



DETENTION ADVOCACY

Chris Kleiser

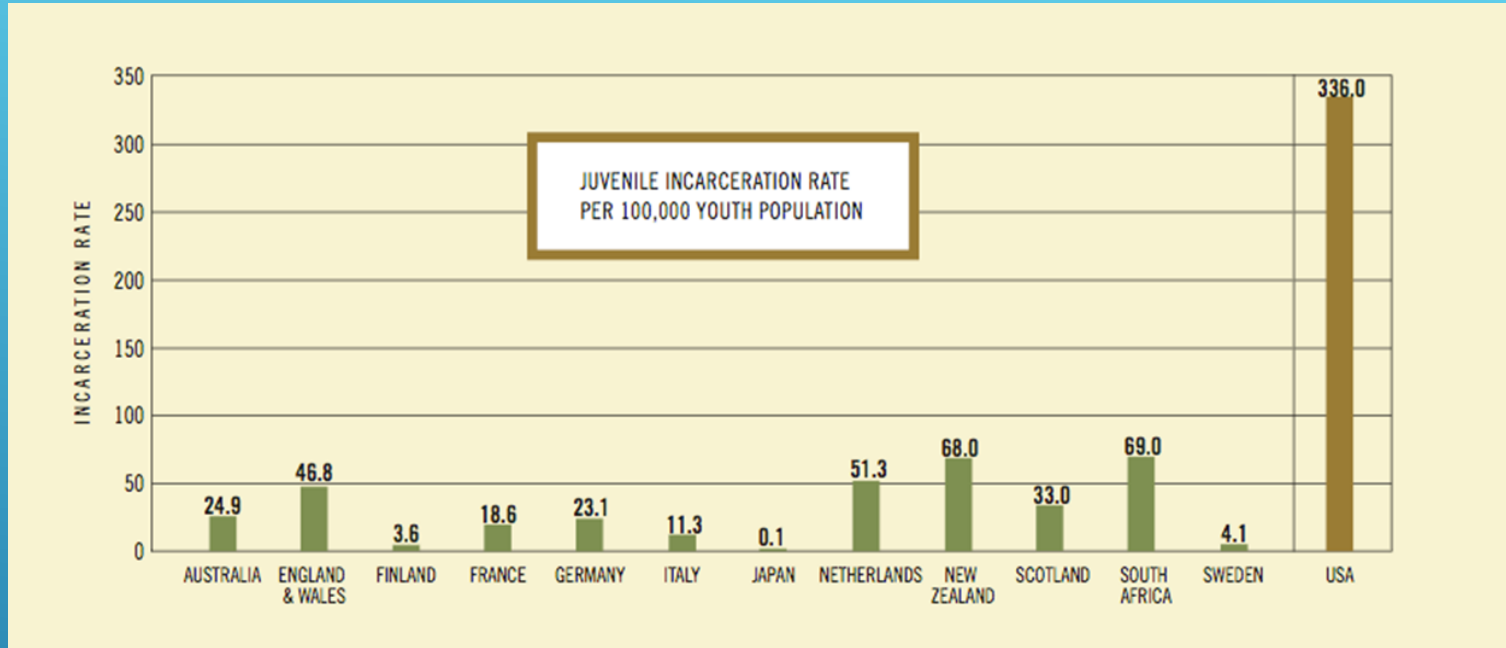


Roadmap

- -Data on why even one day in jail is harmful
- -Deep dive into the land of PC
- --Step by step Crafting Release Plans and getting your client out of jail



Why is this so
important...



US INCARCERATES KIDS 5 TIMES MORE THAN ANY OTHER COUNTRY

Source: Hazel, Neal, Cross-National Comparison of Youth Justice, London: Youth Justice Board, 2008.

- ▶ Criminalizing normal adolescent conduct (DOC)
- ▶ Disabled children: “Disorderly Conduct” Fighting at school; school threats
- ▶ AND overwhelming more youth of color (assaults, resisting, doc)

WE ALSO **DISPROPORTIONATELY** LOCK UP
THREE CATEGORIES OF YOUTH
EVERYWHERE





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Mississippi Raises Minimum Age of Commitment to 12

