

**Proposed New Pa.R.Crim.P. 151 and
revision of the *Comment* to Pa.R.Crim.P. 150.**

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) and to revise the Comment to Rule of Criminal Procedure 150 (Bench Warrants). The proposed 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. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 explanatory Reports.

The text of the proposed changes to the rules precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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no later than Friday, August 31, 2012.

July 30, 2012 BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Philip D. Lauer, Chair

Jeffrey M. Wasileski, Counsel

RULE 150 . BENCH WARRANTS.

(A) In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, if the bench warrant hearing cannot be conducted promptly after the arrest, the defendant or witness shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the court that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance on that bench warrant.

(a) When the bench warrant is issued by the supervising judge of a "multi-county" investigating grand jury, the individual shall be detained only until the supervising judge is available to conduct the bench warrant hearing.

(b) In all other cases, the individual shall not be detained without a bench warrant hearing on that bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (A)(5)(b), the bench warrant shall expire by operation of law.

(B) As used in this rule, "judicial officer" is limited to the magisterial district judge or common pleas court judge who issued the bench warrant, or the magisterial district judge or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings, or in Philadelphia, trial commissioners.

COMMENT: This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth, which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

Paragraph (A)(2) permits the bench warrant hearing to be conducted using two-way simultaneous audio-visual communication, which is a form of advanced communication technology. See Rule 103. Utilizing this technology will aid the court in complying with this rule, and in ensuring individuals arrested on bench warrants are not detained unnecessarily.

Once a bench warrant is executed and the defendant is taken into custody, the bench warrant no longer is valid.

To ensure compliance with the prompt bench warrant hearing requirement, the president judge or the president judge's designee may designate only a magisterial district judge to cover for magisterial district judges or a common pleas court judge to cover for common pleas court judges. See *also* Rule 132 for the temporary assignment of magisterial district judges. In Philadelphia, the current practice of designating trial commissioners to conduct bench warrant hearings is acknowledged in paragraph (B).

It is expected that the practices in some judicial districts of a common pleas court judge (1) indicating on a bench warrant the judge has issued that the bench warrant is a "judge only"

bench warrant, or (2) who knows he or she will be unavailable asking another common pleas court judge to handle his or her cases during the common pleas court judge's absence, would continue.

Paragraph (A)(5)(a) recognizes the procedural and substantive differences between "multi-county" investigating grand jury proceedings and all other proceedings in the court of common pleas, including a county investigating grand jury, by eliminating the time limit for conducting the bench warrant hearing when the bench warrant is issued by the multi-county investigating grand jury supervising judge. See Rules 240-244 and 42 Pa.C.S. § 4544. When the supervising judge issues a bench warrant, the bench warrant hearing must be conducted expeditiously when the supervising judge is available.

Paragraph (A)(6) requires the judicial officer to vacate the bench warrant at the conclusion of the bench warrant hearing. The current practice in some judicial districts of having the clerk of courts cancel the bench warrant upon receipt of a return of service is consistent with this paragraph, as long as the clerk of courts promptly provides notice of the return of service to the issuing judge.

It is incumbent upon the president judge or the president judge's designee to establish procedures for the monitoring of the time individuals are detained pending their bench warrant hearing.

For the procedures concerning violation of the conditions of bail, see Chapter 5 Part C.

As used in this rule, "court" includes magisterial district judge courts.

For the bench warrant procedures in summary cases, see Rules 430(B) and 431(C).

For the arrest warrants that initiate proceedings in court cases, see Chapter 5, Part B(3)(a), Rules 513, 514, 515, 516, 517, and 518. For the arrest warrants that initiate

proceedings in summary cases, see Chapter 4, Part D(1), Rules 430(A) and 431(B).

NOTE: Adopted December 30, 2005, effective August 1, 2006 [.] ; Comment revised _____, 2012, effective _____, 2012.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 150 providing procedures for bench warrants published with the Court's Order at 36 Pa.B. 184, 2006 (January 14, 2006).

Report explaining the Comment revision adding a cross-reference to new Rule 151 published for comment at 42 Pa.B. _____, 2012 (_____, 2012).

[This is an entirely new rule.]

RULE 151. BENCH WARRANT PROCEDURES WHEN WITNESS IS UNDER AGE OF 18 YEARS.

