

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 09-05

(Amend SCR Juvenile 2, 12, 17.1, 25, 32, 42, 44, 48, 50, 53, 55, 108, 109, 110, 112 and new 110A and 119)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules approved amendments to Superior Court Rules Governing Juvenile Proceedings 2, 12, 17.1, 25, 32, 42, 44, 48, 50, 53, 55, 108, 109, 110, 112 and new Rules 110A and 119; and

WHEREAS, these rules do not modify the Federal Rules of Criminal or Civil Procedure; it is

ORDERED that Superior Court Rules Governing Juvenile Proceedings 2, 12, 17.1, 25, 32, 42, 44, 48, 50, 53, 55, 108, 109, 110 and 112 are amended and new Rules 110A and 119 are hereby enacted as set forth below; and it is further

ORDERED that the above enumerated amendments and rules shall take effect October 1, 2009 and govern all proceedings thereafter commenced and insofar as is just and practicable all pending proceedings.

SCR JUVENILE 2

PURPOSE AND CONSTRUCTION

These Rules are intended to provide for the just determination of every proceeding in which a child is alleged to be delinquent or in need of supervision. They embrace the principle that each child is an individual entitled, in his own right, to appropriate elements of due process of law, and also adopt the principle that, when a child is removed from his own home, the ~~Division~~ Family Court will secure for him custody, care and discipline as nearly as possible equivalent to that which should have been provided for him by his parents. These Rules shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. ~~In appropriate cases, they shall be construed together with other rules of the Division to facilitate the consolidated processing of related matters involving the same family or household. If practicable, feasible, and lawful, all cases concerning the same or immediate family or household members and any subsequent case(s) shall be processed consistent with the one family, one judge provision of the District of Columbia Family Court Act of 2001.~~

If no procedure is specifically prescribed by these Rules, the ~~Division~~ Family Court may proceed in any lawful manner not inconsistent with these Rules or with any applicable statute.

COMMENT

The ~~1st~~ first and ~~3rd~~ third sentences of this Rule are taken from FRCrP 2. The ~~2nd~~ second and ~~4th~~ fourth sentences of the Rule (1) make clear (1) that our Rules retain the obligation to give proper care to a child removed from his own home, and (2) implement the one family, one judge provision of the District of Columbia Family Court Act of 2001, Public Law 107-114 (January 8, 2002). ~~that consolidation of related matters involving the same family or household is to be an important policy throughout the Family Division. Such consolidation was also a recurring theme in the Court Reform and Criminal Procedure Act of 1970. See, e.g., D.C. Code (1967 Edition, Supplement IV) § 11-1722(d) and § 16-1004(a).~~

The last paragraph of the Rule is taken from FRCrP 57(b).

SCR JUVENILE 12

PLEADINGS, MOTIONS AND DEFENSES BEFORE THE FACTFINDING HEARING

* * *

(b) *Pretrial motions.* Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion and in accordance with Rule 47-I. The following must be raised prior to trial:

* * *

(5) Requests for a severance of charges or ~~defendants~~ respondents under Rule 14.

* * *

SCR JUVENILE 17.1

PRETRIAL CONFERENCE

At any time after the filing of the petition the ~~Division~~ Family Court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious processing of the case or will result in consolidation consistent with the one family, one judge provision or disposition of ~~causes~~ cases before the ~~Division~~ Family Court relating to members of the same family or household. At the conclusion of a conference the ~~Division~~ Family Court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the respondent or his or her attorney at the conference shall be used against the respondent unless the admissions are reduced to writing and signed by the respondent and his or her attorney. This Rule shall not be invoked in the case of a respondent who is not represented by counsel.

COMMENT

This Rule is substantially similar to FRCrP 17.1, except that the last part of the ~~1st~~first sentence ~~has been~~ was added to implement the one family, one judge provision of the District of Columbia Family Court Act of 2001, Public Law 107-114 (January 8, 2002). ~~The pretrial conference seems a convenient occasion for the consolidation of matters relating to the same family or household (a theme of the Family Division—~~See Comment to SCR-Juvenile 2).

SCR JUVENILE 25

JUDGE; DISABILITY

- (a) *During the factfinding hearing.* If by reason of death, sickness or other disability the judge before whom a factfinding hearing has commenced is unable to proceed with the hearing, a new hearing shall be granted and scheduled forthwith.
- (b) *After finding of guilt or need for supervision.* If by reason of absence, death, sickness or other disability the judge before whom the respondent had his or her factfinding hearing is unable to perform the duties to be performed by the ~~Division~~ Family Court after a finding of guilt or need for supervision, any other judge regularly sitting in or assigned to the ~~Division~~ Family Court may perform those duties but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the factfinding hearing or for any other reason, he or she may in his or her discretion grant a new factfinding hearing. ~~However, a judge who accepted a guilty~~

~~plea is not required to perform the duties to be performed by the Division after such finding of guilt or need for supervision. Subsequent to a disposition hearing, a review of any respondent's status may be conducted by any judge assigned to the Division.~~

(c) Family Court Act of 2001. Nothing in this rule shall be construed in such a manner as to violate the District of Columbia Family Court Act of 2001 (D.C. Code §11-1104 (b)(2)(A) and (C)).

COMMENT

Section (a) is different from FRCrP 25(a) in that it provides for the mandatory granting of a new hearing upon the disability of the judge during the factfinding. A new judge could not simply proceed with the hearing since the judge himself is the trier of fact in non-jury cases and must be able to hear all the evidence and observe all the witnesses. Section (b) is substantially similar to FRCrP 25(b). Section (c), referencing the Family Court Act of 2001, allows for one judicial officer to preside over all matters involving a juvenile after a finding of guilt or need for supervision.

SCR JUVENILE 32

DISPOSITION AND JUDGMENT

(a) *Disposition hearing*. If the respondent has pleaded guilty, or has been found guilty or in need of supervision, the judicial officer shall proceed to hold a disposition hearing. Such disposition hearing may be held immediately if all parties consent and waive preparation of the predisposition report, unless the case involves a victim of crime. If the case involves a victim of crime the disposition hearing shall be set to allow a reasonable period of time for the preparation of a victim impact statement, and to incorporate it into the predisposition report. If the victim does not elect to submit a victim impact statement then the predisposition report may be waived and the disposition hearing may be held immediately. If the disposition hearing is not held immediately, and the respondent is detained or in shelter care pending the disposition hearing, the judicial officer shall schedule a disposition to be held within 15 days, and shall adjourn the proceedings to await the preparation of a predisposition report.

