

**IN THE SUPREME COURT OF OHIO**  
**Supreme Court Case Numbers 07-0895 and 07-0912**

**IN RE: L.A.B.**

A Minor Child

On Appeal from the Summit  
County Court of Appeals,  
Ninth Appellate District  
Court of Appeals No. 23309

**MERIT BRIEF OF APPELLEE**  
**STATE OF OHIO**

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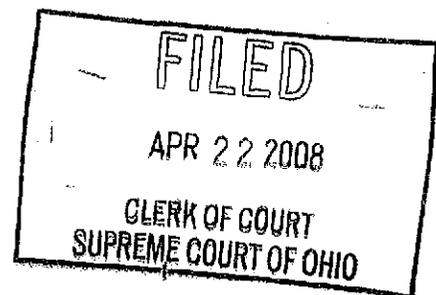
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## STATEMENT OF THE CASE

The Appellant was born on August 20, 1992 and on July 29, 2005 a complaint was filed in Juvenile Court charging the Appellant with Delinquency by reason of Burglary in violation of R.C. 2911.12, a felony of the second degree if committed by an adult. (R. 1). On July 29, 2005 a detention hearing was held and the charges were explained to the Appellant and a legal defender was appointed to represent him. (R. 2). On August 24, 2005 the Appellant waived his right to counsel and admitted to this offense after being informed of his constitutional right to a trial. (R. 4). The Juvenile Court immediately went to disposition and placed the Appellant in 5 days of detention but suspended that commitment on the condition that he commits no new offenses. (R. 4). The Juvenile Court also placed the Appellant on probation for 6 months and ordered 20 hours of community service. (R. 4).

On February 1, 2006 the Appellant was charged with a probation violation indicating that he had been suspended from school on January 1, 2006. (R. 7). On February 27, 2006 the Juvenile Court held a hearing on the probation violation and the court informed the Appellant of his right to an attorney. (T.p. 3). The defendant waived his right to an attorney at this hearing. (T.p. 3). After being informed of his constitutional rights to a trial on this matter and to the maximum penalty that could be imposed including incarceration in the Department of Youth Services for a minimum of 1 year to a maximum incarceration to age 21, the Appellant admitted to this probation violation. (T.pp. 4-5). Prior to the disposition the court summarized the Appellant's deceptive behavior at school including, talking back, mouthing off to a teacher, hitting and slapping girls after school, not following rules in study hall, throwing objects in class, continually disruptive in class by talking out, failure to serve detentions, throwing carrots in class at others, missing classes, tripping another student, giving a fake name, mouthy and

disrespectful, telling the teacher to shut up, being in the restroom without a pass, defiant and disruptive behavior in class, eating, talking and playing with money and dice, taking another student's bike, and hitting other students in the bathroom. (T.pp. 6-7). The Juvenile court imposed 10 days of detention in the Juvenile Detention Center and continued the Appellant on probation. (R. 8).

On March 28, 2006 the Appellant had a second probation violation when he was charged with the new crime of Assault. (R. 9). The Appellant also faced a second Probation Violation for being absent without leave from his home. (March 28, 2006 T.p. 3). On March 28, 2006 the Juvenile Court held a hearing on the probation violation and on the new charge of Assault in case number 06-03-1055. (March 28, 2006 T.pp. 2-3). The Juvenile Court informed the Appellant of the new Assault charge and the probation violation. (March 28, 2006 T.pp. 4-5). The court explained to the defendant his right to an attorney and the Appellant waived that right. (March 28, 2006 T.p. 5). After being informed of his constitutional right to a trial, the Appellant admitted to the Assault and admitted to the Probation Violation. (March 28, 2006 T.p.7). The Juvenile Court set the case for a dispositional hearing on April 6, 2006.

On April 6, 2006 the Juvenile Court held a dispositional hearing on the probation violation in Case No. 05-07-3586, on the Assault charge in Case No. 06-03-1055, and a hearing on a new case, 06-04-10174, for a Curfew violation. (T.p. 13). The Juvenile Court informed the Appellant of his right to an attorney and that an attorney would be appointed for him if he could not afford one. The Appellant chose to proceed without an attorney. (T.p. 13). After being informed of his constitutional rights to a trial the Appellant admitted to the new charge of a Curfew violation. (T.p. 14). The Juvenile Court indicated that it would then proceed with the disposition on all of the charges and probation violations. (T.p. 15). The Appellant explained

that he hit the victim in the Assault case breaking his glasses because he was mad at his principal. (T.p. 19). The Appellant indicated that he did not know the victim and that he and two others beat him up for no reason. (T.p. 19). The Juvenile Court extended the probation in Case No. 05-07-3586 for a period of 6 months and ordered the Appellant to go through the Youthful Offender Program (YOC). (T.pp. 22-23, R. 13).

On May 2, 2006 the Appellant was charged with his third Probation violation for committing a new offense of Receiving Stolen Property. (R. 14). The Appellant waived his right to counsel and admitted the new offense and the probation violation. (R. 15). The Juvenile Court set a dispositional hearing for May 17, 2006.

On May 8, 2006 the Appellant was charged with his fourth probation violation for being absent without leave. The Court explained to the Appellant his right to an attorney and he waived that right. The Appellant admitted to the probation violation after being informed of his constitutional rights.

On May 17, 2006 the Court held a disposition on the Probation violation and the new Receiving Stolen Property charge in Case No. 06-05-1926. (T.p. 31). The Juvenile Court explained to the Appellant his right to an attorney at the dispositional hearing and the Appellant indicated he did not want an attorney. (T.p. 31). The Juvenile Court ordered that the Appellant's probation be continued for another 6 months and that the Appellant be placed on House Arrest for 30 days. (R. 18D).

On May 31, 2006 the Appellant was charged with his fifth Probation violation because he was not attending the Youth Offender Program on a regular basis and had missed the last 3 days. (R. 20). On June 8, 2006 the Court held a hearing on this probation violation. The Juvenile Court explained to the Appellant his right to an attorney and that an attorney would be appointed

for him if he was unable to afford one. (T.p. 39). The Appellant indicated he understood his right to an attorney and decided to waive that right. (T.p. 39). The Juvenile Court explained to Appellant his constitutional right to a trial on probation violation and the maximum penalties that could be invoked if he admitted to these violations. The Appellant admitted to the probation violation. (T.p. 41). The probation officer indicated that he would recommend intensive probation but the Appellant's mother indicated that extending the probation would not help the matter and it was time to be strict with the Appellant. The Juvenile Court ordered the Appellant to be committed to the custody of the Ohio Department of Youth Services for a minimum period of 1 year and a maximum period until the Appellant reached the age of 21.

The Appellant appealed this disposition to the Ninth District Court of Appeals and that Court affirmed the Appellant's disposition. *In Re L.A.B.*, 9<sup>th</sup> Dist. No. 23309, 2007-Ohio-1479. The Appellant filed a motion to certify this case on conflict and the Ninth District Court of Appeals granted this motion finding their opinion to be in conflict with *In Re Lohr*, Monroe No. 06MO 6, 2007-Ohio-1130. This Court accepted Appellant's discretionary appeal and the certification of conflict. The State now files Appellee's brief in this case.

## ARGUMENT ON CERTIFIED QUESTION

### **Does Juvenile Rule 29 apply to probation revocation hearings in Juvenile Court?**

Juvenile Rule 35, Proceedings after Judgment, sets forth the requirements of a probation violation hearing and does not specifically incorporate any of the requirements of Juvenile Rule 29. Juvenile Rule 29, Adjudicatory Hearing, does not mention Juvenile Rule 35 and clearly applies only to adjudications on the original complaint. Should an appellate court reverse a Juvenile Court's judgment where the court followed the Juvenile Rules?

