



CONDUCTING A PRELIMINARY HEARING

1. INTRODUCTION OF PARTICIPANTS:

- Names of those attending (ask case manager to introduce everyone)
- Permission for “others” to attend.

2. EXPLAIN PURPOSE OF PRELIMINARY HEARING:

- The purpose of the preliminary hearing is to determine if there is probable cause to believe that **(name of youth)** has violated his or her conditions of aftercare or alternate plan. The results of this hearing may cause **(name of youth)** to be placed (or continued) in detention pending a final hearing. If **(name of youth)** admits to the charges and waives his/her right to a final hearing, **(name of youth)** may be placed (or continued) in detention and his/her plan of care may be changed. Such a change may include placement of **(name of youth)** in a Youth Development Campus or an alternate placement. The hearing is not to decide the change in **(name of youth)** placement, but only to determine whether **(name of youth)** violated his or her conditions of placement. The screening committee will decide the placement.
- Do you **(name of youth)** understand the purpose of the hearing?
- Do you **(parent/guardian)** understand the purpose of the hearing?

3. EXPLAIN THE FOLLOWING RIGHTS TO THE YOUTH AND PARENT/GUARDIAN:

- You have the right to be represented by your attorney which you must retain. You also have the right to be represented by another person of your choice.
- You have the right to have received written notice of the date, time, place and purpose of the hearing within a reasonable time prior to the hearing, but no later than 24 hours prior to this hearing.
- You also should have received a written statement of the alleged violations at least 24 hours prior to this hearing.
- You have the right to speak on your behalf, present any relevant witnesses who may speak for you and to produce any documentary evidence.
- You have the right to confront and question people who give information against you.
- You have the right to remain silent. You do not have to admit to anything. If you do not want to speak, it can not and will not be held against you.
- If you are not satisfied with the findings of this hearing and do not choose to sign an Admission Violation/Waiver to a final hearing, you have the right to receive a final revocation hearing before a hearing officer of the Office of Administrative Hearings. That hearing will be held within 10 working days if you are detained and within 20 working days if you are not detained.

- Do you (*name of youth*) understand these rights?
- Do you (*parent/guardian*) understand the youth's rights?
- If at any point you do not understand what is happening, you should tell me so I can try to explain it.

4. **EXPLAIN THE FOLLOWING RIGHTS TO THE PARENT/GUARDIAN:**

- You have the right to retain an attorney to represent your child, or to have another representative of your choice.
- You have the right to have received written notice of the date, place, time and purpose of the hearing within a reasonable time prior to this hearing, but no later than 24 hours prior to the date of this hearing.
- You also should have received a written statement of the alleged violations at least 24 hours prior to this hearing.
- You have the right to assist your child in presenting his/her side of the situation. You may counsel your child and make recommendations to him/her. You may confront and question people who give information against your child. You may present any relevant witnesses or evidence.
- If you are not satisfied with the finding of this hearing and your child does not choose to waive a final hearing, your child has the right to receive a final revocation hearing before a hearing officer of the Office of State Administrative Hearings.
- Do you (*parent/guardian*) understand these rights?

5. **REVIEW DOCUMENTS WITH YOUTH AND PARENT/GUARDIAN:**

Commitment Order:

1. State the original charges and the date the youth was committed to the Department.
2. Is the youth currently in the 60-day trial period for placement? (If yes, charges must be dropped. Hearing can not continue)
3. Show to the youth and parent/guardian.
4. Is there any challenge?

Conditions of Placement:

1. Does document bear the name of this youth?
2. Was document signed by parent/guardian and youth?
3. Ask youth and parent/guardian if Conditions were read and explained to them.
4. Show Conditions to youth and parent/guardian. Is there any challenge?

Violation Report:

1. Was it prepared correctly?
2. Does it state when youth was placed in detention?
3. Is the hearing being held within the time limits? (For youth in detention, within 72 hours. If the 72 hour time period expires on a Saturday, Sunday or legal holiday, the hearing will be conducted the next business day which is not a Saturday, Sunday or legal holiday. For youth not in detention, within 10 working days of the filing of the Violation Report)
4. Does the report allege specific violations of Conditions of Placement?
5. Was the report served, read and explained to both the youth and parent/guardian at least 24 hours before the hearing?

