

# THE COURTS

## Title 255—LOCAL COURT RULES

### BERKS COUNTY

#### Detention or Incarceration of Minor Defendants Charged in Adult Criminal Court; No. CP-06-AD-13-2023; No. 23-303

##### Order

*And Now*, this 27 day of March, 2023, in consideration of the requirements set forth in the Juvenile Justice Reform Act of 2018, specifically the requirements as codified at 34 U.S.C. § 11133(a)(11)(B), it is hereby *Ordered* that the following procedures shall apply whenever a minor defendant is arrested for an act designated as a crime under the laws of this Commonwealth and is subject to adult criminal proceedings, either as a “direct file” for an offense which does not fall under the jurisdiction of the juvenile courts pursuant to 42 Pa.C.S.A. § 6302, or as a matter transferred to adult criminal court pursuant to 42 Pa.C.S.A. § 6355:

1. For purposes of this Order, the following definitions shall apply:

“Adult inmate.” An individual who has reached the age of 18 and has been arrested and is in custody for or awaiting trial on a criminal charge or is convicted of a criminal offense.

“Jail or lockup for adults.” A secure facility that is used by the Commonwealth, unit of local government, or law enforcement authority to detain or confine adult inmates.

“Minor defendant.” A defendant who is less than 18 years old.

“Sight or sound contact.” Any physical, clear visual, or verbal contact that is not brief and inadvertent.

2. Upon arrest for an act designated as a crime under the laws of this Commonwealth and subject to adult criminal proceedings, the minor defendant shall be brought before a Magisterial District Judge for preliminary arraignment in accordance with the Pennsylvania Rules of Criminal Procedure. If during regular business hours, the minor defendant shall be brought before the issuing authority, or if after regular business hours, the minor defendant shall be brought before the on-call Magisterial District Judge at Reading Central Court.

3. The arresting law enforcement authority shall contact the District Attorney’s Office (if during regular business hours) or the on-call Assistant District Attorney (if after regular business hours) to advise them of the minor defendant’s apprehension and to receive the District Attorney’s Office’s input regarding detention. The arresting law enforcement authority shall further contact the Juvenile Probation Office (if during regular business hours) or the on-call Juvenile Probation Officer (if after regular business hours) to advise them of the minor defendant’s apprehension and to determine the availability of bed space at any appropriate juvenile facility.

4. While the minor defendant is in the custody of the Sheriff’s Department or other law enforcement agency awaiting preliminary arraignment, the Sheriff’s Department or other law enforcement agency shall ensure that the minor defendant has no sight or sound contact with any other adult inmate.

5. If the Magisterial District Judge sets monetary bail at the preliminary arraignment and the minor defendant is unable to post bail, the Magisterial District Judge shall immediately conduct a hearing to determine whether it is in the “interest of justice” to hold the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, in accordance with the provisions of 34 U.S.C. § 11133(a)(11)(B). The interest of justice hearing shall take place within six (6) hours from when the minor defendant was initially taken into custody on the underlying charges. In making said determination, the Magisterial District Judge shall consider:

- a. The age of the minor defendant;
- b. The physical and mental maturity of the minor defendant;
- c. The present mental state of the minor defendant, including whether the minor defendant presents an imminent risk of harm to the minor defendant;
- d. The nature and circumstances of the alleged offense;
- e. The minor defendant’s history of prior delinquent acts;
- f. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the minor defendant but also to protect the safety of the public as well as other detained youth; and
- g. Any other relevant factor.

6. During the hearing, the District Attorney or Assistant District Attorney and/or others such as members of the Juvenile Probation Office will offer relevant information to the Magisterial District Judge to consider in making a determination during the interest of justice hearing. The minor defendant also has the right to be represented by counsel and may offer evidence during the interest of justice hearing to the presiding Magisterial District Judge. The interest of justice hearing may be held virtually via Microsoft Teams or other similar technology.

7. If the minor defendant requests counsel for the interest of justice hearing and has not had an opportunity to apply for and receive public defender representation and has not retained private counsel, then Joseph Guilama, Esquire, or Catherine Nadirov, Esquire, shall be appointed to represent the minor defendant at the interest of justice hearing.

8. After hearing held, the Magisterial District Judge shall make its finding as to whether it is in the “interest of justice” to hold the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates by entering an Order in writing, using the form Order attached hereto as Exhibit A. The Magisterial District Judge shall indicate on the face of the Order its determination regarding each of the enumerated factors.

