

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modifications of Rules 1120, 1123, 1124, 1364, and 1800 and the new rule 1140 be adopted and prescribed. The proposed modified Rule 1120 provides for the definition of a child, minor, and an adult. The proposed modified Rule 1123 provides that a copy of a subpoena is to be served upon the guardian of a minor witness and that a judge may issue a bench warrant pursuant to new Rule 1140. The proposed modified Rule 1124 provides that a judge is to issue a bench warrant pursuant to the new Rule 1140. Rule 1140 sets forth the procedures of a bench warrant when a person fails to appear before the court. The proposed modified Rule 1364 sets forth the procedures that a judge may issue a bench warrant pursuant to new Rule 1140. Rule 1800 adds Rule 1140 to paragraph one, which suspends 42 Pa.C.S. § 6335(c) only insofar as the Act is inconsistent with the Rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of the rules. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Reports*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than Monday, March 17, 2008.

January 14, 2007

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

RULE 1120 - DEFINITIONS

The Committee is proposing two new definitions and the modification of one definition. The Committee is modifying the definition of a child by adding that the child is the subject of the dependency proceeding. Currently, a child is a person under the age of eighteen or was adjudicated dependent before reaching the age of eighteen years and who, while engaged in the course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event is to remain in the course of instruction or treatment past the age of twenty-one.

The Committee is adding the definition of an “adult.” The proposed definition of “adult” includes anyone eighteen years or older, except a child who is engaged in a course of instruction or treatment and requested the court to retain jurisdiction of them as a dependent child after turning eighteen years old.

The Committee is adding the term “minor.” A “minor” is a person under the age of eighteen. This definition includes a dependent child, a minor witness, or other minor party. Therefore, a “child” can be a “minor” but a “minor” is not a “child” because a “child” must also be the subject of the dependency proceeding.

RULE 1123 - SUBPOENA

The Committee is proposing that paragraph (D) be modified because a master can not issue a bench warrant.

The Committee is proposing that paragraph (E) be added to Rule 1123. The Committee feels that it is important that the guardian of a minor witness be given a copy of the subpoena to impress upon their child the importance of a subpoena. It also allows the guardian to ensure his or her child is present for a hearing.

RULE 1124 - SUMMONS

The Committee is proposing that paragraph (D) be modified because a master can not issue a bench warrant.

The additions in the *Comment* reference the rules for service of parties for a proceeding and the new Bench Warrant Rule.

RULE 1140 - BENCH WARRANTS

This new proposed rule provides for procedures when a bench warrant is issued for failing to appear for a hearing. There are separate procedures when the warrant is issued for a party to the proceedings and a witness to the proceeding.

Pursuant to paragraph (B)(1), if a party is arrested for a bench warrant, the party is to be brought to the judge who issued the warrant unless the judge specifically authorized detention in the warrant. Pursuant to paragraph (B)(2), if detention was authorized in the warrant, the party must have a hearing before the judge by the next business day or the party is to be released.

Pursuant to paragraph (B)(3), if a party is a minor and is arrested for a bench warrant, the guardian of the minor is to be notified immediately of the minor's whereabouts and the reason for the issuance of the bench warrant. This provision ensures that the guardian knows of the detention and the reasons for the detention.

Under paragraph (B)(4), if a party is arrested in another county, the party is to be transported immediately back to the county of issuance. If transportation cannot be arranged immediately, the party is to be taken to a judge of the county where the party is found. The judge is to decide: 1) if the person is the subject of the warrant; 2) if detention of the party is warranted; and 3) what arrangements for transporting the party back to the county of issuance are necessary.

If a witness is arrested for a bench warrant pursuant to paragraph (C)(1), the witness is to be brought to the judge immediately. If the witness is not brought before a judge, the witness is to be released unless a motion to detain the witness has been filed. Pursuant to paragraph (C)(2), if a motion has been filed, the witness is to see a judge no later than the next business day or is to be released.

A motion to detain a witness can be filed by any party. The motion should aver the necessity of the witness's detention. This averment should be supported by facts leading to this necessity.