1. **A simple and straightforward reading of Juvenile Rule 35 indicates that it does not incorporate the requirement of Juvenile Rule 29.**

Juvenile Rule 1 (B)(2) indicates that the Juvenile Rule of Procedure shall liberally interpreted and construed, "to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay; \*\*\*. Juvenile Rule 35, Proceedings after judgment, indicates that the continuing jurisdiction of the Juvenile Court can be invoked by a motion in the original proceedings:

#### **Juv. R 35 Proceedings after judgment**

##### **(A) Continuing jurisdiction; invoked by motion**

The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

##### **(B) Revocation of probation**

The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv. R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv. R. 34(C), been notified.

**(C) Detention**

During the pendency of proceedings under this rule, a child may be placed in detention in accordance with the provisions of Rule 7.

First, although this rule incorporates Juv. R. 7, it does not incorporate Juvenile Rule 29. Further, a simple reading of the Juvenile Rules indicates that Juvenile Rule 29 sets forth the rule for adjudications, Juvenile Rule 34 sets forth the Rule for Dispositional Hearings, and Juvenile Rule 35 sets forth the Rule for Proceedings after Judgment. Juvenile Rule 35 makes it clear that a court has continuing jurisdiction over a child and that this jurisdiction can be invoked by filing a motion in the Juvenile Court. Juvenile Rule 35 provides a different procedure for a probation violation hearing than for adjudicatory hearing.

Second, the Criminal Rules provide some guidance to this court. Crim.R. 11 is similar to Juvenile Rule 29 and sets forth numerous safeguards a Court must follow before taking a defendant's guilty plea including informing the defendant of his constitutional rights. Criminal Rule 32.3, Revocation of Community Control, is similar to Juvenile 35 and merely indicates that a defendant has a right to be informed of the grounds for the revocation, a right to a probation violation hearing, and a right to counsel unless he voluntarily waives counsel. A trial court is not required to explain to a defendant his Criminal Rule 11 rights before a defendant pleads guilty to a probation violation. Similarly, a Juvenile Court is not required to explain to a juvenile his Juvenile 29 rights before accepting an admission to a probation violation.

**2. The Appellant's argument that a probation violation hearing is an adjudicatory hearing is contrary to the Rules of Juvenile Procedure.**

In comparison to the straightforward interpretation of the Juvenile Rules set forth by the State, the Appellant contends that a probation violation hearing fits the definition of an adjudicatory hearing. However, as much as the Appellant attempts to pound a square peg into a round hole, a probation violation hearing is not an adjudicatory hearing. Juv.R. 2(B) sets forth

the definition of an adjudicatory hearing: "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court." This definition does not include probation violation hearings. Further, a probation violation hearing does not determine whether a juvenile comes within the jurisdiction of the court because a juvenile is already within the jurisdiction of the Court when the probation department files a probation violation. Lastly, the Appellant contends that the probation violation is a complaint. However, the complaint that brought the Appellant within the jurisdiction of the Juvenile Court was filed on July 29, 2005 and is labeled "Complaint." The probation violation filed on May 31, 2006 is labeled "Probation violation / Violation of court order." Contrary to the Appellant's semantical argument, the court's June 8, 2006 hearing was a probation violation hearing and not an adjudicatory hearing.

Similarly, Juvenile Rule 29 is clearly inapplicable to a probation violation hearing. Juv. R.29 (B)(2) indicates that a court must inform the Juvenile of the substance of the complaint including the possibility that the cause may be transferred to adult court under Juv.R. 30. However, in a probation violation hearing, a determination has already been made that jurisdiction will remain with the Juvenile Court. The Appellant's argument that Juv. Rule 29 applies to probation violation hearings is clearly not supported by the language set forth in Juv. R. 29.

Although the Appellant indicates that a Juvenile should be afforded greater protections when waiving his rights to counsel during a probation violation hearing, this issue before the Court is what the current rule requires, not what this rule should require. This Court certainly has the authority to impose greater protections for Juveniles in probation violations hearings by proposing new rules. However, at this time the Appellant admitted to the probation violation the

only requirements for a probation violation hearing was set forth in Juv. Rule 35. The Juvenile Court followed the mandates of this rule and Appellant was properly committed to the Department of Youth Services.

**3. An Appellate Court has never indicated why Juv. R. 29 should apply to probation violation hearings.**

The Ninth District Court of Appeals has clearly stated that the plain language of Juvenile Rule 35 does not mandate that a Juvenile Court comply with the requirements of Juvenile Rule 29 when conducting a probation violation hearing:

Rule 35(B) does not incorporate the requirements of Rule 29(D) into a probation revocation hearing.

Rule 29(D) applies to a juvenile's original admission that he committed an act that would be a crime if committed by an adult.<sup>FN1</sup> It is comparable to Rule 11(C)(2) of the Ohio Rules of Criminal Procedure, which provides that a court shall not accept a guilty or no contest plea in a felony case without informing a defendant that, by entering such a plea, he is waiving certain rights. Although Rule 29(D) applies to a juvenile's original admission, it does not apply to an admission that he violated a condition of probation which had been imposed upon him as a result of an earlier admission and finding of delinquency.

*In Re Collins* (Sept. 27, 1995)  
9<sup>th</sup> Dist. No. 2365 M, unreported.

Further, the Eighth District Court of Appeals indicated that probation violation hearings are not criminal proceedings and that the requirements of Juvenile Rule 29 are not applicable to these violation hearings. *In Re Bennett* (June 12, 1997), Cuyahoga No. 71121 unreported.

However, the Seventh District Court of Appeals never expressed a rationale why the Court believed that Juvenile Rule 29 should apply to probation violation hearings. *In Re Lohr*, 7<sup>th</sup> Dist. No. 06 MO 6, 2007-Ohio-1130. Instead, the *Lohr* Court relied on two prior cases from that Court to indicate that probation violation hearings incorporate Juv. R. 29: "This Court has

held a number of times that a “meaningful dialogue” must take place between the magistrate or judge at juvenile probation revocation proceedings before a waiver of the right to counsel can be considered valid. *In re Mulholland* (April 30, 2002), 7th Dist. No. 01-C.A.-108; *In re Royal* (1999), 132 Ohio App.3d 496, 725 N.E.2d 685.” But the *Royal* case involved a new complaint and a probation violation. The *Royal* Court never indicated that Juvenile Rule 29 should apply solely to a probation violation. Instead, the Court reversed the disposition because the Appellant was not given notice of the probation violation pursuant to Juvenile Rule 35. *Id* at 507. Similarly, the *Mulholland* Court also found that the Juvenile Court violated Juv. R. 35 by failing to give the juvenile adequate notice of the hearing or obtaining a proper waiver of counsel. The *Lohr* Court’s rationale for applying Juvenile Rule 29 to Juvenile Rule 35 has no basis in the prior precedent from that Court.

No court in Ohio has expressed any rationale to explain why Juvenile Rule 35 should incorporate the requirements set forth in a Juvenile Rule 29 adjudicatory hearing. The Appellant has not expressed any logical interpretation of the Juvenile Rules to indicate that the requirements set forth in Juvenile Rule 29 should be applied to probation violation hearings. This Court must find that Juvenile Rule 29 does not apply to probation revocation hearings held pursuant to Juvenile Rule 35.

