

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 1128 and 1129

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 1128 and 1129 governing the presence of parties, including the child, at dependency proceedings 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 the:

**Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
P.O. Box 62635
Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by **September 30, 2026**. 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 Juvenile Court Procedural Rules Committee,

Lisa P. Harvey, Esquire, Chair

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

PUBLICATION REPORT

Proposed Amendment of Pa.R.J.C.P. 1128 and 1129

The Juvenile Court Procedural Rules Committee (“Committee”) is considering proposing the amendment of Pennsylvania Rules of Juvenile Court Procedure 1128 and 1129 concerning the presence of the parties, including the child, at dependency proceedings.

Pa.R.J.C.P. 1128(a) would be amended to emphasize the general requirement that all parties, including the child, are required to be physically present in the courtroom at every dependency proceeding. This requirement provides the parties with the opportunity to provide testimony in person and on the record before the judge or juvenile court hearing officer. Further, the parties are able to more readily consult with counsel. It also allows the court to question the parties and for the parties to question witnesses. Moreover, the court is able to observe the interaction between the parents, caregiver, and the child. Finally, the court can observe the child to ensure his or her care, protection, safety, and wholesome mental and physical development.

Subdivision (b)(1) would be amended to provide that a party’s physical presence, including that of the child, may only be excused or excluded upon request for good cause. The use of categorical or “blanket” excuses or exclusions, e.g., age of child, from being physically present would not be permitted. Each requested excuse or exclusion should be determined individually.

Subdivision (b)(2) would continue to permit the court to proceed if a party, including the child, fails to appear, provided there is good cause to do so. This subdivision also retains the existing requirement that the child’s attorney be present notwithstanding a party’s failure to appear.

Subdivision (c) would clarify and provide that advance communication technology may be used if a party, including the child, is excused from being physically present in the courtroom. Readers should observe that subdivision (c) does not contain a similar provision for exclusion.

The Comment accompanying Pa.R.J.C.P. 1128 would be revised to discuss the application of subdivision (b).

Pa.R.J.C.P. 1129, which governs the use of advance communication technology to appear at a proceeding, would be amended to clarify that a child is a “party” to the

proceeding for purposes of the rule, Subdivision (a)(2) would be amended to require the child to appear at every proceeding, rather than every six months, unless excused. Commentary repetitive of the rule text is also proposed to be removed.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

Rule 1128. Physical Presence at Proceedings.

[A)](a) General Rule. All parties, including the child, shall be **physically** present **in the court room** at **[any] every** proceeding unless the exceptions of **[paragraph (B)] subdivision (b)** apply.

[B)](b) Exceptions.

[1) Absence from Proceedings. The court may proceed in the absence of a party upon good cause shown except that in no case shall a hearing occur in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

2) Exclusion from Proceedings. A party may be excluded from a proceeding only for good cause shown. If a party is so excluded, counsel for the party shall be permitted to be present.]

(1) Excused or Excluded from Proceedings. For good cause, a party, including the child, may be excused or excluded, upon request, from either being physically present in court or attending a proceeding. If a party is excused or excluded, counsel for the party shall be permitted to be physically present in the court room.

(2) Failure to Appear. For good cause, the court may proceed if a party, including the child, fails to appear and has neither been excused nor excluded from the proceeding. No case shall proceed in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

[C)](c) Advanced Communication Technology. A **[child] party, including the child,** or **a guardian, whose physical presence has been excused,** may appear by utilizing advanced communication technology pursuant to Rule 1129.

[D)](d) Court-Ordered Appearance. The court may order any person having **[the]** physical custody or control of a child to bring the child to any proceeding.

Comment: [In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.]

Requiring the child's attorney to be present pursuant to **[paragraph (B)(2)] subdivision (b)(1)** protects the child's interest if the proceeding is conducted in the child's absence. However, unless good cause is shown by individual circumstances, a child should be present in court. See also Pa.R.J.C.P. **[1129(A)(2)] 1129(a)(2)** (child shall appear in person **[at least every six months unless presence is] at every proceeding unless** excused). It is important that all children, including infants, appear in court so the court can observe the interaction between the caregiver and child and observe the child's development and health. Because a child may feel uncomfortable while attending proceedings, the court should take measures to ensure that the child understands the courtroom to be a place of safety and security.

