



CONFINED WITHOUT CAUSE: CHALLENGING PROBABLE CAUSE AND DETENTION



Code:

Michelle Callari

Statewide Director of Youth Defense
New Jersey Office of the Public Defender

Kristina Kersey

Assistant Professor, University of Tennessee
Gault Center Southern Region, Co-Director

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- <https://easyretro.io/publicboard/2wnsm5YPtBbtYkQz93Ndq6jLFmg2/dc9eac24-658e-4d1f-b5a5-ab6dd8e3d6e9>

Session Outline

- I. Overview of What We Mean When We Say “Detention Hearing”
- II. Probable Cause Determinations
- III. Detention: Law, Preparing for the Hearing, Conducting the Hearing

Detention Hearings: Purpose?

To determine whether a youth will be detained pending trial.



What rights do youth have at detention hearings?



■ Right to Counsel

- *In re Gault, 387 US 1 (1967)*
- *6th Am requires counsel at all “Critical Stages”*

■ Notice of date/time/right to counsel

■ Notice of charges and discovery

Probable Cause?

Required before a
youth can be
detained.



What is the legal basis for the youth's right to a probable cause finding before detention?

Fourth Amendment



-Gerstein v. Pugh, 420 US. 103 (1975)

Requires PC determination as a “prerequisite to restraint of liberty following arrest.”

-County of Riverside v. McLaughlin, 500 US 44 (1991)

Miss. Section 43-21-309 - Detention and Shelter Hearings

- (1) A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:
 - (a) A written complaint or petition has been filed; and
 - (b) A court order has been entered for continued custody following a review of that custody at a detention hearing in delinquency and child in need of supervision cases and at a shelter hearing in abuse and neglect cases.



Section 43-21-309 - Detention and Shelter Hearings

- (2) Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; to his or her Court-Appointed Special Advocate (CASA) volunteer, if any; and to his or her counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.
- (3) 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

- (4)

- (a) At the conclusion of the detention or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the detention or shelter hearing order recites that:
 - (i) There is probable cause that the youth court has jurisdiction; and
 - (ii) Custody is necessary as defined in Section 43-21-301(3)(b).

Waiver of the hearing


- (5) The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself. The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. If the child has not reached his tenth birthday, the child's consent shall not be required.

PC determination is separate from other detention factors

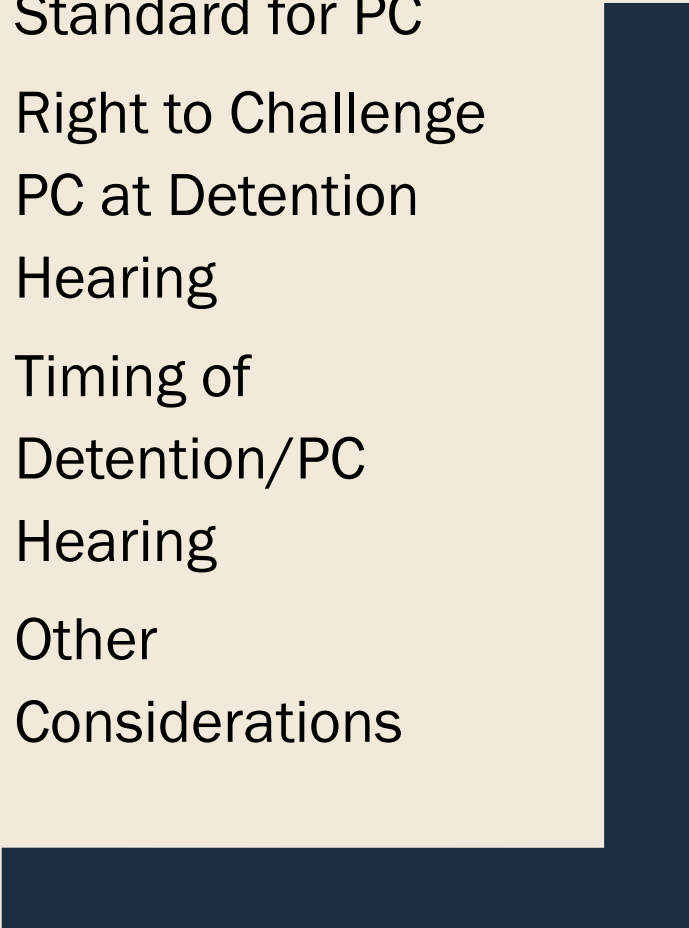
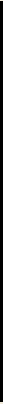
Detention hearing must include both:

