

# Evidence Guide for Juvenile Court

## A Court Reference Guide for Tennessee Child and Parent Attorneys

*Application of evidentiary rules in dependency and neglect and termination of parental rights hearings.*

### THE LAW

- TN Rules of Juvenile Practice and Procedure (TRJPP): Governs practice and procedure for delinquent, unruly and dependency and neglect cases in juvenile courts.
- T.C.A., Title 37 (Juveniles): Contains the substantive law on dependency, neglect, and abuse proceedings (§ 37-1-101 et seq).
- T.C.A., Title 36, Chapter 1 (§ 36-1-101 et seq.): Governs adoption and TPR.
- Tennessee Rules of Evidence (TRE): Apply in adjudicatory hearings, evidentiary hearings, TPRs and appeals; relaxed in preliminary and dispositional hearings.
- TN Case Law: Appellate decisions interpreting statutes and rules provide guidance and should be consulted to understand how trial courts are expected to apply the law.

### FOUNDATIONAL PRINCIPLES

- Court Relies Only on the Record – Orders must be specific and track the transcript; appellate courts reverse when findings do not.
- Evidence as a Tool – Used to create a reliable, reviewable record that protects due process rights.
- Relevance Required – All admitted evidence must make a fact of consequence more or less likely. No such thing as admissible irrelevant evidence.
- Abuse of Discretion Standard on Appeal – Most evidentiary rulings in juvenile court are reviewed deferentially.

### PRACTICE TIPS

- Always state the grounds for objections on the record.
- Preserve appellate issues with offers of proof (Rule 103).
- Anticipate evidentiary challenges in pretrial prep.
- Build orders that mirror the transcript. Shape findings with proposed orders.
- Remember, the court only knows what you put in the record.

### CORE TN RULES OF EVIDENCE IN JUVENILE COURT

- Rule 401: Relevance – Any tendency to make a fact more or less probable.
- Rule 403: Balancing – Exclude evidence only if probative value is substantially outweighed by unfair prejudice, confusion, or waste of time.
- Rule 601: Competency – All witnesses presumed competent, including children. Court must assess ability of children to perceive, recall, communicate, and understand truth-telling.
- Rule 602: Personal Knowledge – Required for witnesses.
- Rule 901: Authentication – Exhibits (text messages, medical reports, photos) must be authenticated before admission.

### HEARSAY (TRE 802-804)

- ❖ Reliable hearsay is admissible in most D&N hearings except adjudication.
- ❖ It is not hearsay if not offered for truth (e.g., effect on listener, impeachment, legally operative statements).

#### Key Hearsay Exceptions:

- TRE 803(1.2): Admission by a party opponent.
- TRE 803(4): Statements for medical diagnosis / treatment.
- TRE 803(6): Business records (DCS notes, treatment logs). Beware “hearsay within hearsay.”
- TRE 803(8): Public records (Can consider inclusion or exclusion of DCS records under this exclusion as well, when documents are or are not reports of official duties).
- TRE 803(25): Child statements of abuse / neglect (trustworthiness required; if child is 13+, must testify unless unavailable).
- TRE 804: Declarant unavailable – prior testimony, statement against interest, forfeiture by wrongdoing.

*Strategy: Some hearsay can be helpful – consider when to object vs. when to let in.*

### EXPERT TESTIMONY

- TRE Rule 702: Expert testimony must substantially assist the trier of fact (stricter than federal “assist” standard).
- Reliability factors (*Daubert/McDaniel v. CSX*, 955 S.W.2d 257 (Tenn. 1997)): 1) peer review, 2) testing, 3) general acceptance, 4) standards, and 5) pre-litigation development.
- Experts may opine whether injuries are consistent with abuse, but cannot give ultimate legal conclusions (e.g., “parent is unfit”).

*Practice Tip: Raise reliability challenges early.*

### CHILDREN’S TESTIMONY

- *TRE Rule 306*: Court must use accommodations to reduce trauma (support person, comfort items, modified questioning).
- *TRE Rule 403*: Emotional distress ≠ automatic grounds to exclude testimony.
- *TRE Rule 601*: Presumed competent.
- *In re Kansas B.*, 664 S.W.3d 22 (Tenn.Ct.App. 2022) – exclusion for harm alone was error. Court must assess competency and attempt accommodations first.

