

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.J.C.P. 148 & 407**

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 148 and 407 to reflect recent legislation 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially 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:

**Daniel A. Durst, Chief Counsel  
Juvenile Court Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9541  
[juvenilerules@pacourts.us](mailto:juvenilerules@pacourts.us)**

All communications in reference to the proposal should be received by **April 30, 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 Joy Reynolds McCoy, Chair

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

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 148 & 407**

The Juvenile Court Procedural Rules Committee proposes the amendment of Pennsylvania Rules of Juvenile Court Procedure 148 and 407 to reflect provisions of the Act of Nov. 3, 2020, P.L. 1087, amending the Public School Code of 1949 to, *inter alia*, add Section 1318.1, prohibiting a juvenile adjudicated delinquent of sexual assault from attending the same public school as the victim.

The Committee proposes the amendment of Rule 148 insofar as the Act appears to supersede the juvenile court's best interest/community protection analysis in determining whether a juvenile should remain in his or her school of origin. Application of the Act does not appear to invite judicial discretion. The proposed amendment is intended to place the reader on notice that application of the rule may be superseded by statute. A description and citation to the statute are contained in the Comment.

The Act imposes a collateral consequence on the juvenile for an admission of certain offenses. While the Act uses the phrase "sexual assault," that phrase is defined to include six enumerated offenses. See 24 P.S. 13-13181(j) (defining "sexual assault"). The Committee believes this collateral consequence is significant because it potentially affects a juvenile's education and ability to return to the school of origin, which may impact a juvenile's life beyond any term of supervision. The Committee is mindful that such a consequence may appear to have less significance when a juvenile goes to placement after adjudication; but the juvenile returning from placement may seek to return to public school. Further, not all juveniles adjudicated for an enumerated offense may go to placement after adjudication.

Accordingly, the Committee proposes amending the admission colloquy set forth in Rule 407(C) to add a question intended to ascertain a juvenile's understanding that returning to a school of origin may not be permitted due to the offense of "sexual assault." Thereafter, the Comment sets forth the enumerated offenses defined by the Act to be a "sexual assault." It is anticipated that the juvenile's counsel will advise the juvenile whether the admitted offense meets that statutory definition.

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

## **Rule 148. Educational Stability and Removal from Home**

- (A) **General Rule.** Any order resulting in the removal of the juvenile from home or a change in placement shall address the educational stability of the juvenile.
- (B) **School of Origin. [A] Subject to statute, a** juvenile removed from home shall remain in their school of origin unless the court finds remaining in the school of origin is not in the juvenile's best interest or protective of the community. If the court finds that it is not in the best interest for the juvenile or protective of the community to remain in the school of origin, then the court may order the juvenile to be enrolled in another school that best meets the juvenile's needs.
- (C) **Another School. [If] Subject to statute, if** a court orders the juvenile to be enrolled in another school pursuant to paragraph (B), then the juvenile shall attend a public school unless the court finds that a public school is not in the best interest of the juvenile or protective of the community.

### **Comment**

This rule is intended to apply at any point in a delinquency proceeding when the juvenile is removed from home, including pre-dispositional detention placement and post-dispositional modification resulting in the juvenile's out of home placement or a change to that placement. This rule is intended to complement rather than supersede the requirements of Rule 512(D)(6).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the juvenile's needs, the proximity of the school of origin relative to the placement location, and the protection of the community. This paragraph is intended to facilitate educational stability while the juvenile remains under the jurisdiction of the Juvenile Court and to codify the presumption that a juvenile is to remain in their school of origin absent evidence that it is not in the best interest of the juvenile or protective of the community to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the juvenile to attend a public school includes the security and safety of the juvenile and treatment needs. Paragraph (C) is intended to codify the presumption that a juvenile is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the juvenile or protective of the community to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

**The application of paragraph (B) & (C) is subject to statute governing the enrollment of a juvenile adjudicated of sexual assault upon another student enrolled in the same public school entity. See 24 P.S. § 13-1318.1.**

For release of information to school, see Rule 163.

