

MISSOURI JUVENILE JUSTICE ASSOCIATION

2022 FALL EDUCATIONAL CONFERENCE

Juvenile Law

**Handout and PowerPoint
(Except as noted)**

Prepared by:

Shawn McCarver

Attorney at Law

P.O. Box 790

Farmington, Missouri 63640

(573) 756-0990

FAX (573) 756-0955

E-Mail: shawnmccarver@aol.com

Presented by:

Ellen K. Haynes

Attorney at Law

Special Counsel

Children's Division

205 Jefferson St., 10th Floor

Jefferson City, MO 65101

573-751-4333

Copyright 2022 - Shawn McCarver

All Rights Reserved

(Except material from other sources as noted within)

TABLE OF CASES

(Note: Section numbers correspond to the Juvenile Law Chapter of the Missouri Bench Book so this material may be used as a supplement thereto)

TABLE OF CONTENTS

H. Elements Of Proof

Section 1.41 Neglect - Section 210.110(8), RSMo.

Judgment assuming jurisdiction affirmed where another child in the family died in a co-sleeping incident several months before this child was born, and when this child was born, mother was inappropriate, uncooperative, and uninterested in the child's health at the hospital, her paramour was intoxicated and unresponsive at the hospital, and where admission of testimony of CD worker concerning mother's conduct at visitation, while not pleaded and therefore a violation of due process, mother was not prejudiced thereby. In Interest of T.D., ED109487 (Mo.App.E.D. 4-12-22).

Section 1.50 Delinquency - Section 211.031.1(3), RSMo.

Where juvenile committed crimes while 17 years old, but before the "raise the age" statute became effective, it was error for the court to dismiss the adult court prosecution as the juvenile division did not have authority to adjudicate the juvenile. *State v. R.J.G.*, SC99034 (Mo.banc 10-26-2021).

Where juvenile committed crimes while 17 years of age, after the 2018 "raise the age" statute was passed, but prior to it becoming effective, juvenile is properly charged in adult court. *State ex rel T.J. v. Cundiff*, SC98951 (Mo.banc 10-26-21).

2018 amendments to juvenile code related to definitions of "adult" and "child," went into effect on July 1, 2021, not January 1, 2021. Defendant must be tried based upon the law that existed on the day the offenses were committed. Therefore, the order dismissing indictments and remanding the case to juvenile court are reversed and the case is remanded for further proceedings in the adult court. *State v. M.M.W., Jr.*, WD84314 and WD84315 (Mo.App.W.D. 1-25-2022).

Adjudication for assault is affirmed where defense of self-defense is negated because even though detention worker pushed juvenile, juvenile's response by repeatedly pushing the victim and banging the victim's head on the ground was not justified. Trial court could properly consider its own order to establish juvenile was required to wearing electronic monitoring device, and tampering therewith is sufficiently proven by aunt's testimony that juvenile had the device on when she left the house, that it was removed when she returned, and that juvenile told her someone else cut it off and where it could be found. *Matter of M.L.H.*, WD84193 (Mo.App.W.D. 10-19-2021).

Juvenile's adjudication for failure to appear under Section 544.665, RSMo is reversed because there was no evidence that juvenile failed to appear for a criminal matter as required by that section. *In Interest of J.R.K.*, WD84500 (Mo.App.W.D. 3-15-2022).

L. Right To Counsel
Section 1.88 Generally

Juvenile's attorney was not ineffective in hearing to certify juvenile to stand trial as an adult where counsel presented evidence, cross-examined witnesses, and provided juvenile a meaningful hearing. Counsel is not ineffective for failing to object to hearsay evidence because the hearsay rules are not applicable because certification hearings are not adjudicatory and are unique. *In Interest of P.J.T.*, SD36997 (Mo.App.S.D. 11-17-2021).

