



DISTRICT OF COLUMBIA  
**JUVENILE BAR  
ASSOCIATION**

The Honorable Zachary Parker  
Chairperson, Committee on Youth Affairs  
Council of the District of Columbia  
1350 Pennsylvania Avenue NW  
Washington, DC 20004

October 2, 2026

**Re: Statement for the Record, Public Roundtable on the Department of Youth Rehabilitation Services' Fifth Rulemaking on Community Placement of Juvenile Offenders (29 DCMR Chapter 12), October 7, 2026**

Dear Chairperson Parker and Members of the Committee:

Thank you for convening this roundtable. We write on behalf of the D.C. Juvenile Bar Association (DCJBA), a professional association of attorneys who practice juvenile defense in the Superior Court of the District of Columbia. Our members include the attorneys on the Family Court's Criminal Justice Act juvenile delinquency panel. We are appointed to represent a substantial share of the young people charged in delinquency cases, and under Superior Court Administrative Order 22-09 our members may elect to continue representing those clients as post-commitment counsel after commitment to the Department of Youth Rehabilitation Services (DYRS), including at the Community Status Review Hearings that these regulations govern. We offer these comments from that practical vantage point.

It is worth being clear about what is at stake. A Community Status Review Hearing decides whether a young person who is living at home, in a group home, or in another community placement will be removed and placed in a secure facility. The D.C. Court of Appeals has described it as "an adversarial-type proceeding" that is "akin to a probation revocation hearing," and has observed that "[c]hildren facing Community Status Review Hearings are not seeking release into the community, they are seeking to remain in the community." *In re N.H.M.*, 224 A.3d 581, 588, 589 n.17 (D.C. 2020). The Supreme Court has long held that the revocation of conditional liberty requires, at a minimum, written notice, disclosure of the evidence, an opportunity to be heard in person, the right to confront adverse witnesses absent a specific finding of good cause, a "neutral and detached" hearing body, and a written statement of reasons. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 786 (1973). The Court of Appeals has not yet decided the full reach of the Due Process Clause in these hearings, but it has vacated a DYRS revocation that rested in part on a concededly unconstitutional

consideration and on a finding that lacked substantial evidence. *R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160, 1165, 1167-68 (D.C. 2019).

In short, the Fifth Rulemaking contains real improvements, which we support. But it also (1) takes the decision about whether a young person is locked up away from the person who actually hears the evidence, (2) lowers the standard for emergency removal and keeps youth detained through every level of appeal, (3) expands from 13 to 20 the categories of offenses for which a charge alone requires DYRS to seek revocation, and (4) shortens or removes procedural protections that have been in place since 2009. The rule is also silent on a practice that can make every one of these protections irrelevant: DYRS routinely asks youth to waive their right to a Community Status Review Hearing in advance, before they are placed in the community and before any violation has been alleged. We ask the Committee to press the Department to make the revisions described below and to consider legislation if the Department declines.

### **What We Support**

The Department deserves credit for several provisions. We support the mandatory recording of hearings (§ 1208.4), the express placement of the burden of proof on DYRS (§ 1208.14), the requirement that DYRS disclose exculpatory and mitigating evidence (§ 1206.6(e)), and the clarification that review of the Director's decision lies in D.C. Superior Court (§ 1210.9). These provisions advance the integrity of the process and should be retained. As we explain in Section IX, however, the disclosure requirement needs a firm deadline and a consequence for missing it.

We also support § 1208.11, which limits representation at the hearing to legal counsel. The 2009 rule allowed a youth to be represented by “parents, legal counsel, or any other person whom the youth may designate” (former § 1210.5). However well intentioned, a parent or lay advocate is not equipped to cross-examine witnesses, challenge the reliability of hearsay, preserve issues for appeal, or protect a young person with a pending delinquency or criminal case from making statements that can later be used against them. A parent's interests are also not always aligned with the child's. In our experience, the parent is sometimes the complaining witness, or the person who asked that the child be removed from the home. Every committed youth now has a right to appointed counsel, and a hearing that can end in secure confinement should be handled by counsel. As the Court of Appeals has put it, “the nature of these hearings makes the presence of counsel both necessary and expected.” *N.H.M.*, 224 A.3d at 588. Parents and caretakers remain free to attend, to support their child, and to testify under § 1208.19. That is the right role for them.

### **A Threshold Problem the Rule Does Not Address: Advance Waivers of the Hearing Itself**

Before turning to the text of the rule, we want the Committee to be aware of a practice that the Fifth Rulemaking does not mention and that can make every protection in this chapter irrelevant. DYRS routinely asks youth, and in some cases requires them, to sign a “Waiver of Community Status Review Hearing” as a prerequisite to being placed in the community, before any violation has even been alleged. One of our members reports that DYRS has asked for a waiver in every one of that member's cases this year, including cases in which the Department's own

placement team was recommending the community placement. Another member reports that, in a recent case, the Department's email to counsel was worded so that the waiver had to be signed before the youth could be placed, even though the placement was at the assessed placement "level." In a particularly egregious recent example, a client was presented with a waiver and, when he did not sign, the Department placed him at its most secure facility, New Beginnings, rather than at home, where the Department had been prepared to place him had he signed. The condition that the youth pre-emptively waive his rights in order to receive the services set up for him in the community was even written into a document the Department itself filed with the Superior Court.

