

# NATIONAL JUVENILE DEFENDER CENTER

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## Encouraging Judges to Support Zealous Defense Advocacy from Detention to Post-Disposition

### An Overview of the *Juvenile Delinquency Guidelines* of the National Council of Juvenile and Family Court Judges

The *Juvenile Delinquency Guidelines (Guidelines)* issued in 2005 by the National Council of Juvenile and Family Court Judges (NCJFCJ) set forth essential elements of effective practice in juvenile delinquency courts. In addition to creating a mandate for juvenile court judges, the *Guidelines* provide standards and support for improving juvenile indigent defense systems and daily court practice. The National Juvenile Defender Center has summarized NCJFCJ's recommendations regarding the role of the juvenile defender and has extracted key quotations from the *Guidelines*, organized topically, to assist defenders in navigating and citing this extensive resource. Please feel free to use and adapt these materials for your own purposes.

#### Background

The *Juvenile Delinquency Guidelines* of the National Council of Juvenile and Family Court Judges ("*Guidelines*") is a comprehensive benchbook of best practices developed by a committee of judges, prosecutors, defense attorneys, and other key juvenile justice stakeholders. Released in July 2005, the *Guidelines* volume can assist juvenile court systems nationwide in planning for improvement and change.

In the *Guidelines*, the nation's leading professional organization of juvenile court judges promotes the active participation of defense counsel in creating fair and efficient delinquency courts. The *Guidelines* identify 16 core principles that characterize a juvenile court of excellence. The seventh principle states that "*youth charged in the formal juvenile delinquency court must have qualified and adequately compensated legal representation.*"<sup>1</sup>

The *Guidelines* recognize zealous defense advocacy as a necessity for children in delinquency proceedings. To this end, the *Guidelines* support policies such as appointment of counsel prior to the detention hearing, adequate training and resources for defenders, and continuity of representation through post-disposition

and reentry. Juvenile defenders can use the best practices endorsed in the *Guidelines* to advance systemic changes in their jurisdictions and outstanding defense practice in every court appearance.



*ensuring excellence in juvenile defense and promoting justice for all children*

## Access to Qualified Counsel

In its core principles and throughout the *Guidelines*, NCJFCJ unequivocally supports the need for qualified defense counsel in establishing a delinquency court of excellence. The *Guidelines* acknowledge that accused children’s right to counsel is frequently underutilized and youth who waive the right are less likely to secure other elements of a fair trial.<sup>2</sup> Although courts often subscribe to the misperception that defense advocacy slows down court processing, the *Guidelines* suggest that early access to counsel leads to early case resolution.<sup>3</sup>

NCJFCJ therefore holds delinquency judges responsible for providing children with access to counsel at every stage of the proceedings, from before the initial hearing through post-disposition and reentry.<sup>4</sup> The *Guidelines* advise judges to be “extremely reluctant” to permit waiver of counsel by youth.<sup>5</sup> Judges should accept waivers from children only on “rare occasion[s]” and should do so only after the child has consulted with an attorney about the decision and persists in desiring to waive the right.<sup>6</sup> The court should always take independent steps to ensure that the child understands the waiver decision and its possible consequences.<sup>7</sup>

Moreover, the court process should be sensitive to the individual characteristics of each child. Judges are also expected to ensure that all courtroom professionals, including defense attorneys, receive adequate training.<sup>8</sup> Youth should have access to defenders who are culturally competent, and to foreign language interpreters if

necessary for conversing with the court and counsel.<sup>9</sup> NCJFCJ repeatedly states that defenders must also have manageable caseloads in order to represent child clients effectively.<sup>10</sup>

In addition, NCJFCJ notes that youth must have access to experienced attorneys who can provide effective assistance.<sup>11</sup> Thus, “representation of youth in juvenile delinquency court should not be an entry-level position that eventually graduates attorneys to other areas of defense work.”<sup>12</sup> Defenders should be “selected on the basis of their skill and competence” and should have both an interest and training in juvenile law, adolescent development, education, substance abuse, and mental health issues.<sup>13</sup> In short, the *Guidelines* acknowledge that juvenile delinquency defense is a specialized area of law requiring highly skilled lawyering.

## Zealous Representation

Juvenile defenders may find that their active representation of child clients is sometimes resisted by other courtroom participants. However, the diverse stakeholders who framed the *Guidelines* recognize that zealous defense advocacy helps resolve cases efficiently and benefits all courtroom participants.<sup>14</sup>

Managers and front-line defenders can use the *Guidelines*, as well as other professional standards, to educate their jurisdictions about the role of counsel for the child. According to NCJFCJ, juvenile defenders must:

- Represent the position expressed by the child client,
- Appear in all hearings as for an adult client accused of the same act,
- Advocate to prevent the child from being inappropriately detained,
- Promptly investigate and actively pursue discovery,
- File all appropriate pre-trial motions,
- Know about disposition options and inform the court of the child’s needs.<sup>15</sup>

By articulating these duties, the *Guidelines* make clear that no court should frown upon a defender’s pursuit of these core responsibilities. Defenders can refer to the *Guidelines* in individual cases or when influencing policy debates to explain why limitations on legitimate advocacy efforts are inappropriate and inefficient.

### Quick Reference:

### NCJFCJ *Juvenile Delinquency Guidelines* Related to the Role of Counsel

References to the Role of Counsel can be found on the following pages of the *Guidelines*:

Access to counsel: 25  
Early appointment of counsel: 77-79, 90-91  
Waiver of counsel: 25  
Primary responsibility to child client: 30, 122, 137, 161  
Detention alternatives: 81-84  
Detention advocacy: 90  
Adjudication: 122, 126  
Disposition: 137  
Appeals: 161-62  
Post-disposition: 169, 181  
Reentry: 187  
Probation/parole violations: 196-97

## Practice Recommendations on Elements of Zealous Defense

- Meet with the child prior to the detention or initial hearing
- Have the opportunity, in every hearing, to cross-examine prosecution witnesses, present evidence, and make arguments
- Inform the court of each youth's special needs
- Zealously represent each child client's expressed interests
- File appropriate pre-trial motions
- Actively pursue discovery
- Appear in all hearings where the attorney would appear for an adult accused of the same crime
- Know the available disposition resources
- Secure the child's appeal rights and explain them to the child

### Expressed Interests of the Child

Many juvenile justice practitioners mistakenly believe that juvenile defenders are obliged to argue for a child's "best interests" in court. The *Guidelines* join other professional standards in recognizing that a juvenile defender's primary responsibility is to the child client.<sup>16</sup> At every stage of court proceedings, a defender is ethically bound to advocate for the legitimate interests and goals expressed by the child.<sup>17</sup> Defenders may not substitute their own judgment, or that of the client's caretakers, for the preferences of the child.<sup>18</sup>