- *Determination of **Probable Cause** AND*
- *Findings regarding dangerousness, risk of flight, social factors, whether there is some less restrictive alternative would address concerns of the court*





ACT I: CHALLENGING PROBABLE CAUSE



Standard for PC
Right to Challenge
PC at Detention
Hearing
Timing of
Detention/PC
Hearing
Other
Considerations

Probable Cause Determinations

Judge must find **2 separate things**:

- PC that an offense was committed, AND*
- PC our client was the one who committed the offense*

MUST RAISE & CHALLENGE PC EXPLICITLY

AGAIN: We must disentangle the probable cause determination from the question of whether detention is necessary to protect the child and public safety



SYSTEM STANDARD 3.4 Implement a basic infrastructure that protects youths' due process rights, including sufficient legal notice, protection from self-incrimination, probable cause determinations at detention, developmentally appropriate plea colloquies, and fair and reliable procedures in the probationary process

When must PC determination be made – in terms of TIMING?

Constitutional Requirement

- PC determination **within 48 hours**,
- State bears the burden of proving **emergency or other extraordinary circumstance** to justify delay. *County of Riverside v. McLaughlin*, 500 U.S. 44, at 57 (1991).
- Intervening weekends and holidays generally do not constitute an emergency.



43-21-301

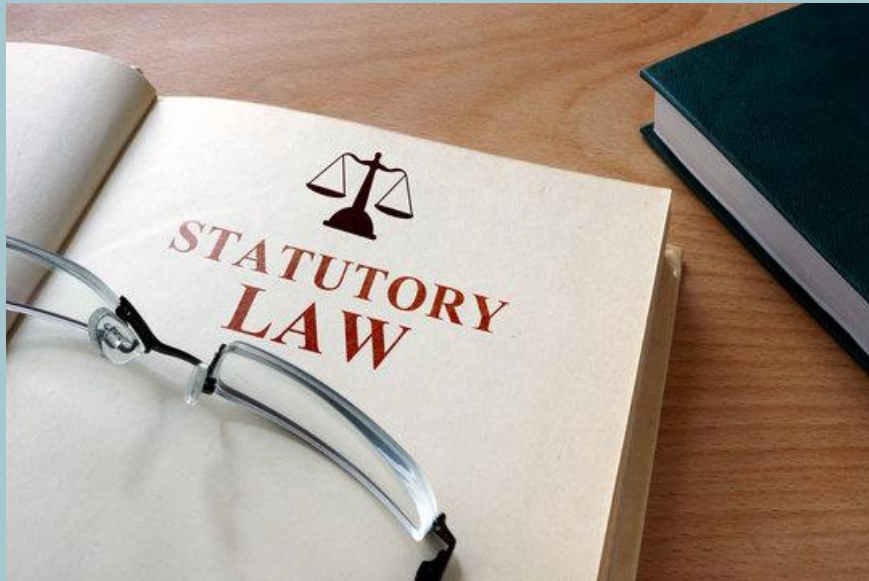
(3) The judge or his designee may require a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.

When is PC Required?

Gerstein says when there is a “restraint on liberty?”

- **STATES REQUIRE PC FINDING:**

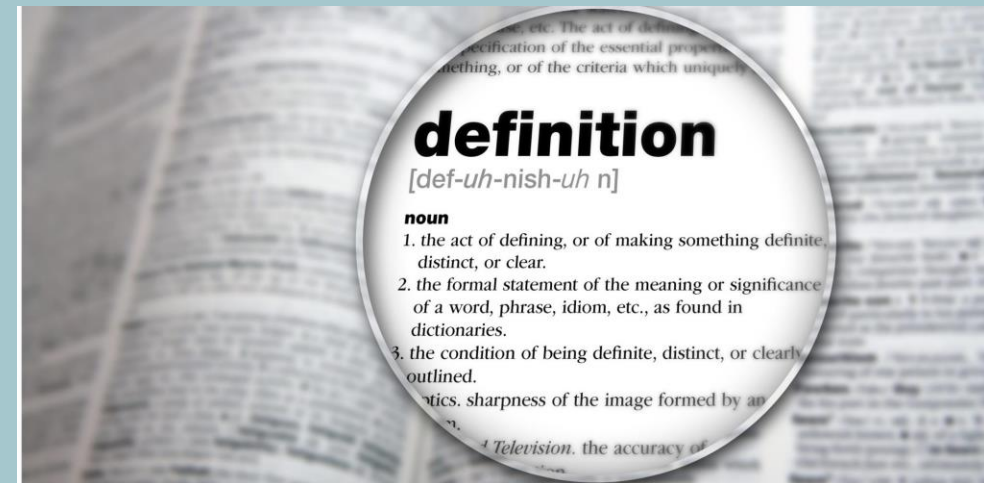
- *Most: Only require hearing when youth detained pending trial*
- *Some: Require hearing even when youth was arrested on warrant*
- *Argue: Even when youth is NOT detained – but court imposes conditions that severely infringe on liberty*



