

POLICY DIRECTIVE 08-231 (1st Revision)

**TO: ALL JUSTICES OF THE PEACE
ALL JUSTICE OF THE PEACE COURT EMPLOYEES**

**FROM: ALAN G. DAVIS
CHIEF MAGISTRATE**

DATED: DECEMBER 15, 2017

RE: TRUANCY CONTEMPT

Scope:

Pursuant to 14 Del. C. §2731(b) the Justice of the Peace Court has jurisdiction of juveniles charged with criminal contempt for failing to comply with a court order stemming from a truancy charge under 14 Del. C. §2730. This legislation was signed by the Governor in May of 2007 and went into effect in November 2007. This policy directive will provide guidance through the process of charging and sentencing a juvenile with criminal contempt under 11 Del. C. §1271.

Justice of the Peace Court Policy:

The Justice of the Peace Court, in an effort to provide consistent treatment of juvenile truancy defendants throughout the criminal justice system, maintains responsibility for the adjudication and sentencing of juveniles charged with contempt resulting from a failure to abide by a court order stemming from the original charge of truancy.

Policy Directives/Legal Memoranda Affected:

No other policy directives or legal memoranda directly address the juvenile contempt charge with regard to the unique circumstances of a truancy case. This revised policy is, in part, a result of recent legislative change and the collaborative efforts of the Justice of the Peace Court, Public Defender’s Office, Attorney General’s Office and the Division of Youth Rehabilitative Services to ensure availability of legal representation for all Truancy Court juvenile defendants charged with contempt. It also expands on critical therapeutic considerations related to pre-contempt intervention efforts and need-specific case planning at sentencing. To the extent that any policy directive or legal memoranda discusses the treatment of juveniles and contempt, this policy directive will take precedence in cases in which the contempt arises out of a truancy case.

Effective Date:

This policy revision is effective immediately upon issuance.

Discussion:

Recommended Actions and Considerations Prior to the Initiation of the Contempt Process

Truancy Court is diversionary and therapeutic at its core. Our model is based on a rehabilitative, non-punitive approach. In the spirit of fulfilling the mission of the program, judges are asked to consider all conditions and interventions with an eye toward therapeutic outcomes. Orders and bond conditions should be in the best interests of the child. For particularly complex cases with risk factors that substantially increase the likelihood of non-secure/secure commitment or other high-level sanctions, it is recommended that the judge consult with DYRS, the AG’s Office, the PD’s Office and/or the Truancy Court Coordinator to ensure all community-based, therapeutic options have been explored/exhausted. The need to include one or more of these parties during pre-contempt deliberations will be based on individual case circumstances. However, judges are urged to notify at least the PD’s Office and the Truancy Court Coordinator of situations where more significant sanctions appear probable.

As a general rule, criminal contempt should not be the first or only course of action/intervention on a case. It should never be used simply as a punishment or sanction for unexcused absences. When employed, it should be viewed as a tool that is critically necessary to achieving a positive case outcome. All conditions and considerations attached to the contempt process should be assessed and implemented based on their therapeutic value. Written justification of higher level sanctions, including details on therapeutic value and expected benefits, should be included in the student’s hard copy file.

At the point where criminal contempt is being considered or has been initiated, the judge should be able to demonstrate reasonable efforts have been made to address the causal factors associated with a student’s poor school attendance by way of least-restrictive, remedial

interventions. Such efforts should include the protracted biopsychosocial assessment (via the case review process) to allow appropriate screening for referrals to behavioral health and/or other community-based resources. Any case rising to the level of criminal contempt will have demonstrated one or more risk factors necessitating clinical and/or other community-based interventions. A full continuum of resources is available in each county. For guidance on accessing or identifying these resources, judges are advised to consult the Truancy Court bench book, the Truancy Case Manager or the Truancy Court Coordinator. With the above in mind, criminal contempt (including any resulting non-secure or secure commitments) should be viewed as an absolute last resort to achieving compliance. When conservative efforts have proved insufficient, the criminal contempt process may be utilized.

Initiation of the Contempt Process

The State, under the authority of the Attorney General's Office will be responsible for filing charges against a juvenile. The school district's visiting teacher should submit the warrant or summons to the judge. If the judge finds that probable cause exists to believe that there is a fair probability under the totality of the circumstances that the juvenile violated 11 Del. C. §1271, the warrant or summons should be signed.

Because visiting teachers do not currently have access to DELJIS, the probable cause affidavit shall be submitted to the Truancy Court clerks, who will then process the warrant or summons accordingly. Forms for these affidavits have been supplied by the Attorney General's office. Each school district's visiting teacher has been trained by a representative from the Attorney General's office to implement this procedure.