March 30, 2021
Abigail Grifno



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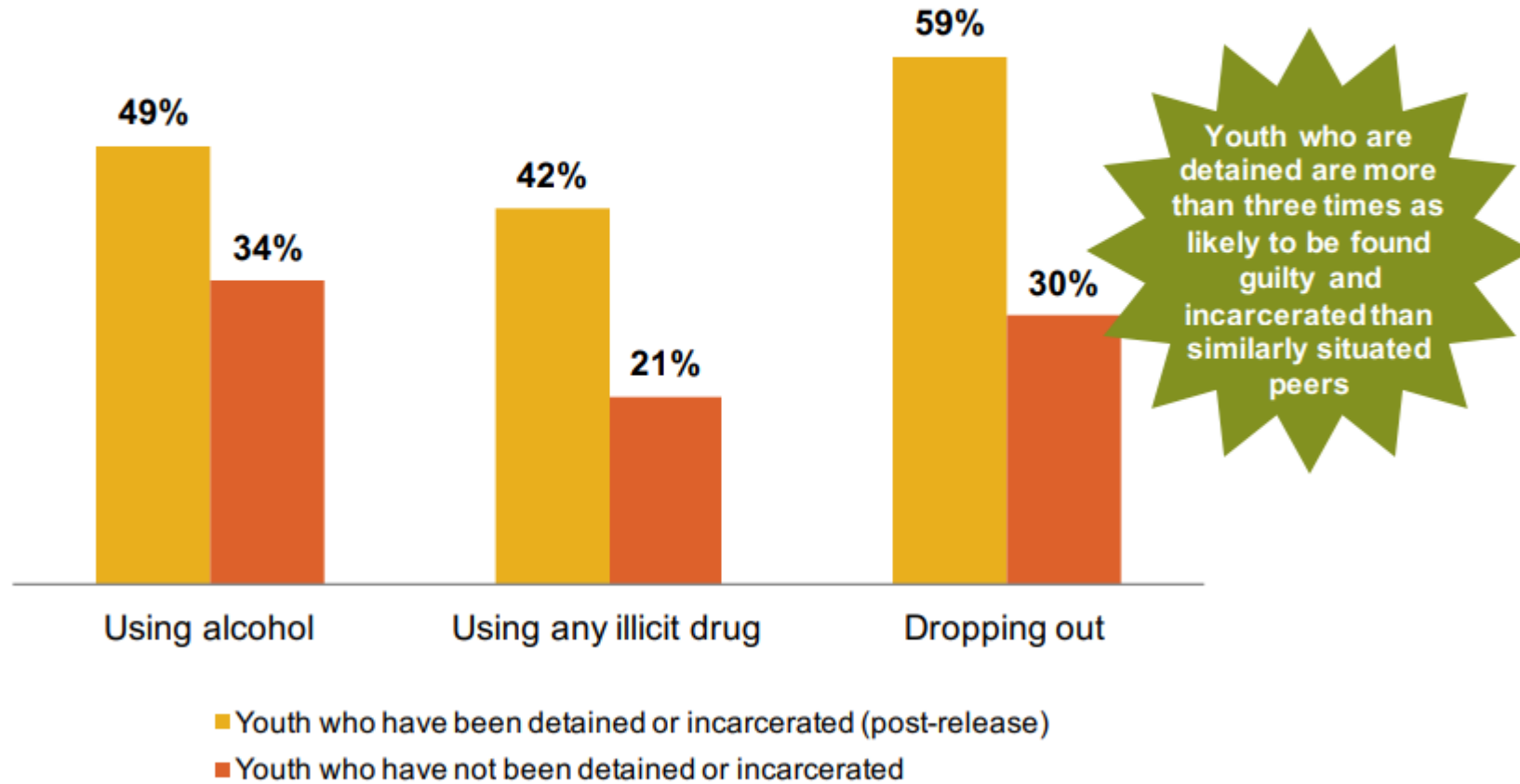
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Yes, even an 12 year old



Detention leads to worse outcomes. After release, detained youth are far more likely to drop out of school and use drugs and alcohol