9. If the Magisterial District Judge finds that it is not in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, the District Attorney or Assistant District Attorney shall immediately contact the Juvenile Probation Office (if during regular business hours) or the on-call Juvenile Probation Officer (if after regular business hours) to inform them of the need to house the minor defendant in an appropriate juvenile

facility. The Sheriff's Department shall provide the Juvenile Probation Office or on-call Juvenile Probation Officer with any personal information regarding the minor defendant (such as name, address, parents' or legal guardians' names, any medications the minor defendant is taking, any medical conditions, drug and/or alcohol use, etc.) which is necessary for the Juvenile Probation Office to place a minor defendant in an appropriate juvenile facility. Once the Juvenile Probation Office has determined an appropriate juvenile facility in which to hold the minor defendant, the Sheriff's Department shall promptly transport the minor defendant to said juvenile facility, ensuring at all times that the minor defendant have no sight or sound contact with adult inmates.

10. If the Magisterial District Judge finds that it is in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, the Sheriff's Department shall promptly transport the minor defendant to the Berks County Jail, ensuring at all times that the minor defendant have no sight or sound contact with adult inmates, unless sight or sound contact with adult inmates is authorized by the Magisterial District Judge as set forth above. Berks County Jail will then transport the minor defendant to the appropriate adult facility.

11. If the Magisterial District Judge finds that it is in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, the Court of Common Pleas shall hold a hearing to review the Magisterial District Judge's ruling within 72 hours of the Magisterial District Judge's Order. The Court of Common Pleas' review shall be de novo.

12. In reviewing the Magisterial District Judge's ruling, the Court of Common Pleas shall consider the same factors as set forth above and shall enter an Order in writing using the form Order attached hereto as Exhibit B, indicating on the face of the Order the Court's determination regarding each of the enumerated factors.

13. If the Court of Common Pleas finds that it is in the interest of justice to detain the minor defendant in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates, the Court of Common Pleas shall hold a hearing and review its confinement order at least every 30 days.

14. A minor defendant shall not be detained in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the Court of Common Pleas, in writing, determines

there is good cause for an extension or the minor defendant expressly waives this limitation.

15. A party may file a motion in the Court of Common Pleas at any time requesting that a detained minor defendant be detained in a jail or lockup for adults or in a secure facility with sight or sound contact with adult inmates. When such a motion is filed, the Court of Common Pleas shall conduct an interest of justice hearing within 72 hours of the filing of the motion. The Court of Common Pleas shall consider each factor as enumerated above and issue its Order in writing using the form Order attached hereto as Exhibit B.

16. Where a minor defendant is required to appear in person for a hearing in the Court of Common Pleas, the minor defendant shall have no sight or sound contact with adult inmates, including during the transport to and from the Court of Common Pleas and during the minor defendant's time at the Court of Common Pleas, unless sight or sound contact has been previously authorized.

17. Judge Scott E. Lash is assigned to conduct all interest of justice hearings for the Court of Common Pleas where the minor defendant is charged with murder or voluntary manslaughter. If Judge Lash is unavailable, Judge Eleni Dimitriou Geishauser or such other Common Pleas Judge assigned to handle juvenile matters may conduct the interest of justice hearing. In all other cases where murder or voluntary manslaughter is not charged, the interest of justice hearings held in front of the Court of Common Pleas shall be conducted by the criminal court judge to whom the minor defendant's case will be assigned. If said assigned Judge is unavailable, Judge Lash, Judge Geishauser, or such other Common Pleas Judge assigned to handle juvenile matters may conduct the interest of justice hearing.

18. If any Court determines, pursuant to this Order, that it is in the interest of justice for a minor defendant to be detained in an adult facility, the Order shall state that the Prison Rape Elimination Act standards for youthful inmates still apply.

19. If a minor defendant turns 18 during the pendency of his case, the provisions of this Order shall no longer apply, and if the now-adult defendant remains in detention on his case, he may be transferred to the Berks County Jail to be housed with other adult inmates without further Order of the Court.

*By the Court*

M. THERESA JOHNSON,  
*President Judge*

Exhibit A

COMMONWEALTH OF PENNSYLVANIA	:	MAGISTERIAL DISTRICT COURT
	:	NO. _____
	:	
v.	:	
	:	OTN No. _____
	:	JUDGE _____

**Order**

The Court, having determined that the above-named juvenile charged as an adult should remain in confinement, now must determine the appropriate facility in which that confinement should occur. Pursuant to section 223(a)(11)(B) of the Juvenile Justice and Delinquency Prevention Act (JJJPA) (see 34 U.S.C. § 11133(a)(11)(B)), a juvenile who is charged as an adult must not be held in an adult jail or lockup, nor have sight or sound contact with adult inmates, unless the Court determines that it is in the interest of justice, by making certain findings. (Failure to comply with this requirement will result in an instance of noncompliance with the statutory requirement and may affect the Commonwealth's ability to receive its full Formula Grants Program funding under Title II, Part B, of the JJJPA.)

The Court therefore determines the following:

- 1. The Court has conducted a hearing on this matter, with the juvenile charged as an adult participating and represented by counsel;
- 2. The Court determines that it  is  is not in the interest of justice to confine the juvenile in an adult jail or lockup;
- 3. In making this decision, the Court has considered each of the following factors:
  - a. The age of the juvenile: \_\_\_\_\_ ;
  - b. The physical and mental maturity of the juvenile;
  - c. The nature and circumstances of the alleged offense;
  - d. The juvenile's prior delinquent acts: \_\_\_\_\_ ;
  - e. The current mental state of the juvenile;
  - f. The juvenile  does  does not pose an imminent risk of harm to themselves;
  - g. The available juvenile detention facilities  can  cannot meet the needs of the juvenile and protect public safety and other detained youth;
  - h. The available adult facilities  can  cannot meet the needs of the juvenile and protect public safety;
  - i. The following other relevant factors:

Based upon these findings the Court determines that  it is  is not in the interest of justice for the juvenile to be held in an adult jail or lockup.

(Insert following paragraphs only if determination is made to detain juvenile in an adult facility)

It  is  is not in the interest of justice to keep the juvenile sight and sound separated from adult inmates.

Notwithstanding any provision in this Order, the standards for youthful inmates pursuant to the Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301 et seq., still apply.

The Court of Common Pleas shall conduct a de novo hearing to review this Court's findings within 72 hours of this Order.

BY THE COURT:

\_\_\_\_\_  
, J.

Exhibit B

COMMONWEALTH OF PENNSYLVANIA  
v.

: IN THE COURT OF COMMON PLEAS  
 : BERKS COUNTY, PENNSYLVANIA  
 : CRIMINAL DIVISION  
 :  
 : DOCKET NO. \_\_\_\_\_  
 : JUDGE \_\_\_\_\_

Order

The Court, having determined that the above-named juvenile charged as an adult should remain in confinement, now must determine the appropriate facility in which that confinement should occur. Pursuant to section 223(a)(11)(B) of the Juvenile Justice and Delinquency Prevention Act (JJDP) (see 34 U.S.C. § 11133(a)(11)(B)), a juvenile who is charged as an adult must not be held in an adult jail or lockup, nor have sight or sound contact with adult inmates, unless the Court determines that it is in the interest of justice, by making certain findings. (Failure to comply with this requirement will result in an instance of noncompliance with the statutory requirement and may affect the Commonwealth's ability to receive its full Formula Grants Program funding under Title II, Part B, of the JJDP.)

The Court therefore determines the following:

- 1. The Court has conducted a hearing on this matter, on the record, with the juvenile charged as an adult participating and represented by counsel;
- 2. The Court determines that it  is  is not in the interest of justice to confine the juvenile in an adult jail or lockup;
- 3. In making this decision, the Court has considered each of the following factors:
  - a. The age of the juvenile: \_\_\_\_\_ ;
  - b. The physical and mental maturity of the juvenile;
  - c. The nature and circumstances of the alleged offense;
  - d. The juvenile's prior delinquent acts: \_\_\_\_\_ ;
  - e. The current mental state of the juvenile;
  - f. The juvenile  does  does not pose an imminent risk of harm to themselves;
  - g. The available juvenile detention facilities  can  cannot meet the needs of the juvenile and protect public safety and other detained youth;

- h. The available adult facilities  can  cannot meet the needs of the juvenile and protect public safety;
- i. The following other relevant factors:

Based upon these findings the Court determines that  it is  is not in the interest of justice for the juvenile to be held in an adult jail or lockup.

(Insert following paragraphs only if determination is made to detain juvenile in an adult facility)

It  is  is not in the interest of justice to keep the juvenile sight and sound separated from adult inmates.

Notwithstanding any provision in this Order, the standards for youthful inmates pursuant to the Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301 et seq., still apply.

Pursuant to the JJDPa at 34 U.S.C. § 11133(a)(11)(B), the Court must hold a hearing and review this confinement order at least every 30 days.

BY THE COURT:

\_\_\_\_\_

, J.

[Pa.B. Doc. No. 23-455. Filed for public inspection April 7, 2023, 9:00 a.m.]

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