

# DETENTION

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## Detention prior to hearing on petition

A child taken into custody shall not be detained prior to the hearing on the petition unless there is probable cause to believe that the child has committed the delinquent or unruly act with which the child is charged.

If a child is taken into custody **without a court order** (e.g. an arrest order or attachment) and the child is alleged to be **delinquent** and held in secure detention, an **ex parte probable cause determination** that an offense has been committed by the child shall be made by a magistrate **within 48 hours** of the child being taken into custody. Non-judicial days are **NOT** excluded from the 48 hours.

Children alleged to be **unruly** shall not be detained for more than **twenty-four (24) hours**, excluding nonjudicial days unless there has been a **detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order**. If the child is detained at the detention hearing, the adjudicatory hearing must be held within 72 hours excluding nonjudicial days.

## Add a Facility Stay

To add a Facility Stay, click the **Add** link at the end of the line.



- Facility Stays [Top](#) [Add](#)  
7/14/2019 12:30:51 AM thru Present (Location: Middle Tennessee; Classification: Middle TN; Privilege: Not Applicable; Duration: 9 days 7 hrs)

### Facility Stay

Start date/time:

7/14/2019 12:30:51 am

Location:\*

MTJD - Middle Tennessee

Bed:

-- Select --

Classification:\*

N/A - Not applicable

Privilege level:\*

N/A - Not Applicable

Property location:

### Reason

Case:

4 - Defendant - 63JV1-2018-JR-230 (Active; Case Filed)

Reason:\*

CO - Court Ordered

Referring agency:\*

MCJC - Montgomery County Juvenile Court

### Facility Stay:

- State date/time – Date and time detention started.
- Location – Select detention center.
- Classification = N/A
- Privilege level = N/A

### Reason:

- Case – Select the case for which they are being held
- Reason – Select the reason they are being held.
- Referring Agency – Select your court.

Click the **Update** button to save your work.

## Add an Event

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<a href="#">- Last 20 Events</a> <a href="#">Top</a>				<a href="#">Add</a>
Event date/time	Event type	Court	Disposition	
<a href="#">7/30/2019 8:30 AM</a>	<a href="#">Adjudicatory/Dispositional Hearing</a>	<a href="#">Judge Howard</a>		
<a href="#">7/24/2019 2:18:37 PM</a>	<a href="#">Detention Hearing</a>	<a href="#">Mag. Begley</a>		
<a href="#">7/19/2019 8:42:44 AM</a>	<a href="#">Probable Cause Hearing (48 hour)</a>	<a href="#">Judge Howard</a>	<a href="#">Heard by Judge</a>	

Probable Cause Hearing with 48 hours [Ex Parte Probable Cause Hearing \(48 hour\)](#)

Detention Hearing within 72 hours [Detention Hearing](#)

## Add a Document

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After a Probable Cause Hearing you will create an [Ex Parte Detention Order](#).

After a Detention Hearing you will create a [Detention Hearing Order](#)

# FORMS

## Delinquency Ex Parte Detention Order - Detain

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### IN THE JUVENILE COURT OF SUMNER COUNTY, TENNESSEE

IN THE MATTER OF:

Case No. 83SCJ-2019-JR-1

**Laura Ingalls - DOB 3/23/2006 AGE 13 years**

A child under 18 years of age  
(at the time of the offense)

CHARGE(S): Case 1, Count 1 - Aggravated Assault (TCA 39-13-102), a Felony  
Case 1, Count 2 - Handgun Possession Prohibited Person under 18 (TCA 39-17-1319), a  
Misdemeanor

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### EX PARTE DETENTION ORDER

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This matter came on to be heard as an ex parte hearing pursuant to Rule 203 of the Tennessee Rules of Juvenile Practice and Procedure and T.C.A. § 37-1-114 on the 19th day of July, 2019, before the Honorable David R. Howard, upon a petition filed alleging the above offense(s). The Court hereby makes the following findings:

1. The Court finds probable cause that the child committed the delinquent offense(s) listed above.
2. Pursuant to T.C.A. § 37-1-114(c), the Court finds probable cause that:
  - a. The delinquent offense constitutes the offense of possession of a handgun or carrying of a weapon, as prohibited by title 39, Chapter 17, part 13.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that:

1. The child shall be detained in the Middle Tennessee Juvenile Detention Center juvenile detention center as there is no less restrictive alternative that will reduce the risk of flight or serious physical harm to the child or others, including placement of a child with a parent, guardian, legal custodian, or relative, or the use of any of the alternatives listed in T.C.A. § 37-1-116(g), or the setting of bail.
2. This matter shall be scheduled for **Detention Hearing on July 24, 2019 at 2:18 PM**. The child and parent, guardian, or legal custodian(s) shall appear.

ENTERED this 17th day of July, 2019.

