

Rule 107. Detention or Shelter Care Hearing

(a) Presence of parent, guardian, or custodian. The detention hearing may be held without the presence of the respondent's parent, guardian, or custodian. However, upon request of the respondent's attorney for good cause shown, the Family Court may postpone the hearing because of the absence of a parent, guardian, or custodian.

(b) Order of proceedings. The judicial officer may admit any testimony and other evidence relevant to the necessity for detaining the respondent, whether or not such evidence would be admissible at a factfinding hearing, provided that any written reports or social records made available to the judicial officer at the hearing shall be made available to the Office of the Attorney General and to counsel for the respondent at the hearing. At the conclusion of the hearing, the judicial officer shall set a date for the next hearing, and counsel for the respondent shall be furnished with a copy of the judicial officer's detention order, with reasons set forth therein.

(c) Application for reconsideration. A judicial officer ordering the release of a respondent upon conditions specified in D.C. Code § 16-2312(d)(2) may at any time amend the order to impose additional or different conditions of release, or order that the respondent be detained, provided the judicial officer gives prompt notice of such action to counsel for the respondent. A respondent who has been placed in detention, shelter care, or released under conditions pursuant to D.C. Code § 16-2312, or the Office of the Attorney General, may, at any time thereafter upon written application to the Family Court, have the order reviewed by the judicial officer who entered the order, and a decision rendered within five days of presentation to the judicial officer who will state the reasons therefor in writing. If the judicial officer finds, after notice to the respondent and opportunity to be heard, that the respondent has violated the respondent's conditions of release, the judicial officer may impose additional conditions of release, or may order that the respondent be detained; provided, however, that the respondent shall not be detained unless (1) detention is required to protect the person or property of others or of the respondent or to secure the respondent's presence at the next court hearing as set forth in SCR-Juvenile 106; and (2) the judicial officer determines that there is probable cause to believe that the allegations in the petition are true. If the judicial officer who entered the above order is unavailable or is no longer sitting in the Family Court at the time of the application, the judicial officer then sitting in New Referrals Court shall review the order and may modify or terminate it, stating the reasons therefor in writing.

(d) Review of hearing commissioner's order of detention, shelter care or release upon conditions. Review of a hearing commissioner's order of detention, shelter care or release upon conditions shall be made upon the request of the respondent by a judge designated by the Presiding Judge of the Family Court within 24 hours (excluding Saturdays, Sundays and legal holidays) following the entry of the order by the hearing commissioner, provided, however, that the time for review may be extended for no more than an additional 24 hours (excluding Saturdays, Sundays and legal holidays) upon notice to the parties and for good cause shown. No written motions or oppositions are required under this paragraph. Nothing in this paragraph shall preclude review of a hearing commissioner's order pursuant to SCR-Family D(e).

(e) Appeal from order of detention or release upon conditions. If a respondent is ordered detained and probable cause is found, or if a respondent is ordered released subject to conditions under D.C. Code § 16-2312(d)(2), the judicial officer shall inform the parties of

the respondent's right to an interlocutory appeal within two days under D.C. Code § 16-2328.

(f) Transfer to adult detention facility. Whenever the Family Court receives notice that a respondent who comes within the provisions of D.C. Code § 16-2313(e) constitutes a menace to other children in detention or cannot be controlled, it shall notify respondent's attorney and shall schedule a summary hearing not later than the next day (excluding Sundays) to determine whether the child should be transferred to a place of detention for adults.

COMMENT

The detention order with reasons called for in paragraph (b) will be on a form. Under paragraph (c), a judicial officer may impose additional conditions of release, or may order the respondent detained, if the judicial officer finds that the respondent has violated conditions of release. Because there is no statutory standard of proof for a finding of violation of conditions of release in juvenile cases, the rule does not provide one. However, under comparable circumstances in the criminal system, D.C. Code § 23-1329(b) provides that violations of conditions of release must be established by clear and convincing evidence before conditional release may be revoked. Paragraph (c) also requires that before detaining a respondent who has been released upon conditions, the judicial officer must find that detention is required to protect the person or property of others or of the respondent, or to secure the respondent's presence at the next court hearing under the factors set forth in SCR-Juvenile 106. Paragraph (d) sets forth an expedited procedure for review of a hearing commissioner's order of detention, shelter care or release upon conditions. Paragraph (f) provides a fair procedure for transfers under D.C. Code § 16-2313(e).