

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120 & 140 be adopted and prescribed. These proposed modifications address a definition for "court" and make clarifications in the bench warrant rule.

The following *Explanatory Report* highlights the intent of this Rule. 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*.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenerules@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., Counsel
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, October 29, 2010.

September 21, 2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

Rule 120 - Definitions

The Committee wanted to clarify that when it uses the term “court” throughout the Rules, it is referring to the Court of Common Pleas. The term includes Senior Judges when they are properly commissioned. It does NOT include magisterial district judges.

Rule 140 - Bench Warrants for Failure to Appear at Hearings

The term “master” was added in several places in this Rule to allow masters to hear cases if the President Judge of each judicial district has designated the master to hear bench warrant cases in their jurisdiction. See paragraphs (C)(2)(a) and (D)(2)(a).

The Committee is proposing that masters should be able to preside at detention hearings on bench warrants. The judge or master determines whether: 1) the juvenile willfully failed to attend the hearing for which the bench warrant was issued; and 2) the juvenile should continue to be detained until further court proceedings.

Only a judge has the authority to issue a bench warrant. However, once the juvenile is detained, the master may conduct the detention hearing when so designated by the President Judge.

Also, several provisions were added to the *Comment* to explain the intent of the Rule. This Rule was designed to not only allow a judge to issue a bench warrant to detain a juvenile or witness until a hearing was rescheduled, but to also allow the judge to postpone the hearing until later in the same day while a police officer, sheriff, or probation officer retrieves the juvenile or witness and brings the juvenile or witness to court for the hearing.

This provision is helpful if everyone is present and ready to testify except the juvenile or the witness. The police officer, sheriff, or probation officer can retrieve the juvenile or witness and bring them to court to begin the proceedings. This is the current practice in some counties and is helpful in alleviating the continuances of proceedings.

In addition, the Committee would like to stress that juveniles and witnesses must be brought to court without unnecessary delay and the warrants must specifically authorize detention. Witnesses are to appear before a judge or master within twenty-four hours; whereas, the juvenile must appear within seventy-two hours. This time difference distinguishes witnesses from juveniles.

Witnesses should be treated with higher priority and should be released unless the judge or master finds that the witness willfully failed to appear or needs protective custody. Even if the judge or master finds that the witness willfully failed to appear, a witness may be released in the court’s discretion.

RULE 120. DEFINITIONS

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JUDGE is a judge of the Court of Common Pleas.

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COMMENT

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The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

The term “judge” is a judge of the Court of Common Pleas, including senior judges when they are properly commissioned. It does not include magisterial district judges. Magisterial district judges; however, are included within the definition of “court” when they have the power to issue arrest warrants pursuant to Rule 210. Arrest warrants are distinguished from Bench Warrants pursuant to Rules 140 & 141. Only judges of the Court of Common Pleas may issue bench warrants if the juvenile: 1) fails to appear at a hearing; or 2) absconds from the court’s supervision.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

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Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR AT HEARINGS

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. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Juvenile.

1) Where to take the juvenile.

- a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge **or master** designated by the President Judge to hear bench warrants.
- b) If the juvenile is not brought before a judge **or master**, the juvenile shall be released unless:
 - i) the warrant specifically orders detention of the juvenile; or
 - ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.
- c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) Prompt hearing.

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

- 3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.
- 4) *Out-of-county custody.*
 - a) If a juvenile 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 juvenile shall be made immediately.
 - c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge **or master** of the county where the juvenile is found.
 - d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.
- 5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

D. 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 **or master** designated by the President Judge to hear bench warrants.
 - b) If the witness is not brought before a judge **or master**, 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 **or master** 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 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 (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge **or master** 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 **or master** of the county where the witness is found.

c) The judge **or master** 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 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.

E. Return & execution of the warrant for juveniles 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 **or master** 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.
- 5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

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 800, 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 juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Pursuant to paragraph (C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. See paragraph (C) for alleged delinquents and paragraph (D) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge **or master** designated by the President Judge of that county to hear bench warrants. **This provision allows the judge the discretion to postpone a hearing until later in the same day while the police officer, sheriff, or probation officer retrieves the juvenile. The juvenile is to be brought immediately before the court for the hearing. However, p[P]ursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, or there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile,** the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph (C)(2)(b).

However, at the seventy-two hour hearing, the judge or master may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements of all the other rules of procedure. See Rules 240, 391, 404, 510 and 605.

Under paragraphs (C)(2) and (C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. See Rule 240(C).

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

Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. See, e.g., Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge **or master** designated by the President Judge of that county to hear bench warrants. **This provision allows the judge the discretion to postpone a hearing until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to be brought immediately before the court for the hearing. However, p[P]** Pursuant to paragraph (D)(1)(b), if the judge **or master** is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. See paragraph (D)(2)(b).

However, at the twenty-four hour hearing, the court judge or master may determine that the witness willfully failed to appear and is in contempt of court, or that the witness is in need or protective custody. If the judge or master has made one of these findings, the judge or master may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements of all the other rules of procedure. See Rules 240, 391, 404, 510 and 605.

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge **or master** 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 (D)(4)(f).

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

Pursuant to paragraph (E)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote 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.

Pursuant to paragraph (E)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

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

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008. Amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 140 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 140 with the Court's Order at 39 Pa.B. 6029 (October 17, 2009).