WV CHILD EMERGENCY DETENTION HEARING

Quick Reference for Covering Counsel

QUICK FLOW: Lawful custody > Continued detention > Release/bond > Competency > Preliminary hearing

1 | BEFORE COURT

Child: _____ **Age:** _____ **Charge(s):** _____

- ■ Review the petition and charges.
- ■ Talk privately with the child about what happened.
- ■ Determine whether the child wants to contest the allegations or detention.
- ■ Talk with the prosecutor about release/bond.
- ■ Talk with parent(s) about bond and ability/intention to post it.

AGE 12 OR YOUNGER: COMPETENCY ALERT.

2 | WAS THE CHILD LAWFULLY TAKEN INTO CUSTODY?

Rule 6B - Custody Without a Court Order

Identify the basis for custody:

- ■ Grounds exist for arrest of an **adult in identical circumstances.**
- ■ Emergency conditions pose **imminent danger** to the child's health, safety, or welfare.
- ■ Child left a parent/guardian without consent and the child's health, safety, or welfare is endangered.
- ■ Child is a fugitive from a lawful custody or commitment order.
- ■ Reasonable grounds exist to believe the child drove with any amount of alcohol in the child's blood.
- ■ Qualifying emergency protective order circumstance applies.

If detention is contested: Does the child deny the conduct? Is the evidence disputed? Does the child want the court to determine whether the evidence supports lawful detention?

Rule 6C: A child taken into custody under these circumstances must be promptly presented for a detention or placement hearing.

3 | DOES THE CHILD NEED TO REMAIN DETAINED?

Rule 13a - Begin with release. Check whether a basis for continued detention applies:

- ■ **Category 1 offense.**
- ■ **Category 2 or 3** offense + finding of danger to the public.
- ■ Category 2 or 3 offense + escape from detention/commitment.
- ■ Category 2 or 3 offense + recent willful failure to appear, with no lesser measure reasonably ensuring appearance.
- ■ Violation of an alternative method of disposition.
- ■ Pending felony-level offense + new felony-level charge.
- ■ Qualifying material violation of bond.
- ■ Fugitive from another jurisdiction + formal request for detention.

Quick category reminders

Category 1: murder, kidnapping, robbery, malicious assault, specified serious sexual offenses, PWID/manufacture/delivery of controlled substances, first-degree arson, specified deadly-weapon offenses, and attempts.

Category 2: burglary, unlawful assault, specified child abuse/neglect and sexual offenses, voluntary manslaughter, qualifying unlisted offenses, and attempts.

Category 3: assault, battery, specified DUI offenses, abduction, extortion, specified arson offenses, involuntary manslaughter, negligent homicide, unlawful shooting, and attempts.

RULE 13f - LESS RESTRICTIVE OPTIONS
Even if a detention factor is present, consider whether less restrictive measures are adequate under the circumstances.

Release argument / proposed conditions: _____

4 | RELEASE / BOND

- ■ Request release when appropriate.
- ■ If bond is necessary, request a reasonable amount and address appropriate release conditions.
- ■ Determine whether parent(s) intend and are able to post bond.
- ■ Make sure child and parent(s) understand conditions and Probation supervision, including that violations may result in return to detention.

Bond requested: $_____ **Family can/will post?** [ ] Yes [ ] No [ ] Unknown
Requested conditions: _____

5 | COMPETENCY CHECK

AGE 12 OR YOUNGER / UNDER 13
[ ] Presumed incompetent unless determined competent.
[ ] State bears the burden of proving competency.
[ ] Standard: preponderance of the evidence.
[ ] Address competency before the case moves forward in a manner inconsistent with competency protections.
Authority: W. Va. Code § 49-4-727.

AGE 13 OR OLDER
[ ] Presumption is competent.

PRACTICAL STOP
Age 12 or younger? Stop and check competency before proceeding.

6 | PRELIMINARY HEARING

Purpose: Probable cause. Determine whether the petition is supported by probable cause.

- ■ Does the child want a contested preliminary hearing?
- ■ Is waiver being considered?
- ■ Have I had enough time and information to advise the child?
- ■ Are necessary witnesses/evidence available?
- ■ Could this case involve transfer to adult criminal jurisdiction?

Timing: If detained: within **10 days of the detention hearing**. If not detained: within **20 days after service of the petition.**

7 | SAME-DAY PRELIMINARY HEARING / TRANSFER CHECK

Before proceeding with a preliminary hearing on the same day as the detention hearing, determine whether **W. Va. Code § 49-4-710(d) or (g)** may apply.

- ■ Child over 14 + specified serious offense.
- ■ Felony offense of violence or qualifying prior delinquency adjudication(s).
- ■ Firearm/deadly weapon used or presented during a felony.
- ■ Qualifying felony involving a narcotic drug.
- ■ Second-degree arson or another circumstance covered by § 49-4-710(d) or (g).

IF TRANSFER MAY APPLY: STOP. Review § 49-4-710 before proceeding with or waiving the preliminary hearing.

AT THE PODIUM | 5 QUESTIONS

1. **LAWFUL CUSTODY?** Why was the child taken into custody, and does Rule 6B permit it?
2. **CONTINUED DETENTION?** What Rule 13 basis permits continued secure detention?
3. **LESS RESTRICTIVE OPTION?** Can the concerns be adequately addressed without secure detention?
4. **WHAT AM I ASKING FOR?** Release? Conditions? Bond? What amount?
5. **RED FLAGS?** Age 12 or younger? Competency? Transfer possibility? Preliminary hearing today?

LAST-MINUTE STOP SIGNS
AGE 12 OR YOUNGER -> COMPETENCY | TRANSFER-ELIGIBLE CHARGE/HISTORY -> CHECK § 49-4-710
SAME-DAY PRELIMINARY HEARING -> STOP & CHECK | DETENTION FACTOR -> STILL CONSIDER RULE 13f