What Does “Probable Cause” Mean?

How do we define “probable cause”?

- Probable Cause is a relatively **low standard** of proof, but it is an important threshold question that must be satisfied by some appropriate quantum of information.
- There must be some “reasonable” grounds.



What if there is No Probable Cause?

Client must be released.



Different ways to determine PC

Nationally, two approaches to determine PC:

- *“On the papers” – “Gerstein proffer”*
 - sworn affidavits
 - police report (unsworn)
- *Full evidentiary hearing with witnesses – like a preliminary hearing*

CHALLENGE PC ON THE PAPERS

What kinds of arguments might you make when you are challenging probable cause on the papers?

- *Do facts alleged support charged offense?
Are all of the elements established?*
- *Do facts make out probable cause to believe your client did it?*
- *Is report/statement based on reliable source of info?*
- *Are there any affirmative defenses?*

“TIPS” FOR EFFECTIVE ARGUMENT

PC ON THE PAPERS


- State the theory of the argument (i.e., why No PC)
 - *Including theories related to no crime committed or no PC to believe our client did it*
- Identify and challenge any element that is not met
- Focus on one alleged offense at a time
- Include detailed facts to support the argument, not just generalized conclusions
- Challenge reliability of officers' source of information
- Raise affirmative defense
- Don't conflate PC facts with the social factors
- Have a well-organized argument & Deliver with passion




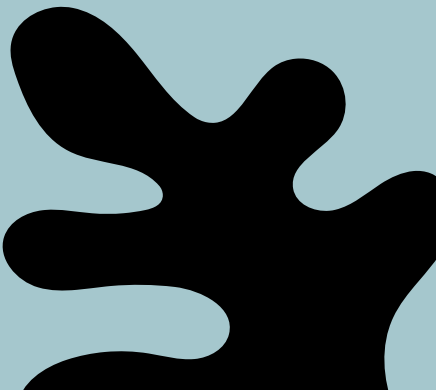
Full Evidentiary PC hearings?

Several state statutes
guarantee right to cross
examination at
PC/Detention





Miss. 43-21-309

- (3) 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.
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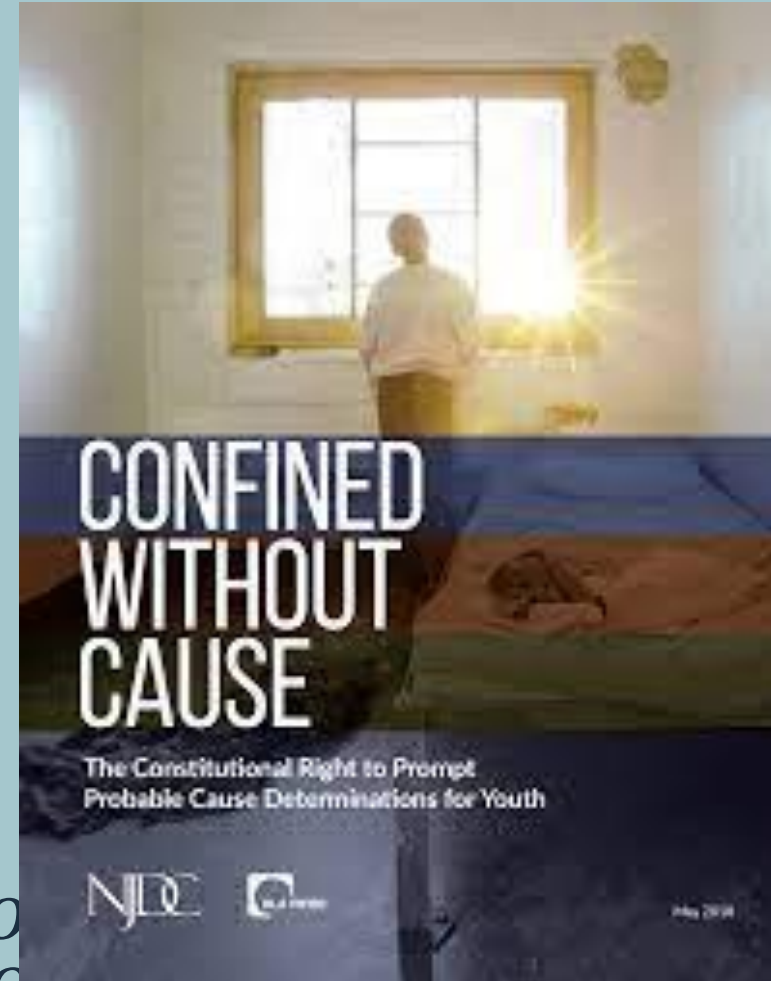
How Do We Demand an Evidentiary Hearing?