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The Honorable David R Howard  
Juvenile Court Judge  
(T.C.A. § 16-1-115)

### **CERTIFICATION OF SERVICE**

I hereby certify that a true and exact copy of the order has been delivered by United States mail, by personal service, by email or facsimile if service is so accepted, to the individuals listed below this 17th day of July, 2019:

Caroline Ingalls, 636 E Main St., Gallatin, TN 37066  
Charles Ingalls, 356 W Main St, Gallatin, TN 37066

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Kathryn Strong  
Juvenile Court Clerk

# Delinquency Detention Hearing Order – Conditional Release

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## IN THE JUVENILE COURT OF SUMNER COUNTY, TENNESSEE

IN THE MATTER OF:

Case No. 83SCJ-2019-JR-1

**Laura Ingalls - DOB 3/23/2006 AGE 13 years**

A child under 18 years of age  
(at the time of the offense)

CHARGE(S): Case 1, Count 1 - Aggravated Assault (TCA 39-13-102), a Felony  
Case 1, Count 2 - Handgun Possession Prohibited Person under 18 (TCA 39-17-1319), a Misdemeanor

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### DETENTION HEARING ORDER

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This matter came on to be heard as a detention hearing pursuant to Rule 203 of the Tennessee Rules of Juvenile Practice and Procedure and T.C.A. § 37-1-114 on the 24th day of July, 2019, before the Honorable David R. Howard, upon a petition filed alleging the above offense(s).

Those present were Laura Ingalls, Caroline Ingalls (Mother), Charles Ingalls (Father) and Zachary Tyler Templeton (Appointed Attorney for Laura Ingalls).

The Court, having considered the testimony and evidence presented and the entire record, finds as follows:

1. The child was advised of the charge(s) against her and of her rights, pursuant to Rule 205 of the Rules of Juvenile Practice and Procedure. The Court finds that the meaning and effect of these rights have been fully explained to the child.
2. The child requested appointed counsel to represent her in this matter.
3. It appearing, based upon the affidavit of indigency filed in this cause, and after due inquiry made, that the parent, guardian or legal custodian(s) is/are indigent and thereby the child qualifies for appointed legal counsel pursuant to T.C.A. § 37-1-126 and/or S.Ct. Rule 13, Sec. 1.
4. The Public Defender is appointed to represent the child in this matter.
5. The Court finds probable cause that the child committed the delinquent offense(s) listed above.
6. Pursuant to T.C.A. § 37-1-114(c), the Court finds probable cause that:
  - a. The delinquent offense constitutes the offense of possession of a handgun or carrying of a weapon, as prohibited by title 39, Chapter 17, part 13.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that:

1. The child shall be placed on in-home detention (house arrest), except when attending school or court-approved employment. The child shall remain inside her residence with no contact of any kind with the outside or non-residents of that household.
2. This matter shall be scheduled for **Adjudicatory/Dispositional Hearing on July 30, 2019 at 8:30 AM.** The child and parent, guardian, or legal custodian(s) shall appear.

ENTERED this 17th day of July, 2019.

David R. Howard

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The Honorable David R. Howard  
Juvenile Court Judge  
(T.C.A. § 16-1-115)

# Delinquency Detention Hearing Order – No Probable Cause

## IN THE JUVENILE COURT OF SUMNER COUNTY, TENNESSEE

IN THE MATTER OF:

Case No. 83SCJ-2019-JR-1

Laura Ingalls - DOB 3/23/2006 AGE 13 years

A child under 18 years of age  
(at the time of the offense)

CHARGE(S): Case 1, Count 1 - Especially Aggravated Robbery (TCA 39-13-403), a Felony  
Case 1, Count 2 - Handgun Possession Prohibited Person under 18 (TCA 39-17-1319), a Misdemeanor

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### DETENTION HEARING ORDER

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This matter came on to be heard as a detention hearing pursuant to Rule 203 of the Tennessee Rules of Juvenile Practice and Procedure and T.C.A. § 37-1-114 on the 24th day of July, 2019, before the Honorable David R. Howard, upon a petition filed alleging the above offense(s).

Those present were Laura Ingalls, Caroline Ingalls (Mother), Charles Ingalls (Father) and Zachary Tyler Templeton (Appointed Attorney for Laura Ingalls).

The Court, having considered the testimony and evidence presented and the entire record, finds as follows:

1. The child was advised of the charge(s) against her and of her rights, pursuant to Rule 205 of the Rules of Juvenile Practice and Procedure. The Court finds that the meaning and effect of these rights have been fully explained to the child.
2. The child requested appointed counsel to represent her in this matter.
3. It appearing, based upon the affidavit of indigency filed in this cause, and after due inquiry made, that the parent, guardian or legal custodian(s) is/are indigent and thereby the child qualifies for appointed legal counsel pursuant to T.C.A. § 37-1-126 and/or S.Ct. Rule 13, Sec. 1.
4. The Public Defender is appointed to represent the child in this matter.
5. The Court does not find probable cause that the child committed the delinquent offense(s) listed above and therefore shall be released from detention.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that:

1. The child shall be released to Caroline Ingalls (Mother - Legal Custody).

ENTERED this 23rd day of July, 2019.

