

**PROPOSED AMENDMENTS TO THE
JUVENILE COURT RULES OF PROCEDURE AND PRACTICE (JCRPP)**

I. PURPOSE

These rules embody the policies set forth in KRS 600.010 which include, but are not limited to, the following:

- A. Providing each child a safe and nurturing home;
- B. Using in-home interventions and avoiding out-of-home placement to the extent possible;
- C. Providing treatment reasonably calculated to bring about an improvement in the conditions that brought the child before the court;
- D. Providing fair judicial proceedings that recognize the rights and interests of all parties; and
- E. Serving the best interest of each child.

II. TITLE AND SCOPE OF RULES

JCRPP 1. Title and Scope.

- A. These rules shall be known as the Juvenile Court Rules of Procedure and Practice and shall apply in family and district court. They may be cited as “JCRPP.”
- B. The JCRPP specifically apply to KRS Chapter 630 on Status Offenders; KRS Chapter 635 on Public Offenders; KRS Chapter 640 on Youthful Offenders; and the introductory, administrative and procedural matters contained in KRS Chapters 600, 605 and 610.
- C. The Rules of Criminal Procedure shall apply to these juvenile matters as indicated in KRS 610.080(2).
- D. All juvenile cases shall be decided on a case-by-case basis and no local rules, or other orders of the court or local policies may supersede or controvert the JCRPP.

JCRPP 2. Assignment of Cases and Jurisdiction.

- A. In jurisdictions having multiple divisions of district or family court, cases shall be assigned as determined by the chief judge.
- B. As used in the JCRPP, “pending” means a petition has been filed and the case is awaiting court action. On post-disposition matters a case is “pending” based on the terms set forth in the disposition order. Disposition orders shall not exceed the time limits established for status and public offenses as set forth in these rules and KRS 635.060.
- C. Duties of family and juvenile court clerk. Upon the filing of a juvenile status or public offense petition in the family or district court, the clerk shall determine if there are pending cases involving the child in order to assign the case as directed in Subsection D. below.
- D. Jurisdiction.
 - 1. Family Court. Pursuant to KRS 23A.100(2)(d), status offense petitions shall be filed and heard in family court, if any, subject to the following:
 - a. Pending public offense case. If a public offense case involving the child is pending in district court at any time a status offense case is pending, the clerk shall assign the status offense case to the district court division presiding over the pending public offense case.
 - b. Transfer of Pending Status Offense.
 - 1) If a public offense petition is filed that involves the same child in a pending status offense case, within 30 days after notice from the clerk, the family court judge presiding over the status offense case shall enter an order transferring the status offense case to the district court division presiding over the public offense case(s). The AOC-JV-54, Notice of Filing of Public Offense Petition and Order Transferring to District Court, shall be utilized by the clerk and the family court judge for the notice of filing and transfer of these cases.
 - 2) Upon entry of such order by a family court judge transferring a status offense case(s) to the district court, the clerk shall consolidate the status offense case and the pending public offense case for purposes of hearing. If the public offense case is

dismissed prior to entry of any orders by the district court, the family court's jurisdiction of the status offense case shall continue. If the public offense case is dismissed after the entry of any orders by the district court, the presiding district judge and the family court judge may agree on a case-by-case basis which court best serves the interest of the child, and the status offense case shall be heard by that court.

- 3) The status offense case shall be scheduled by the clerk on the next available docket pursuant to local scheduling rules, and notice of the court date shall be sent to the parties.
- c. Interstate Compact on Juveniles. Pursuant to KRS Chapter 615, these cases:
 - 1) Shall be processed according to the Compact, and
 - 2) The court shall use the appropriate Compact forms.
2. District Court. Pursuant to KRS 610.010, the following cases shall be filed and/or heard in district court:
 - a. Public offense cases.
 - b. Status offense cases where there is no family court.
 - c. Status offense cases where a family court exists, including:
 - 1) Any existing status offense case that is consolidated with a pending public offense case.
 - 2) Any status offense case that is filed while a public offense case is pending, and
 - 3) The clerk shall consolidate any status offense case transferred to, or filed in, district court with any pending public offense case on the same child, and set the case for a hearing at the child's next scheduled public offense hearing, if said hearing is set to occur within 15 days; otherwise, the clerk shall set the case on the first available public offense docket of the district judge presiding over that case pursuant to local scheduling rules.

- 4) The clerk shall send notice of the hearing date to the parties in the public offense case.
- d. Youthful Offenders.
 - 1) Prior to indictment,
 - 2) With authority to set bail.
- e. Interstate Compact on Juveniles. Pursuant to KRS Chapter 615, these cases:
 - 1) Shall be processed according to the Compact, and
 - 2) The court shall use the appropriate Compact forms.

Commentary

Where a status offense case is transferred to district court from a family court because there is a pending public offense case, the status offense case must be consolidated with the public offense case and placed on the public offense docket to be heard at the same time. Additionally, any court order entered should be effective in both cases. If, however, the public offense is dismissed prior to ANY orders being entered by the district court, jurisdiction remains with the family court. If the public offense case is dismissed AFTER orders have been entered by the district court, the jurisdiction of the status case is to be determined by an agreement of the district and family court judges presiding over the case considering the best interest of the child. The district court does not need a separate status offense docket. The public offense case has priority over the status offense case on dispositional matters. If the child is placed on probation, then the disposition of the status offense case will continue in the district court. If the child is placed in detention, that will supersede ongoing orders relating to the status offense case. If the child completes detention, returns to the community, and continues the status disposition (the case may not be sent back to family court once transfer has occurred), and if the court resumes monitoring, then the district court will continue to handle that status case. This could occur with a very short detention.

Generally, a court would merge the status offense with the public offense, and the disposition order would dispose of both cases. When such cases are final (there are no continuing court-ordered terms) any new status offense petition will be filed in family

court. Conversely, if a case is not final, any new status offense petition will be filed in district court because the public offense case is still pending.

Since the same social services and community resources are used for status and public offense cases, only one court should be making orders about what the child must do when he or she has both pending at the same time; and, because any public offense order has priority over any status offense order, this avoids confusion and conflicting court orders.

3. Pre-Petition Detention under KRS 610.200 - 610.280. When a peace officer has taken a child into custody on an allegation or belief that the child has committed an offense and has filed a complaint with the court designated worker, a court may order pre-petition detention if it finds that detention is necessary to protect the child or public:
 - a. A child alleged to be a status offender may be detained not more than 24 hours and a child alleged to be a public offender may be detained not more than 48 hours, to allow for a detention hearing pursuant to KRS 610.265.
 - b. A detention hearing shall be held within the relevant detention period to determine whether the child shall be further detained or released.
 - c. At the detention hearing the Commonwealth must establish probable cause to believe that the child has committed an offense, and the child shall be given the right to confront and cross-examine witnesses.
 - d. If the Commonwealth establishes probable cause a petition may be filed; however, if the child is eligible for mandatory diversion, the court case shall be dismissed, expunged, and returned to the CDW.
 - e. If a detention hearing is not held within the requisite time, or the court determines there is no probable cause to believe the child has committed an offense, the party having custody of the child shall release the child to the parent(s) or person(s) exercising custodial control or supervision or other persons as appropriate, or the action may proceed as a KRS Chapter 620 or 645 action.

