day. When the minor witness appears before the judge, the judge is required to confirm that the minor witness is the subject of the bench warrant, must decide whether to detain the minor witness, and make arrangements to transport the minor witness to the county of issuance. If the judge is not able to arrange transport, the minor witness must be released unless the bench warrant specifically orders detention. In these cases, the minor witness must be brought to the county of issuance within 72 hours from the execution of the bench warrant or be released.

Because Rule 151 is a court case rule and not a Juvenile Court rule, the Committee did not include the provisions in Juvenile Rule 140(D) for a master or for an “other order of court.” Rule 151 applies only to bench warrants issued in court cases unlike the bench warrants that are issued pursuant to Juvenile Rule 140.

The Rule 151 *Comment* elaborates on the provisions of the new rule and includes a cross-reference to Rule 150. The fourth paragraph explains that a minor witness may not be detained in an adult facility pending the bench warrant hearing.

The Rule 150 *Comment* has been revised to include a cross-reference to new Rule 151.