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## JUVENILE ADVOCACY MANUAL



AND

## JUVENILE COLLATERAL CONSEQUENCES GUIDE

Commonwealth of Kentucky  
Department of Public Advocacy

## Introducing the Juvenile Advocacy Manual

Welcome to the inaugural edition of the Department of Public Advocacy's Juvenile Advocacy Manual. This publication is meant to be an overview of the most relevant law in the various areas of juvenile practice and procedure. This is a publication mainly aimed at defense attorneys, however the law is stated as it stands not as one would like it to be. This manual is organized alphabetically by topic area with the attempt to cross reference to other helpful sections.

This manual incorporates the work of a great deal of people from the current and past Juvenile Post-Disposition Branch. Special thanks go to Kim Shown for starting the compilation and formatting of this publication and John Wampler for the many drafts. Also, Tessa Harris for hours spent formatting and proofing the work of so many authors. This manual would not have been possible however without the work of Gail Robinson who was the main wealth of knowledge and driving force behind the more comprehensive Juvenile Law Manual for many years. This publication incorporates many years of training materials, outlines, national resources and practice guides from numerous great minds. This manual was developed and paid for under grant number JBI10B from the Juvenile Accountability Block Grant.

A handwritten signature in black ink that reads "LaMer Kyle-Griffiths". The signature is written in a cursive, flowing style.

**LaMer Kyle-Griffiths**

JPDB Manager

**Disclaimer** – This publication is for informational purposes only and does not constitute legal advice.

This publication provides an overview of the law of juvenile court as well as the civil consequences of juvenile charges and adjudications, but does not attempt to provide comprehensive legal analysis or information. The information contained in this publication does not include all possible cases on a given topic or all of the conditions or exceptions that could apply in a given situation. Also, laws of the Federal government, other jurisdictions, and other political subdivisions of this Commonwealth may impose additional sanctions and disqualifications that are not listed in this publication.

This publication was finalized in May 2013. Subsequent changes to the law are not included.

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## NOTES

## Adjudication Hearings

**KRS 610.070** Juvenile hearings are to be bench trials. All juvenile hearings are to be conducted in a *formal* manner.

**KRS 610.080 (2)** The Rules of Criminal Procedure Apply in juvenile proceedings, but the child must make a motion to have the rules apply. Also, the “beyond a reasonable doubt” standard applies to juvenile cases. This provision applies to ALL juvenile cases, including status offenses.

**Dryden v. Commonwealth**, 435 S.W.2d 457 (Ky. 1968)

Juveniles are not entitled to jury trials.

**C.J.D. v. Commonwealth**, 2008 WL 1918630 (Ky. App. 2008) **UNPUBLISHED**

A juvenile is not entitled to a jury trial even when the offense charged by the Commonwealth makes him eligible for declaration by the Court as a juvenile sex offender.

**NOTE: If you have a case where you think a jury trial would be appropriate file a motion for jury trial, an example of which is on the Trumpet. Also, feel free to contact the Juvenile Post Disposition Branch for argument strategy on this issue at (502) 564-8006.**

**McKeiver v. Pennsylvania**, 403 U.S. 528, 548, 91 S.Ct. 1976, 1987 (1971) This case held that jury trials were not a due process requirement in juvenile adjudications, but stated: "There is, of course, nothing to prevent the juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury."

**NOTE: Request an advisory jury anytime you feel the judge may be unduly influenced by knowledge a jury would never know such as suppressed evidence, earlier trailers, etc.**

**KRS 610.070** “All cases involving children brought before the court ... shall be granted a *speedy hearing*.”

**B.J. v. Commonwealth**, 241 S.W.3d 324 (Ky. 2007)

An adjudication hearing may be conducted with the juvenile defendant voluntarily *in absentia*.

**NOTE: The *child* must be the one who voluntarily wishes to proceed in absentia, not the lawyer.**

**KRS 610.060** Parent/guardian and other family members must be advised of their right to not testify against child. This may happen at arraignment or any other time.

**In Re Winship**, 397 U.S. 362, 90 S.Ct. 1068 (1970)

The standard of proof in an adjudication hearing is “beyond a reasonable doubt.” The court held that the “beyond a reasonable doubt” standard applied in both criminal and juvenile proceedings.

## Admissions

**Boykin v Alabama**, 395 U.S. 238, 89 S.Ct. 1709 (1969)

For an individual’s admission of guilt and waiver of his constitutional rights to be valid, the court must make a finding that the individual “knowingly and voluntarily” waived his rights when choosing to enter an admission.

## NOTES

**D.R. v. Commonwealth**, 64 S.W.3d. 292 (Ky. App. 2001)

Held no juvenile can waive counsel without first consulting with counsel and *Boykin* applies in juvenile court. Any admission entered without assistance of counsel or without a proper *Boykin* colloquy should be subject to challenge. Further, this challenge must be made pretrial.

**A.B. v. Commonwealth**, 2010 WL 4740319 (Ky. App. 2010) **UNPUBLISHED**

A juvenile's admission of guilt for truancy was not valid because she did not enter into the stipulation of truancy knowingly or intelligently. The juvenile was 13 years old at the time of the hearing and had never made a court appearance. The court did not explain to the juvenile or her mother their respective rights or the potential benefits of representation by counsel. At no time did the court advise her of the constitutional rights she was waiving by entering her admission.

**L.A.S. v. Commonwealth**, 2010 WL 2329102 (Ky. App. 2010) **UNPUBLISHED**

Reaffirming D.R. v. Commonwealth, the court was statutorily obligated to appoint the child counsel, and only after being appointed counsel, child could later choose to waive counsel.

**N.K. v. Commonwealth**, 324 S.W.3d 438 (Ky. App. 2010)

An admission to habitual truancy must be entered by child, not counsel. Orders vacated.

**M.G. v. Commonwealth**, 2008 WL 4683239 (Ky. App. 2008) **UNPUBLISHED**

Boykin was not complied with since child did not even enter an admission and court should not have held contempt hearing with no prosecutor present.

**N.W. v. Commonwealth**, 2012 WL 1383212 (Ky. App. 2012) **UNPUBLISHED**

Family Court's failure to properly advise child of her Boykin rights when she pled guilty to a beyond control charge caused the court's contempt finding, rendered much later, to be invalid.

**T.C. v. Commonwealth**, 2012 WL 1383215 (Ky. App. 2012) **UNPUBLISHED**

Trial court did not properly advise child of *Boykin* rights when she entered plea. Accordingly, that plea could not form the basis for a later contempt charge. Fact that child was subsequently advised of her Boykin rights before pleading guilty to the contempt charge did not cure the earlier failure to advise child of her Boykin rights in proceedings on original beyond control.

**D.G. v. Commonwealth**, 355 S.W.3d 476 (Ky. App. 2011)

Court held that in a case where judge conducted no Boykin colloquy, and did not even advise child that he had the *option* of pleading not guilty, the child's guilty plea must be vacated.

**M.A.M. v. Commonwealth**, 2013 WL 1488509 (Ky. App. 2013) **To Be Published, Not Final**

Admission is not entered voluntarily, intelligently, and knowingly contrary to *Boykin* when there is no inquiry at the time of the admission as to the veracity of the charges, no inquiry as to whether any stipulation was voluntary or coerced or if the court does not inform the child before accepting his plea of what the possible consequences, in terms of the range of punishments, would be if he admitted his guilt.

## NOTES

**Age**

**W.D.B. v. Commonwealth**, 246 S.W.3d 448 (Ky. 2007)

States that the infancy defense does not apply to adjudications under the juvenile code. The Thomas and Spurlock cases themselves are still good law, however, and are included to provide historical perspective.

**Thomas v. Commonwealth**, 189 S.W.2d 686 (Ky. 1945)

A child below age 7 is incapable of committing a crime and there is a presumptive incapacity (incapable of having the intent to commit a crime) between the ages of seven & fourteen which may be overcome by evidence.

**Spurlock v. Commonwealth**, 223 S.W.2d 910 (Ky. 1949)

The common law rule raises a presumption of incapacity of an infant between the ages of seven & fourteen, which is rebuttable, and the presumption is that the incapacity after seven years of age decreases with the progress of his years. At common law, a child under the age of seven years is conclusively presumed to be incapable of committing a crime.

**Appeals**

**Kennedy v. Commonwealth**, 544 S.W.2d 219 (Ky. 1976) (**overruled on other grounds**)

Failure of the trial court to hold an in chambers hearing to determine the voluntariness of the confessions as required by KRS 422.110(2) is not properly preserved for appellate review as counsel raised no question about voluntariness to the trial court. Counsel merely objected to the inconsistency and counsel's lack of knowledge of their existence. Court emphasized that appellants will not be permitted to feed one "can of worms" to the trial judge and another to the appellate court.

**NOTE: Remember to preserve your issues via motion including all possible grounds for the relief you seek as well as requesting a hearing or providing an offer of proof for the best chance at review and beneficial decision by the reviewing court.**

**In re Gault**, 387 U.S. 1, 87 S.Ct. 1428 (1967)

The proceedings of the Juvenile Court failed to comply with the Constitution. Children have a right to appeal among other Constitutional rights and must be afforded all of them.

**Brewer v. Commonwealth**, 283 S.W.2d 702 (Ky. 1955)

The Kentucky Supreme Court held that a circuit court's refusal to hear an appeal from juvenile court where the appeal was granted by statute violates equal protection.

**Buchanan v. Commonwealth**, 652 S.W.2d 87 (Ky. 1980)

The Court held that an appeal can only be pursued once the charges are finally disposed.

**Dryden v. Commonwealth**, 435 S.W.2d 457 (Ky. 1968)

The first court of review in juvenile cases held in District Court is to the Circuit court. If the circuit court denies an appeal that presents a substantial factual issue or a question of law, its action is reviewable by the Court of Appeals.

## NOTES

**“Automatic” Transfer**

**See, Firearm Transfer**

**Avowal**

**Hart v. Commonwealth**, 116 S.W. 3d 481 (Ky. 2003)

The court held that there is requires that all allegations of error regarding excluded evidence to be preserved by requesting the court to enter the evidence into the record by avowal or by counsel offering a proffer of the evidence (Also see KRE 103). Without an avowal, a reviewing court has no mechanism for reviewing the evidence submitted to determine whether exclusion was prejudicial. **See Also, Jones v. Commonwealth**, 623 S.W.2d 226 (1981)

**Beyond Control of Parents**

**See also, Family Court Rules of Procedure and Practice (FCRPP)**

**KRS 600.020 (3)** A child is “beyond control” of their parents when he or she has “*repeatedly* failed to follow the *reasonable* directives of his or her parents, legal guardian, or person exercising custodial control or supervision” and “which behavior results in *danger* to the child or others.” (Emphasis added)

**NOTE: This statute provides a lot of avenues for attack. The Commonwealth has the burden of proving “repeatedly,” “reasonable,” and “danger.”**

**A.H. v. Commonwealth**, 2011 WL 1085639 (Ky.App. 2011) **UNPUBLISHED**

Juvenile court did not have jurisdiction in a beyond control of parent case to enter educational orders that extended to age twenty-one (21). Court specifically limited its holding to beyond control of parent charge.

**NOTE: Although this opinion states limited to beyond control of parent charges, the Court also said in the same opinion: “KRS 610.120(3) makes clear that proceedings that begin when an alleged status offender was still a child must be terminated when the child reaches his eighteenth birthday unless otherwise provided in the Juvenile Code.”**

**Beyond Control of School**

**See also, Family Court Rules of Procedure and Practice (FCRPP)**

**KRS 600.020 (4)** A child is “beyond control” of the school when he or she has “*repeatedly* violated the lawful regulations for the government of the school.” (Emphasis added) Such violations must be documented in writing, and must describe both the child’s behavior as well as the “intervention strategies” attempted by the school.

**NOTE: This statute provides a lot of avenues for attack. The Commonwealth has the burden of proving “repeatedly,” “reasonable,” and “danger.” Also, the school must document its “intervention strategies,” which implies that a petition cannot be brought without the school having first tried other alternative resolutions before running to the court system.**

**B.K. v. Commonwealth**, 2008 WL 2780298 (Ky. App. 2008) **UNPUBLISHED**

Trial court had jurisdiction to consider beyond control petition even though Commonwealth failed to introduce evidence that pre-petition conference was held with the CDW pursuant to KRS 630.050.

**NOTE: Make sure to move to dismiss this charge in the trial court on jurisdictional ground as B.K. also held that the trial court could have dismissed the petition had this issue been timely litigated.**

## NOTES

**E.M. v. Commonwealth**, 2012 WL 3629022 (Ky. App. 2012) **UNPUBLISHED**

Court held that Family Court's finding of "Beyond Control of School" was proper, because school *did* properly document interventions, as required by KRS 600.020(4), and that court was presented with sufficient evidence to support its finding.

**Bond**

Juveniles are not entitled to bond unless the child has been transferred to Circuit Court to be tried as an adult. At that point, the Court must set reasonable bond. KRS 640.010(2)(c), 640.020, RCr. 4.02, 4.16.

**Abraham v. Commonwealth**, 565 S.W. 2d 152 (Ky. App. 1977)

The court reversed the trial court's decision because it only considered the seriousness of the offense in making the bond decision. The court must consider all factors in making this decision.

**KRS 610.280(1)(b)** Use to argue bond for juveniles. This statute outlines four factors to be examined in determining if a child should remain detained:

1. Seriousness of the offense;
2. Safety of the child and community;
3. Prior Record; and
4. Pending charges.

**KRS 431.540 (2)** If the Judge refuses to follow the Uniform Schedule of Bail, then it must set forth its reasons in writing.

**Commitment**

**KRS 630.120(6)** The Family Court (or Juvenile Court in jurisdictions without a Family Court) has the authority to commit a status offender to the Cabinet for Health and Family Services.

**KRS 630.120(7)** A status offender adjudicated for a tobacco or alcohol status offense may not be committed to the Cabinet as a result of that adjudication.

**KRS 635.055** A child cannot be committed as a public offender on a charge of contempt of court. See also, Contempt.

**KRS 635.060(3)** Juvenile Court has the authority to commit a public offender to the Department of Juvenile Justice.

**Commonwealth v. Partin**, 702 S.W.2d 51 (Ky. App. 1986)

Orders of commitment may include advisory recommendations from the court, but the court has no authority to direct the type of treatment.

**See Also, Least Restrictive Alternative**



## Competency to Stand Trial

## NOTES

### **United States v. Branham**, 97 F.3d 835 (6th Cir. 1996)

Competency to stand trial is a matter of whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether [the defendant] has a rational as well as a factual understanding of the proceedings against him."

### **Moody v. Commonwealth**, 698 S.W.2d 530 (Ky. App. 1985)

If a juvenile is competent at the time of adjudication, but at the time of disposition there is reasonable cause to believe the juvenile is incompetent to stand trial, the court cannot continue with the disposition until such a time as it can be found that the juvenile is again competent to stand trial.

### **Lear v. Commonwealth**, 884 S.W.2d 657 (Ky. 1994)

The juvenile's attorney must call to the attention of the court the belief that there are reasonable grounds to suspect the juvenile is not competent to stand trial unless it is so plainly obvious that the trial judge cannot fail to be aware of it.

### **Commonwealth v. Strickland**, 375 S.W.2d 701, 703 (Ky. 1964)

The attorney - and the court - needs to determine if an individual has the ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.

### **Dusky v. United States**, 362 U.S. 402 (Ky. 1960)

Test of defendant's competency to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has rational as well as factual understanding of proceeding against him and it is not enough that he is oriented to time and place and has some recollection of events.

*See, Experts*

*See, Forced Medication*

### **Gilbert v. Commonwealth**, 575 S.W.2d 455, 456 (Ky. 1978)

The juvenile's constitutionally protected due process rights require the hearing on the competency issue to be of an evidentiary nature.

### **McCracken County Fiscal Court v. Graves**, 885 S.W.2d 307 (Ky. 1994)

In the interest of the juvenile's right to participate in the prosecution's examination, the juvenile attorney may need to have the defense expert observe while the prosecution's expert interviews the juvenile. The Commonwealth may be required to pay for the time of the defense expert because the defense had a right to participate in the state's examination.

## Competency to Testify

### **B.B. v. Commonwealth**, 226 S.W. 3d 47. (Ky. 2007)

Kentucky Supreme Court held that four year-old was not competent to testify, due to fact that child shook her head "no" when asked if she understood what telling the truth meant or "what being honest is and telling exactly what happens," meant, and child did not understand concept or consequences of lying.

## NOTES

**NOTE: If a complaining witness in the case is young, file a motion to have that child evaluated for competency to testify.**

### Confessions, General

**RCr 9.60.** An individual's "confession," unless made in open court, will not warrant a conviction, without other proof that offense was committed.

