

# National Juvenile Defender Center

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## The Use and Abuse of Juvenile Detention Understanding Detention and Its Uses

"I just wish my lawyer would come see me, I don't know what's going on."<sup>1</sup>

— Detained Youth in Virginia

The placement of youth in secure detention facilities—which deprives both adjudicated and unadjudicated youth of their freedom—often conflicts with the historical justification that secure juvenile detention should only be used: "(1) to ensure that alleged delinquents appear in court and (2) to minimize the risk of serious reoffending while current charges are being adjudicated."<sup>2</sup> Despite a requirement that detention be linked to risk of non-appearance or rearrest,<sup>3</sup> interim detention, the holding of a youth in secure facilities during the course of delinquency proceedings, still is used in some jurisdictions as a punitive measure, an institutional convenience or because less-restrictive alternatives are unavailable or ignored.<sup>4</sup>

Juveniles initially placed in secure institutions are thus punished early on, despite the fact that their cases may be dismissed or ultimately result in consequences less severe than secure detention.<sup>5</sup> Housed in facilities designed to accommodate juveniles for only brief stays, youth find themselves detained for substantial periods during both the pre-adjudication phase and prior to implementation of the dispositional plan. Most of these detained children become part of populations consisting of a mix of both adjudicated and unadjudicated youth as well as juveniles who committed status offenses and actual crimes. Consequently, possible truants sometimes are housed with adjudicated youth.<sup>6</sup>

The problems with how detention is applied can, however, be improved by involving defense attorneys in juvenile proceedings at an earlier stage and advocating for creative alternatives to secure detention. This fact sheet will address studies that have examined how juvenile detention has been misused and review recommendations for addressing these issues.

### Assessment Findings on the Uses of Detention

In *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, the American Bar Association, the Youth Law Center and Juvenile Law Center documented that "[j]uveniles who are securely detained prior to adjudication—rather than released to parents or placed in community-based programs—are much more likely to be incarcerated at disposition than youth who have not been detained, regardless of the charges against them."<sup>7</sup> With crushing caseloads to deal with, both judges and defenders are often forced to speed through these important proceedings. They do not have time to prepare properly and fully consider how to supervise the youth during the judicial process. To minimize the impact of pre-adjudication decisions to detain youth, the study concluded that defenders "must explore alternatives to secure detention as early as possible."<sup>8</sup>

Following the 1995 release of *A Call for Justice*, state-specific assessments conducted in Georgia, Kentucky, Louisiana, Ohio, Texas and Virginia documented similar circumstances. The authors of the Virginia report concluded that detention "is a pathway to subsequent incarceration."<sup>9</sup> Likewise, the researchers in Texas found that "[a] detained child is more likely to be placed out of home at disposition. [I]n part because he is less able to assist in his defense, he may be viewed by successor judges as 'troublesome' and he is denied the opportunity to demonstrate positive behavior in his home environment."<sup>10</sup> Although some believe that the involvement of counsel at every stage in juvenile proceedings is less important than in adult cases because the consequences faced by youth seem less severe, the reports suggest that youth rushed into secure facilities face harsher punishments later on as a result of these hurried initial proceedings.

Despite the implications that an initial decision to detain a child can have on the ultimate outcome of the case, the decision is often made before the juvenile has an opportunity to properly consult with a lawyer.<sup>11</sup> Following the initial decision to hold a youth, the pre-adjudicatory detention of a juvenile is typically made by a judicial officer based almost entirely on the recommendations of the probation officer.<sup>12</sup> Systemic barriers, including crowded dockets and scarce resources, consequently put pressure on the judiciary to favor detention before a thorough and more objective investigation can be completed.<sup>13</sup>

Virginia, for example, does not recognize the adversarial nature of an initial judicial review of detention. By statute, counsel is not appointed to represent a detained child until after a detention hearing that results in continued detention.<sup>14</sup> “Defenders are not appointed at: arrest, to protect the rights of their clients; intake, to prevent inappropriate entry into the system; initial detention hearings, to present evidence in support of release; or arraignments, where youth are informed of the charges against them.”<sup>15</sup>