- f. If the court finds further detention is necessary for the protection of the child or the community it shall state specific reasons on the record and may order detention utilizing the AOC-JV-34, Juvenile Detention Order Public Offense, or the AOC-JV-35, Juvenile Detention Order Status Offense. KRS 610.280; 630.080(1).
- E. Mandatory Diversion of a Misdemeanor. Any petition filed charging a misdemeanor when the child has no prior adjudications and no prior diversions shall be dismissed by the court for lack of jurisdiction and the court shall order the record expunged using the AOC-JV-29, Order for Expungement of Juvenile Record, and the court designated worker shall proceed with the diversion agreement process on the original complaint.
- F. A child charged with a status offense may instead be subject to a proceeding under KRS Chapter 620 if the court determines it is in the child's best interest, and the court shall:
 - 1. Amend the petition pursuant to KRS 610.010(13) and order it served, or require a new petition to be filed; and may
 - 2. Direct the Cabinet for Health and Family Services (the Cabinet) to investigate and/or provide services to the child and/or family pursuant to KRS 605.130(3).

Commentary

This rule was previously articulated in FCRPP 37, and has been removed from the Family Court Rules of Procedure and Practice.

- G. A public offense petition shall not be amended to a status offense petition and a status offense petition shall not be amended to a public offense petition.

Commentary

The practice of amending the charges in a petition from a public offense to a status offense and vice versa is improper. In the instance that the conduct in the petition actually constitutes a status offense rather than a public offense or vice versa, the

county attorney must move to dismiss the existing petition and may then refile the case under the proper chapter.

JCRPP 3. Juvenile Rights.

- A. At the initial appearance the court shall:
 - 1. Inquire whether the child [is able to] has retained counsel, and if not, appoint counsel and order full access to all records.
 - 2. Inform the child of his or her statutory rights provided in KRS 610.060.
 - 3. Before accepting an admission or confession, make a finding on the record that the admission or confession is knowingly, intelligently and voluntarily entered.
- B. Before removing a child from his or her family, the court shall first find on the record that less restrictive alternatives have been attempted, are not available, or are not feasible pursuant to KRS 620.140.
- C. The court shall ensure prompt and fair hearings, and inform the parties that the rights of the child belong to the child individually and may not be waived by any other party, pursuant to KRS 610.060.

Commentary

Counsel shall be appointed to a child from the time he would first be entitled to counsel, if an adult, until and unless a determination is made that he is not an indigent person under KRS 31.100(5). See *D.R. v. Commonwealth*, 64 S.W.3d 292, 296 (Ky. 2001). If the court finds after appointment that the child is not an indigent person, the parents may be ordered to pay for the services subject to the provisions of KRS 31.125. If an attorney is retained for the child who has appointed counsel, the retained attorney may substitute as counsel.

III. PROCESS IN STATUS OFFENSE CASES

JCRPP 4. Pre-Petition Process in Status Offense Cases.

- A. Status Offense Complaint. Any status offense complaint shall be received by the court designated worker on AOC-JW-57, Juvenile Complaint (Status Offense), and shall include:
1. The name, address and identifying information of the child, the parent or custodian, and the complainant;
 2. The sworn statement of the complainant, as well as any other information required by KRS 610.020, and
 3. Shall be accompanied by the appropriate AOC forms completed by the complainant:
 - a. Habitual truancy: AOC-JV-41, Affidavit and Truancy Evaluation, in compliance with KRS 159.140.
 - b. Beyond control of school: AOC-JV-38.1, Affidavit and Beyond Control of School Evaluation.
 - c. Beyond control of parent: AOC-JV-38, Affidavit and Beyond Control of Parent Evaluation.
 - d. Habitual runaway: AOC-JW-39, Pre-Adjudicative Detention Criteria, if applicable, with attachments.
- B. Complete Complaint. Any incomplete complaint shall be returned to the complainant by the court designated worker for additional information.
- C. Preliminary Intake Inquiry/Formal Conference. After the complaint is complete, the court designated worker shall conduct a preliminary intake inquiry with the child which shall include administering an evidence-based screening tool, and upon completion may:
1. Determine that no further action be taken and give notice and an opportunity to review that determination to the family accountability, intervention, and response (FAIR) team. KRS 610.030(6); or
 2. Conduct a formal conference and enter into a diversion agreement.
- D. Diversion Agreement. A child eligible for diversion may enter into a diversion agreement pursuant to KRS 610.030(6)(d).

1. If the child declines a diversion agreement or the needs of the child require, the court designated worker shall refer the matter to the FAIR team;
2. If the child denies the allegations and demands a formal court hearing or does not qualify for diversion, the court designated worker shall refer the complaint to the county attorney to file a formal petition or to dismiss the case.
3. No petition shall be filed in a diversion case unless:
 - a. The case is referred to the county attorney by the FAIR team,
 - b. The child is not diversion eligible, or
 - c. The child denies the allegations and demands a formal court hearing.

Commentary

The court designated worker shall conduct a preliminary intake inquiry to determine whether further action must be taken in the best interest of the child and public, because the county attorney is no longer authorized to conduct a reasonable grounds review. Public offense cases, on the other hand, still require an initial probable cause, or reasonable grounds, review.

4. If the child successfully completes the terms of the diversion agreement the court designated worker shall close the case with no official court record having been created.
- E. Family Accountability, Intervention, and Response (FAIR) Team. The FAIR team shall conduct enhanced case management only upon referral by the court designated worker, as follows:
1. When the risk and needs assessment indicates high risk;
 2. When the child fails to appear for a preliminary intake inquiry or a later conference;
 3. When the child declines to enter into a diversion agreement;
 4. When the child fails to complete a diversion agreement; or

5. If appropriate, after consultation with the school's director of pupil personnel (DPP), who shall complete AOC-JV-41 in accordance with the documentation and assessment requirements of KRS 630.060(2); KRS 159.140(1)(c), (d), and (f); KRS 159.140(3).

JCRPP 5. Status Offense Petition.

- A. A petition may be filed by the county attorney on AOC-JV-1, Juvenile Petition, to initiate formal court proceedings:
 1. When the FAIR team so recommends;
 2. When a child demands a formal court hearing; or
 3. When the child is ineligible for diversion.
- B. The complaint containing the verified signature of the complainant, any supporting documents, and any charging citation shall be attached.

JCRPP 6. First Appearance – Status Offense Case.

- A. Pursuant to KRS 610.060, the judge shall explain, on the record, the child's rights and the charge, and shall present AOC-JV-49, Notice of Juvenile Rights and Consequences.
- B. [A public advocate] Counsel shall be appointed for the child unless private counsel [is] has been retained. See also JCRPP 3.A.1.
- C. The court may enter a valid court order utilizing the AOC-JV-36, Pre-Adjudicative Court Ordered Terms Status Offense, placing the child on pendente lite terms which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.
- D. The Commonwealth may move to dismiss the case without prejudice and may reinitiate the original complaint with the court designated worker if the child is eligible for diversion and has not failed a diversion agreement on the same charge.

Commentary

Counsel shall be appointed to a child from the time he would first be entitled to counsel, if an adult, until and unless a determination is made that he is not an indigent person under KRS 31.100(5). See *D.R. v. Commonwealth*, 64 S.W.3d 292, 296 (Ky. 2001). If the court finds after appointment that the child is not an indigent person, the parents may be ordered to pay for the services subject to the provisions of KRS 31.125. If an attorney is retained for the child who has appointed counsel, the retained attorney may substitute as counsel.

JCRPP 7. Pretrial Conference – Status Offense Case. A pretrial conference to review the evidence and determine whether an agreement may be reached shall be scheduled by the court upon the request of any party.

