

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.J.C.P. 405

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pennsylvania Rule of Juvenile Court Procedure 405 governing the admission of a certified forensic lab report in lieu of the expert appearing and testifying in court for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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.

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 **January 17, 2023**. 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,

The Honorable Alice Beck Dubow, Chair

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

PUBLICATION REPORT

Proposed Adoption of Pa.R.J.C.P. 405

The Juvenile Court Procedural Rules Committee (“Committee”) proposes the adoption of Pennsylvania Rule of Juvenile Court Procedure 405 governing the admission of a certified forensic lab report in lieu of the expert appearing and testifying in court.

The Committee received a rulemaking request for a delinquency rule mirroring Pa.R.Crim.P. 574 (Forensic Laboratory Report; Certification In Lieu of Expert Testimony). As background, Pa.R.Crim.P. 574 was intended to implement the use of “notice and demand” procedures approved in *Melendez-Diaz v. Massachusetts*, 129 U.S. 2527 (2009), which held that the 6th Amendment’s confrontation right precluded presentation of laboratory reports without a live witness testifying at trial. The reasons for rulemaking include increased consistency among the bodies of rules for prosecutors and defenders crossing over from criminal proceedings to delinquency proceedings. Also, responses to offers of stipulation are sometimes not received so having a formal mechanism would be beneficial. Further, experts seem increasingly busy and a rule that operates to relieve the burden of appearing when reports are uncontested would allow the experts to focus on the proceedings where reports are contested and to reduce lab testing backlogs.

The Committee previously published proposed Pa.R.J.C.P. 405, which provided for “notice and demand” procedures nearly identical to Pa.R.Crim.P. 574. See 44 Pa.B. 3306 (June 7, 2014). The Committee ultimately discontinued rulemaking because the timeframes were not compatible with adjudicatory hearings for detained juveniles. See Pa.R.J.C.P. 404(A) (hearing to be held within 10 days of the petition’s filing). Further, several commentators indicated that stipulations were a widely used and effective alternative to live expert witness testimony.

Given the prior comments, the Committee considered a rule largely modeled after Pa.R.Crim.P. 574 but that would exclude juveniles who were in pre-adjudication detention given the 10-day adjudicatory window for detained juveniles. The rate of pre-adjudication detention appears to be declining over time and most detentions now occur post-adjudication. Consequently, the “detention exclusion” would not erode the value of the rule.

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

<The following is an entirely new rule.>

Rule 405. Forensic Laboratory Report and Certification.

(a) Report and Certification in Lieu of Expert Testimony.

- (1) If the requirements of this rule have been met, the attorney for the Commonwealth may seek to offer a forensic laboratory report into evidence in lieu of testimony in any adjudicatory hearing of a non-detained juvenile.
- (2) The report shall be supported by a certification, as provided in subdivision (e), from the expert who drafted the report and performed the analysis or examination.

(b) Notice.

- (1) The attorney for the Commonwealth shall file the written notice and serve the written notice, together with the report and certification, upon the juvenile's attorney.
- (2) The notice shall include a statement informing the juvenile that:
 - (i) if no written demand for testimony as provided in subdivision (c)(3) is made, the forensic laboratory report and certification are admissible in evidence; and
 - (ii) the expert who drafted the report does not have to testify.
- (3) Service shall occur no later than 20 days prior to the adjudicatory hearing.
- (4) Once entered into evidence, the report and certification shall qualify as if the expert had testified personally.

(c) Demand.

- (1) Within 10 days of service of the notice, the juvenile's attorney may file and serve a written demand upon the attorney for the Commonwealth requiring the expert to testify at the adjudicatory hearing.
- (2) If a written demand is filed and served, the expert must testify.

- (3) If no demand is filed and served as required by subdivision (c)(1), the report and certification are admissible in evidence without the expert's testimony.
- (d) **Extension.** For cause shown, the judge may:
 - (1) extend the time requirements of this rule; or
 - (2) grant a continuance of the adjudicatory hearing.
- (e) **Certification.** The expert shall complete a certification providing:
 - (1) the education, training, and experience that qualify the expert to perform the analysis or examination;
 - (2) the entity by which the expert is employed and a description of the expert's regular duties;
 - (3) the name and location of the laboratory where the analysis or examination was performed;
 - (4) any state, national, or international accreditations of the laboratory at which the analysis or examination was performed;
 - (5) that the analysis or examination was performed under industry-approved procedures or standards; and
 - (6) the report accurately reflects the findings and opinions of the expert.

Comment: This rule is intended to establish a uniform procedure for delinquency proceedings, similar to Pa.R.Crim.P. 574, for the admission of laboratory reports without the expense of live expert testimony while protecting a juvenile's confrontation rights. The rule provides a "notice and demand" procedure for delinquency proceedings. Under this rule, the attorney for the Commonwealth may seek to admit a forensic laboratory report as evidence without expert testimony if the notice requirements are met and no demand for the presence of the expert is made. If the juvenile makes such a demand, the expert is required to testify before the report can be admitted into evidence.

Given the prompt adjudicatory hearing requirement of the Juvenile Act, 42 Pa.C.S. § 6335(a) (if juvenile is detained, then adjudicatory hearing must be held within 10 days of the filing of a petition), this rule is only available for adjudicatory hearings of non-detained juveniles. See Pa.R.J.C.P. 404(B) (if juvenile is not detained, then adjudicatory hearing must be held within a reasonable time).

Nothing in this rule is intended to: 1) preclude a stipulation agreed to by the parties for the admission of the report without the expert's presence; 2) prevent further stipulation by the parties in light of the admission of the report and certification; or 3) change the discovery requirements pursuant to Rule 340.

Pursuant to subdivision (d), the court may permit filing of the notice or demand after the time period required in the rule if the party seeking the late filing shows cause for the delay. In the situation where the judge permits the late filing of the notice, the juvenile still has ten days to make the demand for the live testimony of the expert. This may necessitate a continuance of the adjudicatory hearing.

The certification in subdivision (e) does not require a description of the actual tests performed for the analysis. This information more properly belongs in the report itself. Because one of the goals of this rule is to permit the juvenile to make an informed decision regarding whether to demand the live testimony of the expert, the report should provide information sufficient to describe the methodology by which the results were determined.

For purposes of this rule, a laboratory is "accredited" when its management, personnel, quality system, operational and technical procedures, equipment, and physical facilities meet standards established by a recognized state, national, or international accrediting organization such as the American Society of Crime Laboratory Directors/Laboratory Accrediting Board (ASCLD/LAB) or Forensic Quality Services - International (FQS-I).

See Rule 345 for filing and service requirements.