

Juvenile Defender Self-Assessment Tool for Best Practices in Detention Advocacy

This tool is designed to assist juvenile defenders in assessing the quality of their detention advocacy. Defenders should check the box next to each step that they regularly take on behalf of a typical client. Upon completion of the checklist, defenders should review their answers to self-identify any gaps in their detention advocacy.

If you find a number of the boxes unchecked, consider consulting the National Juvenile Defense Standards (<http://njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>) to learn more about best practices in detention advocacy. Alternatively, you can always contact the National Juvenile Defender Center (NJDC) or your regional juvenile defender center with any questions, suggestions, requests for training, and technical assistance needs to fill the gaps in your practice.

MEETING THE CLIENT

- I meet with my client as soon as practicable following appointment and prior to the detention hearing.
- I meet my client in a private location where our conversations cannot be overheard.
- I speak to my client without parents, guardians, or any other people or parties present.
- If my client is detained, I ask about how he or she is doing, looking for any evidence of mistreatment.
- In the initial meeting, I ascertain my client's expressed interests with respect to detention.
- In the initial meeting, we develop a release plan that is client-driven and can be offered in court.
- In the initial meeting, I explain the following to my client using developmentally-appropriate language:
 - attorney-client confidentiality;
 - my role as attorney for the client, representing the expressed interests of my client, even when they conflict with my own personal /or legal judgment;
 - my role as advisor, including my responsibility to counsel my client when I feel he or she is making a decision that will hurt stated goals or legal interests, but to ultimately advocate for what my client wishes;
 - his or her right to remain silent;
 - the role of parents in the proceedings and how I will interact with them;
 - the roles of each juvenile court actor;
 - what the judge will consider in making the detention decision;
 - the possible levels of detention (*e.g.*, local facility, electronic monitoring, release to home etc.); and
 - the next procedural steps.
- In the initial meeting, I ask my client about his or her version of the events so I have sufficient information to prepare for the probable cause hearing, and get names, contact information, descriptions, or hang-out locations of potential witnesses, in order to begin investigation planning.
- I give my client my contact information and explain how he or she can reach me.

- During the initial meeting, I obtain the necessary signatures (child or parent, dependent upon jurisdiction and requested material) on the appropriate release forms to allow me to subpoena the client's educational, medical, mental health, and other records.

PREPARING FOR THE DETENTION HEARING

- I am aware of the current case law, statutes, and court rules that define when a child can be detained in my jurisdiction and the required detention procedures.
- I am aware of the current research on the harmful effects of detention, both in general and with respect to the specific places where my client is likely to be held.
- I am aware of the available community-based alternatives to detention.

Prior to the detention hearing, I regularly investigate the following:

- my client's school history;
- my client's extracurricular activities, hobbies and other strengths;
- my client's prior record;
- my client's special needs, mental and physical health issues, including the names and doses of any prescribed medications;
- circumstances of any police interrogations, searches, seizures, and identification procedures;
- family members and/or other responsible adults to whom my client could be released and whether my client wants to be released to any of these people;
- if my client does not have any eligible or welcoming family members and/or other responsible adults, available community-based programs to which my client could be released; and
- other family and community contacts willing to participate in my client's release plan in ways besides allowing the client to be released into their custody.

Preparing Your Client's Family

- I explain to my client why it is important for me to talk with family members and what I would talk with them about, and then get my client's consent before speaking to family members about the case.
- I explain the purpose of the hearing to the child's family.
- I explain to the family the role I play as child's counsel.

- I explain confidentiality to the child's family, and how the presence of any third party who is not part of the defense team can destroy attorney-client privilege.
- I talk with my client's family before the hearing to ascertain whether they are willing to have the client released to them.
- If the parent or guardian is resistant to allowing my client to return home, I explore the realistic conditions under which the parent or guardian might allow the child back in the home.
- If the parent or guardian will not allow my client to return home, I explore with the parent or guardian other caregivers to whom the client could be released.
- If the parent or guardian will not allow my client to return home, I explain to the parent or guardian the potential effects and consequences of detention.
- If the parent or guardian does not come to the hearing, I try to contact the parent or guardian to ascertain why they did not attend the hearing, and whether the parent or guardian will allow my client to return home.
- If the parent or guardian cannot make it to the hearing, I explore having the parent or guardian appear by phone.
- I prepare the parent or guardian for the possibility that the court will ask for their views, in open court, concerning their child's school behavior, home behavior, and overall social functioning.

Obtaining Discovery

- I request, receive, and review the risk assessment instrument (RAI) used in my client's case.
- I discuss my client's RAI score with the intake probation officer.
- I request, receive, and review the police reports, petition, and other relevant documents in my client's case in advance of the detention and probable cause hearings.

REPRESENTATION AT THE HEARINGS

Probable Cause Hearing

- If the government seeks to detain my client, I zealously challenge that there is a sufficient factual basis for a finding of probable cause.
- If the jurisdiction has probable cause hearings where testimony is taken, I cross-examine the government's witnesses, and use the witnesses' testimony to argue against probable cause.

- If the jurisdiction has probable cause hearings where testimony is taken, I use the probable cause hearing as a tool for discovery.
- If the jurisdiction has probable cause hearings in which the court determines probable cause based on an officer's affidavit, I try to argue against probable cause based on, *inter alia*, lack of sufficient reliability or corroboration, a lack of evidence concerning one or more of the elements of the charged offense, or an insufficient nexus between my client and the offense.
- I argue to hold the prosecution to the required burden and standard of proof.

Detention Hearing

- If the detention hearing is not scheduled within the time required by my jurisdiction's statute or rules, I file a motion to have my client released.
- If I am not able to speak with my client before the detention hearing, I request that the case be continued for a short time to allow me to consult with the client, but I avoid asking for continuances that would result in my client spending further nights in detention.
- If I do not receive the RAI before the hearing, I raise this point at the hearing.
- If I do not receive or am not afforded an opportunity to review my client's social and legal history before the hearing, I raise this point at the hearing.
- If I do not receive or am not afforded an opportunity to review the police reports and petition in my client's case, I raise this point at the hearing.
- I argue that detention cannot be imposed, even if probable cause is found, unless the relevant statutory criteria are met.
- Even if probable cause is found, I argue that my client should be placed in the least restrictive environment possible.
- I introduce research on the risks and harmful effects of detention for children.
- I present and argue for a detention alternative, tailored to my client's expressed interests and responsive to the judge's concerns about my individual client, complete with specific names and contact information of people willing to be involved in my client's release conditions.
- If the jurisdiction allows the presentation of evidence to support arguments in aid of the detention decision, I call

witnesses or provide other evidence to support my arguments against secure detention or in favor of alternatives.

- I provide guidance, advice, and counsel to my client, in developmentally-appropriate language, so that my client can make informed decisions about his or her expressed interests. I then advocate for my client's expressed interests, even when his or her expressed interest conflicts with my reasoned legal advice or with my own judgment about what might be in the child's best interests.
- At the end of the hearing, I request that the judge prepare and issue written findings and an order.

For jurisdictions in which juveniles can plead guilty at the initial hearing

- I counsel my client about the reasons why accepting a plea at such an early stage may be a poor choice—including the fact that I have not had the opportunity to receive all discovery or conduct independent investigation sufficient to provide adequate advice on the plea—and help the child weigh this against any perceived benefit in accepting a premature resolution.

If my client decides to accept a plea at the initial hearing, I explain, in developmentally-appropriate language:

- the advantages and disadvantages of pleading, including the potential maximum and minimum penalties, any potential fines and community service requirements, the strengths and weaknesses of the government's case, and potential dispositions;
- that taking the plea means giving up the right to a trial, and all the rights that come along with trial (i.e., the rights to present evidence, introduce documents, cross examine witnesses, to testify, to hold the government to its burden of proof beyond a reasonable doubt, and to appeal);
- that pleading guilty may not be the only way to secure release;
- the long-term collateral consequences of a guilty plea;
- that it is the client's constitutional right to go to trial, no matter what the client's parents, police officers, judge, or any other adult might have told the client;
- that, though the client can consider others' advice, the decision to plead belongs to the client alone; and

- the expungement process and why getting a record expunged is important.

For jurisdictions in which juveniles can waive counsel at the initial hearing

- If I am assigned to the case prior to the waiver of counsel, I explain to the child in developmentally-appropriate language all the risks of proceeding without counsel and the benefits he or she may be giving up, to ensure that the child is making an informed decision.
- If my client ultimately waives counsel, I inform the court on the record and in front of the child, that should the child change his or her mind I or my office would be available to represent him or her.
- When I see youth waiving counsel without any counsel present, I document the problem and raise this issue with my supervisors or with others working toward indigent juvenile defense reform.

AFTER THE HEARING

- If my client is released, I thoroughly and clearly explain the conditions of release to the client and parents and provide information about how to satisfy the conditions.
- If my client is released, I get contact information for the client and for the client's relatives and friends.
- If my client is detained, I make sure the client's family knows where and how to visit the client.
- If my client is detained, I visit the client within 48 hours of the detention decision. If this is not feasible, then I schedule my next in-person meeting with the client as soon

as is practicable so the client knows the next time he or she will see me.

- I discuss with my client, using developmentally-appropriate language, what happened at the hearing, and answer any questions he or she may have.
- I explain to my client, in detail using developmentally-appropriate language, the next steps in the case.
- If my client is detained, I file a motion to reopen the probable cause hearing in cases where I subsequently receive exculpatory information.
- If my client is detained, I file a motion to reconsider the detention decision in cases where I subsequently discover favorable information or in cases where circumstances have changed (e.g., the charge is reduced, new information affecting the viability of release comes to light, or a new release option emerges).
- If the judge's detention decision was influenced by a lack of community resources, I challenge this as an impermissible basis for detention.
- If the judge's detention decision appears to be influenced by the parent's unwillingness to allow the child to return home, I challenge this ground for the decision, and consider, in careful consultation with my client, filing a dependency petition.
- Where I believe my client has been wrongfully or unlawfully detained, I consider petitioning for an extraordinary writ (habeas corpus, mandamus, or prohibition) to obtain the release of a client.

Thank you for completing the Defender Self-Assessment Tool. NJDC is committed to promoting justice for all children by ensuring excellence in juvenile defense. If you need support in improving your detention advocacy, please reach out to NJDC for help.



National Juvenile Defender Center

1350 Connecticut Avenue NW, suite 304

Washington, DC 20036

202.452.0010 (phone)

202.452.1205 (fax)

www.njdc.info