JCRPP 8. Adjudication Hearing – Status Offense Case. A record shall be made of all adjudication hearings utilizing the AOC-JV-50, Adjudication Order (Public and Status Offense), which shall include the following, as applicable:

- A. Dismissal. Upon motion of the county attorney a status offense case may be dismissed at any time prior to or at the adjudication hearing.
- B. Admission. Prior to accepting an admission or confession from a child to the truthfulness of the allegations in the petition or any amendments thereto, the court shall inform the child of his or her rights on the record and present AOC-JV-49, Notice of Juvenile Rights and Consequences, and shall make a finding that the admission or confession is knowingly, intelligently and voluntarily entered. Any admission shall be made utilizing the AOC-JV-51, Admission or Confession and Waiver of Formal Adjudication Hearing, and shall be signed by the child and counsel for the child, and shall be signed as having seen and agreed by the county attorney.
- C. Hearing. The court shall conduct an evidentiary hearing unless the case has been dismissed or the court has accepted an admission or confession.
 1. The court shall make a written finding that the allegations in the petition are true and set the case for disposition; or

2. The court shall make a written finding that the allegations in the petition are not proven and the case shall be dismissed.
 3. The court shall advise the child of his or her right to have the juvenile court record expunged pursuant to KRS 610.330.
- D. Predisposition Investigation Report. KRS 610.080 and 610.100.
1. The court shall order a predisposition investigation report (PDI) if a suitable prior PDI is not available, unless appropriately waived by the child.
 - a. The court shall order the PDI to be prepared by the Cabinet if commitment to the Cabinet is being considered and the PDI may not be waived without consent of the Cabinet; or
 - b. At the discretion of the court, the PDI may be prepared by a suitable public or private agency if commitment is not being considered.
 - c. The PDI shall be provided to the court and counsel for the parties three (3) days prior to the disposition hearing, unless the three-day period has been waived; and
 - d. The parties shall be afforded the opportunity to examine and controvert the report; and
 - e. The report shall be filed in the record.

Commentary

A prior report is “suitable” if the court determines on the record that it is both timely and relevant.

JCRPP 9. Disposition Hearing – Status Offense Case.

- A. The court shall consider all relevant information pertaining to the child.
- B. The court shall provide the child, child’s attorney, and parent or custodian a written order utilizing the AOC-JV-31, Disposition Order Status Offense, setting forth:
 1. The conditions of the order,
 2. The consequences of violating the order, and

3. The duration of the order, including the date the order will expire, which shall not exceed the statutory limits.

C. Dispositional Alternatives.

1. The court may not commit any child to the Department of Juvenile Justice for a status offense.
2. The court shall first consider all appropriate local remedies to aid the child and the child's family, including:
 - a. Community-based, non-secure residential and non-residential treatment programs; and
 - b. Non-secure public or private education programs accredited by the Kentucky Board of Education and the Non-Public Schools Commission pursuant to KRS 156.160.
3. Commitment. The court may commit to the Cabinet only after all appropriate resources have been found insufficient to adequately address the needs of the child and family, and any order of removal shall include a determination whether:
 - a. Reasonable efforts have been made to prevent the child's removal from the home; or, that reasonable efforts were not required by state and federal law, and
 - b. Continuation of the child's residence in the home is contrary to the welfare of the child, or
 - c. Placement of the child would be in the child's best interest.

Commentary

While there are no time limits on commitment specified in KRS Chapter 630, it is reasonable that the duration of commitment to the Cabinet should not exceed the time limits placed on public offense commitments (12 months for a misdemeanor offense) unless the court makes findings that a longer period of commitment is necessary.

4. A child may be supervised on probation by the parent or custodian, an appropriate third party, or the court, and the terms and duration of probation and consequences for violation shall be in writing provided to the child.

Commentary

While no probation time limits are specified in KRS Chapter 630, it is reasonable that the duration of status offense probation should not exceed the time limits placed on public offense probation (six (6) months, extended to 12 months if necessary for treatment) unless the court makes findings as to the necessity for a longer period of probation.

5. Finality. A status offense case shall be considered final 30 days after the case is no longer pending. On post-disposition matters a case is “pending” based on the terms set forth in the disposition order, not to exceed the statutory limits. The case shall be considered final no later than 30 days after completion of the terms. Once the case is final the case may not be reopened for any purpose including contempt proceedings.
6. Duties of the clerk. The clerk shall enter information regarding the disposition of the case in the court record, including but not limited to the terms and conditions ordered by the court and the duration of the order.

[IV. SUSPECTED RUNAWAYS; HABITUAL RUNAWAY; INTERSTATE COMPACT]

[JCRPP 10. Initial Contact with Peace Officer

- A. After a peace officer has taken a child into protective custody on suspicion of being a runaway the officer shall notify the child’s parent, guardian or other person exercising custodial control or supervision of the child; the Cabinet or the Department of Juvenile Justice as appropriate; and the court designated worker as a part of the peace officer’s investigation in the attempt to make

provisions for the child's release. If the child is not released pursuant to KRS 610.200(2)(d) or (3), and

1. The child is not a habitual runaway as defined by KRS 600.020(30), then the Cabinet shall assist the officer with the temporary placement of the child pursuant to KRS Chapter 620; or
2. The child is a habitual runaway, then the court designated worker shall assist the officer with the release or placement of the child; or
3. The child is currently committed to the Department of Juvenile Justice, then the Department of Juvenile Justice shall assist the officer in the temporary placement of the child; or
4. The child is a suspected runaway from another state, then the child is subject to the Interstate Compact on Juveniles pursuant to KRS 615.010 and
 - a. The court designated worker shall assist the officer with the temporary placement of the child by contacting a judge for an order for secure detention of the child pending return to the receiving state pursuant to KRS 615.010.
 - b. The court shall detain the suspected runaway from another state pursuant to the procedures established to manage the movement of juvenile offenders between states. KRS 615.010, Article I, Subsection 7.
 - c. Using the appropriate federal form, the court shall detain the child in a secure facility for up to five (5) days unless an agreement is reached with the home state for longer detention.

Commentary

The peace officer may release the child pursuant to KRS 610.200(2)(d) or (3); and, if the peace officer is unable to release the child, the Cabinet, the court designated worker or the Department of Juvenile Justice can exercise the information and resources at their disposal to keep a child out of custody and avoid court involvement as appropriate. However, detention is appropriate when there is no available placement for

a child who is a habitual runaway. If the child is subject to the Interstate Compact on Juveniles, then the child must be detained and the court designated worker shall contact the Interstate Compact Office currently housed within the Department of Juvenile Justice as soon as practicable for further proceedings. The court must use the appropriate Interstate Compact ICJ Form III in order to return the child to the home state. Failure to properly detain a runaway from another state results in expenses for the child being charged to Kentucky rather than the home state.

- B. As necessary, the Cabinet may initiate an ex parte request for an emergency custody order under KRS Chapter 620 on behalf of a runaway, other than a habitual runaway.
- C. If the child cannot be released to the parent or is not otherwise placed and the child qualifies as a habitual runaway, the peace officer shall initiate a complaint with the court designated worker using the AOC-JV-52, Complaint, Affidavit of Peace Officer, and Order for Emergency Protective Custody of a Child Suspected of Being a Habitual Runaway, to seek an ex parte emergency protective custody order from the court pursuant to KRS 610.012(2), (3).

Commentary

KRS 610.012 creates a new form of emergency custody order, the emergency *protective* custody order, which only applies to habitual runaways. The emergency custody order set forth in KRS Chapter 620 is distinguished from this order as it pertains to emergency custody obtained only under that chapter. KRS 600.020(30) defines “habitual runaway” as a child who has been gone from home for at least three (3) days in a one-year period. Therefore, children who have not been gone from home the requisite three days are simply runaways and are not by definition status offenders. The only route to assist these children is through KRS Chapter 620 relating to dependency, neglect and abuse; KRS 620.029 relating to children who are victims of human trafficking; or, KRS Chapter 17 relating to missing children.]