Likelihood of Behavior: Incarcerated vs. Non-incarcerated Youth

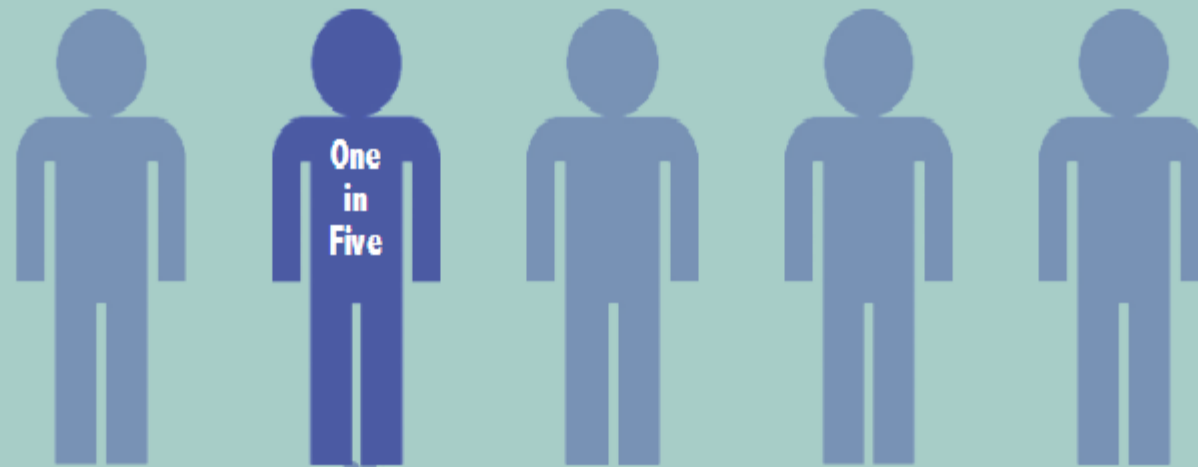


SOURCE: Office of State Courts Administrator, Florida Juvenile Delinquency Court Assessment (2003); LeBlanc, (1991), "Unlocking Learning" in Correctional Facilities, Washington, D.C.; Substance use, abuse, and dependence among youths who have been in jail or a detention center: The NSDUH report, The National Center on Addiction and Substance Abuse (CASA) at Columbia University, (2004); America's Promise report on national rates of high school dropouts: www.msnbc.msn.com/id/23889321/.

The Harms of Juvenile Detention

Youth in detention are removed from settings that matter: their homes, schools, and communities. Without those supports, children develop higher rates of depression, anxiety, and other mental health conditions, and they lose access to educational opportunities. Once released, youth who spent time behind bars are more likely to disengage from school and become system-involved in the future.

More than 1 in 5 children awaiting adjudication spend time in pre-trial detention.¹



**Increased involvement
in the justice system**

**Lack of access
to education**

**Poor mental
health outcomes**

Harms of Confinement

- Incarceration can INCREASE recidivism
 - 70% of youth in secure detention are re-arrested or returned to detention with 1 year *
 - Disrupts the natural ageing-out process *
 - Doesn't reduce crime numbers *
 - Can exacerbate any mental health issues / no proper care
 - Schooling is insufficient *
 - Youth are more traumatized by separation from family/community than adults - could create new psychological harm.
 - Solitary Confinement

Harms of Confinement – let's zoom in on a few key points

Can exacerbate issues of mental health and trauma

- **2/3** of males and **3/4** of females in juvenile detention have one or more psychiatric disorders



Teplin et al., 2002; Wasserman, et al., 2002.

Harms of Confinement

Can exacerbate issues of mental health and trauma.

Nationally:

- Lack of meds
- Lack of sufficient diagnosis
- Lack of appropriate therapy services
- Lack of appropriately trained staff



High Stress + Violence + Isolation = Further Traumatization

Confinement & Very Young Children

National Juvenile Detention Association (NJDA)

National Partnership for Juvenile Services (NPJS)

- ▶ Opposes the placement of pre-adolescents in detention.
- ▶ “Pre-adolescents (children 11 years of age or younger) have unique needs and when placed in juvenile detention facilities pose specific programmatic, safety, and security issues.”

Harms of Confinement

Can negatively impact education and employment:

- ▶ Incarceration at 16 or younger = **26% lower chance of graduating high school.**



- ▶ Even 15 years later, those incarcerated as a youth **work 10% fewer hours** per year.

Harms of Confinement

“Deviancy training” is relatively likely to occur when:

1. participants are of early adolescent age;
2. participants have begun a trajectory toward deviance but are not extremely deviant;
3. Participants are exposed to slightly older, slightly more deviant peers; and
4. the setting is unstructured and allows for free interaction without well-trained adult supervision

Reforming Juvenile Justice: A Developmental Approach, National Academy of Sciences (2013)

Harms of Confinement

Confinement can increase recidivism

- ▶ Each harm of confinement impacts a child's ability to reintegrate to the community
- ▶ It removes children from what support systems they do have.
- ▶ It places children in an environment where choices are made for them.
- ▶ It places children with peers who teach new undesirable behaviors.
- ▶ Can hamper normative adolescent development through stress, trauma, or exacerbating mental illness.

Let's meet Richard



Longer stays in detention are not the key

Getting caught is the key - how long a kid sits is not

- ▶ Longer stays in detention \neq reduced recidivism or “teach child a lesson”
 - ▶ *DET ARGUMENT: Your honor,*

See, JDAI; Presentation by Mark Soler

More data: Detention at Arrest & Charging

Pre-adjudicatory detention is correlated with deeper system involvement:

- ▶ 9% More likely to be petitioned
- ▶ 8.5% likely to be formally adjudicated

Even when controlling for other key variables such as age, race, gender, and *offense severity*.