In practice, appointment of counsel for detention hearings in other states—while sooner—has not necessarily resulted in qualitative differences in representation. While statutes recognize that “a child *may* be represented by an attorney at *every stage* of proceedings” against her,<sup>16</sup> children oftentimes do not meet their lawyers until their detention hearings, when it is too late to prepare an effective, well-informed defense or to prepare a considered plan as an alternative to secure detention.<sup>17</sup> Without persuasive arguments for other arrangements, secure detention is being inappropriately used to protect the process of the court or prevent further arrest.<sup>18</sup>

“The kids come in with their parents, who want to get this dealt with as quickly as possible, and they say, ‘you did it, admit it.’ If people were informed about what could be done, they might actually ask for help.”<sup>19</sup>

— Ohio Public Defender

Late or ill-timed appointment of counsel disadvantages accused youth in several ways. As previously noted, the decision to detain prior to adjudication negatively affects the ultimate decision on the dispositional plan: a detained youth is more likely to be sentenced to time in a secure facility. Second, assigning counsel after the proceedings are underway impacts the time an attorney has to prepare for the adjudication hearing and ultimately the overall quality of the defense. The result appears to be dispositional plans weighted toward security rather than carefully tailored, strength-based programs based on individual needs. Finally, during the initial phases when youth are unrepresented, “[m]any juveniles waive [counsel] and admit the allegations, following a brief (and often poorly-understood) colloquy with the court.”<sup>20</sup> “The desire to go home, faulty advice, confusion, ignorance, the pressure of family or adverse parties appear to be some of the reasons children decide to travel the system unguided.”<sup>21</sup>

Early appointment of counsel is therefore a key factor in arriving at a fair and appropriate dispositional outcome that is not biased by decisions to detain a youth made early in the process or based on incomplete information. For this reason, the *IJA-ABA Juvenile Justice Standards* (hereinafter *The Standards*) state explicitly that “[a] juvenile’s right to counsel may not be waived”<sup>22</sup> and encourage the provision of counsel throughout the entire juvenile proceeding.<sup>23</sup>

The harms stemming from unnecessary detention extend beyond the temporary loss of freedom and increased likelihood of secure custody as a dispositional outcome. Detained youth may be improperly housed with adjudicated youth and a detained youth’s access to counsel and family may be limited by institutional constraints. Because many of these centers are designed for temporary detention, access to education, rehabilitative programs and even

“A child facing incarceration should have a right to know what his options are and how to access those options. Having a well-trained and caring legal advocate is critical....Perhaps many parents think they know and understand what may lie ahead [but] we are mistaken. Our son and our family are still paying for that mistake.”<sup>24</sup>

—Parent of a Louisiana Youth

recreation may be restricted. Finally, inappropriate detention has led to crowded conditions in detention facilities that present sanitation and safety issues for confined children and staff alike.<sup>25</sup>

## Post-Adjudication and Post-Disposition Detention

Several of the harms posed by pretrial detention also afflict juveniles detained awaiting disposition (after adjudication) and dispositional placement (also known as “dead time”). *The Standards* maintain that the detention of youth, after adjudication and prior to disposition, should continue to meet the requirements of the Interim Status volume.<sup>26</sup> Following disposition, however, a youth’s detention falls short of *The Standards* if ordered services are not provided “forthwith.”<sup>27</sup> *The Standards* recommend that the sentencing court “should reduce a disposition or discharge the juvenile when it appears that access to required services is not being provided ....”<sup>28</sup> *The Standards* thus equate post-adjudication detention as a decision made in each case using the traditional inquiry of public safety and risk of flight; in post-dispositional cases, *The Standards* stress the illegality of detention in the absence of ordered services.

The Louisiana report looked at the role of secure detention in cases where the state could not immediately place a juvenile in a court-ordered program. Researchers found that in one detention facility designed for short-term stays, “[o]ver a third of the youth were awaiting secure placement in DPSC custody [and] the average time in detention for such youth was approximately 34 days.”<sup>29</sup> The report noted that this situation results in youth placed in centers that are not adequately funded or properly equipped to meet their developmental needs. Juvenile defenders, however, overwhelmed with daunting caseloads and lacking economic incentives, rarely appeal cases, let alone follow up with clients after disposition.

Defense counsel should advocate for post-adjudication (i.e., pre-disposition) release from detention in all appropriate cases; and advocating for a reduction of a disposition or even discharge should be requested in all cases where ordered services are not being delivered in a timely manner.

