

TEN PRINCIPLES FOR PROVIDING EFFECTIVE DEFENSE ADVOCACY AT JUVENILE DETENTION HEARINGS

Prepared by NJDC for the Annie E. Casey Foundation’s
Juvenile Detention Alternatives Initiative

PREAMBLE

A. Goal of These Principles

These principles are developed as a resource to help defenders and other juvenile court professionals understand the elements of effective detention advocacy on behalf of indigent juvenile clients.¹ Defenders can be at a distinct disadvantage at the detention determination, whether it is at the beginning of the case, when indigent defense counsel often has the least information about the child and the charge compared to every other person in the courtroom,² or at the end of the case, when the child is post-disposition, and an unspoken but unmistakable presumption to detain creeps into the case discourse.³ Juvenile indigent defense counsel have a duty “to explore promptly the least restrictive form of release, the alternatives to detention, and the opportunities for detention review, at every stage of the proceedings where such an inquiry would be relevant.”⁴ Therefore, it is critically important for juvenile defenders to be as well-prepared as possible when they walk into detention hearings, where counsel’s often seemingly impossible goal is to present a history of the client leading up to the present day, along with an individualized release plan that is responsive to the client’s expressed interests⁵ and that bears in mind the needs of the court.

In fall 2004, the National Juvenile Defender Center, with support from the Annie E. Casey Foundation, published *Legal Strategies to Reduce the Unnecessary Detention of Children*, an advocacy and training guide aimed at ensuring that juvenile defenders provide zealous and comprehensive legal advocacy at detention and related hearings. These Principles build on that work. The National Juvenile Defender Center works to ensure excellence in juvenile defense and promote justice for all children.

B. Detention advocacy is crucial to every aspect of the case, including the development of the attorney/client relationship.

There are several reasons defenders must advocate aggressively at detention hearings. First, the detention decision is critical to the client’s ability to prepare for trial. A detained client cannot

assist as well in preparing for trial, and does not make as good an impression on the court, as a client who has been released.⁶ In addition, detention halls are often crowded, dangerous, and unhygienic.⁷

Studies show that time spent in detention increases the likelihood that a child will recidivate,⁸ in part because the child is likely to make negative peer connections,⁹ and because positive, community-based relationships (in particular, with the child’s family) are interrupted. In fact, detention, as a predictor of future criminality, is more reliable than gang affiliation, weapons possession, or family dysfunction.¹⁰ Indeed, detention is a demonstrated gateway into the juvenile delinquency system.

Defenders must advocate aggressively for release in service to the attorney-client relationship. In many detention hearings, the defender’s relationship with the client is new. There is no better way to realize the attorney/client relationship than by taking the time to understand and fight for the client’s expressed legitimate interest.

C. Indigent defense delivery systems must pay particular attention to the disproportionate detention of the most vulnerable and over-represented groups of children in the delinquency system.

Nationally, children of color are severely over-represented at every stage of the juvenile justice process, and the detention stage is no exception.¹¹ As of the fall of 2005, over two-thirds of the youth in detention are children of color, largely African-American and Latino youth.¹² Not only are children from ethnic and racial minority groups disproportionately confined at detention hearings, but they suffer the effects of detention more acutely than other children.¹³

TEN PRINCIPLES

1

At the detention hearing, as at all other stages of a case, defenders fulfill their ethical obligation to advocate for the expressed interests of each client.

- A. The *IJA/ABA Juvenile Justice Standards* are clear that defenders have an ethical obligation to zealously advocate for the expressed interests of each juvenile client, even when the client's expressed legitimate interest conflicts with the defender's sound legal advice or with the defender's own personal judgment about what might be in the client's best interests.¹⁴ These standards apply regardless of the client's age, education level, and perceived or measured intelligence level, so long as the client is "capable of considered judgment on his or her own behalf."¹⁵
- B. In every case where there is conflict between a juvenile client accused of an offense and his or her parents, and, in particular, in cases where there is a possible conflict of interest between the client and his or her parents, as in cases in which either the parent or one of the client's siblings is a complainant, counsel should inform all parties involved that counsel represents the expressed legitimate interests of the client, and that, in the event of a disagreement between the client and his parents, counsel must advocate for the client's expressed interests alone.¹⁶

2

Defenders consult with the client as early as possible, and in all cases prior to the detention hearing.

- A. As far in advance as possible before the detention hearing, defense counsel should consult with the client to find out the client's expressed interests regarding detention and detention alternatives, including placement with family members or in a community-based program, as well as any specific reasons that mitigate against detention of the client, including age, special needs, special strengths and talents, health concerns, and mental health issues.
- B. The initial meeting with the client should also include discussion of: attorney-client confidentiality; the attorney's ethical duty to zealously advocate for the child's expressed interests; the client's right to remain silent; and the client's objectives for the case. Consultation with the client also includes explaining the roles of each of the courtroom players, the purpose of each part of the initial hearing, and preparing the child for the accusatory character of the hearing. If the child is detained counsel should inquire whether there is any evidence that the child has been harassed or mistreated by either staff or other inmates.
- C. Although defenders cannot give the client's parent or guardian legal advice, as part of their ethical duty to zealously represent their juvenile clients, defenders should be sure to prepare the client's parent or guardian for the interview with the intake probation officer.¹⁷ Defenders should relate to the parent the purpose of the interview, warn the parent that everything the parent says will likely be recited in open court, inform the parent that the judge might solicit the parent's opinion about the client's behavior and appropriate placement options in open court, and tell the parent the importance of supporting release when speaking with the probation officer. Defenders should also cover the specific areas likely to be discussed at the hearing, including school attendance, extracurricular activities and hobbies, parental control, dangerousness, and risk of flight.

3

Defense counsel prepares for the hearing with creative and thorough investigation.