**J.W. v. Commonwealth**, 2007 WL 3227436 (Ky. App. 2007) **UNPUBLISHED**

Juvenile's "confession" to sex abuse 1<sup>st</sup> degree was insufficiently corroborated in violation of RCr 9.60; adjudication of guilt reversed.

### Confessions, Miranda

**N.C. v. Commonwealth**, 396 S.W.3d 852 (Ky. 2013)

Juveniles are entitled to *Miranda* warnings before being questioned by a school official in the presence of a law enforcement officer, when they are subject to criminal charges or adult felony charges.

**Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602 (1966)

Prior to any interrogation of any individual in custody (or a custodial situation), the police must advise him or her of his or her basic Constitutional rights, including the right to an attorney and the right against self-incrimination.

**J.D.B. v. North Carolina**, 131 S.Ct. 2394 (2011)

The Supreme Court held that a child's age properly informs the *Miranda* custody analysis, so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

**Welch v. Commonwealth**, 149 S.W.3d 407 (Ky. 2004)

The Kentucky Supreme held that child was in custody, for *Miranda* purposes, when as necessary part of a juvenile sex offender treatment program, he disclosed several uncharged acts of sexual misconduct. Also found that program's counselors were state actors, for *Miranda* and the child's subsequent incriminating statements to police were fruit of the poisonous tree.

**C.W.C.S. v. Commonwealth**, 282 S.W.3d 818 (Ky. App. 2009)

Fourteen-year-old juvenile was not in police custody and no *Miranda* warnings were required before he was questioned by police officers at school about alleged sexual misconduct, where officer stated juvenile did not have to speak to officers, that he was free to return to class, and that officers would leave the school premises if he so chose.

**Commonwealth v. M.G.**, 75 S.W.3d 714 (Ky. App. 2002)

Court of Appeals held that social workers must give a child *Miranda* warnings if they are acting as agents of law enforcement.

**K.M. v. Commonwealth**, 2006 WL 1719752 (Ky.App. 2006) **UNPUBLISHED**

*Miranda* did not apply to preclude admission of statements juvenile made to social worker admitting drug use, where there was no allegation that juvenile was either in custody or under interrogation by social worker when she made statements admitting to drug use.

## NOTES

**Confessions, Voluntary****Shepherd v. Commonwealth**, 251 S.W.3d 309 (Ky. 2008)

A violation of KRS 610.220(2) concerning length of time child may be held in custody is one factor to be considered in deciding whether a confession is voluntary.

**KRS 610.220(1)(2)** A child may only be held in custody for investigative and examination purposes for a maximum of two hours unless an extension is granted by the court, trial commissioner, or court designated worker.

**KRS 610.200 (1)** Upon taking a child into custody, a police officer must advise the child of his rights, and then *notify the child's parent*! If the child's parent is not available, then "a relative, guardian, or person exercising custodial control or supervision of the child" may be notified.

**Murphy v. Commonwealth**, 50 S.W.3d 173 (Ky. 2001)

Court held that failure to comply with KRS 610.200 does not mandate suppression of juvenile's statement.

**Taylor v. Commonwealth**, 276 S.W.3d 800 (Ky. 2008)

If a juvenile defendant's custodial confession was otherwise made voluntarily and was not the result of police coercion, it can still be admissible even when police officers did not adhere to the parent notification provision of KRS 610.200 (1). However, the Court also said in Taylor that such an infringement is an important factor in the overall analysis of voluntariness.

**Commonwealth v. Bell**, 365 S.W.3d 216 (Ky. App. 2012)

Court of Appeals held that Juvenile's confession to detectives who interviewed him at school was not voluntary. Though child was read his Miranda rights, Court held compliance with authority was required at school, school officials forced juvenile into a room where he faced authority figures who feigned superior knowledge, one detective stated that he could not leave until he found out something, and detectives repeatedly demanded answers that the juvenile would feel compelled to provide if he was to be an obedient child.

**Tabor v. Commonwealth**, 613 SW2d 133 (1981)

The Supreme Court concluded that at a hearing on a motion to suppress pursuant to RCr 9.78, the prosecution must affirmatively establish the voluntariness of a confession by a preponderance of the evidence. Police officers present when the confession was given should be called to testify at the hearing, or their absences accounted for. In the present case, the Commonwealth offered no evidence to prove the voluntariness of the confession. Tabor's motion to suppress should have been granted because the Commonwealth failed to meet its burden of proof at the hearing.

**Henson v. Commonwealth**, 20 S.W. 3d 466 (Ky. 2000)

The three criteria used to assess the voluntariness of a confession allegedly obtained by coercion are: (1) whether the police activity was objectively coercive; (2) whether the coercion overbore the will of the defendant; and (3) whether the defendant showed that the coercive police activity was the crucial motivating factor behind the defendant's confession. (Citing to Morgan v. Commonwealth, Ky., 809 S.W. 2d 704, 707 (1991)(adopting federal due process standards of McCall v. Dutton, 863 F.2d 454 (6th Cir.1988))

## NOTES

## Contempt

**In Re Gault**, 387 U.S. 1 (1967)

Juvenile's liberty interest is at stake, a contempt hearing is an adversarial proceeding requiring the same due process considerations as for adults.

**Commonwealth v. Burge**, 947 S.W.2d 805, 808 (Ky. 1996)

Direct Contempt is committed within the presence of the court and will presumably be dealt with immediately in a summary fashion. It does not require any fact-finding function because all of the elements of the contempt are within the personal knowledge of the court. Therefore, a finding of direct contempt does not require any due process considerations. Further, the rules of evidence do not apply to summary findings of direct contempt. KRE 1101(d)(4).

**Taylor v. Hayes**, 418 U.S. 488, 499 (1974)

Indirect contempt on the other hand, occurs outside of the presence of the court so the court does not have the same first-hand knowledge of the facts. Therefore, due process must be satisfied prior to any finding of contempt for such things as violation of a court order. At a minimum, this would require a hearing with evidence presented and an opportunity to defend against that evidence.

**Young v. Knight**, 329 S.W.2d 195, 199 (Ky. 1959)

Contempt is a power inherent in the constitutionally given powers of all Courts. The reason for this is a practical one: the court must be given the power to compel compliance with its orders or those orders become meaningless. This is true whether the orders apply to adults or juveniles. In Kentucky, these constitutionally derived powers have been given some definition and direction through various statutes, though only in regards to available punishment. The power remains largely discretionary.

**Burge v. Commonwealth**, 947 S.W.2d 805 (Ky. 1996)

Civil contempt either direct or indirect, involves the failure of one to do something under order of court – generally for the benefit of a party litigant. Civil contempt is designed to coerce the person into obeying rather than to punish for past behavior: to compel obedience to and respect for an order of the court.

**Blakeman v. Schneider**, 864 S.W.2d 903, 906 (Ky. 1993)

Because of the fact that compliance with the order brings release, the primary characteristic of civil contempt is the fact that the contemnors "carry the keys of their prison in their own pockets."

**Gordon v. Commonwealth**, 133 S.W. 206 (1911)

Criminal contempt, either direct or indirect, is conduct "which amounts to an obstruction of justice and which tends to bring the court into disrepute." It seeks to punish conduct that has already occurred rather than to compel a course of action. The sanction is intended to be a punishment and is usually of a determinate period. Generally, in the juvenile setting, a contempt finding will be of this type since the contempt is usually for violating a court order.

In reality, it may be as important to look at what kind of sentence the judge can or does impose as it is to look at the conduct of the client in determining whether the contempt is classified as civil or criminal.

## NOTES

**A.W. v. Commonwealth**, 163 S.W.3d 4 (Ky. 2005)

Child can be found in contempt of court for violating a condition of probation. Court may impose sentence longer than sentence that was probated. Contempt sanction may be longer than the maximum detention time permitted for a public offender, as statute was not intended to limit court's contempt powers.

**K.F. v. Commonwealth**, 274 S.W.3d 457 (Ky. App. 2008)

Notice of contempt charge is required. "In order for any defendant to prepare and defend against allegations of contempt, proper notice must be given."

**See, Notice, generally.**

**KRS 610.040 (4)** Any person summoned by the court who, without reasonable cause, fails to appear, may be proceeded against for contempt of court.

**Wilson v. West**, 709 S.W.2d 468, 470 (Ky. App. 1986)

Juvenile court jurisdiction over adults is specifically limited to enforcement of its orders concerning a child under its jurisdiction, and any such authority is ancillary to the court's jurisdiction over the child.

**M.A.M. v. Commonwealth**, 2013 WL 1488509 (Ky. App. 2013) **To Be Published, Not Final**

Pre-adjudication orders entered on a child's case are not valid court orders as the child has not had an adjudication hearing and thus the child has not received his full due process rights before the order was entered. Consequently, a child cannot be held in contempt for violating such an order.

### Continuance

**Snodgrass v. Commonwealth**, 814 S.W.2d 579 (1991)

Factors the trial court is to consider in exercising its discretion to delay a trial are (1) length of delay; (2) previous continuances; (3) inconvenience to litigants, witnesses, counsel and the court; (4) whether the delay is purposeful or is caused by the accused; (5) availability of other competent counsel; (6) complexity of the case; and (7) whether denying the continuance will lead to identifiable prejudice.

**M.J. v. Commonwealth**, 115 S.W.3d 830 (Ky. App. 2003)

Trial court did not err by continuing trial for two weeks after Commonwealth announced closed, in order to allow the Commonwealth to meet the burden of proof. Continuances are in the sound discretion of the court, and the unavailability of the witness at the time trial commenced justified the trial court letting the Commonwealth re-open their case after announcing closed.

**M.G. v. Commonwealth**, 2008 WL 4683239 (Ky. App. 2008) **UNPUBLISHED**

Due process was violated when defense counsel was not given sufficient time to prepare for truancy adjudication hearing.

## NOTES

**Culpability**

**Roper v. Simmons**, 125 S. Ct. 1183, 1194, 543 U.S. 551 (2005)

The Supreme Court held that execution of individuals who were under 18 years of age at time of their capital crimes is prohibited by Eighth and Fourteenth Amendments. The court discussed the “evolving standards of decency” that compelled a finding that execution of juveniles was wrong.

**Graham v. Florida**, 130 S. Ct. 2011 (2010)

In holding that the Eighth Amendment prohibits imposition of life without parole on a juvenile offender who did not commit homicide, the Supreme Court made numerous findings, among them that juvenile non-homicide offenders had limited culpability compared to adults, and there was no legitimate penological goal, including retribution, deterrence, incapacitation, and rehabilitation, that provided adequate justification for such a sentence.

**Miller v. Alabama**, 132 S.Ct. 2455 (2012)

The Supreme Court held that a sentence of life without parole for juvenile convicted of capital murder was unconstitutional. The Court in *Miller* outlined the “foundational principle” of *Graham* and *Roper*: “that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.”

**Dependency, Neglect and Abuse (“DNA”)**

**KRS 610.010** Children have certain “fundamental rights” that the legislature believes must be “protected and preserved.” These include, but are not limited to: adequate food, clothing and shelter; freedom from physical, sexual or emotional injury or exploitation; to develop physically, mentally, and emotionally to their potential; and to educational instruction and a “secure, stable family.”

**KRS 620.025** “A finding of jurisdiction under this chapter [KRS 620] shall not necessarily preclude a finding of jurisdiction under KRS Chapters 625, 630, or 635; however, jurisdiction under this chapter shall take precedence. No child shall be released from the jurisdiction of the court under this chapter if concurrent complaints under KRS Chapters 630 or 635 are pending.”

**A.C. v. Commonwealth**, 314 S.W.3d 319 (Ky. App. 2010)

Court held that while KRS 620.025 made clear that DNA proceedings were to take precedence over status court proceeding, a DNA case did not *suspend* proceedings in the child’s status case.

**NOTE: A.C. did not address public offense cases, or the issue of disposition. In public offense cases where the court states at disposition that it feels it must commit the child to DJJ due to home not being a feasible least-restrictive alternative because of the *parents’* abuse or neglect of the child, KRS 620.025 still applies. It can still be used to argue that child should be placed in a foster home instead of being committed to DJJ.**

**Detention, Generally**

**Schall v. Martin**, 467 U.S. 253 (1984)

The court held that it was not a violation of due process for the family court to authorize pretrial detention of an accused juvenile delinquent based upon the finding that there was “serious risk” that the juvenile may before the return date commit an act which if committed by an adult would constitute a crime.

## NOTES

**Commonwealth v. W.E.B.**, 985 S.W.2d 344 (Ky. 1998)

The Supreme Court held that statute limited public offender detention of juvenile to 90 days regardless of number of separate offenses charged.

**D.R.T. v. Commonwealth**, 111 S.W.3d 392 (Ky. App. 2003)

A person who is over 18 at the time of disposition may not be ordered into adult detention as a disposition.

**Jefferson County Dept. for Human Services v. Carter**, 795 S.W.2d 59 (Ky. 1990)

A person who is over 18 at the time of disposition for an offense committed prior to age 18 may not be sentenced to time in the juvenile detention center.

**N.T.G. v. Commonwealth**, 185 S.W.3d 218 (Ky. App. 2006)

Juvenile Court may not impose probated detention sentence on thirteen (13) year old child when KRS 635.060 (4) prohibits detention for children under fourteen (14).

**KRS 635.060** Sets limits for the amount of time that a child may be detained as a disposition based on the age of the child.

### Detention, Status Offenders

**KRS. 630.100** No secure detention for status offenders.

**KRS 630.070** The only exception to KRS 630.100 is for violation of a valid court order [i.e. contempt"], *but this can only be done AFTER a finding* that the child violated the order.

**NOTE: This is not a finding of probable cause that the child *might* have violated the order, but a finding, after a proper *hearing*, that the child *did* violate the order.**

**M.A.M. v. Commonwealth**, 2013 WL 1488509 (Ky. App. 2013) **To Be Published, Not Final**

Pre-adjudication orders entered on a child's case are not valid court orders as the child has not had an adjudication hearing and thus the child has not received his full due process rights before the order was entered. Consequently, a child cannot be held in contempt for violating an order without the full access to his due process rights.

**KRS 630.080** This statute has several provisions that explain the procedures the court must follow if it wants to detain the child for contempt of a valid court order. One of the included requirements is that the Cabinet has to prepare report within 48 hours that "determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate."

**J.K.B. v. Commonwealth**, 336 S.W.3d 917 (Ky. App. 2011) The Court loses jurisdiction over status offenders after age 18.

**NOTE: if you wish to challenge the detention decision of a Family Court, call the Juvenile Post-Disposition Branch at (502) 564-8006 for assistance.**

## NOTES

**Directed Verdict**

**Commonwealth v. Benham**, 816 S.W.2d 186 (Ky. 1991)

Trial court is expressly authorized to direct verdict for defendant if prosecution produces no more than mere scintilla of evidence.

**Brewer v. Commonwealth**, 206 S.W.3d 313, (Ky. 2006)

Kentucky Supreme Court held that: “the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth.” The Court also noted that questions of credibility and the weight to be given to evidence and testimony are issues reserved for determination by the trier of fact.

**I.K.W. v. Commonwealth**, 2013 WL 193008 (Ky.App. 2013) **UNPUBLISHED**

In applying a directed verdict standard of review on appeal, the Court noted: “The Commonwealth carries the same burden of proof as it does in an adult criminal case to show that a juvenile committed an offense.”

**Discovery**

**RCr. 7.24** Governs what evidence the Commonwealth must provide to the defense including exculpatory and expert evidence. Discovery request must be in writing.

**Commonwealth v. DeWeese**, 141 S.W.3rd 372 (Ky. App. 2003)

Discovery pursuant to RCr 7.24 is unavailable prior to the probable cause hearing in transfer cases involving the alleged use of a firearm. Also held that KRS 610.342, allowing child’s attorney access to all records pertaining to the child, is NOT a discovery statute.

**Disposition**

**KRS 610.180** Children have a right to separate disposition hearing.

**K.F. v. Commonwealth**, 274 S.W.3d 457 (Ky. App. 2008)

Family Court erred when it did not conduct a separate disposition hearing, as required by KRS 610.180, and child objected to a combined hearing.

**A.M. v. Commonwealth**, 2009 WL 4882821 (Ky. App. 2009) **UNPUBLISHED**

Court held that trial counsel’s submission of an alternative disposition report put the Family Court on notice that counsel was objecting to the court’s adoption of the recommendations of the dispositional report prepared by the Cabinet. Accordingly, the issue was properly preserved as to whether or not the court’s decision to commit the child to the Cabinet for Health and Family Services was in violation of the “least restrictive alternative” requirement of the Juvenile Code. However, the Court ultimately held that the court’s decision to commit was not clear error in this case.

**A.E. v. Commonwealth**, 860 S.W.2d 790 (Ky. App. 1993)

Under the Unified Juvenile Code, KRS 635.060, there are no distinctions made between felonies, misdemeanors, or violations for the purposes of providing options to the court for disposition.



