

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Crim.P. 523.1

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Crim.P. 523.1 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **July 5, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee,

Aaron J. Marcus
Chair

—The following text is entirely new—

Rule 523.1. Pretrial Detention of Minor Defendant.

- (a) **Definitions.** For purposes of this rule, the following definitions shall apply:
 - (1) **“Adult inmate.”** An individual who has reached the age of 18 and has been arrested and is in custody for or awaiting trial on a criminal charge or is convicted of a criminal offense.
 - (2) **“Jail or lockup for adults.”** A secure facility that is used by the Commonwealth, unit of local government, or law enforcement authority to detain or confine adult inmates.
 - (3) **“Minor defendant.”** A defendant who is less than 18 years old.
 - (4) **“Sight or sound contact.”** Any physical, clear visual, or verbal contact that is not brief and inadvertent.

- (b) **General Rule.** A minor defendant shall not be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates unless a court or issuing authority finds, after a hearing and in writing, that such detention is in the interest of justice.

- (c) **Interest of Justice Exception.** To determine if it is in the interest of justice to permit a minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, a court or issuing authority shall consider:
 - (1) the minor defendant’s age;
 - (2) the minor defendant’s physical and mental maturity;
 - (3) the minor defendant’s present mental state, including whether the minor defendant presents an imminent risk of harm to the minor defendant;
 - (4) the nature and circumstances of the alleged offense;
 - (5) the minor defendant’s history of prior delinquent acts;
 - (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the minor defendant

but also to protect the safety of the public as well as other detained youth; and

(7) any other relevant factor.

(d) **Issuing Authority.**

(1) If a minor defendant is to be detained after a bail determination and a party requests the minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, an issuing authority shall order the minor defendant to be so detained or have such sight or sound contact if, after considering the factors set forth in subdivision (c), the issuing authority finds permitting such detention or sight or sound contact is in the interest of justice.

(2) If, pursuant to subdivision (d)(1), a minor defendant is detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, a court of common pleas shall hold a hearing to review the issuing authority's finding within 5 days. The court's review shall be *de novo*.

(e) **Motion.**

(1) A party may file a motion in a court of common pleas at any time requesting that a detained minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates.

(2) When a motion is filed pursuant to subdivision (e)(1), an interest of justice hearing shall be held within 72 hours of the filing of the motion.

(3) In determining if it is in the interest of justice for the minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, the court shall consider each factor enumerated in subdivision (c).

(f) **Order.**

(1) At the conclusion of either a *de novo* hearing pursuant to subdivision (d)(2) or an interest of justice hearing pursuant to subdivision (e)(2), the court shall enter an order containing the following:

- (i) the court’s determination whether it is in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates; and
 - (ii) the court’s findings with respect to each factor enumerated in subdivision (c).
- (2) If the court determines that it is in the interest of justice for the minor defendant to be detained in an adult facility, the order shall state that the Prison Rape Elimination Act standards for youthful inmates still apply.
- (g) **Review and Limitations.** If a court determines that it is in the interest of justice to permit a minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates:
 - (1) the court shall hold a hearing not less frequently than once every 30 days to review whether it is still in the interest of justice to permit the minor defendant to be so detained or have such sight or sound contact; and
 - (2) the minor defendant shall not be detained in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the minor defendant expressly waives this limitation.

Comment: This rule codifies the requirements of 34 U.S.C. § 11133(a)(11)(B)(i) - (iii). See 34 U.S.C. § 11133(a)(13) for other exceptions to the prohibition on holding a minor defendant in a jail or lockup for adults.

An individual who is under the age of 18 years is treated as an adult for purposes of prosecution either as a result of charges being directly filed in criminal court, see 42 Pa.C.S. § 6302 (Definitions) (excluding certain offenses from the definition of “delinquent act”), or as a result of charges being transferred to criminal court pursuant to 42 Pa.C.S. § 6355 (Transfer to criminal proceedings).