Although parents also have important interests and can play a significant role in delinquency proceedings, at times their position may be adverse to the child's. In such cases, the *Guidelines* make clear that defense counsel's primary duty is to the child. Under the *Guidelines*, where there are conflicts of interest or opinions between a child client and his or her caretaker, defenders need not discuss the case with parents<sup>19</sup> or represent the views of a parent that are contrary to the child's wishes.<sup>20</sup>

### Courtroom Culture

Assessments of state juvenile indigent defense systems conducted by the National Juvenile Defender Center and their partners routinely find that juvenile courts across the country are chaotic, extremely informal, and perceived as less important than adult criminal courts.<sup>21</sup> One juvenile court clerk in Louisiana summed up the issue: "Families and children have no meaningful idea what is going on here. They move through the system quickly and are humiliated and demeaned in the process."<sup>22</sup>

NCJFCJ recognizes that substandard proceedings in delinquency courts are unacceptable. The judge "must explain and maintain strict courtroom decorum and behavioral expectations for all participants ... [and] ensure that the juvenile delinquency court is a place where all ... participants are treated with respect, dignity, and courtesy."<sup>23</sup> Courtroom facilities should be secure and offer separate supervised waiting areas for witnesses and family members, with defense and prosecution witnesses waiting separately. The *Guidelines* repeatedly stress the need for delinquency courts to treat all participants, including defenders and youth, with politeness and cultural understanding.<sup>24</sup> These provisions are a resource for defenders to combat common misperceptions of juvenile court and to insist upon appropriate decorum in the proceedings.

### Detention Advocacy

Early appointment of defense counsel is critical to resolving cases fairly and efficiently. The *Guidelines* specify that in a delinquency court of excellence, counsel is appointed *before* any initial or detention hearing and has enough time to prepare.<sup>25</sup> Only if unavoidable should children meet with counsel for the first time on the day of the hearing, and only if they are then afforded time to discuss the case outside the courtroom.<sup>26</sup> Zealous and prepared detention advocacy is so important that NCJFCJ advises judges and public defenders to take a leadership role in promoting systemic reforms that will redirect resources toward early appointment of counsel, for example by diverting less serious cases from formal processing.<sup>27</sup>

The *Guidelines* discuss several compelling reasons for early appointment of counsel, especially courtroom organization and quality of representation. NCJFCJ

recognizes that early appointment of counsel conserves judicial resources by preventing delays and minimizing additional hearings.<sup>28</sup> Moreover, timely appointment helps defenders meet their ethical obligations and secure due process for children. Defenders are expected to:

- Spend time with the child before the hearing to review the delinquency petition, explain the child’s rights, and discuss whether the child wants to admit or deny the allegations;<sup>29</sup> and
- Based on these early interactions, help the court recognize when there are competency issues that require further assessment.<sup>30</sup>

Defenders can invoke these arguments to encourage reforms that will enable courts to appoint counsel earlier or to gain additional time to talk with each child client before a detention hearing. Given the critical importance of attorney-client interaction, the *Guidelines* also stress that juvenile court facilities should provide private spaces where attorneys can meet with clients and families.<sup>31</sup>

The harmful effects of secure detention on children’s case outcomes and life chances are well documented. Youth placed in secure detention are more likely than non-detained youth to be formally processed and to receive more punitive sanctions at disposition, controlling for demographic and offense characteristics.<sup>32</sup> Secure detention is far more costly than community-based alternatives, and jurisdictions that have pioneered reforms find that these alternatives do not harm public safety and may lower recidivism rates.<sup>33</sup> The *Guidelines* acknowledge the ruinous consequences of overcrowding in detention centers, which endangers youth and prevents services from being delivered.<sup>34</sup> The burdens of detention fall disproportionately on African American youth and other racial minorities, who are locked up at higher rates than white youth accused of comparable offenses.<sup>35</sup>

The *Guidelines* discuss at length the desirability and availability of alternatives to secure detention, including temporary shelters for children whose guardians

cannot be located but for whom secure detention is unnecessary.<sup>36</sup> One of the key functions of juvenile defenders is drawing the court’s attention to appropriate alternatives for each child, and the *Guidelines* emphasize that overuse of secure detention wastes public funds.<sup>37</sup> These arguments have long been raised by defenders, but have added persuasion when seconded by NCJFCJ.

The *Guidelines* note that a police affidavit in support of a request to detain a child should specify the reasons why a youth should be securely confined.<sup>38</sup> Defenders should urge courts to hold police to this standard. Moreover, defenders should ensure that children are detained only when statutory criteria are met and that judges enter written findings regarding the detention decision.<sup>39</sup>

Throughout the *Guidelines*, NCJFCJ encourages early and effective defense advocacy as a means of conserving public resources and streamlining court processing. Defenders can use these principles, propounded by judges and for judges, to expand their jurisdiction’s acceptance of a vigorous defense role in delinquency court. This expansion is especially needed in detention hearings, which are too often dismissed as merely a prelude to the main show.

## Plea Agreements

Youth may have many misconceptions about the process of entering a plea agreement. The *Guidelines* recommend that all courtroom participants, including defenders, ensure that plea negotiations do not give the child the impression that he or she will be able to manipulate the system or avoid consequences by taking a plea offer.<sup>40</sup> Based on this principle, judges are expected to conduct a thorough colloquy in understandable language any time a youth is entering a plea.<sup>41</sup> The *Guidelines* state that judges should determine whether a child’s plea is knowing and voluntary in light of the child’s age, educational attainment, literacy level, and trauma history.<sup>42</sup>

### Policy Recommendations for Juvenile Defense

- Limitation of waiver of counsel to rare occasions, only following a colloquy and consultation with an attorney
- Appointment of counsel prior to the detention or initial hearing
- Diversion of less serious cases from the formal delinquency system
- Continuity of representation, including availability of counsel for appeals and post-disposition reviews
- Manageable caseloads for defense counsel and other participants

The *Guidelines* hold defenders responsible for telling each youth that the plea agreement is not a way to achieve gain and that the court makes a final decision about whether to accept an agreement.<sup>43</sup> The *Guidelines* thereby imply that defenders need adequate time to counsel child clients regarding the momentous direct and collateral consequences of admitting delinquency charges. Defenders can refer to these portions of the *Guidelines* to request additional reasonable time from the court to fulfill all of these responsibilities for each child client.

The *Guidelines* emphasize that it is “unacceptable practice” for prosecutor or counsel to begin plea discussions for the first time on the day of adjudication or as a result of inadequate preparation for adjudication.<sup>44</sup> The court should receive any proposed plea agreement, with a plea petition signed by the child, at least one week ahead of the scheduled adjudication date.<sup>45</sup> However, the *Guidelines* also recognize that untimely plea discussions may be “caused by unmanageable caseloads.”<sup>46</sup> These *Guidelines* provisions provide defenders with policy arguments in favor of caseload reductions. The *Guidelines* recommend diverting less serious cases from the formal delinquency system in order to conserve resources.<sup>47</sup>

## Adjudication

The *Guidelines* expect juvenile defenders to be qualified and to prepare thoroughly for each child’s adjudication.<sup>48</sup> Diligent preparation includes factual investigation, discovery, requests for experts if needed, and communication with the child.<sup>49</sup> Remaining conscious of the need to minimize a child’s time in detention, defenders can cite this provision when urging the court to set an adjudication date that will provide adequate time to prepare a client’s defense. The *Guidelines’* expectations for defenders also provide grounds for policy reforms to fund defense investigators or experts and to set reasonable caseload standards.