Frazier, C.E. and Cochran, J.K. (1986) *Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing and Decisions*. Youth and Society, Vol. 17, No. 3, March 1986, p. 286-305 (N=9,317; p=.05)

Detention Affects Disposition

More likely to receive more punitive sanctions at disposition than those not placed in detention

- 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)

Over 3 times more likely to be securely committed.

- *Florida Juvenile Delinquency Court Assessment*(2003)
Tallahassee, FL: Office of Court Improvements.

Detention & Disposition

Factors Weighing Against Detained Youth at Disposition

- ▶ Little opportunity to demonstrate amenability to community supervision
- ▶ “Confinement Bias”
- ▶ Belief that confinement seems to be “working” so other options may be considered less seriously

Now! Let's get those kids out of detention!

- ▶ Detention hearing must be held within 48 hours
- ▶ Miss. code ann. § 43-21-301(1), (2), (3)(a) – (3)(c).
- ▶ Miss. code ann. §§ 43-21-307; 43-21-309.
- ▶ Miss. code ann §§ 43-21-309; 43-21-301(3)(b).
- ▶ Miss. code ann. § 43-21-309(4)(a)

SHALL NOT DETAIN!



Unless:

- ▶ **PC that the youth court has jurisdiction**
- ▶ **AND**
- ▶ **That custody is necessary!**
- ▶ **Presumption is to release**

When is custody necessary?

Custody only necessary:

- 1) danger to self or others;
- 2) flight risk;
- 3) no parent available;
- 4) no reasonable alternative to custody



When Must the Court Find Probable Cause?

- Miss. code ann. § 43-21-301(1), (2), (3)(a) — (3)(c)
 - PC: 1) That court has jurisdiction
 - 2) That custody is necessary;
 - 3) no reasonable alternative to custody
-
- Required by US Constitution
 - *Gerstein v. Pugh*, 420 US 103 (1975) – can't detain without a finding of Probable Cause that the person committed the act.

Probable Cause

Why create a whole separate section
to talk about probable cause...



Are you statutorily entitled to a Probable Cause Hearing? Yes!
Is it a full blown confrontational hearing? with copies of discovery and everything?

Gerstein v Pugh, 420 U.S. 103, 95 S.Ct. 854 (1975)

- A state "...must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." •Sets minimum requirements for PC for pretrial detention.



Act I: Probable Cause

What's the Timing of the PC Hearing?

- Required within 48 hours of arrest
 - *County of Riverside v. McLaughlin*, 500 US 44 (1991)
 - Statute says 48 hours
- Why?
 - *Gerstein v. Pugh* – 4th Am. requires it as a “prerequisite to restraint of liberty following arrest.”
 - If not, release is required unless state demonstrate some “emergency” or extraordinary circumstance. (*Riverside*)

What's the Order of Things?



Probable Cause Determinations

- Judge must find **2 separate things**:
 - Whether there is PC that an offense was committed, *AND*
 - Whether there is PC your client was the one who committed the offense

CHALLENGING PC

- Reasonable belief that the offense was committed by the suspect.
- Reviewed objectively by the court and must be more than a mere suspicion. It is a fair probability determined by the totality of the circumstances.

- Beck v. Ohio; Illinois v. Gates

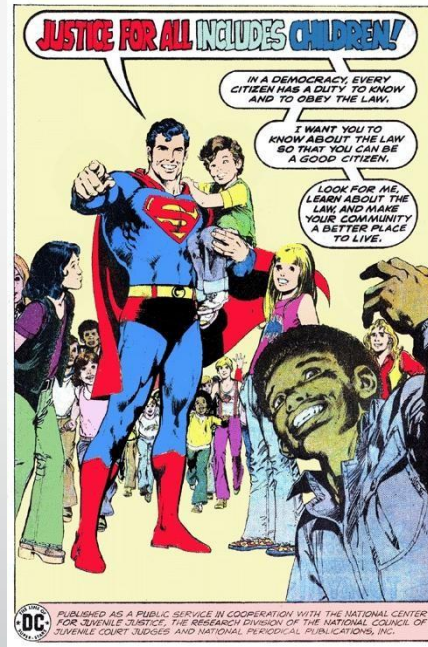
What's the Procedure for Establishing PC?