FIGHT FOR THE RIGHT TO CROSS EXAM

Check your statutes, rules, appellate opinions

Com. v. Ortiz, 393 Mass. 523, 534, 471 N.E.2d 1321, 1329 (1984)

“[s]ince the purpose of the probable cause hearing is to ‘screen out at this ... critical stage ... those cases that should not go to trial,’ ... defendants at such hearings must have the opportunity to cross-examine adverse witnesses and to present testimony in their own behalf to the extent available at a trial.”



Strategic Considerations with evidentiary PC hearing...



Waiving the Right to PC Hearing?

- *Almost never a good idea*
- *Weigh the risk that facts are SO damaging that judge will detain when the social factors alone might not lead the judge to detain. Rare.*

Calling Defense Witnesses?

- *Weigh the risk that defense witness may be locked into impeachable statements for trial VERSUS the likelihood that the witness will help defeat PC (and lead to dismissal)*
- *Unfortunately, often not a good idea because PC standard is so low, and we just end up setting our witness up for possible impeachment at trial.*

ACT II: CHALLENGING DETENTION

- I. Building the Release Argument
- II. Hearing Considerations
- III. Post Hearing: Continuing to Fight for Release

BUILDING THE RELEASE ARGUMENT



Building the Detention Release Argument

- A. *Theory of Release*
- B. *Detention Law*
- C. *Social & System Context*
- D. *The Research & Data to Support Release*
- E. *Client Driven Release Plan*

The Detention Release Argument





A. THEORY FOR RELEASE

REQUEST RELEASE
BASED ON YOUR
RELEASE THEORY



B. The Law

Statute, Cases, Procedures

- Presumptions for/against detention
- Age limits
- What elements are in your statute?

Timelines

- “but in no event later than 48 hours after arrest”
- Justice O’Connor in Riverside
 - (County of Riverside has 48 hour cut off...)

What are the fundamental legal criteria for the use of pretrial detention?

Detention Criteria

- ★ Danger to Themselves or the Person/Property of Others
 - Risk of Flight
 - Prior Failures to Appear for Court

Miss. Section 43-21-309

- (3) 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.
- (4)
- (a) At the conclusion of the detention or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the detention or shelter hearing order recites that:
 - (i) There is probable cause that the youth court has jurisdiction; and
 - (ii) Custody is necessary as defined in Section 43-21-301(3)(b).
- (b) In the case of a shelter hearing, the shelter hearing order shall further recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interest of the child, and, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:
 - (i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
 - (ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody.
- (c) In the event that the court makes a finding in accordance with paragraph (b)(ii) of this subsection, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

Miss. Section 43-21-301



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- (1) No court other than the youth court shall issue an arrest warrant or custody order for a child in a matter in which the youth court has exclusive original jurisdiction but shall refer the matter to the youth court.
- (2) Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.
- (3) The judge or his designee may require a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.
- (a) Custody orders under this subsection may be issued if it appears that there is probable cause to believe that:
 - (i) The child is within the jurisdiction of the court;
 - (ii) Custody is necessary because of any of the following reasons: **the child is in danger of a significant risk of harm, any person would be in danger of a significant risk of harm by the child, to ensure the child's attendance in court at such time as required, or a parent, guardian or custodian is not available to provide for the care and supervision of the child; and**
 - (iii) **There is no reasonable alternative to custody.**
- (b) **Custody orders under this subsection shall be written. In emergency cases, a judge or his designee may issue an oral custody order, but the order shall be reduced to writing within forty-eight (48) hours of its issuance.**

Rule 11. Temporary Custody Orders/Custody Orders

- (a) Delinquency and child in need of supervision proceedings.
- (1) **When a custody order may be issued.** The youth court judge or referee, a chancellor sitting as a youth court judge, or the judge's designee, and no other judge of another court, may issue an order to take into temporary custody or custody a child within the original exclusive jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the temporary custody order or custody order recites that:
 - (i) there is probable cause the child is within the jurisdiction of the youth court; and
 - (ii) there is probable cause that custody is necessary.
- **Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in section 43-21-301 of the Mississippi Code.**

How can you address “risk of flight?”