David R. Howard

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The Honorable David R. Howard

Juvenile Court Judge

(T.C.A. § 16-1-115)

### CERTIFICATION OF SERVICE

# Unruly Ex Parte Detention Order - Detain

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## IN THE JUVENILE COURT OF SUMNER COUNTY, TENNESSEE

IN THE MATTER OF:

Case No. 83SCJ-2019-JR-1

**Laura Ingalls - DOB 3/23/2006 AGE 13 years**

A child under 18 years of age  
(at the time of the offense)

CHARGE(S): Case 1, Count 1 - Unruly Behavior (TCA 37-1-102), a Status Offense

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### **EX PARTE DETENTION ORDER**

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This matter came on to be heard as an ex parte hearing pursuant to T.C.A. § 37-1-114 on the 19th day of July, 2019, before the Honorable David R. Howard, upon a petition filed alleging the above offense(s). The Court hereby makes the following findings:

1. The Court finds probable cause that the child committed the unruly offense(s) listed above.
2. Pursuant to T.C.A. § 37-1-114(c), the Court finds probable cause that:
  - a. The child is an unruly child who has violated a valid court order.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that:

1. The child shall be detained in the Middle Tennessee Juvenile Detention Center juvenile detention center as there is no less restrictive alternative that will reduce the risk of flight or serious physical harm to the child or others, including placement of a child with a parent, guardian, legal custodian, or relative, or the use of any of the alternatives listed in T.C.A. § 37-1-116(g), or the setting of bail.
2. This matter shall be scheduled for **Detention Hearing on July 24, 2019 at 2:18 PM**. The child and parent, guardian, or legal custodian(s) shall appear.

ENTERED this 17th day of July, 2019.

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The Honorable David R Howard  
Juvenile Court Judge  
(T.C.A. § 16-1-115)

### **CERTIFICATION OF SERVICE**



# Unruly Detention Hearing Order – Conditional Release

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## IN THE JUVENILE COURT OF SUMNER COUNTY, TENNESSEE

IN THE MATTER OF:

Case No. 83SCJ-2019-JR-1

**Laura Ingalls - DOB 3/23/2006 AGE 13 years**

A child under 18 years of age  
(at the time of the offense)

CHARGE(S): Case 1, Count 1 - Unruly Behavior (TCA 37-1-102), a Status Offense

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### DETENTION HEARING ORDER

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This matter came on to be heard as a detention hearing pursuant to T.C.A. § 37-1-114 on the 24th day of July, 2019, before the Honorable David R. Howard, upon a petition filed alleging the above offense(s).

Those present were Laura Ingalls, Caroline Ingalls (Mother) and Charles Ingalls (Father).

The Court, having considered the testimony and evidence presented and the entire record, finds as follows:

1. The child was advised of the charge(s) against her and of her rights, pursuant to Rule 205 of the Rules of Juvenile Practice and Procedure, including the right to appeal this matter. The Court finds that the meaning and effect of these rights have been fully explained to the child.
2. The child executed a Waiver of Right to Counsel with written waiver duly filed.
3. The Court finds probable cause that the child committed the unruly offense(s) listed above.
4. Pursuant to T.C.A. § 37-1-114(c), the Court finds probable cause that:
  - a. The child is an unruly child who has violated a valid court order.

It is, therefore, **ORDERED, ADJUDGED AND DECREED** that:

1. The child shall be released to Caroline Ingalls (Mother - Legal Custody) subject to the following: attend school every day.
2. This matter shall be scheduled for **Adjudicatory/Dispositional Hearing on July 30, 2019 at 8:30 AM.** The child and parent, guardian, or legal custodian(s) shall appear.

ENTERED this 17th day of July, 2019.

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The Honorable David R. Howard  
Juvenile Court Judge  
(T.C.A. § 16-1-115)

### **CERTIFICATION OF SERVICE**

**AOC Ex Parte Detention Order**

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IN THE \_\_\_\_\_ COUNTY JUVENILE COURT

STATE OF TENNESSEE

)  
)  
)  
)  
)  
)

CHILD UNDER THE AGE OF  
EIGHTEEN (18)

IN THE MATTER OF

\_\_\_\_\_

DOCKET NO. \_\_\_\_\_

**EX PARTE DETENTION ORDER (48 HOUR PROBABLE CAUSE FINDING WHEN CHILD  
DETAINED WITHOUT A COURT ORDER)**

This matter came on to be heard as an ex parte hearing pursuant to Rule 203 of the Tennessee Rules of Juvenile Practice and Procedure T.C.A. § 37-1-114 on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The court hereby makes the following findings:

