

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 140 and new Rule 141 be adopted and prescribed. The proposed modified Rule 140 adds a paragraph that the bench warrant shall be entered in all appropriate registries. The new Rule 141 provides for the procedures of bench warrants for absconders. 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 Friday, December 19, 2008.

October 30, 2008

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

RULE 140 - BENCH WARRANTS FOR FAILURE TO APPEAR

A new paragraph (B) has been added. A bench warrant shall be entered in all appropriate registries, such as, JNET, CLEAN, PCIC, and NCIC, by the juvenile probation officer or other court designee once a warrant has been issued by the judge. This ensures that law enforcement is aware of the bench warrant so it may be executed.

RULE 141 - BENCH WARRANTS FOR ABSCONDERS

This new rule provides for the procedures when a juvenile absconds from the supervision of the court. This covers all incidences when the court no longer has contact with the juvenile. This would include, but is not limited to, a juvenile who: 1) has escaped from a placement facility, detention facility, shelter care facility, foster care, or other court-ordered programs or placements; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court.

Paragraph (B) ensures that the bench warrant is entered in all appropriate registries by the juvenile probation officer or other court designee once a warrant has been issued by the judge. This ensures that law enforcement is aware of the bench warrant so it may be executed.

Paragraph (C) requires that the juvenile is to be detained in a detention facility or any other facility deemed appropriate by the court until a prompt hearing pursuant to paragraph (D).

The guardian of the juvenile is to be notified immediately when a juvenile is taken into custody pursuant to a bench warrant. The arresting officer is to explain the reasons the warrant was issued and where the juvenile is being detained. See paragraph (F).

Paragraph (G) provides for the procedures on returning and executing the warrant.

RULE 140 . BENCH WARRANTS FOR FAILURE TO APPEAR

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 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 designated by the President Judge to hear bench warrants.
 - b) If the juvenile is not brought before a judge, 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 designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.
 - b) If the juvenile is not brought before a judge 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 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.

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

[D]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 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 court shall order the probation officer or other court designee to remove the warrant from 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 ([B]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 ([B]C) for alleged delinquents and paragraph ([C]D) for witnesses. *See* also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph ([B]C)(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. Pursuant to paragraph ([B]C)(1)(b), 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 seventy-two hours under paragraph ([B]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 ([B]C)(2)(b).

Under paragraphs ([B]C)(2) and ([B]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 ([B]C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph ([B]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 ([C]D)(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. Pursuant to paragraph ([C]D)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph ([C]D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph ([C]D)(2) is to be held by the next business day or the witness is to be released. *See* paragraph ([C]D)(2)(b).

Pursuant to paragraph ([C]D)(4)(b), a witness is to be brought before an out-of-county judge 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 ([C]D)(4)(f).

Pursuant to paragraph ([D]E)(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 warrants by the arresting officer executing a return of warrant. *See* paragraph ([D]E)(3).

Pursuant to paragraph ([D]E)(4), the bench warrant is to be vacated after the return of the warrant is executed [so the juvenile or witness is not taken into custody on the same warrant if the juvenile or witness is released]. “Vacated” is to mean 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 or other court designee 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 .

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008.

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).

RULE 141 . BENCH WARRANTS FOR ABSCONDERS

- A. Issuance of warrant. The juvenile probation officer shall immediately notify the court upon notification or recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.**
- B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter the bench warrant in all appropriate registries.**
- C. Where to take the juvenile. The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).**
- D. Prompt hearing. The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.**
- E. Time requirements. The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.**
- F. Notification of guardian. When the 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.**
- G. Return & execution of the warrant.**
- 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 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 court shall order the probation officer or other court designee to remove the warrant from all appropriate registries.**

COMMENT

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify juvenile probation or other court designee to enter the bench warrant in all appropriate registries, such as, JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant.

Pursuant to paragraph (D) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. See, e.g., Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

Pursuant to paragraph (G)(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 warrants by the arresting officer executing a return of warrant. See paragraph (G)(3).

Pursuant to paragraph (G)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to mean 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 (G)(5), once the warrant is vacated, the juvenile probation officer or other court designee 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.