(b) *Predisposition investigation*.

(1) When made. The Director of Court Social Services (“CSS”) or a qualified agency designated by the judicial officer shall make a predisposition investigation and report to the judicial officer before the entry of a dispositional order unless this requirement is waived by the judicial officer with the consent of all parties. The report shall not be submitted to or considered by the judicial officer, or its

contents disclosed to anyone, unless the respondent has pleaded guilty or has been found guilty or in need of supervision.

- (2) Report. The report of the predisposition investigation shall contain any prior juvenile record of the respondent and such information about the respondent's characteristics, family, environment and the circumstances affecting the respondent's behavior as may be helpful in determining the need for treatment and a proper disposition of the case. If the judicial officer has ordered a physical or mental examination to be conducted pursuant to D.C. Code § 16-2315, the report shall include a copy of the examination. Any victim impact statement that has been submitted to CSS shall be included in the report. The original report and any other material to be disclosed shall be furnished to the judicial officer and copies thereof shall be furnished to counsel for the respondent and to the ~~Corporation Counsel~~ Office of the Attorney General ("OAG") at least three business days prior to the disposition hearing.
- (3) Notice to the Department of Youth Rehabilitation Services ("DYRS") or other agency/department responsible for supervision. As soon as practicable during the preparation of the predisposition report, but in no instance less than three (3) business days prior to the disposition hearing, the Director of CSS shall notify the Administrator of DYRS or other agency responsible for supervision if the predisposition report will recommend or is likely to recommend that the legal custody of respondent be transferred to DYRS or other agency responsible for supervision pursuant to D.C. Code § 16-2320 (c)(2). A copy of the report constitutes sufficient notice to the Administrator under this subsection.
- (4) Copy of Report to the Department of Youth Rehabilitation Services ("DYRS") or other agency/department responsible for supervision. If the predisposition report will recommend or is likely to recommend that the legal custody of respondent be transferred to DYRS or other agency responsible for supervision pursuant to D.C. Code § 16-2320 (c)(2), a copy of the report and any other materials to be presented by the Director of CSS to the judicial officer shall be furnished also to the Administrator of the DYRS or other agency responsible for supervision at least three (3) business days prior to the disposition hearing.

(c) *Disposition.*

- (1) Entry of dispositional order. The dispositional order shall be entered without unreasonable delay. Before entering a dispositional order the judicial officer shall afford the respondent or the respondent's counsel an opportunity to comment on the predisposition report and, in the Court's discretion, to introduce testimony or other information relating to any alleged factual inaccuracy in the report. The judicial officer shall also afford counsel an opportunity to speak on behalf of the respondent and shall address the respondent personally, and the respondent's parent, guardian, or custodian, if present, and ask if they wish to make a statement in the respondent's behalf or to present any information that might affect the

dispositional order. The ~~Corporation Counsel~~ OAG shall have an equivalent opportunity to address the Court and present information pertinent to ~~sentencing disposition~~. The Court may also hear from victims of crime or members of their immediate family.

- (2) Notification of right to appeal. After entering a dispositional order in a case which has gone to a factfinding hearing on a plea of not guilty or in which a conditional plea pursuant to SCR-Juvenile 11(a)(2) has been entered, the judicial officer shall advise the respondent of the right to appeal and of the right of a person who is unable to pay the cost of an appeal for leave to appeal in forma pauperis.
- (d) *Judgment*. The judgment shall set forth the plea, the findings, the adjudication, and the dispositional order. If the dispositional order involves placement of the respondent outside the respondent's home, in an institution or elsewhere, it shall include a statement of reasons why such placement is necessary. If the respondent is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judicial officer and entered by the clerk of the ~~Division~~ Family Court.
- (e) *Withdrawal of plea of guilty*. A motion to withdraw a plea of guilty may be made only before a dispositional order is entered; but to correct manifest injustice the judicial officer after entering a dispositional order may set aside the judgment and permit the respondent to withdraw the plea.
- (f) *Probation and other dispositional orders*.
 - (1) Probation. Upon an adjudication of delinquency or need of supervision, the respondent may be placed on probation as provided by D.C. Code § 16-2320.
 - (2) Copy of probation order. A copy of the probation order with terms and conditions specified therein shall be furnished to the respondent, the respondent's parent, guardian, or custodian, the respondent's attorney, counsel for the government and the Director of Court Social Services. The order shall set forth the date upon which the respondent's probation shall expire and the respondent's rights with respect to the sealing of records upon fulfillment of the conditions specified in D.C. Code § 16-2335.
 - (3) Copy of other dispositional orders. Where the disposition involves an order other than probation, a copy of such order shall be furnished to the respondent, the respondent's parent, guardian, or custodian, the respondent's attorney, the Director of Social Services, and to the person or agency to whose custody the respondent has been committed, if any. Any commitment order shall set forth the date upon which the commitment shall expire and the respondent's rights with respect to the sealing of records upon fulfillment of the conditions specified in D.C. Code § 16-2335.

- (4) Notice of termination of dispositional orders. Upon the automatic termination of any dispositional order, or in cases where the ~~Division~~ Family Court terminates a dispositional order prior to the stated termination date thereof, written notice of termination shall be furnished to the respondent, the respondent's parent, guardian or custodian, and the respondent's attorney. At that time the respondent and the respondent's attorney shall again be notified of the respondent's right to move for the sealing of records as provided in D.C. Code § 16-2335. An application for sealing shall be enclosed with the notice of termination.
- (g) *Review of disposition.* If the dispositional order involves placement of the respondent in an institution, hospital, or agency upon specified conditions, the judicial officer may order that a report concerning implementation of the stated conditions be prepared by the institution, hospital or agency responsible for care and supervision of the respondent, and filed with the ~~Division~~ Family Court within 30 days after entry of the dispositional order, and a copy sent to counsel. If such report does not reflect full implementation of the original dispositional order, counsel for the respondent may request that the ~~Division~~ Family Court set a date for a prompt hearing and order notice sent to all parties, including the institution, hospital or agency in whose custody the respondent was placed by the dispositional order.
- (h) *Periodic evaluations.* The Director of CSS or DYRS, whichever is responsible for the supervision of the disposition order, shall conduct a periodic evaluation of the child to determine if rehabilitative progress has been made and if the services provided to the child have been effective, and to determine, in conjunction with the child, the child's attorney and the OAG, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the child and the safety of the public. At least one evaluation shall be conducted during the course of the probation or commitment. A report containing the periodic evaluation's findings and the bases for those findings shall be furnished to the judicial officer and copies thereof shall be furnished to counsel for the respondent and to the OAG within 10 business days of the completion of the evaluation.
- (h) (i) *Revocation of probation.*
- (1) Referral to Director of Court Social Services. Complaints alleging that a minor on probation has violated a term or condition of probation shall be referred to the Director of Social Services. If any of the acts alleged in the complaint amount to a delinquent act which must be recommended for petitioning under the intake criteria of SCR-Juvenile 103, the Director of Social Services shall refer the complaint to the ~~Corporation-Counsel~~ OAG with a recommendation that a new petition alleging a delinquent act be filed. If the acts alleged in the complaint may be recommended for petitioning as delinquent acts under the intake criteria of SCR-Juvenile 103, or if they merely violate the terms or conditions of probation without constituting delinquent acts, the Director of Social Services may attempt to adjust the matter informally, or may refer the complaint to the ~~Corporation Counsel~~ OAG with a recommendation either that a delinquency petition be filed