## NOTES

**KRS 635. 055** A child may not be committed to the Department of Juvenile Justice as a public offender on a finding of contempt.

**K.F. v. Commonwealth**, 274 S.W.3d 457 (Ky. App. 2008)

A status offender *may* be committed to the Cabinet for Health and Family Services on a charge of contempt.

**D.R.T. v. Commonwealth**, 111 S.W.3d 392 (Ky. App. 2003)

A person who is over eighteen (18) at the time of disposition may not be ordered into detention as a disposition.

### Double Enhancement

*See, Enhancement*

### Due Process

**Kent v. U.S.**, 383 U.S. 550, 86 S.Ct. 1045 (1966)

A transfer hearing is a crucial stage of a criminal proceeding and must comport with due process. To be a valid transfer order, petitioner is entitled to a hearing, including access by his counsel to the social records and probation or similar reports, which will be considered by the court, and to a statement of reasons for the Juvenile court's decision. This result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.

**In re Gault**, 387 U.S. 1, 87 S.Ct. 1428 (1967)

Proceedings for juveniles must comply with the requirements of the Due Process requirements of the Fourteenth Amendment. These requirements include adequate notice of charges, notification of both the parents and the child of the juvenile's right to counsel, opportunity for confrontation and cross-examination at the hearings, and adequate safeguards against self-incrimination.

**In re Winship**, 397 U.S. 358, 90 S.Ct. 1068 (1970)

Proof beyond a reasonable doubt is required during the adjudication hearing in a delinquency proceeding similar to the constitutional safeguards applied in *Gault*.

**M.A.M. v. Commonwealth**, 2013 WL 1488509 (Ky. App. 2013) **TO BE PUBLISHED, NOT FINAL**

Pre-adjudication orders entered on a child's case are not valid court orders as the child has not had an adjudication hearing and thus the child has not received his full due process rights before the order was entered. Consequently, a child cannot be held in contempt for violating an order without the full access to his due process rights.

### Enhancement

**Phelps v. Commonwealth**, 125 S.W.3d 237 (Ky. 2004)

Juvenile court adjudications are not "convictions" for the purposes of any offense under the penal code, so a youthful offender cannot be charged with being a "second or subsequent offender" or a "felon in possession of a firearm" on the basis of the offender's prior juvenile court record.

## NOTES

**Jackson v. Commonwealth**, 363 S.W.3d 11 (Ky. 2012)

Firearm enhancement statute could be used to elevate charge of drug trafficking to a Class B felony as to authorize juvenile's transfer to Circuit Court as a youthful offender even if the enhancement statute would have no effect unless juvenile was convicted; juvenile's trafficking offense was charged as an enhanced offense, there was no objection by counsel prior to transfer, and so charge was classified as a higher level offense at time of transfer proceeding, which satisfied transfer statute's requirements.

**NOTE: Object to any and all enhancements charged in juvenile court at arraignment.**

**Experts****Bishop v. Caudill**, 118 S.W.3rd 159 (Ky. 2003)

The Commonwealth is not permitted to have its own expert on questions of competency.

**Crawford v. Commonwealth**, 824 S.W.2d 847 (Ky. 1992)

Child is not entitled to a second state-funded competency expert if the first one makes findings that are not favorable to his defense.

**Ake v. Oklahoma**, 105 S.Ct. 1087 (1985)

The Court held that when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.

**Binion v. Commonwealth**, 891 S.W.2d 383 (Ky. 1995)

There must be an appointment of a psychiatrist to provide assistance to the accused to help evaluate the strength of his defense, to offer his own expert diagnosis at trial, and to identify weaknesses in the prosecution's case by testifying and/or preparing counsel to cross-examine opposing experts. The examination by a neutral expert is not sufficient.

**K.A.C. v. Commonwealth**, 2006 WL 2034300 (Ky. App. 2006) **UNPUBLISHED**

School official was not qualified to testify as an expert, under KRE 702, as to the results of a drug test taken by the child. However, the Court found that while the trial court abused its discretion in permitting official to testify, it was "harmless error."

**Firearm Transfer**

**KRS 635.020 (4)** If the court finds probable cause that: the child is fourteen (14) or older, a felony was committed, and that a firearm was used in the commission of the felony, then the child *shall* be transferred to Circuit Court to be tried as an adult.

**Commonwealth v. Britt**, Ky., 965 S.W. 2nd 147 (1998)

The court held that KRS 635.020(4) does not create a new category of adult offender that precludes children transferred to circuit court pursuant to it from eligibility for the ameliorative provisions of KRS 640.040. The court indicated that it believes subsection (4) of KRS 635.020 was designed merely to facilitate transfer of juveniles accused of committing a felony with a firearm to the circuit court by bypassing the proof required under KRS 640.010.

## NOTES

**K.N. v. Commonwealth**, 375 S.W.3d 816 (Ky. App. 2012)

When the evidence presented by the Commonwealth clearly met the elements necessary for *mandatory* transfer, the trial court abused its discretion in not transferring the child to Circuit Court. The trial court did not *have* any discretion in deciding whether or not transfer the child; transfer was *mandatory*.

**Friar v. Commonwealth**, 2003 WL 21512230 (Ky. App. 2003) **UNPUBLISHED**

Even when the evidence *ultimately* showed that gun was not used in the commission of the crime, the Court of Appeals held that the trial court was not in error in finding *probable cause* that a gun was used, and transferring the case to Circuit Court.

### Firearm Transfer, Constitutionality

**Commonwealth v. Halsell**, 934 S.W.2d 552 (Ky. 1996)

The Court held that the mandatory transfer statute does not violate provisions of Kentucky Constitution governing jurisdiction of district and circuit courts, and (2) statute does not conflict with statute requiring that district court conduct preliminary hearing at which court is required to make determination of probable cause and to consider seven factors [now eight factors] before deciding whether firearm felony involving juveniles shall be transferred for trial in circuit court.

**Apprendi vs. New Jersey**, 530 U.S. 466, 120 S.Ct. 2348 (2000)

This case supports a constitutional challenge since there is no finding beyond a reasonable doubt of the factors necessary to support transfer and casts doubt on Halsell. When comparing Apprendi due process concerns and concerns relative to the automatic transfer statute.

**Jones vs. United States**, 526 U.S. 227, 119 S.Ct. 1215 (1999)

Requires at least certain sentencing enhancement factors to be found beyond a reasonable doubt by a jury.

**NOTE: Our transfer statute is arguably a sentencing statute and transfer factors are not found beyond a reasonable doubt or by a jury. One should consider challenging the transfer statute based upon Apprendi and Jones but beware Caldwell.**

**Caldwell v. Commonwealth**, 133 S.W.3rd 445, 452-453 (2004)

The Court rejected the application of Apprendi to a KRS 635.020(4) "automatic transfer" hearing. However, two U.S. Supreme Court cases that were decided *after* Caldwell, Blakely v. Washington, 542 U.S. 296 (2004), and United States v. Booker, 543 U.S. 220 (2005), strongly support the idea that Caldwell was wrongly decided and should be reconsidered.

**NOTE: For a full Motion that fleshes out these concepts, contact the Juvenile Post Disposition Branch.**

**Blakely v. Washington**, 542 U.S. 296 (2004)

The "statutory maximum" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant, not the maximum sentence a judge may impose after finding additional facts.

## NOTES

**United States v. Booker**, 543 U.S. 220 (2005)

Any fact, other than a prior conviction, which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt. [In other words, the use of a mere probable cause standard as outlined in the “automatic transfer” statute is not adequate. Transfer takes the case out of juvenile court, subjecting the child to higher penalties. Therefore, the facts supporting such factors must be established beyond a reasonable doubt.]

**Ruark v. Commonwealth**, 2007 WL 2284788 (Ky. App. 2007) **UNPUBLISHED**

It is very important to note that this case is not published, because in this case, the Kentucky Court of Appeals held that Booker and Blakely did not properly support a constitutional challenge to the automatic transfer statute. This case did not however rule out any “as applied” challenges to the statute.

**Firearm Transfer, Use****Pruitt v. Commonwealth**, 700 S.W.2d 68 (Ky. 1985)

While the statute does pertain to “the use of a weapon” and there is a legitimate question as to the type of use contemplated, it does not concern itself at all with what person actually used the weapon. The statute prohibits probation if the commission of the offense “involved the use of a weapon,” and the plain reading of the statute does not indicate any basis for a distinction based upon the identity of the person who uses the weapon.

**Darden v. Commonwealth**, 52 S.W.3d 574 (Ky. 2001)

Juvenile's unlawful possession of a firearm on school property did not constitute “use” of that firearm in commission of the offense of possession, for purposes of transfer statute; statutory terms “possession of a weapon” and “use of a weapon” were two entirely different concepts, and interpreting them as identical would have been counter to legislative intent and resulted in extremely harsh and disproportionate results in trying juvenile cases. “Possession” does NOT equal “use.”

**Haymon v. Commonwealth**, 657 S.W.2d 239 (Ky. 1983)

Although this was an adult case dealing with adult probation, it stands for the position that where a statute is “ambiguous” as to the phrase “use of a firearm,” the individual is entitled to the benefit of that ambiguity.

**Wilburn v. Commonwealth**, 312 S.W.3d 321 (Ky. 2010)

Though not a specific holding in the case, the dicta in the case basically said that fake guns are not guns: “We find nothing in the language of the statutes now in effect that would support Kennedy’s adoption of the Merritt rule that “any object” intended by its user to convince the victim that it is a pistol or other deadly weapon, and does so convince him, is one.”

**Forced Medication****Turner v. Commonwealth**, 860 S.W.2d 772 (Ky. 1993)

If the juvenile's competency to stand trial can be attained through medication, the court can order the administration of that medication. Such medication can then be forcibly administered if necessary in order to attain the competency for trial. The standard applied is only that there must be a reasonable medical probability that taking the medication would achieve that result, and does not have to reach beyond a reasonable doubt standard.

## NOTES

**Gag Orders**

**Canter v. Commonwealth**, 843 S.W.2d 330 (1992)

The confidentiality requirement extends until indictment. If the grand jury fails to indict, or the indictment is for a different offense from the one for which the child was transferred, the case returns to juvenile court.

**FTP v. Courier Journal**, 774 S.W.2d 444 (1989)

The Court held that the purpose of the shroud of secrecy and confidentiality mandated by the above cited statutes is to protect the juvenile through until the end of the appellate process.

**Guilty Pleas and Plea Consequences**

**Boykin v. Alabama**, 395 U.S. 238 (1969)

The Court held that petitioner Boykin was denied due process of law, and that his convictions be reversed outright, solely because 'the record (is) inadequate to show that petitioner intelligently and knowingly pleaded guilty.

**D.R. v Commonwealth**, 64 S.W.3d 292 (Ky.App. 2001)

Boykin applies to juvenile cases. The Court held that the appellant was not informed of the consequences of an admission of guilt. Specifically, he was not informed of constitutional rights waived by admitting guilt or of the range of possible punishments. In short, appellant was not informed of a single consequence of his decision to enter an admission of guilt. Appellant was a fifteen-year-old child who had no previous experience with the court system. The appellant's admission of guilt was not made knowingly and intelligently. The court must question accused to determine he has a full understanding of what the plea connotes and of its consequences, and this determination should become part of record.

**J.D. v. Commonwealth**, 211 S.W.3d 60 (Ky. App. 2006)

Boykin applies in juvenile proceedings, even when a child is represented by counsel, and court has read him his KRS 610.060 "arraignment rights" (clarifying holding in D.R. v. Commonwealth, 64 S.W.3d 292 (Ky. App. 2001))

**Habitual Truancy**

**T.D. v. Commonwealth**, 165 S.W.3d 480 (Ky. App. 2005)

Court held that compliance with KRS 630.060 and KRS 159.140 is jurisdictional and mandatory. If these procedures have not been followed, the court lacks jurisdiction to handle the case.

**B.H. v. Commonwealth**, 329 S.W.3d 360 (Ky. App. 2010)

Family court lacked jurisdiction to entertain status offense petition alleging that juvenile was a status offender because he was a habitual truant, where Commonwealth failed to comply with statutory prerequisites to filing petition by having parties meet with court designated worker (CDW) for determination of how to proceed with matter.

**J.T. v. Commonwealth**, 2011 WL 5105475 (Ky. App. 2011) **UNPUBLISHED**

Court agreed with child's contention that the Family Court lost jurisdiction over her once she turned 18. Child turned 18 during the pendency of the appeal. Appeal dismissed as moot.

## NOTES

**KRS 630.060(2)** requires the court-designated worker to refuse to accept a habitual truancy petition if an adequate assessment of the child has not been performed in accordance with KRS 159.140(1)(c)(d), and (f). If the assessment has not been completed, or if it is inadequate, move to dismiss the petition for lack of subject matter jurisdiction because of noncompliance with KRS 630.060(2) and KRS 159.140(3), (4) and (6). This provision, however, does not apply if the assessment was not performed because the child failed to participate.

**B.H. v. Commonwealth**, 329 S.W.3d 360 (Ky. App. 2010)

Commonwealth's failure to comply with KRS 630.060 required dismissal of truancy petition against juvenile, as there was no evidence that the required statutory assessment had been performed for juvenile, nor did Commonwealth show that an assessment could not be performed due to juvenile's failure to participate. **See also, Jurisdiction, this section.**

**M.G. v. Commonwealth**, 2008 WL 4683239 (Ky. App. 2008) **UNPUBLISHED**

Case must be remanded to court for determination of whether KRS 159.140(1) requirements were met before truancy petition was filed. Court also stated that due process was violated when defense counsel was not given sufficient time to prepare for truancy adjudication hearing; Boykin was not complied with since child did not even enter an admission and court should not have held contempt hearing with no prosecutor present but no reversible error under circumstances.

**N.K. v. Commonwealth**, 324 S.W.3d 438 (Ky.App. 2010)

Court held that: (1) truancy complaint was defective, and should not have been received by the court designated worker; (2) an admission to habitual truancy must be entered by the student, not by counsel; and (3) the Family Court is required to inform the student of his Boykin rights at the time it accepts the admission of habitual truancy. Orders vacated.

**C.F.C. v. Commonwealth**, 2010 WL 4026099 **UNPUBLISHED**

When director of pupil personnel does not sufficiently investigate the causes of a student's truancy as mandated by KRS 159.140 before bringing the student before the court as a truant, the court lacks jurisdiction to hear the case.

### Individuals with Disabilities in Education Act (IDEA)

**42 U.S.C. §1400 et seq.** Children with physical or mental disabilities, are still entitled to a proper public education.

**707 KAR 1:290 §1** Kentucky's special education equivalent of IDEA. States that school must take appropriate steps to ensure that *all* children receive an adequate education.

**Morgan v. Chris L.**, 927 F.Supp. 267, 271 (E.D. Tenn. 1994), affirmed, 106 F.3d 401 (6th Cir. 1997), cert. denied, 520 U.S. 1271, 117 S.Ct. 2448, 138 L.Ed.2d 207(1997)

Case states that children must have a manifestation hearing prior to a case coming to court. This case does not restrict the arrest of a child however.

**NOTE: If you are representing a child with an IEP or who has been designated as a special education student, get all school records, inquire into whether there was a manifestation hearing and use the information to litigate not only IDEA issues but also to inform defenses to intent, knowledge and other mental states.**

## NOTES

**H.C. v. Commonwealth**, 2011 WL 5599708 (Ky. App. 2011) **UNPUBLISHED**

In case where school conducted testing required, and testing found child to not have a disability, and to not qualify for an IEP (Individualized Education Plan), Court found that Family court was not in error in later sentencing child to 15 days for contempt of court for violating its previously entered orders to attend school.

### Involuntary Hospitalization of Minors

**KRS Chapter 645** Mental Health Act governs voluntary and involuntary hospitalization of children as well as rights and procedures once hospitalized. This also includes the rights of the parents and child to review and discharge.

**Addington v. Texas**, 441 US 418, 60 L.Ed.2d 323, 99 S.Ct. 1804 (1979) Provides for a clear and convincing standard of proof in state involuntary commitment proceedings.

**Parham v. J. R.**, 442 US 584, 61 L.Ed.2d 101, 99 S.Ct. 2493 (1979) Juveniles may be admitted to mental hospitals by parents.

**Vitek v. Jones**, 445 US 480, 63 L.Ed.2d 552, 100 S.Ct. 1254 (1980)

A transfer of a convict to a mental hospital requires minimal due process.

**Zinerman v. Burch**, 494 US 113, 108 L.Ed.2d 100, 110 S.Ct. 975 (1990)

Case addresses potential civil liability of mental hospital personnel who admit patients voluntarily when such a patient's ability to provide informed consent is questioned.

**Washington v. Harper**, 494 US 210, 108 L.Ed.2d 178, 110 S.Ct. 1028 (1990)

Prisoner's due process right to avoid involuntary medication is protected by nonjudicial administrative review by neutral professional fact finders.