The *Guidelines* specify that defenders should have the opportunity to cross-examine all witnesses presented at adjudication or to present contrary evidence on the child’s behalf.<sup>50</sup> Statements made by children during intake or detention processing should not be admissible against them at adjudication.<sup>51</sup> Defenders, like prosecutors, must be afforded the opportunity to present closing arguments.<sup>52</sup> The *Guidelines* also note

## Using the NCJFCJ *Guidelines* in Court

Invoking the *Guidelines* in a courtroom presentation could feel awkward. A defender does not want to appear to be telling the judge how to do his or her job. With a little forethought, there are ways to raise the *Guidelines* with finesse and respect.

For example:

- *Your Honor, as you are probably aware, the National Council of Juvenile and Family Court Judges encourages courts to ....*
- *Your Honor, I would appreciate the opportunity to present [argument on a motion, defense witness, defense evidence, etc.], in accordance with the guidelines for excellence set out by your National Council of Juvenile and Family Court Judges.*

that in delinquency adjudications, like criminal trials, the state has the burden of proof.<sup>53</sup> It is clear from the *Guidelines* that defenders should never be inhibited from conducting vigorous cross-examination, challenging admissibility of evidence, demanding that the state prove every element of the crime beyond a reasonable doubt, or otherwise engaging in a zealous defense. The process that is due to a child in delinquency court demands an effort comparable to the process that would be provided in adult criminal court. It is not acceptable for courts to conduct informal adjudications that compromise the protections required in an adversarial delinquency system.

## Disposition

NCJFCJ recognizes the importance of thorough preparation and advocacy at disposition. Defenders should notify the court at the time of adjudication if additional evaluations or expert witnesses will be needed for disposition.<sup>54</sup> The *Guidelines* recommend that a pre-disposition investigator should contact defense counsel for information, and should give a copy of his or her report and recommendations to defense counsel *at least three days before* the disposition hearing.<sup>55</sup> In addition, defenders are responsible to consult with the child client regarding options and preferences.<sup>56</sup> Defenders can use these best practices as a benchmark to argue that the court should not proceed with a rushed disposition hearing. In particular, the *Guidelines* provide that a case

should not proceed from adjudication immediately to disposition unless all necessary preparation has been completed beforehand.<sup>57</sup>

At the disposition hearing, defenders inform the court about each child's needs and preferences regarding services and providers.<sup>58</sup> As in other hearings, defense counsel must have the opportunity to represent the child actively by cross-examining prosecution evidence and presenting evidence on the child's behalf.<sup>59</sup> The *Guidelines* show that these are necessary steps for which courts should provide adequate time in every case. Moreover, the *Guidelines* offer a basis for policy reforms to help give defenders the resources and time to prepare for the comprehensive preparation that is expected of them at the disposition stage.

Although the *Guidelines* acknowledge that parents' views may be relevant, they state that defense counsel has no obligation to present to the court the disposition preference of a parent that is contrary to the child's wishes.<sup>60</sup> NCJFCJ thus reinforces other professional standards in concluding that, at any stage of delinquency proceedings, defense counsel's primary allegiance is to the child client and to the representation of his or her legitimate expressed interests.

## Appeals

As in other stages of the proceedings, defenders' responsibility at the appellate stage is to the child client.<sup>61</sup> NCJFCJ recognizes that it is part of defense counsel's role to take appeals when necessary to protect a client's rights or clarify legal rules.<sup>62</sup> However, judicial performance affects the likelihood of appeal. Delinquency judges can help to avoid the necessity of an appeal by ensuring that there are correct procedures and clear communication throughout the proceedings.<sup>63</sup>

The *Guidelines* expect defenders to consult with a child client about the possibility of appeal, to obtain and review critically the adjudication transcripts, and to take the procedural steps necessary to safeguard the client's right to appeal.<sup>64</sup> Juvenile defenders can invoke these principles to advocate for systemic reforms that will secure more resources for appellate representation in juvenile cases.

## Post-Disposition, Reentry, and Probation/Parole Violations

NCJFCJ urges judges to ensure that counsel is available to children at every stage of delinquency proceedings, specifically including post-disposition and reentry hearings.<sup>65</sup> Indeed, the *Guidelines* state that a court of excellence will ensure that the *same lawyer* remains assigned to the case and appears for progress reports, hearings, and conferences.<sup>66</sup>

Whether children remain in the home or are placed outside the home, defense counsel should not rely on probation reports but should actively seek information about the child's progress through independent interviews.<sup>67</sup> At progress review hearings, defenders state the child's agreement or disagreement with the progress report, have the opportunity to challenge prosecution evidence, and present any additional information or testimony needed.<sup>68</sup> Presenting the child's perspective during post-disposition should not be an unusual event, but a routine step of any progress review. When a child is placed outside the home, the *Guidelines* state that defense counsel should be invited to participate in planning for reentry to the community.<sup>69</sup>

Likewise, children should be represented at hearings on probation or parole violations by the *same lawyer* who represented the youth on the original law violation.<sup>70</sup> This defender should be afforded time to question and present evidence on whether the child violated probation or parole.<sup>71</sup> The defender should have the opportunity to respond to reports about the child's progress.<sup>72</sup>

The *Guidelines* anticipate that defense representation will be as vigorous during the post-disposition phases of a case as in earlier stages. NCJFCJ further envisions that delinquency systems will need to receive and allocate sufficient resources to ensure that children have continuity of representation throughout their involvement with the delinquency system. These recommendations are a clear condemnation of current practice in many jurisdictions, in which defenders of indigent children are expected or required to abandon the case after disposition.

# Role of the Juvenile Defender

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## Counsel's Ethical Obligations

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- “Whether performed by a public defender or the private bar, counsel for youth is responsible to be an advocate, zealously asserting the client’s position under the rules of the adversary system[.]” (page 30)
- “[C]ounsel for the youth’s primary responsibility is to the youth client[.]” (page 122)
- At disposition, “[c]ounsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of counsel’s client.” (page 137)

## Counsel's Specific Responsibilities

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“Counsel for youth must be able to explain the juvenile delinquency court process in terms the youth can understand.” (page 30)

“Whether performed by a public defender or the private bar, counsel for youth is responsible to:

- Promptly and thoroughly investigate the client’s case in order to be an effective advocate;
- Ensure the juvenile delinquency court has been informed of the youth’s special needs;
- Be knowledgeable of all the disposition resources available in the jurisdiction;
- Appear as an attorney for the youth in all hearings concerning a juvenile accused of an act where the defense attorney would appear if an adult committed the same act. This includes, but is not limited to, hearings for detention, speedy trial, motions, dismissal, entry of pleas, trial, waiver, disposition, post-disposition reviews, probation or parole violation hearings, and any appeal from or collateral attacks upon the decisions in each of these proceedings;
- Before the trial and adjudication hearing, file all appropriate pre-trial motions in order to protect the youth’s rights and preserve the fairness of the trial and adjudication hearing. Such motions may include efforts to obtain discovery materials, to suppress physical evidence and confessions, or to challenge the circumstances of a pretrial identification, etc; and
- Actively pursue discovery from the prosecutor under informal procedures, court rule, and motions practice as appropriate. Effective representation of the client’s interests is frustrated when counsel for the youth is ignorant of information contained in discovery materials. Where the jurisdiction requires reciprocal discovery, counsel for youth should provide such materials as promptly as possible.” (page 30-31)

## Defender's Relationship to Client's Parents

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“Although counsel for the youth’s primary responsibility is to the youth client, in most instances it is in the youth’s best interest that his or her parents also be informed. Consequently, in most cases, in order to serve the client’s needs, counsel must include the parent. In some instances, such as when a parent is the victim, it may not be appropriate for counsel for the youth to engage the parent. In this instance, the prosecutor would be the most appropriate person to inform the parents of the proceedings, their rights, the youth’s rights, and the consequences if the youth is adjudicated on the petition, since the parent will probably be a prosecution witness.” (page 122)

## Counsel's Qualifications

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### *Experience:*

- Counsel for youth should be “an experienced attorney in order to provide effective legal assistance. The representation of youth in juvenile delinquency court should not be an entry-level position that eventually graduates attorneys to other areas of defense work.” (page 30)
- “They should be selected on the basis of their skill and competence[.]” (page 30)

### *Specialized knowledge and interests:*

- “Counsel for youth should have a particular interest in youth and family systems, focus on juvenile law, and be trained in the development, education, substance abuse and mental health of youth.” (page 30)
- “Qualified counsel has an understanding of child development principles, cultural differences, mental health, trauma, mental retardation, and maturity issues that relate to juvenile competency to stand trial issues; treatment options that could serve as effective alternatives to detention; and special needs issues including prior victimization and educational needs.” (page 78)
- “Qualified counsel understands juvenile delinquency court process and knows enough about disposition resources to advocate for a disposition response that will meet the youth’s needs.” (page 78)

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## Juvenile Defense Policy

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### Access to Counsel

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- “Alleged and adjudicated delinquent youth must be represented by well trained attorneys with cultural understanding and manageable caseloads.” (page 25)
- “Juvenile delinquency court administrative judges are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.” (page 25)

### Waiver of Counsel

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- Judges “should be extremely reluctant to allow a youth to waive the right to counsel.” (page 25)
- “A waiver of counsel should only be accepted after the youth has consulted with an attorney about the decision and continues to desire to waive the right.” (page 25)
- “On the rare occasion when the court accepts a waiver of the right to counsel, the court should take steps to ensure that the youth is fully informed of the consequences of the decision.” (page 25)
- “Juveniles who are not represented by counsel are not likely to effectively exercise their other due process rights.” (page 78)

### Leadership Role of Delinquency Judges

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- Judges “are responsible to ensure that counsel is available to every youth at every hearing, including post-disposition reviews and reentry hearings.” (page 25)
- If the system does not permit the provision of qualified and effective counsel for youth in formal delinquency proceedings, delinquency judges “should work with the public defender, private bar, funding sources, and the legislature to overcome the barriers to creating [an adequate] system.” (page 79)
- An important principle of timeliness in case management and docketing is “to respect and efficiently use the time of ... counsel for youth” and all other court participants. (page 44)

### Court Capacity

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- “Juvenile delinquency systems must have sufficient numbers of ... public defenders [and other personnel]... to create manageable caseloads and timely process.” (page 24)
- “Juvenile delinquency systems ... must have private meeting space for youth and counsel[.]” (page 24)

### Juvenile Court Jurisdiction

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- “The *Delinquency Guidelines* recommend that all juveniles who have not yet turned 18 should be under the original jurisdiction of the juvenile delinquency court.” (page 37 (citing *Roper v. Simmons*))
- Key Principle 6 states that “Juvenile delinquency court judges should ensure their systems divert cases to alternative systems whenever possible and appropriate.” (page 25)

- “Juvenile delinquency courts should encourage law enforcement and prosecutors to consider diversion for every status offender, every first-time, non-violent misdemeanor offender, and other offenders as appropriate.” (page 38)
- NCJFCJ takes the policy position: “The determination as to whether a juvenile charged with a serious crime should be handled in juvenile delinquency court or transferred to criminal court is best made by a juvenile judge in a judicial hearing with the youth represented by qualified counsel.” “Accordingly, prosecutorial waiver, mandatory transfers, and automatic exclusions are not recommended.” (page 39)

## Case Processing: Confidentiality, Timeliness, Minority Youth

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- “The *Delinquency Guidelines*-recommended practice regarding openness of juvenile delinquency hearings is that hearings should be presumed to be open to the general public, unless sufficient evidence supports a finding that an open hearing will harm the juvenile and that the juvenile’s interests outweigh the public’s interest.” (page 40)
- “Because of [adolescent] developmental dynamics, timeliness throughout the juvenile justice process is critical[.]” Timeliness reinforces the lesson of accountability and protects youth from experiencing a period of prolonged uncertainty and anxiety. (pages 43-44) “Delays in the response of the juvenile justice system lessen the impact of an intervention.” (page 66)
- “Although it remains true that societal issues may subject minority youth to risk factors for delinquency, ongoing work in many juvenile delinquency court jurisdictions shows that the practices of individual justice agencies can exacerbate or alleviate the disparity at each decision point.” (page 50)

## Appointment of Counsel Prior to Detention or Initial Hearing

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- “In a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing.” (page 90)
- “Delays in the appointment of counsel create less effective juvenile delinquency court systems.” (page 90)
- “Effective counsel becomes involved in the case prior to the first hearing, has a manageable caseload, and is present at all juvenile delinquency court hearings.” (page 78)

## Providing Early Access to Counsel

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- When the child is served with a summons, “information should also be provided to the youth and family that describes ... why counsel for the youth is important, and options to obtain legal representation for the youth prior to the hearing.” (page 74)
- “The *Delinquency Guidelines* recommends that the youth, parent, and counsel for the youth meet prior to the initial hearing to determine the position they will take at the hearing.” (page 74, 90)
- “The better the preparation prior to the hearing, the more timely and efficient the process will be.” (page 74)
- If meeting before the hearing is “not possible[.]” then “the second preference is to provide access [to counsel] on the day of the first hearing with sufficient time for the youth, family, and counsel to discuss the case before entering the courtroom.” (page 90)

## Consequences of Untimely Appointment of Counsel

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- “Juvenile delinquency courts that do not create systems that enable counsel to be obtained in advance of the initial hearing, and as a consequence, allow counsel to be absent or unprepared at the first hearing, make it difficult for time-specific hearings to be set and adhered to, cause additional unnecessary hearings to be set which wastes juvenile delinquency court resources, and delay timely justice. Such systems end up with unnecessary continuances, waste expensive resources due to extensive waiting times, and are disrespectful to its citizens.” (page 74)
- “When juvenile delinquency courts do not create systems that enable counsel to be appointed and engaged in advance of the initial hearing, they cause additional unnecessary hearings to be set. Families who can afford private counsel do not have these barriers and rarely appear at the first juvenile delinquency court hearing without prior consultation with counsel.” (page 222)

## Need for Systemic Change to Allow Early Appointment of Counsel

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- “This [Principle 7] recommendation is anticipated to be one of the more controversial recommendations of the *Delinquency Guidelines* because juvenile delinquency systems may believe they simply do not have the resources to comply. In addition, juvenile delinquency court personnel have sometimes perceived that when counsel represents youth, the court process is delayed and made more cumbersome. In contrast to this perception, juvenile delinquency courts have found that providing qualified counsel facilitates earlier resolution of summoned cases.” (page 221-22)
- NCJFCJ suggests systemic reforms that will allow for earlier appointment of counsel (pages 78-79, 222):
  - Change relevant rules or statutes
  - Develop Memorandum of Understanding between the court and public defender
  - Provide interim legal services
- “When a juvenile delinquency court improves its system in these ways, there is a strong likelihood that existing resources for appointment for counsel for youth can handle a greater percentage of formal cases with reduced caseloads that allow a higher degree of quality.” (page 222)

## Practice of Juvenile Defense at Each Stage of a Case

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### Initiating the Court Process

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- “*Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation* applies regardless of whether the youth is released or detained.” (page 77)
- “In some instances, the youth does not need to be detained but a parent or custodian or relative cannot be located. When this occurs, intake should arrange the release of the youth to an appropriate shelter care or non-secure holdover facility until the parent, custodian, or a relative can be located.” (page 77)

### Detention or Initial Hearing

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#### *Preparation for the Hearing:*

- “In a juvenile delinquency court of excellence, counsel is appointed prior to the detention or initial hearing, and has time to prepare for the hearing.” (page 90)
- “When qualified counsel represent youth and have prepared before the hearing, counsel will have also carefully reviewed the petition and rights with the youth and family. Counsel will have significant information from these interactions to assist in identifying whether there are questions of competency to stand trial that need to be addressed.” (page 92)
- “Consultation between the youth, parent or guardian, and counsel regarding whether the youth wishes to admit or deny the charge should have occurred before entering the courtroom.” (page 94)

#### *Competency:*

- “[W]hen counsel, prosecutor, or the juvenile delinquency court judge observe indicators that competency to stand trial may be an issue, each is obligated to pursue the question further.” (page 93)
- “Counsel for the youth is obligated to request a clinical assessment of decisional capacity if the youth’s competency to stand trial is in question.” (page 93)

#### *Conduct of the Hearing:*

- Present at the hearing (page 91):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired

- “If the youth is on probation or involved in services, it may not be necessary for the probation officer or other worker to be present as long as there is a system to ensure that all necessary information is available to the judge, prosecutor, and counsel[.]” (page 91)
- “[I]f the youth in consultation with the parent or guardian and counsel chooses to waive any right, the youth, parent or guardian, and counsel should sign a written waiver.” (page 92)
- “Both prosecutor and counsel for the youth should turn over all discovery materials according to juvenile delinquency court rule and as properly requested as soon as possible as well as pursue discovery under informal procedures as appropriate[.]” (page 95)
- Among the questions that must be answered at this hearing: “Has the youth had access to, and been appointed qualified legal counsel?” (page 96)
- Written findings and orders should include: “If counsel was not present, the plan to ensure the presence of counsel at the next hearing[.]” (page 97)

## Waiver & Transfer Hearing

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### *Counsel’s Qualifications and Duties:*

- “Counsel for the youth must become sufficiently knowledgeable of the alleged incident and of the youth’s circumstances in order to be properly prepared for cross-examination and to determine whether or not to call witnesses for the defense. In order to complete these critical steps, prosecutors and counsel for youth must have reasonable caseloads, with resources to investigate all necessary aspects of the case, and counsel for youth must have been appointed prior to the detention hearing[.]” (page 103)
- “Counsel must understand child and adolescent development, developmental disabilities, victimization and trauma, mental health, mental retardation and maturity issues, and the treatment services that are available in the juvenile justice system. Counsel must also understand the criminal court system in order to determine whether counsel believes the youth will be better served in juvenile delinquency court or criminal court.” (page 105)
- “If... an attorney does not represent the youth at the detention or initial hearing, the court must appoint legal representation for the alleged offender prior to the probable cause hearing on a waiver motion.” (page 105)

### *Preparation for the Hearing:*

- “Because of the very serious potential consequences if the juvenile delinquency court decides to waive jurisdiction and transfer the youth to the criminal court, including lengthy incarceration, and possible abuse in adult prison of immature or special needs youth, it is critical that counsel has the time and resources to prepare for the probable cause hearing.” (page 105)
- “Prior to the probable cause hearing on a motion to waive juvenile delinquency court jurisdiction and transfer a case to criminal court, counsel should investigate all circumstances of the case relevant to the appropriateness of transfer. Counsel should also seek disclosure of any reports or other evidence that will be submitted to, or may be considered by the court, in the course of transfer proceedings. If circumstances warrant, counsel should have requested appointment of an investigator or expert witness to aid in the preparation of the defense, and any other order necessary to protect the youth’s rights, during pre-trial proceedings. Counsel should also fully explain the nature of the proceedings and the consequences of transfer to the youth and the youth’s parent or legal custodian.” (page 105)

### *Conduct of the Probable Cause Phase:*

- Present at the hearing (page 105):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The burden of proof is on the state, and consequently, the youth is not required to present any witnesses or to prove that he or she did not commit the offense. Counsel may choose, however, to present evidence that challenges the evidence of the prosecutor.” (page 106)
- “As with the prosecutor’s evidence, any evidence presented by counsel should be under oath and subject to cross-examination.” (page 106)

- After the prosecutor’s rebuttal, “the prosecutor and counsel for the youth may present closing arguments regarding the probable cause phase.”

### *Conduct of the Waiver/Transfer Phase:*

- Present at the hearing (page 112-13):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The evaluation reports should be provided to the prosecutor and counsel for the youth not less than three days before the hearing. It is recommended that the social and physical evaluations be provided to the prosecutor and counsel for youth prior to the forensic evaluation in order to provide as much review and preparation time as possible.” (page 113)
- “It is important that the prosecutor and youth’s counsel have sufficient time to determine whether ... they wish to challenge the conclusions by either questioning the evaluator or presenting additional information through written reports or testimony.” (page 113)
- “If additional written reports are to be presented by the prosecutor or youth’s counsel, they should similarly have been provided to all parties prior to the hearing.” (page 113)
- If the probation officer or other person who prepared the evaluations testifies, then “the prosecutor and counsel for the youth should have the opportunity to question the preparer.” (page 113)
- “After each [prosecution] witness’ testimony, the defense should have the opportunity to cross-examine.” (page 113)
- “If there is evidence that counsel for the youth can present to defend his or her client against waiver, or to challenge the information in the evaluations, it should be presented at this time [after the prosecution’s case].” (page 113)
- “Counsel should present an alternative plan for the court to consider that would continue juvenile delinquency court jurisdiction.” (page 113)
- “The prosecutor and counsel for the youth may present closing arguments.” (page 114)

### *Interlocutory Appeals Should Be Allowed:*

- “[B]ecause of the potentially serious consequences of a juvenile’s charges being transferred to criminal court, counsel for the youth should have the opportunity to request expedited interlocutory appellate review of the juvenile delinquency court’s decision if counsel believes that the juvenile delinquency court judge has made an error in process or judgment.” (page 107)
- “[A]ppellate courts should work with juvenile delinquency courts, prosecutors, and public defenders to design an expedited appellate review of interlocutory orders to waive juvenile delinquency court jurisdiction and transfer a youth to criminal court. This should be a streamlined and speedy memorandum review process that would allow counsel for the youth’s memoranda to be reviewed within two weeks.” (page 163)

## **Trial or Adjudication Hearing**

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### *Preparing for the Hearing:*

- “A case should not go to trial in the juvenile delinquency court without a prosecutor and counsel for the youth who are qualified and who have exercised due diligence in preparing for the proceeding.” (page 122)
- “Prior to the trial, counsel completed all of the following responsibilities:
  - Investigated all circumstances of the allegations;
  - Sought discovery of any reports or other evidence to be submitted to or considered by the juvenile delinquency court at the trial;
  - If circumstances warrant, requested appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protect the youth’s rights; and
  - Informed the youth of the nature of the proceedings, the youth’s rights, and the consequences if the youth is adjudicated on the petition.” (page 122)

### *Conduct of the Hearing:*

- Present at the hearing (page 124):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “Unless waived by counsel, the statements of a juvenile or other information or evidence derived directly or indirectly from statements made during the juvenile delinquency court intake or detention processing of the case should not be admissible at the trial.” (page 125)
- “After each [prosecution] witness’ testimony, counsel for the youth should have the opportunity to cross-examine.” (page 125)
- “The burden of proof is on the prosecutor and consequently the youth is not required to present any witnesses or to prove that he or she did not commit the alleged offense. Counsel for the youth may choose to present evidence that challenges the evidence of the prosecutor or proves the youth’s innocence.” (page 126)
- “All evidence presented at the trial should be under oath and subject to cross-examination.” (page 125)
- After the prosecutor’s rebuttal, “the prosecutor and counsel for the youth may present closing arguments.” (page 126)

### *Plea Agreements*

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- “Part of the role of counsel for the youth is to tell the youth that he or she should not expect gain in exchange for a plea agreement. Counsel must also advise the youth that the juvenile delinquency court has the final determination over whether to accept the plea agreement.” (page 123)
- “When a plea agreement is appropriate, the prosecutor and counsel for the youth should negotiate plea agreements prior to the time the trial is set. ... It is unacceptable practice for last minute plea agreements to occur because the prosecutor or counsel for the youth has not adequately prepared in advance of the trial. It is also unacceptable practice to wait routinely to first address the question of a plea agreement until the day of the trial.” (page 123)
- “If a plea agreement has been proposed, the prosecutor and counsel for youth should submit to the juvenile delinquency court judge, at least one week before the scheduled trial, a proposed plea agreement and a signed plea petition that, in addition to listing rights waived, has a section completed by the youth that describes what occurred, that has a statement of admission, and that is signed by the youth. The juvenile delinquency court judge should immediately review the plea petition and proposed plea agreement[.]” (page 124)

### *Disposition Hearing*

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#### *Role of Defense Counsel:*

- “Counsel for the youth plays an important role in the disposition hearing with the responsibility to ensure that all significant needs relating to the delinquent behavior of the adjudicated delinquent youth have been brought to the attention of the juvenile delinquency court.” (page 137)
- “[C]ounsel for the youth is not obligated to present the view of the parent, if this view is in opposition to the view of counsel’s client.” (137)

#### *Preparing for the Hearing:*

- “If additional evaluations or expert witnesses are needed to aid in the preparation of the disposition hearing, counsel is responsible to request this assistance at the end of the adjudication hearing.” (page 137)
- Prior to the hearing, counsel should:
  - “[F]ully explain the possible disposition options to the youth and the youth’s parents or legal custodian.” (page 137)
  - “[A]sk them what options they feel would be appropriate and which service providers the youth and family will feel most comfortable working with.” (page 137)
  - “[Determine] whether to agree with the recommendation [of the pre-disposition report] or to present a different recommended disposition.” (page 142)

- “[Determine] whether to call witnesses to testify as to the appropriateness of her or his recommendation or to challenge the conclusions or recommendations of the pre-disposition report.” (page 142)
- “Whenever a juvenile delinquency court can obtain the “buy-in” of youth and family by considering their opinions, needs, recommendations, and preferences, and give them options to choose from, the court enhances the youth’s chances of a successful outcome.” (page 135)
- “Pre-disposition investigations should include ... [c]ontacting the prosecutor and counsel for the youth for additional information, and their perspectives and recommendations[.]” (page 138)
- “The pre-disposition investigator should provide the pre-disposition report, recommendations, and proposed probation or initial reentry plan to the prosecutor and counsel for the youth *not less than three days before the disposition hearing.*” (page 140, emphasis added)

### *Conduct of the Hearing:*

- Present at the hearing (page 141):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to ask the [pre-disposition] investigator questions.” (page 142)
- “Counsel for the youth has the opportunity to cross-examine evidence or testimony presented by the prosecutor” (page 142)
- “Counsel for the youth indicates agreement or disagreement with the recommendation and presents any evidence or testimony accordingly.” (page 142)
- “The juvenile delinquency court judge gives the ... youth [and other participants] ... the opportunity to address the court.” (page 142)

## Appeals Process

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### *Process and Procedure:*

- “[T]he juvenile delinquency judge should do everything possible to ensure that the juvenile delinquency court does not err in process nor create circumstances due to lack of clear communication that would create the necessity of counsel filing an appeal. It is important to clarify that this statement is not intended to discourage appeals where they are needed for counsel to adequately represent her or his client, protect the client’s rights, or refine points of law.” (page 145)
- “If the juvenile delinquency court accepted waiver of counsel, the youth and parents should be informed of their right to counsel to assist in the filing of the appeal.” (page 161)
- “If inadequate representation by counsel is an issue on appeal, procedures should be in place to avoid further delay in appointing new counsel.” (page 161)