- A. Defense counsel should conduct a complete investigation of the client's history in preparation for the detention hearing. Counsel should make every effort to obtain the client's school and medical records, and talk with the client's parent or guardian, teachers, and any other adults to whom the client is close. The social history from the client should cover information about the client's strengths and skills, and the client's prior involvement in the system, as well as the client's special health needs, mental health needs, and family history.
- B. Defense counsel should also investigate the allegations against the client for the probable cause hearing. Counsel should request from the government, receive and review any existing prior delinquency, truancy, and dependency record, as well as the police reports in the case. Counsel should also talk with the client about potential exculpatory information that might be useful at the probable cause hearing.
- C. Defense counsel should advocate with the probation officer and the prosecutor before the hearing. Counsel should request from the probation officer, receive and review any risk assessment instrument (RAI) the probation officer intends to rely on in the detention hearing. Talking with the probation officer before the hearing also gives counsel an opportunity to negotiate on the client's behalf.

4

Defenders use all available arguments and information to oppose a finding of probable cause.

- A. The probable cause standard, which is a very low evidentiary standard, is defined as 1) whether there is probable cause to believe that a crime was committed and 2) whether there is probable cause to believe that the child was involved.¹⁸
- B. Where the state statute does not specify the burden or the standard of proof required, counsel should argue, pursuant to IJA/ABA standards, that the government bears the burden to prove probable cause by clear and convincing evidence.¹⁹
- C. In jurisdictions where probable cause is determined in an evidentiary hearing, counsel should carefully consider whether to waive a probable cause hearing. Even if there is no chance of winning the hearing, counsel can use the hearing as an opportunity for discovery, and for sworn statements to use at trial.
- D. Counsel should always make a probable cause argument. In most cases, an argument can be made concerning a deficient attestation, a lack of evidence concerning one or more of the elements of the charged offense, or an insufficient nexus between your client and the offense.
- E. Particularly if the client is detained, where counsel receives exculpatory information after the probable cause hearing, counsel should immediately file a motion to reopen the hearing.

5

Defenders argue for judges to abide by statutory criteria for ordering detention, such as risk of flight and dangerousness.

- A. Defenders should go into detention hearings knowing the purpose clause of the state's juvenile justice act, the detention statute, and, specifically, the statutory criteria necessary to imposing detention. Defenders should make an abbreviated and portable reference packet that includes the statute and court rules, the statute's legislative history, and synopses of recent and relevant case law.
- B. Defenders should argue from the position that detention is the last resort. Most statutes, as they are constructed, support this position, and typically, judges have a great deal of discretion. The discretion lies in the determination of two specific factors: a client's potential dangerousness to the community and risk of flight.²⁰ In addition, most jurisdictions have statutory language stating that juveniles should be held in the least restrictive conditions necessary to ensure the safety of the community and the return of the juvenile to court.

6

In consultation with the client, defenders investigate and argue for alternatives to detention.

- A. An alternative to detention is whatever creative plan a defender and community partners can devise that is responsive to the needs of the client and addresses the concerns of the court. To craft individualized detention plans using community-based resources, defenders must become familiar with the available detention alternatives. Defenders should compile a list of each community-based program, with contact names and phone numbers, addresses, target populations, and develop a plan to keep the list updated.
- B. Defenders should visit community programs and aim to develop relationships with staff members.
- C. Defenders should challenge any decision to detain based on a lack of community resources. The failure of the community to provide suitable, evidence-based programs responsive to the client's needs does not mean that the client should be detained.

7

Defenders are aware of current research on the harmful effects of detention and, when appropriate, use this research to argue against detention.

- A. Defenders must be familiar with their local detention facilities to be able to argue convincingly concerning the harmful effects of detention. To that end, defenders should arrange tours of their local secure and non-secure detention facilities. They should request copies of each facility's standard operating procedures, and rules regarding how staff should treat residents. They should file Freedom of Information Act requests about criminal allegations, staff training guides, discipline guidelines, and statistics on the use of discipline. Finally, juvenile defenders should talk with their clients about their experiences with different staff members at different facilities.

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- B. Defenders should be aware of and argue the detention facilities' deficiencies, if they exist, including the limited or nonexistent access to special education, mental health treatment, and adequate medical care, increased chances of recidivism, and consequences of overcrowding and harsh treatment.²¹
 - C. Defenders should also be aware of and argue the advantages of staying on release, including continued involvement in family, school, and positive peer relationships.²²

8

Defenders request that the judge make written findings and an order regarding detention.

- A. Counsel should ensure that, in as timely a manner as possible, counsel receives a clear, concise written order documenting the court's findings with respect to the need for detention of the client. If counsel believes any conditions are excessively punitive or unnecessary, counsel should state that position on the record. If the order is ambiguous, counsel should seek clarification.
- B. Defenders should work to ensure that detention orders specify any special conditions or needs of the client.
- C. Both defense counsel and the client should receive copies of the order in a timely manner, and counsel should review the order with the client as soon as is practicable.
- D. Defense counsel should advocate for juvenile detention hearings to be recorded and transcribed.²³

9

Defenders ensure that each client who is released understands the conditions of his or her release and is prepared to fulfill these conditions.

- A. Counsel should adequately explain the conditions of release to the client, and provide the client with the name and telephone number of the court worker assigned to monitor the client's case. Counsel should also contact the worker, provide counsel's name, address, and phone number, and let the worker know that the worker should consider counsel another resource as the client's case progresses.
- B. If a client is released, counsel should ensure that the client's need for safety is met and that agencies are held responsible for the provision of any needed services.

Defenders appeal detention decisions immediately, if warranted and in consultation with the client.

- A. If the client is detained, defense counsel should create and seek out opportunities to win release. In particular, defense counsel should file motions to reconsider, review or modify the detention decision based on evidence showing, inter alia: that time in detention has changed the circumstances of the case such that the child can be released into the community; that new evidence discovered after the probable cause hearing casts doubt on the correctness of the probable cause determination; or that defense counsel has, since the detention decision, been able to create a release plan that addresses the specific reasons the court cited in support of detention.
- B. If the client is detained, defense counsel should immediately inform the client of his or her right to appeal, the timeline of an appeal, the likely outcome, and the affect than an appeal of the detention decision might have on the client's case.
- C. If the client is detained, and counsel has exhausted the standard procedures available to obtain the client's release, defense counsel also considers filing a writ of habeas corpus, mandamus, or prohibition.
- D. If counsel is not prepared to handle the client's appeal, counsel should transfer the case to another attorney who is.

For more information, please contact the National Juvenile Defender Center at 202.452.0010 or at inquiries@njdc.info.

