

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:		
<ul style="list-style-type: none"> 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
at 202.452.0010 or at inquiries@njdc.info.*



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