## How to Prevent Over-Use of Detention

*The Standards* generally discourage the use of detention during juvenile proceedings. Although some judges may feel that “detention has therapeutic value and that confinement serves as a deterrent to further delinquency,” *The Standards* posit: “there is no value in detention as a deterrent to delinquency. The child who will be deterred by a stay in detention is the same child who is affected positively by his court appearances before the judge.”<sup>30</sup> *The Standards*

advocate limiting the use of pretrial detention to situations where it is used to 1) assure appearance of a child in court; 2) reduce the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or 3) protect the accused juvenile from imminent bodily harm upon his or her request.<sup>31</sup>

Defense attorneys can reduce the inappropriate use of detention and meet *The Standards* by getting involved earlier in the process. As *The Standards* note, “important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary for protection of their clients’ interests.”<sup>32</sup> As the Ohio report noted, “[e]ffective representation and advocacy at the earliest stage of the proceedings may have a significant influence on the ultimate disposition of the case.”<sup>33</sup>

In situations where an attorney’s caseload prevents her from personally meeting with a child prior to an initial hearing, other means may be used to ensure she is properly prepared to advocate for the client’s release. The Annie E. Casey’s Juvenile Detention Alternatives Initiative (JDAI)—a multi-year, multi-state project started in 1992 to focus attention on programs that effectively accomplish the goals of juvenile detention—suggests using paralegals to conduct client interviews early in the process.<sup>34</sup> The JDAI reports also praised well-maintained, computerized information systems as a means for sharing the arresting and probation officers’ observations and knowledge of a juvenile with the defender in a timely manner.<sup>35</sup> Armed with personal information about their clients, defenders are able to better assist judges in determining whether it is appropriate to detain a child.

Additionally, public defenders should be provided with training to introduce them to the detention alternatives in their jurisdictions. When last surveyed, attorneys responded that when training is provided ... 58% [of the courses] do not cover detention alternatives.<sup>36</sup> The Ohio report found that “[i]t was also common that defense attorneys were not aware of alternatives to detention programs in their communities, and failed to utilize them if they were available.”<sup>37</sup> Providing supplemental education for attorneys on these topics would improve the current state of affairs. As noted in the Louisiana report, “[t]he failure to advocate for alternatives to detention and incarceration, such as community placement, electronic monitoring or less restrictive supervision, facilitates the prolonged detention and eventual incarceration of youth and sets them up for loss on almost every level of future growth and development.”<sup>38</sup> Training focused on detention alternatives would allow defense attorneys to provide judges with creative alternatives to detention.

*The Standards* also suggest that counsel appointed for initial proceedings involving a juvenile should continue to assist the juvenile during post-dispositional proceedings that may impact the juvenile’s custody, status or course of treatment.<sup>40</sup> Although continuing involvement on the part of defenders may be difficult given the demands of their new and active cases, alternatives may achieve the same goals. For example, a defender could be assigned to each detention facility to monitor the movement of juveniles from temporary confinement in secure facilities to their dispositional programs. This person could ensure that juveniles did not linger in secure facilities for substantial periods of time.

### **To avoid detention, defenders should:**<sup>39</sup>

- Obtain assignment as early in the process as the law [and office policy] allows.
- Discourage the client’s waiver of rights or admission of wrongdoing before a proper investigation has been conducted.
- Inform clients of their right to pursue any investigatory or procedural steps necessary to protect a client’s interests.
- Offer the court information about the child’s family and community ties and support.
- Argue that detention be used as a last resort and only for children who are a danger to the community or unlikely to appear in court.

### **Promising Programs and Strategies**

As demonstrated in Virginia, involvement of defenders early on in the process may not be a legal option in a given state. Whether or not this is true in a particular jurisdiction, options still exist for providing better defense of and support for accused youth.

For example, despite restrictions on defender involvement in initial proceedings in Illinois, First Defense Legal Aid (FDLA) has found ways to intervene before an un-counseled juvenile starts down the path to unnecessary secure detention. FDLA, regardless of income, provides fast, free legal advice at the police station immediately after arrest and until a defender is assigned.

FDLA attorneys collect vital information about the clients and the nature of the alleged offenses. FDLA also ensures that detainees’ critical needs, such as access to medication, are met and that any violations that may have occurred while they were in police custody are documented.<sup>41</sup>

Despite restrictions on public defender involvement prior to an official determination of indigence, juveniles in Illinois may still be protected from unknowingly worsening their position, something that is not necessarily a rare occurrence in that state. For example, between 1991–2001, police from Cook County (in and around Chicago) “obtained at least 71 murder confessions from suspects age 16 and under that were so unconvincing or improper that courts threw them out, prosecutors dropped the charges, or the juveniles were acquitted at trial.”<sup>42</sup> In several of these cases, police used detention and the threat of future detention as a means to extract false confessions from juveniles.

Scared and sometimes misled to believe they can go home if they admit to the crime, children blurt out confessions that are false and even factually or physically impossible. For example, in Chicago, “two boys, ages 7 and 8, confessed to the 1998 murder of 11-year-old Ryan Harris,” despite being too young to have deposited the semen found on the victim’s underwear.<sup>43</sup> FDLA’s involvement early in the process increases the likelihood that juveniles will not be encouraged to implicate themselves while in police custody.

The Washington-based TeamChild project also works to prevent the unnecessary detention of youth.

TeamChild makes a difference for youth in trouble by helping them get the services they need to change their lives. TeamChild addresses the underlying causes of juvenile delinquency by advocating for education, mental and medical health services, safe living situations and other supports.<sup>44</sup>

The organization works against the detention of youth by advocating for alternative solutions that will prevent unnecessary use of detention under the immediate circumstances as well as in the future.

Another model is the Detention Response Unit (DRU) of the Public Defender Office of Maryland.<sup>45</sup> The DRU is a unit of public defenders and social workers that represents youth in detention, either pending a court hearing or awaiting placement in a residential facility. Upon receiving a referral from an attorney, DRU identifies any critical circumstances indicating that an alternative to detention might be beneficial or essential. Once the determination is made that respondents are in need of DRU assistance, both the legal and social work services begin.

A DRU social worker researches appropriate residential and community alternatives to detention and completes a psychosocial assessment of the youth to determine whether further mental, behavioral, or educational evaluations will be necessary and often makes arrangements for those evaluations. The social worker also prepares a recommendation for the court in conjunction with the attorneys.

The DRU attorney investigates the case from a legal perspective. This investigation includes exploring ways in which court-ordered detention can be modified or amended, particularly to allow for community-based alternatives. Whenever necessary, the DRU attorney files exceptions to detention (or review hearings) so that the judge may review the order and reconsider the detention status of the child.

## Conclusion

Currently, “detention is over-utilized in some cases for youth who could be effectively served in less restrictive and more effective settings.”<sup>46</sup> Regardless of guilt or innocence, juveniles in detention facilities are subject to several harms. With more than 300,000 youth locked up annually prior to adjudication or trial, juvenile detention facilities are consequentially overfull and potentially dangerous. Detained youth are harmed when overwhelmed staff are unable to provide adequate care and supervision, let alone mental health services, education, and recreation. Juveniles in detention are also threatened with physical injury because overcrowding “raises the tension level between youth and staff, and leads to increased use of isolation and restraints.” Violence among detained youth and self-inflicted injuries, sometimes as part of suicide attempts, present physical hazards as well. Sexual abuse of juvenile inmates, although more common in adult facilities, also takes place in juvenile facilities.<sup>47</sup> Finally, detained juveniles can be damaged by the emotional strain of being away from friends, family and their community.

Although alternatives to secure detention could be advocated for, including group homes, residential treatment facilities, house arrest, or other non-secure community-based programs,<sup>48</sup> lawyers

are often not appointed in time to present these options to the judge. The untimely assignment of defense counsel and limited understanding of a juvenile’s unique situation lead many courts to opt for detention as a default solution.<sup>49</sup> Additionally, when juveniles are sent to secure facilities to await placement in other programs as demanded by their dispositional decisions, many defenders lack the resources and incentives to follow up with these cases and juveniles spend substantial time in detention—time that is not credited toward stays in rehabilitative programs. By arming defenders with information about detention alternatives and giving them the time to determine what alternatives would best serve their clients’ needs, defenders will be able to more effectively prevent the over-use and abuse of detention in the juvenile justice system.

## Sources

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<sup>4</sup> *Justice Cut Short: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Ohio*, Central Juvenile Defender Center (March 2003), p. ii; *Kentucky: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, ABA Juvenile Justice Center (September 2002), p. 13.

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- <sup>14</sup> Va. Code Ann. § 16.1-250.1. While the law provides a procedure for review of this decision once counsel is appointed, in practice this is rarely done.
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