Practices like this, which render useless the rights afforded to our youth, deserve the Committee's attention. The pressure is not only on the youth. When the Department tells defense counsel that a client will not be placed until a waiver is signed, it puts counsel in the position of advising the client to give up their limited due process rights in order to be able to leave secure detention, which is the goal of every youth in that position. These are not isolated examples. The Department has developed routine forms for this purpose. It has a "Standard Waiver" and a separate "Suspended Placement" waiver, both of which are attached to this statement as Exhibits A and B. Both authorize DYRS to raise the youth's level of restrictiveness "without convening a Community Status Review Hearing." They recite that the youth is giving up the right to a hearing before an impartial decisionmaker, the right to require DYRS to prove the alleged violation, the right to be represented by an attorney, the right to present evidence and call witnesses, and the right to confront and cross-examine witnesses. The form tells the youth to sign only after an opportunity to consult with "a parent, guardian, responsible adult, or attorney," which means that, on its face, it can be signed without the advice of counsel. In practice, our members report that they are rarely provided these forms in advance or given the opportunity to advise their clients.

The Suspended Placement form (Exhibit B) goes further. The youth agrees in advance that a violation of any of sixteen listed conditions, plus an open-ended "Other," will result in automatic placement at a higher level "without a Community Status Review Hearing." The listed conditions include such generalized directives as "Do not create a placement disruption" and "Comply with services." That the Department has developed separate forms for different waiver scenarios says a great deal about how routine the practice has become. A child who signs one of these waivers never gets a hearing, so nothing else in this rule matters for that child. The rule should prohibit that practice.

Nothing in the 2009 rule or in the Fifth Rulemaking authorizes this practice. The 2009 rule provides for a waiver of the hearing in one narrow circumstance: a youth who consents to an emergency removal and is admitted to an inpatient treatment facility may waive the hearing in a writing signed by the youth and by a guardian or counsel, and the rule guarantees that the youth's community placement "is not revoked" and that the youth returns to the same or a less restrictive placement upon discharge (former § 1204.2(b), (d), (e)). The Fifth Rulemaking contemplates two agreements, a consent to emergency removal (§ 1205.3) and an agreed resolution of a pending petition (§ 1208.26), and each must be signed by the youth's counsel. Both arise in response to a specific event or allegation, when the youth and counsel know what the Department claims and

what the youth is giving up. A blanket waiver signed at the time of placement is a different thing entirely.

It is also difficult to see how such a waiver could be valid. A waiver is “ordinarily an intentional relinquishment or abandonment of a known right or privilege,” and “courts indulge every reasonable presumption against waiver” of fundamental rights. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (citation omitted). A youth who signs before any violation has been alleged cannot know what he or she will be accused of, what evidence DYRS will rely on, what defenses may be available, or what placement DYRS will seek. Nor is the choice a free one. The form is presented by the agency that decides whether and where the youth will be placed, in many cases to a youth who is detained and waiting to be placed. The Supreme Court has recognized that children “often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them” and “are more vulnerable or susceptible to . . . outside pressures” than adults. *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011) (first quoting *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion); and then quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)). And as we explain in Section V below, the Superior Court’s practice standards expect counsel to advise a client before the client signs any agreement with DYRS.

The practical point is simple. Whatever the Department and the Committee decide about the hearing officer, the emergency removal standard, or the appeal window, none of it will matter to a youth who has already signed away the hearing. Any revision of Chapter 12 that leaves this practice in place will protect only the youth who are never asked to sign.

**Requested revision:** Add a provision prohibiting DYRS from requesting or accepting a waiver of a Community Status Review Hearing, or of any other right under this chapter, before a petition has been filed or an emergency removal has occurred, and providing that a community placement may not be conditioned on such a waiver and that any advance waiver is void. Prohibit DYRS from telling a youth, a caretaker, or counsel that a waiver is required for placement. Permit a waiver only as to a specific, pending allegation, in a writing signed by the youth and by counsel after consultation, consistent with §§ 1205.3 and 1208.26. At a minimum, require written notice to counsel of record before any waiver is presented to a youth and make counsel’s signature a condition of its validity. We also urge the Committee to ask the Department how often it has obtained these waivers, under what authority, what percentage of those waivers were signed by defense counsel, and how many youth have had their level of restrictiveness raised without a hearing as a result.

## **What We Oppose**

### **I. The Decision to Confine a Youth Is Taken Away from the Person Who Hears the Evidence (§§ 1208.1, 1208.21, 1208.25, 1209.1 through 1209.7)**

The 2009 rule used a three-member panel that both found the facts and, if it terminated community status, determined the youth’s level of restrictiveness (former §§ 1210.2, 1211.4). The Fifth Rulemaking eliminates the panel. A single Hearing Officer, a DYRS employee selected by

the Director (§ 1208.7), decides only whether the youth violated the Community Placement Agreement (CPA), was unsuccessfully discharged, or is a risk to public safety. The Hearing Officer “shall not make a decision on the level of restrictiveness” (§ 1208.21). That decision belongs solely to the Deputy Director of Youth and Family Programs, who never sees the witnesses, never hears argument, and never hears from the youth in person. The youth’s only input is a written statement due within three business days (§ 1209.4), and the Deputy Director may rely on “[h]is or her independent review of the seriousness of the offense” (§ 1209.6(c)).

*Morrissey* describes revocation as a two-step decision: first, whether a violation occurred, and second, “should the parolee be recommitted to prison or should other steps be taken to protect society and improve chances of rehabilitation?” 408 U.S. at 479-80. The person facing revocation “must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.” *Id.* at 488. Under the Fifth Rulemaking, the second and more consequential question is never the subject of a hearing at all.