or that a probation revocation petition be filed or both. In such cases, the ~~Corporation Counsel~~ OAG may proceed upon the basis of a new delinquency petition or upon the basis of a probation revocation petition or both, but evidence of any delinquent act denied by the respondent must be established by proof beyond a reasonable doubt.

- (2) Probation revocation petition. A petition alleging a violation of the terms or conditions of probation shall recite the date that the respondent was placed on probation, the terms of probation alleged to have been violated, the acts giving rise to the violation and the dates thereof, and the time and manner in which notice of the terms of probation ~~were~~ was given. ~~The petition shall be served together with summons in the manner provided by D.C. Code § 16-2306 and SCR-Juvenile 9.~~ Upon the filing of a petition to revoke, the OAG shall serve a copy of the petition on the respondent's counsel and the Director of CSS. Notice of the hearing date and a copy of the petition shall be served by the judicial officer or the Clerk on the respondent, and notice of the hearing date shall be served by the judicial officer or the Clerk on the respondent's counsel, the OAG and the Director of CSS. If the respondent has been taken into custody, the provisions of D.C. Code §§ 16-2309 through 2312 shall apply. No child shall be detained for violation of probation prior to the filing of a revocation petition.
- (3) Hearing. The judicial officer shall not revoke probation except after a hearing at which the respondent and the respondent's attorney shall be present. The ~~Corporation Counsel~~ OAG shall present evidence on behalf of its petition unless the ~~Corporation Counsel~~ OAG's presence is waived by the judicial officer. A copy of the petition and notice of the hearing shall be furnished as in delinquency and need of supervision cases generally. If the alleged violation of probation is established by a preponderance of the evidence according to the rules of evidence governing factfinding hearings, or if a delinquent act is established by proof beyond a reasonable doubt, the judicial officer may continue the respondent on probation or may make any other order of disposition that is authorized by D.C. Code § 16-2320(c). If no violation of probation or delinquent act is satisfactorily established, the judicial officer may continue the respondent on probation for the duration of the original probation order.

(4) (j) *Production of statements at disposition and probation revocation hearings.*

- (1) In General. SCR-Juvenile 26.2(a)-(d), and (f) applies at a disposition hearing and at a hearing to revoke probation under this Rule.
- (2) Sanctions for Failure to Produce Statement. If a party elects not to comply with an order under SCR-Juvenile 26.2(a) to deliver a statement to the moving party, the judicial officer may not consider the testimony of a witness whose statement is withheld.

SCR JUVENILE 42

CONTEMPT OF COURT

(a) *Summary disposition.* A contempt committed by a child may be disposed of summarily, and a contempt committed by an adult may be punished summarily, if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) *Criminal contempt of an adult; disposition upon notice and hearing.* A criminal contempt ~~shall be brought only~~ against a person who is not a child ~~and~~ shall, except as provided in section (a) of this Rule, be prosecuted on notice. The notice shall state the time and place of hearing within the Criminal Division, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the ~~Corporation Counsel~~ Office of the Attorney General, or of an attorney appointed by the Court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury before the Criminal Division in any case in which an act of Congress so provides. He is entitled to be released on conditions. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the Criminal Division shall enter an order fixing the punishment.

(c) Delinquency contempt of a child; notice and hearing. A criminal contempt brought against a child shall be treated as a delinquent act. Except as provided in section (a) of this Rule, criminal contempt against a child shall be prosecuted on notice to the respondent as follows:

(1) If the contempt is initiated by the Court, the notice shall state the time and place of hearing within the Family Court, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the respondent or of an attorney appointed by the Court for that purpose, by an order to show cause or an order for custody.

(2) If the contempt is initiated by the Office of the Attorney General, the notice shall be given by the filing of a petition in accordance with the requirements of D.C. Code § 16-2305 and Juvenile Rule 7.

If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the factfinding hearing except with the respondent's

consent. Upon a finding of guilt, the Family Court shall enter an order of disposition in accordance with the applicable statutes and rules governing juvenile delinquency matters.

COMMENT

This rule is similar to FRCrP 42. ~~as noted in this Comment.~~ Section (a) is was previously modified to provide that contempt committed in the presence of the Court by a child (as defined in D.C. Code § 16-2301(3)) be "disposed of" rather than "punished." This precludes action appropriate only for nonchildren, e.g., jail sentences. ~~"Shall be brought only against a person who is not a child" is added in section (b) to the 1st sentence after "A criminal contempt". This addition makes clear that criminal contempt out of the presence of the Court may not be brought against a child.~~ Section (c) sets forth procedures for contempt prosecution under D.C. Code § 11-944.

SCR JUVENILE 44

RIGHT TO AND ASSIGNMENT OF COUNSEL

* * *

(b) *Assignment of Counsel.*

- (1) List of attorneys. ~~Assignment of counsel shall be made by the Division from a list of attorneys prepared and maintained by Division. Such list shall contain the attorney's name, office address and telephone number, date of admission to the District of Columbia Bar, length of experience in trying juvenile cases and criminal cases in the courts of the District of Columbia, and affiliation. An attorney may at any time be removed from the panel at the attorney's own request, and the attorney shall be removed during the period of any suspension.~~ Assignment of counsel shall be made by the Family Court from a list of panel attorneys approved by the court. Assignment of counsel should be made unless otherwise provided by rule or statute.

