

# Juvenile Detention Reference Guide for Juvenile Court Judges/Masters

## Pre-Detention Considerations / Best Practices:

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**Purpose of Detention** – A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this chapter.

**Detention Risk Assessments** – The Pennsylvania Detention Risk Assessment Instrument (PaDRAI) ensures that placements in detention are determined consistently and equitably, while protecting the community.

**Graduated Responses** – The implementation of graduated responses (both sanctions and rewards) can reduce the need for placements in detention.

**Alternatives to Detention** - Alternatives to secure detention include, but are not limited to: increased probation supervision such as in-home detention; expedited court processing; electronic monitoring; evening reporting centers; kinship care; and shelter care.

## Requirements prior to the commencement of the detention hearing:

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**Prompt Hearing**<sup>1</sup>: A detention hearing shall be held no later than 72 hours after the child is placed in detention.

**Notice of Detention Hearing**<sup>2</sup>: Notice of the detention hearing, including date, time, place, and purpose, shall be given to the juvenile, the juvenile's guardian; the juvenile's attorney; the juvenile probation officer; the attorney for the Commonwealth; the victim; and any other appropriate persons.

**Recording of the Detention Hearing**<sup>3</sup>: If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

**Advanced Communication Technology**<sup>4</sup>: A court may utilize advanced communication technology pursuant to Pa.R.J.C.P. 129 for a juvenile or a witness unless good cause is shown otherwise.

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<sup>1</sup> Pa.R.J.C.P. 240(C)

<sup>2</sup> Pa.R.J.C.P. 241

<sup>3</sup> Pa.R.J.C.P. 242(B)(2)

<sup>4</sup> Pa. R.J.C.P. 242(B)(5)

**Use of Restraints on the Juvenile<sup>5</sup>:** Restraints shall be removed prior to the commencement of a proceeding unless the court determines on the record, after providing the juvenile an opportunity to be heard, that they are necessary to prevent:

1. Physical harm to the juvenile or another person;
2. Disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
3. The juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

**Right to Hearing before Judge<sup>6</sup>:** Prior to the commencement of the hearing, a juvenile master must inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge.

- If the juvenile or the Commonwealth objects to having the matter heard by the juvenile master, the case shall proceed before the judge.

**Tone of the Detention Hearing<sup>7</sup>:** The hearing shall be conducted in an informal but orderly manner.

### **Beginning the hearing**

- The juvenile court judge/master should introduce himself/herself to everyone in attendance.
- Everyone participating in the detention hearing should be identified, as well as their roles.
- The victim has a right to be present at the detention hearing.<sup>8</sup>
  1. However, the Court has discretion to maintain confidentiality of mental health, medical, or juvenile institutional documents or juvenile probation reports.<sup>9</sup>
- The Court should explain that the detention hearing consists of two stages:
  1. The first stage is to determine if there is probable cause to believe that a delinquent act was committed by the juvenile; and, if so,
  2. The second stage is to determine whether continued detention is warranted.

### **Informing juvenile of rights<sup>10</sup>**

1. The Court must provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present.
2. The Court must inform the juvenile of the right to counsel, to retain private counsel, or to be assigned counsel.
  - a. The juvenile may not waive counsel for a detention hearing.<sup>11</sup>
3. The Court must inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

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<sup>5</sup> Pa.R.J.C.P. 139

<sup>6</sup> Pa.R.J.C.P. 187(C)

<sup>7</sup> Pa.R.J.C.P. 242(B)(1)

<sup>8</sup> Pa.R.J.C.P. 132 and 11 P.S. §11.201 et seq.

<sup>9</sup> 42 Pa.C.S. §6336(f)

<sup>10</sup> Pa.R.J.C.P. 242(A)

<sup>11</sup> Pa.R.J.C.P. 152(A)(3)

## Findings Required by the Court

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1. **The Court shall determine whether there is probable cause that a delinquent act was committed.**
  - a. The Court should ensure that all those who may testify are sworn to tell the truth.
  - b. The attorney for the Commonwealth shall attend the hearing and present evidence as the Commonwealth deems necessary to support the written allegation.<sup>12</sup>
  - c. The juvenile shall be present at the detention hearing, and the juvenile's attorney or the juvenile may cross-examine witnesses offered against the juvenile. The juvenile may offer evidence or witnesses, if any, pertinent to the probable cause determination.<sup>13</sup>
  - d. If probable cause is not found, the juvenile is to be released.
  - e. If probable cause is found, the court must determine whether continued detention is warranted.
  
2. **If probable cause exists, the court shall determine whether detention is warranted.**
  - a. A juvenile shall not be detained unless his detention is required:
    - i. To protect the person or property of others, or of the juvenile;
    - ii. Because the juvenile may abscond or be removed from the jurisdiction of the court;
    - iii. Because the juvenile has no parent, guardian or custodian, or other person able to provide supervision and care for him and return him to the court when required; or
    - iv. When an order for his detention or shelter care has been made by the Court.<sup>14</sup>
  - b. The unity of the family should be preserved whenever possible.<sup>15</sup>
  - c. The Court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.
  - d. The attorney for the Commonwealth must present evidence as the Commonwealth deems necessary to support the need for detention.
  - e. The juvenile probation officer should review all alternatives to secure detention and provide a recommendation to the Court regarding whether detention is warranted.
  - f. The juvenile shall be afforded an opportunity to cross-examine witnesses offered against the juvenile, and offer evidence or witnesses, pertinent to the detention determination.
  
3. **Are there any special needs that have been identified that the Court deems necessary to address while the juvenile is in detention.**<sup>16</sup>
  - The juvenile's attorney, the juvenile probation officer, or detention staff is to present any educational, health care, and disability needs to the court, if known at the time of the hearing.
  - Special needs may include needs for special education, remedial services, health care and disability.
  - When addressing the juvenile's needs concerning health care and disability, the Court's order should address the right of a juvenile to receive timely and medically appropriate screenings and health care services<sup>17</sup>; and a juvenile with disabilities to receive necessary accommodations.<sup>18</sup>

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<sup>12</sup> Pa. R.J.C.P. 242(B)(1)(b)

<sup>13</sup> Pa.R.J.C.P. 242(B)(4)

<sup>14</sup> 42 Pa.C.S. §6325

<sup>15</sup> 42 Pa.C.S. §6301 (b)(1)

<sup>16</sup> Pa.R.J.C.P. 242(C)(3)

<sup>17</sup> 55 Pa. Code §3800.32 and 42 U.S.C. §1396d(r)

<sup>18</sup> 42 U.S.C. §12132, 28 C.F.R. §35.101 et seq., Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and implementing regulations at 45 C.F.R. § 84.1 et seq.

- The Court has the authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness, which requires prompt treatment in the opinion of a physician. The Court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the Court that they do not consent to the treatment.<sup>19</sup>
- If the Court determines that a juvenile is in need of an educational decision maker, the Court is to appoint an educational decision maker pursuant to Pa.R.J.C.P. 147.

## Concluding the Detention Hearing

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At the conclusion of the detention hearing, the Court should summarize the proceeding for the juvenile, his guardian(s), the victim(s), and other hearing participants; confirm what just occurred; explain any next steps and relevant timelines; and inform and ensure that the juvenile understands any expectations prior to the next hearing.

## Filing of Petition

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If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.<sup>20</sup>

If the victim is not present, the victim is to be notified of the final outcome of the proceeding.<sup>21</sup>

## Prompt Adjudicatory Hearing<sup>22</sup>

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If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

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<sup>19</sup> 42 Pa.C.S. §6339(b)

<sup>20</sup> Pa.R.J.C.P. 242(D)

<sup>21</sup> 11 P.S. §11.201 et seq.

<sup>22</sup> Pa.R.J.C.P. 404(A)