

JUVENILE COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Amendment of Pa.R.J.C.P. 240, 391, and 404

On November 30, 2021, the Supreme Court amended Pennsylvania Rules of Juvenile Court Procedure 240, 391, and 404 to clarify procedures to permit the extended detention of a juvenile when procedural requirements are not met. The Juvenile Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

The Juvenile Act permits a juvenile to be detained prior to an adjudicatory hearing. See 42 Pa.C.S. § 6325. The Pennsylvania Rules of Juvenile Court Procedure implement this aspect of the Juvenile Act. See Pa.R.J.C.P. 240-243. Pre-adjudicatory detention of a juvenile is typically brief because the juvenile is expected to receive a prompt adjudicatory hearing within 10 days of the filing of a petition. See Pa.R.J.C.P. 404(A).

If a detained juvenile does not receive a prompt adjudicatory hearing, then the juvenile is to be immediately released. See 42 Pa.C.S. § 6335(a); Pa.R.J.C.P. 404(A). However, there are two exceptions to immediate release when the adjudicatory hearing is delayed due to: 1) presently unavailable evidence and the juvenile's life would be in danger, the community would be endangered, or the juvenile will fail to appear at the hearing; or 2) the juvenile. See 42 Pa.C.S. § 6335(a), (f). These exceptions are generally codified at Pa.R.J.C.P. 240(D)(1)-(D)(2).

When a timely hearing cannot be held and either exception is applicable, the juvenile is not immediately released. Instead, the juvenile court must decide whether to release the juvenile or continue to detain the juvenile. See 42 Pa.C.S. § 6335(a), (f) (permitting, but not requiring, continued detention); Pa.R.J.C.P. 240(D) (same).

The Committee published for comment several amendments to the rules governing extended pre-adjudicatory detention. See 50 Pa.B. 3836 (August 1, 2020). First, Rule 391(B) states "if the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2)." The text of paragraphs (B)(1) and (B)(2) are almost identical to Rule 240(D) with the exception of "including a psychological or psychiatric evaluation" in paragraph (B)(1)(a). Rather than repeat the language of Rule 240(D), the Committee proposed removing the language from Rule 391(B)(1) and (B)(2) and refer the reader to Rule 240(D). A similar approach had already been taken with Rule 404(A).

Second, Rule 240(D) states “except as provided in paragraph (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.” It was apparent to the Committee that the triggering event for continued detention when a transfer is initiated differs between Rule 391(B) and Rule 240(D). Rule 391(B) is triggered when a transfer hearing is untimely whereas Rule 240(D) is triggered when the notice of request for a transfer hearing is untimely. The Committee believed that the triggering event should be the transfer hearing, not the notice. Therefore, the Committee proposed amending Rule 240(D) to include the transfer hearing and remove mention of the notice.

Third, the Committee proposed introducing a motion requirement to Rule 240(D). This requirement is not separate from that for seeking a continuance, but part of a motion for continuance pursuant to Rule 122. The Committee also proposed expanding the court’s consideration of the necessity for continued detention anytime that continued detention is sought. Finally, the Committee proposed removing the juvenile’s attorney as a cause for the juvenile’s continued detention, as set forth in Rule 240(D)(2)(a)-(b).

In response to the proposal, concern was expressed that the proposed amendment of Rule 240(D)(2)(a), which would result in the juvenile’s immediate release for delays attributable to a juvenile’s attorney’s unavailability, may have ventured beyond procedure and into substantive matters. Further, there was a potential public safety concern if an attorney’s unavailability may otherwise result in the release of a juvenile who may pose a threat to the public.

The Committee acknowledges 42 Pa.C.S. § 6335(f)(1) is unambiguous: if a juvenile’s attorney is unavailable, then the juvenile can be further detained. Subjecting a juvenile to further detention is a substantive matter involving one’s liberty interest. Any remedy to the application of § 6335(f)(1) lies with the General Assembly through amendment of the Juvenile Act rather than through rulemaking. Accordingly, the proposed amendment of Rule 240(D)(2)(a) was removed from the proposal.

Post-publication, the Committee considered the interplay of Pa.R.J.C.P. 240(D) and Pa.R.J.C.P. 404. The time requirements for an adjudicatory hearing pursuant to paragraphs (A) and (B) of Pa.R.J.C.P. 404 (Prompt Adjudicatory Hearing) pivot on whether a juvenile is detained. However, paragraph (C) treats decertified juveniles differently: “Notwithstanding the provisions of paragraphs (A) and (B), if a petition was filed pursuant to Rule 337, an adjudicatory hearing shall be held within ten days of the filing of the petition.”

Paragraph (C) did not account for whether a juvenile was being detained and often decertifications are complicated cases involving severe types of offenses. The Committee considered whether the hearing deadline should also pivot on whether the juvenile is detained, noting that the Comment to Pa.R.J.C.P. 337 (Filing of Petition After

Case has been Transferred from Criminal Proceedings) states: “If the juvenile is detained, an adjudicatory hearing is to be held within ten days of the filing of the petition. See *a/so* Rule 404.” Additionally, paragraph (C) did not acknowledge that the youth may have been released on bail in criminal court and likewise might not be placed in detention by the juvenile court.

The Committee recommended removing paragraph (C) from Rule 404 so that juveniles transferred from criminal court would be subject to either paragraph (A) or paragraph (B) depending on their detention status. A Comment was added to instruct the reader.

Additional commentary was added post-publication to Pa.R.J.C.P. 240 setting forth the factors to be considered when the court considers whether continued detention is warranted.

These amendments become effective April 1, 2022.