

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 140 & 1140

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 140 and 1140 concerning the use of Advance Communications Technology in juvenile court proceedings 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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 **December 13, 2021**. 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 Alice Beck Dubow, Chair

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

REPORT

Proposed Amendment of Pa.R.J.C.P. 140 & 1140

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Juvenile Court Procedure 140 and 1140 in response to a rulemaking request regarding the use of Advance Communication Technology (“ACT”) in juvenile court proceedings.

In July of 2021, the Committee received a report prepared by the Administrative Office of Pennsylvania Courts and the Pennsylvania Conference of State Trial Judges concerning the “continued use” of ACT. Given that the use of ACT in juvenile court proceedings has been governed by procedural rule, the report made the following recommendations:

In the Delinquency Rules, it is recommended both the guardian, Pa.R.J.C.P. 131, and the victim, Pa.R.J.C.P. 132, be authorized to participate in proceedings via ACT, at the discretion of the presiding judge. In bench warrant[] proceedings for failure to appear, Pa.R.J.C.P. 140 (C)(1)(a) and 140 (D)(1)(a), it is recommended the juvenile and witnesses be permitted to participate via ACT. It is also recommended the rules authorize the use of ACT to conduct the hearing required under Pa.R.J.C.P. 140(C)(2) and 140 (D)(2).

There is already liberal authority in the Dependency Rules to utilize ACT to conduct proceedings. *See, e.g.*, Pa.R.J.C.P. 1128 (C) and 1129. As with the Delinquency Rules above, in bench warrant proceedings for failure to appear, it is recommended that both parties, Pa.R.J.C.P. 1140 (B)(1), and witnesses, Pa.R.J.C.P. 1140 (C)(1), be authorized to appear via ACT, and that the hearings pursuant to Pa.R.J.C.P. 1140 (B)(2) and 1140 (C)(2) be conducted using ACT, at the discretion of the presiding judge. It is also recommended ACT be authorized to conduct hearings when a witness is out-of-county, Pa.R.J.C.P. 1140(C)(4). It is recommended ACT be authorized to conduct permanency hearings under Pa.R.J.C.P. 1609.

It is further recommended that Juvenile Court Procedural Rules, Pa. R.J.C.P. 120 and 1120, contain a definition of “good cause”.

2021). The report also recommended a uniform definition of ACT and the use of ACT for the service of orders and filings.

The presence of a guardian or victim at a delinquency proceeding via ACT is not precluded by Pa.R.J.C.P. 131 or 132. Therefore, the Committee does not believe amendments are necessary. However, when a guardian or victim is appearing as a witness in certain proceedings, the requirements for consent to use ACT have been retained. See, e.g., Pa.R.J.C.P. 406(C); Pa.R.J.C.P. 512(A)(3). Although these requirements do not prohibit the use of ACT, *per se*, the requirement of consent operates to restrict the unilateral judicial application of ACT to all proceedings.

The report also recommended amendments to rules governing bench warrant proceedings to clarify the permitted use of ACT. See Pa.R.J.C.P. 140 & 1140. The Committee proposes for comment responsive amendments to that recommendation. The report also recommends that ACT be authorized to conduct permanency hearings. The Committee believes such authority presently exists in Pa.R.J.C.P. 1608(E) for good cause.

Concerning the requested definition of “good cause,” as it relates to the use of ACT, the Committee is not inclined to recommend a definition because any definition may be unintentionally too broad or too narrow given that the phrase exists in 23 rules, some of which are not related to the use of ACT. See, e.g., Pa.R.J.C.P. 150(C)(1)(a) (“good cause” to withdraw as counsel). Notwithstanding, “good cause” has been defined generally as:

[A] substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase “good cause” depends upon circumstances of [an] individual case, and finding of its existence lies largely in [the] discretion of [an] officer or court to which [the] decision is committed.... “Good cause” is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented.

Anderson v. Centennial Homes, Inc., 594 A.2d 737, 739 (Pa. Super. 1991) (quoting Black’s Law Dictionary 623 (5th ed. 1979)). Kindly note that the Comments accompanying Pa.R.J.C.P. 129 and 1129 contain examples of “good cause,” *i.e.*, “Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or is otherwise in a remote location.” In sum, the Committee believes that what constitutes “good cause” is best relegated to judicial discretion based upon immediate facts.