Subdivision (e) provides for the review of an issuing authority’s interest of justice determination by a court of common pleas. An issuing authority is required to make an interest of justice determination prior to a minor defendant being detained in a secure facility with sight or sound contact with adult inmates or detained in a jail or lockup for

adults. Such determination would be required, for example, if an issuing authority denied a minor defendant bail at a preliminary arraignment and a party requested that the minor defendant be held in a jail for adults rather than in a secure detention facility, see 55 Pa. Code § 3800.5 (Definitions); and Pa.R.Crim.P. 598, Comment.

Regarding subdivision (e)(2), see 28 C.F.R. § 115.14 (relating to youthful inmates) and the Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301 *et seq.*

If an issuing authority or court of common pleas determines that it is not in the interest of justice for a minor defendant to be detained in a secure facility with sight or sound contact with adult inmates or detained in a jail or lockup for adults, detention of the minor defendant, if any, would continue to be governed by 42 Pa.C.S. § 6327 (Place of detention).

Regarding appellate review of an interest of justice determination, see Pa.R.A.P. 1610 (Review of Bail Orders).

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Adoption of Pa.R.Crim.P. 523.1

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pa.R.Crim.P. 523.1. Rule 523.1 would implement the requirements of the Juvenile Justice Reform Act (“JJRA”) codified at 34 U.S.C. § 11133(a)(11)(B). The rule would also include a subdivision containing relevant definitions from the Juvenile Justice and Delinquency Prevention Act (“JJDPA”), see 34 U.S.C. § 11103, as well as subdivisions governing procedures before an issuing authority and a court of common pleas.

The JJRA was signed into law in December of 2018. The JJRA reauthorized and substantially amended the JJDPA of 1974. Of particular interest is the JJRA’s requirement that any child under the age of 18 who is being processed through criminal proceedings must be separated by sight and sound¹ from adult inmates and may not, except under limited circumstances, be held pretrial in a jail or lockup for adults². This requirement became effective on December 21, 2021.

Pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6301-6375, a child can become subject to criminal proceedings when charges are directly filed in criminal court³ or when charges are transferred to criminal court after a petition alleging delinquency has been filed⁴. In either case, if the child is not released on bail, he or she may be held in a secure

¹ “[T]he term ‘sight or sound contact’ means any physical, clear visual, or verbal contact that is not brief and inadvertent.” 34 U.S.C. § 11103(25).

² “[T]he term ‘jail or lockup for adults’ means a secure facility that is used by a State, unit of local government, or law enforcement authority to detain or confine adult inmates.” 34 U.S.C. § 11103(22). An “adult inmate” is an individual who “has reached the age of full criminal responsibility under applicable State law; and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense[.]” 34 U.S.C. § 11103(26)(A).

³ See 42 Pa.C.S. § 6302 (Definitions) for offenses excluded from the definition of “delinquent act” and thus not subject to the Juvenile Act per 42 Pa.C.S. § 6303(a)(1).

⁴ See 42 Pa.C.S. § 6355 (Transfer to criminal proceedings).

detention facility⁵ but, pursuant to the amended JJDP, not in an adult jail or within sight or sound contact of adult inmates. Section 11133(a)(11)(B)(i) of Title 34 of the United States Code codifies this prohibition. Section 11133(a)(11)(B)(ii) provides an exception if a court finds that it is in the interest of justice to permit a child to be detained in a jail or lockup for adults or to have sight or sound contact with adult inmates. In determining whether such detention or sight or sound contact is in the interest of justice, a court must consider:

- (1) the age of the juvenile;
- (2) the physical and mental maturity of the juvenile;
- (3) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- (4) the nature and circumstances of the alleged offense;
- (5) the juvenile's history of prior delinquent acts;
- (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- (7) any other relevant factor.

34 U.S.C. § 11133(a)(11)(B)(ii). If a court determines that it is in the interest of justice to permit a child to be held in a jail or lockup for adults or to have sight or sound contact with adult inmates, the court shall hold a hearing at least every 30 days to review that determination. 34 U.S.C. § 11133(a)(11)(B)(iii)(I). The JJRA enlarges the time to hold such hearings to 45 days in rural jurisdictions. A child may not be held in a jail or lockup for adults or have sight or sound contact with adult inmates for more than 180 days unless the court determines that there is good cause for an extension or the child waives the limitation. 34 U.S.C. § 11133(a)(11)(B)(iii)(II).