## PROPOSITION OF LAW ONE

**A COURT MUST CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING A JUVENILE'S PRIOR EXPERIENCE WITH THE COURT, IN DETERMINING WHETHER HE VOLUNTARILY WAIVED HIS RIGHT TO COUNSEL.**

## LAW AND ARGUMENT

The Appellant contends that he did not voluntarily waive his right to counsel pursuant to Juvenile R. 29. However, as discussed above, at a probation violation hearing the Juvenile Court must only advise a Juvenile of their right to counsel pursuant to Juvenile Rule 35. *In Re Rogers* (May 23, 2001), Summit No. 20393. The United States Supreme Court has held there is no Sixth Amendment constitutional right to the appointment of counsel in all probation revocation proceedings. *Gagnon v. Scarpelli* (1973), 411 U.S. 778, 787-790, 93 S.Ct. 1756, 36 L.Ed.2d 656. When the right to counsel does not involve a constitutional right, this Court has only required substantial compliance with the rule of procedure. *State v. Martin* (2004), 103 Ohio St.3d 385, 392, 816 N.E.2d 227, 233.

Juv.R. 35(B) indicates that Appellant has the right to counsel:

The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv. R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv. R. 34(C), been notified.

A Juvenile Court properly violates a Juvenile's probation without counsel present where the Juvenile waives his right to counsel in open court. *In Re Rogers* (May 23, 2001), Summit No. 20393. To satisfy itself that a juvenile has made a voluntary, knowing and intelligent waiver of counsel, this Court has indicated that the inquiry encompasses the totality of the circumstances:

The judge must consider a number of factors and circumstances, including the age, intelligence, and education of the juvenile; the juvenile's background and experience generally and in the court system specifically; the presence or absence of the juvenile's parent, guardian, or custodian; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the complexity of the proceedings.

*In re C.S.* (2007), 115 Ohio St.3d 267, 284,  
874 N.E.2d 1177, 1193.

In this case, the Appellant waived his right to an attorney after the Juvenile Court specifically informed the Appellant of the allegations of the probation violation, his right to an attorney and that an attorney would be appointed for the Appellant if the Appellant could not afford an attorney:

THE COURT: Okay. The probation violation indicates that you have violated your probation by not attending YOC on a regular basis and having missed the last three days in a row.

You understand that?

MR. BARNES: Yes.

THE COURT: All right, Lee Adierre. You have the right to be represented by a lawyer at any time. If you can't afford a lawyer, I will give you one that you do not have to pay for.

Do you understand that?

MR. BARNES: Yes.

THE COURT: Do you want to be represented by a lawyer or do you want to proceed today without a lawyer?

MR. BARNES: Without a lawyer.

(T.p. 39)

Reviewing the entire record in this case, especially his prior experience with the Juvenile Court in this case, the Appellant made a voluntary, knowing and intelligent waiver of his right to

counsel. The Court had specifically informed the Appellant of his right to counsel and that he qualified for appointed counsel before the Appellant admitted to this offense on August 24, 2005:

THE COURT: Thank you.

Adierre, my name is Magistrate Freeman. You understand this matter was scheduled for a pretrial today, right?

MR. BARNES: Yes.

THE COURT: At the pretrial you get an opportunity to discuss the case with the prosecutor and see what kind of evidence they have, and then you can decide how you want to proceed. Now, you are entitled to have your own lawyer.

Do you understand that?

MR BARNES: Yes.

THE COURT: And in fact, you qualify for a public defender.

Do you understand that?

MR. BARNES: Yes.

THE COURT: So you could have a lawyer at no charge. It's my understanding that you wish to waive your right to a lawyer.

Is that correct, you don't want to have one?

MR. BARNES: No. No.

THE COURT: What's that?

MR. BARNES: No.

THE COURT: You don't want to have a lawyer?

MR. BARNES: No.

THE COURT: You are sure?

MR. BARNES: Yes.

THE COURT: And why don't you want to have one?

MR. BARNES: Because I know I took the bike.

THE COURT: Okay. All right. So nobody's promised you anything or threatened you in any way to get you to waive your right to a lawyer?

MR. BARNES: No.

(8/24/05 T.pp. 3-4)

Before being sent to the Juvenile Detention Center on June 8, 2006 after his fifth probation violation hearing, the Appellant had four prior probation violation hearings. During these hearings the Appellant was always informed of his right to counsel and chose to waive his right to counsel. (2/27/06 T.p. 3, 3/28/06 T.p. 5, 8, 4/6/06 T.p. 13, 5/2/06 T.p.3-4, 5/8/06 T.p. 25, 5/17/06 T.p. 31). Based upon Appellant's biweekly appearances before the court for probation violations and his decision to waive counsel in every case, Appellant not only understand his rights to an attorney, he could have possibly memorized the Court's explanation regarding his right to an attorney and that one would be appointed for him if he could not afford counsel. Considering the Appellant's recent experiences with the Juvenile Court system, the Appellant understood and voluntarily waived his right to counsel in this case. *In Re Estes*, 4<sup>th</sup> Dist. No. 04CA11, 2004-Ohio-5163 at ¶ 16-17. The Appellant's proposition of law is without merit and it must be overruled.

## PROPOSITION OF LAW TWO

**THE APPELLANT WAIVES AN ISSUE IN THE OHIO SUPREME COURT THAT WAS NOT ASSERTED IN THE NINTH DISTRICT COURT OF APPEALS.**

### LAW AND ARGUMENT

The Appellant contends that a juvenile's waiver of counsel constitutes structural error when the Juvenile Court does not explain to Appellant the procedure pursuant to Juvenile Rule 40 for filing objections to the magistrate's report. This Court has indicated that it will not consider an issue that was not raised in the appellate court and not considered by that court:

We do not consider this claim of error since the issue was not raised in any way in the Court of Appeals, [FN3] nor did the Court of Appeals consider or decide it. *Toledo v. Reasonover* (1966), 5 Ohio St.2d 22, 213 N.E.2d 179; *State v. Eley* (1978), 56 Ohio St.2d 169, 170, 383 N.E.2d 132; *State v. Cornely* (1978), 56 Ohio St.2d 1, 4, 381 N.E.2d 186; *State v. Williams* (1977), 51 Ohio St.2d 112, 364 N.E.2d 1364, paragraph two of the syllabus.

*State v. Price* (1979) 60 Ohio St.2d 136,  
139, 398 N.E.2d 772, 774.

Here, the Appellant raised three assignments of error in the Ninth District Court of Appeals but never asserted that a Juvenile Court must inform the Juvenile of Juvenile Rule 40 prior to taking a waiver of counsel. Further, he never asserted that this error constitutes structural error. The Appellant has waived this issue on appeal.

Assuming this Court considers the merits of this issue, the State contends that a Juvenile Court magistrate need not inform the Appellant of the procedure surrounding Juvenile Rule 40 prior to obtaining a waiver of counsel. This Court has recently set forth the test to determine whether a juvenile waives counsel at an adjudicatory hearing. To satisfy that a juvenile has made a voluntary, knowing and intelligent waiver of counsel, this Court has indicated that the inquiry encompasses the totality of the circumstances:

The judge must consider a number of factors and circumstances, including the age, intelligence, and education of the juvenile; the juvenile's background and experience generally and in the court system specifically; the presence or absence of the juvenile's parent, guardian, or custodian; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the complexity of the proceedings.

In re C.S. (2007), 115 Ohio St.3d 267, 284,  
874 N.E.2d 1177, 1193.

The Appellant now contends that the Juvenile Court must inform the Juvenile of his right to appeal and file objections pursuant to Juvenile Rule 40 prior to accepting a waiver of counsel. Further, he alleges that if the Juvenile does not comprehend this rule, he has not made a voluntary and knowing waiver of his right to counsel. The Appellant does not cite any case law to support this argument. Further, although the Appellant cites to the totality of the circumstances test set forth in *In Re C. S.* in his first proposition of law, he now attempts to abandon this test by setting forth a rule that a waiver of counsel is not knowing and voluntary unless the Juvenile Court explains Juvenile Rule 40 prior to accepting the waiver and that the Juvenile must understand this rule of procedure.

