

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 407

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 407 concerning admission colloquies for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially 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 **January 2, 2018**. 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,

Kelly L. McNaney, Esq., Chair

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

REPORT

Proposed Amendment of Pa.R.J.C.P. 407

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 407 to add a provision concerning SORNA registration for a sexually violent delinquent child (SVDC) committed for involuntary treatment and to make language concerning appellate rights after an admission consistent with Rule 512(C).

Effective April 1, 2017, the Court amended Rule 407 to simplify language in the admission colloquy and to add a separate colloquy when a juvenile is making an admission to an act of sexual violence, see 42 Pa.C.S. § 6358. Regarding the latter colloquy, it would advise the juvenile of the possibility of civil commitment after termination of juvenile court supervision when the juvenile turns 21 years of age. The same judicial finding that would trigger the civil commitment would also result in the juvenile being subject to lifelong SORNA registration. See 42 Pa.C.S. § 9799.13(9) (applicability of SORNA to SVDC) and § 9799.15(a)(5) (lifelong registration requirement).

The Committee received a request to amend Rule 407(D) to add a provision regarding the SORNA registration requirement under these circumstances. The Committee considered two approaches to address this matter. The first approach was informational wherein the form would contain a very detailed colloquy including several questions about SORNA requirements. The second approach operated more as a notice using a single question and relying upon the attorney to provide the details and dialogue with the juvenile. The Committee favored the second approach.

Accordingly, the Committee proposes amending the “Addendum to Admission Colloquy Form” to add a new Question 4(b) concerning the SORNA registration requirement, the frequency of reporting, the term of this obligation, and the public availability of registration information. The phrasing contained in the question is intended to reflect a seventh grade reading level.

Additionally, for consistency purposes, the Committee proposes replacing the language of Question 20 in the Admission Colloquy Form in Rule 407(C) with the language contained in Question 9 of the Post Dispositional Rights Colloquy in Rule 512(C). The provisions in both forms discuss a juvenile’s appellate rights after an admission; the description of the rights should not vary because the rights themselves do not vary.

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

RULE 407. ADMISSIONS

A. **Admissions.** At any time after a petition is filed, the juvenile may tender an admission to some or all of the delinquent acts charged.

1) Requirements.

- a) Before the court can accept an admission, the court shall determine that the admission is knowingly, intelligently, and voluntarily made.
- b) As a part of this determination, the court shall ensure:
 - i) an attorney has reviewed and completed the admission colloquy with the juvenile pursuant to paragraph (C); and
 - ii) there is a factual basis for the admission.
- c) At the hearing, the court shall conduct an independent inquiry with the juvenile to determine:
 - i) whether the juvenile understands the nature of the allegations to which he or she is admitting and understands what it means to admit;
 - ii) whether the juvenile understands that he or she has the right to a hearing before the judge and understands what occurs at a hearing;
 - iii) whether the juvenile is aware of the dispositions that could be imposed and the consequences of an adjudication of delinquency that can result from an admission;
 - iv) whether the juvenile has any questions about the admission; and
 - v) whether there are any other concerns apparent to the court after such inquiry that should be answered.

2) **Agreements.** If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) **Court Action.** If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) **Limitations on Withdrawals.** An admission may be withdrawn prior to the court entering the dispositional order. After the court has entered the dispositional order, an admission can be withdrawn only upon a demonstration of manifest injustice.

B. **Incriminating Statements.** An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*

C. **Written Admission Colloquy.** If a juvenile is making an admission, the colloquy shall be:

1) in writing;

2) reviewed and completed with the juvenile by an attorney;

3) submitted to and reviewed by the court; and

4) substantially in the following form:

ADMISSION COLLOQUY FORM

In re _____ JD _____
(Juvenile) :
: **Delinquent Act(s):** _____
: _____
: _____
: _____
: _____

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): _____

General Information:

1) What is your full name? _____

2) Do you have any other name or nickname? _____
If yes, state: _____

3) How old are you today? _____

4) What grade are you in? _____

5) Can you read, write, and understand English? _____ (if yes, go to #6)

a) If you cannot read, has someone read this form to you? _____

If so, who? _____(print name)

(signature of reader verifies that the form has been read to the juvenile)

b) If you do not read English, have you been given a translator or a lawyer who speaks your language? _____

c) Did your translator or lawyer read this form to you and explain it? _____

If so, who? _____ (print name)

(signature of reader verifies that the form has been read to the juvenile)

Knowing and Voluntary Admission:

- 6) Are you now a patient in a mental hospital? _____
a) If yes, where? _____
b) Are you being treated for a mental illness? _____
c) If yes, what are you being treated for? _____
- 7) Have you taken any drugs or alcohol yesterday or today that do not make you think clearly? _____
If yes, specify type of drugs and/or alcohol: _____
- 8) Has anyone threatened or forced you to sign this form? _____
If yes, explain: _____
- 9) Have you been promised anything for this admission? _____
If yes, explain: _____