Youth has been compliant thus far

- Has appeared in other proceedings
- Was cooperative with police / turned themselves in
- If child isn't in lock-up, showed up today!
- If attends school, even if failing, shows ability to show up

Has a place to stay

- No history of running away
- Supportive parent/alternative guardian

How can you address “prior failures to appear?”



If there are prior failures, are there ways to mitigate?

- Wasn't aware of summons
- Didn't have proper notice of a hearing
- Was told by attorney, intake, or some adult - he didn't have to appear?
- Was locked up
- Was in another court
- Family emergency
- What factors in this case demonstrate this time is different?

The background features a dense, irregular pattern of small green and yellow dots. Two dark blue L-shaped brackets are positioned on the left and right sides, framing the central text. The left bracket is on the left side, and the right bracket is on the right side, both pointing towards the center.

SOCIAL & SYSTEM CONTEXT COURT
MAY CONSIDER

What is the judge most concerned about?

The charge

- No enumerated offenses require detention

Prior record

- No convictions. Or was years past. Or occurred after a particular life event?

Home supervision

- Family or alternate guardian can provide sufficient structure

School situation

- Attendance = supervision, dependability
- Positive aspects/reports

Time of offense

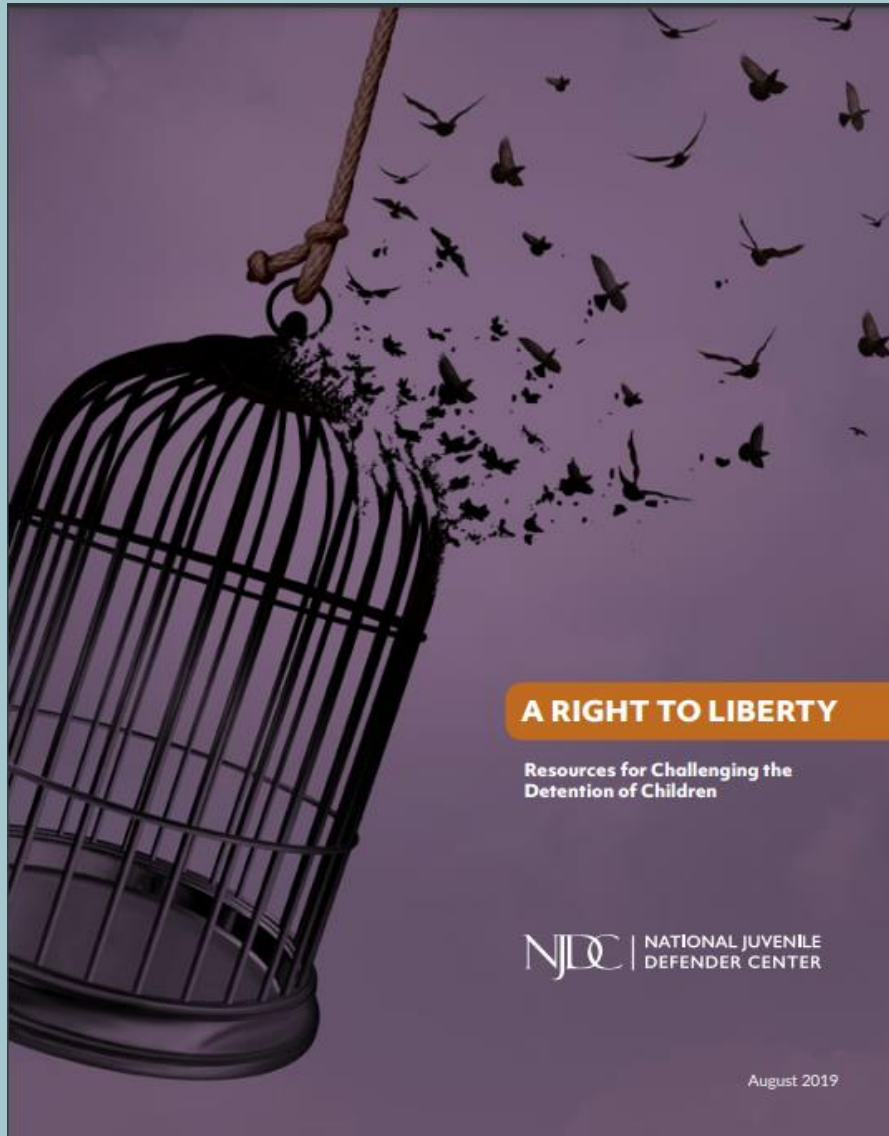
- Late at night? Right after school?