M. Presence And Exclusion Of Parties At Hearings
Section 1.97 Exclusion of the Juvenile

Judgment vacated and case remanded where juvenile was denied the right to be physically present at his adjudication hearing based upon COVID protocols and erroneous interpretation of Supreme Court orders related to court operations during pandemic. *In Interest of J.A.T.*, SC99251 (Mo.banc 1-11-2022).

Delinquency judgment is vacated and the case is remanded where, over juvenile's objection, the court required juvenile to participate in the adjudication, a critical stage at which guilt or innocence is determined, by two-way video conference. *In Interest of L.I.B.*, WD84107 (Mo.App.W.D. 3-8-2022).

Judgment finding juvenile committed acts that would be crimes were juvenile an adult is vacated, and the case is remanded, where the adjudication hearing was conducted without the physical presence of the juvenile. *In Interest of D.H.*, ED109226 (Mo.App.E.D. 5-3-2022).

Adjudication vacated and the case is remanded where the juvenile's right to confrontation was violated by conducting the hearing, over the objection of the juvenile, by two-way video conference where the trial court failed to make case-specific findings as required by the U.S. Supreme Court case of *Maryland v. Craig*. *In Interest of A.S.B.*, WD84244 (Mo.App.W.D. 6-28-2022).

Where trial court failed to make required findings, use of two-way videoconferencing requires reversal and remand. *X.D.M. V. Juvenile Officer*, WD84520 (Mo.App.W.D. 7-5-2022).

P. Rules Of Evidence
Section 1.104 Generally

Adjudication reversed where trial court excluded video of the incident because the witness testifying to lay the foundation for admission had not created the video. The video is both logically relevant and legally relevant, and its exclusion creates a rebuttable presumption of prejudice. *In Interest of J.R.*, ED109245 (Mo.App.E.D. 10-19-21).

Juvenile’s attorney was not ineffective in hearing to certify juvenile to stand trial as an adult where counsel presented evidence, cross-examined witnesses, and provided juvenile a meaningful hearing. Counsel is not ineffective for failing to object to hearsay evidence because the hearsay rules are not applicable because certification hearings are not adjudicatory and are unique. *In Interest of P.J.T.*, SD36997 (Mo.App.S.D. 11-17-2021).

Section 1.106 Hearsay Declarations

Juvenile’s hearsay statements were admissible under the excited utterance exception, and there was sufficient evidence to show the juvenile knew his conduct was a sexual act. *In Interest of T.R.T.*, WD84167 (Mo.App.W.D. 12-14-2021).

Q. Dismissal To Allow Prosecution Of Juvenile Under General Law As An Adult
Section 1.110 Generally

Hearsay evidence is admissible in a certification hearing. *In Interest of T.D.S., Jr.*, ED109317 (Mo.App.E.D. 10-26-2021).

Juvenile’s attorney was not ineffective in hearing to certify juvenile to stand trial as an adult where counsel presented evidence, cross-examined witnesses, and provided juvenile a meaningful hearing. Counsel is not ineffective for failing to object to hearsay evidence because the hearsay rules are not applicable because certification hearings are not adjudicatory and are unique. *In Interest of P.J.T.*, SD36997 (Mo.App.S.D. 11-17-2021).

Where the juvenile was accorded all of his rights, the judgment transferring the juvenile to the court of general jurisdiction is affirmed despite the fact that the pleading was called a motion to modify rather than a petition, which term is used in both the statute and the Rule. *In Interest of J.T.J.*, SC99037 (Mo.banc 12-21-2021).