The report also recommended study of the use of ACT for the service of orders and filings, other than original process. The Committee wishes to note that the rules currently provide clerks of court several options to serve court orders and notices on counsel or unrepresented parties including the use of facsimile or email, upon request. See Pa.R.J.C.P. 167(B); 1167(B). Moreover, PACFile, an electronic filing system developed and maintained by the Administrative Office of Pennsylvania Courts, is available for use in the juvenile courts. That system contains a functionality whereby users are notified of orders and filings in lieu of traditional service methodologies. See Pa.R.J.C.P. 205(H); 1205(H). Of course, nothing in the rules precludes the use of ACT to send parties and witnesses “reminders” of court proceedings provided that notice has also been served in accordance with the rules.

The Committee will consider alternative service methodologies at a later date and specifically welcome readers’ input on whether the existing service methodologies are ineffective and whether sufficiently reliable alternative methods exist.

The Committee invites all comments, concerns, and suggestions.

Rule 140. Bench Warrants for Failure to Appear at Hearings.

([A]a) Issuance of [w]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]b) Entry of [w]Warrant [i]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]c) Juvenile.

(1) Where to [t]Take the [j]Juvenile.

([a]i) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge or juvenile court hearing officer designated by the President Judge to hear bench warrants.

([b]ii) If the juvenile **[is not brought] does not appear** before a judge or juvenile court hearing officer, the juvenile shall be released unless:

([i]A) the warrant specifically orders detention of the juvenile;
or

([ii]B) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

([c]iii) 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 [h]Hearing.

([a]i) If a juvenile is detained, the juvenile shall **[be brought] appear** before the judge who issued the warrant, a judge or juvenile court hearing officer designated by the President

Judge to hear bench warrants, or an out-of-county judge or juvenile court hearing officer pursuant to **[paragraph (C)] subdivision (c)**(4) within seventy-two hours.

[(b)ii] If the juvenile **[is not brought] does not appear** before a judge or juvenile court hearing officer within this time, the juvenile shall be released.

(3) **Notification of [g]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-[c]County [c]Custody.**

[(a)i] 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)ii] Arrangements to transport the juvenile shall be made immediately.

[(c)iii] If transportation cannot be arranged immediately, then the juvenile shall **[be taken] appear**, without unnecessary delay, **[to] before** a judge or juvenile court hearing officer of the county where the juvenile is found.

[(d)iv] The judge or juvenile court hearing officer will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order or recommend that arrangements be made to transport the juvenile to the county of issuance.

(5) **Time [r]Requirements.** The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

[(D)d) Witnesses.

(1) **Where to [t]Take the [w]Witness.**

[(a)i] When a witness is taken into custody pursuant to a bench warrant, the witness shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge or juvenile court hearing officer designated by the President Judge to hear bench warrants.

([b]ii) If the witness **[is not brought] does not appear** before a judge or juvenile court hearing officer, the witness shall be released unless the warrant specifically orders detention of the witness.

([c]iii) A motion for detention as a witness may be filed any time before or after the issuance of a bench warrant. The judge may order or the juvenile court hearing officer may recommend detention of the witness pending a hearing.

([i]A) Minor. If a detained witness is a minor, the witness shall be detained in a detention facility.

([ii]B) Adult. If a detained witness is an adult, the witness shall be detained at the county jail.

(2) Prompt [h]Hearing.

([a]i) If a witness is detained pursuant to **[paragraph (D)(1)(c)] subdivision (d)(1)(iii)** or brought back to the county of issuance pursuant to **[paragraph (D)(4)(f)] subdivision (d)(4)(vi)**, the witness shall **[be brought] appear** before the judge or juvenile court hearing officer by the next business day.

([b]ii) If the witness **[is not brought] does not appear** before a judge or juvenile court hearing officer within this time, the witness shall be released.

(3) Notification of [g]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-[c]County [c]Custody.

([a]i) 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]ii) The witness shall **[be taken] appear**, without unnecessary delay and within the next business day, **[to] before** a judge or juvenile court hearing officer of the county where the witness is found.

([c]iii) The judge or juvenile court hearing officer will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order or recommend that arrangements be made to transport the witness to the county of issuance.

([d]iv) Arrangements to transport the witness shall be made immediately.

([e]v) 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]A) Minor. If the witness is a minor, the witness may be detained in an out-of-county detention facility.

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

([f]vi) 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]vii) If the time requirements of this paragraph are not met, the witness shall be released.

([E]e) Advanced [c]Communication [t]Technology. A court may utilize advanced communication technology pursuant to Rule 129 for **the appearance of** a juvenile or a witness unless good cause is shown otherwise.