[The rest of (b) is unchanged]

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SCR JUVENILE 48

DISMISSAL

- (a) ~~By Corporation Counsel~~ Office of the Attorney General. The ~~Corporation Counsel~~ Attorney General may file a dismissal of a petition and the proceedings shall thereupon terminate. The dismissal shall be without prejudice unless otherwise stated. Such a dismissal may not be filed during the factfinding hearing without the consent of the respondent.
- (b) ~~By the Division Family Court. Even though the Division may have acquired jurisdiction, the judicial officer may at any time during or at the conclusion of any hearing dismiss a petition and terminate the proceedings relating to the respondent, if such action is in the interests of justice and the welfare of the respondent. At or after a disposition hearing, the judicial officer may dismiss a petition and terminate the proceedings relating to the respondent, if the judicial officer finds by clear and convincing evidence that the child is not in need of care or rehabilitation. The reason for such dismissal shall be set forth upon request of the Corporation Counsel Attorney General. Once a factfinding hearing has begun, any dismissal is with prejudice to any further proceedings on the subject. Unnecessary delay in the filing of a petition or in bringing a respondent to a hearing or disposition is a factor to be considered by the Division when deciding whether to dismiss a petition. A hearing on this issue may be held at the request of any party. If a motion to dismiss is made under this section, the opposing party shall have an opportunity to respond and, if necessary to preserve the rights of either party, the disposition hearing shall be continued for a hearing on the motion.~~
- (c) Notwithstanding subparagraph (b), the Court retains its authority to dismiss a petition for want of prosecution if there is unnecessary delay in the filing of a petition or in bringing a respondent to a hearing or disposition.

SCR JUVENILE 50

CALENDARING

Priority in calendaring shall be given to cases in which the child is in detention or shelter care as far as practicable. ~~Except as provided in SCR Juvenile 25, the judicial officer who presided over a factfinding hearing in which the child was found to be guilty or in need of supervision shall continue to preside over all proceedings in the case concerning the child until a dispositional order is entered.~~

SCR JUVENILE 53

REGULATION OF CONDUCT IN THE COURTROOM

(a) *Persons admitted to hearings.*

- (1) Generally. Pursuant to D.C. Code § 16-2316(e), the general public shall be excluded from judicial hearings concerning juvenile delinquency or persons in need of supervision. However, a person having a proper interest in a particular case or in the work of the ~~Division~~ Family Court may be admitted upon preliminary approval of the Presiding Judge of the ~~Division~~ Family Court and final approval of the judicial officer before whom the hearing is scheduled. Such a person shall apply for permission to attend a hearing or series of hearings by stating in writing the person's name, address and telephone number, business or professional affiliation, reason for wishing to attend, and that the person will refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings. The required information shall be furnished in duplicate on a form supplied by the ~~Division~~ Family Court, which the applicant shall personally sign. When initialed by the Presiding Judge of the ~~Division~~ Family Court and signed by the judicial officer before whom the case is scheduled, the original application shall be kept on file by the ~~Division~~ Family Court, and the copy shall be carried with the applicant at all times during attendance at ~~Division~~ Family Court hearings.
- (2) Persons Who Need Not Apply for Admission. The following persons shall be deemed to have a proper interest in the work of the ~~Division~~ Family Court and need not apply for admission under subparagraph (a)(1) of this rule in order to be admitted to ~~Division~~ Family Court hearings, but (a) shall nonetheless be required to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings, and (b) may be excluded by the judicial officer presiding over the proceeding:
 - (A) Any member of the Bar of the District of Columbia or law student admitted to the limited practice of law under SCR-General Family M;
 - (B) Authorized personnel of the District of Columbia Superior Court and the District of Columbia Department of Human Services, and other personnel of the Superior Court and the Department of Human Services when engaged in the delivery of court documents; and
 - (C) Members of the respondent's family.
 - (D) Subject to the rule on witnesses, the victim, the immediate family members, and custodians of the victim shall have a right to attend transfer, fact-finding,

disposition and post-disposition hearings, and shall have a right to be present during the victim's testimony. Those admitted under this subsection shall be advised of their obligation to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings.

(E) Subject to the rule on witnesses, eyewitnesses, the immediate family members, and custodians of eyewitnesses shall have a right to attend transfer, fact-finding, disposition and post-disposition hearings, and shall have a right to be present during the eyewitness' testimony. Those admitted under this subsection shall be advised of their obligation to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings.

(3) Persons Deemed Admissible Upon Application. The following persons shall be deemed to have a proper interest in the work of the ~~Division~~ Family Court, and shall be admissible to ~~Division~~ Family Court hearings after filling out an application pursuant to subparagraph (a)(1) of this Rule:

(A) Any authorized representative of the news media; and

(B) Any attorney not a member of the Bar of the District of Columbia.

(4) Other Persons. Eligibility of other persons for admission shall be governed by the provisions of subparagraph (a)(1) of this Rule.

(b) *Taking Photographs and Radio and Television Broadcasting.*

(1) Taking photographs, radio and television broadcasting prohibited. The taking of photographs, or radio or television broadcasting will not be permitted in any of the courtrooms of the ~~Division~~ Family Court during the progress of judicial proceedings, or in any of the anterooms adjacent thereto, in the detention rooms, in the lobby, or in the corridors of the courthouse occupied by the ~~Division~~ Family Court.

(2) Limited Permission to Take Photographs. The taking of photographs in any office or other room of the ~~Division~~ Family Court shall be only with the knowledge and consent of the official or person in charge of such office or room and of the person or persons photographed.

COMMENT:

“Immediate family member” is defined in D.C. Code § 16-2301(42); and “Custodian” is defined in D.C. Code § 16-2301(12).

SCR JUVENILE 55

RECORDS

(a) Review or Inspection of Information Contained in Juvenile Case Records

(1) Persons with statutory access; no application required.

- (A) Unless the court has limited access pursuant D.C. Code § 16-2331(c), the following persons and entities may gain access to and share information from juvenile case records with other persons and entities named in this paragraph without seeking permission from or notifying the court: the judges and professional staff of the Superior Court, including Court Social Services; the Attorney General and his or her assistants assigned to the Family Court; the respondent, his or her parents or guardians, and their duly authorized attorneys; and authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals or their families under the jurisdiction of the Family Court. Inspection of sealed juvenile case records is subject to the limitations of D.C. Code § 16-2335. The persons and entities named in this paragraph may release juvenile case records to contract and service providers and their authorized personnel if the recipients of the information certify that they will not disclose or use the record or information for any purpose other than that for which the information is provided and that the information will not be used in a manner reasonably likely to identify the respondent.
- (B) Nothing in this rule shall prevent the Attorney General and his or her assistants assigned to the Family Court from disclosing to the United States Attorney for the District of Columbia, his or her assistants, any other prosecuting attorneys, or law enforcement personnel: orders issued in juvenile cases regarding conditions of release, probation or commitment, including but not limited to stay-away orders and curfew restrictions; resolution of the charges; and photographs, physical descriptions, and address contained in juvenile case records under D.C. Code §§ 16-2331(b). The Attorney General and his or her assistants assigned to the Family Court may also disclose other information contained in juvenile case records to the United States Attorney for the District of Columbia, his or her assistants, and any other prosecuting attorneys:

- (i) when the prosecuting attorney receiving the information is involved in the investigation or prosecution of a criminal case arising out of the same transaction or occurrence as a case in which a child is alleged to be delinquent;
- (ii) when the records are relevant to a determination of the conditions of release or bail in a criminal proceeding, to plea bargaining, or to the sentencing of a person charged with a criminal offense; or
- (iii) when the United States Attorney for the District of Columbia is considering charging an individual pursuant to D.C. Code § 16-2301(3) or the Attorney General is considering transfer of a child or minor pursuant to D.C. Code § 16-2307.