(1) Certain charges make a certification hearing mandatory, but the decision to certify is in the discretion of the court. (2) The appellate standard of review is for abuse of discretion. (3) “Order” for certification is appealable as denomination requirement of Rule 74.01 does not apply. (4) Notice of appeal filed before judgment is final will be considered filed immediately after the judgment becomes final. (5) Certification is supported by substantial evidence even though all parties recommended against certification. (6) The trial court is not required to give equal weight to all factors listed in Section 211.071.6, nor is the court required to make findings on all of the listed factors. (7) The offense charged need not be both serious

and such that certification is required to protect the community in order to certify the juvenile. (8) Right to counsel implies the right to effective assistance of counsel, and a claim for ineffective assistance of counsel may be raised on direct appeal. (9) The correct standard for determining whether counsel is ineffective (*Strickland* or meaningful hearing) is not resolved as appellant has not shown counsel to be ineffective even under the more demanding standard. (10) There is no authority for appellant's proposition that the rules of evidence apply to this hearing. (11) Court's comments during expert's testimony show concern with streamlining the proceedings and judicial economy, and do not demonstrate bias or prejudice. (12) Court's comments after evidence was closed are not grounds for recusal. *In Interest of J.N.W.*, WD84378 (Mo.App.W.D. 2-15-2022).

Section 1.112 Procedure

Where the juvenile was accorded all of his rights, the judgment transferring the juvenile to the court of general jurisdiction is affirmed despite the fact that the pleading was called a motion to modify rather than a petition, which term is used in both the statute and the Rule. *In Interest of J.T.J.*, SC99037 (Mo.banc 12-21-2021).

Judgment certifying juvenile to stand trial as an adult is vacated and the case is remanded where the certification hearing was conducted by two-way video. *In Interest of C.A.M., JR.*, ED109128 (Mo.App.E.D. 5-3-2022).

Decision certifying juvenile to stand trial as adult is reversed and remanded where certification hearing was held by two-way video conference. Despite lack of objection to the procedure, there was no record of a knowing, voluntary, and intelligent waiver of the rights of confrontation, due process, and to be physically present at a critically important stage of the proceedings. *In Interest of A.L.D.*, ED109679 (Mo.App.E.D. 8-9-2022).

R. Hearing On Petition

Section 1.120 Conducting the Hearing

Where the juvenile's right to confrontation was violated, the judgment is vacated, and the case is remanded. *In Interest of C.A.R.A.*, SC99231 (Mo.banc 1-11-2022).

Judgment finding juvenile committed acts that would be crimes were juvenile an adult is vacated, and the case is remanded, where the adjudication hearing was conducted without the physical presence of the juvenile. *In Interest of D.H.*, ED109226 (Mo.App.E.D. 5-3-2022).

Adjudication is reversed and case is remanded where juvenile's adjudication was conducted by video conference, thereby violating juvenile's right of confrontation. *In Interest of I.J.*, ED109406 (Mo.App.E.D. 5-17-2022).

Jeopardy attaches in a juvenile delinquency case when the trier of fact begins to hear evidence. The juvenile officer has the burden of proof, which must include the elements of the offense. Where the juvenile officer fails to prove up the municipal ordinance, the adjudication is reversed and judgment of acquittal is entered. *In Interest of S.R. W.*, WD84938 (Mo.App.W.D. 6-14-22).

Plain error review of unpreserved error results in judgment being vacated and case remanded where the trial court could not possibly have found a basis in fact for juvenile's admission to a law violation where juvenile was 16 and an element of the offense required the offender be 18 or over. *In Interest of P.L.S.*, WD84977 (Mo.App.W.D. 9-6-22).

Section 1.121 Presentation of Evidence

Jeopardy attaches in a juvenile delinquency case when the trier of fact begins to hear evidence. The juvenile officer has the burden of proof, which must include the elements of the offense. Where the juvenile officer fails to prove up the municipal ordinance, the adjudication is reversed and judgment of acquittal is entered. *In Interest of S.R. W.*, WD84938 (Mo.App.W.D. 6-14-22).

Section 1.125 Abuse/Neglect

Judgment assuming jurisdiction affirmed where another child in the family died in a co-sleeping incident several months before this child was born, and when this child was born, mother was inappropriate, uncooperative, and uninterested in the child's health at the hospital, her paramour was intoxicated and unresponsive at the hospital, and where admission of testimony of CD worker concerning mother's conduct at visitation, while not pleaded and therefore a violation of due process, mother was not prejudiced thereby. *In Interest of T.D.*, ED109487 (Mo.App.E.D. 4-12-22).