([F]f) Return & [e]Execution of the [w]Warrant for [j]Juveniles and [w]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 juvenile court hearing officer 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)] subdivision (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)] subdivision (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)] subdivision (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)] subdivision (c)** for alleged delinquents and **[paragraph (D)] subdivision (d)** for witnesses. See *also* Rule 120 for definition of “juvenile” and “minor.”

Pursuant to **[paragraph (C)(1)(a)] subdivision (c)(1)(i)**, the juvenile is to **[be taken]** immediately **[to appear before]** the judge who issued the bench warrant or a judge or juvenile court hearing officer designated by the President Judge of that county to hear bench warrants. This provision allows the judge or juvenile court hearing officer the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to **[be brought]** immediately **appear** before the court for the hearing. However, pursuant to **[paragraph (C)(1)(b)] subdivision (c)(1)(ii)**, if a bench warrant specifically provides that the juvenile may be detained in a detention facility, or there are circumstances apparent at the time

of the surrender or apprehension that merit detention of the juvenile, the juvenile may be detained without having to **[be brought] appear** before the judge or juvenile court hearing officer until a hearing within seventy-two hours under **[paragraph (C)(2)(a)] subdivision (c)(2)(i)**. 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)(1)(b)] subdivision (c)(1)(b)**.

At the seventy-two hour hearing, the judge or juvenile court hearing officer 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 provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Under **[paragraphs (C)(2) and (C)(4)] subdivisions (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]c**).

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

Pursuant to **[paragraph (C)(5)] subdivision (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)] subdivision (d)(1)(i)**, the witness is to **[be taken] appear** immediately **[to] before** the judge who issued the bench warrant or a judge or juvenile court hearing officer designated by the President Judge of that county to hear bench warrants. This provision allows the judge or juvenile court hearing officer the discretion to postpone a hearing, for example, an adjudicatory 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] appear** immediately before the court for the hearing. However, pursuant to **[paragraph (D)(1)(b)] subdivision (d)(1)(ii)**, if the judge or juvenile court hearing officer is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to **[paragraph (D)(1)(c)] subdivision (d)(1)(iii)**, a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to **[paragraph (D)(2)] subdivision (d)(2)** is to be held by the next business day or the witness is to be released. See **[paragraph (D)(2)(b)] subdivision (d)(2)(ii)**.

At the hearing pursuant to **[paragraph (D)(2)(a)] subdivision (d)(2)(i)**, the judge or juvenile court hearing officer may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or juvenile court hearing officer has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or juvenile court hearing officer 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 provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.

Pursuant to **[paragraph (D)(4)(b)] subdivision (d)(4)(ii)**, a witness is to **[be brought] appear** before an out-of-county judge or juvenile court hearing officer by the next business day unless the witness can **[be brought] appear** 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] appear** before the court by the next business day. See **[paragraph (D)(4)(f)] subdivision (d)(4)(vi)**.

Pursuant to **[paragraph (F)(2)] subdivision (f)(2)**, the bench warrant is to be returned to the judge who issued the warrant or to the judge or juvenile court hearing officer designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. See **[paragraph (F)(3)] subdivision (f)(3)**.

Pursuant to **[paragraph (F)(4)] subdivision (f)(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 (F)(5)] subdivision (f)(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.

If there is a bench warrant issued, juvenile court hearing officers may hear cases in which the petition alleges only misdemeanors. See Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to **[paragraph (C)(2)(a)] subdivision (c)(2)(i)** or the hearing for witnesses pursuant to **[paragraph (D)(2)(a)] subdivision (d)(2)(i)** is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.

Pursuant to Rule 191, the juvenile court hearing officer is to submit his or her findings and recommendation to the court. In bench warrant cases, the juvenile court hearing officer should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. See Rule 191(D).

If the findings and recommendation are not taken immediately to the judge, the juvenile court hearing officer is to submit the recommendation within one business day. See Rule 191(C).

[Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008. Amended September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011. Amended September 20, 2011, effective November 1, 2011. Amended April 6, 2017, effective September 1, 2017. Amended May 4, 2018, effective July 1, 2018.]

[*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). Final Report explaining the amendments to Rule 140 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 140 with the Court's Order at 41 Pa.B. 5355 (October 8, 2011). Final Report explaining the amendments to Rule 140 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017). Final Report explaining the amendments to Rule 140 published with the Court's Order at 48 Pa.B. 2939 (May 19, 2018).]

Rule 1140. Bench Warrants for Failure to Appear.

([A]a) Issuance of Warrant.