ENDNOTES

- 1 For the purposes of these *Principles*, detention means confinement in a secure detention facility during the interim period between arrest and adjudication.
- 2 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 4 (2004), available on the web at http://www.njdc.info/pdf/detention_guide.pdf.
- 3 See generally, *Maine: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2003); *Maryland: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2003); *Montana: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2003); *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2003); *Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2003); *Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters* (2003); *Florida: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings* (2006). All of NJDC's state assessments are available at on the web at <http://www.njdc.info/assessments.php>.
- 4 Institute for Judicial Administration/American Bar Association (IJA/ABA), *Juvenile Justice Standards, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, Standard 8.2 Standards for the Defense Attorney.
- 5 IJA/ABA, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1 The Lawyer-Client Relationship (stating, "[h]owever engaged, the lawyer's principal duty is the representation of the client's legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance").
- 6 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 5 (2004).
- 7 National Juvenile Detention Association and Youth Law Center, *Crowding in Juvenile Detention Centers: a Problem Solving Manual* (Dec 1998) 5-10, on the web at www.njda.com/learn-materials-pub-r0711.html.
- 8 Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 4 (2006).
- 9 *Id.* at 5.
- 10 Bart Lubow, 11 *Juvenile Justice Update* 1, 2, *Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys* (Aug/Sep 2005).
- 11 American Council of Chief Defenders & National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems* (January 2005) (http://www.njdc.info/pdf/10_Principles.pdf).
- 12 Bart Lubow, 11 *Juvenile Justice Update*, *Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys* 1, 2 (Aug/Sep 2005); see also Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 12 (2006)(stating that "[e]ven in states with tiny ethnic and racial minority populations, (like Minnesota, where the general population is 90% white, and Pennsylvania, where the general population is 85% white) more than half of the detention population are youth of color").
- 13 *Id.* at 2, 14 (stating, "Indeed, detained youth are generally among the most disadvantaged and disconnected people in our country. . . . These youth have some of the worst odds of making a successful transition to adulthood in our country, and detention lowers those odds still further.")
- 14 IJA/ABA, *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 3.1 The Lawyer-Client Relationship.
- 15 *Id.*
- 16 IJA/ABA, *Juvenile Justice Standards, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, Standard 8.1 Conflicts of Interest.
- 17 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 14 (2004).
- 18 *Gerstein v. Pugh*, 420 U.S. 103 (1975).
- 19 IJA/ABA, *Juvenile Justice Standards, Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders Between Arrest and Disposition*, Standard 4.2 Burden of Proof.
- 20 Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Children* 17-20 (2004) (listing potential detention hearing arguments concerning dangerousness and risk of flight).
- 21 *Id.* at 21.
- 22 *Id.* at 22.
- 23 IJA/ABA, *Juvenile Justice Standards, Standards Relating to Appeals and Collateral Review*, recognizes the importance of having hearings transcribed. According to Standard 3.2, The Right to Counsel and Records, "Any party entitled to an appeal under Standard 2.2, or his or her counsel, is entitled to a copy of the verbatim transcript of the adjudication and dispositional hearings and any matter appearing in the court file."



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ACHIEVING EXCELLENCE IN DETENTION ADVOCACY: A Checklist to Evaluate Defense Representation at Detention Hearings

Prepared by NJDC for the Annie E. Casey Foundation’s
Juvenile Detention Alternatives Initiative

This diagnostic tool is designed to assist juvenile defenders, juvenile defender supervisors, juvenile policy advocates, and juvenile section chiefs in determining the effectiveness of defense counsel at arraignment, the probable cause determination, and the detention hearing. In some jurisdictions, these are all collapsed into a single hearing. Because many jurisdictions still allow children to waive their right to counsel and/or plead at the initial hearing, some questions allude to these practices.

Supervisors and section chiefs who conduct both in-court observation *and* in-person interviews of juvenile defenders will get the most accurate picture

of current practice. This tool is divided into two main sections. The first presents a series of questions about juvenile defense practice. The second section reviews policy and system procedures that may be impacting practice. Taken together, these two sections should provide supervisors and section chiefs with the information necessary to identify gaps and areas ripe for improvement.

Please contact NJDC with questions, suggestions, and technical assistance needs to move ahead. We look forward to working with supervisors and section chiefs to enhance detention practice.

I. PRACTICE ISSUES

ACCESS TO COUNSEL

1. Are youth represented by counsel at detention hearings?	Yes	No
Comments:		

Appointment of Counsel

1. Is counsel appointed <i>prior</i> to the detention hearing?	Yes	No
Comments:		
2. On average, how much time does defense counsel have to prepare?		
Comments:		

3. When does counsel first meet with the client?		
Comments:		
4. Where does counsel first meet with the client?		
Comments:		
5. Is there a presumption of indigence applied to youth in delinquency proceedings?	Yes	No
Comments:		
6. Is parents' income considered when determining whether a youth in delinquency court is indigent?	Yes	No
Comments:		
• Are fees to receive juvenile indigent defense services assessed?	Yes	No
Comments:		

Waiver of Constitutional Rights

1. Are youth permitted to waive counsel without first consulting an attorney?	Yes	No
Comments:		
• Do judges conduct individual waiver colloquies, using age-appropriate language, to determine whether each youth who waives counsel is doing so knowingly, voluntarily and intelligently?	Yes	No
Comments:		
2. Are youth permitted to plead guilty at the initial hearing?	Yes	No
Comments:		
• Do judges conduct individual plea colloquies, using age-appropriate language, to determine whether each youth who pleads guilty is doing so knowingly, voluntarily and intelligently?	Yes	No
Comments:		

<ul style="list-style-type: none"> If judges take pleas in groups, do defenders object? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If youth are represented, does the defender thoroughly discuss the plea with the client? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If youth are represented, does the defender thoroughly review the rights to be waived? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If youth are represented, does the defender thoroughly discuss collateral consequences of the plea with the client? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If unrepresented youth are permitted to plead guilty at the initial hearing, do defenders make themselves available to advise the youth concerning the consequences of a delinquency finding, including the detention possibilities, before the youth pleads? 	Yes	No
Comments:		
<ul style="list-style-type: none"> Are unrepresented youth more likely to plead guilty than represented youth? 	Yes	No
Comments:		
3. Is the threat of detention one of the main tools prosecutors use to bargain for pleas at the initial hearing, whether the prosecutor is bargaining with represented or unrepresented youth?	Yes	No
Comments:		