**Turner v. Stumbo**, 701 F.2d 567 (6th Cir. 1983)

Distinguishes psychiatric hospitalization of pretrial criminal defendants from civil commitment patients.

**Doe v. Austin**, 668 F Supp. 597 (W.D. Ky. 1986); affirmed in part, reversed in part by 848 F.2d 1386 (6th Cir. June 15, 1988)

Mentally retarded individuals placed by legal guardian in habilitation institution have right to annual judicial review.

### Jurisdiction

**KRS 610.010 (1)** The juvenile session of the District Court has exclusive jurisdiction over any child under eighteen (18) who has allegedly committed a public offense, or who was under eighteen (18) at the time the public offense was allegedly committed. Except for motor vehicle offenses for children age sixteen (16) or over, which shall be treated as adult cases in District Court.

**NOTE: Motor vehicle offenses do not include stealing a motor vehicle, operating a motor vehicle without the owner's consent, or any offense which constitutes a felony.**

## NOTES

**KRS 610.010(2)** Either the District Court or the Family Court has exclusive jurisdiction over all dependency, neglect, and abuse cases; beyond control; truancy; and minor in possession of alcohol or tobacco cases.

**Cunningham v. Commonwealth**, 2012 WL 1142937 (Ky. App. 2012) **UNPUBLISHED**

After transferring case to district court, family court did not have jurisdiction to later hold child in contempt for violation of orders entered by the district court.

**A.H. v. Commonwealth**, 2011 WL 1085639 (Ky. App. 2011) **UNPUBLISHED**

Juvenile court did not have jurisdiction in a beyond control of parent case to enter educational orders that extended to age twenty-one (21.)

**NOTE: Although the stated that its opinion was limited to beyond control of parent charges, the Court states in the same opinion: “KRS 610.120(3) makes clear that proceedings that begin when an alleged status offender was still a child must be terminated when the child reaches his eighteenth birthday unless otherwise provided in the Juvenile Code.**

**Christy v. Commonwealth**, 2008 WL 682601 (Ky. App. 2008) **UNPUBLISHED**

Driving under the influence is to be dealt with by the adult session of the district court.

**J.E. v. Commonwealth**, 2004 WL 2260499 (Ky. App. 2004) **UNPUBLISHED**

Juvenile Code permits “review” of dispositional orders pursuant KRS 610.010(13), but does not vest the trial court with the power to unilaterally change the terms of its previously entered disposition in a subsequent proceeding at which both the child and counsel were not present.

**See also, Truancy**

### Juvenile Sex Offenders

**S.M. v. Commonwealth**, 2008 WL 2696896 (Ky. App. 2008) **UNPUBLISHED**

Juvenile court may not order juvenile sex offender assessment for any offense which is not an offense allowing a child to be declared a juvenile sex offender.

**I.B. v. Commonwealth**, 2008 WL 162891 (Ky. App. 2008) **UNPUBLISHED**

Failure of DJJ to provide sex offender assessment to court and counsel prior to disposition was erroneous.

**KRS 635.505 (2), (4)** A child with an IQ below 70 cannot be declared a Juvenile Sex Offender.

**NOTE: The term now used in the statutes for such children is “intellectually disabled.” Prior to 2013, the term used was “mentally retarded.”**

**R.B. v. Commonwealth**, 2013 WL 1091270 (Ky. App. 2013) **UNPUBLISHED**

Committing a child found guilty of a sex offense with an IQ under 70 is not cruel and unusual punishment and is permitted under the statute concerning disposition as a public offender.

**C.I. v. Commonwealth**, 2003 WL 22461730 (Ky. App. 2003) **UNPUBLISHED**

Where no hearing was conducted at trial level to determine if child was “mentally retarded,” court did not err in declaring the child to be a juvenile sexual offender and committing the child to the Department of Juvenile Justice.

**NOTE: Always investigate child’s mental state in sex offense cases and request a hearing even if the IQ score comes out a little above the 70 threshold.**



## NOTES

**C.W.C.S. v. Commonwealth**, 282 S.W.3d 818 (Ky. App. 2009)

The Court held that district court had discretion to declare juvenile charged with misdemeanor sex offenses to be a juvenile sexual offender, when the statutory language clearly authorized such discretion. Court also held that district court did not abuse its discretion.

**T.R. v. Commonwealth**, 2011 WL 6412081 (Ky. App. 2011) **UNPUBLISHED**

Child's commitment to DJJ as a public offender was proper, despite fact that child could not be declared a Juvenile Sex Offender under KRS 635.505 (2) and (4.) It should be noted that the Court also held that the juvenile court did not abuse its discretion regarding commitment being the least-restrictive alternative.

**B.J.A. v. Commonwealth**, 2003 WL 22519619 (Ky. App. 2003) **UNPUBLISHED**

The child's age at the time of *adjudication*, not at the time of the *commission* of the offense governs whether or not the various provisions of 635.505 apply to that child.

**Young v. Commonwealth**, 968 S.W.2d 670, 672 (Ky. 1998)

The Kentucky Supreme Court stated that sex between two children under 12 would be illegal, "although neither child could be subjected to prosecution because of their respective ages".

**N.L. v. Commonwealth**, 323 S.W.3d 732 (Ky. App. 2009)

The Court held that juvenile was entitled to continuance so that he could retain an expert to conduct an independent sexual offender evaluation in an effort to challenge the Department of Juvenile Justice's (DJJ) findings. Case vacated & remanded.

**NOTE: Always challenge the findings of the DJJ sex offense assessment and hire an expert to assess your child. There is a great amount of variance in the training of some staff. Look to the policies and procedures of the assessor to make sure your child was assessed accurately.**

**Dever v. Commonwealth**, 300 S.W. 3d 198 (Ky. App. 2009)

Youthful offender convicted of first degree sexual abuse based on victims being under twelve (12) was exempt from lifetime sex offender registration pursuant to KRS 17.500(3) (a), since crime based on age of victims, and not on forcible compulsion.

### Least-Restrictive Alternative

#### See Also, Disposition Hearing

**X.B. v. Commonwealth**, 105 S.W.3d 459 (Ky. App.2003)

The Court of Appeals held that: (1) trial court was required to state its reasons for placing juvenile in the custody of the Department of Juvenile Justice rather than in a less restrictive placement.

**J.S. v. Commonwealth**, 304 S.W. 3d 67 (Ky. App. 2009)

Interpreting KRS 600.010(2)(c) and KRS 600.020(35), the court established a two-prong test for determining whether the Family Court's decision to commit a child to the Cabinet should be upheld. There must be a finding, supported by substantial evidence, that either: "(1) all less restrictive alternatives were attempted or (2) no feasible alternative to commitment existed."

## NOTES

**N.L. v. Commonwealth**, 323 S.W.3d 732 (Ky. App. 2009)

Court noted that before a juvenile offender is committed to the custody of the DJJ, the juvenile court must demonstrate compliance with KRS 600.010(2)(c), which provides that prior to child's removal from his home "[t]he court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary[.]" Court also found that in this case, the juvenile court failed to make the required finding. Court stressed that the plain language of KRS 600.010(2)(c) makes such findings compulsory.

**T.M.W. v. Commonwealth**, 2011 WL 832491(Ky. App. 2011) **UNPUBLISHED**

Court remanded case to Family court to make findings regarding whether all least restrictive alternatives had been exhausted prior to committing two sixteen-year-old twins, to the Cabinet for Health and Family services on charges of habitual truancy. Subsequent to the filing of the truancy petition, the girls had been withdrawn from school by their mother, who cited health concerns of the girls as the reason for doing so.

### Mandatory Transfer

**See, Firearm Transfer**

### Notice

**Q.C. v. Commonwealth**, 164 S.W.3d 515 (Ky. App. 2005)

Due process requires that child be provided with written notice of his probation violation.

**A.C. v. Commonwealth**, 314 S.W.3d 319 (Ky. App. 2010)

It is a violation of due process to hold a status offender in contempt during the course of separate abuse and neglect proceedings, without providing the child proper notice.

**J.R. v. Commonwealth**, 2011 WL 944368 (Ky. App. 2011) **UNPUBLISHED**

Failure to provide adequate notice to child of an order to attend summer school so tainted later contempt proceedings held the following month as to render unenforceable the court's contempt order.

**D.S. v. Commonwealth**, 2009 WL 2633194 (Ky. App. 2009) **UNPUBLISHED**

In case where child was missing and had not been provided notice of Family Court's intent to revoke probation, the court's subsequent revocation of probation was held to be invalid.

### Priors

**Commonwealth v. Gadd**, 665 S.W.2d 915 (1984)

The Kentucky Supreme Court held that any challenge to the unconstitutionality of a prior conviction must be made pretrial or it is waived.

**Manns v. Commonwealth**, 80 S.W.3d 439 (Ky. 2002)

Juvenile court adjudication is not a "conviction" for the purpose of the rule of evidence permitting impeachment by prior "convictions." Statute permitting juvenile records to be used at sentencing

## NOTES

or for impeachment is unconstitutional to the extent that it applied to the use of those records as impeachment.

**KRS 610.090** Unless the child is proceeded against as a youthful offender, the disposition of any child under any of the KRS Chapters 600 to 645, or any evidence given in the case, shall not be lawful evidence against the child for any purpose, except in subsequent cases involving the same child under KRS Chapters 600 to 645.

### Probation Revocation

**Morrissey v. Brewer**, 408 U.S. 471 (1972)

Juveniles are to be afforded the same rights as adults regarding the revocation of probation or parole. Morrissey also requires that the case be heard by a “neutral and detached” hearing body. If the hearing officer is a DJJ employee, including if he or she is under contract to DJJ as a hearing officer, such officer cannot fit the neutral and detached requirement.

**Q.C. v. Commonwealth**, 164 S.W.3d 515 (Ky. App. 2005)

The Court held that juvenile courts have the inherent authority to revoke probation, referring to the adult probation statutes and held that the Commonwealth must serve written notice of specific alleged probation violations in juvenile cases.

**NOTE: This means a review cannot legally be transformed into a probation revocation hearing without prior written notice to client of violations.**

### Restitution

**KRS 635.060** The court may [note that this is *discretionary*] order the child or his parents/guardians to pay restitution/reparations to “any injured person.” However, child’s parent cannot not be ordered to pay unless they are granted a hearing, and the court finds after that hearing that their “failure to exercise reasonable control or supervision was a substantial factor in the child’s delinquency.

**Commonwealth v. S.K.**, 253 S.W.3d 486, 489 (Ky.2008)

The juvenile session of the district court retains jurisdiction over a child accused of committing a public offense before he turned eighteen years of age, even after the child has turned eighteen (18), in order to conduct adjudication and disposition hearings, and to order *and enforce* orders of restitution with contempt powers.

**J.D.N. v. Commonwealth**, 2012 WL 1447989 (Ky. App. 2012) **UNPUBLISHED**

Court held that child’s failure to appear at a restitution hearing constituted waiver of right to challenge restitution amount, and that juvenile court’s order for amount supported by evidence provided by Commonwealth was proper. Citing *Commonwealth v. S.K.*, Court also noted that juvenile court has continuing jurisdiction over an individual past the age of 18 to set or enforce a restitution obligation. This includes situations where the child has had a disposition prior to eighteen, but restitution hearing not held till after 18.

**K.B. v. Commonwealth**, 2012 WL 28679 (Ky. App. 2012) **UNPUBLISHED**

Court held that trial court was expressly authorized by the Juvenile Code to order child to pay restitution and that joint and several liability can be applied to criminal cases even though it has been outlawed in tort cases in Kentucky. However, the Court *also* said: “We echo the comments of the Franklin Circuit Court when it cautioned that joint and several liability in a juvenile restitution

## NOTES

order is not appropriate in all cases and must only be ordered if rehabilitative in nature and to promote the juvenile's best interest."

### School Searches

**T.L.O. v. New Jersey**, 469 U.S. 325, 105 S.Ct. 733 (1985)

Children have an expectation of privacy even while on school grounds and a search by school personnel must be: 1) reasonable in its inception; and 2) must be "reasonably related in scope to the circumstances which justified the interference in the first place."

**Lamb v. Holmes**, 162 S.W.3d 902, 906 (Ky. 2005)

There are three (3) factors to determine if the school searches were reasonable: 1) the student's legitimate expectation of privacy; 2) the intrusiveness of the search; and 3) the severity of the school system's needs that were met by the search. This case dealt with strip searching of girls to look for a missing pair of shorts.

**NOTE: the analysis in many of these cases focuses initially on the fact that the government is requiring the search. These cases would seem to find unconstitutional also the indiscriminate drug testing of children by the court.**

### Status Offenders

**KRS 610.060 (c).** The court *shall* advise the parent or guardian of his or her right to remain silent, anything they say can be used against the child.

**KRS 630.050** statute mandating that the CDW meet with a child and recommend them to social services agencies prior to sending them to the court on a status offense.

### Special Education

**See, Individuals with Disabilities in Education Act (IDEA)**

### Stays Pending Appeal

**RCr. 12.04 (4)** Stays pending appeal are *discretionary* in juvenile dispositions.

**M.M. v. Williams**, 113 S.W.3d 82 (Ky. 2003)

Court held that the child must at least ask the appellate court to grant the stay. If the appellate court refuses, there is some potential relief through an extraordinary writ of mandamus.

**NOTE: If you are appealing a case, you must first file a stay in the trial court and then a stay can be filed in the appellate court. Sample Stay motions are at the back of this Manual.**

### Suppression Hearing

**Kentucky Milk Marketing Commission v. Kroger Company**, Ky., 691 S.W.2d 893 (1985)

If the Court is unsure of its power to hold a suppression hearing in a transfer case, (i.e., the argument from the Commonwealth being that the transfer hearing is equivalent to a probable cause hearing, and suppression is not appropriate at this stage) apply Section 2 of the Kentucky

## NOTES

Constitution and the legal residuum rule in Kentucky. In the Kentucky Milk Marketing Commission case, the Court stated that under the legal residuum rule, there must be some reliable evidence upon which an administrative agency or a court bases its decision. If there is no legal residuum of admissible evidence, then any decision by the court would violate of Section 2 of the Kentucky Constitution as being arbitrary.

### Transfer Hearings

**Kent v. United States**, 383 U.S. 541 (1966)

The determination of whether to transfer a child from the statutory structure of the Juvenile Court to the criminal processes of the District Court is ‘critically important. The court held that it is, indeed, a ‘critically important’ proceeding. The Court also outlined eight determinative factors which must be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be waived. Finally, a juvenile should be entitled to discovery prior to a transfer hearing. “[it] will be the responsibility of any officer of the Court's staff assigned to make the investigation of any complaint in which waiver of jurisdiction is being considered to develop fully all available information which may bear upon the criteria and factors set forth above. Although not all such factors will be involved in an individual case, the Judge will consider the relevant factors in a specific case before reaching a conclusion to waive juvenile jurisdiction . . .” This is especially true for eight factors transfer hearings.

**NOTE: When dealing with discovery issues on eight factors transfer hearings, cite to RCr 3.07 which states if a preliminary hearing is being held by a court which has jurisdiction, which the juvenile court has until it relinquishes that jurisdiction, then Chapters VI – XIII apply which includes 7.24 and 7.26 concerning discovery.**

**KRS 635.020** Lists the criteria for a child being eligible to be tried as an adult after a hearing by the court.

**KRS. 640.010** This statute makes it clear that in the case of discretionary AKA eight factors transfer hearings, the proceedings are to be *bifurcated*. First, there is the preliminary hearing regarding the offense. *Then*, only if the Commonwealth meets its burden on that first portion, is there to be a hearing on the “eight factors”

**NOTE: A probable cause finding made during a detention hearing held *cannot* be substituted for the required preliminary hearing under this statute. Detention hearings are governed by KRS 610.265. These two statutes are very different, and the determination of probable cause serves different purposes.**

**Schooley v. Commonwealth**, 556 S.W.2d 912 (Ky. App. 1977)

If the court does not make adequate findings, then the transfer is invalid.

**Commonwealth v. Davis**, 80 S.W.3d 759 (Ky. 2002)

Juvenile who did not challenge whether he met the minimum criterion for transfer to circuit court and trial as an adult in either the circuit or district court waived his right to make that challenge on appeal.

**C.E.H. v. Commonwealth**, 619 S.W.2d 725 (Ky. App. 1981)

The order of the district court transferring a case to circuit court is interlocutory, and therefore not final and appealable. In the case of an improper transfer the remedy is to challenge the jurisdiction of the circuit court.

## NOTES

**NOTE: This case makes very clear that there is no remedy by appeal for a transfer to the circuit court thus it is very possible a writ would be an appropriate remedy as the child will be harmed by publicity and other issues after the case is transferred to the circuit court.**

**Osborne v. Commonwealth**, 43 S.W.3d 234 (Ky. 2001)

Fact that burglary charge was omitted from transfer order transferring child to circuit court for trial as an adult on robbery and murder charges did not deprive circuit court of jurisdiction over burglary count. KRS 640.010 provides process for transferring the child, not the charge, and indictment can vary from transfer order so long as the child is eligible for transfer on indicted offenses.