Other circumstances that come to light in hearing



THE RESEARCH

The Harms & What Works



RESOURCES FOR CHALLENGING THE DETENTION OF CHILDREN

- Annotated Bibliography on Risks Associated with Incarceration

Risks Associated with Incarceration

Derailing Education & Employment

Long-term Harm to Physical & Mental Health

Risk of Victimization

Risk of Increased Recidivism

Results from Iowa Youth Justice Council Talking Wall

Detention Derails Education

- *Why Youth Incarceration Fails, The Sentencing Project (Dec 2022)*

A Michigan study found that placement into a juvenile detention facility reduced the likelihood of high school graduation by 31%.

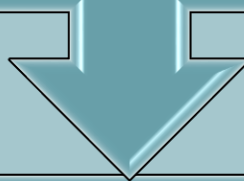
In a study from Cook County, Illinois, detention reduced the likelihood of high school graduation by 13%.

In Washington State, a 2019 study found that confinement in a juvenile detention facility reduced the likelihood of graduating high school by 28%.


Derailing Education

Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood
(Kirk & Sampson, *Sociology of Education* 86(1)36-62, 2013)

“an arrest that results in a period of confinement in a juvenile detention facility virtually guarantees that a student will not finish high school.”



Every youth in our sample who spent time in a juvenile detention facility ultimately dropped out of high school.



Although data limitations prevent us from examining the specific reasons, we suggest that time in juvenile detention makes stigmatization more likely and makes it difficult for a student to reengage in the schooling process.”

Derailing Employment

Jung, H. (2015). *The Long-Term Impact of Incarceration During the Teens and 20s on the Wages and Employment of Men*. Journal of Offender Rehabilitation

Apel, R. J., & Sweeten, G. A. (2009). *The effect of criminal justice involvement in the transition to adulthood*. US Department of Justice, National Institute of Justice.

Incarceration in juvenile facilities led to:

lower wages,

fewer weeks worked,

and less job experience by age 39,

as well as reduced total educational attainment

Incarceration in juvenile facilities:

significantly reduced employment rates, and

wages, and

participation in the labor force

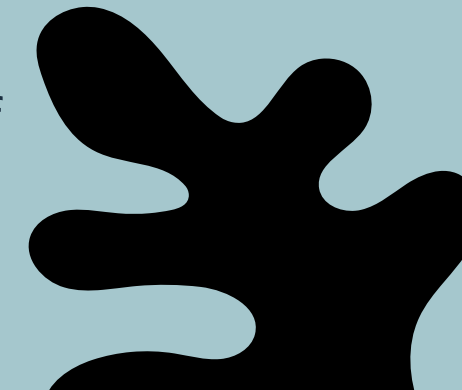


Risks Associated with Incarceration - Negative Health Outcomes

Risk of long-term physical and mental health harms

Barnert, E. S., Dudovitz, R., Nelson, B. B., Coker, T. R., Biely, C., Li, N., & Chung, P. J. (2017). How does incarcerating young people affect their adult health outcomes?. Pediatrics, 139(2).

Findings:

- **Depressive Symptoms:** Youth who faced incarceration of less than 1 month were more likely to have depressive symptoms as an adult
 - **General Health:** Cumulative incarceration of 1 month to 1 year as a youth, were more likely to have worse general health
 - **Functional Limitations:** Those with cumulative incarceration of more than 1 year were more likely to have adult functional limitations
- 

Risk of Victimization

Assault, Robbery, Theft - (Sedlak, McPherson, Basena, 2013)

- *Findings from the Survey of Youth in Residential Placement:*
 - 29% of youth in custody reported they were beaten up or threatened with being beaten
 - 46% of youth in custody reported their property being stolen
 - 56% reported violent victimization

Sexual Victimization – (Beck, Cantor, Hartge & Smith, 2012)