### *Role of Counsel:*

- “In order to shorten the time [for appeals] as much as possible, counsel for youth should file the appeal as soon as possible and in no case, more than 30 days from disposition.” (page 160)
- “Counsel for the youth is responsible to review the juvenile delinquency court’s orders of adjudication and disposition critically. Counsel must explain the orders to the youth, doing everything possible to help the youth understand the nature and impact of each component of the juvenile delinquency court’s orders. It is counsel’s responsibility to explain to the youth the right to appeal, the pros and cons of filing an appeal, and counsel’s opinion as to the likely outcome of an appeal.” (page 161)

### *Counsel’s Interaction with Client’s Parents:*

- “Although counsel is not required to explain appeal issues to the youth’s parents, in most instances it will be helpful to the youth if the parents also understand all of these issues. Consequently, in order to best represent the client, counsel should, unless contraindicated, include the parents in explanations and recommendations regarding the appellate process.” (page 161-62)

## Post-Disposition Review

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“All parties and key participants who were involved in hearings prior to and including the disposition hearing should be involved in post-disposition review, including the prosecutor and counsel for the youth.” (pages 167, 178)

### Youth Remains at Home

#### *Preparing for the Review:*

- “The prosecutor and counsel for the youth are always invited to negotiation interventions; however, they would be notified of, but not invited to family conferencing, unless the youth or family asked them to attend.” (page 168)
- “*Key Principle 7: Youth Charged in the Formal Juvenile Delinquency Court Must Have Qualified and Adequately Compensated Legal Representation*, not only states that all youth must be represented by counsel in the formal juvenile delinquency court but that counsel should be involved in every juvenile delinquency court hearing. A juvenile delinquency court that has incorporated this *Key Principle* ensures that counsel stays assigned to a case when a progress report due date, progress conference, or progress hearing is set at disposition” (page 169).
- “The probation officer should provide copies of the [progress] report to the juvenile delinquency court two weeks prior to the juvenile delinquency court’s scheduled review of the report. The juvenile delinquency court should immediately forward the report to the prosecutor, counsel for the youth, parent, legal custodian, service provider, and tribal council representative, if applicable. Each legal party and key participant should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response for the juvenile delinquency court judge’s consideration at the same time the judge reviews the progress report.” (page 170)
- “When the juvenile delinquency court has set any of these methods [specifically progress review conferences, case staffings and dispute resolution alternatives] for post-disposition review, the probation officer should ensure that the youth, parents, legal custodian, prosecutor, counsel for the youth, tribal representative, if applicable, and primary service providers are included.” (page 170)

#### *Role of Counsel:*

- “In order for counsel to be effective at this [post-disposition] stage of the juvenile delinquency court process, counsel must not only rely on the information provided by the probation officer, but should also independently speak with the youth, the youth’s parent or legal custodian, and the service provider.” (page 169)
- Prior to the progress hearing, “[c]ounsel has discussed the reports with the youth, parent, and legal custodian.... The prosecutor and counsel have determined whether they agree with the reports or will present other information either by report or through testimony.” (page 171)

#### *Conduct of the Review:*

- Present at the review (page 170):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to question the probation officer or caseworker.” (page 171)
- “Counsel for the youth indicates agreement or disagreement with the report and present any additional information or testimony, if needed.” (page 171)
- “The juvenile delinquency court judge gives the ... youth the opportunity to address the court.” (page 171)
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 172)

## Youth Placed Outside the Home

### *Preparing for the Review:*

- “For the first 30 days following the youth’s release, the juvenile delinquency court judge should calendar the case for weekly progress hearings with mandatory attendance by the youth and family (if reunification has or will occur), and participants of the reentry team, including prosecutor and counsel for the youth.” (page 183)
- “[T]he juvenile delinquency court should immediately provide copies of the [progress] report to the prosecutor, counsel for the youth, parent or legal custodian, future custodian, and tribal council representative, if applicable. Each of these individuals should have the opportunity to prepare a response to the report if they choose to do so, and to submit the response to the juvenile delinquency court. The juvenile delinquency court should give two weeks for submission of responses[.]” (page 184)

### *Role of Counsel:*

- “A juvenile delinquency court should ensure that counsel remains active when a youth is placed out of the home under the continuing jurisdiction of the juvenile delinquency court.” (page 181)
- “In order for counsel to be effective at this [post-disposition] stage of the juvenile delinquency court process, counsel must not only be informed by the case manager, but should independently speak in-depth with the youth, the youth’s parent, legal custodian, future physical custodian, probation officer, child protection worker, and placement staff.” (page 181)
- Prior to the progress hearing, “[c]ounsel has discussed the reports with the case manager, probation officer, child protection worker, or corrections authority staff, and with the youth and parents. .... The prosecutor and counsel have determined whether they agree with the reports or will present other information, either by report or through testimony.” (page 185)

### *Conduct of the Hearing:*

- Present at the hearing (page 184):
  - Youth
  - Counsel for the youth
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The prosecutor and counsel for youth have the opportunity to question the case manager.” (page 185)
- “Counsel for the youth has the opportunity to cross-examine any witnesses or challenge any reports presented by the prosecutor.” (page 185)
- “Counsel for the youth indicates agreement or disagreement with the report and present any additional information or testimony, if needed.” (page 185)
- “The juvenile delinquency court judge gives the ... youth ... the opportunity to address the court.” (page 185)
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 186)

### *Reentry Planning:*

“[C]ounsel for the youth should also be invited to participate [in the final reentry planning process].” (page 187)

The *Delinquency Guidelines* have separate recommendations for youth at low and high risk to reoffend.

For youth at low risk to reoffend, there may or may not be a hearing:

- “For youth who are low risk to reoffend at the time of reentry, if the juvenile delinquency court judge or any legal parties or key participants have concerns regarding the reentry plan, the juvenile delinquency court judge should determine whether to set a hearing, case staffing, progress conference, or dispute resolution alternative to address the concerns.” (page 188)
- If there is a hearing, “[a]t the end of the hearing, the juvenile delinquency court judge generates written findings and orders that approve a final reentry plan, either as proposed or as modified, and distributes the findings and orders immediately to all legal parties and key participants.” (page 188)
- “If the plan is acceptable to everyone when distributed and no hearing is required, the juvenile delinquency

court judge should generate a copy of the written findings and orders that approve the proposed final reentry plan and immediately provide the findings and orders to all legal parties and key participants.” (page 188)

For youth at high risk to reoffend, there should always be a hearing:

- “At the time of plan approval, the juvenile delinquency court should set a hearing not later than the date of release to review the plan with all participants, to ensure that all components of the plan are in place and ready to begin, and to ensure that all persons involved in the reentry plan are aware of their responsibilities.” (page 189)