[JCRPP 11. Emergency Protective Custody Order. Following an ex parte request for an emergency protective custody order on a suspected habitual runaway, the court shall use the AOC-JV-52, Complaint, Affidavit of Peace Officer, and Order for Emergency Protective Custody of a Child Suspected of Being a Habitual Runaway, for entry of the order, and:

- A. The court shall first attempt to place the child in the least restrictive placement alternative available, which may include relative or agency placement.
- B. If a less restrictive placement is not available, the court shall next attempt to place the child in a non-secure detention facility for no more than 72 hours, excluding weekends and holidays.
- C. Before the court places a child in a secure detention facility, the court shall make a finding that a non-secure detention facility is not available, and then may place the child in a secure detention facility for no more than 24 hours, excluding weekends and holidays.]

[JCRPP 12. Emergency Protective Custody Order Hearing on Suspected Habitual Runaway.

- A. A hearing shall be scheduled by the court and held within 24 hours of a child being detained in a secure facility or within 72 hours of a child being detained in a non-secure facility or any less restrictive alternative placement pursuant to KRS 610.012.
- B. At the hearing, the court shall use the AOC-JV-52.1, Emergency Protective Custody Release Order (Suspected Habitual Runaway), and either:
 1. Return the child to the parent or custodian, and if the child is a habitual runaway the court designated worker shall initiate a status offense case;
or
 2. Issue an emergency custody order pursuant to KRS Chapter 620, place the child with the Cabinet, and the Cabinet shall file a dependency, neglect and abuse action pursuant to KRS 610.012(4) as a new action.
- C. This action shall be final upon entry of the orders set forth in B.1. and B.2. above and the case shall be dismissed.]

IV. PROCESS IN PUBLIC OFFENSE CASES

JCRPP [13]10. Pre-Petition Process in Public Offense Cases.

- A. Public Offense Complaint. Any public offense complaint received by the court designated worker shall be on AOC-JW-58, Juvenile Complaint (Public Offense), and shall include:
 - 1. The name, address and identifying information of the child, the parent or custodian, and the complainant,
 - 2. The sworn statement of the complainant, and
 - 3. Any other information required by KRS 610.020.
- B. Complete Complaint. Any incomplete complaint shall be returned to the complainant by the court designated worker for additional information.
- C. Reasonable Grounds Review – Peace Officer. If a peace officer has issued a citation or has taken a child into custody, the complaint shall state the charges in the citation and the county attorney shall make a reasonable grounds determination whether the alleged facts constitute a public offense.
 - 1. If reasonable grounds do not exist or the county attorney elects not to proceed, the county attorney shall dismiss the complaint and mark the appropriate box on the complaint form. The court designated worker shall close the complaint file and inform the complainant that no further action will be taken. KRS 635.010.
 - 2. If reasonable grounds exist and the county attorney elects to proceed with the complaint, the county attorney shall so indicate on the complaint form.
 - 3. Preliminary Intake Inquiry. If the county attorney finds reasonable grounds exist and does not elect to dismiss the complaint, the court designated worker shall conduct a preliminary intake inquiry with the child, including administering an evidence-based screening tool, and make recommendations to the county attorney as follows:
 - a. The child is statutorily entitled (mandatory) to diversion under KRS 635.010(4);

- b. The child is eligible for diversion for a misdemeanor under KRS 605.030(1)(e) and a diversion agreement is recommended;
 - c. The child is eligible for diversion on a felony offense that did not involve the commission of a sexual offense or the use of a deadly weapon unless the county attorney has objected to diversion in the case in writing on AOC-JW-12, Public Offense Recommendation to County Attorney; or
 - d. The child is not eligible for diversion.
- 4. Mandatory Diversion. If the child meets the criteria for mandatory diversion, no petition shall be filed unless the child declines diversion, fails diversion, or the child denies the allegations and demands a formal court hearing.
 - 5. Notice of Diversion Recommendation. In all diversion cases the court designated worker shall advise the complainant, any victim, and the law enforcement agency with jurisdiction of the offense of the reasons for the diversion recommendation in writing.
 - 6. Formal Conference. In all diversion cases the court designated worker shall proceed with a formal conference and enter into a diversion agreement with the child; and may make a referral to the FAIR team when appropriate.
- D. Reasonable Grounds Review – Third Party. If a third party who is not a peace officer files a complaint, the court designated worker shall submit the complaint to the county attorney who shall make a reasonable grounds review, and if reasonable grounds exist, determine the appropriate charge(s) as a result of the facts alleged in the complaint, and the court designated worker shall proceed pursuant to Subsection C. above.
- E. Diversion Agreement.
- 1. Mandatory Diversion. If a child is charged with a misdemeanor and has had no prior adjudications and no prior diversions the court designated worker shall enter into a diversion agreement with the child unless the child declines diversion.

2. Permissive Diversion. If a child is eligible for diversion and the county attorney has not objected to diversion, the court designated worker shall enter into a diversion agreement with the child unless the child declines diversion.

Commentary

The county attorney retains discretion in public offense cases that are not mandatory diversion cases (permissive diversion cases) to object to diversion and file a petition. If the county attorney does not object to the diversion in writing, and the child enters into a diversion agreement, then diversion is no longer a mere recommendation from the court designated worker[.]. [and t] The child can reasonably rely on the opportunity to complete diversion and have the complaint file closed as diverted. The FAIR team may be utilized at any time during the diversion process.

3. If the child successfully completes the terms of the diversion agreement the court designated worker shall close the case with no official court record having been created.
 4. If the child fails to successfully complete the terms of the diversion agreement the court designated worker shall notify the county attorney who shall then determine whether to file a petition. KRS 610.030(9)(b)(1).
- F. Family Accountability, Intervention, and Response (FAIR) Team. Referral to the FAIR team for enhanced case management may occur:
1. Pre-Petition. [When a child who is diversion eligible scores as high-needs on the risk and needs assessment] When the assessment administered by the court designated worker indicates that referral to the FAIR team is appropriate.
 2. Post-Petition. When there has been an informal adjustment pursuant to JCRPP [19] 16 but the court refers the case to the court designated worker for diversion under KRS 610.105(3)(a) and the assessment administered by the court designated worker indicates that referral to the FAIR team is appropriate.

Commentary

Diversion through the court designated worker is by definition pre-petition diversion. Only when a child is participating in an informal adjustment and did not participate in a pre-petition diversion agreement may the court refer the child to the court designated worker for diversion if no other diversion programs are available. In the event such a diversion referral is part of an informal adjustment, the court designated worker may refer the case to the FAIR team.

JCRPP [14] 11. Public Offense Petition.

- A. A petition may be filed by the county attorney, on AOC-JV-1, Juvenile Petition, to initiate a formal court proceeding:
 - 1. When a child is eligible for diversion but diversion is not mandatory under KRS 635.010;
 - 2. When a child is not eligible for diversion;
 - 3. When a child has failed to complete a diversion agreement; or
 - 4. When a child declines to enter into a diversion agreement.
- B. The complaint containing the verified signature of the complainant, any supporting documents, and any charging citation shall be attached to the petition.

JCRPP [15] 12. First Appearance – Public Offense Case.

- A. Pursuant to KRS 610.060, at the first appearance the judge shall explain to the child, on the record, his or her rights and the charge, and shall present AOC-JV-49, Notice of Juvenile Rights and Consequences, to the child.
- B. [A public advocate] Counsel shall be appointed for the child unless private counsel [is] has been retained. See also JCRPP 3.A.1.
- C. The court may place the child on pendente lite terms utilizing the AOC-JV-36.1, Pre-Adjudicative Court Ordered Terms Public Offense, which address the child's alleged behavior(s), and may order participation in a service, program or local resource to assist the child.