- *Findings from the National Survey of Youth in Custody*
 - 10% experienced sexual victimization while in custody

Risks Associated with Incarceration – Recidivism

Dishion & Tipsord, *Peer Contagion in Child and Adolescent Social and Emotional Development* (2011)

Congregate care
may increase
problem behaviors

(Gatti, Trembla & Vitaro, *Iatrogenic Effect of Juvenile Justice* (2009)

The more restrictive
the intervention,
the greater
likelihood of adult
arrest

Loughran, Mulvey, Schubert,
Fagan, Piquero, Losoya,
*Estimating a Dose-Response
Relationship Between Length of
Stay and Future Recidivism in
Serious Juvenile Offenders* (2009)

In the best case
scenario,
placement has no
significant effect on
recidivism

The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study

Sarah Cusworth Walker¹ 
and Jerald R. Herting¹

Crime & Delinquency
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A stay in pretrial juvenile detention increases a young person's likelihood of felony recidivism by 33% and misdemeanor recidivism by 11%

when a young person spends additional days in pretrial detention, their risk of recidivism jumps by 1% per day

the role pretrial detention can play in deepening the negative collateral consequences of court, including more severe sanctions, which appear to particularly affect racial and ethnic minorities involvement

the presumed benefits of pretrial detention to address safety concerns are overestimated

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



8.5% more likely to be
found guilty²

2x more likely to
reoffend than non-
detained youth³



60% do not return to
school or drop out
within five months⁴

Less special education
services
Fewer hours of instruction⁵



1 in 3

detained youth who are diagnosed
with depression developed the
condition after placement in
detention⁶



Parents are often
charged with detention
fees, which can total over
\$600 in some states⁷

DAYS
22

Average length
of stay in pre-trial
detention⁸

1.5x

Youth of color are
detained 1.5 times
more than white
youth⁹

SIMPLIFIED DATA

Harms of Juvenile Detention

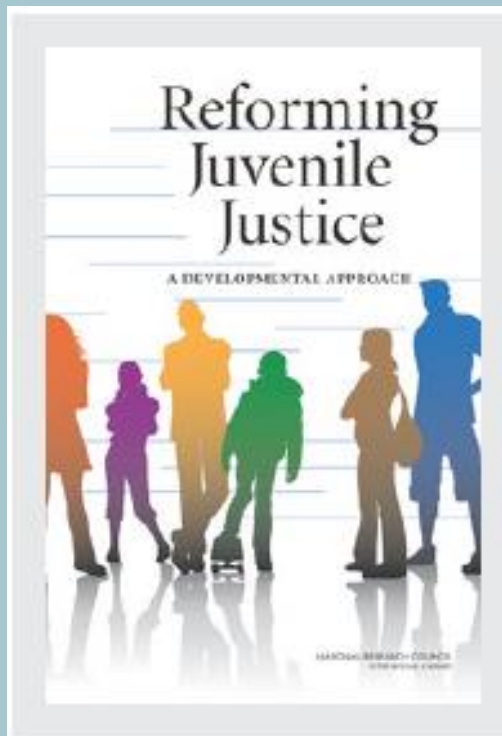
Harms of Detention

Talking Wall: Impact of detention on young people

Poor Conditions	Impact on Education	Isolation from Family & Support	Mental & Physical Trauma	Staff Issues
<ul style="list-style-type: none"> • No privacy, people can see when you use the bathroom • No soap to shower • Why you lock up kids with other problem kids • They refuse us showers, bathroom • It makes me sad, PTSD, no sleep, not loved • Sometimes go to bed hungry 	<ul style="list-style-type: none"> • Being in detention is hard on my mental health because of the schooling • They keep us in our room for an hour keeping us from school. We see other youth at school. Rules don't make sense. • I don't get credit for the work I do here in school 	<ul style="list-style-type: none"> • I'm not with my family • Makes me sad – I'm away from people who care for me • Not having family visits is hard • Not seeing my family, not being able to touch my family • I get depressed without family • It hurts to be away • Worst thing you could ever experience, miss my family 	<ul style="list-style-type: none"> • Dehumanizing • In HELL • They don't help you, keep you in your room all day, I feel more angry and depressed • It screwed up my mind, I saw things I should never have to see • You cry, pray you are safe • Assaulted by staff • Assaulted and emotionally hurt • Saw kids get punched who ain't do nothing 	<ul style="list-style-type: none"> • Staff will fight you • Leaves you with a lot of trauma – the guards scream at us, increases depression • Always threats from staff • Staff doing things to the kids • Makes me feel angry – how we are treated by staff • Staff abuse their power to make themselves feel good

WHAT WORKS: RESEARCH TELLS US

National Research Council 2013. ***Reforming Juvenile Justice: A Developmental Approach***. Washington, DC: The National Academies Press .