- A. The court ( ) finds ( ) does not find probable cause that the child committed the delinquent offense with which the child is charged; and
- B. The court ( ) finds ( ) does not find probable cause that: (check one or more boxes below as appropriate)
  - 1. ( ) The delinquent offense constitutes a crime against a person resulting in serious bodily injury or death of the victim or involving the likelihood of serious injury or death of such victim or constitutes the offense of possession of a handgun or carrying of a weapon, as prohibited by title 39, Chapter 17, part 13.
  - 2. ( ) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation, or violation of aftercare and the child (check one or more):
    - a. ( ) Is currently on probation.
    - b. ( ) Is currently awaiting court action on a previous alleged delinquent offense.
    - c. ( ) Is alleged to be an escapee or absconder from a juvenile facility, institution, or other court-ordered placement.
    - d. ( ) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in death or serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult.
  - 3. ( ) The child is alleged to be an escapee from a secure juvenile facility or institution.
  - 4. ( ) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction.
  - 5. ( ) Special circumstances in accordance with T.C.A. § 37-1-114(c)(3) indicate that the child should be detained in that \_\_\_\_\_

IT IS THEREFORE ORDERED that the child shall:

Be detained at \_\_\_\_\_, as there is no less restrictive alternative that will reduce the risk of flight or serious physical harm to the child or others, including placement of a child with a parent, guardian, legal custodian, or relative, or the use of any of the alternatives listed in T.C.A. § 37-1-116(g), or the setting of bail.

Be released to \_\_\_\_\_

Be released upon the posting of cash or court-approved surety bond in the amount of \$\_\_\_\_\_

Be released to \_\_\_\_\_ subject to the following:

Attend school every day;

No contact with

In-home detention (house arrest), except when attending school or court-approved employment. The child shall remain inside his/her residence with no contact of any kind with the outside or non-residents of that household.

Other: \_\_\_\_\_

This matter is set for  a detention hearing  \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

ALL OF WHICH IS ADJUDGED, ORDERED, AND DECREED.

\_\_\_\_\_  
JUDGE/MAGISTRATE

# AOC Detention Hearing Order Sample

IN THE \_\_\_\_\_ COUNTY JUVENILE COURT

STATE OF TENNESSEE	)	CHILD UNDER THE AGE OF
	)	EIGHTEEN (18)
	)	
IN THE MATTER OF	)	
	)	
_____	)	DOCKET NO. _____

## DETENTION HEARING ORDER

This matter came on to be heard as a detention hearing on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the Honorable \_\_\_\_\_ upon a petition filed by \_\_\_\_\_ pursuant to Rule 203 of the Tennessee Rules of Juvenile Practice and Procedure and T.C.A. § 37-1-114.

Present for the hearing were the child, \_\_\_\_\_, petitioner \_\_\_\_\_, parent(s)/guardian/custodian \_\_\_\_\_, attorney for the child, \_\_\_\_\_, District Attorney or ADA, representing the State of Tennessee \_\_\_\_\_, other participant(s), \_\_\_\_\_.

The child was advised of the charge(s) against him/her and of his/her rights, pursuant to Rule 205 of the Rules of Juvenile Practice and Procedure. The Court finds that the meaning and effect of these rights have been fully explained to the child.

- The child has waived his /her right to an attorney in writing in a separate document.
- The court finds probable cause that the child committed the delinquent offense with which the child is charged.
- The court does not find probable cause that the child committed the delinquent offense with which the child is charged.

Pursuant to T.C.A. § 37-1-114(c), the court finds probable cause that: (check one or more boxes below as appropriate)

The delinquent offense constitutes a crime against a person resulting in serious bodily injury or death of the victim or involving the likelihood of serious injury or death of such victim or constitutes the offense of possession of a handgun or carrying of a weapon, as prohibited by title 39, Chapter 17, part 13; or

There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation, or violation of aftercare and the child (check one or more):

- Is currently on probation;
- Is currently awaiting court action on a previous alleged delinquent offense;
- Is alleged to be an escapee or absconder from a juvenile facility, institution, or other court-ordered placement;

Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in death or serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult or

The child is alleged to be an escapee from a secure juvenile facility or institution or

The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction; or

There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with T.C.A. § 37-1-114(c)(3) indicate that the child should be detained in that \_\_\_\_\_

The court does not find probable cause that the child meets any of the criteria of T.C.A. § 37-1-114(c) and therefore shall be released from detention.

**IT IS THEREFORE ORDERED** that the child shall:

Be detained at \_\_\_\_\_, as there is no less restrictive alternative that will reduce the risk of flight or serious physical harm to the child or others, including placement of a child with a parent, guardian, legal custodian, or relative, or the use of any of the alternatives listed in T.C.A. § 37-1-116(g), or the setting of bail.

Be released from detention to \_\_\_\_\_

Be released upon the posting of cash or court-approved surety bond in the amount of \$\_\_\_\_\_

Be released to \_\_\_\_\_ subject to the following:

Attend school every day;

Have no contact with \_\_\_\_\_

Placed on in-home detention (house arrest), except when attending school or court-approved employment.

The child shall remain inside his/her residence with no contact of any kind with the outside or non-residents of that household.