Notice of Preliminary Hearing:

1. Was it prepared correctly?
2. Was it served, read and explained to both youth and parent/guardian at least 24 hours before the hearing? (Ask both the parent/guardian and youth)

Placement History:

1. Review and confirm placement history with youth and parent/guardian.

Graduated Sanctions:

1. Are graduated sanctions appropriate in this case?
2. Were graduated sanctions used prior to the youth being administratively revoked?

6. ALLOW SUPERVISOR OPPORTUNITY TO PRESENT THE CHARGES:

- Request that case manager's supervisor read aloud the Violation Report.
- Case manager may be called as a witness to present testimony.
- Supervisor may present any documentary evidence.
- Give youth opportunity to question witnesses for the DJJ.

7. ALLOW YOUTH OPPORTUNITY TO RESPOND TO CHARGES:

- Remind youth of his/her rights. (Allow time for conference with parent/guardian.)
- Give youth opportunity to question witnesses, present documentary evidence.
- Give supervisor opportunity to question witnesses for youth.
- Ask youth if he/she admits or denies violations set forth in the Violation Report.

8. CLOSING STATEMENTS:

- Give supervisor opportunity to make a closing statement.
- Give youth and parent/guardian opportunity to make a closing statement.

9. **DETERMINE IF PROBABLE CAUSE EXISTS:**

- Facts and circumstances presented in the case are of a reasonably trustworthy nature?
- Known facts and circumstances would lead a reasonable person to believe that the Violation was committed?

10. **IF NO PROBABLE CAUSE IS DETERMINED:**

- Youth will be immediately continued in the community with no greater restriction than the placement preceding the hearing

11. **IF PROBABLE CAUSE IS DETERMINED & YOUTH WAIVES:**

- Admission/Waiver Form: Read form aloud, explaining to youth his/her right to a final hearing and consequences of waiving such a hearing.
- If youth admits and waives a final hearing, the preliminary hearing officer has the authority to make the same disposition that the administrative law judge for final revocation could make. The preliminary hearing officer has the authority to decide if the youth will be detained until the screening can be held.
- If detained, complete the Findings of Preliminary Hearing form and give a copy to RYDC Director as authority to detain.
- Within 24 hours, mail original (typed) Findings of Preliminary Hearing to case manager. Keep copy for your file.

12. **IF PROBABLE CAUSE IS DETERMINED & YOUTH DOES NOT WAIVE:**

- Case Manager and Supervisor present evidence to show probable cause.
- Allow youth and/or parent/guardian to cross examine witnesses, present evidence, make statement, etc.
- Determine if probable cause exists.
- If probable cause not found, release youth to existing placement or parent/guardian.
(Stress importance of staff complying with officer's determination in this matter. To continue to detain a youth where no probable cause has been found to support further detention is a violation of the youth's due process rights and can subject the Department and the employee to liability.)
- If probable cause found:
 - a. Determine if youth should be placed (or continued) in detention.
 - b. Again request if youth wants to waive a final hearing as a result of your findings or to proceed with the final hearing.
 - c. If a final hearing is requested, determine whether youth and/or parent/guardian wants an attorney. If so, advise youth or parent/guardian, they must retain one if they can afford to pay for an attorney. If the youth and/or parent/guardian can not afford an attorney, the hearing officer must determine whether they are eligible for an appointed attorney. This

entails determining whether the youth has a colorable claim that he either did not commit the violation or there are substantial mitigating circumstances. In cases where the youth requests legal representation for a final revocation and the youth has not been effectively assisted by a parent/guardian or where the interest of the parent/guardian and the youth conflict, the Department will appoint an attorney to represent the youth.

13. PREPARE INFORMATION SHEET: (IF YOUTH DOES NOT WAIVE)

- Determine who youth and parent/guardian wish to subpoena (name, title, agency and address when appropriate)
- Determine who case manager and supervisor wish to subpoena (name, title, agency and address when appropriate)
- Contact DJJ Director of Legal Services at 404-508-6500 to advise of the youth's request for a final revocation hearing.
- Follow up within 24 hours by sending the Director a copy of the following documents:
 1. Violation Report (send all reports filed)
 2. Notice of Preliminary Hearing (send all notices given)
 3. Findings of Preliminary Hearing
 4. Conditions of Placement
 5. Court commitments and other documents relevant to the case
 6. Information Sheet for revocation hearings
 7. Provide name and address of the attorney obtained for the youth.

These documents must be sent in a timely manner.

If the youth is detained and requests a final revocation hearing and legal representation, the attorney must be secured and the hearing coordinated and held within 10 working days from the date of the decision by the preliminary hearing officer.