- Nationally, two approaches:
 - “On the papers” – sworn affidavit or police report
 - Full evidentiary hearing with witnesses
- Mississippi?
- *At the detention or shelter hearing, all parties present shall have the right to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.*

Arguments

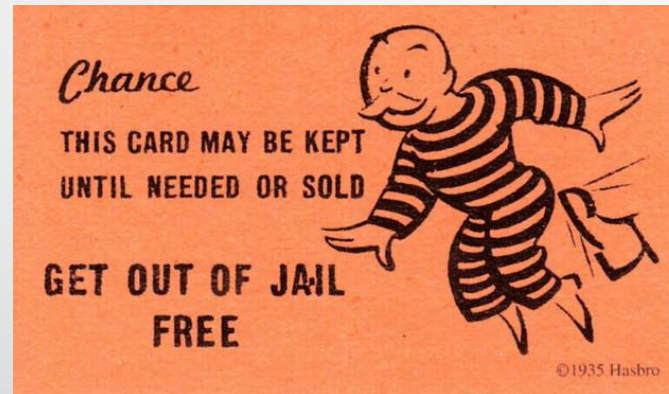
- Do the facts alleged establish all the elements of the offense?
- Do the facts support the belief that **your** client did it?
- Are the facts alleged based on **reliable information**?

How to be a superhero defender at detention...



What if there is No Probable Cause?

- Client must be released.



In Re Gault

• “The Child requires the guiding hand of counsel at every step in the proceedings against him”

• 387 U.S. 1 (1967).

Juvenile Defender Self-Assessment Tool for Best Practices in Detention Advocacy

This tool is designed to assist juvenile defenders in assessing the quality of their detention advocacy. Defenders should check the box next to each step that they regularly take on behalf of a typical client. Upon completion of the checklist, defenders should review their answers to self-identify any gaps in their detention advocacy.

If you find a number of the boxes unchecked, consider consulting the National Juvenile Defense Standards (<http://njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>) to learn more about best practices in detention advocacy. Alternatively, you can always contact the National Juvenile Defender Center (NJDC) or your regional juvenile defender center with any questions, suggestions, requests for training, and technical assistance needs to fill the gaps in your practice.

MEETING THE CLIENT

- I meet with my client as soon as practicable following appointment and prior to the detention hearing.
- I meet my client in a private location where our conversations cannot be overheard.
- I speak to my client without parents, guardians, or any other people or parties present.
- If my client is detained, I ask about how he or she is doing, looking for any evidence of mistreatment.
- In the initial meeting, I ascertain my client's expressed interests with respect to detention.
- In the initial meeting, we develop a release plan that is client-driven and can be offered in court.
- In the initial meeting, I explain the following to my client using developmentally-appropriate language:
 - attorney-client confidentiality;
 - my role as attorney for the client, representing the client;
 - my role as advisor, including my responsibility to counsel my client when I feel he or she is making a decision that will hurt stated goals or legal interests, but to ultimately advocate for what my client wishes;
 - his or her right to remain silent;
 - the role of parents in the proceedings and how I will interact with them;
 - the roles of each juvenile court actor;
 - what the judge will consider in making the detention decision;
 - the possible levels of detention (e.g., local facility, electronic monitoring, release to home etc.); and
 - the next procedural steps.
- In the initial meeting, I ask my client about his or her version of the events so I have sufficient information to prepare for the probable cause hearing, and get names, contact information, descriptions, or hang-out locations of potential

NATIONAL JUVENILE DEFENSE STANDARDS





MISSISSIPPI

AN ASSESSMENT
OF ACCESS TO COUNSEL AND
QUALITY OF REPRESENTATION

Tips for Cross at PC Hearing(Once you get one)

1. Know the elements.
2. Anticipate defenses.
3. Decide your goal. Win or pursue discovery?
4. Start with the source of information.
5. Lock-in witness testimony.
6. Be precise and detailed.
7. Do not forget close-out questions.
8. Do not confuse your client with the suspect or assailant. Language matters!
9. Do not ask the ultimate question.
10. Build one fact at a time; no compound questions.

The best defense is a good offense...

What they say...