Ongoing Communication

1. Does the defender give the client contact information and explain how the client can reach the defender?	Yes	No
Comments:		

2. If in line with the client's expressed interests, does the defender give the client's family contact information and explain how the family can reach the defender?	Yes	No
Comments:		
3. Does the defender explain the defender's role to the client's family?	Yes	No
Comments:		

QUALITY OF REPRESENTATION

A. GENERAL

Duty to Represent Client's Expressed Interests

1. Does the defender consult with the juvenile client?	Yes	No
Comments:		
2. Does the defender clearly explain the defender's role and duty of confidentiality to the client?	Yes	No
Comments:		
3. Does the defender advocate for the juvenile client's expressed views and interests at all stages?	Yes	No
Comments:		
<ul style="list-style-type: none"> If the jurisdiction has detention team meetings, in which parties decide their positions on the child's detention status outside of the courtroom, does the defender advocate zealously for the child's expressed interests both in this meeting and in court before the judge? 	Yes	No
Comments:		

B. PREPARING FOR THE HEARING

Client Interview

1. If appointed ahead of time, does the defender meet with each child before the detention hearing?	Yes	No
Comments:		
<ul style="list-style-type: none">• If appointed ahead of time, does the defender meet with each child out of the presence of that child's parent or guardian?	Yes	No
Comments:		
<ul style="list-style-type: none">• Does the defender discuss the possible levels of detention (i.e., secure versus non-secure), and the client's opinion on possible alternatives to detention?	Yes	No
Comments:		
<ul style="list-style-type: none">• Does the defender explore specific reasons that argue against detention, including vulnerability, age, special needs, health concerns, suicidal tendencies, etc?	Yes	No
Comments:		
<ul style="list-style-type: none">• Does the defender tell the client what to expect at the upcoming hearing, including an explanation of the purpose of the hearing and of the roles of the judge, the prosecutor, and the probation officer?	Yes	No
Comments:		
<ul style="list-style-type: none">• Does the defender ask about the client's version of events to prepare for the probable cause hearing, and get names, contact information, descriptions, or hang-out locations of potential witnesses, and begin investigation planning?	Yes	No
Comments:		
2. Does the defender bring and get the client's signature on the appropriate release forms to allow the defender to subpoena the client's educational, medical, mental health, and other records?	Yes	No
Comments:		

3. If the defender is not appointed with enough time to meet with each client individually, does the defender enlist the aid of a social worker, law student, or legal intern to interview clients before their hearings?	Yes	No
Comments:		

Taking a Comprehensive Client History

1. Does the defender take from the client and/or receive from the government information comprising a complete client history, including information about the client's strengths and skills, as well as the client's prior delinquency, truancy, and dependency record, special health needs, mental health needs, and family history?	Yes	No
Comments:		

2. Does the defender consider, in consultation with the client, people to whom the client could be released, as well as community-based services that the client believes could help him stay in the community?	Yes	No
Comments:		

3. Does the defender get the names, phone numbers, and other contact information for these potential community-based options?	Yes	No
Comments:		

• Does the defender contact potential community programs to ascertain whether they are willing to take the client pending trial?	Yes	No
Comments:		

• Or does the defender rely solely on the recommendation of the probation officer?	Yes	No
Comments:		

4. Is the defender aware of other family and community contacts willing to participate in the child's release plan in ways other than being a placement resource?	Yes	No
Comments:		

<ul style="list-style-type: none"> Does the defender contact these people and programs to ascertain whether they are willing to participate in the child's release plan? 	Yes	No
Comments:		
5. If the defender is not able to take a comprehensive detention hearing history because the defender is appearing in court, does the defender enlist the aid of a social worker or legal intern to take the information and pass it to the defender before the child's detention hearing?	Yes	No
Comments:		

Preparing the Client's Family

1. Does the defender explain the purpose of the hearing to the client's parent or guardian?	Yes	No
Comments:		
2. Does the defender explain the defender's role as the child's counsel to the child's family?	Yes	No
Comments:		
3. Does the defender ascertain whether the client's parents will allow the client to return home?	Yes	No
Comments:		
<ul style="list-style-type: none"> If the parent or guardian will not allow the client to return home, does the defender explore with the parents realistic conditions under which the parent or guardian might allow the child back in the home? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the parent or guardian will not allow the client to return home, does the defender explore with the parent or guardian other people to whom the client could be released? 	Yes	No
Comments:		

<ul style="list-style-type: none"> If the parent or guardian will not allow the client to return home, does the defender explain to the parent or guardian the potential effects and consequences of detention? 	Yes	No
Comments:		
4. If the parent or guardian does not come to the hearing, does the defender try to contact them to ascertain why they are not attending the hearing, and whether they will allow the client to return home?	Yes	No
Comments:		
5. If the parent or guardian does not come to the hearing, does the defender explore having the parent or guardian appear by phone?	Yes	No
Comments:		
6. Does the defender prepare the parent or guardian for the possibility that the court will solicit the views of the parent or guardian in open court?	Yes	No
Comments:		

Obtaining Detention Hearing Discovery

1. Does the defender request, receive and review the police reports in the client's case?	Yes	No
Comments:		
2. Does the government regularly turn over, and/or does the defender request, receive and review the client's complete court history and all available records before the hearing?	Yes	No
Comments:		
3. Does the government regularly turn over, and/or does the defender request, receive and review the client's completed risk assessment instrument (RAI) before the hearing?	Yes	No
Comments:		
4. Does the defender make it a point to speak with intake probation about the RAI score?	Yes	No
Comments:		

Knowledge of Applicable Detention Hearing Law

1. Is the defender aware of applicable current case law on detention?	Yes	No
Comments:		
2. Is the defender aware of the statute or court rule that defines when a child can be detained in your jurisdiction?	Yes	No
Comments:		
3. Is the defender aware of current research on the harmful effects of detention, both generally and specifically with respect to the places where the client is likely to be held?	Yes	No
Comments:		

C. REPRESENTATION AT THE HEARING

Defender Arguments at the Hearing

1. If the defender has not met with the child due to untimely appointment of counsel, does the defender state that issue at the detention hearing on the record and request a brief continuance?	Yes	No
Comments:		
2. If the detention hearing is not scheduled or held within the time limits required by law or court rule, does the defender file a motion for the child's release?	Yes	No
Comments:		
3. If the defender did not receive or was not afforded an opportunity to review the client's RAI before the hearing, did the defender raise this point at the hearing?	Yes	No
Comments:		
4. If no one except the intake probation officer had access to the RAI before the hearing, did the defender raise this point at the hearing?	Yes	No
Comments:		

5. If the defender did not receive or was not afforded an opportunity to review the client's prior record, did the defender raise this point at the hearing?	Yes	No
Comments:		
6. If the defender did not receive or was not afforded an opportunity to review the police reports in the client's case, did the defender raise this point in the hearing?	Yes	No
Comments:		

Probable Cause Hearing

1. Is the defender aware of the required burden and standard of proof for probable cause, and does the defender hold the prosecution to its burden?	Yes	No
Comments:		
2. Regardless of the particular jurisdiction's type of probable cause hearing, does the defender marshal available evidence to argue against a finding of probable cause?	Yes	No
Comments:		
<ul style="list-style-type: none"> If the jurisdiction has probable cause hearings where testimony is taken, does the defender cross examine the government's witnesses, and use the witnesses' testimony to argue against probable cause? 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the jurisdiction has probable cause hearings in which the court determines probable cause based on an officer's affidavit, does the defender try to argue against probable cause based on, <i>inter alia</i>, a deficient attestation, a lack of evidence concerning one or more of the elements of the charged offense, or an insufficient nexus between your client and the offense? 	Yes	No
Comments:		

Detention Hearing

1. Does the defender make arguments related to current case law and the statutory criteria for imposing detention, and argue that the child cannot be detained unless the required criteria are met?	Yes	No
Comments:		
2. Is the defender aware of and arguing current research on the harmful effects of detention, both generally, and specifically with respect to the places where the client is likely to be held?	Yes	No
Comments:		
3. Is the defender aware of each child's individual strengths and needs, and how these are relevant to the detention decision?	Yes	No
Comments:		
4. Does the defender present and argue for a detention alternative, complete with specific names and contact information of people willing to be involved in the youth's release conditions, and detailed representations concerning how the youth will be monitored?	Yes	No
Comments:		
5. If the jurisdiction allows the presentation of evidence in aid of the detention decision, does the defender call witnesses or present evidence to support arguments on behalf of the child – even if the court's tradition is not to call witnesses or present evidence?	Yes	No
Comments:		

D. AFTER THE HEARING

Keeping the Client and the Client's Family Informed

1. If the child is released, does the defender thoroughly and clearly explain the conditions of release to the child and family and provide information about how to satisfy the conditions?	Yes	No
Comments:		

2. If the client is released, does the defender answer the client's questions about the hearing, and preview the next steps in the case for the client and the client's family?	Yes	No
Comments:		
3. If the client is released, does the defender get contact information for the client, including the client's name, address, phone number, and similar information for the client's relatives and friends?	Yes	No
Comments:		
4. If the client is released, does the defender schedule the next meeting with the client before the client leaves the court building?	Yes	No
Comments:		
5. If the client is detained, does the defender make sure that the client's family knows where and how to visit the client?	Yes	No
Comments:		
6. If the client is detained, does the defender give the client the date and time of the next time the defender will visit?	Yes	No
Comments:		
7. Regardless of the client's detention status, does the defender explain, in detail and with age-appropriate language, the next steps in the case?	Yes	No
Comments:		

Challenging the Decision to Detain

1. If the client is detained, does the defender file motions to reopen the probable cause hearing if the defender subsequently receives exculpatory information from the government, or motions to reconsider the detention decision if the defender learns of relevant favorable information (e.g., the charges are reduced or a new, community-based placement option emerges)?	Yes	No
Comments:		

2. If the child is detained and the detention decision appeared to be influenced by a lack of community resources, does the defender challenge this ground for the decision?	Yes	No
Comments:		
3. If the child is detained and the detention decision appeared to be influenced by the parent's unwillingness to allow the child to return home, does the defender challenge this ground for the decision and, in careful consultation with the client, consider filing a dependency petition?	Yes	No
Comments:		
4. If the child is detained, does the defender file a motion to reconsider the detention decision?	Yes	No
Comments:		
5. Does the defender file appeals from detention decisions?	Yes	No
Comments:		
6. Does the defender file petitions for extraordinary writs (<i>habeas corpus</i> , <i>mandamus</i> , or prohibition) to seek the release of a child who is wrongfully detained?	Yes	No
Comments:		

II. POLICY CONSIDERATIONS

Supervisors and section chiefs can use the questions above to think about whether the defenders in your jurisdiction are providing zealous defense advocacy regarding all aspects of detention. Assess which elements of detention advocacy your defenders regularly provide to their juvenile clients, and which they do not.

For the elements of detention advocacy that defenders were consistently unable to provide to their juvenile clients:

1. What are the barriers to their representation?

2. How would you characterize those barriers? Are they systemic (e.g., excessive caseloads, inadequate compensation, insufficient supervision, insufficient non-legal resources like support staff, social workers, and experts), or technical (e.g., lack of training opportunities in juvenile-specific practice), or do they result from tradition (e.g., no one files motions to reconsider because no one ever has)?

3. What are the sources of those barriers – your office, state laws or rules, local habits, your court system, or something else?

