

Detention - Basic Law and Procedure

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Custody With A Warrant



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Requirements For A Custody Order To Be Issued

PROBABLE CAUSE TO BELIEVE:

- ▶ Child is within the jurisdiction of the youth court;
- ▶ Custody is necessary because:

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When Is Custody Deemed Necessary?

Child is a danger to themselves or others

OR

To ensure the child's presence in court

OR

A parent or guardian is not available to provide for the care and supervision of the child

AND

That there is no reasonable alternative to custody.

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Custody Without A Warrant

§43-21-303

Grounds exist for the arrest of an adult in identical circumstances;

AND

Such law enforcement officer has probable cause to believe that custody is necessary as defined in 43-21-301

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Special Rules for Status Offenders

- ▶ 24 Hours Prior to Initial Hearing
- ▶ 24 Hours After Initial Hearing

UNLESS

- ▶ Violation of Valid Court Order
- ▶ Out-Of-State Runaway

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▸ Detention Hearings

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Detention Hearings: Purpose

- To determine whether it is appropriate to detain a youth pending court proceedings.



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Waiver

- Time
- Detention hearing

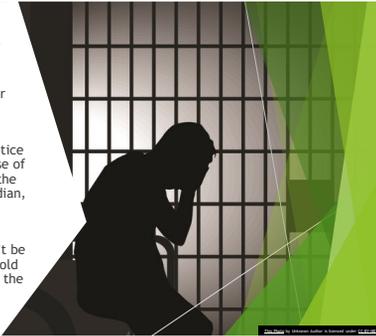
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Continued Custody

A written report, complaint or petition must be filed.

Reasonable oral or written notice of the time, place and purpose of the hearing is to be given to the child, their parent(s) or guardian, and the child's attorney.

If the parent or guardian can't be found, the youth court may hold the hearing in the absence of the child's parent or guardian.



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Evidence

- ▶ All parties have the right to present evidence
- ▶ Right to cross-examine witnesses produced by others.
- ▶ The court may receive testimony and other evidence relevant to the necessity of continued custody.
- ▶ Rules of Evidence DO NOT apply
- ▶ Hearsay and opinion evidence is admissible.
- ▶ All testimony is made under oath
- ▶ Testimony may be in narrative form.

§43-21-309(3)



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Release

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Attorney Preparation For The Hearing

Counsel should be well versed in the law and procedures regarding detention and the detention hearing.

Counsel should be familiar with and have visited the jurisdiction's detention facility.

Counsel should investigate alternatives to secure detention and review those options with the client.

Counsel should review detention risk assessment findings and look for inaccuracies or mitigating factors that may affect the accuracy of the risk scores for the client.

Counsel should make efforts to have meaningful contact with the client prior to the hearing. Talk with them and, if appropriate, their parent or guardian.

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Role of Counsel at the Detention Hearing

- ▶ Counsel should zealously argue for the client's pre-trial release, if that is consistent with the client's expressed interest.
- ▶ Counsel should advocate for the removal of all physical restraints during the hearing.
- ▶ Counsel should present the court with alternatives to detention and a pre-trial release plan consistent with the client's expressed interest.
- ▶ Counsel should ensure that detention proceedings are recorded.

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