T. Modification Of Judgment

Section 1.144 Evidence to be Considered

Adjudication for assault is affirmed where defense of self-defense is negated because even though detention worker pushed juvenile, juvenile's response by repeatedly pushing the victim and banging the victim's head on the ground was not justified. Trial court could properly consider its own order to establish juvenile was required to wearing electronic monitoring device, and tampering therewith is sufficiently proven by aunt's testimony that juvenile had the device on when she left the house, that it was removed when she returned, and that juvenile told her someone else cut it off and where it could be found. *Matter of M.L.H.*, WD84193 (Mo.App.W.D. 10-19-2021).

U. Appeals

Section 1.148 To Whom Allowed

The Western District would dismiss this appeal as the relatives who appealed are not persons entitled to appeal under 211.261.1. Because of divergent authority based upon 512.020, this case is transferred to the Supreme Court for decision under Rule 83.02. *In Interest of L.N.G.S.*, WD85072 (Mo.App.W.D. 9-6-22).

AB. Termination Of Parental Rights

Section 1.187 Termination of Parental Rights for Abuse or Neglect (Contested Ground No. 2)

Section 1.191 Severe or Recurrent Abuse/Repeated or Continuous Neglect - Sufficiency of Evidence

TPR reversed where Mother provided clothing, food, toys, and a birthday gift, and where Mother's house, while lacking, was not sufficiently substandard to justify termination of Mother's rights when CD allowed Mother to have visits in the house. *In Interest of T.M.P.*, ED109843 (Mo.App.E.D. 4-5-2022).

TPR is affirmed where mother fails to follow the against-the-weight-of-the-evidence formula required by the court. Mother challenged certain records, but failed to provide the records to the appellate court. *In Interest of D.N.D.*, SD37371 (Mo.App.S.D. 6-3-2022).

Where mother fails, on appeal, to follow the required steps to make an "against the weight" challenge, the judgment terminating her parental rights is affirmed. *In Interest of D.N.D.*, SD37371 (Mo.App.S.D. 7-6-2022).

Section 1.192 Failure to Rectify (Contested Ground No. 3)

Section 1.193 Failure to Rectify - Proof Required

Termination of mother's parental rights was reversed where the trial court's finding that grounds existed for termination was against the weight of the evidence and where the trial court failed to recite the clear, cogent, and convincing evidence standard in the judgment. *In Interest of D.L.P., T.H., W.C.H., A.G.H., and R.S.M.H.*, ED109493 (Mo.App.E.D 12-7-2021).

TPR reversed where Mother provided clothing, food, toys, and a birthday gift, and where Mother's house, while lacking, was not sufficiently substandard to justify termination of Mother's rights when CD allowed Mother to have visits in the house. *In Interest of T.M.P.*, ED109843 (Mo.App.E.D. 4-5-2022).

TPR affirmed where failure to grant request for continuance is not an abuse of discretion, where the ground of failure to rectify and the determination that TPR is in the best interests of the child were each supported by substantial evidence. *In Interest of K.A.M.L.*, ED109556 (Mo.App.E.D. 4-12-2022).

TPR affirmed where the ground of failure to rectify is supported by sufficient evidence and where the decision was in the best interests of the children. *In Interest of A.M.W., et al.*, WD84846 (Mo.App.W.D. 5-31-22).

TPR is affirmed where mother fails to follow the against-the-weight-of-the-evidence formula required by the court. Mother challenged certain records, but failed to provide the records to the appellate court. *In Interest of D.N.D.*, SD37371 (Mo.App.S.D. 6-3-2022).

Where mother fails, on appeal, to follow the required steps to make an “against the weight” challenge, the judgment terminating her parental rights is affirmed. *In Interest of D.N.D.*, SD37371 (Mo.App.S.D. 7-6-2022).

