THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 2]
Proposed New Pa.R.Crim.P. 212

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule 212 to provide for the temporary delay in the dissemination of search warrant information to the public prior to execution. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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.

The text of the proposed new Rule 212 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Monday, April 23, 2007.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 212. Dissemination of Search Warrant Information.

The issuing authority shall not make any search warrants, all affidavits of probable cause, and any other supporting information available for public inspection or dissemination until the warrant has been executed.

Comment

Execution of search warrants carries the potential risk of hazard and premature dissemination of the intention to execute a warrant may greatly increase that risk. For this reason, this rule was adopted in 2007 to delay the dissemination of search warrant information to the general public until after execution. This rule does not deny disclosure of search warrant information to the public, but rather, temporarily delays the dissemination of that information in order to protect public safety.

Once the warrant is executed, the information may be disseminated unless sealed pursuant to Rule 211.

Official Note: Rule 212 adopted , 2007, effective , 2007.

Committee Explanatory Reports:

Report explaining new Rule 212 providing for the limitations in dissemination of search warrant information published at 37 Pa.B. 1302 (March 24, 2007).

REPORT

Proposed New Pa.R.Crim.P. 212

Dissemination of Search Warrant Information

Recently, the Committee has been presented with questions regarding the obligation of an issuing authority to disseminate search warrant information to the public prior to the execution of these warrants. This concern has been heightened by the increased level of automation of court records and increased accessibility of this information.

Premature disclosure of search warrant information has the potential for injury or loss of life to the executing officers in addition to the possibility of destruction or secretion of evidence. The Committee concluded that such disclosure was inappropriate and that reasonable limitations on pre-execution disclosure should be put into place, regardless of whether that information was disseminated electronically or was physically available for inspection at the issuing authority's office.

The Committee believes that such a restriction is consistent with current Pennsylvania law. In *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992), the Supreme Court of Pennsylvania noted with approval the process of sealing executed search warrants by court order but specifically distinguished the pre-execution situation, stating, "The ex parte application for issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed." 532 Pa. at 6, 614 A.2d at 1108.

The Committee is proposing a new Rule 212 that would prohibit the issuing authority from disseminating search warrant information, in any form, to the public until the warrant is executed. It is contemplated that the search warrant itself, the affidavit of probable cause and the existence of the warrant are included in this limitation. The Committee is proposing as a new rule rather than a modification to Rule 211, which provides for the sealing of search warrant affidavits, because the procedure here is different in quality and duration from that for the sealing of a warrant. A search warrant sealed pursuant to Rule 211 provides for long-term restriction, up to the date of arraignment, and requires judicial review. The procedure contemplated by new Rule 212 would be of limited duration and ministerial in nature. Since the time in which a warrant must be executed is of finite duration,

usually not to exceed two days from the time of issuance, the restriction on the dissemination of warrant information is temporary and any impact on the right of public access to court records would be very limited.

[Pa.B. Doc. No. 07-482. Filed for public inspection March 23, 2007, 9:00 a.m.]

[234 PA. CODE CH. 5]

Amendments to Pa.Rs.Crim.P. 510, 543, and 547 and Revisions of the Comments to Rules 512 and 527

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 510, 543, and 547 and revisions of the Comments to Rules 512 and 527 to provide procedures for ensuring compliance with identification procedures, including fingerprinting, in summons cases. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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.

The text of the proposed changes to Rules 510, 512, 527, 543, and 547 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Monday, April 23, 2007.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(2). Summons Procedures

Rule 510. Contents of Summons; Notice of Preliminary Hearing.

* * * * *

(C) A copy of the complaint **and an order directing the defendant to submit to fingerprinting** shall be attached to the summons.

Comment

* * * * *

[When a defendant appears for a preliminary hearing pursuant to a summons under this rule and is held for court, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. It is suggested that these processing procedures be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112.]

When a case proceeds by summons, the issuing authority also must issue an order requiring the defendant submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest.

Paragraph (C)(2), added in 2007, requires that the fingerprint order be sent to the defendant with the summons. The purpose of this change is to ensure that the fingerprinting process in summons cases is completed. See the Criminal History Record Information Act, 18 Pa.C.S. § 9112.

When the defendant is processed for fingerprinting and other identification procedures prior to being released pursuant to Rule 519, the fingerprint order does not have to be attached to the summons.

If a defendant has not complied with the fingerprint order by the time of the preliminary hearing, the issuing authority must make compliance a condition of release on bail.

* * * * *

Official Note: Original Rule 109, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended , 2007, effective , 2007**.

Committee Explanatory Reports:

* * * * *

Report explaining the amendments to paragraph (C) concerning the fingerprint order published at 37 Pa.B. 1305 (March 24, 2007).

Rule 512. Procedure in Court Cases Following Issuance of Summons.

* * * * *

Comment

* * * * *

[When a defendant appears for a preliminary hearing pursuant to a summons and is held for court, the issuing authority should require that the defendant submit to administrative processing and identification procedures (fingerprinting, for example) as authorized by law. It is recommended that this requirement be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112.]

When a case proceeds by summons, the issuing authority must require that the defendant submit to the administrative processing and identification procedures as authorized by law (such as finger-

printing) that ordinarily occur following an arrest. See, e.g., Criminal History Record Information Act, 18 Pa.C.S. § 9112. If these processing procedures are not completed by the time of the preliminary hearing, they must be made a condition of bail or release. Regarding fingerprinting, see Rule 510(C)(2) that requires the issuing authority to send the fingerprint order with the summons.

* * * * *

Official Note: Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; Comment revised , 2007, effective , 2007**.

Committee Explanatory Reports:

* * * * *

Report explaining the Comment revisions concerning administrative processing and identification procedures published at 37 Pa.B. 1305 (March 24, 2007).

PART C(1). Release Procedures

Rule 527. Nonmonetary Conditions of Release on Bail.

* * * * *

Comment

* * * * *

The following sets forth a few examples of conditions that might be imposed to address specific situations. In some circumstances, a combination of such conditions might also be considered. This is not intended to be an exhaustive list of appropriate conditions.

* * * * *

(6) When a case proceeds by summons, the issuing authority must require that the defendant submit to required administrative processing and identification procedures, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest. Rule 510(C)(2) requires an order directing the defendant to be fingerprinted be issued with the summons. If the defendant has not completed fingerprinting by the date of the preliminary hearing, completion of these processing procedures must be made a condition of release.

Official Note: Former Rule 4006 adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 524 and 528. Present Rule 4006 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 527 and amended March 1, 2000, effective April 1, 2001**; Comment revised , 2007, effective , 2007**.

Committee Explanatory Reports:

* * * * *

Report explaining the Comment revisions adding paragraph (6) concerning administrative processing and identification procedures published at 37 Pa.B. 1305 (March 24, 2007).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 543. Disposition of Case at Preliminary Hearing.

* * * * *

(C) When the defendant has been held for court, the issuing authority shall:

* * * * *

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529**(A)[.]; and**

(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to rule 510(C)(2), make compliance with these processing procedures a condition of bail.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

* * * * *

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

* * * * *

(c) if the case is held for court or if the preliminary hearing is continued, issue a warrant for the arrest of the defendant **and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), transmit with the transcript to the clerk of courts a notice to the court of common pleas of the defendant's noncompliance**.

* * * * *

Comment

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

If the administrative processing and identification procedures as authorized by law (such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112) that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as a condition of bail. See Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. See Rule 547.

* * * * *

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006**; amended , 2007, effective , 2007**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 37 Pa.B. 1305 (March 24, 2007).

Rule 547. Return of Transcript and Original Papers.

* * * * *

(C) In addition to this transcript the issuing authority shall also transmit the following items:

* * * * *

(3) all affidavits filed in the proceeding; **[and]**

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody**[.]; and**

(5) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(2)(d).

Comment

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. See, e.g., Rules 542 and 543.

When the case is held for court pursuant to Rule 543(D)(2), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

Official Note: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970, revised January 31, 1970; effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended , 2007, effective , 2007**.

Committee Explanatory Reports:

* * * * *

Report explaining the amendments to paragraph (C) concerning the fingerprint order published at 37 Pa.B. 1305 (March 24, 2007).

REPORT

Amendments to Pa.Rs.Crim.P. 510, 543, and 547 and Revisions of the Comments to Rules 512 and 527

Fingerprint Orders in Summons Cases

As part of its continuing review of the rules and in response to numerous communications with the Committee, the Committee examined the question of how the fingerprint requirements of Criminal History Records Information Act (CHRIA), 18 Pa.C.S. § 9112, are to be accomplished in cases initiated by summons. Section 9112(B)(2) requires that, in cases initiated by summons, "the court . . . shall order the defendant to submit within five days of such order for fingerprinting . . . "

In a case initiated by arrest, compliance with the requirements of CHRIA is relatively straightforward, with the defendant's fingerprints being taken as part of the usual administrative processing following arrest. The situation is different in summons cases because the defendant does not undergo the same type of processing as in an arrest case. Additionally, since no preliminary arraignment is held during summons cases, the first occasion in which the defendant comes before an issuing authority is usually at the preliminary hearing.

The Committee received reports that there was a divergence of practice regarding this question running the gamut from issuing authorities sending out fingerprint orders with the summons to issuing authorities who believe that, based on language in the Comment to Rule 510, fingerprints may only be ordered after the case is held for court at the preliminary hearing.

Initially, the Committee considered permitting an issuing authority the discretion to chose the procedure for the issuance of the fingerprint order. Upon further examination, the Committee concluded that such discretion did not adequately address the problem that CHRIA applied regardless of whether a case was bound over for court. In other words, in those cases started by summons that are not held for court at the preliminary hearing, unless the fingerprint order has been issued with the summons, there would be no mechanism to have the defendant fingerprinted. Therefore, the Committee concluded that the rules should require that in all cases, when a summons is issued, the issuing authority also would be required to send out a fingerprint order and would not have the option of waiting until the preliminary hearing to issue the order. To accomplish this, the Committee is proposing that Rule 510 be amended to provide that the fingerprint order be attached to the summons, along with the copy of the complaint. Additionally, the language in the Comments to Rules 510 and 512 that suggests that the issuing authority must wait until the preliminary hearing to issue the fingerprint order would be deleted.

Recognizing that, if the defendant fails to comply with the fingerprint order, the primary mechanism to enforce the fingerprint order will be making compliance with the order a bail condition following the preliminary hearing, the Committee is proposing new paragraph (C)(3) be added to Rule 543 that requires compliance be made a condition of bail. The Comments to Rules 510, 512, 527, and 543 would be revised to indicate this required bail condition as well.

Another issue that arose during the Committee's discussions concerns the situation when a case is held for court and transferred from the issuing authority to the court of common pleas. In these cases, there is a possibility that the fingerprint requirement might "get lost," especially in the situation in which the case is held for court in the defendant's absence as provided in Rule 543(D)(2). To address this situation, the Committee is proposing that a provision be added to Rules 543(D)(2)(c) and 547(C) to require that the issuing authority send notice of the defendant's non-compliance to the court of common pleas. It is contemplated that the court of common pleas, once notified, will take whatever actions would be appropriate in the circumstances to ensure future compliance.

[Pa.B. Doc. No. 07-483. Filed for public inspection March 23, 2007, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Amendments to Rules 120, 123 and 124 and Proposed New Rule 140

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.

By the Juvenile Court
Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

ADULT is any person eighteen years old or older.

* * * * *

MINOR is any person under the age of eighteen.

* * * * *

Rule 123. Subpoenas.

* * * * *

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.

* * * * *

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 desig-

nated 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.

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—Subpoena

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.

[Pa.B. Doc. No. 07-484. Filed for public inspection March 23, 2007, 9:00 a.m.]