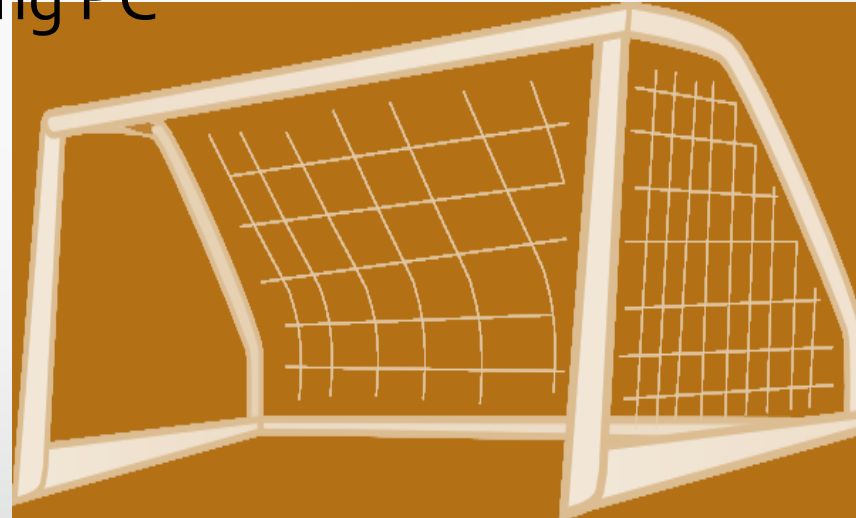
- The victim could have been seriously injured...
- No reason to believe that this youth will abide by the conditions of release...
- This isn't the first time that this youth has been in court...
- The state is seeking just one more day to gather information on this charge...

What we say...

- The court can not rely on hypotheticals for its findings and basis of detention.
- No reason to believe that they won't based on the following plan.
- Prior record is not ignored, but not enough to show that this time the child won't comply.
- It is illegal to detain my client for even one more minute

Defense Goals for PC Hearing

- Prevent detention by defeating PC
- **Discovery**
- Preview strengths & weaknesses of state's case
- **Earn client's trust**
- Signal other problems with the case to the court
- **Lock state witnesses into sworn statements**



Strategic Considerations

- Right to Waive PC Hearing
 - Almost never a good idea
 - Weighing the chance of release on social factors alone against what you'd learn in the PC hearing.
- Calling Defense Witnesses
 - Weighing the chance they will help defeat PC against the chance they may be locked into impeachable statements for trial.

Let's chat about this very common scenario

PETITION

JUVENILE COURT OF KNOX COUNTY, TENNESSEE
In the Matter of: [REDACTED]
[REDACTED] ([REDACTED])
2023 KNOX COUNTY JUVENILE COURT
KNOXVILLE, TN [REDACTED]

Petition# [REDACTED]
Complaint# [REDACTED]7

Gender M Race CAUCASIAN
DOB 07-17-2007
Age 15
Companion(s) Not Applicable

DLN
Grade 09 School [REDACTED] HIGH SCHOOL (9-12)

TO THE HONORABLE TIMOTHY E. IRWIN, JUDGE OF THE JUVENILE COURT OF KNOX COUNTY, TENNESSEE:
Your petitioner, KNOX COUNTY SHERIFF'S OFFICE respectfully represents to the Court on information and belief that [REDACTED], a child now within Knox County and 15 years of age, is

Delinquent Unruly and in need of treatment and rehabilitation or Other

By TCA 39-16-517 Threat to commit act of mass violence on school property within the meaning of the law of the State of Tennessee in that said child within Knox County, Tennessee, on or about May 12, 2023

On May 12, 2023, at [REDACTED] High School, [REDACTED] [REDACTED], Knoxville, Knox County, Tennessee, teacher's assistant [REDACTED] was handing out cookies in class. The defendant became upset when another student took the last cookie. The defendant stated: "I could shoot everyone in this class."

Further, it is in the best interest of the child and the public that the proceeding be brought. Petitioner further avers that the child's

PREMISES CONSIDERED, petitioner prays;
That the court make inquiry into the matter above stated and take such action and make orders as to the Court may deem proper.

What are the possible levels of restriction?



- Secure detention
- Release back to legal custodian with conditions (“only out of your house if you’re holding your mamma’s hand”)

Other possibilities?

Be the court's problem solver!

Other ideas to support release back to community -

- List of structured, adult-supervised activities (sports, church, work)
- Home detention
- Curfew
- School monitoring
- Mentor program
- Out-patient treatment programs
- If parent isn't an option; find an alt. temp. placement*** NOT CUSTODY CHANGE

Crafting a Release Plan

- What will the judge typically consider?



Comments to Uniform Rule 16 of Youth Court Practice

- **Factors the court may consider in determining whether custody is necessary include:**
 - family ties and relationships;
 - prior delinquency record;
 - the violent nature of the alleged offense;
 - prior history of committing acts that resulted in bodily injury to others;
 - the child's character and mental condition;
 - the court's ability to supervise the child if placed with a parent or relative;
 - the child's ties to the community;
 - the risk of nonappearance;
 - the danger to the child or public if the child is released;
 - another petition is pending against the child; the home conditions of the child; violation of a valid court order.

