



## Ohio Revised Code

### Section 2151.28 Adjudicatory hearing - determining shelter care placement.

Effective: July 5, 2002

Legislation: House Bill 393 - 124th General Assembly

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(A) No later than seventy-two hours after the complaint is filed, the court shall fix a time for an adjudicatory hearing. The court shall conduct the adjudicatory hearing within one of the following periods of time:

(1) Subject to division (C) of section 2152.13 of the Revised Code and division (A)(3) of this section, if the complaint alleged that the child violated section 2151.87 of the Revised Code or is a delinquent or unruly child or a juvenile traffic offender, the adjudicatory hearing shall be held and may be continued in accordance with the Juvenile Rules.

(2) If the complaint alleged that the child is an abused, neglected, or dependent child, the adjudicatory hearing shall be held no later than thirty days after the complaint is filed, except that, for good cause shown, the court may continue the adjudicatory hearing for either of the following periods of time:

(a) For ten days beyond the thirty-day deadline to allow any party to obtain counsel;

(b) For a reasonable period of time beyond the thirty-day deadline to obtain service on all parties or any necessary evaluation, except that the adjudicatory hearing shall not be held later than sixty days after the date on which the complaint was filed.

(3) If the child who is the subject of the complaint is in detention and is charged with violating a section of the Revised Code that may be violated by an adult, the hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing of good cause, the adjudicatory hearing may be continued and detention extended.

(B) At an adjudicatory hearing held pursuant to division (A)(2) of this section, the court, in addition to determining whether the child is an abused, neglected, or dependent child, shall determine whether the child should remain or be placed in shelter care until the dispositional hearing. When the court



makes the shelter care determination, all of the following apply:

(1) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child otherwise would remain or be placed in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(2) The court shall comply with section 2151.419 of the Revised Code.

(3) The court shall schedule the date for the dispositional hearing to be held pursuant to section 2151.35 of the Revised Code. The parents of the child have a right to be represented by counsel; however, in no case shall the dispositional hearing be held later than ninety days after the date on which the complaint was filed.

(C)(1) The court shall direct the issuance of a summons directed to the child except as provided by this section, the parents, guardian, custodian, or other person with whom the child may be, and any other persons that appear to the court to be proper or necessary parties to the proceedings, requiring them to appear before the court at the time fixed to answer the allegations of the complaint. The summons shall contain the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons. A child alleged to be an abused, neglected, or dependent child shall not be summoned unless the court so directs. A summons issued for a child who is under fourteen years of age and who is alleged to be a delinquent child, unruly child, or a juvenile traffic offender shall be served on the parent, guardian, or custodian of the child in the child's behalf.

If the person who has physical custody of the child, or with whom the child resides, is other than the parent or guardian, then the parents and guardian also shall be summoned. A copy of the complaint



shall accompany the summons.

(2) In lieu of appearing before the court at the time fixed in the summons and prior to the date fixed for appearance in the summons, a child who is alleged to have violated section 2151.87 of the Revised Code and that child's parent, guardian, or custodian may sign a waiver of appearance before the clerk of the juvenile court and pay a fine of one hundred dollars. If the child and that child's parent, guardian, or custodian do not waive the court appearance, the court shall proceed with the adjudicatory hearing as provided in this section.

(D) If the complaint contains a prayer for permanent custody, temporary custody, whether as the preferred or an alternative disposition, or a planned permanent living arrangement in a case involving an alleged abused, neglected, or dependent child, the summons served on the parents shall contain as is appropriate an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges, an explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or an explanation that the issuance of an order for a planned permanent living arrangement will cause the removal of the child from the legal custody of the parents if any of the conditions listed in divisions (A)(5)(a) to (c) of section 2151.353 of the Revised Code are found to exist.

(E)(1) Except as otherwise provided in division (E)(2) of this section, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(2) In cases in which the complaint alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school, the court shall endorse upon the summons an order directing the parent, guardian, or other person having care of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.



(F)(1) The summons shall contain a statement advising that any party is entitled to counsel in the proceedings and that the court will appoint counsel or designate a county public defender or joint county public defender to provide legal representation if the party is indigent.

(2) In cases in which the complaint alleges a child to be an abused, neglected, or dependent child and no hearing has been conducted pursuant to division (A) of section 2151.314 of the Revised Code with respect to the child or a parent, guardian, or custodian of the child does not attend the hearing, the summons also shall contain a statement advising that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of failure to comply with a journalized case plan.

(G) If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, that the child may abscond or be removed from the jurisdiction of the court, or that the child will not be brought to the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer serve the summons and take the child into immediate custody and bring the child forthwith to the court.

(H) A party, other than the child, may waive service of summons by written stipulation.

(I) Before any temporary commitment is made permanent, the court shall fix a time for hearing in accordance with section 2151.414 of the Revised Code and shall cause notice by summons to be served upon the parent or guardian of the child and the guardian ad litem of the child, or published, as provided in section 2151.29 of the Revised Code. The summons shall contain an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges.

(J) Any person whose presence is considered necessary and who is not summoned may be subpoenaed to appear and testify at the hearing. Anyone summoned or subpoenaed to appear who fails to do so may be punished, as in other cases in the court of common pleas, for contempt of court. Persons subpoenaed shall be paid the same witness fees as are allowed in the court of common pleas.

(K) The failure of the court to hold an adjudicatory hearing within any time period set forth in



division (A)(2) of this section does not affect the ability of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(L) If the court, at an adjudicatory hearing held pursuant to division (A) of this section upon a complaint alleging that a child is an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, determines that the child is a dependent child, the court shall incorporate that determination into written findings of fact and conclusions of law and enter those findings of fact and conclusions of law in the record of the case. The court shall include in those findings of fact and conclusions of law specific findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's determination that the child is a dependent child.