**Pardue v. Commonwealth**, 2010 WL 1253166 (Ky. App. 2010) **UNPUBLISHED**

Kentucky Court of Appeals held that when murder charge rose out of same “course of conduct” as the burglary and robbery charges that caused the district court to transfer the cases to Circuit Court, Circuit Court had subject matter jurisdiction over the murder charge as well.

**KRS 640.010(2)(b)** Lists the eight factors the court must consider in a discretionary transfer. If the court finds two or more favor transfer, the court *may* transfer the child.

**NOTE: The language of the statute says *may*, not *shall*. The Court can find that two or more favor transfer, and still decide to not transfer the child.**

**Bean v. Commonwealth**, 2013 WL 375494 (Ky. App. 2013) **UNPUBLISHED**

Court held that trial court’s checking off of two of the “eight factors” on an AOC form, and making oral findings on the record regarding the factors satisfied the requirements of the Juvenile Code regarding discretionary transfer. Court also found that a trial court must consider the eight factors, but does not have to make “detailed findings” regarding each one.

**Harden v. Commonwealth**, 885 S.W.2d 323 (Ky. App. 1994)

Trial court’s failure to consider *all* of the discretionary factors of KRS 640.010(2)(b) rendered the transfer of the child to Circuit Court invalid.

**Commonwealth v. DeWeese**, Ky. App., 141 S.W.3rd 372 (2003)

The court held that the juvenile court did not have jurisdiction to order discovery before probable cause hearing was held on transfer; and, the statute providing attorney representing juvenile with access to records was not a rule of discovery, and so did not permit discovery in juvenile court before the hearing. It should be noted that *Deweese* dealt with mandatory transfer for use of a firearm, and its application should be limited to mandatory transfers only.

**See Also, Firearm Transfer**

### Transfer Hearings, Specific Findings

**Kent v. United States**, 383 U.S. 541, 86 S.Ct. 1045 (1966)

The Court held “we now make it clear that either the waiver [transfer] order, an accompanying statement, or the juvenile court record must include (1) a showing that the juvenile had a hearing at which he was represented by counsel and (2) a statement of the reasons for the transfer which are specific enough to permit meaningful review for the purpose of determining whether there has been compliance with [the juvenile transfer statute.]”

## NOTES

**Hubbs v. Commonwealth**, Ky., 511 S.W.2d 664, 666 (1974)

The Court held that the waiver [transfer] order, an accompanying statement, or the juvenile court record must include a showing that the juvenile had a hearing and made findings in compliance with *Kent*.

**Richardson v. Commonwealth**, Ky., 550 S.W.2d 538 (1977)

Court held that order waiving juvenile court jurisdiction was invalid absent statement of reasons for transfer specific enough to permit meaningful review.

**Barth v. Commonwealth**, 80 S.W.3d 390 (Ky. 2001)

Rules of evidence do not apply in a transfer hearing thus co-defendant's statement, which was inadmissible at trial, was admissible at juvenile transfer hearing for the purpose of establishing probable cause.

**Transfer Hearing, Waiver****Humphrey v. Commonwealth**, 153 S.W.3d 854 (Ky. App. 2004)

The Court held that: (1) waiver form was not sufficient to determine if waiver was knowingly and voluntarily made; the court held in this case that the infirm Waiver is not cured by any meaningful colloquy between the district court and Humphrey; (2) however, Court also held that a juvenile could voluntarily waive transfer hearing; The court referred to KRS 600.010(2)(e), which specifies that "[u]nless otherwise provided, such protections [of KRS Chapters 600 to 645, the Kentucky Unified Juvenile Code] belong to the child individually and may not be waived by any other party." In other words, in this provision, the legislature is signaling its intent that a child may waive any of the rights set out in the Kentucky Unified Juvenile Code, unless otherwise provided.

**Richard Cooksey v. Commonwealth**, 2012 WL 4839130 (Ky. App. 2012) **UNPUBLISHED**

Applying Humphrey to the facts of this case, the Court held that the child's signature of a Waiver of Rights form was adequate enough to find that child had "voluntarily, knowingly and intelligently" waived his rights.

**Truancy**

**See Habitual Truancy**

**Witness Competency****B.B. v. Commonwealth**, 226 S.W.3d 47 (Ky. 2007)

Four-year-old child found to lack testimonial competence in sex offense case. Additionally, because of child's lack of competence, hearsay statements attributed to her were also inadmissible.

**Writs****K.R. v. Commonwealth**, 360 S.W.3d 179 (Ky. 2012)

The extraordinary writs of mandamus or prohibition are available in two classes of cases, the first of which requires a showing that the lower court is acting without jurisdiction and there is no remedy available from an intermediate court, and the second of which usually requires a showing of no adequate remedy by appeal and great and irreparable injury; of these two requirements, the first is mandatory, but the second is not.

## NOTES

**Eaton v. Commonwealth**, 562 S.W.2d 637 (1978)

A writ of prohibition may not be available when the court is acting within its jurisdiction because contempt is considered a discretionary act of the court.

**K.N. v. Commonwealth**, 375 S.W.3d 816 (Ky. App. 2012)

A writ of mandamus was the appropriate remedy available to the Commonwealth when the district court failed to transfer a child's case to Circuit Court as required by the mandatory transfer statute.

**NOTE: The court held that due to the interlocutory nature of a transfer order, there was no remedy by appeal, so the Commonwealth had to proceed via writ. The reverse should also be true. If the child is transferred, a writ to the Court of Appeals is the avenue for relief.**

***See also, Firearm Transfer***

**Hooten v. Jennings**, 2005 WL 1412486 (Ky. 2005) **UNPUBLISHED**

Writ of prohibition was appropriate remedy for juvenile's claim that circuit court lacked jurisdiction to try her as adult for robbery; however, prohibition was not appropriate remedy for claims that statute governing transfers to circuit court was unconstitutional, where juvenile would have adequate remedy for those claims on appeal.

**NOTE: There is still an argument that a writ would be appropriate for a transfer hearing that was either outside the court's jurisdiction or with arguments of why appeal is not an appropriate remedy such as loss of confidentiality, etc.**

**M.M. v. Williams**, 113 S.W.3d 82 (Ky. 2003)

The Kentucky Supreme Court held that the child must at least ask the appellate court to grant a stay pending appeal. If the appellate court refuses, there is some potential relief through an extraordinary writ of mandamus; rather than through habeas corpus.

### Youthful Offenders

**Johnson v Commonwealth**, 967 S.W.2d 12 (1998)

Even if the youthful offender presents evidence of total rehabilitation the court can still cite the seriousness of the crime and send him on to prison.

**Commonwealth v. Jeffries**, 95 S.W.3d 60 (2002)

Juvenile entitled to a meaningful opportunity to be heard at his 18 year old hearing. This right was denied when the trial court denied Jeffries the right to present evidence in mitigation, and to controvert the contents of a report submitted by the Commonwealth.

**Osborne v. Commonwealth**, 43 S.W. 3d 234, 238 - 239 (2001)

The Supreme Court, in interpreting KRS 640.010(3), that a grand jury may indict a youth "for other offenses arising out of the same course of conduct that gave rise to the offense that caused the child be transferred to circuit court".

**NOTE: Be sure that any charge added by the grand jury did arise out of the same incident as the other charges transferred by the juvenile court.**



## NOTES

**Pollini v. Commonwealth**, 172 S.W. 3d 418 ( 2005)

Takes *Osborne* a step further, and says that the acts or actions are not required to involve the same victim to be connected. Thus, if a child goes on a crime spree, even if she is only transferred for one part of the spree, she can be indicted on the others without additional transfer proceedings.

**Canter v. Commonwealth**, 843 S.W.2d 330 (Ky. 1992)

The Kentucky Supreme Court has specifically affirmed that the juvenile code restricts the scope of the circuit court's jurisdiction over youthful offenders.

### Youthful Offenders - Parole

**KRS 640.080** Youthful Offenders may be placed on parole to the Department of Corrections.

**NOTE: This means that in some instances, a youthful offender could be eligible for parole before s/he turns 18.**

**Shepherd v. Commonwealth**, 251 S.W.3d 309 (Ky. 2008)

Instruction on life without parole was erroneous since KRS 640.040(1) does not permit that penalty for Youthful Offenders, but error was harmless since jury did not recommend that sentence.

**Anderson v. Commonwealth**, 2008 WL 4691702 (Ky. 2008) **UNPUBLISHED**

A youthful offender may not be sentenced to life without parole for a capital offense; youthful offender sentencing provisions govern to the extent that they conflict with adult penalty provisions.

**Edwards v. Harrod**, 391 S.W.3d 755, 2013 WL 646174 (Ky. 2013)

Youthful offenders who are sentenced in adult court for a capital offense or a Class A or Class B felony offense are subject to the parole-eligibility restrictions imposed by the violent-offender statute. Held that basic holding in Merriman did not extend to parole eligibility.

### Youthful Offenders - Probation

**KRS 640.030 (2)** Youthful offenders are eligible for probation.

**Commonwealth v. Merriman**, 265 S.W.3d 196 (Ky. 2008)

Violent offender probation prohibitions of KRS 439.3401(3) do not apply to youthful offenders. Juvenile code provision allowing probation at 18 year old hearing takes precedence.

**KRS 439.265** Individuals charged with felonies [which includes youthful offenders] may motion for shock probation any time from thirty (30) to one hundred eighty (180) days of being sentenced.

**Rees. v. Ottman**, 2008 WL 3551151 (Ky. App. 2008) **UNPUBLISHED**

Youthful offender is eligible for shock probation if he is denied probation at eighteen (18) year old hearing under KRS 640.030(2).

## NOTES

**Youthful Offenders - Sentencing****Gourley v Commonwealth**, 37 S.W.3d 792 (Ky. App. 2001)

The Court held that KRS 640.030(3) gives courts the *option* of sending Youthful Offenders over 18 to DJJ but does not *require* that course of action. Court also held that Youthful Offender was entitled to have PSI done by Department of Juvenile Justice, rather than Probation and Parole and that trial court's order directing Probation and Parole to do the PSI was prejudicial and reversible.

**Canter v. Commonwealth**, 843 S.W.2d 330 (1992)

Youthful offenders who plead to or are convicted of lesser included offenses that would not have originally made them eligible for transfer in juvenile court must be sentenced as public offenders pursuant to KRS 635.060.

**Masengale v. Commonwealth**, 2009 WL 2971788 (Ky. App. 2009) **UNPUBLISHED**

Found that child pleading to misdemeanors in Circuit Court required his case to be remanded for re-sentencing as a public offender pursuant to KRS 635.060.

**Chipman v. Commonwealth**, 313 S.W.3d 95 (Ky. 2010)

Juvenile, who was 17-years-old, was exempt from youthful offender sentencing when convicted pursuant to conditional plea of a non-transferrable offense.

**Kozak v. Commonwealth**, 279 S.W. 3d 129 (Ky. 2008)

Juvenile who was transferred to circuit court pursuant to KRS 635.020(2) for rape, first degree but pled guilty to sex abuse, first degree which would not have allowed him to be transferred must be remanded to circuit court and informed that his guilty plea will exempt him from sentencing as a juvenile under KRS 640.040(4) and allowed to withdraw that guilty plea.

**NOTE: This lesser charge was part of a *negotiated guilty plea*. Even in the cases of negotiated guilty pleas, if the lesser charge would not allow for transfer, this case supports the idea that unless the child specifically waives his right to return to juvenile court for sentencing, the child is to be sentenced under the Juvenile Code.**

**KRS 640.040(4)** Any youthful offender convicted in Circuit Court of a misdemeanor or any felony offense which would exempt him from transfer under KRS 635.020(2), (3), (4), (5), (6), (7), or (8) shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

**Brown v. Commonwealth**, 2012 WL 876748 (Ky. App. 2012) **UNPUBLISHED**

Child's discharge of a firearm during scuffle with/flight from police constituted "use of a firearm," and therefore he was NOT entitled to be sentenced as a juvenile per the provisions of KRS 640.040 (4).

**Roper v. Simmons**, 125 S. Ct. 1183, 1194, 543 U.S. 551 (2005)

The Supreme Court held that execution of individuals who were under 18 years of age at time of their capital crimes is prohibited by Eighth and Fourteenth Amendments. The court discussed the "evolving standards of decency" that compelled a finding that execution of juveniles was wrong.

## NOTES

**Graham v. Florida**, 130 S. Ct. 2011 (U.S. 2010)

In holding that the Eighth Amendment prohibits imposition of life without parole on a juvenile offender who did not commit homicide, the Supreme Court made numerous findings, among them that juvenile non-homicide offenders had limited culpability compared to adults, and there was no legitimate penological goal, including retribution, deterrence, incapacitation, and rehabilitation, that provided adequate justification for such a sentence.

**Miller v. Alabama**, 132 S.Ct. 2455 (U.S. 2012)

The Supreme Court held that a sentence of life without parole for juvenile convicted of capital murder was unconstitutional. The Court in Miller outlined the “foundational principle” of Graham and Roper: “that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.”

**Campbell v. Commonwealth**, 2011 WL 1642028 (Ky. 2011) **UNPUBLISHED**

Court held that sentence of life without parole for twenty-five (25) years was not unconstitutionally excessive for defendant convicted for crimes child committed while he was under the age of eighteen years.

## Appendix

2013 Appeals Checklist for District to Circuit Court

2013 Appeals Checklist for Family Court

## **APPEALS FROM DISTRICT COURT**

**Thank you for collaborating with the Juvenile Branch  
to help our clients!**

- ❑ Within 30 days of the disposition order being entered by the clerk, you must file the following documents in the district court:
  - ❑ Notice of Appeal
  - ❑ Motion to Proceed *in forma pauperis*
  - ❑ Tendered Order, Granting the *in forma pauperis* motion.
  - ❑ Designation of Record, identifying the records and hearings you want to see reviewed by the Circuit Court (err on the side of caution and include *everything*).
  - ❑ Motion to Stay Disposition of Commitment or Motion to Stay Disposition of Detention (see Note, below), and an Order to Stay Judgment of Commitment Pending Appeal or an Order to Stay Judgment of Detention Pending Appeal.

- ❑ Include the Judge, Commonwealth Attorney and County Attorney in your certificate of service.
- ❑ **Do NOT rely upon the clerk to forward the *in forma pauperis* order to us.** You are counsel of record until JPDB enters its appearance. It is your responsibility to make sure that the *in forma pauperis* order is sent to JPDB. JPDB is not assigned to the appeal until this order is received BUT the clock starts to tick for when the brief is due as soon as the IFP order is entered by the clerk. Therefore it is very important that this order is received by JPDB timely. The easiest and fastest way to do this is to present the order to the judge to sign while in court.

Once the tendered order is signed, forward a copy of the notice of appeal and the signed order along with the attached “Appeal Information Sheet” to La Mer Kyle-Griffiths, DPA, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601 or scan documents and e-mail to [LaMer.Kyle-Griffiths@ky.gov](mailto:LaMer.Kyle-Griffiths@ky.gov) or fax to (502) 564-7890. If you have sent the required information to JPDB, and have not heard from someone in the branch within one week, please contact LaMer Kyle-Griffiths at (502) 564-8006 or via e-mail. Note that if you get any pushback from the court on signing the IFP, i.e. requiring new affidavit of indigency, etc., alert JPDB and be aware that you can file a writ of mandamus to force the court to sign it.

- ❑ When we receive the Notice of Appeal and IFP order from you, the case will be assigned to a JPDB lawyer who will enter their appearance and request a copy of the record. JPDB will handle the appeal from that point forward, and will work cooperatively with you to ensure that all appellate claims are addressed, and to ensure that the client is kept informed about the status of the appeal. You are responsible for all other matters, hearings, etc. occurring in the district court after the appeal is filed

including motion to stay judgment, even if JPDB has entered its appearance in the appeal in circuit court.