The structure also raises a neutrality problem. The Deputy Director (or a designee) is the same official who, within one business day of an emergency removal, decides on DYRS’s own petition whether there is a reasonable basis to keep the youth securely held (§ 1205.2(e)). By the time the matter returns for a decision on level of restrictiveness, that official has already concluded that the youth is a clear and present danger. That is difficult to reconcile with the “neutral and detached” hearing body that *Morrissey* requires. 408 U.S. at 489.

The problem is compounded by who conducts the hearing. Under § 1208.7, the sole factfinder is a DYRS employee selected by the Director. The rule sets no qualification, no training requirement, no term, and no separation from the Youth and Family Programs chain of command whose recommendation the Hearing Officer is asked to evaluate. Nothing bars an official who prepared the petition, supervised the Case Manager, or reviewed the emergency removal from sitting as the Hearing Officer in the same case. The 2009 rule at least diffused that risk across a three-member panel. The Fifth Rulemaking concentrates it in one employee who serves at the Director’s pleasure and whose findings are then acted on by the Deputy Director who approved the removal. That is not the “neutral and detached” decisionmaker *Morrissey* requires, 408 U.S. at 489, and it invites exactly the kind of challenge the Court of Appeals was asked to consider in *R.O.*

**Requested revision:** Restore dispositional authority to the body that hears the evidence, with the Placement Review Committee advising on placement availability and clinical appropriateness, and keep the Deputy Director or Director as the administrative appellate level. In the alternative, require the Deputy Director to hear from the youth and counsel in person or remotely, to review the hearing recording, and to issue written findings explaining the level of restrictiveness chosen, and bar any official who made the emergency removal determination from deciding the level of restrictiveness. Require that Hearing Officers be attorneys admitted in the District, that they not report to or be supervised by the Deputy Director of Youth and Family Programs, and that no person who prepared, reviewed, or approved the petition or the emergency removal may serve as the Hearing Officer in that matter.

## **II. The Emergency Removal Standard Is Lowered, and Youth Remain Detained Through Every Level of Appeal (§§ 1205.2(e), 1209.3, 1210.3, 1210.5)**

Under the 2009 rule, a youth removed on an emergency basis was entitled to “an independent probable cause determination” within one business day (former § 1204.1(d)). The Fifth Rulemaking replaces probable cause with a “reasonable basis,” decided by the Deputy Director or a designee “based on the Community Status Review Hearing petition,” which is to say on DYRS’s own paper (§ 1205.2(e)). Once that finding is made, the youth “shall continue to be securely held until the conclusion of the administrative or D.C. Superior Court appeal process.” Even for adult parolees, the Supreme Court requires a prompt preliminary hearing at which the person “may appear and speak in his own behalf.” *Morrissey*, 408 U.S. at 485-87. Under § 1205.2(e), the youth is not heard at all before the decision that keeps him or her in secure detention.

Nor is counsel. Section 1205.2(e) does not require DYRS to notify counsel that a reasonable basis determination is being made, to provide the petition before the determination, or to accept a written response. The finding that keeps a child in a locked facility for the life of the case is made within one business day, on the Department’s paper, by the Department’s official, with no one on the other side aware that it is happening. Even a preliminary parole hearing gives the parolee notice and a chance to speak. *Morrissey*, 408 U.S. at 485-87. The rule gives the youth less.

Read together with §§ 1209.3 and 1210.3, the rule appears to keep a youth in secure detention for the entire life of the case, including through an appeal taken by DYRS under § 1210.1, and even where the Deputy Director ultimately decides under § 1209.7(a) or (b) that the youth should remain in the community. Section 1210.5 goes further and requires that any youth who returns from abscondence during the process “shall be securely detained” until all appeals conclude, with no individualized determination. For a young person, weeks or months in a secure facility is not a neutral holding pattern. It interrupts school, treatment, employment, and family relationships, which are the very things community placement exists to protect.

**Requested revision:** Restore the independent probable cause standard for emergency removals. Provide that a youth is returned to the community promptly upon any decision in the youth’s favor, whether by the Hearing Officer, the Deputy Director, or the Director, and that a DYRS appeal does not stay that return. Make detention under § 1210.5 discretionary and subject to the same clear and present danger standard that governs every other emergency removal. Require that the petition be served on counsel before the reasonable basis determination is made and that counsel have the opportunity to submit a written response, however brief, before the Deputy Director rules.

## **III. Mandatory Revocation Petitions Are Expanded and Are Triggered by a Charge Alone (§§ 1203.2, 1206.5)**

The 2009 rule listed 13 serious offenses that required DYRS to convene a hearing (former § 1202.2). New § 1203.2 lists 20 categories and adds, among others, unregistered firearm and unlawful ammunition, carrying a pistol without a license, possession of a dangerous weapon,

felony assault on a police officer, and gang-related offenses. Several of these are possessory offenses. The trigger is that the youth “has been charged,” not that a judge has found probable cause and not that the youth has been found involved. The Case Manager has no discretion: the petition “shall” be filed, and under § 1205.2(a) the same charge permits an emergency removal to a secure facility with no supervisory review.

This is not a theoretical concern. In *R.O.*, DYRS revoked a youth’s community placement relying in part on a carjacking arrest for which a Superior Court judge had found no probable cause. On appeal, DYRS did not dispute that relying on that arrest was unconstitutional, and the Court of Appeals vacated the revocation. *R.O.*, 199 A.3d at 1167. The Fifth Rulemaking invites the same error on a larger scale. Section 1206.5(b) compounds the problem by providing that the dismissal of the underlying charge under a plea agreement cannot by itself be a basis to dismiss the hearing.

The Committee should also consider who is charged. Black youth make up roughly half of the District’s young people but more than nine of every ten youth arrested. The District’s own Juvenile Justice Advisory Group reported in 2023 that “[w]hile 54% of DC’s youth population is Black, 91% of youth arrested by the many agencies policing the District are Black.” Juvenile Justice Advisory Group, *Recommendations to Reduce Racial and Ethnic Disparities in Arrests of District Youth* 6 (Feb. 1, 2023). Criminal Justice Coordinating Council arrest data for the first half of 2025 put the figure above 93 percent. See Joshua Rovner, The Sentencing Project, *DC Youth in Adult Courts* (Sept. 16, 2025) (citing CJCC Adult and Juvenile Arrests data, Jan. 1 to June 29, 2025). The disparity carries through to confinement. In 2023, Black youth in the District were placed in juvenile facilities at 4.3 times the rate of white youth, The Sentencing Project, *Black Disparities in Youth Incarceration* (Aug. 12, 2025), and as of May 2025 every committed youth held at the Youth Services Center was a Black male. Council for Court Excellence, *Committed Youth Awaiting Placement in the D.C. Youth Services Center* (Oct. 16, 2025). Nor does an arrest mean a case. The Attorney General reported that in Fiscal Year 2024 his office papered 76 percent of the juvenile arrests presented to it, which he described as the highest papering rate in at least five years. Testimony of Attorney General Brian L. Schwalb, Performance Oversight Hearing, Comm. on the Judiciary & Pub. Safety (Feb. 25, 2025). Put differently, even in the Attorney General’s best recent year, roughly one in four juvenile arrests was not papered at all. Our members see the reason every day: our clients are too often arrested based on what they look like and where they live rather than what they have done. A rule that mandates a revocation petition on a charge alone, with no probable cause finding and no prosecutorial screening, imports every one of those disparities into the commitment system and adds secure confinement on top of them.

**Requested revision:** Retain the 2009 list for mandatory petitions and move the newly added categories to the discretionary provision in § 1203.3. Provide that a mandatory petition shall be withdrawn or dismissed when the Superior Court finds no probable cause, when the Office of the Attorney General or the U.S. Attorney’s Office declines to bring the charge, or when the charge is dismissed other than as part of a plea agreement.

#### **IV. “Risk to Public Safety” and “Unsuccessful Discharge” Are New, Broad, and Poorly Defined Grounds for Revocation (§§ 1203.3(a), 1299.1)**

Section 1203.3(a)(3) allows DYRS to seek revocation when a youth’s behavior “poses a risk to public safety.” The § 1299.1 definition, “a determination based on available information that a youth poses a risk of significant harm to themselves or others, or to property,” is circular and provides no meaningful limit on agency discretion. It permits revocation based on a prediction about future conduct that is not tied to any specific act, and it treats a risk of harm to the youth himself or herself as a public safety ground for confinement. That is hard to square with the rule’s own commitment to placement “in the least restrictive environment consistent with the youth’s needs and public safety” (§ 1200.2).

“Unsuccessful discharge” is an independent ground under § 1203.3(a)(2) but is not defined anywhere. Youth are discharged from placements for reasons that have nothing to do with their own conduct, including provider closures, program eligibility rules, capacity reductions, and staffing decisions. As drafted, any of those could support a petition to revoke.

**Requested revision:** Define “Risk to Public Safety” to require specific, articulable facts about recent conduct by the youth that show a substantial risk of significant physical harm to another person, and remove harm to self and harm to property as freestanding grounds. Define “Unsuccessful Discharge” to cover only discharges caused by the youth’s own conduct in violation of the placement’s written rules, and to exclude administrative and provider-side discharges.

#### **V. Community Placement Agreements Should Not Be Signed Without Notice to Counsel (§§ 1202.3, 1202.5, 1203.3(b))**

Section 1202.3 says the youth “may consult counsel of record or alternate counsel before signing the CPA,” but it does not require anyone to tell counsel that a CPA is being presented. The 2009 rule at least directed the case worker to “make reasonable efforts to discuss the agreement with the youth’s family and/or counsel of record” (former § 1201.5). That language is gone. Section 1203.3(b) adds a new pressure point: a youth who is alleged to be noncompliant may be asked to sign a new CPA “with the same or updated terms,” and a refusal to sign authorizes a revocation petition.

This is already happening under the current rule. In two recent cases, our members learned, after the fact and after repeated requests for information, that DYRS had moved their clients and had them sign a CPA without notice to counsel. One involved an initial step-down placement from YSC, and the other a move from a foster placement to the client’s home. When counsel objected and expressed concern, the Department’s position was that neither counsel’s signature nor counsel’s presence is required on a CPA, and that the current rule’s direction to make reasonable efforts to discuss the agreement with counsel is only a discussion obligation that does not condition the agreement on counsel’s involvement. The Department has taken that position even where counsel, having learned of the agreement, asked to be present to support the client. Nor is counsel provided a copy of the executed agreement; our members report that obtaining one requires a records request

to the Department's Office of the General Counsel. The Department's own waiver form, by contrast, commits DYRS to provide a copy of the fully executed waiver to the youth's legal representative within three business days (Exhibit A). The CPA, the more consequential document, carries no such commitment.

If that is how the Department reads the current rule, a rule that drops the language altogether will produce even less. The Fifth Rulemaking also requires a new CPA each time a youth moves from one community placement to another (§ 1202.5), so more of these agreements will be signed, and with less notice to counsel, than before.

The CPA is the document whose breach exposes the youth to secure confinement. The Department cannot rely on the universal availability of post-commitment counsel to justify streamlining the rest of the chapter while allowing the foundational document to be signed without counsel's knowledge. By statute, a child "is entitled to be represented by counsel at all critical stages of Division proceedings, including the time of admission or denial of allegations in the petition and all subsequent stages," D.C. Code § 16-2304(a), and the Court of Appeals has held that Community Status Review Hearings are "ancillary to a critical stage of Family Division proceedings." *N.H.M.*, 224 A.3d at 589. The Superior Court's own practice standards for post-commitment counsel provide that, "[t]o the extent possible, counsel should advise the client before the client signs any agreement with DYRS, such as a Community Placement Agreement or a GPS monitoring agreement." D.C. Super. Ct. Admin. Order No. 25-05, Post-Commitment Juvenile Attorney Practice Standards § D-2, at 13 (Feb. 13, 2025). A right to consult counsel means little if counsel is never told. The CPA is, in substance, an agreement between the Department and a represented young person, and a breach of it can cost that young person his or her liberty. Our members routinely assert their clients' right to counsel on the record at the initial hearing in the delinquency case, and the Department should not treat that assertion as though it expired at commitment. In our view, a CPA that DYRS obtains from a represented youth without notice to counsel should not be enforceable against the youth.

It is also relevant who is being asked to sign these contractual agreements. These are children, and the data consistently show that youth with disabilities are grossly overrepresented in the juvenile justice system. The National Center for Learning Disabilities estimates that 60 to 75 percent of youth in the juvenile justice system have a disability, and that students with disabilities are three times more likely to be arrested than their non-disabled peers. National Center for Learning Disabilities, *Unlocking Futures: Youth with Learning Disabilities & the Juvenile Justice System* (Dec. 8, 2022). Many of our clients have learning disabilities, mental health impairments, or other challenges that make it difficult to understand a legally binding document without counsel, let alone one whose breach can result in the loss of their freedom and placement in secure confinement. If the Department believes the terms of these agreements are fair, it is difficult to understand why it works so hard to keep counsel out of the process.

**Requested revision:** Amend §§ 1202.3, 1202.5, and 1203.3(b) to require (1) written notice to counsel of record, with a copy of the proposed CPA, at least one business day before the youth is asked to sign; (2) a documented opportunity for the youth to consult with counsel before

signing; (3) where counsel of record is unavailable, a brief deferral or the involvement of alternate counsel; and (4) a copy of the executed CPA to counsel of record within one business day of signing. Provide that a youth's request to speak with counsel before signing is not a refusal to sign. Require the Case Manager to document the efforts made to notify counsel and to review the terms with the youth and the youth's caretaker and, where counsel was not included, the reason. Provide that a CPA signed without the required notice may not serve as the basis for a petition under § 1203.3 until the youth has had the opportunity to consult with counsel and the CPA has been reissued.

## **VI. Treating Every Failure to Appear as a Violation, and Deferring to Findings Made in the Youth's Absence, Is Unfair (§§ 1207.2, 1207.3, 1207.4, 1207.8)**

Section 1207.2 declares that a youth's failure to appear at a hearing "constitutes a violation of the CPA," with no inquiry into the reason. Our clients miss hearings because of transportation failures, hospitalization, mental health crises, school conflicts, court appearances in other matters, and breakdowns in notice through their placement providers. None of that is willful noncompliance.

The remedy the rule offers is too narrow. A second hearing is available only where the youth was in abscondence and the placement was revoked (§§ 1207.3, 1207.4), and even then the findings made in the youth's absence "shall be upheld" if they were "reasonable in light of the additional evidence presented" (§ 1207.8). That standard effectively shifts the burden to the youth, which is inconsistent with § 1208.14.

**Requested revision:** Provide that a failure to appear is a CPA violation only where DYRS proves it was willful and without good cause. Make a second hearing available to any youth who missed the first hearing for good cause, whatever the outcome, and require that the second hearing be conducted de novo with the burden on DYRS.

## **VII. Notice to Counsel Is Not Notice to the Youth (§§ 1206.9(c), 1206.9(e))**

Section 1206.9(c) deems service on counsel to be constructive notice to a youth in abscondence, and § 1206.9(e) deems notice satisfied whenever counsel participates in scheduling. Combined with § 1207.1(b), which requires the hearing to go forward in the youth's absence, these provisions allow a youth's placement to be revoked without the youth ever learning of the hearing, and with no limit on how long after the alleged conduct that may occur. Counsel who cannot reach a client cannot present a defense.

**Requested revision:** Provide that notice through counsel is sufficient only where DYRS documents reasonable efforts to give the youth actual notice, and require that a hearing held in the youth's absence take place within a reasonable, defined period after the alleged violation, after which DYRS must file a new petition.

### **VIII. Three Business Days Is Not Enough Time to Appeal (§ 1210.1)**

The Fifth Rulemaking shortens the appeal window from seven business days (former § 1211.7) to three. In three business days, counsel must obtain the recording, review the written decision, consult with a client who may be detained, identify the errors, and prepare “a detailed description of the basis for the appeal and the facts and legal arguments in support” (§ 1210.2(a)). Counsel who is in trial that week cannot do it. The predictable result is either bare-bones appeals or forfeited appeal rights. The Department, by contrast, gives the Director ten business days to decide (§ 1210.6).

**Requested revision:** Extend the appeal window to ten business days or, at a minimum, keep the seven business days that have been the rule since 2009. Require the Hearing Officer to provide the recording within one business day of a request.

### **IX. Routine Disclosure of Progress Reports and Team Meeting Reports Should Be Restored, and Disclosure Needs a Deadline and a Remedy (§§ 1206.3, 1206.6, 1206.7)**

The 2009 rule required DYRS to send counsel the police report, the agreement, the case worker’s recommendation, and “progress reports and Youth/Family Team meeting reports” (former § 1207.2). New § 1206.6 keeps the first three and adds the documents DYRS relied on and exculpatory or mitigating evidence, which we welcome. But it drops routine production of progress reports and team meeting reports. Those records show how the youth has actually been doing, identify mitigating circumstances, and often reveal that the recommendation is at odds with the agency’s own contemporaneous notes. Leaving it to the Case Manager to decide what counts as “mitigating” is not an adequate substitute.

The rule also sets no disclosure deadline and no consequence for late disclosure. Section 1206.6 leaves the deadline to whatever the Hearing Officer puts in the notice of hearing, and § 1206.7 requires only that evidence be exchanged “within a reasonable time,” even though the hearing must be held within five business days of the petition (§ 1208.5). Our members report that DYRS routinely delays providing any discovery at all. Nothing in the rule would stop the Department from delivering its evidence at 10:00 p.m. the night before a 9:00 a.m. hearing, and counsel cannot review records, consult with a client who may be detained, and prepare cross-examination overnight. Nor does the rule say what happens when DYRS misses a deadline. The Hearing Officer has a remedy for defective service of the petition (§ 1204.4) but none for late or incomplete disclosure, and § 1208.9 bars the Hearing Officer from even ordering DYRS to respond to a motion raising the problem. The requirement to disclose exculpatory and mitigating evidence is one of the real improvements in this rule, but without a deadline and a sanction it cannot be enforced.

A firm deadline costs the Department nothing. Every document that § 1206.6 requires, including the police report, the CPA, the Case Manager’s recommendation, the progress reports, and the team meeting notes, already sits in the Department’s own case management system on the day the petition is filed. The Case Manager who drafts the petition is the same person who has

been generating those records. Producing them two business days before the hearing requires no investigation and no new work. It requires only that the Department send what it already has.

**Requested revision:** Add to § 1206.6 the routine production of all progress reports and Youth/Family Team meeting reports from the six months before the alleged violation, and require that all § 1206.6 materials be provided no later than two business days before the hearing. Provide that the disclosure obligation is a continuing one. Provide that materials DYRS did not timely disclose may not be admitted or relied on over the youth's objection, that the youth is entitled on request to a continuance that does not count against the youth under § 1208.12, and that the Hearing Officer may dismiss the petition, or return a detained youth to the community pending the hearing, where late disclosure has prejudiced the youth.

## **X. The Rule on Motions Is One-Sided (§ 1208.9)**

Section 1208.9 provides that the Hearing Officer "shall not order DYRS to respond to any motions made by the youth and their counsel," and may not treat a failure to respond as a concession. No comparable protection runs to the youth. A neutral tribunal must be able to ask a party for its position. A rule that bars the Hearing Officer from requiring the agency to answer a motion to dismiss, a discovery motion, or a motion to exclude evidence undermines the independence that § 1208.8 promises.

**Requested revision:** Delete the first sentence of § 1208.9.

## **XI. Continuance Limits Are Too Restrictive (§ 1208.12)**

Under the 2009 rule, the youth was "permitted" one brief continuance (former § 1210.8). Under § 1208.12, even the first request is discretionary and is capped at five business days. Our members carry calendars across the Family Court, the Criminal Division, and administrative forums. With hearings set within five business days of the petition, a single discretionary continuance of five business days is often not enough to prepare, to secure witnesses, or to work around a trial.

**Requested revision:** Give the youth one continuance of up to ten business days as of right, with further continuances for good cause, and clarify that a conflicting court appearance is good cause.

## **XII. Drafting Errors Show the Rule Is Not Ready**

Finally, the text contains a number of internal errors that should be corrected before anyone is asked to apply it. Section 1204.1(c) refers to the crimes "listed in § 1203.1," but the list is in § 1203.2. Section 1209.4 refers to a referral "under § 1207.24," a subsection that does not exist (the referral provision is § 1208.25). Section 1207.5 refers to youth "securely detained pursuant to § 1204," but emergency removals are governed by § 1205. Section 1205.2(d) requires a petition within one business day of every emergency removal, while § 1204.1(b) allows five business days after a removal to a staff secure placement. Section 1208.1 and the § 1299.1 definition of "Community Status Review Hearing" omit unsuccessful discharge as a ground, while §§ 1208.21

and 1208.25 include it. Section 1206.3 ends mid-sentence (“deadlines for exchanging supporting”). Section 1209.2 is missing words (“after the issuance of the Hearing Officer”) and makes the Placement Review Committee’s meeting contingent on a youth statement that is due on the same three-business-day clock. Section 1205.1 still refers to the “case worker.” These are small points individually, but in a rule that governs a child’s liberty, they matter.

## **Conclusion**

We share the Department’s interest in a process that is fair, efficient, and rehabilitative, and we recognize that the Fifth Rulemaking includes real improvements. But as written, it moves the most important decision out of the hearing room, widens the path to revocation, and shortens the time and tools young people have to defend themselves. And it does nothing to stop the Department from asking youth to waive the hearing before they ever need it or from having represented youth sign Community Placement Agreements without their lawyers’ knowledge. We ask the Committee to use its oversight authority to urge the Department to make the revisions above, and to consider legislation if it does not. Our members would welcome the chance to meet with the Department and Committee staff and to help draft alternative language.

There is also a practical reason to get this right now. As written, the rule invites litigation. The Director’s decisions under this chapter are reviewable in Superior Court (§ 1210.9) and, from there, in the Court of Appeals. Several of the provisions discussed above raise due process questions that our members will be obligated to litigate on behalf of their clients, including the removal of the level of restrictiveness decision from the hearing, the reasonable basis standard for emergency removals, detention through every level of appeal, and mandatory petitions triggered by a charge alone. The Court of Appeals has already had to address these hearings twice in recent years, in *R.O.* and *N.H.M.*, and it has not yet decided the full reach of the Due Process Clause in this setting. Years of case-by-case appellate litigation is a slow and costly way to write a regulation, and in the meantime, it leaves youth, counsel, and the Department uncertain about what the rules are. This is also the Department’s fifth proposed rewrite of Chapter 12 since 2015. Making the revisions we have outlined now, whether in the Department’s final rule or through legislation, will reduce litigation in the future and make it less likely that this chapter will have to come back before the Council.

Our President, William E. Mount, has registered to testify at the October 7 roundtable, and we would be glad to answer any questions. Thank you for your attention to these issues and for your continued oversight of the District's juvenile justice system.

Respectfully submitted,

The Executive Board of the D.C. Juvenile Bar Association



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William E. Mount, Esq.  
President

/s/ Lydia Wade

Lydia Wade, Esq.  
Vice President

/s/ Caitlyn N. Greene

Caitlyn N. Greene, Esq.  
Secretary

/s/ Kyle Coopersmith

Kyle Coopersmith, Esq.  
Treasurer

cc: Members, Committee on Youth Affairs  
Allison Bailey, Deputy Committee Director, Committee on Youth Affairs  
Sam Abed, Director, Department of Youth Rehabilitation Services  
Aisha Braithwaite-Flucker, General Counsel, Department of Youth Rehabilitation Services

## EXHIBIT A

### DYRS Waiver of Community Status Review Hearing, Standard Waiver

DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES

## WAIVER OF COMMUNITY STATUS REVIEW HEARING STANDARD WAIVER



This is a Standard Waiver of Community Status Review Hearing. It is an agreement between you and DYRS about your placement. By signing this waiver, you are voluntarily agreeing to waive your right to have a Community Status Review Hearing (CSRH). You should not sign this agreement unless you understand it and how it impacts your rights. You should sign this waiver only after having the opportunity to consult with a parent, guardian, responsible adult, or attorney.

This is a Waiver of Community Status Review Hearing. The purpose of this form is to do the following:

1. To detail the agreement between DYRS and a youth regarding a placement,;
2. To detail how that placement impacts a youth's right to a Community Status Review Hearing.

### AGREEMENT

I, \_\_\_\_\_ (Youth's Printed Name), \_\_\_\_\_ (D.O.B.), have been given the opportunity to have this waiver explained to me by a parent, guardian, responsible adult, or attorney.

I understand that I am agreeing to be placed in a \_\_\_\_\_.

I understand that I do not have to sign this Waiver and that instead I have the right to a Community Status Review Hearing during which an impartial factfinder would determine if I violated the terms and conditions of my CPA (29 DCMR 1210).

I understand that by signing this Waiver, I am authorizing DYRS to increase my level of restrictiveness from \_\_\_\_\_ to \_\_\_\_\_ without convening a Community Status Review Hearing.

I understand that once I have successfully completed this placement my community status will be restored, and I will be returned to my previous placement level or lower level of restrictiveness.

I understand that if I do not successfully complete this placement, my community status may be automatically raised.

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CASE NUMBER:

## RIGHTS AFFECTED BY WAIVER

I understand that, by waiving my right to a Community Status Review Hearing, I am giving up the following rights:

- a) The right to a hearing before an impartial individual(s) without unnecessary delay. \_\_\_\_\_
- b) The right requiring that DYRS prove I have violated my CPA or other allegations. \_\_\_\_\_
- c) The right to be represented by an attorney or by a person of my choosing. \_\_\_\_\_
- d) The right to present evidence and call witnesses. \_\_\_\_\_
- e) The right to provide written statements or testimony. \_\_\_\_\_
- f) The right to confront and cross-examine witnesses. \_\_\_\_\_

I understand that if I do not waive my right to a Community Status Review Hearing, I may be subject to a hearing where my level may be lowered, stay the same, or may be raised. \_\_\_\_\_

I understand that I am waiving my right to have a Community Status Review Hearing only for this placement and/or placement level. \_\_\_\_\_

I understand that by signing this agreement, I am freely, voluntarily, knowingly, and intelligently giving up each of the rights in this agreement and accept the sanction listed above which describes the increase in my level of restrictiveness. \_\_\_\_\_

Youth's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Attorney's Signature (if consulted): \_\_\_\_\_ Date: \_\_\_\_\_

DYRS Case Worker : \_\_\_\_\_ Date: \_\_\_\_\_

Parent/Guardian Signature (if consulted): \_\_\_\_\_ Date: \_\_\_\_\_

**Note:** This waiver is effective once signed by the youth and DYRS. DYRS must provide a copy of the fully executed copy to the youth's legal representative or alternative legal representative within three business days of the agency signing the waiver.

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CASE NUMBER:

## EXHIBIT B

### DYRS Waiver of Community Status Review Hearing, Suspended Placement (blank form)

DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES

## WAIVER OF COMMUNITY STATUS REVIEW HEARING SUSPENDED PLACEMENT



This is a Suspended Placement Waiver of Community Status Review Hearing. It is an agreement between you and DYRS about your placement. By signing this waiver, you are voluntarily agreeing to waive your right to have a Community Status Review Hearing (CSRH). You should not sign this agreement unless you understand it and how it impacts your rights. You should sign this waiver only after having the opportunity to consult with a parent, guardian, responsible adult, or attorney.

The purpose of this form is to do the following:

1. To detail the agreement between DYRS and a youth regarding a placement.
2. To list conditions of that placement.
3. To detail how that placement impacts a youth's right to a Community Status Review Hearing.

### AGREEMENT

I, \_\_\_\_\_ (Youth's Printed Name), \_\_\_\_\_ (D.O.B.), have been given the opportunity to have this waiver explained to me by a parent, guardian, responsible adult, or attorney.

I understand that by signing this Waiver, I am authorizing DYRS to raise my level of restrictiveness to  
☐ **MEDIUM** ☐ **HIGH without** convening a Community Status Review Hearing.

I understand and agree that despite my consent to be raised to the above-selected level, my level will be temporarily lowered for \_\_\_\_\_ days and I will be placed in a ☐ **LOW** ☐ **MEDIUM** placement.

This placement will be in:

- ☐ a local group home ☐ an out-of-state group home ☐ a foster home  
☐ a treatment facility ☐ other: \_\_\_\_\_.

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CASE NUMBER:

## CONDITIONS OF PLACEMENT

I understand that if I violate any of the below conditions of my placement, I will automatically be placed at the higher level listed above without a Community Status Review Hearing. \_\_\_\_\_

While in this temporary placement, I agree to the following conditions:

- ☐ Obey all laws, ordinances, rules, and regulations of the District of Columbia and all its surrounding jurisdictions.
- ☐ Comply with the plans and conditions of the Individual Development Plan.
- ☐ Obey Parents, relatives, guardians, responsible adults I am living with.
- ☐ Obey all school personnel, independent living personnel, group/shelter home personnel, foster care providers or parents, and service provider staff.
- ☐ Attend School.
- ☐ Keep appointments with the Case Manager and/or follow the Case Manager's instructions.
- ☐ Report any change of address to the Case Manager within (48) forty-eight hours, and/or provide the Case Manager with a new full address and a working phone number.
- ☐ Abstain from the use of all illegal drugs, synthetic narcotics, hallucinatory or other habit-forming illicit drugs, and alcohol including marijuana, heroin, crack, cocaine, cocaine, Molly, all bath salts or other forms of synthetic drugs.
- ☐ Stay in the Washington, DC, Metropolitan area unless granted permission from the Case Manager and parent or guardian.
- ☐ Comply with the curfew set by the Case Manager, in collaboration with others (e.g., parent, guardian, foster care provider, group/shelter home personnel, and independent living program personnel).
- ☐ Stay out of restricted zone, neighborhood, or area.
- ☐ Do not abscond or run away from placement.
- ☐ Do not create a placement disruption.
- ☐ Comply with any required drug testing
- ☐ Comply with services.
- ☐ Comply with all conditions of the GPS agreement.
- ☐ Other: \_\_\_\_\_

I understand that if I follow the conditions of this waiver for the specified time, my placement at a higher level will be set aside.

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CASE NUMBER:

## RIGHTS AFFECTED BY WAIVER

I understand that, by waiving my right to a Community Status Review Hearing, I am giving up the following rights:

- a) The right to a hearing before an impartial individual(s) without unnecessary delay. \_\_\_\_\_
- b) The right requiring that DYRS prove I have violated my CPA or other allegations. \_\_\_\_\_
- c) The right to be represented by an attorney or by a person of my choosing. \_\_\_\_\_
- d) The right to present evidence and call witnesses. \_\_\_\_\_
- e) The right to provide written statements or testimony. \_\_\_\_\_
- f) The right to confront and cross-examine witnesses. \_\_\_\_\_

I understand that I do not have to sign this Waiver and that instead I have the right to a Community Status Review Hearing during which an impartial factfinder would determine if I violated the terms and conditions of my CPA or have committed any other allegations (29 DCMR 1210). \_\_\_\_\_

I understand that if I do not waive my right to a Community Status Review Hearing, I may be subject to a hearing where my level may be lowered, stay the same, or may be raised. \_\_\_\_\_

I understand that I am waiving my right to have a Community Status Review Hearing only for this placement and/or placement level. \_\_\_\_\_

I understand that by signing this agreement, I am freely, voluntarily, knowingly, and intelligently giving up each of the rights in this agreement and accept the sanction listed above which describes the increase in my level of restrictiveness. \_\_\_\_\_

Youth's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Attorney's Signature (if consulted): \_\_\_\_\_ Date: \_\_\_\_\_

DYRS Case Worker : \_\_\_\_\_ Date: \_\_\_\_\_

Parent/Guardian Signature (if consulted): \_\_\_\_\_ Date: \_\_\_\_\_

**Note:** This waiver is effective once signed by the youth and DYRS. DYRS must provide a copy of the fully executed copy to the youth's legal representative or alternative legal representative within three business days of the agency signing the waiver.

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CASE NUMBER: \_\_\_\_\_