Risk of Flight



- Has client missed other court dates?
 - If this is first court appearance, can't assume he won't show up if released.
 - He was cooperative with police / she turned herself in
 - If child isn't in lock-up, he showed up today!
 - If attends school, even if failing, shows ability to show up

Prior Failures to Appear

- If there are prior failures, are there ways to mitigate?
 - Um, your honor....
 - Wasn't aware of summons
 - Didn't have proper notice of a hearing
 - Was told by attorney, PO, or someone adult that he didn't have to come?
 - Was locked up
 - Was in another court
 - Family emergency
 - What factors in this case demonstrate this time is different?



Other Current Cases?

- Custody Orders / Holds
 - If for a minor case, doesn't make client dangerous
 - If that case isn't adjudicated, he's still innocent until proven guilty.
- Petition to Revoke Probation
 - Other than new unproven allegation, was probation going well?



Argument Tips

- Use client's name
- Use language that reminds court your client is a child
- Address negatives, but focus on positives
- Counter state's arguments

Counter Inappropriate State Requests

- Conditions of release should address concerns raised by the case.
 - stay-away orders require a nexus to the offense.
 - No treatment where no need is established.
 - Thing client already does well shouldn't be court-ordered (like school).
 - Lack of family resources/poverty does not relieve the court of the need to find alternatives to detention.

Preparing for the Hearing

- ❖ Interview your client
- ❖ Get documents
- ❖ Talk to others



Step one: gather the documents

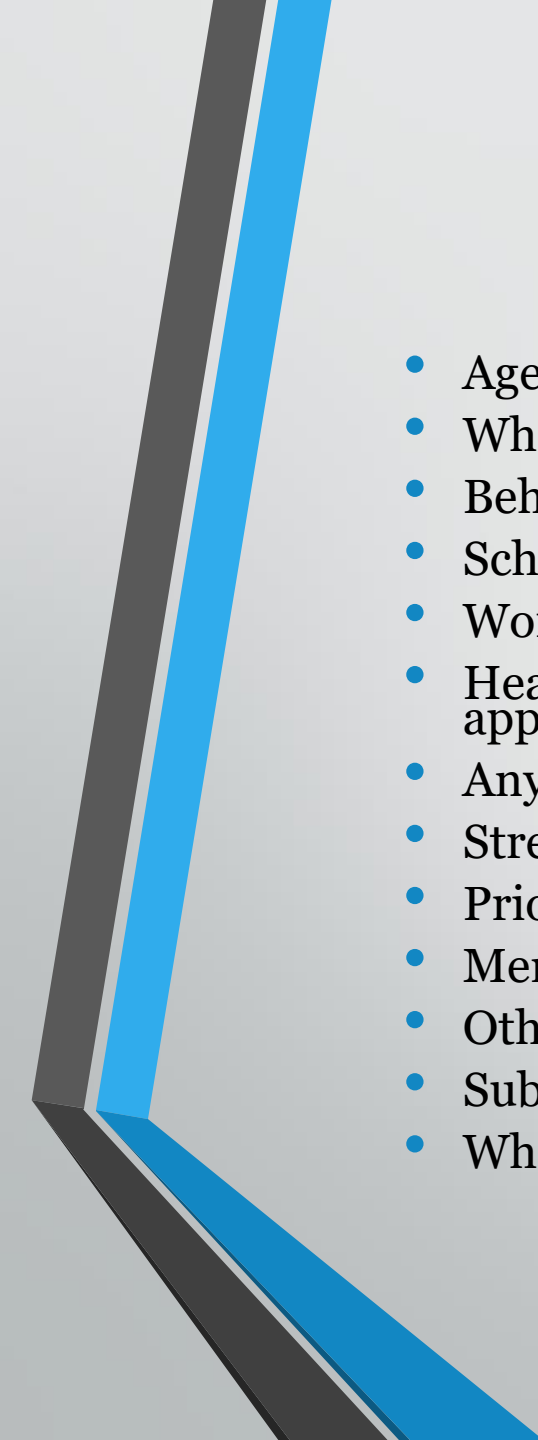
- 1) obtain copies of all available documents
- 2) Know and/or get copies of your client's juvenile court record

Step two: Interview your client

- *Things you need to tell him/her:*
- 1) attorney-client confidentiality
- 2) explain role as defense counsel: express interest; client centered
- 3) process – this is a detention hearing; not your trial; no need to talk
- 4) release conditions

Let's brainstorm –

- You have very little time to meet with your client before a detention hearing – what might be some key things to get from him or her in those precious minutes?