- ❑ **NOTE REGARDING STAYS PENDING APPEAL:** A motion to stay should be filed *unless* waived by the client after consultation, especially if the child is ordered to serve time in detention or is being removed from their home. Depending on the ultimate disposition of the case, there are two different examples included in this document. Most clients have more to gain than to lose by pursuing a stay pending appeal and the circuit court cannot hear a motion to stay the judgment on appeal unless the trial court has heard the issue and **the Circuit Court cannot hear a motion to stay the judgment on appeal unless the trial court has heard the issue.**

#### **HOW TO LITIGATE A STAY MOTION:**

- ❑ **Have a hearing.** While there is no juvenile case law on the issue, under adult case law, the child is entitled to an adversarial hearing on the stay motion. Commonwealth v. Peacock, 701 S.W.2d 397 (Ky. 1985). If the court refuses to give you a hearing, contact JPDB to discuss whether a writ of mandamus should be filed.
- ❑ **Call witnesses.** The standard is whether there is a risk of runaway or new offense pending appeal. Call any witnesses that can supervise your client, i.e. parents or other family members.
- ❑ **Suggest alternatives pending appeal.** The court can issue conditions of release pending appeal, such as ankle monitoring or court orders.
- ❑ **Do NOT rehash the same legal arguments made earlier in the case.** Focus on the short time period of the appeal, which can be 3-6 months (or more) and any positive information that occurred during the pendency of the case: i.e. child was not detained during case and no new offenses or did very well in detention.
- ❑ Note that the denial of a stay motion can be relitigated in the higher court but the standard of review is very high- abuse of discretion. So keep that in mind- even if you lose, if the judge applies the wrong reasoning or appears biased, it can open it up for litigation in the higher court and give your client a second change at immediate relief.
- ❑ Make sure to notify JPDB of the result of your stay motion!

**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**  
**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**NOTICE OF APPEAL**

\* \* \* \* \*

Please take notice that the child, \_\_\_\_\_, appeals from this Court's disposition order, dated \_\_\_\_\_. On appeal the Appellant will be \_\_\_\_\_, and Appellee will be the Commonwealth of Kentucky. All parties should also take notice that pursuant to KRS 610.150 the Appellant reserves the right to raise all issues relating to the detention, custody, or participation in court ordered programs.

Served on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Respectfully submitted,

\_\_\_\_\_  
Department of Public Advocacy

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( )

**Certificate of Service**

I certify that on \_\_\_\_\_, 2013 a true and correct copy of the foregoing document was served by first class mail upon \_\_\_\_\_, County Attorney, **ADDRESS** and \_\_\_\_\_ Commonwealth Attorney, **ADDRESS**.

\_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**  
**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL,**  
**AND FOR RELEASE OF RECORDS**

Comes the child, \_\_\_\_\_, and moves this Court to allow him/her to proceed on appeal *in forma pauperis*, to appoint the Department of Public Advocacy to represent him/her on appeal, and to order the clerk to make the record available to the attorney assigned by the Department of Public Advocacy to handle this appeal. In support of this motion, \_\_\_\_\_ has attached an affidavit of indigency showing that he/she is a child without means to pursue this appeal at his/her own expense.

WHEREFORE, for the foregoing reasons, \_\_\_\_\_ respectfully requests this Court to sign the tendered order allowing the child to proceed *in forma pauperis* and granting access to the records to the appellate attorney.

Respectfully submitted,

\_\_\_\_\_  
Assistant Public Advocate

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( )

**Notice**

Please take notice that the foregoing motion has been filed in the \_\_\_\_\_ court on \_\_\_\_\_.

**Certificate of Service**

I certify that on \_\_\_\_\_, 2013 a true and correct copy of the foregoing document was served by first class mail upon \_\_\_\_\_, County Attorney, **ADDRESS** and \_\_\_\_\_ Commonwealth Attorney, **ADDRESS**.

\_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**  
**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**ORDER TO PROCEED *IN FORMA PAUPERIS***

The child has moved this Court for an order to prosecute the appeal of his juvenile disposition *in forma pauperis*. This Court has reviewed the motion, and finds that the child is a pauper within the meaning of KRS 453.190 and KRS 31.110(2)(b).

IT IS THEREFORE ORDERED that the child may prosecute his appeal without the payment of costs, and that the Department of Public Advocacy is appointed to represent the child on that appeal.

IT IS FURTHER ORDERED that the court clerk shall compile and transmit the record of the entire proceedings pursuant to the Designation of Record, including the audio/video record. KRS 610.342.

Under my hand this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge

**DISTRIBUTION TO:**

- La Mer Kyle-Griffiths, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601, fax: (502) 564-5539;
- DPA Trial Attorney;
- County Attorney;
- Commonwealth Attorney.



**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**

CASE NO: \_\_\_\_\_

In the Interest of \_\_\_\_\_, A child

**DESIGNATION OF RECORD**

\*\*\*\*\*

Comes now the Child, \_\_\_\_\_, a Child Under Eighteen, by counsel, and for his/her designation of record, hereby designates the entire record of the proceedings in this matter. Specifically, the Child designates all documents, motions, orders and exhibits filed in the record in this case. The Child further designates all proceedings mechanically recorded in this matter, including the arraignment, all pretrial hearings, all evidence presented, all openings and closing arguments, all bench conferences, all in-chambers hearings, any post-trial hearings and/or hearing on a motion for a new trial, and the final disposition hearing.

DATE(S)	EVENT
_____	arraignment
_____	status conference(s)
_____	pretrial hearing(s)
_____	adjudication (includes opening and closing arguments)
_____	new trial and/or post-trial hearing(s)
_____	disposition
_____	other

Respectfully Submitted,

\_\_\_\_\_  
COUNSEL FOR CHILD

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served on the following:

- DPA Trial Attorney
- County Attorney
- Commonwealth Attorney

**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**  
**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**MOTION TO STAY DISPOSITION OF COMMITMENT**

\*\*\*\*\*

Comes the Movant, through counsel and, pursuant to RCr 12.04, KRS 610.150, KRS 610.130 and all other applicable law, moves this Court to stay further enforcement of the order of commitment entered by this Court. As basis for this motion, the juvenile states as follows:

1. On \_\_\_\_\_, 2013 this Court entered a disposition order committing \_\_\_\_\_ to the Department of Juvenile Justice (DJJ).

2. Movant has filed a timely Notice of Appeal from the disposition order simultaneous with the filing of this motion.

3. Appeals from juvenile adjudications of the district court may be taken as a matter of right to the circuit court. See KRS 610.130. Further, all appeals from dispositional orders entered by the district court pursuant to KRS 610.110 “shall be taken in the manner provided in the Rules of Criminal Procedure.” See KRS 610.130.

4. RCr 12.04(4) provides that “[t]he timely filing of a notice of appeal from a judgment of the district court shall stay proceedings on the judgment as long as the case remains on appeal, except for the requirement of bail. Stays in juvenile dispositions shall be discretionary with the court.” RCr 12.04(4).

5. Though bail is not directly applicable to proceedings in the juvenile court, RCr 12.78 provides in relevant part: "(3) The applicable provisions governing bail shall apply to bail on appeal." RCr 12.78. Further, the case law discussing bail on appeal recognizes, in the adult context, that even though § 16 of the Kentucky Constitution does not confer a constitutional right to bail pending appeal, a trial court may not act arbitrarily or capriciously in denying bail or

setting an unreasonably high bond. See Braden v. Lady, 276 S.W.2d 664, 666 (Ky. 1955); Long v. Hamilton, 467 S.W.2d 139, 141 (Ky. 1971).

6. In the juvenile court context, bail is analogous to the factors the district court must consider at the pretrial detention hearing pursuant to KRS 610.280. Hence, in deciding whether to grant a stay of a juvenile disposition order, this Court may not act arbitrarily or capriciously in exercising discretion, but must instead evaluate the relevant factors and grant the stay unless there is some showing that the pretrial conditions of release would not ensure the attendance of the child after his appeal has been resolved.

7. **Specifically, this Court should assess: (1) the seriousness of the offense; (2) the possibility that the child would commit an offense dangerous to himself or community pending appeal; (3) the child's prior record; and (4) any other pending charges. See KRS 610.280(b).**

8. In this case, the Commonwealth's decision not to seek pretrial detention indicates that the seriousness of the offense and the risk of re-offense are negligible. *(Or alternatively: A detention hearing was held pursuant to KRS 610.280 shortly after the filing of the juvenile complaint in this case. Though probable cause was established, this Court chose not to detain movant based upon its analysis of the statutory factors. After consideration of these factors, this Court determined that detention was unnecessary).*

9. More importantly, the circumstances leading to the Commonwealth's decision not to seek detention have not changed. *(or alternatively: **More importantly, the circumstances leading to this Court's finding that detention was unnecessary have not changed.**)* In fact, \_\_\_\_\_ *(this is the place to point out the specifics of your case, i.e. (1) your client pled guilty or was found guilty of a lesser offense than the one with which he was originally charged; (2) your client has not committed any new offenses since being placed on pre-trial conditions; (3) list any positive steps your client may have taken since arraignment - any counseling, good grades in school, etc.).*

10. Thus, the factors set forth in KRS 610.280 weigh in favor of a stay pending resolution of this appeal.

11. In addition to the factors set forth in KRS 610.280, this Court must evaluate the consequence to the child if a stay pending appeal is not granted pursuant to RCr 12.04(4). In many cases the conditions imposed as a result of the disposition will have been served and any relief on appeal would be meaningless if district court judgments were not stayed pending appeal.

12. Here, movant has presented significant issues on appeal. And the denial of a stay would be tantamount to punishment when the Commonwealth has made no showing that the conditions of pretrial release previously ordered by this Court would be inadequate to ensure that the juvenile will be properly supervised pending appeal.

WHEREFORE, for the foregoing reasons, the child respectfully requests that this Court stay further enforcement of the disposition order of commitment to the Department of Juvenile Justice. If the stay is granted, the conditions of pretrial release will be reinstated until the appeal becomes final.

Respectfully Submitted,

---

**ATTORNEY**  
Department of Public Advocacy  
**ADDRESS**  
**PHONE NUMBER**  
**FAX NUMBER**

**Notice**

Please take notice that the foregoing motion shall be heard in the \_\_\_\_\_ District Court on \_\_\_\_\_, 2013 at \_\_\_\_\_ a.m./p.m..

**Certificate of Service**

I hereby certify that the foregoing document was served by mail on the following parties or their agents on \_\_\_\_\_, 2013:

- Hon. \_\_\_\_\_, County Attorney, \_\_\_\_\_;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, \_\_\_\_\_; and
- Hon. \_\_\_\_\_, District Judge, \_\_\_\_\_.

\_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**  
**DISTRICT COURT**  
**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**MOTION TO STAY DISPOSITION OF DETENTION**

\*\*\*\*\*

Comes the Movant, through counsel and, pursuant to RCr 12.04, KRS 610.150, KRS 610.130 and all other applicable law, moves this Court to stay further enforcement of the order of detention entered by this Court. As basis for this motion, the juvenile states as follows:

1. On \_\_\_\_\_, 2013 this Court entered a disposition order confining \_\_\_\_\_ to a secure juvenile detention facility for a period of \_\_\_\_ days.

2. Movant has filed a timely Notice of Appeal from the disposition order simultaneous with the filing of this motion.

3. Appeals from juvenile adjudications of the district court may be taken as a matter of right to the circuit court. See KRS 610.130. Further, all appeals from dispositional orders entered by the district court pursuant to KRS 610.110 “shall be taken in the manner provided in the Rules of Criminal Procedure.” See KRS 610.130.

4. RCr 12.04(4) provides that “[t]he timely filing of a notice of appeal from a judgment of the district court shall stay proceedings on the judgment as long as the case remains on appeal, except for the requirement of bail. Stays in juvenile dispositions shall be discretionary with the court.” RCr 12.04(4).

5. Though bail is not directly applicable to proceedings in the juvenile court, RCr 12.78 provides in relevant part: "(3) The applicable provisions governing bail shall apply to bail on appeal." RCr 12.78. Further, the case law discussing bail on appeal recognizes, in the adult context, that even though § 16 of the Kentucky Constitution does not confer a constitutional right to bail pending appeal, a trial court may not act arbitrarily or capriciously in denying bail or

setting an unreasonably high bond. See Braden v. Lady, 276 S.W.2d 664, 666 (Ky. 1955); Long v. Hamilton, 467 S.W.2d 139, 141 (Ky. 1971).

6. In the juvenile court context, bail is analogous to the factors the district court must consider at the pretrial detention hearing pursuant to KRS 610.280. Hence, in deciding whether to grant a stay of a juvenile disposition order, this Court may not act arbitrarily or capriciously in exercising discretion, but must instead evaluate the relevant factors and grant the stay unless there is some showing that the pretrial conditions of release would not ensure the attendance of the child after his appeal has been resolved.

7. **Specifically, this Court should assess: (1) the seriousness of the offense; (2) the possibility that the child would commit an offense dangerous to himself or community pending appeal; (3) the child's prior record; and (4) any other pending charges.** See KRS 610.280(b).

8. In this case, the Commonwealth's decision not to seek pretrial detention (or alternatively, the court's ruling that pretrial detention was unwarranted) indicates that the seriousness of the offense and the risk of re-offense are negligible. Thus, the only factors to be evaluated are child's prior record and any pending charges. Based on those factors, it is clear that a stay should be granted because \_\_\_\_\_. *(this is the place to point out the specifics of your case, i.e. (1) your client pled guilty or was found guilty of a lesser offense than the one with which he was originally charged; (2) your client has not committed any new offenses since being placed on pre-trial conditions; (3) list any positive steps your client may have taken since arraignment - any counseling, good grades in school, etc.).*

9. In short, all of the factors set forth in KRS 610.285 weigh in favor of a stay pending resolution of this appeal.

10. In addition to the factors set forth in KRS 610.285, this Court must evaluate the consequence to the child if a stay pending appeal is not granted pursuant to RCr 12.04(4). In this case, if the disposition order of detention for \_\_\_\_ days is not stayed, the juvenile will likely serve his sentence before his appeal is final and one relief he might be entitled to on appeal would become meaningless.

11. Here, movant has presented significant issues on appeal. And the denial of a stay would be tantamount to punishment (not treatment) when the Commonwealth has made no showing that the conditions of pretrial release previously ordered by this Court would be inadequate pending appeal.

**WHEREFORE**, for the foregoing reasons, the child respectfully requests that this Court stay further enforcement of the disposition order confining him to detention for \_\_\_\_ days. If the stay is granted, the conditions of pretrial release will be reinstated until the appeal becomes final.

Respectfully Submitted,

---

**ATTORNEY**  
Department of Public Advocacy  
**ADDRESS**  
**PHONE NUMBER**  
**FAX NUMBER**

**Notice**

Please take notice that the foregoing motion shall be heard in the \_\_\_\_\_ District Court on \_\_\_\_\_, 2013 at \_\_\_\_\_ a.m./p.m..

**Certificate of Service**

I hereby certify that the foregoing document was served by mail on the following parties or their agents on \_\_\_\_\_, 2013:

- Hon. \_\_\_\_\_, County Attorney, ;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, ; and
- Hon. \_\_\_\_\_, District Judge, \_\_\_\_\_ District Court .

---



COMMONWEALTH OF KENTUCKY  
\_\_\_\_\_  
DISTRICT COURT  
CONFIDENTIAL CASE NO. \_\_\_\_\_

IN THE INTEREST OF \_\_\_\_\_, A CHILD

**ORDER TO STAY JUDGMENT OF COMMITMENT PENDING APPEAL**

\*\*\*\*\*

The Court having considered the motion for stay pending appeal, and the Court having been sufficiently advised of the facts and law,

**IT IS HEREBY ORDERED AND ADJUDGED:**

That the judgment rendered by this Court on \_\_\_\_\_, 20\_\_, committing the child to the Department of Juvenile Justice, shall be stayed as of this date. This order is made pursuant to RCr 12.04 and shall be effective through the final disposition of the appeal. Upon entry of this order, the child shall immediately be released from the \_\_\_\_\_ Youth Development Center and placed into the custody of \_\_\_\_\_ (i.e. *parents, guardian, foster care, etc.*).

This is the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge

\_\_\_\_\_  
District Court

**DISTRIBUTION TO:**

- La Mer Kyle-Griffiths, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601
- DPA Trial Attorney
- Hon. \_\_\_\_\_, County Attorney, **ADDRESS**;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, **ADDRESS**

COMMONWEALTH OF KENTUCKY  
\_\_\_\_\_  
DISTRICT COURT  
CONFIDENTIAL CASE NO. \_\_\_\_\_

IN THE INTEREST OF \_\_\_\_\_, A CHILD

**ORDER TO STAY JUDGMENT OF DETENTION PENDING APPEAL**

\*\*\*\*\*

The Court having considered the motion for stay pending appeal, and the Court having been sufficiently advised of the facts and law,

**IT IS HEREBY ORDERED AND ADJUDGED:**

That the judgment rendered by this Court on \_\_\_\_\_, 20\_\_, placing the child in detention for \_\_\_\_ days shall be stayed as of this date. This order is made pursuant to RCr 12.04 and shall be effective through the final disposition of the appeal. Upon entry of this order, the child shall immediately be released from the \_\_\_\_\_ detention center and placed into the custody of \_\_\_\_\_ (i.e. *parents, guardian, foster care, etc.*).