Other: \_\_\_\_\_

This matter is set for \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

**ALL OF WHICH IS ADJUDGED, ORDERED, AND DECREED.**

\_\_\_\_\_  
JUDGE/MAGISTRATE

# STATUTES

## **37-1-114. Detention or shelter care of child prior to hearing on petition.**

- (a) A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless there is probable cause to believe that the child:
- (1) Has committed the delinquent or unruly act with which the child is charged; or
  - (2) Is a neglected, dependent or abused child, and in either case the child's detention or shelter care is required because the child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, or the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removal of the child from the custody of the child's parent, guardian, legal custodian or the person who physically possesses or controls the child available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing.
- (b) Children alleged to be unruly shall not be detained for more than twenty-four (24) hours, excluding nonjudicial days unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than seventy-two (72) hours exclusive of nonjudicial days prior to an adjudicatory hearing. Nothing herein prohibits the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.
- (c) A child shall not be detained in any secure facility or secure portion of any facility unless:
- (1) There is probable cause to believe the child has committed a delinquent offense constituting:
    - (A) A crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim; or
    - (B) The unlawful possession of a handgun or carrying of a weapon, as prohibited by title 39, chapter 17, part 13;
  - (2) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:
    - (A) Is currently on probation;
    - (B) Is currently awaiting court action on a previous alleged delinquent offense;
    - (C) Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement; or
    - (D) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;
  - (3) There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with the provisions of subsection (a) indicate the child should be detained; however, in any such case, the judge shall, within twenty-four (24) hours of the actual detention, excluding nonjudicial days, issue a written order on a form prescribed by the Tennessee council of juvenile and family court judges setting forth the specific reasons necessitating such detention. Nothing in this subdivision (c)(3) shall be construed as requiring a hearing or formal finding of fact, except as otherwise required by § 37-1-117;
  - (4) The child is alleged to be an escapee from a secure juvenile facility or institution;
  - (5) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;
  - (6) There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);
  - (7) In addition to any of the conditions listed in subdivisions (c)(1)-(6), there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in § 37-1-116(g); or the setting of bail; and
  - (8) For the purposes of this subsection (c), "serious physical injury" includes conduct that would constitute the offenses of aggravated rape, rape and aggravated sexual battery.

## **37-1-117. Investigation and release or detention -- Petition -- Hearings.**

- (a)
- (1) If a child alleged to have committed a delinquent or unruly act is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that such child's detention is warranted or required under § 37-1-114.
  - (2) If such child is not so released, the court shall issue an order authorizing the detention of the child and a petition under § 37-1-120 shall be promptly filed with the court. The filing of a petition shall not preclude participation in informal adjustment pursuant to § 37-1-110. In the case of a child alleged to be delinquent, a detention hearing shall be held no later than seventy-two (72) hours after the child is placed in detention to determine whether such child's detention is required under § 37-1-114. In computing the time limitation for purposes of such detention hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is placed in detention. The court, in its discretion, may release the child on an appearance bond or on the child's own recognizance subject to a written agreement to appear in court.
- (b)
- (1) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and a child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian, legal custodian, or the person who physically possesses or controls the child and be placed in the custody of a suitable person, persons, or agency, as specified in § 37-1-116(d), pending further investigation and hearing. When a child alleged to be dependent and neglected is removed from the custody of such child's parent, guardian, legal custodian, or the person who physically possesses or controls the child prior to a hearing on a petition, a preliminary hearing shall be held no later than seventy-two (72) hours after the child's removal to determine whether such child's continued removal is required under § 37-1-114. In computing the time limitation for purposes of such preliminary hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is removed from the home.
  - (2) If a child is removed from the home prior to the filing of a petition, a petition shall be filed within forty-eight (48) hours of the removal, excluding nonjudicial days, unless the child is returned to the home within the forty-eight hour time period. In no event shall a petition be filed later than the preliminary hearing.
  - (3) This subsection (b) may be waived by express and knowing waiver, by the parties to an action including the parents, guardian, or legal custodian and the child or guardian ad litem for the child. Any such waiver may be revoked at any time, at which time this section shall apply. The court shall make every effort to advise the parent, guardian, or legal custodian, and the child individually, if fourteen (14) years of age or older, of the time, date, and place of the hearing and the factual circumstances necessitating the removal.
- (c) If the child is not so released, and a parent, guardian, or legal custodian has not been notified of the hearing, did not appear or waived appearance at this hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order such child's release unless it appears from the hearing that the child's detention or shelter care is required under § 37-1-114.

## **37-1-122. Summons -- Attachment where summons ineffectual.**

- (a) After the petition has been filed, the clerk shall schedule a time for a hearing and issue summonses to the parties. In case a summons cannot be served or the party served fails to obey the same, and in any case where it is made to appear to the court that such summons will be ineffectual, except as described in subsection (b), an attachment may issue, on the order of the court, against the:
- (1) Parent or guardian;
  - (2) Person having custody of the child;
  - (3) Person with whom the child may be; or
  - (4) Child.
- (b) (1) An attachment for a violation of conditions or limitations of probation pursuant to § 37-1-131 or § 37-1-132, home placement supervision pursuant to § 37-1-137, or diversion pursuant to § 37-1-129 shall not issue unless:
- (A) The child poses a significant likelihood of:
    - (i) Significant injury or sexual assault to another person;
    - (ii) Danger to self, such that a delay would endanger the child's safety or health; or
    - (iii) Damage to property;
  - (B) The child cannot be located by the supervising person, persons, or entity after documented efforts to locate the child by the supervising person, persons, or entity; or
  - (C) The child fails to appear for a court proceeding.