Proposed Rule 523.1 has been adapted from 34 U.S.C. § 11133(a)(11)(B) to implement the requirements of the JJRA. Subdivision (a) of Rule 523.1 would include definitions for "adult inmate," "jail or lockup for adults," "minor defendant," and "sight or sound contact." A minor defendant, per the proposed rule, would be defined as a defendant who is less than 18 years old. Use of the term "defendant" indicates that the minor is subject to criminal proceedings. Subdivision (b) would provide the general rule,

⁵ See 42 Pa.C.S. § 6327(d); 55 Pa. Code § 3800.5; and Pa.R.Crim.P. 598, Comment.

“A minor defendant shall not be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates unless a court or issuing authority finds, after a hearing and in writing, that such detention is in the interest of justice.” To determine if such detention would be in the interest of justice, an issuing authority or common pleas judge would be required to consider the factors set forth in subdivision (c) as mandated by 34 U.S.C. § 11133(a)(11)(B)(ii), *supra*.

Subdivision (d)(1) of Rule 523.1 would require an issuing authority to make an interest of justice determination if a minor defendant is to be detained after a bail determination and a party requests the minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates. The Comment would provide additional guidance on the circumstances necessitating an interest of justice determination by an issuing authority. If the issuing authority were to find that such detention was in the interest of justice and ordered the minor defendant so detained, a court of common pleas, pursuant to subdivision (d)(2), would be required to hold a hearing within 5 days to review the issuing authority’s finding. The court of common pleas’ review would be *de novo*.

Subdivision (e) of the rule would provide for the filing of a motion in a court of common pleas requesting “that a detained minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates.” Proposed Rule 523.1(e)(1). Per subdivision (e)(2), when such a motion is filed, the court is required to have a hearing within 72 hours. At that hearing, the court would have to determine if it is in the interest of justice for the minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates. The court would be required to consider each factor listed in subdivision (c). Proposed Rule 523.1(e)(3).

At the conclusion of either a *de novo* hearing or an interest of justice hearing, a court would be required to enter an order with the court’s determination and the court’s findings regarding each factor enumerated in subdivision (c). Proposed Rule 523.1(f)(1). Subdivision (f)(2) would require an order entered pursuant to subdivision (f) to state that “the Prison Rape Elimination Act standards for youthful inmates still apply” if the minor defendant is detained in an adult facility.

If a minor defendant is detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates after an interest of justice hearing, subdivision (g)(1) would require the court to review its determination once every 30 days. Subdivision (g)(2) would limit the detention of a minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates to 180 days, pursuant to 34 U.S.C. § 11133(a)(11)(B)(iii)(II), “unless the court, in writing, determines there is good cause for an extension or the minor defendant expressly waives this limitation.” Proposed Rule 523.1(g)(2).

The Comment to the rule would include citations to 34 U.S.C. § 11133(a)(11)(B)(i) - (iii), the relevant federal statute, as well as to 34 U.S.C. § 11133(a)(13), which provides additional exceptions to the prohibition on detaining a minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates. The Comment would also provide citations to 42 Pa.C.S. § 6302 (Definitions) (excluding certain offenses from the definition of “delinquent act”) and 42 Pa.C.S. § 6355 (Transfer to criminal proceedings) to inform the reader of when a minor may be prosecuted as an adult in criminal court. And as subdivision (e)(2) references the Prison Rape Elimination Act, the Comment would cite 28 C.F.R. § 115.14 (relating to youthful inmates) and the Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301 *et seq.* for those unfamiliar with the requirements of the Act and how those requirements apply to youthful inmates.

The final two citations provided in the Comment are to 42 Pa.C.S. § 6327 (Place of detention), for when a minor defendant is to be detained but not in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, and to Pa.R.A.P. 1610 (Review of Bail Orders), for procedures when a minor defendant wishes to appeal an interest of justice determination.

The Committee invites all comments, concerns, and suggestions.