- (3) 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.
- (4) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.
- (5) The judge shall not issue an arrest warrant for a dependent child who absconds.

([B]b) Party.

(6) Where to Take the Party.

([a]i) When a party is taken into custody pursuant to a bench warrant, the party shall **[be taken] appear**, without unnecessary delay, **[to] before** the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

([b]ii) If the party **[is not brought] does not appear** before a judge, the party shall be released unless the warrant specifically orders detention of the party

([c]iii) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.

([i]A) Minor. If the party is a minor, the party shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.

([ii]B) Adult. If the party is an adult, the witness shall be detained at the county jail.

(7) Prompt Hearing.

([a]i) If a party is detained pursuant to specific order in the bench warrant, the party shall **[be brought] appear** 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)] subdivision (b)(4)** within seventy-two hours.

([b]ii) If a party **[is not brought] does not appear** before a judge within this time, the party shall be released.

(8) **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.

(9) **Out-of-County Custody.**

([a]i) 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]ii) Arrangements to transport the party shall be made immediately.

([c]iii) If transportation cannot be arranged immediately, then the party shall **[be taken] appear, without unnecessary delay, [to] before** a judge of the county where the party is found.

([d]iv) 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 juvenile to the county of issuance.

(10) **Time Requirements.** The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

([C]c) Witnesses.

(5) **Where to Take the Witness.**

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

([b]ii) If the witness **[is not brought] does not appear** before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

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

([i]A) Minor. If a detained witness is a minor, the witness shall be detained in a shelter care facility or other placement as deemed appropriate by the judge.

([ii]B) Adult. If a detained witness is an adult, the witness shall be detained at the county jail.

(6) Prompt Hearing.

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

([b]ii) If the witness **[is not brought] does not appear** before a judge within this time, the witness shall be released.

(7) 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.

(8) Out-of-County Custody.

([a]i) 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]ii) The witness shall **[be taken] appear**, without unnecessary delay and within the next business day, **[to] before** a judge of the county where the witness is found.

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

([d]iv) Arrangements to transport the witness shall be made immediately.

([e]v) 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]A) Minor. If the witness is a minor, the witness may be detained in an out-of-county shelter care facility or other placement as deemed appropriate by the judge.

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

([f]vi) 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]vii) If the time requirements of this paragraph are not met, the witness shall be released.

([D]d) Advanced Communication Technology. A court may utilize advanced communication technology pursuant to Rule 1129 unless good cause is shown otherwise.

([E]e) Return & Execution of the Warrant for Parties and Witnesses.

(6) The bench warrant shall be executed without unnecessary delay.

(7) 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.

(8) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

(9) Upon the return of the warrant, the judge shall vacate the bench warrant.

Comment

Pursuant to **[paragraph (A)] subdivision (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)] subdivision (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 juvenile is detained. See Chapter Twelve.

[Paragraph (A)(3)] Subdivision (a)(3) does not preclude the issuance of a bench warrant for a case in which the child is subject to the jurisdiction of the dependency and delinquency court, see Rule 141 (Bench Warrants for Absconders), or an order for protective custody. Nor does the paragraph preclude judicial inquiry into efforts to locate a missing dependent child.

In **[paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i)] subdivisions (b)(1)(iii)(A), (c)(1)(iii)(A), & (c)(4)(v)(A)**, “other placement as deemed appropriate by the judge” does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. See 42 Pa.C.S. § 6302 & 6327(e).

Under **[paragraphs (B)(2) and (B)(4)] subdivisions (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 1242(D).

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

Pursuant to **[paragraph (C)(4)(b)] subdivision (c)(4)(ii)**, a witness is to **[be brought] appear** before an out-of-county judge by the next business day unless the witness can be **[brought] appear** 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] appear** before the judge who issued the bench warrant by the next business day. See **[paragraph (C)(4)(f)] subdivision (c)(4)(vi)**.

Pursuant to **[paragraph (E)(4)] subdivision (e)(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 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.

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 dependents and other minors who are witnesses. See also Rule 1120 for the definitions of “child” and “minor.”

[Official Note: Rule 1140 adopted March 19, 2009, effective June 1, 2009. Amended April 21, 2011, effective July 1, 2011. Amended April 23, 2018, effective July 1, 2018.]

[Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1140 published with the Court’s Order at 39 Pa.B. 1614 (April 4, 2009). Final Report explaining the amendments to Rule 1140 published with the Court’s Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 1140 published with the Court’s Order at 48 Pa.B. 2615 (May 5, 2018).]