(2) If the child has an attorney of record, that attorney must be served with any attachment request made to the court.

(3) A child may not be detained pursuant to an attachment under this subsection (b), unless the child meets the criteria of § 37-1-114.

## **RULE 109: ORDERS FOR THE ATTACHMENT OF CHILDREN.**

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(a) Requirements for Issuance of Orders for Attachment. Orders for the attachment of children shall be based upon a judicial determination that there is probable cause to believe that the child is in need of the immediate protection of the court because:

(1) The conduct, condition or surroundings of the child are endangering the child's health or welfare or that of others; or

(2) The child may abscond or be removed from the jurisdiction of the court; or

(3) Service of a summons or subpoena would be ineffectual or the parties are evading service.

The statement of a person requesting the order of attachment must be by affidavit or sworn testimony reduced to writing and must provide sufficient factual information to support an independent determination that probable cause exists for the issuance of the order. If hearsay evidence is relied upon, the affidavit or testimony must include the basis for the credibility of both the declarant and the declarant's statements.

(b) Failure to Appear. When a child fails to appear at a hearing or other court-scheduled proceeding to which the child has been properly served or directed by appropriate court personnel to appear, the court may, on its own initiative or on the basis of a sworn writing, issue an attachment.

(c) Terms of Order. The order for attachment shall order that the child be brought immediately before the court or that the child be taken into custody in accordance with Rule 203 or 302.

Advisory Commission Comments.

Ordinarily, proceedings in juvenile court will be initiated and conducted pursuant to the issuance of a petition and summons rather than the issuance of attachment. Attachments should be used only when necessary to further the goals and purposes of the juvenile court. The Commission notes that the offense of failure to appear is a defined offense and may provide independent grounds for the issuance of an order to take a child into custody if charged.

The issuance of an order of attachment does not determine what should occur once that child is taken into custody. There may be instances in which an order to take a child into custody is warranted but, once accomplished, that child may not meet the requirements to be held in a secure facility pending hearing. In addition, the purpose of an order to take a child into custody may vary from case to case. The order should give specific instructions as to how the attachment order should be carried out.

Subdivision(b) allows the court to issue an attachment in the event the child fails to appear at a court-scheduled hearing, meeting or conference after the child has been duly summoned to appear and fails to do so. The attachment may direct the appropriate authorities to take the child to a detention facility or to court or to another place. Prior to issuing an attachment for failure to appear, whether or not the child is charged with the delinquent act of failure to appear, the child must have received appropriate notice specifying the date, time and location of the proceeding in issue. Accordingly, the Commission encourages each court to implement notice procedures which satisfy due process and afford court participants ample notice of proceedings. For instance, a summons generally is required to initiate most court proceedings, unless the child is served with an arrest warrant or has been issued a citation, while notice of subsequent court dates may be accomplished by less formal means so long as the method chosen is effective.

This rule clarifies the evidentiary requirements for the issuance of orders for the attachment of children based on the provisions of T.C.A. §§ 37-1-113(2), 114(a)(2), 117(b), and 122.

This rule will apply to the process of obtaining an "arrest order" for a child pursuant to T.C.A. §§ 37-1-113(2).



As only attachments of children are addressed in this rule, reference to T.C.A. § 37-1-122, regarding attachments of parents, guardians, and other persons having custody of children under juvenile court jurisdiction, was omitted from the rule. That code section should be consulted for guidance in regard to such action.

[As amended by order filed December 21, 2016, effective July 1, 2017.]

Advisory Commission Comments [2017].

The rule is amended by adding this 2017 Advisory Commission Comments as further explanation. Additionally, the fourth paragraph of the original Advisory Commission Comment is amended by changing two references to T.C.A. § 37-1-128(b) to T.C.A. § 37-1-117(b), in light of the amendments to the statutes.

An attachment is distinguished from an order for the removal of custody or order of detention, in that it addresses only the physical taking of the person of the child, under terms specified by the court, for the purposes specified in this rule. An attachment may accompany an order of removal of custody, order of detention, or other order, if necessary to accomplish the taking of child's person, but will not be necessitated in every case, as where the child is already in the physical custody of the intended entity.

If the probable cause determination in subdivision (a) is based on a written affidavit reciting the facts, it may be sworn to in person or by audio-visual means. Black's Law Dictionary defines affidavit as "(a) voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary 66 (9th ed. 2009).

## **RULE 203: PROCEDURES UPON TAKING A DELINQUENT CHILD INTO CUSTODY.**

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(a) Delinquent child taken into custody and released. When a child is taken into custody and is not detainable, the child shall be released to the child's parent, guardian or other custodian within a reasonable time. The child and the person to whom a child is released shall be served a summons requiring the child's return to court at such time and place as the court directs.