When the witness is brought before the judge, the judge is to address the motion and the reasons for the necessity of the witness's detention. For example, the witness may be harmed if the witness is not taken into protective custody or the witness may flee the jurisdiction because of threats of bodily injury or fear of implication in a crime or delinquent act.

Pursuant to paragraph (C)(3), if a witness is a minor, the witness's guardian is to be notified immediately of the witness's whereabouts and the reasons for the issuance of the bench warrant. This provision ensures that the guardian is told about the bench warrant and the place of detention.

Pursuant to paragraph (C)(4), if a bench warrant is executed in another county, the county of issuance is to be notified immediately and the witness is to be transported to the county of issuance. If transportation cannot be arranged

immediately, the witness is to be released unless a motion to detain the witness has been filed.

If a motion to detain the witness has been filed, the witness is to appear before a judge within twenty-four hours or the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. The out-of-county judge is to determine: 1) if the witness is the subject of the warrant; 2) if detention is warranted; and 3) what arrangements for transporting the witness back to the county of issuance are necessary. In no circumstances is the witness to remain in another county for more than seventy-two hours of the execution of the warrant.

Pursuant to paragraph (D), in all cases, the bench warrant is to be executed without unnecessary delay. When the bench warrant is executed, the bench warrant is to be returned to the issuing judge. Upon the return of the warrant, the judge is to vacate the bench warrant. The bench warrant is to be marked as executed in the system to ensure the subject of the warrant is not arrested again on the same warrant.

RULE 1364 - FAILURE TO APPEAR ON THE SUMMONS

A reference to the new bench warrant rule has been added.

RULE 1800 - SUSPENSIONS OF ACTS OF ASSEMBLY

The new bench warrant rule has been added to paragraph one, which suspends 42 Pa.C.S. § 6335(c) only insofar as the Act is inconsistent with the Rules. The Rules require that a summoned person is to fail to appear for the hearing and the court is to find that sufficient notice was given to the summoned person.

RULE 1120. DEFINITIONS.

ADULT is any person, other than a child, eighteen years old or older.

* * *

CHILD is a person who is under the age of eighteen **who is the subject of the dependency petition**, or who was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.

* * *

MINOR is any person under the age of eighteen.

RULE 1123. SUBPOENAS

A. **Contents.** A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. **Service.**

- 1) **Method of Service.** A subpoena shall be served upon a witness by:
 - a) in-person delivery;
 - b) registered or certified mail, return receipt requested; or
 - c) first class mail.

C. **Duration.** A subpoena shall remain in force until the end of a proceeding.

D. **Bench Warrant.** If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the **[court] judge** may issue a bench warrant **pursuant to Rule 1140.**

E. Parental notification.

- 1) Generally. If a witness is a minor, the witness's guardian shall be notified that the minor has been subpoenaed.**
- 2) Exception. Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.**

COMMENT

A subpoena duces tecum is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, In re J.C., 412 Pa.Super. 369, 603 A.2d 627 (1992), and In re A.H., 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In

addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 1140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. *See In re Crawford*, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishment of contempt (children). *See also In re Griffin*, 456 Pa.Super. 440, 690 A.2d 1192 (1997) (foster parents), *Janet D. v. Carros*, 240 Pa.Super. 291, 362 A.2d 1060 (1976) (county agency), and *In re Rose*, 161 Pa.Super. 204, 54 A.2d 297 (1947) (parents) for additional guidance on contempt for other parties.

RULE 1124. SUMMONS

A) **Requirements of the summons.** The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the parties about the right to counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B) **Method of Service.** The summons shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

C) **Exception to service.** If service cannot be accomplished pursuant to paragraph (B), the party may move for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the person sought to be served and the reasons why service can not be made.

D) **Bench Warrant.** If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the **[court] judge** may issue a bench warrant **pursuant to Rule 1140.**

COMMENT

In paragraph (D), this rule provides that a summoned person is to fail to appear and the court is to find that sufficient notice was given before a bench warrant may be issued. The Juvenile Act, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended to the extent that it conflicts with this rule. *See* Rule 1800 for suspensions.