## **D&N AND TPR HEARINGS AND RULES CONSIDERATIONS IN JUVENILE COURT**

Type of Hearing	Rules of Juv. Pro.	Rules of Civil Pro.	Rules of Evidence	Standard of Proof/ Notes
<b>Preliminary Hearing (Protective Custody/ Ex Parte Removal)</b>	Yes – TRJPP govern (esp. TRJPP 27–28)	No	Relaxed – reliable hearsay often admitted (e.g., social worker testimony or out-of-court statements)	Standard of proof = probable cause. Focus on immediate safety, least drastic alternative; formal evidence rules not strictly applied.
<b>Adjudicatory Hearing</b>	Yes – TRJPP apply generally	No	Yes – TRE apply	Standard of proof = clear and convincing evidence. Child presumed competent to testify.
<b>Dispositional Hearing (after adjudication)</b>	Yes – TRJPP apply	No	Relaxed – court may consider reports, hearsay, and other reliable info	Standard of proof = preponderance of evidence. Court’s role is to issue orders in the child’s best interest.
<b>Review Hearings (permanency, progress, periodic)</b>	Yes – TRJPP apply	No	Relaxed – hearsay and reports typically admissible	Hearings are not an adjudication of facts but progress reviews.
<b>Motions Practice (pre-trial or post-disposition)</b>	TRJPP govern motion procedure	TRCP may apply if TRJPP silent (TRJPP 1(b))	If evidentiary hearing, TN Rules of Evidence apply	Ex: Motion to compel discovery follows civil rules if TRJPP lacks guidance.
<b>Termination of Parental Rights (TPR) Proceedings</b>	Yes – TRJPP apply	No	Yes – TN Rules of Evidence apply	Standard of proof = clear and convincing evidence. TPR trials are adjudicatory in nature.
<b>Appeals from Juvenile Court (to Circuit/ COA)</b>	Appellate Rules apply in TPR	TRCP in circuit	Yes, if evidentiary hearing is de novo (in circuit)	Appeal de novo to circuit.

## **COMMON EVIDENTIARY OBJECTIONS AT ADJUDICATION AND TPR**

<i>Objection</i>	<i>Legal Basis/Rationale</i>	<i>When to Use</i>	<i>Example Scenario</i>
<b>Relevance</b>	<b>Rule 401</b> – must make a fact more or less probable	Information not related to an issue in the hearing	DCS asks about a parent’s traffic tickets during a removal hearing.
<b>Asked and Answered</b>	<b>Rule 403</b> – avoids cumulative evidence	Attorney repeats questions already answered	Parent’s attorney keeps asking if the parent completed parenting classes.
<b>Cumulative</b>	<b>Rule 403</b> – evidence is unnecessarily repetitive	Same point made by multiple witnesses or documents	Three different workers testify to the same observation.
<b>Assumes Facts Not in Evidence / Lack of Personal Knowledge</b>	<b>Rule 602</b> – witness must have personal knowledge	A witness testifies to something they could not have directly perceived	A neighbor testifies: “Everyone knows the mom uses meth.”
<b>Argumentative</b>	<b>Rule 611</b> – falls under the court’s authority to control interrogation	Cross-examiner engages in commentary or aggressive tone	GAL repeatedly asks: “So you just ignored your child’s needs?”
<b>Leading Question</b>	<b>Rule 611(c)</b> – not allowed on direct exam	Attorney suggests the answer in question to witness on direct	DCS asks the caseworker: “You found the home was unsafe, correct?”
<b>Speculation / Lack of Personal Knowledge</b>	<b>Rule 602/701</b> – lay witnesses can’t guess or assume	Witness guesses about motives or future events	Caseworker speculates that the parent is likely to relapse without evidence.
<b>Improper Opinion</b>	<b>Rule 701/702</b> – experts vs. lay witness opinions	Lay person offers professional or medical opinion	Parent testifies that the child has PTSD without being qualified.
<b>Hearsay</b>	<b>Rule 802</b> – statement offered to prove truth of matter asserted	Out-of-court statements without applicable hearsay exception	DCS offers a foster parent’s written statement about something the child allegedly said.
<b>Lack of Foundation</b>	<b>Rule 901</b> – proponent skipped a necessary step under the rules before admission of evidence	Introduction of documents, etc. without testimony/certification to show they are what they claim	DCS offers CPS investigative report without testimony or certification.