Ensuring a child appears in court on a regular basis is critical because the court oversees the child and is to ensure his or her care, protection, safety, and wholesome mental and physical development. However, the court may **[ask] order** that the child be **[removed] excluded** from the courtroom during sensitive testimony.

Subdivision (b)(1) is intended to permit the court to excuse or exclude a party, including a child, from either being physically present in the courtroom or appearing at the proceeding, upon good cause. For an excusal, the court has the discretion pursuant to subdivision (c) to permit participation via advanced communication technology. For a party's excused appearance at a proceeding, see also Pa.R.J.C.P. 1122 (Continuances).

Good cause for court-ordered exclusion pursuant to subdivision (b)(1) may include a party's disruptive behavior or a child's exposure to sensitive testimony. Nothing in this subdivision is intended to limit a court's contempt power to maintain decorum as an alternative to exclusion. The exclusion of a party does not operate to exclude the party's counsel from the proceeding.

Subdivision (b)(2) permits the court to proceed if an unexcused party, including the child, fails to appear, upon good cause. Good cause exists if proceeding is in the best interest of the child provided the non-appearing party received notice of the proceeding. See also Pa.R.J.C.P. 1243 (Shelter Care Rehearing); Pa.R.J.C.P. 1124(D) (bench warrant if a summoned person fails to appear after sufficient notice was provided).

See In re Adoption of S.B.B. and E.P.R., 539 A.2d 883 (Pa. Super. 1988).

Nothing in **[these rules] this rule** creates **[a] the** right of a child to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

[Official Note: Rule 1128 adopted August 21, 2006, effective February 1, 2007; amended April 21, 2011, effective July 1, 2011; amended October 14, 2020, effective January 1, 2021.]

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1128 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006). Final Report explaining the amendments to Rule 1128 published with the Court's Order at 41 Pa.B. 2326 (May 7, 2011). Final Report explaining the amendments to Rule 1128 published with the Court's Order at 50 Pa.B. 5841 (October 24, 2020).]

Rule 1129. Appearance by Advanced Communication Technology.

[A.](a) Generally.

- (1) **[The child,] A party, including the child, a guardian, or a witness may appear at a proceeding by utilizing advanced communication technology pursuant to Rules 1140, 1242, 1406, 1512, and 1608 if excused pursuant to Rule 1128(b)(1).**
- (2) **[At a minimum, the] The child shall appear in person at [least every six months] every proceeding unless [as otherwise provided by] excused pursuant to Rule 1128**(b)(1).****

[B.](b) Counsel.

- (1) **[The child] A party, including the child, or a guardian shall be permitted to confer with counsel before entering into an agreement to appear utilizing advanced communication technology.**
- (2) **[The child] A party, including the child, or a guardian shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.**

Comment: [Paragraph (A) requires that every child is to appear in person at least every six months. There may be instances in which the child is excused from attending pursuant to Rule 1128.]

This rule is not intended to compel the use of advanced communication technology but rather permit appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience **[for] of** witnesses[;], efficient use of resources[;], or **[when] if** a party or witness has an illness, is incarcerated, or is otherwise in a remote location. See **[Rules] Pa.R.J.C.P.** 1140**(D)**, 1242**(b)(4)**, 1406**(A)(2)**, 1512**(A)(3)**, and 1608**(e) [for]** (specific requirements for the use of advanced communication technology).

Additionally, special care is to be taken when utilizing advanced communication technology to prevent disclosure of sensitive information to unauthorized persons and entities or to prevent a breach of confidentiality between a party and the party's attorney.

[Pursuant to paragraph (B)(1), the child or guardian is to be permitted to confer with counsel prior to agreeing to a proceeding utilizing advanced communication technology.] “Counsel,” as used in subdivision (b), includes legal counsel [and/or] and the guardian *ad litem*. [Pursuant to paragraph (B)(2), the child or guardian is permitted to confer with counsel privately prior to and during the proceedings.] The child is to be afforded all the same rights as if the **[hearing] proceeding was held with all parties present in the courtroom.**

[Official Note: Rule 1129 adopted April 21, 2011, effective July 1, 2011.]

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 1129 published with the Court's Order at 41 Pa.B. 2327 (May 7, 2011).]