

JUVENILE COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Amendment of Pa.R.J.C.P. 148 and 407

On November 30, 2021, the Supreme Court amended Pennsylvania Rules of Juvenile Court Procedure 148 and 407 to reflect provisions of the Act of Nov. 3, 2020, P.L. 1087, No. 110 amending the Public School Code of 1949 to, *inter alia*, add Section 1318.1, prohibiting a juvenile adjudicated delinquent of sexual assault from attending the same public school as the victim. 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.

Effective January 3, 2021, Act 110 of 2020 amended the Public School Code of 1949 to prohibit a juvenile adjudicated delinquent of sexual assault from attending the same public school as the victim. See 24 P.S. § 13-1318.1. This Act marks a change in policy wherein a student may be subject to discipline in school for conduct occurring outside of school. See 24 P.S. § 5-510 (granting school board authority to enforce rules against students during such time as students are under supervision, including the time necessarily spent in coming to and returning from school); 24 P.S. § 21-2134 (providing for a period of transition for student returning after being adjudicated delinquent before returning to regular classroom). When a juvenile is adjudicated delinquent of sexual assault and prohibited from attending the same public school as the victim, the public school is required to 1) expel the juvenile; 2) transfer the juvenile to an alternative education program; or 3) reassign the juvenile to another school or educational program within the public school entity.

The Committee proposed the amendment of Pa.R.J.C.P. 148 insofar as the Act operates to supersede the juvenile court's best interest/community protection analysis in determining whether a juvenile should remain in his or her school of origin. Application of the Act does not appear to invite judicial discretion. The proposed amendment was intended to place the reader on notice that application of the rule may be superseded by statute. A description and citation to the statute are contained in the Comment. A parallel amendment was not made to Pa.R.J.C.P. 1148 because that rule concerns dependency matters.

The Act also imposes a collateral consequence on the juvenile for an admission of certain offenses. While the Act uses the phrase "sexual assault," that phrase is defined to include six enumerated offenses. See 24 P.S. § 13-1318.1(j) (defining "sexual assault"). The Committee believed this collateral consequence was significant because it potentially affects a juvenile's education and ability to return to the school of origin, which may impact a juvenile's life beyond any term of supervision.

Accordingly, the Committee proposed amending the admission colloquy set forth in Pa.R.J.C.P. 407(C) to add a question intended to ascertain a juvenile's understanding that returning to a school of origin may not be permitted due to the offense of "sexual assault." Thereafter, the Comment sets forth the enumerated offenses defined by the Act to be a "sexual assault." It is anticipated that the juvenile's counsel will advise the juvenile whether the admitted offense meets that statutory definition.

This proposal was published for comment. See 51 Pa.B. 1307 (March 13, 2021). No comments were received.

Post-publication, the additional commentary to Pa.R.J.C.P. 148 was expanded to include citation of the enumerated offenses constituting a "sexual assault" under the Act. Further, question 18 of the colloquy in Pa.R.J.C.P. 407 was revised to add "alternative education program."

These amendments become effective April 1, 2022.