

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Crim.P. 125

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pennsylvania Rule of Juvenile Court Procedure 125 governing qualifications of counsel for indigent defense services 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.

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

**Criminal Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: (717) 231-9521
criminalrules@pacourts.us**

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,

David R. Crowley, Esquire, Chair

Rule 125. Qualifications of Counsel for Indigent Defense Services.

(a) Definitions.

- (1) “Indigent defense services” – The legal representation provided to indigent defendants, at public expense, through either a public defender’s office, contracted counsel, or conflict counsel.
- (2) “Public defender’s office” – Governmental, non-profit, or contracted agencies that provide legal defense to indigent defendants within a specific jurisdiction.

(b) Qualifications. Before counsel provides indigent defense services, counsel shall meet the following licensure and educational qualifications:

- (1) **Licensure.** Counsel shall be a member in good standing of the Bar of this Commonwealth.
- (2) **Education.** Counsel shall have completed at least six of counsel’s annually required continuing legal education credits with coursework specific to criminal law practice, including but not limited to:
 - (i) substantive criminal law;
 - (ii) criminal procedure;
 - (iii) pretrial investigation, preparation, and strategy;
 - (iv) jury selection and trial advocacy;
 - (v) presentation and rebuttal of relevant scientific, forensic, biological, and mental health evidence and experts;
 - (vi) rules of evidence;
 - (vii) sentencing laws and guidelines;
 - (viii) appellate procedure;
 - (ix) post-conviction litigation; and
 - (x) immigration consequences of criminal cases; and

- (xi) ethical considerations particular to criminal defense representation.

Nothing in this subdivision shall be construed to modify the requirements of Pa.R.Crim.P. 801, relating to qualifications for defense counsel in capital cases.

- (c) **Experience.** To the extent practicable, when providing indigent defense services, counsel's prior criminal practice experience shall, at a minimum, be commensurate with the severity of the charges, complexity of the case, and stage of proceeding.

- (d) **Responsibility.**

- (1) **Public Defender Office.** The public defender office shall be responsible for ensuring that its employed counsel meet the qualifications of subdivision (b).
- (2) **Contractor.** The entity contracting counsel to provide indigent defense services shall be responsible for ensuring that counsel meets the qualifications of subdivision (b).
- (3) **Court.** If the court appoints counsel to provide indigent defense services, and counsel is neither employed by a public defender office nor under contract to provide such services, the court shall be responsible for ensuring that counsel meets the qualifications of subdivision (b) prior to making the appointment.
- (4) **Affidavit.** Unless employed by a public defender office or under contract to provide indigent defense services, any counsel seeking an appointment by the court to represent an indigent defendant shall:
 - (i) sign an affidavit attesting that he or she has met the qualifications set forth in subdivision (b) and describe his or her criminal practice experience;
 - (ii) submit the affidavit to the president judge or administrative judge of the judicial district where counsel is seeking appointment; and
 - (iii) after submission of the initial affidavit, counsel shall submit a new affidavit every two years, and continue to do so for as long as counsel represents or seek an appointment to

represent an indigent defendant, attesting that he or she continues to meet the qualifications set forth in subdivision (b).

Comment: For the qualifications of defense counsel in a capital case, see Pa.R.Crim.P. 801.

This rule is not intended to substitute for or affect counsel's obligation under the Pennsylvania Rules of Professional Conduct to provide competent legal representation of the defendant with the necessary legal knowledge, skill, thoroughness and preparation, including, but not limited to, keeping abreast of changes in criminal law and its practice. See Pa.R.P.C. 1.1. Additionally, a violation of this rule is not intended to form an independent basis of relief under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546.

The definition of "indigent defense services" in subdivision (a) is derived from 72 P.S. § 202-F.

The affidavit required by subdivision (d)(4)(iii) may also include an updated description of criminal practice experience.