Understanding the Admission:

- 10) Has your lawyer told you what you did was against the law? _____
- 11) By admitting what you did, do you understand that you are giving up:
- a) the right to be presumed innocent, which means the judge does not think you broke the law until the D.A. (District Attorney) proves beyond a reasonable doubt that you broke the law (a reasonable doubt is a belief that it is very possible you did not break the law); _____
 - b) the right to a hearing by a fair judge; _____
 - c) the right to remain silent and your silence cannot be held against you; _____
 - d) the right to tell the judge your side of the story; _____

- e) the right to ask witnesses questions; _____
 - f) the right to present witnesses or evidence to help tell your side of the story, but you do not have to do anything; _____
 - g) the right to tell the judge you disagree with something; _____
 - h) the right to ask the judge to decide if he or she should hear certain things; and _____
 - i) the right to have a higher court review this judge's decision. _____
- 12) Do you understand if the judge accepts your admission and believes you need help (finds you delinquent), the judge may make you get help? _____

Possible Consequences of Adjudication of Delinquency:

- 13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old? _____
- 14) Are you aware that if you are admitting to _____

 that your driving license will be suspended now or in the future (which means you will not be able to drive)?
 (lawyer shall write acts on this line, cross off, or write n/a).
- 15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail.

- 16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers? _____
- 17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? _____

Admission Agreements:

- 18) Are you aware that the judge does not have to accept any agreement between you and the District Attorney? _____ (write n/a if no agreement)

- 19) If you change your mind about admitting to the charges before the judge decides your disposition or consequences, then you can ask the judge to let you take back your admission.

Appeals:

- 20) If you are found delinquent after this admission, you can have a higher court review your case for only three reasons:

[a) You did not understand this admission or you were forced to admit;

b) The court was not the proper court to take your admission; or

c) The judge's disposition or consequence is more than the biggest punishment an adult would get for the same crime. _____]

a) whether your admission was voluntary (you made your own decision to admit to a charge. No one forced you to do this. You understood what you were doing, including the consequences.); _____

b) whether the court was the correct court to hear your case (the court had the authority over your case); or _____

c) whether the court abused its responsibility or made any mistakes in the things that were ordered as your consequences. _____

If you do not admit, do you understand you have other rights? _____

Lawyer's Representation and Opportunity to Speak with Guardian

- 21) Are you okay with what your lawyer did for you and how he or she explained everything? _____

- 22) Did you talk with your parent or guardian about admitting to the charge(s)?

I promise that I have read the whole form or someone has read the form to me. I understand it. I am telling the truth. I am saying that I have done the things on page 1. I believe that this admission is best for me. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has told me and I believe that he or she understands this form.

LAWYER FOR JUVENILE

DATE

D. **Admission to an Act of Sexual Violence.** If a juvenile is making an admission to an act of sexual violence, see 42 Pa.C.S. § 6358, which may render the juvenile eligible for civil commitment for involuntary treatment upon attaining 20 years of age **and subject to lifelong SORNA requirements**, then the admission colloquy form set forth in paragraph (C) shall be amended to include substantially the following form:

ADDENDUM TO ADMISSION COLLOQUY FORM

In re _____ JD _____
 (Juvenile) :
 :
 : Delinquent Act(s): _____
 : _____
 : _____
 : _____

ELIGIBILITY FOR CIVIL COMMITMENT FOR INVOLUNTARY TREATMENT

Civil Commitment Cases

I did at least one of the crimes (in the box below); AND

If the judge says that I am a delinquent; AND

If I am in placement when I turn age 20,

I can go to a different placement against my will.

See 42 Pa.C.S. § 6401 *et seq.*

Check all that are true:

<input type="checkbox"/> Rape, 18 Pa.C.S. § 3121	<input type="checkbox"/> Sexual Assault, 18 Pa.C.S. § 3124.1
<input type="checkbox"/> Involuntary Deviate Sexual Intercourse, 18 Pa.C.S. § 3123	<input type="checkbox"/> Indecent Assault, 18 Pa.C.S. § 3126
<input type="checkbox"/> Aggravated Indecent Assault, 18 Pa.C.S. § 3125	<input type="checkbox"/> Incest, 18 Pa.C.S. § 4302

- 1) If I am in placement when I am age 20, SOAB (State Sexual Offenders Assessment Board) will look at information about me to see if I have mental problems that make it hard for me to stop doing sexual crimes. _____ initials

See 42 Pa.C.S. § 6358.

- 2) If SOAB thinks that I need treatment, the judge will have a hearing. _____ initials

See 42 Pa.C.S. § 6358.

- 3) If the judge agrees I need treatment, I will have a second hearing. _____
initials

See 42 Pa.C.S. § 6358.

- 4) At the hearing, the judge will decide if I have mental problems that make it likely that I will do sexual crimes again. If the judge says yes[.],:

- a)** I will go to a different placement for at least one year. _____ initials

See 42 Pa.C.S. §§ 6403 & 6404.

- b) I must register with the police and report to them every 90 days for the rest of my life. Information about me and my crime will also be available for everyone to see. _____ initials**

See 42 Pa.C.S. § 9799.13(9) & § 9799.15(a)(5)

- 5) The judge will look at my case each year. I will stay in that placement for as long as the judge decides that I have mental problems that make it likely that I will do sexual crimes again. _____ initials

See 42 Pa.C.S. § 6404.

- 6) If the judge says I can leave placement, I must continue to get treatment when told for my mental problems. The judge will look at my case after one year. _____ initials

See 42 Pa.C.S. §§ 6404.1 & 6404.2.

- 7) If the judge says I can stop getting treatment after one year, I still must talk to a counselor every month. _____ initials

See 42 Pa.C.S. §§ 6404.1 & 6404.2.

- 8) If I do not obey these rules or the counselor says I cannot stop my bad actions, I will be sent back to placement. _____ initials

See 42 Pa.C.S. § 6404.2.

Lawyer's Representation and Opportunity to Speak with Guardian

- 9) Did you talk with your lawyer before you decided to tell the judge you did the crimes (delinquent acts)? Yes No

- 10) Are you okay with what your lawyer did for you? Yes No

11) Did your lawyer answer all your questions? Yes No

12) Did you talk with your parent or guardian about saying you did the crimes?
Yes No

If you answered no, would you like to talk with them now? Yes No

I have read this form or someone has read this form to me.

I understand the form and what I have to do. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has informed me and I believe that he or she understands the rights, consequences, and dispositions outlined in this form. I have completed the foregoing sections with my client. I have explained them. I have no issues with my client admitting to the delinquent acts.

LAWYER FOR JUVENILE

DATE

COMMENT

Under paragraph (A)(1), the court is to determine if the admission is knowingly, intelligently, and voluntarily made by asking questions to ascertain the juvenile's ability to comprehend the written colloquy and to make an admission.

The written colloquy serves as an aid for the court in making its determination that the admission is knowingly, intelligently, and voluntarily made and it does not supplant the court's responsibility to conduct a sufficient inquiry to support its determination pursuant to paragraph (A)(1).

Nothing in this rule prohibits the judge from reviewing the entire written colloquy with the juvenile on the record or asking more questions than required under paragraph (A)(1)(c).

The admission colloquy is similar to a guilty plea colloquy in criminal court; however, the juvenile court judge has special responsibilities under the Juvenile Act in providing a balanced attention to the protection of the community, the imposition of accountability for delinquent acts committed, and the development of competencies to enable juveniles to become responsible and productive members of the community. See 42 Pa.C.S. § 6301.

If the court finds an admission is not knowingly, intelligently, and voluntarily made, the case is to proceed to a hearing pursuant to Rule 406. The decision whether an admission is knowingly, intelligently, and voluntarily made is not appealable to another common pleas judge; therefore, the admission may not be presented to another judge once this determination has been made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. 1998).

If the court does not accept an agreement or finds an admission not to be knowingly, intelligently, and voluntarily made, a motion for recusal of the judge may be appropriate for the adjudicatory hearing.

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

Pursuant to paragraph (D), the written admission colloquy in paragraph (C) is to be amended when the juvenile is admitting to an act that would render the juvenile eligible for court-ordered involuntary treatment upon attaining 20 years of age **and lifelong SORNA registration and reporting requirements**. See 42 Pa.C.S. §§ 6358,

6403, **9799.13(9), and § 9799.15(a)(5)**. The court is to conduct a colloquy as to the potential consequences of an admission of this type using the form in paragraph (D).

The colloquy forms use several age-appropriate terms for the juvenile to understand; however, certain legal terms are contained in the form. It is expected that attorneys will explain these forms until their clients understand.

The forms used for admissions are to be substantially in the forms found at paragraphs (C)(4) and (D). The questions set forth are the minimal standard. A judicial district may choose to add requirements to these admission colloquies. Any addition to the required colloquies is considered a local rule and the procedures of Rule 121 are to be followed if a judicial district chooses to make additions. See Rule 121.

The admission colloquies can be downloaded from the Supreme Court's webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>. The forms are also available in Spanish.

The Pennsylvania Juvenile Collateral Consequences checklist is also available on the Supreme Court's webpage.

Nothing in this rule precludes the court from entering a consent decree after the acceptance of an admission.

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012. Amended January 23, 2017, effective April 3, 2017. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 407 published with the Courts' Order at 42 Pa.B. 664 (February 4, 2012). Final Report explaining the amendments to Rule 407 published with the Courts' Order at **47 Pa.B. 820 (February 11, 2017). Final Report explaining the amendments to Rule 407 published with the Courts' Order at _____ Pa.B. (_____, 2017).**