Summons v. Warrant

If the defendant is present in the court when the probable cause is submitted, a summons for appearance on that same date should be issued upon probable cause. This will avoid the problem of processing upon execution of the warrant. If the defendant is not present, a warrant should be issued for the defendant's arrest. Executing the warrant will have to be handled by an appropriate police agency (e.g. school resource officer, youth aid officer, etc.) although court constables can make the arrest if it is followed by processing at the appropriate agency.

Presentment of Defendant

Pursuant to Rule 44.1, a juvenile charged with criminal contempt shall have access to counsel at all stages, including arraignment. Under summons, the defendant should be presented on the contempt charge (but not arraigned) by the Truancy Court judge currently presiding. If the defendant is arrested under a warrant, the defendant should be taken to the nearest Truancy Court if that court is in session. Again, the defendant should be presented on the charge but not arraigned. If Truancy Court is not in session, the defendant should be taken to the nearest JP Court. The presiding judge at that presentment should not arraign the defendant. The case should then be handled as any other juvenile presentment under 10 Del. C. §1007. Bond should be set with an order to have the child appear at the next sitting of Truancy Court. As with any

juvenile presentment, the juvenile bail justification form should be completed by the judge who sets bail.

Assignment of Counsel and Arraignment at Truancy Court

According to Rule 44.1, “after the issuance of a criminal contempt charge, if a juvenile is not represented by counsel, the Court shall order the Chief Defender to assign counsel to represent the juvenile.” Additionally, “the appointment of counsel shall occur prior to the juvenile’s arraignment on the contempt charge.” The arraignment should be scheduled for the next Truancy Court date and when representatives from the Public Defender’s Office and the Attorney General’s Office are available. A parent/guardian must be present for the arraignment.

Scheduling of Trials

Trials should be set for the next Truancy Court trial date, and notice shall be generated to the Public Defender’s Office and the Attorney General’s Office. This notice shall be generated (via email) the same day the trial date is set and shall include the defendant’s contact information. Copies of all notifications shall be included in defendants’ hard copy files. In addition to these individual notifications, both the Public Defender’s Office and the Attorney General’s Office shall receive copies of all Truancy Court trial calendars.

All parents/guardians should be provided contact information for the Public Defender’s Office in the county where the charge is brought. This contact information should be offered in the form of the standard PD’s Office information letter. The letter should be completed in its entirety, and a copy of the signed/dated letter should be placed in the defendant’s hard copy file. Copies of the information letters are available in the Truancy Court Bench Books and from the Truancy Court Coordinator.

Trial

The State bears the burden of proving its case beyond a reasonable doubt. Any Truancy Court judge can hear the case, including the judge who handles the underlying charge. If the judge is considering a non-secure or secure (Level V) commitment, which should be very rare, sentencing should be deferred pending PAC review/recommendation. The judge should contact Lauren Deveber (DSCYF) via email or phone to inform her of the potential sentence. In addition, if the juvenile is unrepresented following a previous waiver of counsel, the Public Defender’s office shall be notified. Bail can be set on the juvenile pending sentencing.

Sentencing

The presumptive sentence for a juvenile found delinquent under 11 Del C. §1271 is level V suspended to level II. This presumptive sentence is subject, of course, to variation with aggravating and mitigating factors. A juvenile criminal contempt sentence shall include both the commencement date and the duration. In consideration of Truancy Court’s therapeutic model, the probation/VOP process and the student population served, indefinite sentences should be avoided. If the judge believes special circumstances merit the use of an indefinite sentence, the

event shall be stayed/continued to allow time for the sitting judge to consult with the DCM, the staff attorney and/or the Truancy Court Coordinator. Written justification for the indefinite sentence should be indicated in the hard copy file. This presumptive sentence is subject, of course, to variation with aggravating and mitigating factors. See the juvenile disposition sheet for further assistance in determining an appropriate sentence. The disposition sheet should be completed and entered into the file.

When a non-secure or secure commitment has been ordered, the judge should be able to articulate how the commitment is part of a therapeutic intervention plan with a focus on improving multi-domain functioning and overall student well-being. Non-secure and secure commitments should not be considered stand-alone orders. Commitments, as well as orders for probation, must be accompanied by other therapeutic conditions. Such conditions might include a referral for a CAS evaluation, substance abuse assessment, medical evaluation or a specialized adjunctive service.

The sentencing order and all supporting documentation should be scanned and emailed to Lauren DeVeber at DYRS. She will forward to the appropriate regional supervisor for assignment. All such email communication should be encrypted using Egress Switch. Full contact information for Ms. DeVeber is as follows:

Lauren DeVeber, Regional Manager
DYRS/Community Services
1825 Faulkland Road
Admin Bldg, Rm 176
Wilmington, DE 19808
Phone: 892-6413

The Justice of the Peace Court Truancy Case Manager will assist the defendant in completing the juvenile intake sheet. The intake sheet and the juvenile disposition sheet should be forwarded to DYRS. A probation officer will contact the juvenile within two (2) weeks.

