

Rule 152. Waiver of Counsel

A. **Waiver requirements.** A juvenile who has attained the age of fourteen may only waive the right to counsel if:

- 1) the waiver is knowingly, intelligently, and voluntarily made; **[and]**
- 2) the court conducts a colloquy with the juvenile on the record; and
- 3) the proceeding for which waiver is sought is not one of the following:
 - a) detention hearing pursuant to Rule 242;
 - b) transfer hearing pursuant to Rule 394;
 - c) adjudicatory hearing pursuant to Rule 406, including the acceptance of an admission pursuant to Rule 407;
 - d) dispositional hearing pursuant to Rule 512; or
 - e) a hearing to modify or revoke probation pursuant to Rule 612.

B. **Stand-by counsel.** The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. **Notice and revocation of waiver.** If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

Comment

Because of the ramifications of a juvenile record, it is important that every safeguard **[is] be** taken to ensure that all constitutional and procedural guarantees and rights are preserved. Juveniles should not feel pressured to waive counsel or be the subject of any proactive pursuit for obtaining a waiver.

In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made, the court, on the record, is to ask the juvenile questions to elicit: 1) the reasons why the juvenile wants to waive counsel; 2) information regarding the juvenile's: a) age; b) maturity; c) education; d) mental health issues, if any; and e) any current alcohol or drug issues that may impair the juvenile's decision-making skills; 3) the juvenile's understanding of the: a) right to an attorney, including the provisions of Rule 151; b) juvenile's role when proceeding *pro se*; c) allegations in the petition against

the juvenile; **and** d) possible consequences if the juvenile is found delinquent; 4) whether the juvenile consulted with the juvenile's guardian; and 5) whether the juvenile consulted with an attorney.

If it is determined that the juvenile has not knowingly, intelligently, and voluntarily waived counsel, the court immediately is to appoint counsel for the juvenile. If it is determined that the juvenile has made a knowing, intelligent and voluntary waiver, the court may appoint stand-by counsel for all proceedings.

This rule is not meant to preclude the guardian's presence at any hearing. Indeed, the presence and active participation of a guardian should be welcomed. During the colloquy, which is the subject of this rule, the court should feel free to elicit information from the guardian. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interest of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Additionally, Rule 150(B) provides that once an appearance is entered or the court assigns counsel, counsel is to represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw. See Pa.R.J.C.P. 150(B).

[Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation.]

Pursuant to paragraph (C), if waiver of counsel is revoked, the court is to appoint counsel before proceeding.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005. Amended January 11, 2012, effective March 1, 2012. **Amended February 6, 2017, effective April 1, 2017.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 152 published with the Court's Order at 42 Pa.B. 547 (January 28, 2012). **Final Report explaining the revision to the Comment to Rule 152 published with the Court's Order at Pa.B. (, 2017).**

Rule 242. Detention Hearing

A. Informing juvenile of rights. Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to retain private counsel or to be assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. Manner of hearing.

1) Conduct.

- a) The hearing shall be conducted in an informal but orderly manner.
- b) The attorney for the Commonwealth shall:
 - i) attend the hearing; and
 - ii) present such evidence as the Commonwealth deems necessary to support the written allegation and the need for detention.

2) Recording. If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) Testimony and evidence.

- a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.
- b) The juvenile's attorney[, **the juvenile, if the juvenile has waived counsel pursuant to Rule 152,**] and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney **[or the juvenile, if the juvenile has waived counsel pursuant to Rule 152,]** may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

5) **Advanced communication technology.** A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

C. **Findings.** The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile;

2) detention of the juvenile is warranted; and

3) there are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

D. **Filing of petition.** If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

E. **Court's order.** At the conclusion of the detention hearing, the court shall enter a written order setting forth its findings pursuant to paragraph (C).

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

An additional determination is required in paragraph (C)(3) although this is not a third stage of the detention hearing. It is important that the court address any special needs of the juvenile while the juvenile is in detention. The juvenile's attorney, the

juvenile probation officer, or detention staff is to present any educational, health care, and disability needs to the court, if known at the time of the hearing. Special needs may include needs for special education, remedial services, health care, and disability. If the court determines a juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

When addressing the juvenile's needs concerning health care and disability, the court's order should address the right of: 1) a juvenile to receive timely and medically appropriate screenings and health care services, 55 Pa. Code § 3800.32 and 42 U.S.C. § 1396d(r); and 2) a juvenile with disabilities to receive necessary accommodations, 42 U.S.C. § 12132, 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.*

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. See Rule 330 for petition requirements, Rule 331 for service of the petition, and Rule 363 for time of service.

The victim may be present at the hearing. See Rule 132 and 18 P.S. § 11.201 *et seq.* Any persons may be subpoenaed to appear for the hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

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Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 242 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012). **Final Report explaining the amendments to Rule 242 published with the Court's Order at Pa.B. (, 2017).**