(C) Public disclosure by the Office of the Attorney General shall be governed by subparagraph (a)(2)(D) of this rule.

(2) *Persons with statutory access; application required.*

(A) Except for those persons and entities named in section (a)(1) and for the purposes identified therein, the following persons or entities who seek to inspect or copy juvenile case records shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee:

- (i) any other court in which the respondent is charged or convicted as a respondent in a delinquency case or status offense or as a defendant in a criminal case, the court's probation staff, and counsel for the respondent or defendant in that case;
- (ii) public or private agencies or institutions providing supervision or treatment, or having custody of, the child, if supervision, treatment, or custody is under order of the Family Court;
- (iii) the United States Attorney for the District of Columbia, his or her assistants, and any other prosecuting attorneys or defense attorneys, when necessary for the discharge of their official duties;
- (iv) the Child Fatality Review Committee, for the purpose of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;
- (v) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for the purpose of carrying out of their official

duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph; and

(vi) any law enforcement personnel when necessary for the discharge of their official duties.

(B) The application shall:

(i) provide the applicant's name, address, telephone number, and professional affiliation;

(ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;

(iii) indicate the purpose for which inspection is sought;

(iv) if applicable, specify the statutory provision that entitles the applicant to access; and

(v) certify that the applicant will not disclose or use the record or information for any purpose other than that for which it is provided.

(C) If the court determines that the applicant meets the requirements set forth in D.C. § 16-2331, the court shall grant the request, except that the court may redact or withhold particular items or classes of items contained in the juvenile case records pursuant to D.C. Code § 16-2331(c). The court shall act promptly upon an applicant to inspect and issue a written order.

(D) Public disclosure by the Office of the Attorney General.

(i) Pursuant to D.C. Code §§ 16-2331(b-2) and 16-2333(b-1), when the Attorney General for the District of Columbia or his or her designees seeks to release information contained in a juvenile case or juvenile law enforcement record for the purpose of public safety, they must file a written request and a proposed order with the judicial officer presiding over Family Court proceedings involving the respondent and shall provide notice of the request to the respondent or his or her counsel. The written request shall:

a) state that the respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

- b) set forth factors that demonstrate that release of such information is necessary to protect the public safety and welfare; and
 - c) state that the respondent has been charged with a crime of violence as set forth in the D.C. Code § 23-1331(4).
 - (ii) The Court shall act promptly on the application and shall issue a written order setting forth specific information that may be released to the public and advising the parties of the penalties that attached to the unauthorized disclosure of information.
- (3) All Other Persons Having a Professional Interest; application required.
 - (A) Other persons or entities who have a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or a member of his or her family, or in the work of the Superior Court and who seek to inspect or copy juvenile case records as permitted by D.C. Code § 16-2331(b)(7) shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee.
 - (B) The application shall:
 - (i) provide the applicant's name, address, telephone number, and professional affiliation;
 - (ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;
 - (iii) indicate the purpose for which inspection is sought;
 - (iv) if applicable, specify the statutory provision that entitles the applicant to access; and
 - (v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided.
 - (C) If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2331(b)(7), the court shall grant the request except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2331(c). The court shall act promptly upon an application to inspect and shall issue a written order.
- (b) Review or Inspection of Information Contained in Juvenile Social Records.

(1) Persons with statutory access; no application required. Unless the court has limited access pursuant to D.C. Code §16-2332(c), the following persons and entities may gain access to and share information from juvenile social records with other persons and entities named in this paragraph: the judges and professional staff of the Superior Court, including Court Social Services; the Attorney General and his assistants assigned to the Family Court; the attorney for the child at any stage of a proceeding in the Family Court, including intake; and authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals or their families under the jurisdiction of the Family Court. Inspection of sealed juvenile social records is subject to the limitations of D.C. Code §16-2335. The persons or entities named in this paragraph may release juvenile social records to contract and service providers and their authorized personnel if the recipients of the information certify that they will not disclose or use the record or information for any purpose other than that for which the information was provided and that the information will not be used in a manner which is reasonably likely to identify the respondent.

(2) Persons with statutory access; application required.

(A) Except for those parties named in section (b)(1) and for the purposes identified therein, the following persons or entities, who seek to inspect or copy juvenile social records, shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee:

- (i) any other court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case, and, if and to the extent other presentence materials are disclosed to him or her, the counsel for the defendant in that case;
- (ii) public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment or custody is under order of the Family Court;
- (iii) the Child Fatality Review Committee for the discharge of its official duties; and
- (iv) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when a custody order has issued for the respondent.

(B) The application shall:

- (i) provide the applicant's name, address, telephone number, and professional affiliation;
- (ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;
- (iii) indicate the purpose for which inspection is sought;
- (iv) if applicable, specify the statutory provision that entitles the applicant to access; and
- (v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided.

(C) If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2332, the court shall grant the request, except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2332(c). The court shall act promptly upon an application to inspect and issue a written order.

(3) *All other Persons Having a Professional Interest; application required.*

(A) Other persons or entities who have a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or a member of his or her family, or in the work of the Family Court and who seek to inspect or copy juvenile social records as permitted by D.C. Code § 16-2332(b)(1)(E) shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee.