Internal Sentence Review

In consideration of each student's trauma, developmental, educational, treatment and social histories, it is recommended that all non-secure and secure commitments be internally reviewed within 3 working days following the judge's order. The review panel shall consist of the ordering judge, DCM, and the Truancy Court Coordinator. The purpose of the review is to ensure all available options have been exhausted and that the intervention plan is consistent with Court policy and best practice standards. Such reviews may occur by phone or face-to-face. Completion of the review should be noted in the defendant's file.

Violation of Probation

When a violation of probation hearing is set, the expectation is that the DYRS probation officer will be prepared at the hearing with a Division-approved/authorized set of

recommendations. The DYRS case plan for the student should be updated in accordance with the judge's order. If the Court is aware of a potential violation of probation, these facts should be forwarded to the probation officer.

Violation of probation hearings should be conducted the same as an adult with the same standard of proof.

Att: Rule 44.1

cc: Honorable Leo E. Strine, Jr.
Honorable Jan R. Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
All Justice of the Peace Courts
Jody Huber
Marianne Kennedy
Jill Malloy
Mark Hitch
Patricia Dailey-Lewis, Attorney General's Office
Lisa Minutola, Public Defender's Office
Nancy Dietz, DYRS
Lauren DeVeber, DYRS
All Visiting Teachers
Law Libraries: New Castle County, Kent County, Sussex County,
Widener University School of Law

Rule 44.1. Appointment of counsel for juveniles

- (a) *Right to counsel.* A juvenile against whom criminal contempt proceedings pursuant to 14 Del.C. §2731 and 11 Del.C. §1271 have been initiated shall have the right to counsel at all stages.
- (b) *Appointment of counsel where juvenile not represented.*
 - (1) Before the issuance of a criminal contempt charge, if a juvenile is not represented, the Court may contact the Chief Defender to request the appointment of counsel for the juvenile if a contempt charge appears probable or the parties are engaged in pre-contempt deliberations.
 - (2) After the issuance of a criminal contempt charge, if a juvenile is not represented by counsel, the Court shall order the Chief Defender to assign counsel to represent the juvenile. The appointment of counsel shall occur before the juvenile's arraignment on the contempt charge.
- (c) *Cases in which the right to counsel may not be waived.* The juvenile's right to be represented by counsel under subsection (a) of this rule shall not be waived:
 - (1) By a juvenile of any age where the delinquent act the juvenile is accused of is a felony.
 - (2) By a juvenile of any age who is in the custody of the Division of Family Services.
 - (3) By a juvenile who is younger than 16 years of age at the time of the attempted waiver.
 - (4) By a juvenile whose family member, guardian, or custodian is the alleged victim of the delinquent act or whose interest is determined by the Court to be adverse to the juvenile's interest.
- (d) *Waiver of counsel.* In cases not listed in subsection (c) of this Rule, the juvenile may waive the right to counsel only after following the procedures of this subsection of the Rule.

The following shall be the sole method of waiver by a juvenile of his or her right to counsel:

- (1) If the juvenile wishes to waive his or her right to counsel, then an in-person meeting with counsel shall be held at which counsel explains, the disadvantages of self-representation.
- (2) If, after this meeting, the juvenile still wishes to waive the right to counsel, the Court shall conduct an in-court hearing to determine whether the waiver is knowing, intelligent and voluntary. The juvenile shall bear the burden of proving the waiver is knowing, intelligent and voluntary by clear and convincing evidence.
- (3) In determining whether a juvenile's waiver is knowing, intelligent, and voluntary, the Court shall consider the circumstances surrounding the waiver, including:
 - A. The juvenile's mental and emotional health and maturity;
 - B. Whether the juvenile understands the consequences of the waiver;
 - C. Whether the juvenile understands the seriousness of the offense;
 - D. Whether the juvenile understands the potential, direct and collateral consequences of being adjudicated delinquent of the offense;
 - E. Whether the parent, guardian, or custodian understands the consequences to the juvenile of the waiver; and

- F. Whether the waiver of the right to counsel is the result of any coercion, force, or inducement.
- (4) Before the Court may accept the waiver, the juvenile must provide to the Court a written statement, signed by both the juvenile and his or her parent, guardian or custodian, affirming that the juvenile has followed the procedures of this Rule and understands the rights he or she is waiving and the potential consequences of the waiver.
 - (5) If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding and the juvenile may revoke the waiver of counsel at any time.