- D. The Commonwealth may move to dismiss the case without prejudice and may reinitiate the original complaint with the court designated worker if the child is eligible for diversion and has not failed a diversion agreement on the same charge. If the court dismisses for lack of jurisdiction pursuant to JCRPP 2.E. the court shall order the record expunged using the AOC-JV-29, Order for Expungement of Juvenile Record, and the court designated worker shall proceed with the diversion agreement process on the original complaint.

Commentary

Counsel shall be appointed to a child from the time he would first be entitled to counsel, if an adult, until and unless a determination is made that he is not an indigent person under KRS 31.100(5). See *D.R. v. Commonwealth*, 64 S.W.3d 292, 296 (Ky. 2001). If the court finds after appointment that the child is not an indigent person, the parents may be ordered to pay for the services subject to the provisions of KRS 31.125. If an attorney is retained for the child who has appointed counsel, the retained attorney may substitute as counsel.

JCRPP [16] 13. Pretrial Conference – Public Offense Case. A pretrial conference may be scheduled by the court on its own motion or upon the request of any party to allow the county attorney and the parties to discuss the case, review the evidence, and determine whether an agreement may be reached to resolve the case.

JCRPP [17] 14. Adjudication Hearing – Public Offense Case. A record shall be made of all adjudication hearings utilizing the AOC-JV-50, Adjudication Order (Public and Status Offense), which shall include the following as applicable:

- A. Dismissal. Upon motion of the county attorney a public offense case may be dismissed at the adjudication hearing.
- B. Admission. Prior to accepting an admission or confession from a child to the truthfulness of the allegations in the petition or any amendments thereto, the court shall inform the child of his or her rights, on the record, as contained in AOC-JV-49, Notice of Juvenile Rights and Consequences, and shall make a finding that the admission is knowingly, intelligently and voluntarily entered.

Any admission shall be made utilizing the AOC-JV-51, Admission or Confession and Waiver of Formal Adjudication Hearing and shall be signed by the child and counsel for the child, and shall be signed as having seen and agreed by the county attorney.

- C. Adjudication Hearing. The court shall conduct an evidentiary hearing unless the case has been dismissed or the court has accepted an admission or confession.
 - 1. Findings. The court shall make a written finding that the allegations in the petition are true and set the case for disposition; or
 - 2. The court shall make a written finding that the allegations in the petition are not proven and the case shall be dismissed.
 - 3. The court shall advise the child of his or her right to have the juvenile court record expunged pursuant to KRS 610.330.

Commentary

The Adjudication Hearing referenced in this rule is a specific stage of the proceeding which is followed by Disposition, or resolution of the case. The Juvenile Code also refers to “adjudicatory hearings,” which are any hearings where a court considers evidence and enters orders, and should be distinguished from this hearing which is a required step in formal juvenile proceedings.

- D. Risk and Needs Assessment. The court shall not make a disposition without reviewing the results of the risk and needs assessment conducted by the Department of Juvenile Justice; the assessment cannot be waived. KRS 15A.0652(1)(b). KRS 610.110(2).
- E. Predisposition Investigation Report.
 - 1. The court shall order a predisposition investigation report (PDI) if a suitable prior PDI is not available, unless appropriately waived by the child.
 - 2. The court shall order the PDI to be prepared by the Department of Juvenile Justice if commitment to the Department is being considered and

the PDI may not be waived without the consent of the Department of Juvenile Justice; or

3. At the discretion of the court, the PDI may be prepared by a suitable public or private agency if commitment to the Department is not being considered.
4. The PDI shall be provided to the court and to counsel for the parties three (3) days prior to the disposition hearing, unless the three-day period has been waived; and
5. The parties shall be afforded the opportunity to examine and controvert the report; and
6. The report shall be filed in the record.

JCRPP [18] 15. Disposition Hearing – Public Offense Case.

- A. The court shall consider all relevant information pertaining to the child, including the results of the risk and needs assessment, in order to determine the appropriate dispositional alternatives.
- B. The court shall provide the child, child’s attorney, and parent or custodian a written order utilizing the AOC-JV-31.1, Disposition Order Public Offense setting forth:
 1. The conditions of the order,
 2. The consequences of violating the order, and
 3. The duration of the order, including the date the order will expire, which shall not exceed the statutory limits.
- C. Dispositional Alternatives.
 1. Restitution or Reparation.
 - a. Any restitution or reparation shall be fixed at a reasonable amount and no child shall be held in contempt if he or she does not have the funds to pay.
 - b. The county attorney may request payment of restitution or reparation from the child’s parent or legal guardian and shall give notice of the hearing and the amount of restitution sought.

- c. Unless the parent or legal guardian agrees, before ordering restitution or reparation the court shall make the following findings:
 - 1) The child has admitted or has been adjudicated responsible for causing the damage requiring restitution or reparation; and
 - 2) The failure of the child's parent or guardian to exercise reasonable control or supervision over the child is a substantial factor in the child's conduct.
- 2. Supervision by Parent.
 - a. A court may order a child to be supervised by his or her parent upon conditions that the court shall determine, when:
 - 1) Services are not needed;
 - 2) Services are already being provided with the parent/custodian with the child's full cooperation; or
 - 3) Services have already been completed and the child is at a low risk to reoffend.
 - b. Parent supervision shall not exceed six (6) months for a violation or misdemeanor, nor more than 12 months for a felony, or until the child reaches age 18, whichever first occurs.
 - c. If the child violates written conditions for supervision by parent, on motion of the county attorney with notice to all the parties, graduated sanctions may be imposed.
 - d. Graduated sanctions are required prior to imposing detention or commitment, and shall be in writing.

Commentary

Changing probation or supervision from parent-monitored to [court] DJJ-monitored, for example, may be an appropriate graduated sanction. When a court explains the consequences of violating the terms of probation the court may state those consequences generally, such as "community service," but once a violation occurs the sanction imposed should be described with particularity so that the child understands the expected conduct. Graduated sanctions are so termed because the statute requires

first using less restrictive sanctions and graduating to more punitive sanctions should violations increase. Ideally, sanctions should be tailored to suit the nature of the violation.

3. **[Probate with Court Monitoring] Probation and Parent Supervision.**

- a. A court may set the terms of probation to be monitored by the court and according to terms set by the court, and shall include periodic review to ensure compliance.
- b. The child, parent or guardian and the child's attorney shall be given notice of any review date and shall be advised in writing of any documentation required to be provided to the court as proof of compliance with court-ordered conditions.
- c. Duration of Court-Monitored Probation.
 - 1) Court monitored probation for a violation shall not exceed 30 days unless as a condition of probation the child enters into a treatment program that extends beyond 30 days, in which case court-monitored probation shall not exceed three (3) months.
 - 2) Court-monitored probation for a misdemeanor, other than an offense for which the child has been declared a juvenile sexual offender under KRS 635.510 or an offense involving a deadly weapon, shall not exceed six (6) months unless as a condition of probation the child enters into a treatment program that extends beyond six (6) months. In this event probation shall not exceed 12 months.
 - 3) Court monitored probation for a Class D felony other than a juvenile sexual offense, or an offense which involves use of a deadly weapon, shall not exceed 12 months.
 - 4) Court monitored probation for all other felonies and for misdemeanors involving a deadly weapon, but not for juvenile sexual offenses, shall not extend beyond the child's 18th birthday, except that if a person is placed on probation after the person

reaches the age of seventeen (17) years and six (6) months, the probation shall be for a period not to exceed one (1) year.

4. Detention.

a. The court may impose detention or probate all or part of an order of detention.

b. Detention shall be:

1) No longer than 45 days for a child who is 14 but less than 16 years of age, and

2) No longer than 90 days for a child who is 16 years of age or over.

c. Detention shall not be used as a disposition for a child under 14 years of age.

