

The Role of Juvenile Defense Counsel at Disposition

An introduction to the role and obligations of the juvenile defender at disposition in juvenile court. For further reading, see the *Role of Juvenile Defense Counsel in Delinquency Court* and the *National Juvenile Defense Standards*, available at www.njdc.info. Please contact the National Juvenile Defender Center at 202-452-0010 or inquiries@njdc.info with any questions.

Disposition is the sentencing phase that occurs after a child has been adjudicated by guilty plea or trial. As in other stages of the case, the defender's role at disposition is to counsel the youth on all options, advocate for his or her expressed objectives (what the client wants), and develop an individualized, strengths-based plan to offer to the court.

AT DISPOSITION, THE DEFENDER MUST:

Identify all disposition options and advise the client

The defender must be aware of all available disposition options—such as probation or incarceration—and inform the client in age-appropriate language about the requirements, duration, and consequences of each option. Defenders need to understand disposition guidelines and the short- and long-term consequences of each alternative; identify the full range of community-based programs; determine the least restrictive options available; and be up to date on all possible out-of-home placements and their standards of safety and care. The defender should counsel the client when the defender believes the client's desires or expectations for disposition are not realistic or could negatively affect them. Ultimately, however, the defender must advocate for a child's expressed interests in court and craft a plan for achieving their goals.

Discuss the pre-disposition report and prepare the client

In juvenile court systems where a pre-disposition report is provided to the court, the client will typically be interviewed by a probation officer in preparation for that report. The defender must discuss the importance of the report with the client, prepare the client for the interview, request a copy of the report prior to the disposition hearing, and involve the client in reviewing the report. The defender should promptly investigate all sources of information used in developing the report; "translate" the report into clear and age-appropriate language for the client; and, in jurisdictions where pre-disposition report disclosure is not automatic, make a motion requesting the report. Where a report is not turned over in a timely fashion, the defender should challenge submission of the report or, in consultation with the client, request additional time to review the report.

Understand risk assessments and evaluations

The defender must understand the different risk assessment tools and evaluation instruments used to inform dispositions. The defender should be able to explain to the client, in age-appropriate terms, the use and purpose of such evaluation instruments. The defender has an obligation to ensure any tools or instruments used to inform the court at disposition are accurately scored for their individual client, and to challenge the tools or instruments when they are incorrectly used or inappropriate for disposition purposes.

Develop a written, independent, and individualized disposition plan

The defender must counsel and collaborate with their client to develop a written, independent, and individualized disposition plan for submission to the court that is consistent with the child's goals. When the defense's plan differs from the plan presented by probation officers or the prosecution, the defender must advocate for the court to adopt his or her recommendations. The plan offered by the defense should: anticipate the judge's concerns; address those concerns by highlighting the client's strengths; clarify how the components of the defense plan will contribute to the client's success and rehabilitation; establish the circumstances under which the client is most likely to succeed; be proportional to the offense; and not be used to unduly overreach into the lives of the client and his or her family. The defender should provide the court with evidence in support of the proposed plan.

Advocate for the client's legal and procedural rights

In all hearings, the defender must advocate for the client's legal and procedural rights. The defender must understand the law regarding a client's right to an evidentiary hearing at the disposition stage, including the ability to call experts or other witnesses whose testimony could support the client's proposed disposition. The defender must ensure the client receives all procedural safeguards to which he or she is entitled and that the disposition is legal. For instance, the defender must ensure that the court makes a proper record containing the facts it considers in reaching a disposition decision, the defense's agreement or objection to the disposition plan, and any disputed findings of fact or disputed conclusions of law that serve as the basis of the court's disposition decision.

Challenge "standard" conditions of probation

If the disposition order provides for probation, the defender should review each of the conditions of probation with the client. (Note: review and negotiation of probation conditions should occur prior to adjudication when the case is resolved by plea agreement). At disposition, the defender should challenge inclusion of any conditions of probation that are merely "standard" and are not specific to the client's individual circumstances.

Obtain final disposition order and consider post-disposition options

The defender should advocate for a clear, concise, and written final disposition order. This is essential to preserving the client's right to appeal or in requesting reconsideration or a stay pending appeal. The defender must ensure the disposition order contains all provisions of the disposition. The child should also understand his or her rights regarding appeal, and the defender should advise and inform the client and, where appropriate, the client's parent or guardian, of the nature, conditions, obligations, duration, and collateral consequences of the disposition order.