**Official Note:** Rule 148 adopted December 21, 2018, effective May 1, 2019.  
**Amended \_\_\_\_\_, 2021, effective \_\_\_\_\_, 2021.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019). Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019). **Final Report explaining the amendments to Rule 148 published with the Courts' Order at Pa.B. \_\_\_\_\_ (\_\_\_\_\_, 2021).**

## Rule 407. Admissions

\* \* \*

(C) **Written Admission Colloquy.** If a juvenile is making an admission, the colloquy shall be:

- (1) in writing;
- (2) reviewed and completed with the juvenile by an attorney;
- (3) submitted to and reviewed by the court; and
- (4) substantially in the following form:

**ADMISSION COLLOQUY FORM**

In re \_\_\_\_\_ JD \_\_\_\_\_  
(Juvenile) :  
: **Delinquent Act(s):** \_\_\_\_\_  
: \_\_\_\_\_  
: \_\_\_\_\_  
: \_\_\_\_\_

Answer all of the questions on this form. If you do not understand any question, leave it blank and ask your lawyer or the judge.

I admit that I did the following things (attorney shall list the delinquent acts, grading of acts, and counts): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* \* \*

**Possible Consequences of Adjudication of Delinquency:**

- 13) Do you understand that if you are found delinquent, the judge may make you pay money and place you outside of your home or on probation until you turn 21 years old? \_\_\_\_\_
  
- 14) Are you aware that if you are admitting to \_\_\_\_\_  
\_\_\_\_\_ that your driving license will be suspended now or in the future (which means you will not be able to drive)?  
(lawyer shall write acts on this line, cross off, or write n/a).
  
- 15) Do you understand that this case can be used against you in the future? For example, if you break the law again, you may get a longer sentence in jail.  
\_\_\_\_\_
  
- 16) Do you understand that if you are found delinquent, other people may find out about it? You may also have to tell people, including colleges, military recruiters, or employers? \_\_\_\_\_
  
- 17) Do you understand that if you are not a U.S. citizen, it may cause problems, which could include being forced to leave the U.S.? \_\_\_\_\_

**18) Do you understand that if you are admitting to sexual assault that you cannot attend the same school as the victim? You will either be expelled or transferred to another school.**

**Admission Agreements:**

1[8]9) Are you aware that the judge does not have to accept any agreement between you and the District Attorney? \_\_\_\_\_ (write n/a if no agreement)

[19]20) If you change your mind about admitting to the charges before the judge decides your disposition or consequences, then you can ask the judge to let you take back your admission.

**Appeals:**

2[0]1) If you are found delinquent after this admission, you can have a higher court review your case for only three reasons:

\* \* \*

**Lawyer's Representation and Opportunity to Speak with Guardian**

2[1]2) Are you okay with what your lawyer did for you and how he or she explained everything? \_\_\_\_\_

2[2]3) Did you talk with your parent or guardian about admitting to the charge(s)?  
\_\_\_\_\_

\* \* \*

**Comment**

\* \* \*

Pursuant to paragraph (C), an attorney is to review the written admission colloquy with the juvenile prior to entering the courtroom. The practice in some judicial districts permitting the juvenile probation officer to review this colloquy with the juvenile is inconsistent with this rule.

**As used in Question 18 of the admission colloquy in paragraph (C)(4), "sexual assault" includes rape, 18 Pa.C.S. § 3121, statutory sexual assault, 18 Pa.C.S. § 3122.1, involuntary deviate sexual intercourse, 18 Pa.C.S. § 3123, sexual**

**assault, 18 Pa.C.S. § 3124.1, aggravated sexual assault, 18 Pa.C.S. § 3125, and indecent assault, 18 Pa.C.S. § 3126. See 24 P.S. 13-13181(j) (defining “sexual assault”).**

The colloquy forms use several age-appropriate terms for the juvenile to understand; however, certain legal terms are contained in the form. It is expected that attorneys will explain these forms until their clients understand.

\* \* \*

**Official Note:** Rule 407 adopted April 1, 2005, effective October 1, 2005. Amended January 18, 2012, effective April 1, 2012. Amended January 23, 2017, effective April 3, 2017. **Amended \_\_\_\_\_, 2021, effective \_\_\_\_\_, 2021.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 407 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 407 published with the Courts’ Order at 42 Pa.B. 664 (February 4, 2012). Final Report explaining the amendments to Rule 407 published with the Courts’ Order at **47 Pa.B. 820 (February 11, 2017).** **Final Report explaining the amendments to Rule 407 published with the Courts’ Order at Pa.B. (\_\_\_\_\_, 2021).**