5. Commitment.

a. A child may be committed to the Department of Juvenile Justice when:

1) The child is adjudicated to have committed what would be a misdemeanor or Class D felony if committed by an adult and:

a) The child has at least three (3) prior adjudications consisting of what would be misdemeanors or felonies (not violations) which do not arise from the same course of conduct; or

b) The child has at least four (4) prior adjudications of what would be violations which do not arise from the same course of conduct; or

2) The child is adjudicated to have committed an offense involving a deadly weapon or an offense which would be a class A, B, or C felony if committed by an adult.

b. A child who is adjudicated as a declared juvenile sexual offender under KRS 635.510 shall be committed to the Department of Juvenile Justice as set forth in KRS 635.515.

c. In addition to any other applicable statutory determinations, when the child is committed to the Department of Juvenile Justice and is ordered to be detained pending placement, the court shall determine in the initial court order of commitment whether:

- 1) Reasonable efforts have been made to prevent the child's removal from the home, or that reasonable efforts were not required by state and federal law, and
- 2) Continuation of the child's residence in the home is contrary to the welfare of the child, or
- 3) Placement of the child would be in the child's best interest.

d. If the child is committed but the child is returned to his or her home pending placement or action by the Department of Juvenile Justice, the court shall state in the order of commitment that community placement is authorized until placement is arranged.

e. Term of Commitment. Commitment shall not exceed the time limits set forth in KRS 635.060 unless an extension is allowed by statute, as follows:

- 1) For what would be a misdemeanor if committed by an adult, when the child is not declared to be a juvenile sexual offender or in possession of a deadly weapon, commitment shall not exceed 12 months; KRS 635.060(4)(b)(1).
- 2) For what would be a class D felony if committed by an adult when the child is not declared to be a juvenile sexual offender or in possession of a deadly weapon, commitment shall not exceed 18 months; KRS 635.060(4)(b)(2).
- 3) For what would be a class A, B or C felony if committed by an adult, or any offense in which there is use of a deadly weapon, commitment shall not exceed the child reaching age 18; KRS 635.060(4)(b)(3).
- 4) Juvenile sexual offenders shall be committed as provided in KRS 635.515.

f. A probation violation shall not result in a commitment to the Department of Juvenile Justice unless the child was previously committed to the Department of Juvenile Justice and the commitment was probated.

6. Probation.

- a. A child may be placed on probation or supervision:
 - 1) Under parental supervision in the child's home or other suitable home, on terms set by the court.
 - 2) The court shall explain in terms the child will understand the duration of probation, and the conditions and possible sanctions which may be imposed if the conditions are violated and shall include the duration, conditions and possible sanctions in the written order of probation which shall be given to the child and filed in the record.
- b. A child on probation shall be supervised by a probation officer or the Department of Juvenile Justice.
- c. The probation officer or Department of Juvenile Justice shall impose graduated sanctions prior to asking the court to impose detention.
- d. After graduated sanctions are exhausted, the court may impose a sanction of up to 30 days detention for violation of the conditions of supervision or probation.
- e. Term of probation.
 - 1) For an offense that would be a violation if committed by an adult, not more than 30 days unless court ordered treatment includes a program lasting longer than 30 days to complete;
 - 2) For an offense that would be a misdemeanor if committed by an adult, not more than six (6) months unless a court-ordered substance abuse or treatment program requires more than six (6) months to complete;
 - 3) For an offense that would be a class D felony if committed by an adult, not more than 12 months; or
 - 4) For an offense that would be any other felony if committed by an adult, up to age 18.
- f. Probation Supervision.
 - 1) The Department of Juvenile Justice or probation officer shall:
 - a) Conduct an evaluation of the child;

- b) Develop a case plan to include individualized treatment goals to address the child's risks and needs; and
 - c) Provide the case plan to the court and all parties.
 - 2) The probation plan shall include all conditions imposed by the court and shall not extend beyond the statutory maximum timeframes mandated by KRS 635.060.
 - 3) Prior to a motion for sanctions being filed, the Department of Juvenile Justice or probation officer shall provide to the county attorney:
 - a) The complete terms and conditions of the juvenile's probation;
 - b) The specific violation(s) and any supporting documentation; and
 - c) The graduated sanctions applied prior to seeking court action.
- g. Probation violation.
 - 1) The county attorney may file a motion seeking review for violations of probation and shall notice the child (if the child's whereabouts are known), the parent or the custodian, and the child's attorney of the hearing date;
 - a) The child's attorney may present evidence on behalf of the child; and
 - b) The court shall make a written finding whether the child has violated the court's orders, and if the court imposes detention, shall also:
 - i) Make a finding by clear and convincing evidence that graduated sanctions have been applied and failed; or
 - ii) That there are no appropriate graduated sanctions short of detention to address the violation; and
 - iii) That the child is an immediate threat to himself or herself or others.
 - c) As aforementioned in Subsection 5(f), a probation violation shall not result in a commitment to the Department of Juvenile Justice unless the child was previously committed to the Department of

Juvenile Justice and the commitment was probated.

Commentary

KRS 635.060 is a substantial change from the previous Juvenile Code and contains several new processes. This section establishes the options the court has at the dispositional hearing. The juvenile court must first find that the child falls under this chapter and then may impose any combination of the dispositional options so long as the detention time allowed for various dispositions is not exceeded. For example, a child could be placed in detention for 10 days, and then placed on probation for a period not to exceed one (1) year. If a child is placed in detention for the statutory maximum, 45 days for ages 14 to 16 or 90 days for over age 16, then the dispositional options are complete as far as detention time is concerned unless there is a contempt proceeding.

There are multiple options at disposition, including ordering restitution or reparation in conjunction with another disposition which is too varied to set forth in a rule. The court and practitioners must carefully read KRS 635.060 to determine how these dispositional options may be applied.

One specific option includes giving credit for time a child spends in out of home placement for violating the conditions of a probated or suspended commitment against the maximum time of commitment not to exceed 12 months if the offense would be a misdemeanor if committed by an adult; not to exceed 18 months if the offense would be a class D felony if committed by an adult; or not to exceed up to age 18 if the offense would be any other felony if committed by an adult. This provision does not apply to a child who has been declared a juvenile sexual offender or who committed an offense involving a deadly weapon. These categories of offenses are addressed by other statutes. Successful completion of probation or a commitment shall terminate proceedings on the instant charge(s).

7. Fines. Pursuant to KRS 635.085, a fine may be imposed in lieu of commitment to the Department of Juvenile Justice in the best interest of the child and to aid in his or her rehabilitation, if the child is financially able to pay a fine as follows:

- a. Fine amounts
 - 1) For a felony offense, not to exceed \$500;
 - 2) For a misdemeanor offense, not to exceed \$250;
 - 3) For a violation, not to exceed \$100.
 - b. The court shall allow a reasonable time for payment; otherwise fine payment is due immediately.
- D. Juvenile Sexual Offenders.
- 1. Upon adjudication, the court shall order a juvenile sexual offender assessment be conducted by the Department of Juvenile Justice or other qualified professional.
 - 2. A copy of the assessment and recommendations shall be provided to the court, the child's attorney and the county attorney not less than three (3) days prior to the disposition; these copies are confidential and shall be returned to the court at the disposition hearing.
 - 3. A child may be classified as a juvenile sexual offender based on the assessment and the recommendations and other relevant factors and if it is in the best interest of the child to be so classified.
 - 4. If the court finds that the child is a juvenile sexual offender and is not actively psychotic or intellectually disabled as defined by KRS 635.505, the child shall be committed to the Department of Juvenile Justice.
- E. Finality. A public offense case shall be considered final 30 days after the case is no longer pending. On post-disposition matters a case is "pending" based on the terms set forth in the disposition order, not to exceed the statutory limits. The case shall be considered final no later than 30 days after completion of the terms. Once the case is final the case may not be reopened for any purpose including contempt proceedings.
- F. Duties of the clerk. The clerk shall enter in the court record information regarding the disposition of the case, including but not limited to the terms and conditions ordered by the court and the duration of the order.