(B) The application shall:

- (i) provide the applicant's name, address, telephone number, and professional affiliation;
- (ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;
- (iii) indicate the purpose for which inspection is sought;
- (iv) if applicable, specify the statutory provision that entitles the applicant to access;
- (v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided; and

- (C) The application may include written consent to the application by the respondent, the respondent's parent, guardian, or custodian, and the respondent's attorney.
- (D) Unless the application includes the respondent's written consent to access the records as provided by subparagraph (b)(3)(C), the court shall give notice to the respondent, the respondent's parent, guardian, or custodian, and the respondent's attorney that an application to inspect was filed. Following the provision of notice, the court may conduct a hearing on the application. If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2332(b)(1)(E), the court shall grant the request except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2332(c). The court shall act promptly upon an application to inspect and issue a written order. The court shall deny an application sought pursuant to D.C. Code 16-2332(b)(1)(E) unless it appears that:
- (i) the application is accompanied by written consent of the respondent, the respondent's parent, guardian, or custodian and the respondent's attorney;
 - (ii) the information contained in the social records and sought by the applicant is not otherwise available to the applicant and the applicant has a professional interest in the protection, welfare, treatment, or rehabilitation of the respondent or the respondent's family; or
 - (iii) the applicant has a professional interest in the work of the Family Court and inspection of the juvenile social record and the intended use by the applicant of the information is not reasonably likely to cause the respondent or the respondent's family embarrassment or emotional or psychological harm.
- (E) An applicant who receives access to juvenile social records, released pursuant to section (b)(3)(D) of this Rule, shall not use information obtained from the social records in a manner which is reasonably likely to identify the respondent and shall not reveal or publish information of a personal nature about the respondent or the respondent's family.

COMMENT

While ~~paragraph (b)~~ of this rule provides that applications to inspect case records should be submitted to the Presiding Judge of the ~~Division~~ Family Court, nothing in the rule is not intended to preclude the Presiding Judge from certifying the matter to a judge presiding over a trial in which a party has made a motion to inspect case or social records

~~of a juvenile. from determining in a case then pending before that judge, that access to those records is necessary to a fair and just determination of the issues before the Court.~~

Juvenile Rule 55 was revised to implement the Omnibus Juvenile Justice Act of 2004, D.C. Law 15-0261 (March 17, 2005), which amended D.C. Code §§16-2331 and 16-2332 to expand the number of persons and entities that may access confidential Family Court records and broadened the scope of information that may be inspected. The rule sets forth procedures for persons to apply to the court to inspect records. The rule also requires application by some persons who are provided access under the statute, pursuant to the court's authority under D.C. Code §§16-2331(d) and 16-2332(d), which state that, "[t]he Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them."

SCR JUVENILE 108

TRANSFER FOR CRIMINAL PROSECUTION

(a) *Request for transfer.* A motion requesting the transfer of a child for criminal prosecution filed by the ~~Corporation Counsel~~ Office of the Attorney General ("OAG") pursuant to D.C. Code § 16-2307 shall allege that the transfer is in the interest of the public welfare and protection of the public security and there are ~~not~~ no reasonable prospects for rehabilitating the child prior to his majority, ~~and~~ The motion shall contain a statement of facts supporting this allegation under the factors enumerated in D.C. Code § 16-2307(e) and showing the child's eligibility for transfer under D.C. Code § 16-2307(a). Copies of the motion shall be served on the Director of Social Services and on counsel for the child.

(b) *Notice of transfer hearing.* Following the filing of the motion, summonses shall be issued to the child and his spouse (if any) and to his parent, guardian, or custodian, in accordance with D.C. Code § 16-2307(b) and SCR-Juvenile 9. The summons shall be accompanied by a copy of the petition if the parties have not already received a copy. The summons shall contain a brief description of the offense which is the subject of the transfer proceedings and a statement that jurisdiction over the offense may be transferred to the Criminal Division unless the judge finds at the transfer hearing that there are reasonable prospects for rehabilitating the child prior to his 21st birthday. The summons shall also advise the parties that the child will be represented by counsel at the transfer hearing, and that the ~~Division~~ Family Court will appoint counsel for him if counsel is not retained.

(c) *Mental examination.* Upon receipt of the motion requesting transfer, the Director of Social Services shall arrange for an immediate psychological or psychiatric examination of the child, unless the child has had a psychological or psychiatric examination within the past year. The report of the examination shall state whether there are reasonable

grounds to believe the child is ~~substantially retarded or mentally ill~~ incompetent. If on the basis of the examination and other evidence the ~~Division~~ Family Court determines there are reasonable grounds to believe the child is ~~substantially retarded or mentally ill~~ incompetent, it shall stay the proceedings for the purpose of obtaining a psychiatric examination and shall proceed according to D.C. Code §16-2307(c). If, as a result of the mental examination the Family Court determines that the child is incompetent, it shall proceed according to D.C. Code § §16-2307(c) and 16-2315(c).

(d) Time to conduct the transfer hearing and enter an order on motion to transfer. Except in cases in which there is an issue pertaining to the child's competency as provided in D.C. Code § 16-2307 (c), the Family Court shall conduct a hearing on a transfer motion within 30 days (excluding Sundays and legal holidays) of the filing of the transfer motion. Upon the motion of the child or the OAG, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the motion for transfer, the Family Court must state in the order the extraordinary circumstances for the delay. The order deciding the motion to transfer shall be entered within 30 days (excluding Sundays and legal holidays) of the conclusion of the transfer hearing. The Family Court may extend the time to enter its order deciding the motion to transfer, for good cause shown, for an additional period not to exceed 30 days (excluding Sundays and legal holidays).

(e) The transfer order. If the motion is granted by the Family Court, a statement of its reasons for ordering the transfer shall accompany the transfer order. The court's findings with respect to each of the factors set forth in D.C. Code § 16-2307(e) relating to the public welfare and protection of the public security shall be included in the statement of reasons. The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

COMMENT

~~Section (e) reconciles implements D.C. Code § 16-2307(e), which requires the Division to stay the proceedings for the purpose of obtaining an examination only "when there are grounds to believe the child is substantially retarded or mentally ill", and D.C. Code § 16-2307(e)(3), which requires that evidence of the child's mental condition be considered in every transfer decision.~~

This rule sets forth procedures for adjudicating motions to transfer a child and specific procedures in cases where there is reason to believe the child may be incompetent.

SCR JUVENILE 109

TRANSFER HEARING

- (a) *Examination of records.* Upon request to the clerk of the ~~Division~~ Family Court, the ~~Corporation Counsel~~ Office of the Attorney General (“OAG”) and counsel for the respondent shall have the opportunity to examine and copy all case and social records pertaining to the respondent as defined in D.C. Code §§ 16-2331 and 16-2332.
- (b) *Filing of written materials.* Counsel may submit any written materials which ~~counsel~~ ~~feels~~ might be helpful to the judicial officer in making the transfer decision. Such materials must be filed with the Clerk of the ~~Division~~ Family Court no later than three days prior to the scheduled date of the transfer hearing.
- (c) *Evidence.* Evidence which is material and relevant shall be admissible at the transfer hearing. Except as provided by D.C. Code § 16-2307(e-2), the ~~Corporation Counsel~~ OAG shall have the burden of showing by a preponderance of the evidence that it is in the interest of the public welfare and protection of the public security that the respondent be transferred for criminal prosecution and that there are no reasonable prospects for rehabilitating the respondent within the jurisdiction of the Family ~~Division~~ Court prior to the respondent’s majority.
- (d) *Presence of parties.* The respondent and the respondent’s parent, guardian, or custodian shall be present throughout the transfer hearing, unless the judicial officer makes a written finding that the presence of the parent, guardian, or custodian is not possible, except that the judicial officer may temporarily exclude the respondent if the judicial officer finds such exclusion to be in the respondent’s best interest.
- (e) *Presence of non-parties.* Victims and eyewitnesses, and the immediate family members and custodians of the victims and eyewitnesses, shall have a right to attend the transfer hearing, subject to the rule on witnesses.

SCR JUVENILE RULE 110

PHYSICAL AND MENTAL EXAMINATIONS

- (a) *Authority of the Family Court and pPlace of examination.* At any time following the filing of a petition, the ~~Division~~ Family Court may order a child examined as an aid in determining his physical or mental condition in accordance with D.C. Code § 16-2315. The ~~Division~~ Family Court may order the examination conducted at the Child Guidance Clinic, ~~St. Elizabeths Hospital~~, or any other appropriate hospital, agency or

institution, or may refer the child to the ~~D.C. Mental Health Administration~~ appropriate District of Columbia agency with instructions to secure ~~testing~~ examination within a prescribed period of time.

(b) *Hearing on request for mental health examination.* When a request for a mental health examination of a child is made on motion of one of the parties or by the court, the Family Court shall notify the parties and hold a hearing on that request to determine whether to order such examination and whether any such examination should be conducted on an outpatient or inpatient basis.

(1) *Inpatient examination.* The Family Court may order an inpatient mental health examination of a child only if a psychiatrist or qualified psychologist as defined in D.C. Code § 16-2301(40) certifies that he has examined the child and that the child is presently in need of a mental health examination that cannot be provided effectively on an outpatient basis. If the Family Court receives a request for an inpatient mental health examination that is not filed with a written finding of a psychiatrist or qualified psychologist that the child is in need of a mental health examination which cannot be effectively provided on an outpatient basis, the Family Court shall order that a forensic screening be conducted by the Department of Mental Health within 24 hours or by the next business day.

(2) *If the Family Court orders a forensic screening pursuant to subparagraph (b)(1) of this rule, upon completion of the forensic screening, the psychiatrist or qualified psychologist shall prepare a written report indicating whether further examination of the child's mental health is needed and whether such examination can be conducted on an outpatient basis. The report shall be filed with the Family Court with copies served on the attorneys of record. A forensic screening report shall include the following information:*

(A) a certification of whether the examination can be effectively conducted on an outpatient basis;

(B) if an inpatient mental health examination is recommended,

- (i) an explanation of the need for an inpatient examination;
- (ii) a recommendation of an appropriate hospital, facility or institution where the inpatient examination should be conducted;
- (iii) a statement of whether immediate hospitalization is recommended, and if so,
- (iv) the bases for such recommendation.

(C) If the forensic screening is ordered in whole or in part to determine whether the child is competent to proceed:

(i) a preliminary assessment of the child's capacity to understand the proceedings against him, including the nature of the charges and range of options available to the court at disposition; and

(ii) the child's ability to assist his attorney.

(3) Prior to any hearing pursuant to subsection (b) of this Rule, the Family Court shall notify counsel for the child, the child's parents, guardian or custodian, and the Assistant Attorney General of the request for the examination, the requesting party, and the reasons proffered for the request.

(4) An order of the Family Court for an inpatient mental health examination shall provide:

(A) That the hospital or other appropriate facility for the purpose of the mental health examination shall not discharge the child without further order of the Family Court; and

(B) For a return date for a hearing no later than the 21st day from the date of the order for inpatient mental health examination.

~~(b) *Inpatient examination prior to factfinding hearing.* No child may be committed for an inpatient examination prior to a factfinding hearing unless the Division, on the basis of a hearing at which the child is represented by counsel, orders the child placed in a hospital or other suitable facility for the purpose of the examination, or unless such hearing is waived by respondent's attorney and his parents, guardian or custodian. If commitment for inpatient examination is ordered, the Division shall set forth its reasons for the commitment in writing.~~

(c) *Court order for access to mental health and educational records.* Upon motion of either party, and after consideration of any response from the opposing party, the Family Court may issue an order to procure a child's mental health and educational records that are relevant for purposes of an examination ordered pursuant to D.C. Code § 16-2315(a). The Family Court order shall provide in detail which mental health and educational records the order covers and identify who shall have authority to procure the records. The Family Court shall order that the person who obtains these records pursuant to the Court order shall not disclose the records or information contained therein except as permitted by the Court.

~~(e)~~(d) *Outpatient examination prior to factfinding hearing.* If a child is ordered to be examined on an outpatient basis prior to a factfinding hearing, the ~~Division~~ Family Court shall promptly notify counsel for the child, and the child's parents, guardian or custodian, of the reasons for the examination and the place where the examination is to take place. Upon request by counsel for the child or the child's parent, guardian, or custodian, the ~~Division~~ Family Court shall hold a hearing within 48 hours to establish the necessity for the examination.

(e) Report of inpatient or outpatient examination.

- (1) Timing. A written report of the examining psychiatrist or qualified psychologist shall be filed with the Family Court with copies to attorneys of record no later than 20 days from the date of the order of examination and no later than one day prior to a hearing. A written report may be filed with the Family Court with copies to the attorneys of record at any time after the examining psychiatrist or qualified psychologist has completed the examination.
- (2) Content of report conducted in whole or in part for the purpose of determining the competency of the child to proceed. A written report of the examining psychiatrist or qualified psychologist shall include the following information: an assessment of whether the child has the capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition; an assessment of the child's ability to assist his attorney; whether the child is incompetent to proceed, and if so, the reasons and bases for the conclusion and the suspected cause of the incompetence; an assessment of the likelihood of the child attaining competence in the reasonably foreseeable future, and if likely, any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and a certification as to the least restrictive setting for providing the recommended treatment and services.

(f) HIV/AIDS testing.