This Court has cited to the United States Supreme Court precedent to indicate that there is no one factor that should determine whether a defendant properly waived his right to counsel:

However, the United States Supreme Court “ha[s] not \* \* \* prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must possess in order to make an intelligent election \* \* \* will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.” *Tovar*, 541 U.S. at 88, 124 S.Ct. 1379, 158 L.Ed.2d 209.

*State v. Johnson* (2006), 112 Ohio St.3d 210, 225, 858  
N.E.2d 1144, 1164.

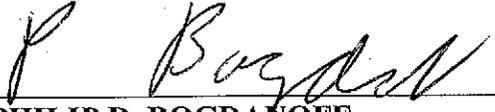
Here, the Appellant has already waived his right to counsel at the adjudicatory hearing and at four probation violation hearings. At his fifth probation violation hearing, the Juvenile court was not required to inform the Appellant of the appellate procedure involving Juvenile Rule 40. The totality of the circumstances in this case indicates that the Appellant made a voluntary and intelligent decision to waive counsel. The Appellant's second proposition of law is without merit.

**CONCLUSION**

Pursuant to the argument offered, the Appellee respectfully contends that the Juvenile Court did not commit error when it followed Juvenile Rule 35. The Juvenile Court properly informed the Appellant of the probation violation, told the Appellant of his right to counsel and that counsel would be appointed if he was indigent. The Appellant made a knowing, voluntary and intelligent decision to waive counsel. The Juvenile Court did not commit error in this case and the Appellate Court's decision must be affirmed.

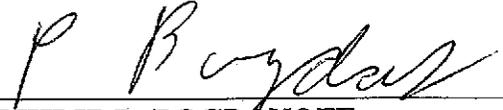
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Reg. No. 0018887

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum in Opposition was sent by regular U.S. Mail to Amanda J. Powell, Assistant State Public Defender, 8 East Long Street, 11<sup>th</sup> Floor; Columbus, Ohio 43215, on this 21<sup>ST</sup> day of April, 2008.

  
**PHILIP D. BOGDANOFF**  
Assistant Prosecuting Attorney  
Appellate Division

APPENDIX





In Re: Juvenile's Name Lee Adierre Barnes

DOB: 08-20-1992

Age: 13

Date: 6-08-06

School: \_\_\_\_\_

Grade: \_\_\_\_\_

Present: Lee Adierre, mother, PO J. Sims

2006 JUN -9 PM 2:42

LINDA TUCCI TEODOSIO  
JUDGE

Count No.1 Probation Violation

OFFENSE/ORC/DEGREE/AMENDED TO  
2152.02 (Robbery F2)

Count No.2 \_\_\_\_\_

Count No.3 \_\_\_\_\_

Count No.4 \_\_\_\_\_

Hearing Type:  Detention  Preliminary  Adjudication  Pretrial  Trial  Disposition  Review  Drug Ct. Review  
Rights:  Explained  Waived Right to Counsel  Waived Right to Trial  
Attorney:  Requested  Appoint Legal Defender  Appoint private counsel  Has retained own counsel  
Plea:  Admit  Deny  Set for Pretrial  Set for Trial

**ORDER**

- \_\_\_\_\_ Hearing: \_\_\_\_\_
- House arrest/EMHA until \_\_\_\_\_
- Curfew \_\_\_\_\_
- Probation \_\_\_\_\_ or until all orders completed  
Staffing \_\_\_\_\_ Review \_\_\_\_\_
- Probation terminated \_\_\_\_\_
- Substance abuse evaluation/follow all recommendations
- Family counseling  Individual counseling
- Community Service (CRP/Private) \_\_\_\_\_
- Restitution (CRP/Private) \_\_\_\_\_
- Fine \_\_\_\_\_  Costs \_\_\_\_\_ due by \_\_\_\_\_
- Ohio Driver's License / right to apply suspended \_\_\_\_\_
- Juvenile held pending next hearing  
 no one to release to  flight risk  danger to self/others
- Juvenile release to SCS on 6-12-06

- Committed to legal custody of ODYS  
1 year min/max to age 21 at Count 1
- Stay on ODYS Commitment until \_\_\_\_\_ on  
condition of no violation of Court Order/probation/law
- Probation revoked, committed to ODYS
- Parole revoked, child ordered returned to ODYS
- Issue warrant for arrest/detention pending hearing
- Continuing in home is contrary to the health/safety  
of child; child committed to temporary custody of CSB
- Notify superintendent and principal of adjudication
- Child to attend school regularly/parent to verify attend.
- \_\_\_\_\_ AA meetings/ week with written verification
- \_\_\_\_\_ days in detention suspended on condition that \_\_\_\_\_
- Call P.O. \_\_\_\_\_ per week

Conclusions of Law: that the juvenile is found to be:

- Delinquent count 1
- Tobacco Violator \_\_\_\_\_

- Unruly \_\_\_\_\_
- Dismissed without prejudice \_\_\_\_\_

OTHER ORDERS: \_\_\_\_\_

FINDINGS OF FACT: \_\_\_\_\_

\*\*Reasonable efforts have been made to prevent the child's removal from his home, however, those efforts have not been able to stop the child from engaging in behaviors detrimental to his health and safety. It is therefore in the child's best interest to be in a secure setting.

Lee Adierre admits not attending YOC. He pretends to go, but doesn't. He is on EMHA, violates regularly. Suspended last day of school. IPS is not an option, his traditional PO already sees him 3-4 times per week. Lee Adierre does as he pleases and is on the streets. Parents have been very supportive and done what they can. New charges coming in again.

THE MAGISTRATE'S DECISION IS APPROVED AND ENTERED AS A MATTER OF RECORD, SUBJECT TO THE RIGHT OF THE PARTY TO FILE WRITTEN OBJECTIONS WITHIN 14 DAYS OF ITS FILING, PER JUVENILE RULE 40 (E)(3). THE CLERK SHALL SERVE UPON THE PARTIES NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL. WITHIN THREE DAYS OF ENTERING THE JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE THE PARTIES IN A MANNER PRESCRIBED BY CIVIL RULE 5(B) AND NOTE THE SERVICE IN THE APPEARANCE DOCKET.

*Linda Tucci Teodosio*  
Linda Tucci Teodosio, Judge

CC: Juvenile, Parent/Guardian SCS, DYS Regional, detention

6-8-06

0836

In Re: Juvenile's Name Lee Adierre Barnes

DOB: 08-20-1992

Age: 13

Date: 6-08-06

School: \_\_\_\_\_

Grade: \_\_\_\_\_

Present: Lee Adierre, mother, PO J. Sims

2006 JUN -9 PM 2:42

OFFENSE/ORC/DEGREE/AMENDED TO ONDA TUCOI TEODOSIO  
JUDGE

Count No.1 Probation Violation

2152.02

(Robbery F2)

Count No.2 \_\_\_\_\_

Count No.3 \_\_\_\_\_

Count No.4 \_\_\_\_\_

Hearing Type:  Detention  Preliminary  Adjudication  Pretrial  Trial  Disposition  Review  Drug Ct. Review

Rights:  Explained  Waived Right to Counsel  Waived Right to Trial

Attorney:  Requested  Appoint Legal Defender  Appoint private counsel  Has retained own counsel

Plea:  Admit  Deny  Set for Pretrial  Set for Trial

### DECISION

- Hearing: \_\_\_\_\_
- House arrest/EMHA until \_\_\_\_\_
- Curfew \_\_\_\_\_
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- Staffing \_\_\_\_\_ Review \_\_\_\_\_
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Conclusions of Law: that the juvenile is found to be:

- Delinquent count 1
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- Unruly \_\_\_\_\_
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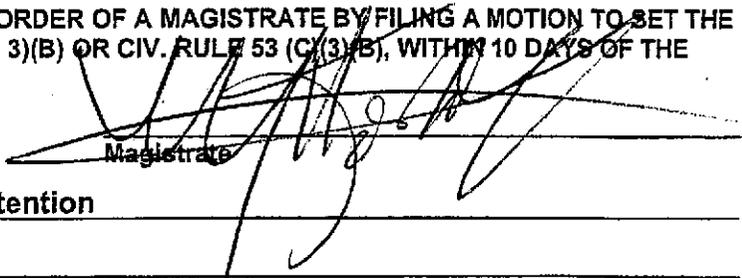
OTHER ORDERS: \_\_\_\_\_

FINDINGS OF FACT: \_\_\_\_\_

\*\*Reasonable efforts have been made to prevent the child's removal from his home, however, those efforts have not been able to stop the child from engaging in behaviors detrimental to his health and safety. It is therefore in the child's best interest to be in a secure setting.

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ANY PERSON MAY APPEAL TO THE COURT FROM ANY ORDER OF A MAGISTRATE BY FILING A MOTION TO SET THE ORDER ASIDE, IN ACCORDANCE WITH JUV. RULE 40 (C) 3(B) OR CIV. RULE 53 (C) 3(B), WITHIN 10 DAYS OF THE ORDER.



Magistrate

CC: Juvenile, Parent/Guardian SCS, DYS Regional, detention

COPY

## R.C. § 2911.12

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs &amp; Annos)

Chapter 2911. Robbery, Burglary, and Trespass (Refs &amp; Annos)

Burglary

## →2911.12 Burglary

(A) No person, by force, stealth, or deception, shall do any of the following:

(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;

(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;

(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense;

(4) Trespass in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.

(B) As used in this section, "occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(C) Whoever violates this section is guilty of burglary. A violation of division (A)(1) or (2) of this section is a felony of the second degree. A violation of division (A)(3) of this section is a felony of the third degree. A violation of division (A)(4) of this section is a felony of the fourth degree.

(1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1990 H 837, eff. 7-3-90; 1982 H 269, § 4, S 199; 1972 H 511)

## Crim. R. Rule 11

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Criminal Procedure (Refs & Annos)  
➔ **Crim R 11 Pleas, rights upon plea**

**(A) Pleas**

A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

**(B) Effect of guilty or no contest pleas**

With reference to the offense or offenses to which the plea is entered:

- (1) The plea of guilty is a complete admission of the defendant's guilt.
- (2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.
- (3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim. R. 32.

**(C) Pleas of guilty and no contest in felony cases**

- (1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.
- (2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:
  - (a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.
  - (b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

#### **(D) Misdemeanor cases involving serious offenses**

In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

#### **(E) Misdemeanor cases involving petty offenses**

In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.

The counsel provisions of Crim. R. 44(B) and (C) apply to division (E) of this rule.

**(F) Negotiated plea in felony cases**

When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

**(G) Refusal of court to accept plea**

If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

**(H) Defense of insanity**

The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

(Adopted eff. 7-1-73; amended eff. 7-1-76, 7-1-80, 7-1-98)

UNCODIFIED LAW

## Crim. R. Rule 32.3

Baldwin's Ohio Revised Code Annotated Currentness

Rules of Criminal Procedure

➔**Crim R 32.3 Revocation of community release****(A) Hearing**

The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which action is proposed. The defendant may be admitted to bail pending hearing.

**(B) Counsel**

The defendant shall have the right to be represented by retained counsel and shall be so advised. Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel. Where a defendant convicted of a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant.

**(C) Confinement in petty offense cases**

If confinement after conviction was precluded by Crim. R. 44(B), revocation of probation shall not result in confinement.

If confinement after conviction was not precluded by Crim. R. 44(B), revocation of probation shall not result in confinement unless, at the revocation hearing, there is compliance with Crim. R. 44(B).

**(D) Waiver of counsel**

Waiver of counsel shall be as prescribed in Crim. R. 44(C).

(Adopted eff. 7-1-73; amended eff. 7-1-98)

HISTORICAL AND STATUTORY NOTES

## Juv. R. Rule 1

Baldwin's Ohio Revised Code Annotated CurrentnessRules of Juvenile Procedure (Refs & Annos)➔ **Juv R 1 Scope of rules: applicability; construction; exceptions****(A) Applicability**

These rules prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts, with the exceptions stated in subdivision (C).

**(B) Construction**

These rules shall be liberally interpreted and construed so as to effectuate the following purposes:

- (1) to effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights;
- (2) to secure simplicity and uniformity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay;
- (3) to provide for the care, protection, and mental and physical development of children subject to the jurisdiction of the juvenile court, and to protect the welfare of the community; and
- (4) to protect the public interest by treating children as persons in need of supervision, care and rehabilitation.

**(C) Exceptions**

These rules shall not apply to procedure (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.

When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules.

(Adopted eff. 7-1-72; amended eff. 7-1-91, 7-1-94, 7-1-95)

HISTORICAL AND STATUTORY NOTES

## Juv. R. Rule 2

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Juvenile Procedure (Refs & Annos)  
➔ **Juv R 2 Definitions**

As used in these rules:

- (A) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.
- (B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.
- (C) "Agreement for temporary custody" means a voluntary agreement that is authorized by section 5103.15 of the Revised Code and transfers the temporary custody of a child to a public children services agency or a private child placing agency.
- (D) "Child" has the same meaning as in sections 2151.011 and 2152.02 of the Revised Code.
- (E) "Chronic truant" has the same meaning as in section 2151.011 of the Revised Code.
- (F) "Complaint" means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.
- (G) "Court proceeding" means all action taken by a court from the earlier of (1) the time a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until the court relinquishes jurisdiction over such child.
- (H) "Custodian" means a person who has legal custody of a child or a public children's services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.
- (I) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.
- (J) "Dependent child" has the same meaning as in section 2151.04 of the Revised Code.
- (K) "Detention" means the temporary care of children in restricted facilities pending court adjudication or disposition.
- (L) "Detention hearing" means a hearing to determine whether a child shall be held in detention or shelter care prior to or pending execution of a final dispositional order.
- (M) "Dispositional hearing" means a hearing to determine what action shall be taken concerning a child who is within the jurisdiction of the court.

CHILD JUVENILE Rule 2

(N) "Guardian" means a person, association, or corporation that is granted authority by a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents.

(O) "Guardian ad litem" means a person appointed to protect the interests of a party in a juvenile court proceeding.

(P) "Habitual truant" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Hearing" means any portion of a juvenile court proceeding before the court, whether summary in nature or by examination of witnesses.

(R) "Indigent person" means a person who, at the time need is determined, is unable by reason of lack of property or income to provide for full payment of legal counsel and all other necessary expenses of representation.

(S) "Juvenile court" means a division of the court of common pleas, or a juvenile court separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(T) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151 and 2152 of the Revised Code.

(U) "Juvenile traffic offender" has the same meaning as in section 2151.021 of the Revised Code.

(V) "Legal custody" means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by any section of the Revised Code or by the court.

(W) "Mental examination" means an examination by a psychiatrist or psychologist.

(X) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(Y) "Party" means a child who is the subject of a juvenile court proceeding, the child's spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

(Z) "Permanent custody" means a legal status that vests in a public children's services agency or a private child-placing agency, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.

(AA) "Permanent surrender" means the act of the parents or, if a child has only one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the Revised Code, to transfer the permanent custody of the child to a public children's services agency or a private child-placing agency.

(BB) "Person" includes an individual, association, corporation, or partnership and the state or any of its political subdivisions, departments, or agencies.

(CC) "Physical examination" means an examination by a physician.

(DD) "Planned permanent living arrangement" means an order of a juvenile court pursuant to which both of the following apply:

(1) The court gives legal custody of a child to a public children's services agency or a private child-placing agency without the termination of parental rights;

(2) The order permits the agency to make an appropriate placement of the child and to enter into a written planned permanent living arrangement agreement with a foster care provider or with another person or agency with whom the child is placed.

(EE) "Private child-placing agency" means any association, as defined in section 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

(FF) "Public children's services agency" means a children's services board or a county department of human services that has assumed the administration of the children's services function prescribed by Chapter 5153 of the Revised Code.

(GG) "Removal action" means a statutory action filed by the superintendent of a school district for the removal of a child in an out-of-county foster home placement.

(HH) "Residence or legal settlement" means a location as defined by section 2151.06 of the Revised Code.

(II) "Residual parental rights, privileges, and responsibilities" means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including but not limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

(JJ) "Rule of court" means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and that is filed with the Supreme Court.

(KK) "Serious youthful offender" means a child eligible for sentencing as described in sections 2152.11

and 2152.13 of the Revised Code.

(LL) "Serious youthful offender proceedings" means proceedings after a probable cause determination that a child is eligible for sentencing as described in sections 2152.11 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious youthful offender proceedings once a child has been determined by the trier of fact not to be a serious youthful offender or the juvenile judge has determined not to impose a serious youthful offender disposition on a child eligible for discretionary serious youthful offender sentencing.

(MM) "Shelter care" means the temporary care of children in physically unrestricted facilities, pending court adjudication or disposition.

(NN) "Social history" means the personal and family history of a child or any other party to a juvenile proceeding and may include the prior record of the person with the juvenile court or any other court.

(OO) "Temporary custody" means legal custody of a child who is removed from the child's home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person or persons who executed the agreement.

(PP) "Unruly child" has the same meaning as in section 2151.022 of the Revised Code.

(QQ) "Ward of court" means a child over whom the court assumes continuing jurisdiction.

(Adopted eff. 7-1-72; amended eff. 7-1-94, 7-1-98, 7-1-01, 7-1-02)

HISTORICAL AND STATUTORY NOTES

## Juv. R. Rule 7

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Juvenile Procedure (Refs & Annos)  
➔ **Juv R 7 Detention and shelter care**

**(A) Detention: standards**

A child taken into custody shall not be placed in detention or shelter care prior to final disposition unless any of the following apply:

(1) Detention or shelter care is required:

(a) to protect the child from immediate or threatened physical or emotional harm; or

(b) to protect the person or property of others from immediate or threatened physical or emotional harm.

(2) The child may abscond or be removed from the jurisdiction of the court;

(3) The child has no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to the court when required;

(4) An order for placement of the child in detention or shelter care has been made by the court;

(5) Confinement is authorized by statute.

**(B) Priorities in placement prior to hearing**

A person taking a child into custody shall, with all reasonable speed, do either of the following:

(1) Release the child to a parent, guardian, or other custodian;

(2) Where detention or shelter care appears to be required under the standards of division (A) of this rule, bring the child to the court or deliver the child to a place of detention or shelter care designated by the court.

**(C) Initial procedure upon detention**

Any person who delivers a child to a shelter or detention facility shall give the admissions officer at the facility a signed report stating why the child was taken into custody and why the child was not released to a parent, guardian or custodian, and shall assist the admissions officer, if necessary, in notifying the parent pursuant to division (E)(3) of this rule.

**(D) Admission**

The admissions officer in a shelter or detention facility, upon receipt of a child, shall review the report submitted pursuant to division (C) of this rule, make such further investigation as is feasible and do either of the following:

- (1) Release the child to the care of a parent, guardian or custodian;
- (2) Where detention or shelter care is required under the standards of division (A) of this rule, admit the child to the facility or place the child in some appropriate facility.

#### **(E) Procedure after admission**

When a child has been admitted to detention or shelter care the admissions officer shall do all of the following:

- (1) Prepare a report stating the time the child was brought to the facility and the reasons the child was admitted;
- (2) Advise the child of the right to telephone parents and counsel immediately and at reasonable times thereafter and the time, place, and purpose of the detention hearing;
- (3) Use reasonable diligence to contact the child's parent, guardian, or custodian and advise that person of all of the following:
  - (a) The place of and reasons for detention;
  - (b) The time the child may be visited;
  - (c) The time, place, and purpose of the detention hearing;
  - (d) The right to counsel and appointed counsel in the case of indigency.

#### **(F) Detention hearing**

*(1) Hearing: time; notice.* When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier, to determine whether detention or shelter care is required. Reasonable oral or written notice of the time, place, and purpose of the detention hearing shall be given to the child and the parents, guardian, or other custodian, if that person or those persons can be found.

*(2) Hearing: advisement of rights.* Prior to the hearing, the court shall inform the parties of the right to counsel and to appointed counsel if indigent and the child's right to remain silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

(3) *Hearing procedure.* The court may consider any evidence, including the reports filed by the person who brought the child to the facility and the admissions officer, without regard to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter care is required under division (A) of this rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse, neglect, or dependency is alleged, the court shall determine whether there are any appropriate relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate relative as the temporary custodian of the child. The court shall make a reasonable efforts determination in accordance with Juv. R. 27(B)(1).

### **(G) Rehearing**

If a parent, guardian, or custodian did not receive notice of the initial hearing and did not appear or waive appearance at the hearing, the court shall rehear the matter promptly. After a child is placed in shelter care or detention care, any party and the guardian ad litem of the child may file a motion with the court requesting that the child be released from detention or shelter care. Upon the filing of the motion, the court shall hold a hearing within seventy-two hours.

### **(H) Separation from adults**

No child shall be placed in or committed to any prison, jail, lockup, or any other place where the child can come in contact or communication with any adult convicted of crime, under arrest, or charged with crime.

### **(I) Physical examination**

The supervisor of a shelter or detention facility may provide for a physical examination of a child placed in the shelter or facility.

### **(J) Telephone and visitation rights**

A child may telephone the child's parents and attorney immediately after being admitted to a shelter or detention facility and at reasonable times thereafter.

The child may be visited at reasonable visiting hours by the child's parents and adult members of the family, the child's pastor, and the child's teachers. The child may be visited by the child's attorney at any time.

(Adopted eff. 7-1-72; amended eff. 7-1-94, 7-1-01)

UNCODIFIED LAW

2002 H 180, § 3, eff. 5-16-02, reads, in part:

## Juv. R. Rule 29

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Juvenile Procedure (Refs & Annos)  
➔ **Juv R 29 Adjudicatory hearing**

**(A) Scheduling the hearing**

The date for the adjudicatory hearing shall be set when the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint alleging a violation of a section of the Revised Code that may be violated by an adult and that does not request a serious youthful offender sentence, and if the child is in detention or shelter care, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.

The prosecuting attorney's filing of either a notice of intent to pursue or a statement of an interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing the adjudicatory hearing date and extending detention or shelter care.

The hearing of a removal action shall be scheduled in accordance with Juv. R. 39(B).

If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or for a reasonable time beyond thirty days to obtain service on all parties or complete any necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days after the complaint is filed.

The failure of the court to hold an adjudicatory hearing within any time period set forth in this rule does not affect the ability of the court to issue any order otherwise provided for in statute or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of any order of the court.

**(B) Advisement and findings at the commencement of the hearing**

At the beginning of the hearing, the court shall do all of the following:

(1) Ascertain whether notice requirements have been complied with and, if not, whether the affected parties waive compliance;

(2) Inform the parties of the substance of the complaint, the purpose of the hearing, and possible consequences of the hearing, including the possibility that the cause may be transferred to the appropriate adult court under Juv. R. 30 where the complaint alleges that a child fourteen years of age or over is delinquent by conduct that would constitute a felony if committed by an adult;

(3) Inform unrepresented parties of their right to counsel and determine if those parties are waiving their right to counsel;

(4) Appoint counsel for any unrepresented party under Juv. R. 4(A) who does not waive the right to

counsel;

(5) Inform any unrepresented party who waives the right to counsel of the right: to obtain counsel at any stage of the proceedings, to remain silent, to offer evidence, to cross-examine witnesses, and, upon request, to have a record of all proceedings made, at public expense if indigent.

**(C) Entry of admission or denial**

The court shall request each party against whom allegations are being made in the complaint to admit or deny the allegations. A failure or refusal to admit the allegations shall be deemed a denial, except in cases where the court consents to entry of a plea of no contest.

**(D) Initial procedure upon entry of an admission**

The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following:

- (1) The party is making the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission;
- (2) The party understands that by entering an admission the party is waiving the right to challenge the witnesses and evidence against the party, to remain silent, and to introduce evidence at the adjudicatory hearing.

The court may hear testimony, review documents, or make further inquiry, as it considers appropriate, or it may proceed directly to the action required by division (F) of this rule.

**(E) Initial procedure upon entry of a denial**

If a party denies the allegations the court shall:

- (1) Direct the prosecuting attorney or another attorney-at-law to assist the court by presenting evidence in support of the allegations of a complaint;
- (2) Order the separation of witnesses, upon request of any party;
- (3) Take all testimony under oath or affirmation in either question-answer or narrative form; and
- (4) Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings; by clear and convincing evidence in dependency, neglect, and abuse cases, and in a removal action; and by a preponderance of the evidence in all other cases.

**(F) Procedure upon determination of the issues**

Upon the determination of the issues, the court shall do one of the following:

- (1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;
- (2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:
  - (a) Enter an adjudication and proceed forthwith to disposition;
  - (b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;
  - (c) Postpone entry of adjudication for not more than six months;
  - (d) Dismiss the complaint if dismissal is in the best interest of the child and the community.
- (3) Upon request make written findings of fact and conclusions of law pursuant to Civ. R. 52.
- (4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in Juv. R. 27(B)(1) and to relative placement in accordance with Juv. R. 7(F)(3).

(Adopted eff. 7-1-72; amended eff. 7-1-76, 7-1-94, 7-1-98, 7-1-01, 7-1-04)

#### UNCODIFIED LAW

2002 H 180, § 3, eff. 5-16-02, reads, in part:

The General Assembly hereby requests the Supreme Court to promptly modify Rule 29 of the Rules of Juvenile Procedure pursuant to its authority under the Ohio Constitution to make that rule consistent with the amendments of this act to section 2151.28 of the Revised Code.

2000 S 179, § 6, eff. 4-9-01, reads:

## Juv. R. Rule 30

Baldwin's Ohio Revised Code Annotated CurrentnessRules of Juvenile Procedure (Refs & Annos)**➔Juv R 30 Relinquishment of jurisdiction for purposes of criminal prosecution****(A) Preliminary hearing**

In any proceeding where the court considers the transfer of a case for criminal prosecution, the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that the act would be an offense if committed by an adult. The hearing may be upon motion of the court, the prosecuting attorney, or the child.

**(B) Mandatory transfer**

In any proceeding in which transfer of a case for criminal prosecution is required by statute upon a finding of probable cause, the order of transfer shall be entered upon a finding of probable cause.

**(C) Discretionary transfer**

In any proceeding in which transfer of a case for criminal prosecution is permitted, but not required, by statute, and in which probable cause is found at the preliminary hearing, the court shall continue the proceeding for full investigation. The investigation shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination. When the investigation is completed, an amenability hearing shall be held to determine whether to transfer jurisdiction. The criteria for transfer shall be as provided by statute.

**(D) Notice**

Notice in writing of the time, place, and purpose of any hearing held pursuant to this rule shall be given to the state, the child's parents, guardian, or other custodian and the child's counsel at least three days prior to the hearing, unless written notice has been waived on the record.

**(E) Retention of jurisdiction**

If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

**(F) Waiver of mental examination**

The child may waive the mental examination required under division (C) of this rule. Refusal by the child to submit to a mental examination or any part of the examination shall constitute a waiver of the examination.

**(G) Order of transfer**

The order of transfer shall state the reasons for transfer.

**(H) Release of child**

With respect to the transferred case, the juvenile court shall set the terms and conditions for release of the child in accordance with Crim. R. 46.

(Adopted eff. 7-1-72; amended eff. 7-1-76, 7-1-94, 7-1-97)

HISTORICAL AND STATUTORY NOTES

## Juv. R. Rule 34

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Juvenile Procedure (Refs & Annos)  
➔ **Juv R 34 Dispositional hearing**

**(A) Scheduling the hearing**

Where a child has been adjudicated as an abused, neglected, or dependent child, the court shall not issue a dispositional order until after it holds a separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or dependent child shall be held at least one day but not more than thirty days after the adjudicatory hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing and all parties consent to the dispositional hearing being held immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child, the court may continue a dispositional hearing for a reasonable time not to exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed. If the dispositional hearing is not held within this ninety day period of time, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv. R. 29(F)(2) (a) through (d) and the ninety day requirement shall not apply. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.

**(B) Hearing procedure**

The hearing shall be conducted in the following manner:

(1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;

(2) Except as provided in division (I) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

**(C) Judgment**

After the conclusion of the hearing, the court shall enter an appropriate judgment within seven days. A copy of the judgment shall be given to any party requesting a copy. In all cases where a child is placed on probation, the child shall receive a written statement of the conditions of probation. If the judgment is conditional, the order shall state the conditions. If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from public funds.

**(D) Dispositional Orders**

Where a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;

(4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;

(5) Place the child in a planned permanent living arrangement with a public or private agency if the agency requests the court for placement, if the court finds that a planned permanent living arrangement is in the best interest of the child, and if the court finds that one of the following exists:

(a) The child because of physical, mental, or psychological problems or needs is unable to function in a family-like setting;

(b) The parents of the child have significant physical, mental or psychological problems and are unable to care for the child, adoption is not in the best interest of the child and the child retains a significant and positive relationship with a parent or relative;

(c) The child is sixteen years of age or older, has been counseled, is unwilling to accept or unable to adapt to a permanent placement and is in an agency program preparing the child for independent living.

**(E) Protective supervision**

If the court issues an order for protective supervision, the court may place any reasonable restrictions upon the child, the child's parents, guardian, or any other person including, but not limited to, any of the following:

(1) Ordering a party within forty-eight hours to vacate the child's home indefinitely or for a fixed period of time;

(2) Ordering a party, parent, or custodian to prevent any particular person from having contact with the child;

(3) Issuing a restraining order to control the conduct of any party.