4. What can you do to help defenders change or overcome those barriers?

Strengthening the Defender Community

Are there avenues available to you to help defenders work with, learn from, and share resources with each other? Consider whether the following might be useful in your jurisdiction. Could you, as a supervisor or section chief:

1. Convene regular meetings for your defenders to have case reviews for detained clients?	Yes	No
2. Lead an effort to populate a pleadings bank with model motions to reopen the probable cause hearing or reconsider the detention decision?	Yes	No
3. Organize a twice-yearly resource fair so that defenders can learn about community-based detention alternatives?	Yes	No
4. Designate someone to keep a regularly-updated list of the current community-based alternatives to detention, and to make that list available to defenders?	Yes	No

Juvenile Court Policies and Procedures

Are there ways for you, as a supervisor, section chief, or policy advocate, to improve juvenile court policies and procedures for juvenile defenders? Could you:

1. If counsel is not appointed prior to the detention hearing, help defenders devise a strategy to advocate for earlier appointment, or for initial hearings to be held in the afternoon so that defenders can interview clients in the morning?	Yes	No
2. If youth are interviewed by intake probation officers before they have been afforded an opportunity to consult with an attorney, work with probation staff to ensure that youth are advised of their right to an attorney?	Yes	No

Ease of Communication

1. Ensure that detention facilities allow clients liberal and free telephone access to their attorneys?	Yes	No
2. Ensure that families of youths detained pending their initial hearing are able to convey social information crucial to the detention hearing to the defender?	Yes	No
3. Help arrange for a private space in the juvenile court building where defense counsel can meet privately with clients?	Yes	No

Representation at the Hearing

1. Work with prosecutors, judges, and probation officers to ensure that, during the probable cause hearing, defense counsel is given the opportunity to present evidence, to challenge the prosecution's evidence through cross examination, introduction of defense evidence, and to argue the evidence?	Yes	No
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Detention Reform Process Issues

Additionally, are defenders meaningfully engaged in detention reform? Is there more that you, as a supervisor, section chief, or policy advocate, could be doing to help your defenders become engaged or participate meaningfully? Could you:

1. Make sure defenders are on the RAI subcommittee?	Yes	No
2. Give juvenile defenders time to participate in case rounds to evaluate detention issues as they arise?	Yes	No
3. Organize training for defenders on reading or potentially challenging the RAI being used in each jurisdiction in which the defender practices?	Yes	No

This diagnostic tool can be adapted to the practices of your jurisdiction. For example, in some jurisdictions, criminal procedure does not apply at detention hearings. In others, defenders are not allowed to introduce evidence at detention hearings. NJDC is available to work with supervisors, section chiefs, and policy advocates to adapt this tool, to ensure that it is effective and leads to meaningful practice reform and engagement of juvenile defenders in the process.

Thank you.



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ACHIEVING EXCELLENCE IN DETENTION ADVOCACY:

Guidelines for Juvenile Defenders to Provide Zealous Advocacy at Initial Detention Hearings

Prepared by NJDC for the Annie E. Casey Foundation’s
Juvenile Detention Alternatives Initiative

These guidelines are designed to assist defenders in assessing their advocacy at the traditional, three-part initial hearings held in most jurisdictions: arraignment, the probable cause determination, and the detention hearing. In some jurisdictions, these are all collapsed into a single hearing. Because many jurisdictions still allow children to waive their right to counsel and/or plead at the initial hearing, some questions allude to these practices.

This tool is divided into two main sections. The first presents a series of questions about juvenile defense practice. The second section reviews policy and system procedures that may be impacting practice. Taken together, these two sections should provide defenders with the information necessary

to identify practice gaps. Please contact NJDC with questions, suggestions, and technical assistance needs to move ahead. We look forward to working with defenders to enhance detention practice.

Consider the three most recent cases in which you represented a child at an initial detention hearing. For each of these cases, consider the following questions. Use these questions to think about which elements of detention advocacy you regularly provide to your child clients. The more of the above elements you can provide in each case, the more effective your advocacy will be. Please circle the response that best reflects how much you agree or disagree with each statement.

I. PRACTICE ISSUES

MEETING MY CLIENT

Establishing the Attorney-Client Relationship

1. I had an opportunity to meet with my client prior to the detention hearing.	Yes	No
Comments:		
<ul style="list-style-type: none"> We were able to meet in a private location where our conversations could not be overheard. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I spoke with my client without parents, guardians or any other people or parties present. 	Yes	No
Comments:		

2. I ascertained my client's expressed interests with respect to detention.	Yes	No
Comments:		
• I advocated zealously for my client's expressed interests both in the pre-hearing team meeting and in court before the judge.	Yes	No
Comments:		
3. I had a full initial interview with my client using age-appropriate language.	Yes	No
Comments:		
• I discussed attorney-client confidentiality rules with my client.	Yes	No
Comments:		
• I discussed my ethical duty to zealously advocate for my client's expressed interests, even when my client's expressed interest conflicts with my sound legal advice or with my own personal judgment.	Yes	No
Comments:		
• If my client was detained, I asked how my client was doing in detention.	Yes	No
Comments:		
• If my client was detained, I asked whether there was any evidence of harassment or mistreatment of my client in detention.	Yes	No
Comments:		
• I explained my client's right to remain silent.	Yes	No
Comments:		
• I explained what information is relevant to the detention decision under my state's law.	Yes	No
Comments:		
• I asked my client about his or her prior record.	Yes	No
Comments:		
• I asked my client about his or her school attendance and performance.	Yes	No
Comments:		
• I asked about my client's home life.	Yes	No
Comments:		

<ul style="list-style-type: none"> If my jurisdiction requires drug tests, I asked my client the results of his or her drug test. 	Yes	No
Comments:		
<ul style="list-style-type: none"> We discussed the possible levels of detention (i.e., secure versus non-secure), and my client's opinion on possible alternatives to detention. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I explored specific reasons that argue against detention, including vulnerability, age, special needs, health concerns, suicidal tendencies, etc. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I ascertained my client's objectives for my legal representation. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I told my client what to expect at the upcoming hearing, including an explanation of the purpose of the hearing and of the roles of the judge, the prosecutor, and the probation officer. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I ascertained my client's choice about whether to admit or deny the charges. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I asked about my client's version of events to prepare for the probable cause hearing, to get names, contact information, descriptions, or hang-out locations of potential witnesses, and/or to begin investigation planning. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I discussed attorney-client confidentiality rules with my client. 	Yes	No
Comments:		
4. I gave the client my contact information and explained how s/he can reach me.	Yes	No
Comments:		

5. I brought and got my client's signature on the appropriate release forms to allow me to subpoena my client's educational, medical, mental health, and other records.	Yes	No
Comments:		
6. Since I am not appointed with enough time to meet with each client individually, I have enlisted the aid of a social worker, law student, or legal intern to interview clients for me I am appearing in court.	Yes	No
Comments:		

PREPARING FOR THE HEARING

Knowledge of Applicable Detention Law and Alternatives

1. I am aware of the current case law, statutes, and court rules that explain when a child can be detained in my jurisdiction.	Yes	No
Comments:		
2. I am aware of current research on the harmful effects of detention, both generally, and specifically with respect to the places where my client is likely to be held.	Yes	No
Comments:		
3. I am aware of the current community-based alternatives to detention.	Yes	No
Comments:		

Taking a Comprehensive Client History

1. I have investigated my client's school history.	Yes	No
Comments:		
2. I have investigated my client's extracurricular activities, hobbies, and other strengths.	Yes	No
Comments:		

3. I have asked about my client's special needs, mental health and health issues, including the names and doses of any prescribed medications.	Yes	No
Comments:		
4. I have considered, in consultation with my client, family members to whom my client could be released.	Yes	No
Comments:		
5. I have considered, in consultation with my client, other community-based programs, besides family members, to whom my client could be released.	Yes	No
Comments:		
6. I have considered, in consultation with my client, community-based services that my client believes could help my client stay in the community.	Yes	No
Comments:		
7. I am aware of other family and community contacts willing to participate in the child's release plan in ways besides allowing my client to be released into their custody.	Yes	No
Comments:		
8. I contacted these people and/or programs before the hearing.	Yes	No
Comments:		

Preparing My Client's Family

1. I explained the purpose of the hearing to my client's family.	Yes	No
Comments:		
2. I explained my role as the child's counsel to my client's family.	Yes	No
Comments:		
3. I spoke with my client's family before the hearing to ascertain whether they were willing to have my client released to them.	Yes	No
Comments:		

<ul style="list-style-type: none"> If the parent/guardian initially would not allow my client to return home, I explored with the parent/guardian realistic conditions under which the parent/guardian might allow the child back in the home. 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the parent/guardian would not allow my client to return home, I explored with the parent/guardian other people to whom my client could be released. 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the parent/guardian would not allow my client to return home, I explained to the parent/guardian the potential effects and consequences of detention. 	Yes	No
Comments:		
4. If the parent/guardian did not come to the hearing, I tried to contact the parent/guardian to ascertain why the parent/guardian did not attend the hearing, and whether the parent/guardian would allow my client to return home.	Yes	No
Comments:		
5. If the parent/guardian could not come to the hearing, I explored having the parent/guardian appear by phone.	Yes	No
Comments:		
6. I prepared the parent/guardian for the possibility that the judge would solicit the views of the parent/guardian in open court concerning my client's school behavior, home behavior, and overall social functioning.	Yes	No
Comments:		

Obtaining Discovery

1. I requested, received and reviewed the risk assessment instrument (RAI).	Yes	No
Comments:		
<ul style="list-style-type: none"> I discussed the RAI score with the intake probation officer prior to the hearing. 	Yes	No
Comments:		
2. I requested, received and reviewed the police report(s) in my client's case.	Yes	No
Comments:		

3. I requested, received and reviewed a copy of any existing prior delinquency, truancy, and/or dependency history of my client.	Yes	No
Comments:		

REPRESENTATION AT THE HEARING

Defender Arguments at the Hearing

1. If the detention hearing was not scheduled within the time required by my jurisdiction's statute or rules, I filed a motion to have my client released.	Yes	No
Comments:		
2. If I was not able to speak with my client before the detention hearing, due to untimely appointment to the case or any other reason, I requested that the case be continued for a few hours to allow me to consult with my client.	Yes	No
Comments:		
3. If I did not receive the RAI before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
• If no one except the intake probation officer had access to the RAI before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
4. If I did not receive or was not afforded an opportunity to review my client's prior record before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
5. If I did not receive or was not afforded an opportunity to review the police report(s) in my client's case, I raised this point at the hearing.	Yes	No
Comments:		

Probable Cause Hearing

1. If the government sought to detain my client, I marshaled all available evidence to argue against a finding of probable cause.	Yes	No
Comments:		

<ul style="list-style-type: none"> If the jurisdiction has probable cause hearings where testimony is taken, I cross examined the government's witnesses, and used the witnesses' testimony to argue against probable cause. 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the jurisdiction has probable cause hearings where testimony is taken, and I calculated that there was little to no chance of winning the probable cause hearing, I used the probable cause hearing as a discovery tool. 	Yes	No
Comments:		
<ul style="list-style-type: none"> If the jurisdiction has probable cause hearings in which the court determines probable cause based on an officer's affidavit, I tried to argue against probable cause based on, <i>inter alia</i>, a deficient attestation, a lack of evidence concerning one or more of the elements of the charged offense, or an insufficient nexus between my client and the offense. 	Yes	No
Comments:		
<ul style="list-style-type: none"> I argued to hold the prosecution to the required burden and standard of proof. 	Yes	No
Comments:		

Detention Hearing

1. I argued that detention cannot be imposed unless the relevant statutory criteria, as explicated by current case law, were met.	Yes	No
Comments:		
2. I argued that my client should be placed in the least restrictive environment possible.	Yes	No
Comments:		
3. I argued research on the risks and harmful effects of detention for children.	Yes	No
Comments:		
4. I presented and argued for a detention alternative, tailored and responsive to the judge's concerns about the individual client, complete with specific names and contact information of people willing to be involved in the youth's release conditions, and detailed representations concerning how my client will be monitored.	Yes	No
Comments:		

5. If the jurisdiction allows the presentation of evidence to support arguments in aid of the detention decision, I called witnesses or introduced other evidence to support my arguments against secure detention or in favor of alternatives.	Yes	No
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Comments:

6. I advocated for my client's expressed interests, even when the child's expressed interests conflicted with my reasoned legal advice or with my own personal judgment about what might be in the child's best interests.	Yes	No
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Comments:

Making a Record

1. At the end of the hearing, I requested that the judge prepare and issue written findings and an order.	Yes	No
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Comments:

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

2. I asked to be assigned to represent the child, at least to put on the record that the child's waiver of counsel and plea were entered without the benefit of counsel.	Yes	No
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Comments:

3. I asked the court to inform the child that, should the child change his or her mind, I or my office would be available to represent him or her.	Yes	No
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Comments:

4. I stated for the record that I had not had a chance to investigate the matter or subpoena relevant documents before my client pled.	Yes	No
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Comments:

AFTER THE HEARING

Keeping the Client and the Client's Family Informed

1. If my client was released, I clearly explained the conditions of release to my client and my client's parent/guardian and provided information about how to satisfy the conditions.	Yes	No
Comments:		
2. If my client was released, I got contact information for my client, including my client's name, address, phone number, and similar information for my client's relatives and friends.	Yes	No
Comments:		
3. If my client was detained, I made sure that my client's family knew where and how to visit my client.	Yes	No
Comments:		
4. If my client was detained, I visited my client within 48 hours of the detention decision.	Yes	No
Comments:		
5. If the detention center is so far away that I could not travel there within 48 hours, I contacted my client by phone within 48 hours.	Yes	No
Comments:		
6. I scheduled my next in-person meeting with my client.	Yes	No
Comments:		
7. I discussed with my client, in detail and using age-appropriate language, what happened at the hearing, and answered any questions my client had.	Yes	No
Comments:		
8. I explained to my client, in detail and using age-appropriate language, the next steps in the case.	Yes	No
Comments:		

Challenging the Decision to Detain

1. If my client was detained, I filed a motion to reopen the probable cause hearing in cases where I subsequently received exculpatory information.	Yes	No
Comments:		
2. If my client was detained, I filed a motion to reconsider the detention decision in cases where I subsequently discovered favorable information (e.g., the charge is reduced, or a new placement option emerges).	Yes	No
Comments:		
3. If the judge's detention decision was influenced by a lack of community resources, I challenged this as an unlawful basis for the decision.	Yes	No
Comments:		
4. If the judge's detention decision appeared to be influenced by the parent's unwillingness to allow the child to return home, I challenged this ground for the decision, and considered, in careful consultation with my client, filing a dependency petition.	Yes	No
Comments:		
5. I informed my client of the right to appeal the detention decision.	Yes	No
Comments:		
6. If my client wished to appeal, I followed the procedural steps needed to secure the right to an appeal.	Yes	No
Comments:		
7. I handled the appeal or transitioned the case to another attorney.	Yes	No
Comments:		
8. I considered petitioning for an extraordinary writ (habeas corpus, mandamus, or prohibition) to obtain the release of a client who was wrongfully detained.	Yes	No
Comments:		

We look forward to hearing from you about how this tool has helped inform or change detention practice in your site. We would also like your suggestions about other areas of detention advocacy, both inside and outside the courtroom, that should be included in this tool, as well as ways to make these *Guidelines* more useful to juvenile defenders.

II. POLICY CONSIDERATIONS

This section of the *Guidelines* reviews policy and systemic issues that may impact your detention practice. Think about which elements of detention advocacy you did not or could not provide to your juvenile clients.

1. If you could not provide a service, what were the barriers to your representation?

2. How would you characterize those barriers?

3. Are they systemic (e.g., excessive caseloads, insufficient supervision, insufficient non-legal resources like support staff, inadequate compensation, social workers, and experts), or technical (e.g., lack of training opportunities in juvenile-specific practice), or do they result from tradition (e.g., no one files motions to reconsider because no one ever has)?

4. What are the sources of those barriers – your office, state laws or rules, local habits, your court system, or something else?

Drawing Strength from the Defender Community

5. If you could have provided a service, but did not, what were the reasons?

6. What barriers do you need to overcome, and how will you do so?

7. What resources can help you to serve your clients better?

8. Consider the following avenues. Can you, as defenders:

<ul style="list-style-type: none">Keep and share a regularly-updated list of the current community-based alternatives to detention, with contacts at each facility and phone numbers?	Yes	No
<ul style="list-style-type: none">Regularly update and share model motions to reopen, or to reconsider, or motions arguing the conditions of the local detention center?	Yes	No

<ul style="list-style-type: none"> • Convene regular case review meetings with defenders in other jurisdictions? 	Yes	No
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Juvenile Court Policies and Procedures

Are there ways for you, as a defender charged with protecting your clients' due process rights, to improve juvenile court policies and procedures for your clients?

Could you, as a defender:

<ul style="list-style-type: none"> • In jurisdictions where children are allowed to plead after waiving counsel, coordinate with your colleagues to make sure a defense attorney is present and ready to counsel a child who wishes to plead after waiving counsel before the child pleads? 	Yes	No
<ul style="list-style-type: none"> • In jurisdictions where children are allowed to plead at the initial hearing, begin a practice of stating on the record you have not had a chance to investigate the matter or subpoena relevant documents before the client pled? 	Yes	No
<ul style="list-style-type: none"> • If you were in the courtroom when a child waived the right to counsel, could you, before the waiver colloquy, ask the court for a brief pass to allow you or one of your colleagues to advise the child about the advantages and disadvantages of waiving counsel outside of the presence of the court and of the child's parents? 	Yes	No

Detention Process Issues

As a defender, are you meaningfully engaged in the detention hearing?

Could you, as a defender:

<ul style="list-style-type: none"> • Organize training on the RAI in each of the jurisdictions in which you practice? 	Yes	No
<ul style="list-style-type: none"> • Adopt, with the permission of your division supervisor, a system to review detention cases more rigorously and more frequently than release cases? 	Yes	No
<ul style="list-style-type: none"> • Make sure that defenders are on the RAI subcommittee? 	Yes	No

Please adapt this diagnostic tool to the practices of your jurisdiction:

Does your jurisdiction's statute hold that criminal procedure does not apply at detention hearings? If it does, what does that mean for you to advocate zealously at detention hearings?

Does your jurisdiction's statute forbid the introduction of evidence at detention hearings by defenders? If it does, brainstorm how you can get information that is favorable to your client before the court.

NJDC is available to work with defenders to ensure that these guidelines lead to juvenile defenders' being engaged in meaningful reform of detention practice. Please do not hesitate to contact us.

Thank you.

*For more information, please contact the National Juvenile Defender Center
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