Standards for Delivery of Effective Indigent Defense Services

Preamble

The delivery of effective indigent defense services throughout this Commonwealth is a requirement of the Constitution of the United States and the Constitution of Pennsylvania. The following principles are designed to assist counsel in providing legal representation to indigent defendants through either a public defender's office, contracted counsel, or conflict counsel to ensure that counsel's ability, training, and experience matches case assignments.

These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct, nor shall they be used as a basis for litigation, lawyer discipline or sanctions.

§ 1. Minimum Standards.

Attorneys should have sufficient knowledge of the law, training, and experience to provide effective assistance of counsel.

§ 2. Knowledge of Law.

- (a) Counsel should have reasonable knowledge of substantive Pennsylvania and federal law regarding constitutional law, criminal law, criminal procedure, factors impacting culpability, mitigation, rules of evidence, rules of professional responsibility, trial advocacy, and local practices.
- (b) Counsel who practice in specific areas such as appeals, capital defense, mental health representation, or post-conviction relief should have reasonable knowledge of the substantive law and rules relevant to these areas of practice.
- (c) Counsel should have reasonable knowledge of ethical rules of practice.
- (d) Counsel should keep updated on developments in the relevant rules and law.

§ 3. Technological Skills.

- (a) Counsel should be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system.
- (b) Counsel should be reasonably able to review materials that are provided in an electronic format and have a duty to keep updated with technological developments relevant to criminal defense.

§ 4. Forensic knowledge.

- (a) Attorneys should have reasonable knowledge of forensic and scientific issues that can arise in criminal cases and be reasonably able to effectively litigate those issues.
- (b) If counsel does not have sufficient forensic knowledge at the outset of a case, counsel should adequately prepare to achieve competence by seeking training, information, mentorship, and supervision, as available.

§ 5. Appropriateness of Case Assignments.

Counsel should not accept a case that will exceed:

- (a) Counsel's general level of experience.
- (b) Counsel's training and legal knowledge relevant to the case.
- (c) Counsel's ability to sufficiently prepare for a particular case to the degree required for competent representation.
- (d) Counsel's expertise in a particular field of law or specific subject matter is necessary for competent representation.

§ 6. Counsel's Duties to Clients.

- (a) Counsel should adopt a client-centered approach to representation based around a client's needs and working with them to achieve their goals.
- (b) Counsel should take all reasonable steps to address collateral issues that are relevant to their client's case. Counsel should offer direct assistance with such issues or provide referrals for the client to civil legal services organizations, social services providers, other attorneys, or non-attorney professionals.

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

JOINT PUBLICATION REPORT

Proposed Adoption of Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153

The Criminal Procedural Rules Committee is considering proposing the adoption of Pennsylvania Rule of Criminal Procedure 125 and the Juvenile Court Procedural Rules Committee is considering proposing the adoption of Pennsylvania Rule of Juvenile Court Procedure 153 for minimum standards for the delivery of effective indigent defense services throughout this Commonwealth pursuant to the Act of Dec. 13, 2023, P.L. 251, No. 34 (Act 34).

Act 34 established the Indigent Defense Advisory Committee (IDAC) and, *inter alia*, tasked IDAC to:

- (1) Propose minimum standards for the delivery of effective indigent defense services throughout this Commonwealth that are consistent with the requirements of the Constitution of the United States and the Constitution of Pennsylvania.
- (2) Propose minimum standards for attorneys providing indigent defense services to ensure that the ability, training and experience of the attorneys match the cases assigned to the attorneys.

72 P.S. § 203-F(i)(1)-(i)(2). The Pennsylvania Supreme Court is then tasked with adopting the proposed minimum standards through a manner prescribed by the Court. *Id.* § 203-F(i)(3).

IDAC has crafted and submitted proposed “Standards for Delivery of Effective Indigent Defense Services” to the Supreme Court of Pennsylvania, which have been referred to the Criminal Procedural Rules Committee and the Juvenile Court Procedural Rules Committee for procedural rulemaking consideration.

One standard would allow each county to develop policies for attorney qualifications and training programs. The Committees believed such an individualized approach would foster inconsistency among the counties. Instead, the minimum qualifications should be established through statewide rule, similar to those established in Pa.R.Crim.P. 801 for defense counsel in capital cases and Pa.R.J.C.P. 182 for juvenile court hearing officers.

Accordingly, the Committees propose Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153 to establish minimum qualifications for counsel who provide indigent defense services. The “qualifications” involve licensure and education. For “education” requirements, the Committees propose an annual continuing legal education (CLE) requirement of at least six hours on topics related to criminal law practice or juvenile law practice. See Pa.R.Crim.P. 125(b) (proposed); Pa.R.J.C.P. 153(b) (proposed). Subdivision (b)(2) of the proposed rules include non-exhaustive lists of CLE topics that would count towards the requirements. The Committees intend to recommend an effective date for the rules reasonably sufficient to allow counsel to obtain the necessary credits.

The Criminal Procedural Rules Committee specifically solicits comment on whether the court should be able to waive the educational requirements in subdivision (b)(2) for appointed counsel.

The Committees also considered what role, if any, the Continuing Legal Education (CLE) Board should have in identifying specific courses that satisfy the requirements of Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153. The breadth of courses that would fall under the scope of subdivision (b)(2) of both rules is substantial and evolving. Moreover, the courses described in subdivision (b)(2) are not exhaustive. The Committees believed that the responsibility for ensuring that counsel’s CLE courses fell within subdivision (b)(2) should fall on those responsible for ensuring that counsel meets the qualifications under the rule. Accordingly, the Committees do not propose that the CLE Board identify courses that meet the scope of courses in subdivision (b)(2).

Subdivision (c) of each rule states, generally that, “to the extent practicable,” counsel’s prior experience “shall... be commensurate with the severity of the offenses, complexity of the case, and stage of proceedings.” It does not contain specific requirements, *e.g.*, number of jury trials, felony cases, appeals, etc. Given the wide range of matters in the span of criminal or juvenile cases, the Committees did not believe it was possible to quantify experiential requirements. Further, the required experience may depend on the type of proceeding if defense counsel may be substituted at different stages. The phrase, “to the extent practicable,” is intended to recognize that exigent circumstances may exist when less-than-experienced representation is better than no representation.

Pursuant to subdivision (d) of each rule, the responsibility for ensuring that counsel is qualified is based on who is assigning counsel. This will primarily fall on the Chief Public Defender, but it can also fall on the county if they are contracting counsel. Finally, with court appointments when counsel is not with the Public Defender’s Office or contracted, the court is responsible for ensuring that counsel meets the qualifications. To aid the court in these circumstances, subdivision (d)(4) contains an affidavit requirement. The affidavit requirement is intended to allow the court to maintain a list of qualified counsel so that a colloquy of counsel is not necessary prior to making each appointment.

The Committees discussed the consequence of failing to abide by the rules-based qualifications and the standards described in the commentary. Mindful of the construct against mirroring other authority, the proposed Comment to Pa.R.Crim.P. 125 would make clear that a violation of the rule would not form an independent basis for relief under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. Likewise, the Comment to Pa.R.J.C.P. 153 contains a similar statement related to Pa.R.J.C.P. 622 (Motion for *Nunc Pro Tunc* Relief). Claims concerning the ineffectiveness of counsel would be governed by separate authority and counsel's actual performance.

Regarding the other standards in IDAC's proposal, the Committees considered the Code of Civility, 204 Pa. Code §§ 99.1-99.3, first adopted by the Court in 2000, as a model for recognizing their aspirational nature. Those standards are proposed to be located within the commentary accompanying Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153. The Committees imported a portion of the Preamble to the Code of Civility into the preamble to the standards stating: "These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct, nor shall they be used as a basis for litigation, lawyer discipline or sanctions."

The Committees invite all comments, concerns, and suggestions.