JCRPP [19] 16. Informal Adjustment - Status and Public Offense Cases.

- A. Upon the motion of any party, as an alternative to formal proceedings and after finding that it is in the best interest of the child, a case may be resolved by informal adjustment as defined under KRS 600.020(~~[34]~~36) and authorized by KRS 610.105.
- B. The moving party shall give notice of the motion for informal adjustment to the child, child's attorney, county attorney, victim, and any other persons entitled to notice pursuant to KRS 610.070 as appropriate.
- C. The court shall explain to the child on the record his or her rights and the charge, and shall have the child sign as received the Notice of Juvenile Rights and Consequences, AOC-JV-49.
- D. The parties must enter an agreement setting forth the required actions of the child and consequences for failure to comply using the AOC-JV-53, Informal Adjustment Agreement and Order. KRS 600.020(~~[34]~~36).
- E. If an informal adjustment occurs after adjudication but prior to disposition, the court shall set the adjudication aside and proceed with the informal adjustment. KRS 610.105.

Commentary

The definition section of KRS ~~[610.010]~~ 600.020 states that an informal adjustment must occur prior to formal adjudication *and disposition*. However, KRS 610.105, a new amendment to the Juvenile Code states that informal adjustment may occur after adjudication. Thus it is now clear that informal adjustment can be an alternative disposition any time prior to formal disposition, including after formal adjudication. Therefore, if an adjudication has occurred in a case which the parties have agreed to informally adjust, the formal adjudication must be set aside as per the above rule. Banishment is not an option. See *Q.M. v. Commonwealth*, 459 S.W.3d 360 (Ky. 2015).

- F. An informal adjustment order must be entered using the AOC-JV-53, Informal Adjustment Agreement and Order, and may include, in the best interest of the

child, any terms appropriate to resolve the issues before the court, including but not limited to:

1. Placing the child on community supervision or monitoring by the court, not to exceed six (6) months unless waived by the child; or
 2. Referral of the case to diversion other than any diversion program in which the child has participated prior to the filing of the petition.
 3. An informal adjustment case can only be referred to the court designated worker diversion program if the child has not previously entered into a pre-petition diversion agreement on the current charge and no other diversion programs are available; the court designated worker may refer the case to the FAIR team as appropriate.
 4. If the informal adjustment includes diversion, which is unsuccessful, the case shall be returned to the court for further action.
- G. The child shall be returned to the court upon failure to complete an informal adjustment agreement for imposition of graduated sanctions or the agreed upon consequences. The AOC-JV-53.1, Informal Adjustment Review and Order Redocketing or Order of Dismissal, shall be used for this purpose.
- H. Unless otherwise ordered by the court, the informal adjustment shall be re-docketed six (6) months after entry of the informal adjustment agreement order for review to determine if the terms of the informal adjustment are complete. The AOC-JV-53.1, Informal Adjustment Review and Order Redocketing or Order of Dismissal, shall be used for this purpose.
- I. Upon completion of the terms of the informal adjustment, an order shall be entered stating that the case has been informally adjusted and is dismissed.

Commentary

Diversion through the court designated worker is by definition pre-petition diversion. Only when a child is participating in an informal adjustment and did not participate in a pre-petition diversion agreement may the court refer the child to the court designated worker for diversion if no other diversion programs are available. In the event of such a diversion referral as part of an informal adjustment, the court designated

worker may refer the case to the FAIR team. The rationale behind this is that the court designated worker diversion program is a limited resource that is designed to divert children from ever entering the formal court process. For that reason, it should be used in a very limited manner, as set forth in these rules, for post-petition matters.

Also, mere failure to complete the terms of an informal adjustment agreement does not automatically rise to the level of contempt. While the court may still detain for violation of a valid court order, the court is required to use graduated sanctions before it may detain a child. Logically this means that contempt orders are reserved for direct contempt for acts of actual defiance or disrespect for the court.

JCRPP [20] 17. Youthful Offenders.

- A. For a child who qualifies and is proceeded against as a youthful offender pursuant to KRS 635.020(2–8) and KRS 640.010, the district court shall conduct the appropriate hearings to determine if the child should be transferred to circuit court for grand jury proceedings.
- B. If, upon arraignment or during the proceedings, there are reasonable grounds to believe the child lacks the capacity to appreciate the nature and consequences of the proceedings against him or her or to participate rationally in his or her defense, all proceedings shall be stayed until the issue of competency is determined. The district court shall immediately appoint at least one psychologist or psychiatrist to examine, treat, and report on the child’s mental condition and conduct a competency hearing prior to conducting a hearing to determine if the child’s case should be transferred to circuit court. See KRS 504.100, KRS 645.070(1), RCr 8.06, and *Commonwealth v. B.H.*, 548 S.W.3d 238, 248 (Ky. 2018).

Commentary

Courts should act in good faith when balancing the need for expedience in competency determinations against the parties’ need to adequately investigate and prepare for a hearing to ensure that children whose competency is at issue do not languish in detention.

[A] C. If the district court finds that the child qualifies as a youthful offender and transfers the case for grand jury proceedings, the district court shall:

1. First determine whether the child is entitled to release or bail pursuant to Chapter 431, and
2. Set bail or the conditions of release accordingly.

[B] D. Any child that is not released on bail or conditions of release shall be detained in a secure juvenile detention facility or juvenile holding facility, unless the juvenile is 18 years of age or older.

[C] E. The [District Court] district court shall retain jurisdiction until the return of an indictment by a grand jury.

[D] F. If a child is transferred to circuit court for grand jury proceedings and the grand jury does not indict the child as a youthful offender, and

3. Finds that there is probable cause to believe the child committed another criminal offense, then
4. The child shall be returned to district court to be proceeded against as a public offender, and
5. The case shall remain confidential.

Commentary

While KRS 640.010 referring to preliminary hearings does not mention KRS 635.020(4) relating to use of a firearm in a felony, the latter section states that a preliminary hearing is required to determine whether there is probable cause to believe that the child committed a felony using a firearm, and that the child was over 14 years of age at the time of the commission of the felony, before the court may transfer the case for grand jury proceedings. Therefore, there is no “automatic transfer” of a firearms felony offense absent a finding of probable cause to believe that the child has committed such an offense. *See K.R. v. Commonwealth*, 360 S.W.3d 179, 185 (Ky. 2012).

JCRPP [21] 18. Contempt Proceedings for Violation of a Valid Court Order and Direct Contempt.

- A. The court designated worker shall not accept a complaint or process a charge alleging contempt for a violation of a valid court order in a status offense case; violation of terms or conditions of an order in a public offense case; or, for probation violation.

Commentary

Contempt is neither a status nor a public offense. KRS 600.020(~~62~~65) and (~~49~~51). The court designated worker is authorized to process “complaints” which allege either a public or status offense. KRS 600.020(~~14~~15). Allegations must be sufficient to initiate formal court action. Contempt is not an offense which initiates a formal court action since the child is already in court.

B. Setting Conditions in Status Offense Cases; Valid Court Order.

1. A court may issue a valid court order or orders setting conditions pending further hearing; as part of an informal adjustment; or for any other reason during the pendency of a case.