## Probation & Parole Violations

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### *Role of Counsel:*

- “[C]ounsel should be involved at every hearing. The same attorney who represented the youth on the petition that resulted in the court order of probation or parole should represent the youth on a probation or parole violation.” (page 196)

### *Conduct of the Hearing:*

- Present at the hearing (pages 196-97):
  - Youth
  - Counsel who represented the youth on the law violation that resulted in the order of probation or parole
  - Certified interpreters if youth or parent does not speak English or is hearing impaired
- “The juvenile delinquency court’s findings and orders should be set out in writing and made available to all legal parties and key participants at the conclusion of the hearing.” (page 198)

### *Information on the Alleged Violation:*

- During the prosecution case:
  - “Sworn testimony is not required unless requested by counsel for the youth.” (page 197)
  - “Counsel for the youth has the opportunity to ask questions related to the information presented.” (page 197)
- “The youth’s counsel, if desired, should call on individuals to provide information that supports a finding that the youth did not commit the alleged violation.” (page 197)

### *Information on Progress and/or Sanction Recommendations:*

- “The prosecutor and counsel for the youth have the opportunity to ask questions and present their recommendations if different from the probation or parole officer’s recommendation.” (page 197)
- “The juvenile delinquency court judge gives ... the youth [and other participants]... the opportunity to address the court with information, recommendations, and questions.” (page 197)

## Resources

### *Juvenile Delinquency Guidelines*

- Download in sections, for free, from <http://www.ncjfcj.org/content/view/411/411/>.
- Purchase a printed copy for \$20:  
Contact NCJFCJ at [JDG@ncjfcj.org](mailto:JDG@ncjfcj.org) or by phone at (775) 784-6012.  
Order from the NCJFCJ online store at <http://www.ncjfcj.org/store/index.php>.

Many of the *Guidelines* recommendations are supported by other bodies of professional standards. You may also want:

American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (2005), available at [www.njdc.info/pdf/10\\_Principles.pdf](http://www.njdc.info/pdf/10_Principles.pdf).

Institute of Judicial Administration & American Bar Association, *Juvenile Justice Standards* (1979). The text of the original 24 volumes of standards is available from online legal databases, and a condensed and annotated single-volume version can be purchased from the American Bar Association website at [www.ababooks.org](http://www.ababooks.org).

## Endnotes

- 1 National Council of Juvenile and Family Court Judges, *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* 25 (2005) [hereinafter *Guidelines*].
- 2 *Id.* at 78.
- 3 *Id.*
- 4 *Id.* at 25.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.* at 25, 78.
- 8 *Id.* at 28.
- 9 *Id.* at 25.
- 10 *Id.* at 25, 78.
- 11 *Id.* at 30.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.* at 30-31 (listing the duties of defense counsel), 122 (counsel's primary responsibility is to the child client); see also IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1.
- 16 *Guidelines, supra* note 1, at 30 (describing the role of counsel); see also Institute of Judicial Administration & American Bar Association, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties* 3.1 (1980), Kristin Henning, *Loyalty, Paternalism and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 Notre Dame L. Rev. 255-59 (2005) (charting the emergence of a professional consensus regarding the role of counsel for the child and the persistence of contrary practice).
- 17 *Guidelines, supra* note 1, at 122 (duty to represent child's expressed interests at adjudication), 137 (duty to represent child's expressed interests at disposition), 161 (duty to represent child's expressed interests during appeals).
- 18 See also Henning, *supra* note 16, at 245 (considering competing models of attorney-client interaction and ultimately advocating for a collaborative approach to client counseling).
- 19 *Guidelines, supra* note 1, at 122.
- 20 *Id.* at 137.
- 21 See, e.g., National Juvenile Defender Center, *Maine: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 27-28 (2003); National Juvenile Defender Center, *Montana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 41 (2003); National Juvenile Defender Center, *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 58-59 (2003); National Juvenile Defender Center, *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 31-32 (2001);

- 22 National Juvenile Defender Center, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana* 62 (2001).
- 23 *Guidelines*, *supra* note 1, at 123.
- 24 See, e.g., *id.* at 25 (a core principle is that all members of the court shall treat participants with respect, dignity, courtesy and cultural understanding).
- 25 *Id.* at 77, 90.
- 26 *Id.* at 90.
- 27 *Id.* at 67, 78-79, 222.
- 28 *Id.* at 78, 90-91.
- 29 *Id.* at 78, 92.
- 30 *Id.* at 92.
- 31 *Id.* at 91.
- 32 C.E. Frazier & J.C. Cochran, *Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing Decisions*, 17 *Youth & Soc’y* 286-305 (1986); C.E. Frazier & D.M. Bishop, *The Pretrial Detention of Juveniles and its Impact on Case Disposition*, 76(4) *J. Crim. L. & Criminology* 1132-1152 (1985).
- 33 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 56-58, 62-64 (2004) (summarizing research on the costs and effects of detention).
- 34 *Guidelines*, *supra* note 1, at 83.
- 35 Calvin, *supra* note 19, at 67 (analyzing data from the Office of Juvenile Justice and Delinquency Prevention, *Easy Access to Juvenile Court Statistics* data package, 1999).
- 36 *Guidelines*, *supra* note 1, at 81-84.
- 37 *Id.* at 81.
- 38 *Id.* at 75.
- 39 *Id.* at 97 (judges should make written findings about the need for detention).
- 40 *Id.* at 123.
- 41 *Id.* at 125.
- 42 *Id.*
- 43 *Id.* at 123.
- 44 *Id.*
- 45 *Id.* at 124.
- 46 *Id.* at 123.
- 47 *Id.* at 122.
- 48 *Id.*
- 49 *Id.*
- 50 *Id.* at 125.
- 51 *Id.* at 125-26.
- 52 *Id.* at 126.
- 53 *Id.*
- 54 *Guidelines*, *supra* note 1, at 137.
- 55 *Id.* at 138, 140.
- 56 *Id.* at 137, 142.
- 57 *Id.* at 137.
- 58 *Id.*
- 59 *Id.* at 142.
- 60 *Id.* at 137.
- 61 *Id.* at 161-62 (explaining the counsel is not required to explain appeal issues to parents, but should do so if necessary to represent the child).
- 62 *Id.* at 145.
- 63 *Id.*
- 64 *Id.* at 160-61.
- 65 *Id.* at 169, 181, 196.
- 66 *Id.* at 169 (in the home), 181 (outside the home).
- 67 *Id.* at 169 (in the home), 181 (outside the home).
- 68 *Id.* at 171 (in the home), 185 (outside the home).
- 69 *Id.* at 187.
- 70 *Id.* at 196.
- 71 *Id.* at 197.
- 72 *Id.*

*The National Juvenile Defender Center (NJDC) is a non-profit organization that is dedicated to ensuring excellence in juvenile defense and promoting justice for all children. NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination. To learn more about NJDC, please visit [www.njdc.info](http://www.njdc.info).*

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