(A) In a court case when a bench warrant for a witness under the age of 18 years is executed, except as provided in this rule, the case is to proceed in accordance with the procedures in Rule 150.

(B) Upon execution of the warrant for a minor witness, the arresting officer immediately shall inform the proper judicial officer and a parent or guardian of the minor witness of the arrest of the minor witness.

(C) Execution of Bench Warrant in County of Issuance

(1) 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, the minor witness shall be taken before the on-call judge of the court of common pleas.

(a) The on-call judge shall determine whether to release the witness or to detain the witness pending the bench warrant hearing. If the bench warrant specifically orders detention of the minor witness, the on-call judge shall not release the witness.

(b) If the on-call judge determines the witness must be detained, the witness shall be detained in a detention facility. The on-call judge shall notify the parent or guardian of the minor witness of the detention.

(2) The minor witness shall not be detained without a bench warrant hearing on that bench warrant longer than 24 hours, or the close of the next business day if the 24 hours expires on a non-business day.

(D) Execution of Bench Warrant Outside County of Issuance

(1) The minor witness shall be taken before a common pleas court judge of the county of arrest without unnecessary delay and in no case later than the end of the next business day.

(2) The judge shall identify the minor witness as the subject of the bench warrant, decide whether detention as a minor witness is necessary, and order that

arrangements be made immediately to transport the minor witness to the county of issuance.

(3) If transportation cannot be arranged immediately, the minor witness shall be released unless the bench warrant specifically orders detention of the witness. In this case, the minor witness shall be detained in an out-of-county detention facility.

(4) If detention is ordered, the minor witness shall be brought to the county of issuance within 72 hours from the execution of the bench warrant.

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

COMMENT: This rule was adopted in 2012 to establish the procedures when a witness subject to a bench warrant is under the age of 18. The procedures following the execution of a bench warrant set forth in Rule 150 apply to cases when the witness is under the age of 18, except as otherwise provided in this rule.

Paragraph (B) ensures that the judicial officer who issued the bench warrant is aware that the minor witness has been arrested, and that a parent or guardian of the arrested minor witness is notified of the arrest.

The procedures in paragraph (C) for cases in which the bench warrant is executed in the county of issuance, recognize the need, when the issuing judicial officer is unavailable to conduct the bench warrant hearing, for the common pleas court judge who is on call to determine whether a minor witness may be released or must be detained. If the minor witness is detained, the bench warrant hearing must be held no later than the end of the next business day. If the bench warrant hearing is not conducted within this time period, the minor witness must be released.

The minor witness may not be detained in an adult facility pending a bench warrant hearing unless the witness is separated by sight and sound from incarcerated adult offenders and is under continuous visual supervision by facility staff.

In cases in which the bench warrant is executed outside the county of issuance, the minor witness must be transported to the county of issuance within 72 hours of the execution of the bench warrant, and the bench warrant hearing must be conducted by the end of the next business day.

As used in this rule, “minor witness” means a witness who is under the age of 18 years, and “proper judicial officer” means the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee.

NOTE: Adopted _____, 2012, effective _____, 2012.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining proposed new Rule 151 providing procedures for bench warrants when a witness is under the age of 18 published for Comment at 42 Pa.B. (2012).

REPORT

Proposed new Pa.R.Crim.P. 151, and Proposed Revisions to the Comment to Pa.R.Crim.P. 150

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

I. BACKGROUND

For the past several years, the Committee has been developing procedures governing the use of subpoenas in the courts of common pleas and in magisterial district courts.¹ During that time, Rule of Juvenile Court Procedure (“Juvenile Rule”) 123 was amended to require parental notification when a subpoena is issued for a minor witness.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 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, proposed new Rule 151.

¹ See Committee explanatory *Report* at 35 *Pa.B.* 1557 (March 5, 2005) and *Supplemental Report* at 35 *Pa.B.* 5677 (October 15, 2005).

² 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

II. DISCUSSION

Proposed new 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 agreed 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 the emergency common pleas court judge for a bail decision, including release on an electric monitor, 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 *a/so* 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 included 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 only be detained in an adult facility pending the bench warrant hearing if the witness is separated by sight and sound from the incarcerated adult offenders and is under continuous visual supervision by facility staff.

The Rule 150 *Comment* would be revised to include a cross-reference to new Rule 151 and to cross-reference Rule 107.