Ex gratia review of TPR based upon failure to rectify results in TPR being affirmed where mother failed to address significant mental health issues, domestic violence, and other issues, and where TPR was in the best interests of the child. *In Interest of D.T.H. and M.J.H.*, WD84988 (Mo.App.W.D. 9-13-22).

Section 1.194 Mental Condition/Chemical Dependency—Sufficiency of Evidence

Ex gratia review of TPR based upon failure to rectify results in TPR being affirmed where mother failed to address significant mental health issues, domestic violence, and other issues, and where TPR was in the best interests of the child. *In Interest of D.T.H. and M.J.H.*, WD84988 (Mo.App.W.D. 9-13-22).

Section 1.195 Social Service Plan/Success or Failure of Efforts

Termination of mother’s parental rights was reversed where the trial court’s finding that grounds existed for termination was against the weight of the evidence and where the trial court failed to recite the clear, cogent, and convincing evidence standard in the judgment. *In Interest of D.L.P., T.H., W.C.H., A.G.H., and R.S.M.H.*, ED109493 (Mo.App.E.D 12-7-2021).

TPR reversed where Mother provided clothing, food, toys, and a birthday gift, and where Mother’s house, while lacking, was not sufficiently substandard to justify termination of Mother’s rights when CD allowed Mother to have visits in the house. *In Interest of T.M.P.*, ED109843 (Mo.App.E.D. 4-5-2022).

TPR affirmed where failure to grant request for continuance is not an abuse of discretion, where the ground of failure to rectify and the determination that TPR is in the best interests of the child were each supported by substantial evidence. *In Interest of K.A.M.L.*, ED109556 (Mo.App.E.D. 4-12-2022).

Ex gratia review of TPR based upon failure to rectify results in TPR being affirmed where mother failed to address significant mental health issues, domestic violence, and other issues, and where TPR was in the best interests of the child. *In Interest of*

D.T.H. and M.J.H., WD84988 (Mo.App.W.D. 9-13-22).

Section 1.198 Termination of Parental Rights for Parental Unfitness (Contested Ground No. 6)

Termination of mother's parental rights was reversed where the trial court's finding that grounds existed for termination was against the weight of the evidence and where the trial court failed to recite the clear, cogent, and convincing evidence standard in the judgment. *In Interest of D.L.P., T.H., W.C.H., A.G.H., and R.S.M.H., ED109493 (Mo.App.E.D 12-7-2021).*

Section 1.199 Section 211.447.7 Factors

Ex gratia* review of TPR based upon failure to rectify results in TPR being affirmed where mother failed to address significant mental health issues, domestic violence, and other issues, and where TPR was in the best interests of the child. *In Interest of D.T.H. and M.J.H., WD84988 (Mo.App.W.D. 9-13-22).

Section 1.202 Procedure

TPR affirmed where failure to grant request for continuance is not an abuse of discretion, where the ground of failure to rectify and the determination that TPR is in the best interests of the child were each supported by substantial evidence. *In Interest of K.A.M.L., ED109556 (Mo.App.E.D. 4-12-2022).*

Section 1.207 Service of Summons

Failure to object to service by publication was not raised, therefore, lack of personal jurisdiction was waived. *In Interest of J.J.R.H., SD37202 (Mo.App.S.D. 4-20-2022).*

Section 1.209 Right of Counsel/Appointment of Counsel

Trial court did not commit error by failing to approve mother's request for evaluation by an expert and testimony to show mother could not protect her children from abuse by father. There was no error in admission of hearsay even where the juvenile officer did not properly invoke the P.K.A. hearsay exception by failing to address the factors to be considered and the balancing of concerns because the few statements at issue were not prejudicial in light of the fact that the record was replete with proof of abuse by mother. *In Interest of L.Q.F., A.E.D., D.G.F., J.S.F., L.T.K., and J.L.K., ED109823 (Mo.App.E.D. 3-15-2022).*

Section 1.213 Right to Effective Assistance of Counsel

Juvenile's attorney was not ineffective in hearing to certify juvenile to stand trial as an adult where counsel presented evidence, cross-examined witnesses, and provided juvenile a meaningful hearing. Counsel is not ineffective for failing to object to

hearsay evidence because the hearsay rules are not applicable because certification hearings are not adjudicatory and are unique. *In Interest of P.J.T.*, SD36997 (Mo.App.S.D. 11-17-2021).

