

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modifications of Rules 120, 123, and 124 and the new rule 140 be adopted and prescribed. The proposed modified Rule 120 provides for the definition of a minor and an adult. The proposed modified Rule 123 provides that a copy of a subpoena is to be served upon the guardian of a minor witness. The proposed modified Rule 124 provides that a copy of a summons for a juvenile be served on the juvenile's guardian. Rule 140 sets forth the procedures of a bench warrant when a person fails to appear before the court. 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, May 21, 2007.

March 8, 2007

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

RULE 120 - DEFINITIONS

The Committee is proposing two new definitions. The term “minor” differentiates between a child who may be a witness to a proceeding with a child who is a “juvenile” and is the subject of the proceeding. This would include any child seventeen years of age or younger. The second term “adult” includes anyone eighteen years or older.

RULE 123 - SUBPOEANA

The Committee is proposing that paragraph (E) be added to Rule 123. 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 and allows the guardian to ensure his or her child is present for a hearing.

RULE 124 - SUMMONS

The Committee is proposing that paragraph (D) be added to Rule 124. Requiring the guardian to be served a copy of the juvenile’s summons ensures that the guardian knows about his or her child’s hearing date and time.

RULE 140 - 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 juvenile who is the subject of the hearing and a witness to the proceeding.

Pursuant to paragraph (B)(1), if a juvenile is picked up on a bench warrant, the juvenile 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 juvenile must have a hearing before the judge by the next business day or the juvenile is to be released.

Pursuant to paragraph (B)(3), if a juvenile is picked up on a bench warrant, the guardian of the juvenile is to be notified immediately of the juvenile’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 juvenile is picked up in another county, the juvenile is to be transported immediately back to the county of issuance. If transportation cannot be arranged immediately, the juvenile is to be taken to a judge of the county where the juvenile is found. The judge is to decide: 1) if the

juvenile is the subject of the warrant; 2) if detention of the juvenile is warranted; and 3) what arrangements for transporting the juvenile back to the county of issuance are necessary.

If a witness is picked up on 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 shall appear before a judge within twenty-four hours or the next business day. The 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. The bench warrant is to be returned to the issuing judge. Once there has been a hearing on the bench warrant, the bench warrant is to be marked as executed in the system to ensure the subject of the warrant is not picked up again on the same warrant.

RULE 120. DEFINITIONS.

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ADULT is any person eighteen years old or older.

MINOR is any person under the age of eighteen.

RULE 123. SUBPOENAS

A. **Contents.** A subpoena in a delinquency 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) by first class mail.
- 2) **Proof of Service.** The following shall be *prima facie* evidence of service of the subpoena:
 - a) A completed return receipt;
 - b) Hand signed receipt of personal delivery; or
 - c) Affidavit of in-person delivery signed by a process server.

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 may issue a bench warrant.

E. Parental notification. If a witness is a minor, a copy of the subpoena shall be served upon the witness's guardian.

COMMENT

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*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishing juveniles for contempt.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. See Rule 140 for procedures on bench warrants.

RULE 124. SUMMONS AND NOTICE

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 juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B. Method of Service. Summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

C. Bench Warrant. If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

D. Parental notification. A copy of the summons shall be served upon the juvenile's guardian.

COMMENT

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (C), the court is to find a summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile 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. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

See Rule 140 for procedures on bench warrants.

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR

A. **Issuance of warrant.** Before a bench warrant may be issued by a judge, the judge shall find that the person received actual notice of the hearing and failed to appear. A judge may not find actual notice solely on the basis of regular mail service.

B. Juvenile.

1) Where to take the juvenile.

a) When a bench warrant is executed for a juvenile, the juvenile 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 unless the warrant specifically orders detention of the juvenile.

b) 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 for the juvenile's protective custody pending a hearing.

2) **Prompt hearing.** 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 designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) by the next business day. If the juvenile is not brought before a judge within this time, the juvenile shall be released and the bench warrant shall be deemed expired by operation of law.

3) **Notification of guardian.** If a juvenile is arrested pursuant to a bench warrant, the police 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 arrest.** If a juvenile is arrested pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately. Arrangements to transport the juvenile shall be made immediately. If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge of the county where the juvenile is found. 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.

C. Witnesses.

1) Where to take the witness.

a) When a bench warrant is executed for a witness, 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 otherwise the

witness is to be released unless a motion for detention as a witness has been filed.

- b) If a motion for detention as a witness has been filed, 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 detention facility.
 - 2) **Adult.** If a detained witness is an adult, the witness shall be housed at the county jail.
- 2) **Prompt hearing.** If a witness is detained pursuant to paragraph (C)(1)(b), the witness shall be brought before the judge by the next business day. If the witness is not brought before a judge within this time, the witness shall be released and the order for detention as a witness shall be deemed expired by operation of law.
- 3) **Notification of guardian.** If a witness who is arrested on 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 arrest.**
 - a) If a witness is arrested pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be immediately notified. Arrangements to transport the witness shall be made immediately. If transportation cannot be arranged immediately, the witness shall be released immediately unless a motion for detention as a witness has been filed. If a motion for detention as a witness has been filed, the witness shall be taken without unnecessary delay to a judge of the county where the witness is found. 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.
 - b) The witness shall appear before a judge within twenty-four hours or the next business day. The witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant. If the time requirements of this paragraph are not met, the witness shall be released.
 - 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.

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

- 1) The bench warrant is to be executed without unnecessary delay.
- 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 bench warrants.
- 3) After a hearing on the bench warrant, the bench warrant is to be marked immediately as executed.

COMMENT

Pursuant to paragraph (A), the judge is to ensure that the person received actual 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 actual notice is presented. Testimony by an officer of the court that the person was told in person about the hearing is sufficient for actual notice.

Pursuant to paragraph (B), the “juvenile” is 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 (B) for alleged delinquents and paragraph (C) for witnesses. See also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (B)(1)(a), the juvenile 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. If a bench warrant specifically provides that the juvenile may be detained in a detention facility, the juvenile may be detained without having to be brought before the judge until a hearing within the next business day pursuant to (B)(2). 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 because the bench warrant is deemed to have expired by operation of law.

Under paragraphs (B)(2) and (C)(2), a juvenile or witness arrested on a bench warrant is to have a hearing no later than the next business day.

Pursuant to paragraphs (B)(4) and (C)(4), a juvenile or witness is to have a hearing by the next business day if the arrest is made out-of-county. The juvenile or witness may be detained out-of-county until transportation arrangements can be made. Pursuant to paragraph (C)(4), a witness is to be brought before the judge who issued the bench warrant within seventy-two hours of the execution of the bench warrant or the next business day if it is a weekend or holiday.

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. If the judge is not available, the witness is to be released immediately unless a motion for detention as a witness has been 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 and the order for detention as a witness is deemed to have expired by operation of law.

Pursuant to paragraph (D)(3), the bench warrant is to be marked as executed at the hearing on the bench warrant so the juvenile or witness is not arrested on the same warrant if the juvenile or witness is released. “Executed” is to mean that the bench warrant has been served, dissolved, vacated, dismissed, canceled, returned, or any other similar language used by the court to terminate the warrant. The bench warrant is no longer in effect once it has been executed.

For juveniles who are detained under this rule, the time requirements of all other rules are to apply. *See, e.g.*, Rules 240, 391, 404, 510, and 605.

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