(b) Delinquent child taken into custody and not released.

(1) If a child is taken into custody without an order and:

(A) The child is alleged to be delinquent and held in secure detention, a probable cause determination that an offense has been committed by the child shall be made by a magistrate within 48 hours of the child being taken into custody; or

(B) The child is alleged to be delinquent and detained under the special circumstances exception pursuant to T.C.A. § 37-1-114(c)(3), a probable cause determination that an offense has been committed by the child and a finding of special circumstances shall be made by a magistrate within 24 hours, excluding nonjudicial days, but no later than 48 hours of the child being taken into custody.

In either case, if the magistrate does not make the required findings, the child shall be immediately released to the child's parent, guardian or other custodian. If the required findings are made and the child remains in secure detention, a detention hearing must be held within the timeframes outlined in subdivision (b)(2). "Magistrate" means a person designated as such pursuant to the provisions of T.C.A §§ 37-1-107 or 40-1-106. Probable cause determinations shall be based on a written affidavit, which may be sworn to in person or by audio-visual electronic means.

(2) If a child alleged to be delinquent is taken into custody pursuant to an order of attachment or if a probable cause determination is made pursuant to paragraph (b), the child shall not remain in detention longer than 72 hours, excluding nonjudicial days, but in no event more than 84 hours, unless a detention hearing is held. For a child so detained, a petition setting forth the allegations against the child and the basis for asserting the court's jurisdiction shall be filed prior to the child's detention hearing.

(c) Secure detention of delinquent child.

(1) A child alleged to be delinquent and not released shall be placed in a juvenile detention facility. The court and the child's parent, guardian or other custodian shall immediately be notified of the child's location and of the reason for the child's detention.

(2) A child not released shall be informed upon being placed in the detention facility, both verbally and in writing, by a person designated by the court of:

(A) The reason for being detained, including the nature of the alleged offense;

(B) The child's right to a detention hearing and an explanation of the purpose of a detention hearing;

(C) The child's right to an attorney and that an attorney will be appointed to represent the child as soon as possible prior to the detention hearing if the child's parent or custodian is financially unable or refuses to retain an attorney for the child;

(D) The right not to say anything about the charges being placed against the child and that anything the child says may be used against the child in court;

(E) The right to communicate with the child's attorney and parent, guardian or other custodian, and that provision will be made by the detention facility to allow for such private communication.

(d) Detention Hearing.

(1) Advisement of Rights. At the beginning of the detention hearing, the court shall inform the parties of the purpose of the hearing and the possible consequences of the detention hearing and shall inform the child of the child's rights pursuant to Rule 205.

(2) Evidence. Any finding that there is probable cause to believe that an offense has been committed, and that the child committed it, shall be based on evidence admitted pursuant to the Rules of Evidence, except that such evidence may include reliable hearsay.

(3) Required Determinations. The court, in making the decision on whether to detain the child, shall:

(A) Determine whether probable cause exists as to whether the charged offense or a lesser included offense has been committed and whether the child committed it; and

(B) If probable cause has been determined, whether the offense is one which qualifies for continued detention under T.C.A. § 37-1-114; and

(C) If probable cause has been determined and the offense qualifies for continued detention, determine whether it is in the best interest of the child and the community that the child remain in detention pending further hearings. In making this best interest determination, the court should consider the likelihood that the child would abscond or be removed from the jurisdiction of the court; and

(D) Determine whether any less restrictive alternatives to detention are available which would satisfy the court's best interest determination above. The court may impose conditions on release such as the setting of bail, restrictions on the child's movements and activities, requirements of the child's parent, guardian, or custodian, or other community-based alternatives as an alternative to continued detention.

(4) Release of Child. If the court does not find the child is detainable as above, the child shall be released to an appropriate parent, guardian or responsible adult. The court may impose conditions on release as above, and a hearing shall be scheduled.

(5) Continued Detention of Child. If the court orders the child to be detained, or if the child waives the detention hearing, the court shall ensure that the child's case will be scheduled so as to limit the time the child spends in secure detention.

(6) Waiver of Time Limit for Detention Hearing. The time limit for the hearing may be waived by a knowing and voluntary written waiver by the child. Any such waiver may be revoked at any time, at which time a detention hearing shall be held within the time frame outlined in T.C.A. § 37-1-117.

#### Advisory Commission Comments.

This rule applies only to children alleged to be delinquent. A child alleged to be unruly and taken into custody may not be held in a secure facility for a period longer than allowed in T.C.A. § 37-1-114.