TPR affirmed where counsel was not ineffective and where trial court did not require certification of “connection status of participants” where portions of the trial were held “virtually.” *In Interest of C.E.A.*, SD37317 (Mo.App.S.D. 5-27-22).

Section 1.214 Juvenile Officer Meeting with the Court/Social Study and Investigation

TPR affirmed where Mother did not preserve her claim of error for appeal, and where no manifest injustice appears as a result of the social study and investigation being prepared by an agency not ordered by the court and after the filing of the TPR petitions, but prior to the order to prepare the same. *In Interest of S.C.A. and I.S.A.*, SD37443 and SD37444 (Mo.App.S.D. 8-2-2022).

Section 1.215 Dispositional Hearing

Trial court did not commit error by failing to approve mother’s request for evaluation by an expert and testimony to show mother could not protect her children from abuse by father. There was no error in admission of hearsay even where the juvenile officer did not properly invoke the P.K.A. hearsay exception by failing to address the factors to be considered and the balancing of concerns because the few statements at issue were not prejudicial in light of the fact that the record was replete with proof of abuse by mother. *In Interest of L.Q.F., A.E.D., D.G.F., J.S.F., L.T.K., and J.L.K.*, ED109823 (Mo.App.E.D. 3-15-2022).

Section 1.218 Record of Proceedings

When record on appeal is inadequate through no fault of the parties, the case is remanded to the trial court where recording equipment malfunctioned for 90 minutes. *In Interest of L.A.M.M.*, SD37486 (Mo.App.S.D. 6-7-2022).

Section 1.219 Rulings of Motions for Continuance

TPR affirmed where failure to grant request for continuance is not an abuse of discretion, where the ground of failure to rectify and the determination that TPR is in the best interests of the child were each supported by substantial evidence. *In Interest of K.A.M.L.*, ED109556 (Mo.App.E.D. 4-12-2022).

Section 1.222 Special Hearsay Rules and Anatomical Dolls

Trial court did not commit error by failing to approve mother’s request for evaluation by an expert and testimony to show mother could not protect her children from abuse by father. There was no error in admission of hearsay even where the juvenile officer did not properly invoke the P.K.A. hearsay exception by failing to address the factors

to be considered and the balancing of concerns because the few statements at issue were not prejudicial in light of the fact that the record was replete with proof of abuse by mother. *In Interest of L.Q.F., A.E.D., D.G.F., J.S.F., L.T.K., and J.L.K.*, ED109823 (Mo.App.E.D. 3-15-2022).

Section 1.225 Finality of Order

Denial of father's Rule 74.06(b) motion is set aside and the case is remanded where father did not receive notice of the hearing on said motion. *S.L.C. and M.S.C.*, WD84549 (Mo.App.WD 2-15-2022).

ADOPTION

Failure to object to service by publication was not raised, therefore, lack of personal jurisdiction was waived. *In Interest of J.J.R.H.*, SD37202 (Mo.App.S.D. 4-20-2022).

RE-ENTRY OF JUVENILE INTO FOSTER CARE

Juvenile aged out of the foster care system at age 21. CD is entitled to a hearing on juvenile's declaratory judgment count concerning whether Public Law 116-260 requires CD to accept juvenile, who is over 21, back into foster care with reinstatement of all financial and other assistance. *In Interest of B.D.*, WD84811 (Mo.App.W.D. 5-10-22).