See Rules 1360(A), 1500(A), and 1600(A) for service of the parties for a proceeding.
See Rule 1140 for procedures on bench warrants.

RULE 1140 . BENCH WARRANTS FOR FAILURE TO APPEAR

A. Issuance of warrant.

- 1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.
- 2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Party.

1) Where to take the party.

- a) When a party is taken into custody pursuant to a bench warrant, the party shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.
- b) If the party is not brought before a judge, the party shall be released unless the warrant specifically orders detention of the party.
- c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.
 - 1) Minor. If the party is a minor, the party shall be detained in a shelter-care facility or other appropriate care.
 - 2) Adult. If the party is an adult, the witness shall be detained at the county jail.

2) Prompt hearing.

- a) If a party is detained pursuant to a specific order in the bench warrant, the party shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.
- b) If the party is not brought before a judge within this time, the party shall be released.

3) Notification of guardian. If a party is a child and is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the child's guardian of the child's whereabouts and the reasons for the issuance of the bench warrant.

4) Out-of-county custody.

a) If a party is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the party shall be made immediately.

c) If transportation cannot be arranged immediately, then the party shall be taken without unnecessary delay to a judge of the county where the party is found.

d) The judge will identify the party as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the party to the county of issuance.

5) Time requirements. The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

C. Witnesses.

1) Where to take the witness.

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

1) Minor. If a detained witness is a minor, the witness shall be detained in a shelter-care or detention facility.

2) Adult. If a detained witness is an adult, the witness shall be detained at the county jail.

2) Prompt hearing.

a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) Notification of guardian. If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) Out-of-county custody.

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) Minor. If the witness is a minor, the witness may be detained in an out-of-county shelter-care or detention facility.

ii) Adult. If the witness is an adult, the witness may be detained in an out-of-county jail.

- f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.
- g) If the time requirements of this paragraph are not met, the witness shall be released.

D. Return & execution of the warrant for parties and witnesses.

- 1) The bench warrant shall be executed without unnecessary delay.
- 2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.
- 3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.
- 4) Upon the return of the warrant, the judge shall vacate the bench warrant.

COMMENT

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 1800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a child is detained. See Chapter Two, Part D.

Pursuant to paragraph (B)(1)(a), the party is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the party may be detained, the party may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(2)(a). Pursuant to this paragraph, if a hearing is not held promptly, the party is to be released. See paragraph (B)(2)(b).

Under paragraphs (B)(2) and (B)(4), a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. See Rule 1240 (C).

Pursuant to paragraph (B)(4), the party may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (B)(5), the time requirements of all other rules are to apply to children who are detained. See, e.g., Rules 1242, 1404, 1510, and 1607.

Pursuant to paragraph (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench

warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. See paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. See paragraph (C)(4)(f).

Pursuant to paragraph (D)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See paragraph (D)(3).

Pursuant to paragraph (D)(4), the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "Vacated" is to mean that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

See 42 Pa.C.S. § 4132 for punishment of contempt for children and witnesses.

Throughout these rules, the "child" is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a "minor." When "minor" is used, it may include a child. This distinction is made to differentiate between children who are alleged dependants and other minors who are witnesses. See also Rule 1120 for the definitions of "child" and "minor."

RULE 1364. FAILURE TO APPEAR ON THE SUMMONS

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant **pursuant to Rule 1140.**

COMMENT

See Rule 1140 for issuance of a bench warrant.

CHAPTER 18 SUSPENSIONS

1800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

- 1) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 1124 and 1140, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.
- 2) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rules 1127(A) & 1242(B)(2), which requires all proceedings to be recorded, except for shelter care hearings.
- 3) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.
- 4) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian *ad litem*.
- 5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.
- 6) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers taking a child into custody.

- 7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the child to shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).
- 8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.
- 9) The Act of December 19, 1990, P.L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.
- 10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides that a copy of the petition is to accompany a summons, is suspended only insofar as the Act is inconsistent with Rule 1360, which provides that the summons is to include a copy of the petition unless the petition has been previously served.