2. A “valid court order” as defined in KRS 600.020(~~66~~69) only applies in a status

offense case when:

- a. The child is before the court;
- b. The order regulates future conduct;
- c. The child was given written and verbal warning of the consequences of violation at the time the order was issued;
- d. The child’s attorney or parents or legal guardian was provided with written notice of the consequences of violation of the order; and
- e. The child was given full due process rights guaranteed by the Constitution of the United States.

C. Contempt in Status Offense Cases.

1. Contempt for violation of a valid court order.

- a. Before making a finding of contempt for violation of conditions of a valid court order the court shall conduct a hearing to determine whether the child violated the valid court order.
 - b. Upon a finding that the child violated the valid court order the court shall first levy graduated sanctions unless none are available and the child is an immediate threat to himself or others.
 - c. If the court finds that graduated sanctions have previously been imposed, or finds that no graduated sanctions are available and the child is an immediate threat to himself or others, then the court may impose a sanction of up to 30 days of detention.
 - d. Prior to ordering the child to be securely detained because he or she violated a valid court order pursuant to KRS 610.265(3)(d), the court shall order a written report prepared by an appropriate public agency concerning the behavior of the child, why he or she was brought before the court, and state whether all alternatives short of secure detention have been exhausted or are inappropriate. This information shall be included in the court's written detention order.
2. Direct contempt. A finding of direct contempt shall only be issued for acts of defiance or inappropriate conduct toward the court.
 3. Any detention ordered as a result of direct or indirect contempt shall not exceed 30 days of detention. KRS 600.060 and 635.055.

D. Setting Conditions in Public Offense Cases.

A court may issue an order or orders setting conditions as part of release pending further hearing; as part of an informal adjustment; as part of a grant of probation; as part of a probated commitment; as part of court-monitored probation; or for any other reason during the pendency of a case.

E. Contempt in Public Offense Cases.

1. Contempt for pre- or post- disposition violation of court-ordered terms or conditions or violation of probation.

- a. Before making a finding of contempt for violation of terms or conditions of a court order, either pre- or post-disposition, the court shall conduct a hearing to determine whether the child violated the order.
 - b. Upon a finding that the child violated the order the court shall first levy graduated sanctions unless none are available and the child is an immediate threat to himself or others.
 - c. If the court finds that graduated sanctions have previously been imposed, or finds that no graduated sanctions are available and the child is an immediate threat to himself or others, then the court may impose a sanction of up to 30 days of detention.
2. Direct contempt. A finding of direct contempt shall only be issued for acts of defiance or inappropriate conduct toward the court.
 3. Any detention ordered as a result of direct or indirect contempt shall not exceed 30 days of detention. KRS 600.060 and 635.055.
- F. If the child's case is informally adjusted then,
1. Violations of the conditions of informal adjustment shall be subject to the consequences agreed upon when the court entered the terms for the informal adjustment, and shall not be subject to contempt.
 2. A finding of direct contempt may be issued for acts of defiance or inappropriate conduct toward the court. Any detention ordered shall not exceed 30 days. KRS 600.060.

Commentary

The inherent contempt power of the court is not diminished by the statutes referenced in the JCRPP because the statutory language simply defines the process to be applied in a dispositional option under KRS 635.060, and sets a timeframe for the imposition of detention for contempt. As a matter of policy the graduated sanctions that are to be applied to children on probation shall also be applied by the court on pendente lite orders.

JCRPP [22] 19. Expungement of Juvenile Cases.

- [A. Any child who has been adjudicated as a status offender or has admitted to committing what would be a misdemeanor or violation if committed by an adult may petition the court for expungement of the record of those offenses:
1. No sooner than two (2) years after the date of termination of the court's jurisdiction over the child, or
 2. Two (2) years after the child's release from any commitment.
 3. This time restriction may be waived by the court.
- B. The child shall be informed of the right to expungement at the time of adjudication if eligible.
- C. If the court grants the order of expungement sealing the record, all index references shall be deleted, unless otherwise ordered by the court.]
- A. Subject to the conditions and exclusions in this rule, a court may expunge the following from the juvenile court record:
1. Misdemeanors, violations, or status offenses;
 2. A single felony; or
 3. A series of felonies arising from a single incident;
- B. Expungement shall not be granted if:
1. There are any proceedings pending or being instituted against the child pursuant to KRS Chapter 610.
 2. The offense is a sex crime, as defined by KRS 17.500; or
 3. The offense would classify a person as a violent offender under KRS 439.3401.
- C. The child may petition the court for the expungement, or the following may motion for the expungement:
1. The court, on its own motion;
 2. A probation officer of the court;
 3. A representative of DJJ or the Cabinet; or
 4. Any other interested person.
- D. The petition or motion shall not be filed or made until two (2) years after the date of termination of the court's jurisdiction over the person or two (2) years after the

child's release from any commitment, unless the court finds that waiving the waiting period is advisable due to extraordinary circumstances.

- E. Upon the filing of the petition or motion, the court shall set a hearing and notify the county attorney and anyone else that the court or child has reason to believe may have relevant information related to the expungement.
- F. If a petition is dismissed or a child is found not delinquent, the court shall expunge the action by court order at the time of dismissal or at the time of finding that the child is not delinquent. No action is required by the child in these instances.
- G. If the court grants the order of expungement sealing the record, all index references shall be deleted, unless otherwise ordered by the court. The court may order all public agencies and private schools to destroy all records related to the expunged offense or violation.
- H. At the time of adjudication, the child shall be informed of the right to petition for expungement.

JCRPP [23] 20. Use of Restraints on a Child Charged with a Status or Public Offense in Court.

There shall be a presumption that no child shall be restrained upon entry into the courtroom. This presumption may be rebutted with good cause shown.

Commentary

Use of restraints in a courtroom has generally been defined to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior. (National Council of Juvenile and Family Court Judges, Resolution Regarding Shackling of Children in Juvenile Court, 2015 [hereinafter NCJFCJ Resolution]).

The Association of Prosecuting Attorneys has issued a Statement of Principles concerning the use of restraints in court that states in part, “[t]here should be a presumption against the use of restraints on juveniles in court without appropriate evidence-based and data-driven assessments indicating that there are no less

restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the public, court personnel, law enforcement officers, or bailiffs.” The prosecutors note that minors “are impressionable and the indiscriminate use of restraints in court has been shown to influence juveniles such that it negatively impacts their future behavior and also fosters a negative perception of the criminal justice system, including decreasing their level of cooperation and engagement with courtroom stakeholders.” (Association of Prosecuting Attorneys, Statement of Principles, 2015).

This concern is echoed by the National Council of Juvenile and Family Court Judges as it notes that restraining children in court may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, attorneys, and other parties, and limit the child’s ability to engage in the court process. Given that research in social and developmental psychology has indicated that restraints can interfere with healthy identity development, be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; negatively influence how a child behaves as well as how a child is perceived by others; and promote punishment and retribution over rehabilitation and development of children under the court’s jurisdiction, it is critical to recognize the need for continued attention and consistent judicial leadership to ensure that policies regarding treatment of children in juvenile and family court are fair, age appropriate and promote justice. (NCJFC Resolution).

This rule is likewise in accord with the American Bar Association, Criminal Justice Section Resolution 107A, which states thusly: “RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.” (American Bar Association, Criminal Justice Section Resolution 107A, 2015).

The NCJFCJ Resolution supports a presumptive rule or policy against shackling children, recommends that requests for exceptions be made to the court on an individualized basis and that such requests must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others. In accord with juvenile and family court practice, JCRPP [23] 20 creates such a rule in its purest and simplest form.

All sitting. All concur.

ENTERED: