Juvenile Delinquency Waiver of Counsel

Overview and Colloquy

I. Appointment of Counsel.

When a petition is filed under ORS 419C.005, the court **is required** to appoint counsel to represent a youth at all stages of the proceeding when: (1) youth is charged with an offense that is classified as a crime, (2) at any proceeding concerning an order of probation; and (3) in any case in which youth would be entitled to appointed counsel if the youth were an adult charged with the same offense. ORS 419C.200. In any other proceeding under ORS 419C.005, the court **may** appoint counsel.[1] Appointment of counsel is not contingent on the youth or youth's parents or guardians financial situation.

II. Waiver of Counsel.

The court may only accept a waiver of counsel if:

- The youth is at least 16 years of age;
- The youth has met with and been advised by counsel;
- A written waiver, signed by the youth and youth's counsel, has been filed with the court; and
- The court has found the waiver was knowingly, intelligently and voluntarily made and not unduly influenced by the interests of others, including the youth's parents or guardians. ORS 419C.200(2)(a).

III. Determining the Validity of the Waiver.

Before accepting a waiver, the court must ensure the youth had the opportunity to meet with counsel. This may require a provisional appointment for purposes of a consultation. After the youth has met with counsel, the court must make a determination on the record that the youth's waiver is knowingly, intelligently and voluntarily made and not unduly influenced by the interests of others. The following outline provides a colloquy that the court may tailor to the particular circumstances of the individual youth.

A. Colloquy

We are here today to decide if you can represent yourself in this case without an attorney. Before I can allow you to represent yourself, I have to make sure your decision is thoughtful, is

[1] The court maintains discretion to appoint counsel for youth in violation cases. ORS 419C.200(1)(a)(D).

not the product of any threat or pressure and that you are aware of the dangers of representing yourself.

I also want you to know that you do not have to pay for an attorney I appoint. Before a judge decides if you should be found guilty and held responsible for what it says in the petition, you have the right to present evidence in court, and a ***constitutional right*** to have an attorney represent you. You and your parents or guardians do not have to pay the cost for an attorney. You or your parents may also hire your own attorney. Do you understand that you have the right to an attorney, including one provided by this court?

Do you plan to hire an attorney for this case?

As I said before, I need to make sure you are making this decision on your own. Would you like to answer my questions?

I understand you are in the ___ grade. What classes are you taking? What do you like to do outside of school? (*Ask follow up questions to get a sense for the youth's developmental stage*)

Is there any reason that it would be difficult for you to make this decision today? Things like injury, illness, disability, being under the influence of drugs or alcohol, or other reasons may make it hard for you to decide what to do today. Do any of those things apply that would make it difficult for you to make a decision?

[*Note: If there is any reason to believe the youth is not competent to waive his or her right, appoint an attorney.*]

The district attorney has filed a petition alleging that you have ____. This means that you have been accused of _____. You have the right to make the district attorney prove the facts that support this allegation beyond a reasonable doubt before a judge decides any consequences. If a judge finds that you have committed the offense, it is possible that you could be ordered to: (*discuss potential disposition, including detention, probation, restitution and other possible penalties, and any applicable collateral consequences such as loss of driver's license, trouble getting a job, loss of financial aid for college, sex offender reporting, out of home placement, inability to hang out with friends who are on probation. Make sure to explain that juvenile court jurisdiction is indeterminate, that probation may last up to 5 years, and that the court may remain involved with the youth until age 23(probation) or 25 (if discussing commitment is a possibility).*

If you decide to represent yourself in this case without an attorney, you are giving up the following ***benefits***:

- An attorney can review the facts of your case and discuss them with you to determine what ***defenses*** you may have to the charges against you. An attorney can also identify

any problems with the State's case against you.

- An attorney can help you decide about whether to ask for a trial, or whether it would be better to enter into an ***agreement*** with the district attorney for a lower charge or an agreement about what should happen to you. Even if you think you have done what you are charged with, an attorney may be able to negotiate a lower charge or an agreement about what will happen that is better for you.
- An attorney can advise you on whether you qualify for ***release*** from detention before trial. An attorney can prepare your case for trial, including gathering evidence and interviewing and subpoenaing ***witnesses***, preparing to cross examine the State's witnesses, and filing pretrial motions.
- An attorney knows the rules and procedures on how to get information from the district attorney that is important to your case, such as police reports and statements from witnesses.
- An attorney understands the ***rules of evidence*** and can assist you in questioning witnesses. An attorney can present other evidence that is necessary for your defense **and** prevent the State from using improper evidence. For example, an attorney will understand how to question the legality of your arrest or raise search and seizure issues.
- An attorney can explain what the judge may require if he or she finds that you committed the offense, and other possible consequences that you may not be aware of.
- An attorney can make arguments to the court based on the law that may make a difference in whether you are found responsible, and that may impact what you are ordered to do.

If you choose to proceed without an attorney and represent yourself, you may be at a ***serious disadvantage***. Here's why:

- Because you don't have legal training, you may not realize you have one or more defenses to the charges.
- You don't have experience with the rules and procedures that this court will apply to you even though you are not an attorney.
- The district attorney is an attorney and understands the rules and procedures of this court, which gives him/her an advantage over you.

If you choose to proceed without an attorney, you cannot rely on your juvenile counselor, the judge, court staff or the district attorney for legal advice or help in defending yourself.

Do you still want to proceed without an attorney? *(If yes, consider the following additional questions)*

- Please tell me in your own words what the worst-case scenario is if you are found responsible for the offense listed in the petition?
- An attorney can help prevent the worst-case scenario by negotiating a lesser charge or sanction with the district attorney by arguing for exclusion of evidence at trial, and by bringing out facts that are helpful to your case.
- Do you know the rules of evidence? The district attorney has had years of training and practice in applying the law and rules of evidence in these cases. You won't get any special breaks for not knowing the rules. Do you think you will be at a disadvantage?

Can you tell me in your own words what the risks are of not having an attorney?

Has anyone, including your parent/s, encouraged you or pressured you to not have an attorney in this case?

IV. Findings

Make findings on the record and use the form of order in Odyssey to accept or reject the waiver. If the waiver is rejected, the court should appoint counsel.