This is the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge  
\_\_\_\_\_ District Court

**DISTRIBUTION TO:**

- La Mer Kyle-Griffiths, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601; fax 502-564-5539
- DPA Trial Attorney
- Hon. \_\_\_\_\_, County Attorney, **ADDRESS**;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, **ADDRESS**; and

**APPEAL INFORMATION SHEET**

1. County and Case Number: \_\_\_\_\_
2. Defendant: \_\_\_\_\_  
D.O.B. \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
3. Parent: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
3. Name & Phone # of Prosecuting Attorney: \_\_\_\_\_
4. Original Charges: \_\_\_\_\_
5. Charges adjudicated: \_\_\_\_\_
6. Was the child adjudicated or pled guilty to any felony offenses? \_\_\_\_ yes \_\_\_\_ no
7. Does the child have any prior felony adjudications? \_\_\_\_yes \_\_\_\_ no
- If yes, please list: \_\_\_\_\_
8. Was the child at risk for transfer to adult court? \_\_\_\_ yes \_\_\_\_ no
9. Was there a suppression hearing? \_\_\_\_ Yes \_\_\_\_ No  
If yes, date of hearing: \_\_\_\_\_
10. Were there any other evidentiary hearings held? \_\_\_\_Yes \_\_\_\_No  
If yes, date of hearing: \_\_\_\_\_
11. Final Disposition (check one): \_\_\_\_ Detention \_\_\_\_ days, \_\_\_\_ Probation, \_\_\_\_ Commitment  
\_\_\_\_ Other: \_\_\_\_\_
12. Date Notice of Appeal filed: \_\_\_\_\_ 13. Designation of Record Filed: \_\_\_\_ yes \_\_\_\_ no
14. Stay motion: \_\_\_\_ granted by order dated \_\_\_\_\_  
\_\_\_\_ denied by order dated \_\_\_\_\_  
\_\_\_\_ not sought because \_\_\_\_\_
15. Brief statement of suspected errors: (attach additional sheet if necessary)
16. Attach copies of:
- |                                       |  |
|---------------------------------------|--|
| ____ a) Judgment/Order appealed from  | ____ d) Designation of Record              |
| ____ b) Motion for New Trial/Judgment | ____ e) Order appointing DPA on appeal     |
| ____ c) Notice of Appeal              | ____ f) any order granting or denying stay |

## **APPEALS FROM FAMILY COURT**

**Thank you for collaborating with the Juvenile Branch  
to help our clients!**

- ❑ Within 30 days of the disposition order being entered by the clerk, you must file the following documents in the family court:
  - ❑ Notice of Appeal
  - ❑ Motion to Proceed *in forma pauperis*
  - ❑ Tendered Order, Granting the *in forma pauperis* motion.
  - ❑ Designation of Record, identifying the records and hearings you want to see reviewed by the Court of Appeals (err on the side of caution and include *everything*).

Note: It is important to file a DoR as this notifies the clerk to assemble the record for transmission to JPDB. Most delays in briefing are due to delays in obtaining the court record.

- ❑ File a Motion to Stay Disposition (see Note, below), and an Order to Stay Disposition.
- ❑ Include the Judge, Commonwealth Attorney and County Attorney in your certificate of service.
- ❑ **DO NOT RELY UPON THE CLERK TO FORWARD THE *IN FORMA PAUPERIS* ORDER TO US.** *You* are counsel of record until JPDB enters its appearance. It is your responsibility to make sure that the *in forma pauperis* order is sent to JPDB. JPDB is not assigned to the appeal until this order is received BUT the clock starts to tick for when the brief is due as soon as the IFP order is entered by the clerk. Therefore it is very important that this order is received by JPDB timely. The easiest and fastest way to do this is to present the order to the judge to sign while in court.

Note that if you get any pushback from the court on signing the IFP, i.e. requiring new affidavit of indigency, etc., alert JPDB and be aware that you can file a writ of mandamus to force the court to sign it.

Once the tendered order is signed, forward a copy of the notice of appeal and the signed order along with the attached “Appeal Information Sheet” to La Mer Kyle-Griffiths, DPA, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601 or scan documents and e-mail to [LaMer.Kyle-Griffiths@ky.gov](mailto:LaMer.Kyle-Griffiths@ky.gov) or fax to (502) 564-7890. If you have sent the required information to JPDB, and have not heard from someone in the branch within one week, please contact La Mer Kyle-Griffiths at (502) 564-8006 or via e-mail.

- ❑ When we receive the Notice of Appeal and IFP order from you, the case will be assigned to a JPDB lawyer who will enter their appearance and request a copy of the record. JPDB will handle the appeal from that point forward, and will work cooperatively with you to ensure that all appellate claims are

addressed, and to ensure that the client is kept informed about the status of the appeal. You are responsible for all other matters, hearings, etc. occurring in the family court after the appeal is filed including motion to stay judgment, even if JPDB has entered its appearance in the appeal in the Court of Appeals.

- ❑ **NOTE REGARDING STAYS PENDING APPEAL:** A motion to stay should be filed unless waived by the client after consultation, *especially when the child has been removed from the home or is under severe court orders*. Most clients have more to gain than to lose by pursuing a stay pending appeal and **the Court of Appeals cannot hear a motion to stay the judgment on appeal unless the trial court has heard the issue.**

#### **HOW TO LITIGATE A STAY MOTION:**

- ❑ **Have a hearing.** While there is no juvenile case law on the issue, under adult case law, the child entitled to an adversarial hearing on the stay motion. Commonwealth v. Peacock, 701 S.W.2d 397 (Ky. 1985). If the court refuses to give you a hearing, contact JPDB to discuss whether a writ of mandamus should be filed.
- ❑ **Call witnesses.** The standard is whether there is a risk of runaway or new offense pending appeal. Call any witnesses that can supervise your client, i.e. parents or other family members.
- ❑ **Suggest alternatives pending appeal.** The court can issue conditions of release pending appeal, such as ankle monitoring or court orders.
- ❑ **Do NOT rehash the same legal arguments made earlier in the case.** Focus on the short time period of the appeal, which can be 3-6 months (or more).
- ❑ Note that the denial of a stay motion can be relitigated in the higher court but the standard of review is very high- abuse of discretion. So keep that in mind- even if you lose, if the judge applies the wrong reasoning or appears biased, it can open it up for litigation in the higher court and give your client a second change at immediate relief.
- ❑ Make sure to notify JPDB of the result of your stay motion!

COMMONWEALTH OF KENTUCKY

FAMILY COURT

CASE NO: \_\_\_\_\_

In the Interest of \_\_\_\_\_, A child

**NOTICE OF APPEAL**

\*\*\*\*\*

Please take notice that the child appeals from the final disposition entered in this case on \_\_\_\_\_.

On appeal, the appellant will be \_\_\_\_\_, a Child under Eighteen, and the appellee will be the Commonwealth of Kentucky.

Served on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Respectfully Submitted,

\_\_\_\_\_  
COUNSEL FOR CHILD

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, 2013 a true and correct copy of the foregoing document was served by first class mail upon \_\_\_\_\_, County Attorney, **ADDRESS** \_\_\_\_\_ Commonwealth Attorney, **ADDRESS** and Jack Conway, Attorney General, 1025, Capital Center Drive, 3rd Floor, Frankfort, KY 40601.

\_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**  
**FAMILY COURT**

**CASE NO:** \_\_\_\_\_

In the Interest of \_\_\_\_\_, A child

**MOTION TO PROCEED *IN FORMA PAUPERIS***  
**AND TO APPOINT DEPARTMENT OF PUBLIC ADVOCACY**

\*\*\*\*\*

Comes the Child, through counsel, and moves this court to be permitted to prosecute his/her appeal *in forma pauperis*, and that the Department of Public Advocacy be appointed to represent the child on appeal. In support of this motion, the child states that he/she has been permitted to proceed *in forma pauperis* at all prior stages in these proceedings, and that he/she lacks the resources to prosecute this appeal at his/her own expense, as demonstrated by the attached affidavit of indigency.

WHEREFORE, for the foregoing reasons, the child respectfully requests that this court sign the attached order allowing him/her to proceed *in forma pauperis* and appointing the Department of Public Advocacy to represent him/her in this appeal.

Respectfully Submitted,

\_\_\_\_\_  
COUNSEL FOR CHILD

**NOTICE AND CERTIFICATE OF SERVICE**

Please take notice that the foregoing motion has been filed in the \_\_\_\_\_ court on the \_\_\_\_\_ day of \_\_\_\_\_, 2013. I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, a true and correct copy of this document was served on the following:

- Family Court Judge:
- County Attorney:
- Commonwealth's Attorney:
- Jack Conway, Attorney General, 1025 Capital Center Drive, 3rd Floor, Frankfort, KY 40601

COMMONWEALTH OF KENTUCKY  
\_\_\_\_\_  
FAMILY COURT  
CASE NO: \_\_\_\_\_

In the Interest of \_\_\_\_\_, A child

**ORDER GRANTING *IN FORMA PAUPERIS* STATUS**  
**APPOINTING COUNSEL, AND ORDERING CLERK**  
**TO PREPARE RECORD**

\*\*\*\*\*

The Child has moved the court for an order to prosecute the appeal of his/her disposition *in forma pauperis*, and it appears that the Child is a pauper within the meaning of KRS 453.190 and KRS 31.110(2)(b).

IT IS HEREBY ORDERED AND ADJUDGED that the Child may prosecute this appeal without payment of costs, and the Department of Public Advocacy is appointed to represent the child on appeal.

IT IS FURTHER ORDERED that the court clerk shall compile and transmit the record of the entire proceedings pursuant to the Designation of Record, including the audio/video record.

Under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JUDGE

**DISTRIBUTION TO:**

- La Mer Kyle-Griffiths, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601, fax: (502) 564-5539;
- DPA Trial Attorney;
- Hon. \_\_\_\_\_, County Attorney, **ADDRESS**;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, **ADDRESS**; and
- Hon. Jack Conway, Attorney General, 1025 Capital Center Drive, 3rd Floor, Frankfort, KY 40601.



**COMMONWEALTH OF KENTUCKY**  
**\_\_\_\_\_ FAMILY COURT**  
CASE NO: \_\_\_\_\_

In the Interest of \_\_\_\_\_, A child

**DESIGNATION OF RECORD**

\*\*\*\*\*

Comes now the Child, \_\_\_\_\_, a Child Under Eighteen, by counsel, and for his/her designation of record, hereby designates the entire record of the proceedings in this matter. Specifically, the Child designates all documents, motions, orders and exhibits filed in the record in this case. The Child further designates all proceedings mechanically recorded in this matter, including the arraignment, all pretrial hearings, all evidence presented, all openings and closings arguments, all bench conferences, all in-chambers' hearings, any post-trial hearings and/or hearing on a motion for a new trial, and the final disposition hearing.

DATE(S)	EVENT
_____	arraignment
_____	status conference(s)
_____	pretrial hearing(s)
_____	adjudication (includes opening and closing arguments)
_____	new trial and/or post-trial hearing(s)
_____	disposition
_____	other

Respectfully Submitted,

\_\_\_\_\_  
COUNSEL FOR CHILD

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was served on the following:

- Family Court Judge:
- County Attorney:
- Commonwealth's Attorney:
- Hon. Jack Conway, Attorney General, 1025 Capital Center Drive, 3rd Floor, Frankfort, KY 40601.

---

**COMMONWEALTH OF KENTUCKY**  
**\_\_\_\_\_ FAMILY COURT**

**CONFIDENTIAL CASE NO: \_\_\_\_\_**

**IN THE INTEREST OF \_\_\_\_\_, A CHILD**

**MOTION TO STAY DISPOSITION PENDING APPEAL**

\*\*\*\*\*

Comes the Movant, through counsel and, pursuant to RCr 12.04, CR 65.08, KRS 610.150, KRS 610.130 and all other applicable law, moves this Court to stay further enforcement of the order of disposition entered by this Court. As basis for this motion, the juvenile states as follows:

1. On \_\_\_\_\_, 2013 this Court entered a disposition order of \_\_\_\_\_.

2. Movant has filed a timely Notice of Appeal on \_\_\_\_\_.

3. Appeals from juvenile adjudications of the family court may be taken as a matter of right to the Kentucky Court of Appeals. CR 73.01(2). However, the Family Court and Kentucky Court of Appeals have concurrent jurisdiction to decide matters of detention and court orders. See KRS 610.120; KRS 610.150; CR 62.03; CR 65.08.

4. The Rules of Civil Procedure and the Rules of Criminal Procedure **shall** apply in Family Court proceedings. FRCPP §1(4). The Rules of Criminal Procedure provides that a stay may be granted in a juvenile proceeding pending appeal. RCr 12.04(4). The Civil Rules of Procedure also provides for a stay or interlocutory relief from disposition pending appeal. CR 62.03; 65.08. Further, the Civil Rules of Procedure provide for review of a lower court's denial of relief from disposition with the Court of Appeals. CR 65.08; 65.07; 76.33.

5. Under the Civil Rules of Procedure, giving a supersedeas bond automatically stays a judgment pending appeal. Under the Criminal Rules, a sentence of probation may be stayed and bail is available as relief pending appeal. RCr 12.76(4); 12.78.

6. While bail is not available in juvenile cases, the rights and relief afforded adults pending appeal must also be available to juveniles. RCr 12.78; see In re Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967) (stating that a child cannot be afforded less rights than their adult counterparts). Therefore, the same criteria utilized to determine whether an adult should be granted relief pending appeal must also be applied to juveniles. **As such, an adversarial hearing is required when relief pending appeal is requested.** In such a hearing, the Rules of Evidence apply and *ex parte* information is prohibited. Comm. v. Peacock, 701 S.W.2d 397 (Ky. 1985)

6. The criteria to consider bail on appeal in an adult case is also applicable for juvenile stays. **These factors are:** (1) the seriousness of the offense; (2) the possibility that the child would commit an offense dangerous to himself or the community pending appeal; (3) the child's prior record; and (4) any other pending charges. See KRS 610.280(b); KRS 431.525; Braden v. Lady, 276 S.W.2d 664, 666 (Ky. 1955).

7. At the very least, a decision regarding a stay cannot be arbitrary or capricious. **Therefore the reasons for denying a stay must be stated on the record in writing.** Comm. v. Peacock, 701 S.W.2d 397 (Ky. 1985); Ky. Const. §2.

8. The disposition in this case is on the status offense of \_\_\_\_\_, which is not a crime if the Movant was an adult. Therefore, the facts weigh in favor of granting the stay:

11. In addition to the factors listed above, this Court must also evaluate the consequence to the child if a stay pending appeal is not granted. In many cases the conditions imposed as a result of the disposition will have been served and any relief on appeal would be meaningless if the order of disposition is not stayed pending appeal. Here, **[EXPLAIN WHY CASE MIGHT BE MOOT IF STAY NOT GRANTED]**.

12. Furthermore, status offense cases are unique in that there is a significant risk that the Movant will be further harmed if this stay is not granted. This case is still ongoing; the Movant is currently subject to court orders and must appear before the court for periodic reviews. Therefore, if those orders and appearances are not stayed, **there is further risk that the child may be subjected to additional penalties, which may include incarceration in a juvenile**

**detention facility.** Any orders issued after disposition may result in further litigation through appeal or writ. Since this appeal will decide whether the original proceedings and dispositional order is legally binding, findings of contempt based on the dispositional order or any subsequent court order would also be illegal if the Movant is successful on appeal. Therefore judicial economy and consistency require that all further proceedings and orders based on the original status offense petition be stayed until a reviewing court determines whether the original proceedings and orders are legal and binding.

12. In sum, denial of a stay subjects the child to further punishment, may spur further litigation, and deny the Movant of relief on appeal. The child is not a danger to the community or to himself.

WHEREFORE, for the foregoing reasons, the child respectfully requests that this Court stay further enforcement of the disposition order entered on \_\_\_\_\_ and stay any further proceedings on the [TYPE OF STATUS OFFENSE & CASE NUMBER] petition.

Respectfully Submitted,

---

***ATTORNEY***

Department of Public Advocacy

***ADDRESS***

***PHONE NUMBER***

***FAX NUMBER***

**Notice**

Please take notice that the foregoing motion shall be heard in the \_\_\_\_\_ Family Court on \_\_\_\_\_, 2013 at \_\_\_\_\_ a.m./p.m..

**Certificate of Service**

I hereby certify that the foregoing document was served by mail on the following parties or their agents on \_\_\_\_\_, 2013:

- Hon. \_\_\_\_\_, County Attorney, \_\_\_\_\_;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, \_\_\_\_\_; and
- Hon. \_\_\_\_\_, Family Court Judge, \_\_\_\_\_.
- Hon. Jack Conway, Attorney General, 1025 Capital Center Drive, 3rd Floor, Frankfort, KY 40601.

