

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Crim.P. 523.1

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Crim.P. 523.1 for the reasons set forth in the accompanying re-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.

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 **January 31, 2025**. 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 Criminal Procedural Rules Committee,

Hon. Stefanie Salavantis
Chair

—The following text is entirely new—

Rule 523.1. Detention of Minor Defendant.

- (a) **Definitions.** For purposes of this rule, the following definitions shall apply:
- (1) **“Adult inmate.”** An individual who has reached the age of 18 and has been arrested and is in custody for or awaiting trial on a criminal charge or has been convicted of a criminal offense, unless the individual was younger than 21 years of age at the time of the criminal offense and was committed to the care and custody or supervision, including post-placement or parole supervision, of a juvenile correctional agency. The term “adult inmate” does not include a child as defined in 42 Pa.C.S. § 6302 (Definitions) or a minor defendant as defined in this rule.
 - (2) **“Jail or lockup for adults.”** A secure facility that is used by the Commonwealth, unit of local government, or law enforcement authority to detain or confine adult inmates.
 - (3) **“Minor defendant.”** A defendant who is less than 18 years old.
 - (4) **“Sight or sound contact.”** Any physical, clear visual, or verbal contact that is not brief and inadvertent.
- (b) **General Rule.** If bail has been denied or revoked, or if the conditions of bail have not been satisfied, a minor defendant shall be detained in a secure detention facility unless a court or issuing authority finds, after a hearing and in writing, that detaining the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates is in the interest of justice.
- (c) **Interest-of-Justice Exception.** To determine if it is in the interest of justice to permit a minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, a court or issuing authority shall consider:
- (1) the minor defendant’s age;
 - (2) the minor defendant’s physical and mental maturity;

- (3) the minor defendant's present mental state, including whether the minor defendant presents an imminent risk of harm to the minor defendant;
 - (4) the nature and circumstances of the alleged offense;
 - (5) the minor defendant's history of prior delinquent acts;
 - (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the minor defendant but also to protect the safety of the public as well as other detained youth; and
 - (7) any other relevant factor.
- (d) **Issuing Authority.**
- (1) **Hearing.**
 - (i) If a minor defendant is to be detained and a party requests the minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, an issuing authority shall order the minor defendant to be so detained or have such sight or sound contact if, after conducting a hearing to consider the factors set forth in subdivision (c), the issuing authority finds permitting such detention or sight or sound contact is in the interest of justice.
 - (ii) The minor defendant shall be represented by counsel at the hearing. If counsel cannot be provided, the hearing shall not be held, and the minor defendant shall be detained in a secure detention facility.
 - (iii) Whether the issuing authority grants or denies the party's request, the issuing authority shall provide written reasons for the decision.
 - (2) **Review.**
 - (i) If, pursuant to subdivision (d)(1), a minor defendant is detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, a court of common

pleas shall hold a hearing to review the issuing authority's finding within 72 hours. The court's review shall be *de novo*.

(ii) The minor defendant shall be represented by counsel at the hearing.

(3) **Local Rule Option.** A judicial district may adopt a local rule allowing only a court of common pleas judge to make an interest-of-justice determination. If a judicial district elects to adopt a local rule in accordance with this subdivision, any request to detain a minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates shall be made by motion pursuant to subdivision (e)(1) of this rule. Unless a motion has been filed and granted, a minor defendant, if detained, shall be detained in a secure detention facility.

(e) **Motion.**

(1) **Motion for Interest-of-Justice Hearing.** A party may file a motion in a court of common pleas at any time requesting that a detained minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates.

(2) **Motion for Reconsideration.**

(i) A minor defendant being detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates may file a motion seeking reconsideration of the court's determination that such detention is in the interest of justice.

(ii) A second or subsequent motion for reconsideration shall only be considered if the minor defendant alleges new facts or cites new legal authority.

(3) When a motion is filed pursuant to subdivision (e)(1) or (e)(2), an interest-of-justice hearing shall be held within 72 hours of the filing of the motion.

(4) In determining if it is in the interest of justice for the minor defendant to be detained in a jail or lockup for adults or in a secure facility with

sight or sound contact with adult inmates, the court shall consider each factor enumerated in subdivision (c).

- (f) **Order.** At the conclusion of either a *de novo* hearing pursuant to subdivision (d)(2)(i) or an interest-of-justice hearing pursuant to subdivision (e)(3), the court shall enter an order containing the following:

- (1) the court's determination whether it is in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates; and
- (2) the court's findings with respect to each factor enumerated in subdivision (c).

- (g) **Review and Limitations.** If a court determines that it is in the interest of justice to permit a minor defendant to be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates:

- (1) the court shall hold a hearing no less frequently than once every 30 days to review whether it is still in the interest of justice to permit the minor defendant to be so detained or have such sight or sound contact; and
- (2) the minor defendant shall not be detained in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for an extension or the minor defendant expressly waives this limitation.

Comment: This rule codifies the requirements of 34 U.S.C. § 11133(a)(11)(B)(i) - (iii) and governs detention before the guilt phase of a trial, pending sentencing, and while awaiting extradition. For exceptions to the prohibition on holding a minor defendant in a jail or lockup for adults that do not require an interest-of-justice determination, see 34 U.S.C. § 11133(a)(13).

With regard to the definition of "minor defendant" in subdivision (a), an individual who is under the age of 18 years is treated as an adult for purposes of prosecution either as a result of charges being directly filed in criminal court, see 42 Pa.C.S. § 6302 (Definitions) (excluding certain offenses from the definition of "delinquent act"), or as a result of charges being transferred to criminal court pursuant to 42 Pa.C.S. § 6355 (Transfer to criminal proceedings).

“Any other relevant factor”, as used in subdivision (c)(7), includes, but is not limited to, the effect of adult placement on the minor defendant, the character of the minor defendant, the minor defendant’s needs, or any other mitigating or aggravating information.

If a minor defendant is detained in a secure detention facility pursuant to subdivision (d)(1)(ii), the party that requested the minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates may renew that request by filing a motion as provided for in subdivision (e)(1).

Subdivision (d)(2)(i) provides for the review of an issuing authority’s interest-of-justice determination by a court of common pleas. An issuing authority is required to make an interest-of-justice determination prior to a minor defendant being detained in a secure facility with sight or sound contact with adult inmates or detained in a jail or lockup for adults. Such determination would be required, for example, if an issuing authority denied a minor defendant bail at a preliminary arraignment and a party requested that the minor defendant be held in a jail for adults rather than in a secure detention facility, see 55 Pa. Code § 3800.5 (Definitions); Pa.R.Crim.P. 598, cmt.

Subdivision (e)(2)(ii) is intended to protect against excessive and repetitive filings when neither the facts nor the law informing the court’s previous interest-of-justice determination have changed.

If an issuing authority or court of common pleas determines that it is not in the interest of justice for a minor defendant to be detained in a secure facility with sight or sound contact with adult inmates or detained in a jail or lockup for adults, detention of the minor defendant, if any, would continue to be governed by 42 Pa.C.S. § 6327 (Place of detention).

Regarding appellate review of an interest-of-justice determination, see Pa.R.A.P. 1610 (Review of Bail Orders).

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

RE-PUBLICATION REPORT

Proposed Adoption of Pa.R.Crim.P. 523.1

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pa.R.Crim.P. 523.1. Rule 523.1 would implement the requirements of the Juvenile Justice Reform Act (“JJRA”), 34 U.S.C. § 11133(a)(11)(B). The rule would also include a subdivision containing relevant definitions from the Juvenile Justice and Delinquency Prevention Act (“JJDPA”), see 34 U.S.C. § 11103, as well as subdivisions governing procedures before an issuing authority and a court of common pleas.

Background

The JJRA was signed into law in December of 2018. The JJRA reauthorized and substantially amended the JJDPA. Of particular interest is the JJRA’s requirement that any child under the age of 18 who is being processed through criminal proceedings must be separated by sight and sound¹ from adult inmates and may not, except under limited circumstances, be held pretrial in a jail or lockup for adults². This requirement became effective on December 21, 2021.

Pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6301-6375, a child can become subject to criminal proceedings when charges are directly filed in criminal court³ or when charges are transferred to criminal court after a petition alleging delinquency has been

¹ “[T]he term ‘sight or sound contact’ means any physical, clear visual, or verbal contact that is not brief and inadvertent.” 34 U.S.C. § 11103(25).

² “[T]he term ‘jail or lockup for adults’ means a secure facility that is used by a State, unit of local government, or law enforcement authority to detain or confine adult inmates.” 34 U.S.C. § 11103(22). An “adult inmate” is an individual who “has reached the age of full criminal responsibility under applicable State law; and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense[.]” 34 U.S.C. § 11103(26)(A).

³ See 42 Pa.C.S. § 6302 (Definitions) for offenses excluded from the definition of “delinquent act” and thus not subject to the Juvenile Act per 42 Pa.C.S. § 6303(a)(1).

filed⁴. In either case, if the child is not released on bail, he or she may be held in a secure detention facility⁵ but, pursuant to the amended JJDPa, not in an adult jail or within sight or sound contact of adult inmates. See 34 U.S.C. § 11133(a)(11)(B)(i). An exception is provided if a court finds that it is in the interest of justice to permit a child to be detained in a jail or lockup for adults or to have sight or sound contact with adult inmates. See *id.* § 11133(a)(11)(B)(ii). In determining whether such detention or sight or sound contact is in the interest of justice, a court must consider:

- (1) the age of the juvenile;
- (2) the physical and mental maturity of the juvenile;
- (3) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;
- (4) the nature and circumstances of the alleged offense;
- (5) the juvenile's history of prior delinquent acts;
- (6) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and
- (7) any other relevant factor.

Id.

If a court determines that it is in the interest of justice to permit a child to be held in a jail or lockup for adults or to have sight or sound contact with adult inmates, the court shall hold a hearing at least every 30 days to review that determination. See *id.* § 11133(a)(11)(B)(iii)(I). The JJRA enlarges the time to hold such hearings to 45 days in "rural" jurisdictions. A child may not be held in a jail or lockup for adults or have sight or sound contact with adult inmates for more than 180 days unless the court determines that there is good cause for an extension or the child waives the limitation. See *id.* § 11133(a)(11)(B)(iii)(II).

⁴ See 42 Pa.C.S. § 6355 (Transfer to criminal proceedings).

⁵ See 42 Pa.C.S. § 6327(d); 55 Pa. Code § 3800.5; and Pa.R.Crim.P. 598, Comment.

Proposal

Proposed Rule 523.1, adapted from 34 U.S.C. § 11133(a)(11)(B) to implement the requirements of the JJRA, was previously published for comment. See 52 Pa.B. 3215 (June 4, 2022). Subdivision (a) would include definitions for “adult inmate,” “jail or lockup for adults,” “minor defendant,” and “sight or sound contact.” A minor defendant would be defined as a defendant who is less than 18 years old. The term “defendant” is intended to indicate that the minor is subject to criminal proceedings. Subdivision (b) would provide the general rule: “A minor defendant shall not be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates unless a court or issuing authority finds, after a hearing and in writing, that such detention is in the interest of justice.” To determine if such detention would be in the interest of justice, an issuing authority or common pleas judge would be required to consider the factors set forth in subdivision (c) as mandated by 34 U.S.C. § 11133(a)(11)(B)(ii).

Subdivision (d)(1) has been revised from the original publication to add subdivisions (d)(1)(i) – (d)(1)(iii). Subdivision (d)(1)(i) carries over previously proposed language.

Subdivision (d)(1)(ii) would require a minor defendant to be represented by counsel at any hearing held pursuant to subdivision (d)(1). This is consistent with the Rules of Juvenile Court Procedure, which require counsel for a juvenile prior to any hearing and impose requirements for waiver of counsel. See Pa.R.J.C.P. 151, 152. If counsel cannot be provided, the subdivision would prohibit the hearing from being held and the minor defendant would be detained in a secure detention facility. The Comment, as before, would provide additional guidance on the circumstances necessitating an interest-of-justice determination by an issuing authority. Additionally, the Comment would explain:

If a minor defendant is detained in a secure detention facility pursuant to subdivision (d)(1)(ii), the party that requested the minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates may renew that request by filing a motion as provided for in subdivision (e)(1).

Subdivision (d)(1)(iii) would require an issuing authority to provide written reasons for any decision. This requirement is intended to aid a minor defendant and his or her attorney in preparing for a *de novo* review in the court of common pleas.

If an issuing authority finds, pursuant to subdivision (d)(1), that detention in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates is in the interest of justice and orders the minor defendant so detained, subdivision (d)(2) would require the court of common pleas to hold a hearing within 72 hours to review the issuing authority’s finding. The court of common pleas’ review would be *de novo*. As

previously published, this *de novo* review was to be held within five days of the issuing authority's determination. However, after further consideration by the Committee, this time frame for review has been reduced to 72 hours to mitigate the potential harms of unwarranted detention in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates of a minor defendant.

Subdivision (d)(3) has been added to permit judicial districts to adopt a local rule permitting only a court of common pleas judge to make any interest-of-justice determination, including the initial determination. If a judicial district adopts such a local rule, an interest-of-justice determination would be initiated by motion in the court of common pleas pursuant to subdivision (e).

This subdivision is intended to provide judicial districts the flexibility to determine whether members of the minor judiciary should make the initial interest-of-justice determination or whether such determinations should be made by a court of common pleas judge in the first instance. This subdivision is intended to accommodate those judicial districts that have already adopted local rules implementing the JJRA that require common pleas judges to make all initial interest-of-justice determinations. Further, the Committee observes the proposed requirement of subdivision (d)(1)(ii) for counsel to represent minor defendants at an initial interest-of-justice determination before an issuing authority may be another factor in whether a judicial district adopts such a local rule.

Subdivision (e)(1) would provide for the filing of a motion in the court of common pleas requesting "that a detained minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates."

Subdivision (e)(2)(i) would provide for a motion for reconsideration by which a minor defendant being detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates could seek reconsideration of the prior interest-of-justice determination. Subdivision (e)(2)(ii) would limit second or subsequent such motions to circumstances where the minor defendant alleges new facts or cites new legal authority. This change allows for a minor defendant to have an interest-of-justice determination reviewed without having to wait 30 days for the review required by subdivision (g)(1). The Comment would further clarify that the limitation on second or subsequent motions for reconsideration is to "protect against excessive and repetitive filings when neither the facts nor the law informing the court's previous interest-of-justice determination have changed."

If a motion is filed pursuant to either subdivision (e)(1) or subdivision (e)(2), subdivision (e)(3) would require the court of common court pleas to hold a hearing within 72 hours. At that hearing, the court would have to determine if it is in the interest of justice for the minor defendant to be detained in a jail or lockup for adults or in a secure facility

with sight or sound contact with adult inmates. When making its determination, subdivision (e)(4) would require the court to consider each factor listed in subdivision (c).

Subdivision (f) would require the court of common pleas, at the conclusion of either a *de novo* hearing or an interest-of-justice hearing, to enter an order with the court's determination and the court's findings regarding each factor enumerated in subdivision (c). The previously proposed requirement that the order state that the Prison Rape Elimination Act (PREA) standards for youthful inmates still apply if the minor defendant is detained in an adult facility has been removed. The Committee removed this requirement after observing a tension between the provisions of the JJRA and the PREA, which, contrary to the JJRA, prohibits a youthful inmate from being "placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate" through use of a common space. 28 C.F.R. § 115.14(a). Moreover, the Committee concluded that the standards of PREA apply, if they continue to apply, regardless of the contents of an order entered pursuant to this rule, and adherence to those standards is the responsibility of the facility housing the minor defendant.

Subdivision (g)(1) would require the court to review its determination once every 30 days if a minor defendant is detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates after an interest-of-justice hearing. As was previously proposed, the temporal aspect of the review requirement would be uniform throughout Pennsylvania.

Subdivision (g)(2) would limit the detention of a minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates to 180 days, pursuant to 34 U.S.C. § 11133(a)(11)(B)(iii)(II), "unless the court, in writing, determines there is good cause for an extension or the minor defendant expressly waives this limitation."

The Comment to the rule would include citations to the relevant federal statutes. The first sentence of the Comment has been expanded from the prior publication to explain that the rule "governs detention before the guilt phase of a trial, pending sentencing, and while awaiting extradition." This revision reflects that an interest-of-justice hearing is required for "juveniles awaiting trial or *other legal process* who are treated as adults for purposes of prosecution in criminal court[.]" 34 U.S.C. § 11133(a)(11)(B)(i) (emphasis added). Concomitantly, "pretrial" has been removed from the title of the rule as it did not accurately reflect the scope of the rule.

The Committee invites all comments, concerns, and suggestions.