- 
- # Things you need to ask your client:
- Age
 - Where Born (potential ICE issues)
 - Behavior at home
 - School (special ed?) (does he go to school?)
 - Working – last employment
 - Health – medical / mental health issues – on any medications? Any pending appointments?
 - Any special needs your client has
 - Strengths / talents (on football team)
 - Prior record (on probation?)
 - Mentors / allies / advocates
 - Other family client is willing to stay with if necessary
 - Substance abuse?
 - What does client want?

Step three: Talk to Others

- 1) His parents /guardian (very important!)

What should we elicit from the parent/guardian?

- Willingness to take youth home
- Behavior at home
- School information
- Medical issues?

The angry parent



Others you need to talk to

- 1) The intake / probation officer
- 2) The DA
- 3) GAL if your client has one
- 4) Any persons who might help with alternative release (other family member; service agencies involved with your client / mentors, other advocates)

Step four: Prepare a release plan

- 1) Assess the likelihood of release
- 2) Make a release plan
- 3) Gather supporting documents, witnesses or create a safety plan, particularly in more serious cases (examples in handouts)

	Sun.	Mon.	Tues.	Wed.	Thurs	Fri.	Sat.
8:00 AM		School	School	School	School	School	
9:00 AM	Church						
10:00 AM							Community
11:00 AM							Service
12:00 PM							
1:00 PM							
2:00 PM		Tutoring	Tutoring	Tutoring	Tutoring	Tutoring	
3:00 PM		Basketball	Basketball	Basketball	Basketball	Basketball	
4:00 PM				Bus			
5:00 PM		Bus	Bus	Counseling	Bus	Bus	
6:00 PM		Grandma	Grandma	Bus	Grandma	Grandma	
7:00 PM		Chores/Homework	Chores/Homework	Homework	Chores/Homework	Chores/Homework	
8:00 PM		Home to Mom	Home to Mom	Home to Mom	Home to Mom	Home to Mom	

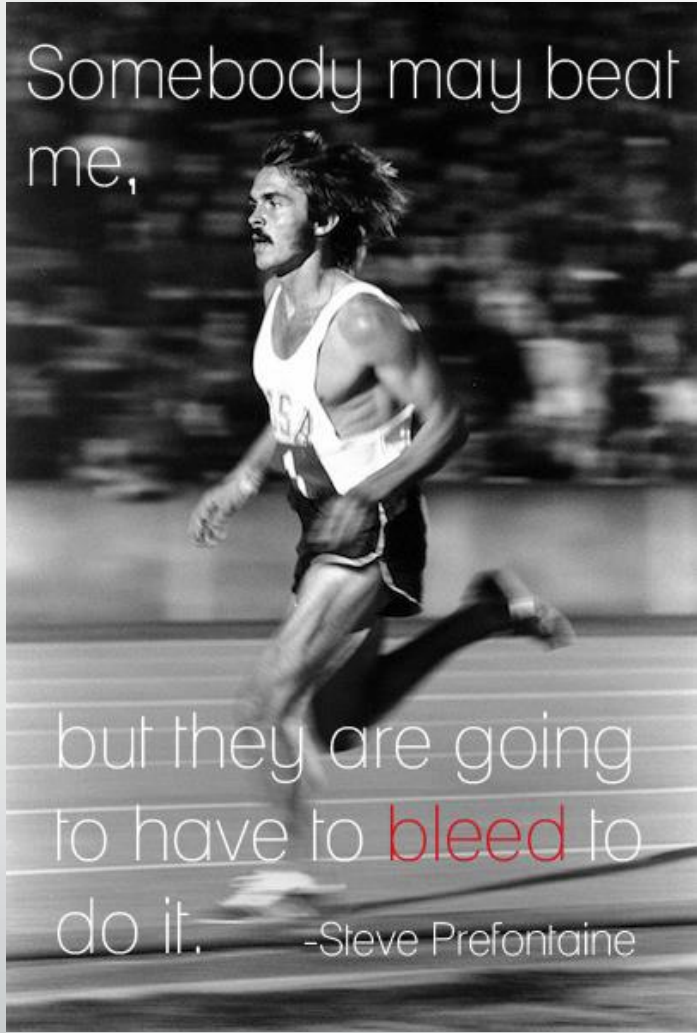
Next steps

- Monitor conditions of confinement if held
- Help family navigate the visitation process
- VISIT YOUR CLIENT!

- If released, make sure client understands conditions and consequences if not followed;
- Maintain regular contact with client
- Motion to modify conditions if necessary



Somebody may beat
me,



but they are going
to have to **bleed** to
do it. -Steve Prefontaine

Thank you
from my adolescent self!





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