

INTRODUCTION

The Juvenile Court Procedural Rules Committee is soliciting public comment on proposed New Rule 405 before it considers any recommendations to the Supreme Court of Pennsylvania. These proposed modifications address the notice and demand requirements in presentation of a forensic lab report at an adjudicatory hearing without the presence of a live witness while satisfying the juvenile's right to confront witnesses.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

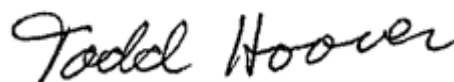
For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq.
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Friday, July 25, 2014.

5/28/2014

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:



Honorable Todd A. Hoover, Chair



Christine Riscili, Counsel

EXPLANATORY REPORT

The Juvenile Court Procedural Rules Committee (Committee) is seeking public comment on an entirely new proposed Rule 405 regarding the notice and demand requirements in presentation of a forensic lab report at an adjudicatory hearing without the presence of a live witness.

This rule is being proposed to create a uniform procedure for delinquency proceedings similar to Pa.R.Crim.P. 574, which was adopted to address the issues raised by the U.S. Supreme Court's decision in *Melendez-Diaz v. Massachusetts*, 129 U.S. 2527 (2009). Its decision held that the 6th Amendment's confrontation right precluded presentation of laboratory reports without a live witness testifying at trial. In *Melendez-Diaz*, the U.S. Supreme Court noted with approval the use of "notice and demand" procedures. These procedures allow routine reports to be admitted without the expense of live expert testimony while protecting a defendant's confrontation rights.

Under the Pennsylvania Constitution, Art. 1, § 9, juveniles are to be afforded the same due process rights as adult defendants, including the right to confront witnesses. See *In re Davis*, 546 A.2d 1149 (Pa. Super. Ct. 1988); *Com. v. McNaughton*, 381 A.2d 929 (Pa. Super. Ct. 1977). See also *In re Winship*, 397 U.S. 358 (1970) and *In re Gault*, 387 U.S. 1 (1967).

This rule provides a "notice and demand" procedure for delinquency proceedings. Under this rule, the attorney for the Commonwealth may seek to admit a forensic laboratory report as evidence without expert testimony if the notice requirements are met and no demand for the presence of the expert is made. If the juvenile makes such a demand, the expert is required to testify before the report can be admitted into evidence. See paragraph (B) for notice requirements and paragraph (C) for demand requirements.

An adjudicatory hearing may have to be continued if the court permits the filing of the notice or demand after the time period required if the party shows cause for the delay pursuant to paragraph (D). The demand period will run ten days from the date on the late filing of the notice.

Paragraph (E) provides for the requirements of the certification.