\_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
\_\_\_\_\_  
FAMILY COURT  
CONFIDENTIAL CASE NO. \_\_\_\_\_

IN THE INTEREST OF \_\_\_\_\_, A CHILD

**ORDER TO STAY DISPOSITION PENDING APPEAL**

\* \* \* \* \*

The Court having considered the motion for stay pending appeal, and the Court having been sufficiently advised of the facts and law,

**IT IS HEREBY ORDERED AND ADJUDGED:**

That the disposition rendered by this Court on \_\_\_\_\_, 2013, shall be stayed as of this date. This order is made pursuant to RCr 12.04 and shall be effective through the final disposition of the appeal. Upon entry of this order, the child, if in custody, shall immediately be released and placed into the custody of \_\_\_\_\_ (i.e. *parents, guardian, foster care, etc.*).

This is the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge  
\_\_\_\_\_ District Court

**DISTRIBUTION TO:**

- La Mer Kyle-Griffiths, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, KY 40601
- DPA Trial Attorney
- Hon. \_\_\_\_\_, County Attorney, **ADDRESS**;
- Hon. \_\_\_\_\_, Commonwealth's Attorney, **ADDRESS**; and
- Hon. Jack Conway, Attorney General, 1025 Capital Center Drive, 3rd Floor, Frankfort, KY 40601.

### **APPEAL INFORMATION SHEET**

1. County and Case Number: \_\_\_\_\_
2. Defendant: \_\_\_\_\_  
D.O.B. \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
3. Parent: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
3. Original Charges: \_\_\_\_\_
4. Charges adjudicated: \_\_\_\_\_
5. Do any of the child's prior trailers include a prior DNA action? \_\_\_\_ yes \_\_\_\_ no  
If so, what trailer(s)? \_\_\_\_\_
6. Has child been placed out of the home? \_\_\_\_ yes \_\_\_\_ no  
If yes, name and address of placement: \_\_\_\_\_
7. Name & phone # of prosecuting attorney: \_\_\_\_\_
8. Date of Disposition: \_\_\_\_\_
6. Date Notice of Appeal filed: \_\_\_\_\_
9. Designation of Record Filed: \_\_\_\_ yes \_\_\_\_ no
10. Stay motion: \_\_\_\_ granted by order dated \_\_\_\_\_  
\_\_\_\_ denied by order dated \_\_\_\_\_  
\_\_\_\_ not sought because \_\_\_\_\_
11. Brief statement of suspected errors: (attach additional sheet if necessary)
12. Attach copies of :  
\_\_\_\_ a) Judgment/Order appealed from  
\_\_\_\_ b) Motion for New Trial/Judgment  
\_\_\_\_ c) Notice of Appeal  
\_\_\_\_ d) Designation of Record  
\_\_\_\_ f) Order appointing DPA on appeal  
\_\_\_\_ g) any order granting or denying stay



## Collateral Consequences of Juvenile Adjudications

## NOTES

There are many different collateral consequences for those convicted of crimes. Juveniles have an entirely different set of consequences that stem from their interaction with the court system. They may also share some of the collateral consequences that affect adults, but this guide is to assist practitioners to identify the unique consequences that apply only to juveniles. Many thanks to the ABA “Think Before you Plea” resource, Renee VandenWallBake and untold trainings in Kentucky and abroad for this compilation.

### **A Juvenile Adjudication is NOT a Criminal “Conviction”**

The Juvenile Code, KRS 635.040, expressly states that:

No adjudication by a juvenile session of District Court shall be deemed a conviction, nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from a criminal conviction, nor shall any child be found guilty or be deemed a criminal by reason of such adjudications.

This provision strongly provides that juveniles who are found guilty or who plead guilty to any juvenile offense should not be subjected to normal civil sanctions. However, there are some exceptions to this, which are discussed below. In addition, juveniles may be subjected to civil disabilities they could otherwise avoid if they are not aware of these protections. Occasionally, institutions will request juvenile records or use a juvenile adjudication against a child. Thus, it is important for juveniles and adults to be aware of the protections afforded by the code as well as what is not protected.

### **Disclosure of Juvenile Court Information to The Juvenile’s School**

Under KRS 610.345(3), if a youth has an adjudication of a felony or a misdemeanor that “involves” possession of a controlled substance, possession/use of a deadly weapon, or physical injury, that information can be released to the juvenile’s school. The information released can include the facts of the case, the charge, adjudication and disposition of the case. This provision authorizes the school to also release this information to its employees.

When a child is found guilty of an offense that would classify the child as a youthful offender, “the judge in the court in which the matter was tried shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case.” The superintendent is to inform the principal of the school in which the child is enrolled and the court should direct the prosecuting entity to inform the school of the case with a statement of the facts. KRS 610.345

If a child is found guilty of a felony or an offense that would classify the child as a violent offender, the superintendent of the public school, or the principal of the private school or secondary school in which the child is enrolled will be notified within five days of the charge, adjudication, and disposition of the case. If a child is found guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involved a controlled substance, deadly weapon, or physical injury to another person, the superintendent or principal of the private school where the child attends will be notified of the charge, adjudication, and disposition of the case within twenty-four hours of the petition being filed. All records that are received by the schools are to be kept in a locked file cabinet. Furthermore, “if the petition is dismissed, all records of the incident or notification created in the school district or the school . . . shall be destroyed, and shall not be included in the child’s school records.”

Under KRS 610.345(6), a child who is placed with the Department of Juvenile Justice will also have their “offense history” provided to the school when they re-enter the community.

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**Consequences of School Disclosure**

The release of this information often results in the child being placed in an alternative school program, rather than a regular education setting, regardless of the child's behavior and grades. While some schools feel that such a placement serves to "transition" the child from detention or a DJJ placement, juveniles and parents often feel that is a punishment for the child's involvement in the court system.

A guilty plea or finding of guilt may also cause the child to be suspended or expelled from school. While the school cannot "punish" a child based on his or her juvenile court history (KRS 158.153), the school can follow its own disciplinary procedures and suspended or expelled for that incident. However, if the child has been identified under IDEA, they are entitled to a manifestation hearing prior to any removal from school for more than 10 days. 707 KAR 1:340. Regardless of whether the child's behavior was a manifestation of their disability, the school can still suspend or expel the child for up to 45 days if the child (1) brought a weapon to school, (2) possessed or sold drugs on school property, or (3) "inflicted serious bodily injury" on someone while at school. 707 KAR 1:340.

Removing a child from their school can have a serious impact on their life. Research that has shown that removal from a child's regular school setting can mean termination of a child's educational services, such as tutoring and counseling, for weeks or months, or perhaps permanently. This results in a decline in grades and an increased risk that the child will drop out or fail to graduate. Changing a child's school setting also results in a breakdown of a child's support network of teachers, counselors, and peers and institutes new rules and a new social setting that the child must learn and adapt to quickly. See J.A. American Psychological Association Task Force on Zero Tolerance, 2008 (finding that a loss of a connection between the child and their school setting leads to an increased drop out rate); Baker, J. A., et al, *The flip side of the coin: Understanding the school's contribution to dropout and completion*, School Psychology Quarterly, 76, 406-426 (2001); Foley, R., *Academic characteristics of incarcerated youth and correctional education programs: A literature review*, J. Emotional and Behavioral Disorders, 9(4), 248-259 (2001); Katsiyannis, A., et al., *Juvenile delinquency and recidivism: The Impact of academic achievement*, Reading and Writing Quarterly, 24, 177-196 (2008).

**Disclosure of A Juvenile's Information To The Public**

For good cause, a court can provide records to other individuals. Additionally, "juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing." An "authorized person" includes social workers, probation officers, school personnel, prosecutors, court staff, mental health providers and other providers of services. 610.340(1)(a)

In addition, the public will have access at the courthouse to the juvenile petition, juvenile court order of adjudication, and juvenile disposition in cases where a juvenile was fourteen years of age or older at the time of the commission of what would be (if committed by an adult) a capital offense, Class A, B, or C felony, or for any offense involving the use or display of a deadly weapon. KRS 610.320, 610.340 (1)(b)

**Financial Burden**

In addition to any restitution orders issued in a juvenile case, a child's family may also have to pay attorney's fees, and depending on the county, court costs, and supervision fees- i.e. for monitoring while on home incarceration. However, the child's attorney can argue that the child and the family are indigent and do not have the ability to pay these costs.

**Effect on A Juvenile and Their Family's Housing**

A juvenile's public offense may bar them or their family from receiving public assistance and public housing, particularly if the offense is alcohol or drug related, "violent", or would threaten

## NOTES

the health safety or right to peaceful enjoyment of the premises by others. 24 C.F.R. § 5.855 (2009). An exception exists if the household member has completed an approved supervised drug rehabilitation program or if the reason for the eviction no longer exists. 24 C.F.R. §§ 5.854 (a)(1)-(2) (2009). However, because a juvenile offense is not a “crime,” one may be able to advocate that such an adjudication is not “criminal activity” under the statute.

### **Effect on A Juvenile’s Future Career**

While many employers do not require that a potential employee disclose their juvenile record, some do. One major employer that requires such a disclosure is the U.S. Armed Forces. Such a disclosure is required, even if the record is sealed or expunged. Any juvenile adjudication may possibly prevent a child from being accepted into the military. An applicant can request a waiver; however, they are not qualified for enlistment unless the waiver is approved. See Army Regulation 601-210, ch. 4, available at [http://www.apd.army.mil/pdffiles/r601\\_210.pdf](http://www.apd.army.mil/pdffiles/r601_210.pdf). Any sex crime, violent crime or felony would be more likely to prevent a person from being able to enlist in the Armed Services. Adjudication of juvenile offenses may not ultimately prevent a person from joining the Armed Forces, but they will still be considered and be grounds for rejection. It is also important to note that offenses showing a pattern of violence or aggression, such as domestic violence, may result in automatic exclusion.

Many other state and federal government jobs also require disclosure of a juvenile’s record, which may prevent them from gaining employment.

### **Immigration Consequences for Juveniles**

Some juveniles who are undocumented may be able to apply for permanent legal status through the Special Immigrant Juvenile Status (SIJS) or through a family member that is a U.S. Citizen. However, a juvenile court record can bar the child from obtaining a green card if it was a drug offense, violent offense, or a crime of “moral turpitude” such as sexual offenses, theft or fraud. It may also give cause for the child to be deported. See e.g., *Yafae v. Holder*, 324 Fed. Appx. 121 (2<sup>nd</sup> Circuit 2009) (finding juvenile offense of assault when he was 15 years old to be a “crime of violence” that warranted deportation). Immigration consequences are very complicated and so juveniles who are not U.S. citizens should consult an immigration attorney prior to pleading guilty to a juvenile offense. The U.S. Supreme Court has held that defense attorneys render ineffective assistance of counsel if they do not advise their client of immigration consequences of their charge. *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

### **Effect on Criminal Cases after a Child has Turned 18**

Neither a juvenile adjudication nor a conviction as a youthful offender can be used as a sentence enhancement, such as to establish that the adult is a Persistent Felony Offender. KRS 640.040, KRS 532.080. However, an adult’s juvenile offense history can be used in an adult criminal trial for purposes of impeachment and in the sentencing phase if the juvenile offense was a felony. KRS 610.320(5).

In addition, a juvenile adjudication of a “violent felony” offense (involving a knife or firearm and threatened/actual use of force or burglary or risk of physical injury) may be used to enhance a federal sentence. See 18 USC 922; 18 USC 924(e)(2)(B).

Effective July 25, 2013, certain juvenile records may be made available to the newly created Child Fatality and Near Fatality Review Panel. See KRS Chapter 620.

### **The Particular Case of Sex Offenses**

If a juvenile is a designated “juvenile sex offender” under the statute (KRS 635.505), the court must commit the child to the Department of Juvenile Justice at disposition for up to three (3) years. In addition, DJJ may keep the child in a facility beyond their eighteenth birthday, up until the age of 21, in order for them to complete sex offender treatment. KRS 635.515.

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Kentucky law requires a juvenile who was over the age of 13 and was adjudicated as a “juvenile sex offender” to provide a DNA sample. KRS 17.170.

Federal regulations require certain juvenile sex offenders to be on a lifetime registry. See SORNA. Kentucky has not yet established regulations for this process, however, future adoption may require retroactive registration and if the child is required to register in another state, including several adjacent states, they must register upon moving from their home state to Kentucky. There is ongoing litigation concerning this issue both as an appeal and possibly in a civil context as well so check before pleading guilty. See Ohio Attorney General’s Guide to SORNA, [http://www.opd.ohio.gov/AWA\\_Information/AWA\\_2009GuideOhioSORNLaws.pdf](http://www.opd.ohio.gov/AWA_Information/AWA_2009GuideOhioSORNLaws.pdf).

Communication concerning the sex offense in the process of completing the Juvenile Sex Offender Assessment may not be privileged if the communication is related to an ongoing criminal investigation or if the juvenile signs a waiver permitting parties in a suit to access these records. KRS § 635.527.

For juveniles moving in from another state, that juvenile is required to register as a sex offender in Kentucky. KRS 17.510 Furthermore, if a juvenile was required to register in his state, the juvenile *must* register in Kentucky even if the juvenile would *not* have had to register for the same offense in Kentucky. Consequently, youth who were disposed of in their home states in juvenile court and NOT convicted in adult court are on Kentucky’s sex offender registry and personal information about them can be found including their photograph and address.

#### **DNA Samples**

Any juvenile at least fourteen (14) years old at the time of the commission of the offense adjudicated guilty of a felony sex offense in KRS 510 or incest, and any juvenile declared a Juvenile Sexual Offender under KRS 645.510 are required to provide a DNA sample for the centralized database. See KRS 17.170

#### **Effect on Driver’s License or Permits**

Certain crimes involving motor vehicles will result in the child losing his driver’s license or permit, until he reaches the age of eighteen, as a part of a sentence. For example, a minor can expect to lose a permit or license if the juvenile is adjudicated delinquent for driving under the influence. In addition a minor might lose a license for the commission of a felony in which a motor vehicle was used, conviction of three charges of reckless driving within twelve months, theft of a motor vehicle, and other crimes. KRS 186.560 For Juveniles who are under 17 but older than 14, who are convicted of substance abuse violations in KRS 218A, the judge may recommend revocation of their license for up to a year, up to two (2) years for subsequent offenses or, if they have no license, recommend no license be issued to them for the same time periods. KRS 218A.991. Also, should a child under 18 accumulate 6 or more points on their license with two (2) years, they will face license suspension. 601 KAR 13:025

#### **Sealing and Expungement of Juvenile Records**

A juvenile may petition the court for the expungement of court records if adjudicated as a status offender or as a public offender with only a misdemeanor record. Thus, any adjudication that involves guilt of an offense which would have been a felony if the offense was committed by an adult cannot be expunged. The juvenile must be informed of the right of expungement at the time of the adjudication. KRS 610.330 The child, court, a probation officer of the court, a representative of the Department of Juvenile Justice or the cabinet, or any other interested person may initiate expungement proceedings. The petition for expungement must be filed and the order entered two years after the date of termination of the court’s jurisdiction over the person, or two years after the juvenile’s unconditional release from commitment to the DJJ or the Cabinet for Health and Family Services. Agreements as part of the resolution of a case may be made allowing for expungement to occur at an earlier time. Juveniles have the opportunity to seal court records. All index references to the person and the charges are to be deleted from

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court files. The court will order juvenile records sealed if it finds that there have not been any felony convictions, enumerated adjudications, or pending proceedings or petitions against a juvenile since the termination of the court's jurisdiction or release from the DJJ. KRS 610.330.

Copies of the order to seal the records are to be sent to each agency identified in the court's order. Inspection of any records may thereafter be permitted only by the child or a person identified by the child as having the right to see the record.

### Conclusion

In sum, a juvenile who pleads guilty or is found guilty of a juvenile offense can be subject to significant collateral consequences. While some adjudications may have to be disclosed even if they are expunged, such as if the child is applying to the military, it is generally in the best interest of the child to apply to have their misdemeanor adjudications expunged to prevent some of these negative consequences. Juvenile felony offenses should be taken very seriously, particularly because they cannot be expunged and can lead to a future youthful offender charge. Children who are tried in adult criminal court as youthful offenders are treated the same as adults with a criminal conviction. Thus youthful offender convictions can prevent a juvenile from obtaining a job, driver's license, obtaining financial aid for school, or voting. Only with full awareness of these serious consequences should a juvenile agree to plead guilty to an offense.

### Resources/Links

Kentucky Department of Public Advocacy - <http://dpa.ky.gov/>

Office of the Attorney General - <http://www.ag.ky.gov>

Kentucky Department of Juvenile Justice - <http://djj.ky.gov/>

Kentucky Youth Advocates - [http://www.kyyouth.org/Issue\\_Areas/Juvenile\\_Justice/](http://www.kyyouth.org/Issue_Areas/Juvenile_Justice/)

National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk - <http://www.neglected-delinquent.org/nd/States/state.asp?state=KY&stName=Kentucky>

The United States Attorney's Office- Western District of Kentucky - <http://www.justice.gov/usao/kyw/>







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