- (1) At the request of the Attorney General or his or her designee to have a respondent tested for the HIV/AIDS virus, the Family Court shall hold a hearing to determine if there is probable cause to believe that a victim or eyewitness to an alleged delinquent act may have been put at risk of the HIV/AIDS virus by virtue of being a victim or eyewitness to an alleged delinquent act.
- (2) If the Family Court determines that there is probable cause to believe that the victim or eyewitness was put at risk of the HIV/AIDS virus by virtue of being a victim or eyewitness to an alleged delinquent act, the Family Court shall order that the respondent be tested for the HIV/AIDS virus and shall order the Attorney General or his or her designee to disclose the results of the testing to the respondent and the victim or eyewitness and advise the victim or eyewitness that he or she may disclose the respondent's identity only to his or her doctor or counselor.

COMMENT:

This rule supplements D.C. Code § 16-2315. Sections ~~(b) and (e)~~ (c) and (d) of the rule reflect the statutory preference for outpatient examinations. (See D.C. Code § 16-2315(b)). Section (f) implements D.C. Code §16-2315 (f).

SCR JUVENILE 112

RESTITUTION AND FINES

~~(a) A dispositional order may require the respondent to make restitution in a reasonable amount or to pay a fine in an amount not exceeding \$300, provided:~~

~~(1) The respondent is at least 14 years of age,~~

~~(2) The respondent is gainfully employed or has reasonable prospects for gainful employment,~~

~~(3) The amount of restitution or fine ordered is commensurate with the respondent's earnings or prospective earnings, and~~

~~(4) The judge believes that the restitution or fine will implement the rehabilitation of the respondent.~~

~~(b) Payment of any restitution or fine ordered by the Division shall be made to the Clerk of the Division and shall be made over such period of time as the Division may direct.~~

(a) Following a restitution hearing, the Family Court may enter a judgment of restitution against a child, who has been found to have committed a delinquent act, against the child's parent or against the child's guardian pursuant to D.C. Code § 16-2320.01.

(b) The restitution hearing may be part of the fact-finding hearing or disposition hearing, or held separately. If not held as part of the fact-finding or disposition, the restitution hearing shall be held within 30 days of the disposition hearing, unless the Court extends the date of the hearing for good cause.

(c) A judgment of restitution may not be entered against a parent or guardian unless the parent or guardian is afforded notice and a reasonable opportunity to be heard and to present appropriate evidence in the parent or guardian's behalf.

(d) A written statement or bill for medical, dental, hospital, funeral or burial expenses, or for the cost for repair and replacement of property, shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(e) If the Family Court finds that the child, parent or guardian is financially unable to pay restitution, the Family Court may order the child, parent, or guardian instead to perform community service or some other non-monetary service of equivalent value.

(f) Payment of any judgment of restitution may be made directly to the victim, governmental entity or third party payor as the Court directs. Alternatively, the Court may direct that payment be made through the Clerk of the Court. Payment will be made over such period of time as the Court directs.

COMMENT

~~This rule provides an additional dispositional alternative pursuant to D.C. Code § 16-2320(a)(5) and § 16-2320(e)(1).~~

The rule was redrafted to implement D.C. Code § 16-2320.01, a provision created by the Omnibus Juvenile Justice Act of 2004, D.C. Law 15-0261 (March 17, 2005).

SCR JUVENILE 110A

TREATMENT WHEN CHILD DETERMINED TO BE INCOMPETENT

(a) Court order for competency treatment. If the Family Court orders treatment and services that may render the child competent in the reasonably foreseeable future, pursuant to D.C. Code § 16-2315(c)(2), the order shall specify the following:

- (1) whether the treatment is to be received on an outpatient or inpatient basis;
- (2) if outpatient treatment is ordered, the name of the psychiatrist or qualified psychologist who will provide the treatment;
- (3) if inpatient treatment is ordered, which hospital or mental health facility or unit designated by the Mayor shall provide the treatment;
- (4) that if the psychiatrist or qualified psychologist responsible for the treatment is of the opinion that the child is competent or inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist or qualified psychologist shall immediately send a report to the Family Court, with copies to the attorneys of record;
- (5) the dates, which shall be no less than every two months from the date of the order for treatment, by which the psychiatrist or qualified psychologist responsible for the treatment of the child shall submit reports to the Family Court, with copies to the attorneys of records, pursuant to D.C. Code § 21-2315(c)(6); and

(6) that if inpatient treatment is ordered, the facility providing the inpatient treatment shall not discharge the child without further order of the Family Court.

(b) Court hearing on report of competency or inpatient treatment.

(1) If at any time during treatment or services to render the child competent, pursuant to D.C. Code § 16-2315(c)(2)(A), the psychiatrist or qualified psychologist files a report with the Family Court stating the opinion that the child is competent to proceed or that inpatient hospitalization is no longer necessary, the Family Court shall hold a prompt hearing on the report.

(2) The Family Court shall hold a hearing on the report of the treating psychiatrist or the qualified psychologist filed pursuant to D.C. Code § 16-2315(c)(6) concerning whether the child is competent to proceed. The hearing shall be held no more than 30 days from the date of the treating psychiatrist's or the treating qualified psychologist's report, if the child is receiving treatment as an inpatient and no more than 60 days, if the child is receiving treatment as an outpatient. The Family Court may, for good cause shown, extend the time for the hearing but no more than 30 days, if the child is detained or hospitalized, and not more than 60 days, if the child is not detained or hospitalized.

(c) Report of psychiatrist or qualified psychologist. The report filed by the psychiatrist or qualified psychologist responsible for the treatment of a child ordered pursuant to D.C. Code § 16-2315(c) shall contain the information required by subsection 2315(c)(6).

SCR JUVENILE 119

PARTICIPATION ORDER

In any proceeding in which a child is alleged to be delinquent or in need of supervision, the Court shall enter an order specifically requiring a parent or guardian to participate in the rehabilitation process of a juvenile, including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program, unless the Court determines that such an order is not in the best interest of the child. In addition, when the Court determines that it is in the best interest of the child, the Court shall issue an order applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian. The order shall require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding or court-ordered program concerning the child. If the Court determines that the person ordered to appear received notice of the order and failed to appear without good cause, the Court shall issue a bench warrant pursuant to D.C. Code § 16-2325.01(d), as

amended, and it may proceed to adjudicate the person in civil contempt pursuant to D.C. Code § 16-2325.01(c), as amended.

By the Court:

Date: August 11, 2009

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
All Magistrate Judges
Library
David Luria, Attorney Advisor