**(F) Case plan**

As part of its dispositional order, the court shall journalize a case plan for the child. The agency required to maintain a case plan shall file the case plan with the court prior to the child's adjudicatory hearing but not later than thirty days after the earlier of the date on which the complaint in the case was filed or the child was first placed in shelter care. The plan shall specify what additional information, if any, is necessary to complete the plan and how the information will be obtained. All parts of the case plan shall be completed by the earlier of thirty days after the adjudicatory hearing or the date of the dispositional hearing for the child. If all parties agree to the content of the case plan and the court approves it, the court shall journalize the plan as part of its dispositional order. If no agreement is reached, the court, based upon the evidence presented at the dispositional hearing and the best interest of the child, shall determine the contents of the case plan and journalize it as part of the dispositional order for the child.

**(G) Modification of temporary order**

The department of human services or any other public or private agency or any party, other than a parent whose parental rights have been terminated, may at any time file a motion requesting that the court modify or terminate any order of disposition. The court shall hold a hearing upon the motion as if the hearing were the original dispositional hearing and shall give all parties and the guardian ad litem notice of the hearing pursuant to these rules. The court, on its own motion and upon proper notice to all parties and any interested agency, may modify or terminate any order of disposition.

**(H) Restraining orders**

In any proceeding where a child is made a ward of the court, the court may grant a restraining order controlling the conduct of any party if the court finds that the order is necessary to control any conduct or relationship that may be detrimental or harmful to the child and tend to defeat the execution of a dispositional order.

**(I) Bifurcation; Rules of Evidence**

Hearings to determine whether temporary orders regarding custody should be modified to orders for permanent custody shall be considered dispositional hearings and need not be bifurcated. The Rules of Evidence shall apply in hearings on motions for permanent custody.

**(J) Advisement of rights after hearing**

At the conclusion of the hearing, the court shall advise the child of the child's right to record expungement and, where any part of the proceeding was contested, advise the parties of their right to appeal.

(Adopted eff. 7-1-72; amended eff. 7-1-94, 7-1-96, 7-1-02)

HISTORICAL AND STATUTORY NOTES

Juv. R. Rule 35

Baldwin's Ohio Revised Code Annotated Currentness  
Rules of Juvenile Procedure (Refs & Annos)  
➔ **Juv R 35 Proceedings after judgment**

**(A) Continuing jurisdiction; invoked by motion**

The continuing jurisdiction of the court shall be invoked by motion filed in the original proceeding, notice of which shall be served in the manner provided for the service of process.

**(B) Revocation of probation**

The court shall not revoke probation except after a hearing at which the child shall be present and apprised of the grounds on which revocation is proposed. The parties shall have the right to counsel and the right to appointed counsel where entitled pursuant to Juv. R. 4(A). Probation shall not be revoked except upon a finding that the child has violated a condition of probation of which the child had, pursuant to Juv. R. 34(C), been notified.

**(C) Detention**

During the pendency of proceedings under this rule, a child may be placed in detention in accordance with the provisions of Rule 7.

(Adopted eff. 7-1-72; amended eff. 7-1-94)

HISTORICAL AND STATUTORY NOTES

**(A) Appointment**

The court may appoint one or more magistrates who shall be attorneys at law admitted to practice in Ohio. A magistrate appointed under this rule also may serve as a magistrate under Crim.R. 19. The court shall not appoint as a magistrate any person who has contemporaneous responsibility for working with, or supervising the behavior of, children who are subject to dispositional orders of the appointing court or any other juvenile court.

**(B) Compensation**

The compensation of magistrates shall be fixed by the court, and no part of the compensation shall be taxed as costs.

**(C) Authority**

(1) *Scope.* To assist juvenile courts of record and pursuant to reference under Juv.R. 40(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Determine any motion in any case, except a case involving the determination of a child's status as a serious youthful offender;

(b) Conduct the trial of any case that will not be tried to a jury, except the adjudication of a case against an alleged serious youthful offender;

(c) Upon unanimous written consent of the parties, preside over the trial of any case that will be tried to a jury; except the adjudication of a case against an alleged serious youthful offender;

(d) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) *Regulation of proceedings.* In performing the responsibilities described in Juv.R. 40(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

(d) Calling the parties to the action and examining them under oath;

(e) When necessary to obtain the presence of an alleged contemnor in cases involving direct or indirect contempt of court, issuing an attachment for the alleged contemnor and setting the type, amount, and any conditions of bail pursuant to Crim.R. 46;

(f) Imposing, subject to Juv.R. 40(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

**(D) Proceedings in matters referred to magistrates**

(1) *Reference by court of record.*

(a) *Purpose and method* A court may, for one or more of the purposes described in Juv.R. 40(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.

(b) *Limitation.* A court may limit a reference by specifying or limiting the magistrate's powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) *Magistrate's order; motion to set aside magistrate's order.*

(a) *Magistrate's order.*

(i) *Nature of order.* Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) *Form, filing, and service of magistrate's order.* A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their attorneys.

(iii) *Magistrate's order include.* A magistrate's order includes any of the following:

(A) Pretrial proceedings under Civ.R. 16;

(B) Discovery proceedings under Civ.R. 26 to 37, Juv.R. 24, and Juv.R. 25;

- (C) Appointment of an attorney or guardian ad litem pursuant to Juv.R. 4 and Juv.R. 29(B)(4);
  - (D) Taking a child into custody pursuant to Juv.R. 6;
  - (E) Detention hearings pursuant to Juv.R. 7;
  - (F) Temporary orders pursuant to Juv.R. 13;
  - (G) Extension of temporary orders pursuant to Juv.R. 14;
  - (H) Summons and warrants pursuant to Juv.R. 15;
  - (I) Preliminary conferences pursuant to Juv.R. 21;
  - (J) Continuances pursuant to Juv.R. 23;
  - (K) Deposition orders pursuant to Juv.R. 27(B)(3);
  - (L) Orders for social histories, physical and mental examinations pursuant to Juv.R. 32;
  - (M) Proceedings upon application for the issuance of a temporary protection order as authorized by law;
  - (N) Other orders as necessary to regulate the proceedings.
- (b) *Motion to set aside magistrate's order.* Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.
- (3) *Magistrate's decision; objections to magistrate's decision.*
- (a) *Magistrate's decision.*
    - (i) *When required.* Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under Juv.R. 40(D)(1).
    - (ii) *Findings of fact and conclusions of law.* Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of

law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) *Form; filing, and service of magistrate's decision.* A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv.R. 40(D)(3)(b).

(b) *Objections to magistrate's decision.*

(i) *Time for filing.* A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Juv.R. 40(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) *Specificity of objection.* An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

(iii) *Objection to magistrate's factual finding; transcript or affidavit.* An objection to a factual finding, whether or not specifically designated as a finding of fact under Juv.R. 40(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(iv) *Waiver of right to assign adoption by court as error on appeal.* Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).

(4) *Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.*

(a) *Action of court required.* A magistrate's decision is not effective unless adopted by the court.

(b) *Action on magistrate's decision.* Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.

(c) *If no objections are filed.* If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

(d) *Action on objections.* If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) *Entry of judgment or interim order by court.* A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) *Judgment.* The court may enter a judgment either during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) *Interim order.* The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown.

(5) *Extension of time.* For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

(6) *Disqualification of a magistrate.* Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.

(7) *Recording of proceedings before a magistrate.* Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

(8) *Contempt in the presence of a magistrate.*

(a) *Contempt order.* Contempt sanctions under Juv.R. 40(C)(2)(f) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

(b) *Filing and provision of copies of contempt order.* A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) *Review of contempt order by court; bail.* The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

(Adopted eff. 7-1-72; amended eff. 7-1-75, 7-1-85, 7-1-92, 7-1-95, 7-1-98, 7-1-01, 7-1-03, 7-1-06)

#### UNCODIFIED LAW

2002 H 393, § 3, eff. 7-5-02, reads: