

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.J.C.P. 240 & 391**

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 240 and 391 clarifying procedures to permit the extended detention of a juvenile when procedural requirements are not met 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 **September 15, 2020**. 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,

Judge Joy Reynolds McCoy, Chair

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

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 240 & 391**

The Juvenile Court Procedural Rules Committee proposes the amendment of Pennsylvania Rules of Juvenile Court Procedure 240 and 391 to clarify procedures to permit the extended detention of a juvenile when procedural requirements are not met.

First, Rule 391(B) states “if the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).” The text of paragraphs (B)(1) and (B)(2) are almost identical to Rule 240(D) with the exception of “including a psychological or psychiatric evaluation” in paragraph (B)(1)(a). Rather than repeat the language of Rule 240(D), the Committee proposes removing the language from Rule 391(B)(1) and B(2) and simply refer the reader to Rule 240(D). A similar approach has already been taken with Rule 404(A).

Second, Rule 240(D) states “except as provided in paragraph (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.” It has become apparent to the Committee that the triggering event for continued detention when a transfer is initiated differs between Rule 391(B) and Rule 240(D). Rule 391(B) is triggered when a transfer hearing is untimely whereas Rule 240(D) is triggered when the notice of request for a transfer hearing is untimely.

The Committee believes that the triggering event under Rule 391(B) should be the transfer hearing, not the notice. Therefore, the Committee proposes amending Rule 240(D) to include the transfer hearing and remove mention of the notice.

Third, the Committee proposes introducing a motion requirement to paragraph (D). This requirement is not separate from that for seeking a continuance, but part of a motion for continuance pursuant to Rule 122. The Committee also proposes expanding the court’s consideration of the necessity for continued detention anytime that continued detention is sought. Finally, the Committee proposes removing the juvenile’s attorney as a cause for the juvenile’s continued detention.

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

## **RULE 240. DETENTION OF JUVENILE**

- A) **Detention [r]Requirements.** If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:
- 1) examine the written allegation;
  - 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
  - 3) release the juvenile, unless it appears that the juvenile's detention is warranted.
- B) **Filing of [p]Petition.** The release of the juvenile shall not prevent the subsequent filing of a petition.
- C) **Prompt [h]Hearing.** If the juvenile is not released, a detention hearing shall be held no later than **[seventy-two] 72** hours after the juvenile is placed in detention. Neither the juvenile nor the juvenile's attorney shall be permitted to waive the detention hearing.
- D) **Time [r]Restrictions.** Except as provided in **this** paragraph[s (D)(1) and (D)(2)], if the adjudicatory hearing is not held **[or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404], as required by Rule 404(A), or a transfer hearing is not held, as required by Rule 391(B),** the juvenile shall be released.
- 1) **[A] Upon motion, a** juvenile may be detained for an additional single period not to exceed **[ten]10** days when the court determines that:
    - a) evidence material to the case is unavailable;
    - b) due diligence to obtain such evidence has been exercised; **and**
    - c) there are reasonable grounds to believe that such evidence will be available at a later date[; **and**].

**[d] the detention of the juvenile would be warranted.]**
  - 2) **[A] Upon motion, a** juvenile may be detained for **[successive ten-day intervals] additional periods, each of which shall not exceed 10 days,** if the delay is caused by the juvenile. The court shall state on the record if failure

to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile **[or the juvenile's attorney]**;
- b) delay caused by any continuance granted at the request of the juvenile **[or the juvenile's attorney]**; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

**3) Whenever extended detention is sought under this paragraph, the court shall consider whether detention remains warranted.**

### **Comment**

If a juvenile is detained, the guardian should be notified immediately. See Rules 220 (Procedure in Cases Commenced by Arrest Without Warrant) and 313(B) (Detention from Intake—Notice to Guardian) for notification of the guardian.

Nothing in paragraph (C) is intended to preclude the use of stipulations or agreements among the parties, subject to court review and acceptance at the detention hearing.

Under paragraph (D)(2), if the juvenile causes delay, the juvenile may continue to be held in detention. **[The a]Additional periods** of detention should not **individually** exceed ten days. **[The court may continue such detention for successive ten-day intervals if the juvenile caused the delay.]** The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

**Under paragraph (D)(3), whenever extension of a juvenile's detention may result, the court should considered whether continued detention is warranted and whether a less restrictive alternative to secured detention is available.**

**[For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.]**

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code §§ 200.101 *et seq.* (2003).

If a juvenile is detained, the juvenile is to be placed in a detention facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definition of "detention facility."

**RULE 391. TIME RESTRICTIONS FOR DETENTION OF JUVENILES SCHEDULED FOR TRANSFER HEARING**

- A) **Generally.** The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing **[except for the time restrictions provided in paragraph (B) of this rule].**
- B) **Time Restrictions.** If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released **[except as provided in paragraphs (B)(1) and (B)(2)] unless the exceptions of Rule 240(D) apply.**

**[1)A juvenile may be detained for an additional single period not to exceed ten days when the court determines:**

- a) **that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;**
- b) **that due diligence to obtain such evidence or evaluation has been exercised;**
- c) **that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and**
- d) **that the detention of the juvenile would be warranted.**

**2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:**

- a) **delay caused by the unavailability of the juvenile or the juvenile's attorney;**
- b) **delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or**
- c) **delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.]**

**Comment**

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within

ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). See Rule 800.

**[Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.]**