Subdivision(b) clarifies that upon a warrantless arrest of a child alleged to be delinquent, a neutral and detached magistrate must make a probable cause determination that the child has committed the delinquent offense within 48 hours of the arrest. This determination may be made ex parte. Under the Fourth Amendment, in order for a state to detain a person arrested without a warrant, a judicial officer must determine that probable cause exists to believe the person has committed a crime. *Gerstein v. Pugh*, 420 U.S. 103 (1974). The judicial officer must make this determination "either before or promptly after arrest." *Id.* at 124. Seventeen years later, the Court further refined its *Gerstein* decision, holding that probable cause determinations must be made within 48 hours of a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) ("A jurisdiction that chooses to offer combined [probable cause and

arraignment] proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest"). Although the Supreme Court has not addressed whether *Gerstein* hearings are required for

juveniles, the Sixth Circuit has answered this question affirmatively. *Cox v. Turley*, 506 F.2d 1347, 1353 (6th Cir. 1974) ("Both the Fourth Amendment and the Fifth Amendment were violated because there was no

prompt determination of probable cause – a constitutional mandate that protects juveniles as well as adults"). See also *State v. Bishop*, No. W2010-01207-SC-R11-CD, 2014 Tenn. LEXIS 189, 2008 WL 888198 (Tenn. 2013), and *State v. Huddleston*, 924 S.W.2d 666 (Tenn. 1996).

The probable cause determination in subdivision (b)(1) must be based on a written affidavit reciting the facts, which may be sworn to in person or by audio-visual electronic means. Black's Law Dictionary defines affidavit as "(a) voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary 66 (9th ed. 2009).

Subdivision(b)(2) refers to an "order of attachment." The Commission uses the phrase "order of attachment" to refer to any court order commanding that the child be taken into custody. Some jurisdictions may refer to these orders as orders of arrest or arrest warrants. Such orders of attachment may direct the appropriate authorities to take the child to a detention facility, to the police station, to court, or to another place.

Wherever possible, community-based alternatives to secure detention facilities should be used. This preference is in keeping with the prohibition in T.C.A. § 37-1-114 against any detention or shelter care of children unless "there is no less drastic alternative to removal of the child from the custody of his parent, guardian or legal custodian available which would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing."

The Commission recognizes that detention is a severe curtailment of the child's liberty and affects not only the child, but the child's parent, guardian or custodian. A child in detention is presumed to be innocent and retains all rights guaranteed to children facing charges but who are not detained. Accordingly, detention should be as brief as possible and should be used only when absolutely necessary to accomplish the objectives of the statute. The court should determine, on an individual basis, whether the child's continued detention is warranted under T.C.A. § 37-1-114 and that there are no less drastic alternatives available. The court should make specific findings of fact justifying continued detention.

A child alleged to be delinquent has the right to an attorney at the detention hearing, as well as all other stages of a delinquency proceeding. The court must inform the child of the right to an attorney at the beginning of the hearing, pursuant to the procedures in Rule 205. Also, in order for a child to effectively waive the right to an attorney, the court must comply with the process to obtain a knowing and voluntary waiver in that rule.

Courts should have an established practice in place for the appointment of attorneys as soon as possible prior to detention hearings. If at all practicable, detention hearings should not be continued for the sole reason of locating and appointing attorneys. The Commission recognizes that time constraints may interfere with this objective, but would stress that continued deprivation of liberty is a significant event in the life of a child.

[As amended by order filed December 21, 2016, effective July 1, 2017.]

Advisory Commission Comments [2017].

A new sentence (which reads, "If the required findings are made and the child remains in secure detention, a detention hearing must be held within the timeframes outlined in subdivision (b)(2)") is added to subdivision (b)( 1) to provide further clarification that a detention hearing must be held even though the required 48-hour probable cause findings are made.

## **§ 31.303(f)(3) of Title 28 of the Code of Federal Regulations**

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**(3) Valid court order.** For the purpose of determining whether a [valid court order](#) exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to [secure](#) incarceration:

**(i)** The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

**(ii)** The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

**(iii)** The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or [legal guardian](#) in writing and be reflected in the court record and proceedings.

**(iv)** All judicial proceedings related to an alleged violation of a [valid court order](#) must be held before a court of competent jurisdiction. A juvenile accused of violating a [valid court order](#) may be held in [secure](#) detention beyond the 24-hour grace period permitted for a noncriminal [juvenile offender](#) under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a [Valid Court Order](#) may be held only in a [secure](#) juvenile detention or correctional [facility](#), and not in an [adult jail](#) or lockup.

**(v)** Prior to and during the violation hearing the following full due process rights must be provided:

- (A)** The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;
- (B)** The right to a hearing before a court;
- (C)** The right to an explanation of the nature and consequences of the proceeding;
- (D)** The right to legal counsel, and the right to have such counsel appointed by the court if indigent;
- (E)** The right to confront witnesses;
- (F)** The right to present witnesses;
- (G)** The right to have a transcript or record of the proceedings; and
- (H)** The right of appeal to an appropriate court.

**(vi)** In entering any order that directs or authorizes the placement of a [status offender](#) in a [secure facility](#), the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a [valid court order](#) (paragraphs (f)(3) (i), (ii) and (iii) of this section) and the applicable due process rights ([paragraph \(f\)\(3\)\(v\)](#) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than [secure](#) confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).