Three conditions are critically important to healthy development in adolescence:

- 1) the presence of a **parent or family figure** who is involved with the adolescent and concerned about his or her successful development,
- 2) **inclusion in a peer group** that values and models prosocial behavior and academic success, and
- 3) activities that contribute to **autonomous decision making and critical thinking**.

Research Overview on Positive Youth Development

Studies consistently confirm that incarcerating young people causes great harm, including increased victimization, recidivism, school drop-out, and long-term physical and mental health issues. Fortunately, research also identifies what young people need for positive, healthy development which, in turn, promotes public safety. Young people should have time for and access to activities, environments, and people that will help them grow to become thriving adults.

FRESH AIR / FREE TIME	<p>Harrison Pinckney et al, <u>Black PlayCrit: Examining the Disruption of Play for Black Male Youth</u>, 13 Am. J. of Play 210 (2021).</p> <ul style="list-style-type: none">Depriving youth, particularly Black youth, of their freedom to engage in play, which is vital for healthy development, is rooted in historically oppressive social constructs that have deprived Black children of their childhood and the freedom to play. <p>Linda L. Caldwell & Peter A. Witt, <u>Leisure, Recreation and Play from a Developmental Context</u>, <u>New Directions for Youth Dev.</u>, 130 (2011).</p> <ul style="list-style-type: none">Young people need to have opportunities to find activities that are inherently interesting and intrinsically motivated, which should include time for unstructured activities, to promote healthy development. <p>Linda L. Caldwell, <u>Preliminary Effects of a Leisure Education Program to Promote Healthy Use of Free Time among Middle School Adolescents</u>, 36 J. Leisure Resch. 311 (2004).</p> <ul style="list-style-type: none">Role and identity experimentation, which typically occur within the context of free time, play a vital role in fostering healthy development.Encouraging youth to take charge of their leisure time by engaging in activities that enhance their overall wellbeing promotes positive behaviors and reduces negative behaviors. <p>Susan Strife & Liam Downey, <u>Childhood Development and Access to Nature: A New Direction for Environmental Inequality Research</u>, 22 Organ Environ. 100 (2009).</p> <ul style="list-style-type: none">Children's exposure to nature positively impacts their overall development by improving cognitive functioning and social skills while reducing stress, among other factors. Conversely, when children have limited exposure to nature, they are more likely to endure negative and long-term developmental consequences.Children gain a wide range of cognitive, emotional, and physical advantages from having access to nature and green spaces. These benefits include enhanced concentration, improved academic performance, reduced stress and aggression levels, and a decreased likelihood of obesity.
COUNSELING	<p>The Annie E. Casey Found., <u>Transforming Juvenile Probation A Vision for Getting It Right</u> 10 (2018).</p> <ul style="list-style-type: none">Initiatives aimed at enhancing psychosocial development in young people through positive youth development opportunities and counseling, specifically utilizing cognitive behavioral approaches, have a tendency to lower recidivism rates.

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WHAT WORKS

Young people should have time for and access to activities, environments, and people that will help them grow to become thriving adults.

<https://www.defendyouthrights.org/wp-content/uploads/Research-Overview-on-Positive-Youth-Development.pdf>

WE KNOW WHAT WORKS



AT THE CLOSE OF TREATMENT

Multi Systemic Therapy (MST)
HAS BEEN RIGOROUSLY
EVALUATED AND SUPPORTS
YOUTH IN COMMUNITY

Therapists work with youth at home, school, and where they live to strengthen positive relationships. And it saves tax dollars!

UP TO
\$23.59
ROI FOR EVERY
DOLLAR SPENT

UP TO
\$200K
NET BENEFIT
PER YOUTH

"Simply the best book I have ever read about adolescence. . . With gentle wisdom, Steinberg guides us through truly novel findings on what happens during adolescence and tells us how, as parents and teachers, we should change our ways."

— MARTIN E. P. SELIGMAN, Ph. D., author of *The Optimistic Child*

Age of Opportunity

LESSONS FROM THE
NEW SCIENCE OF ADOLESCENCE

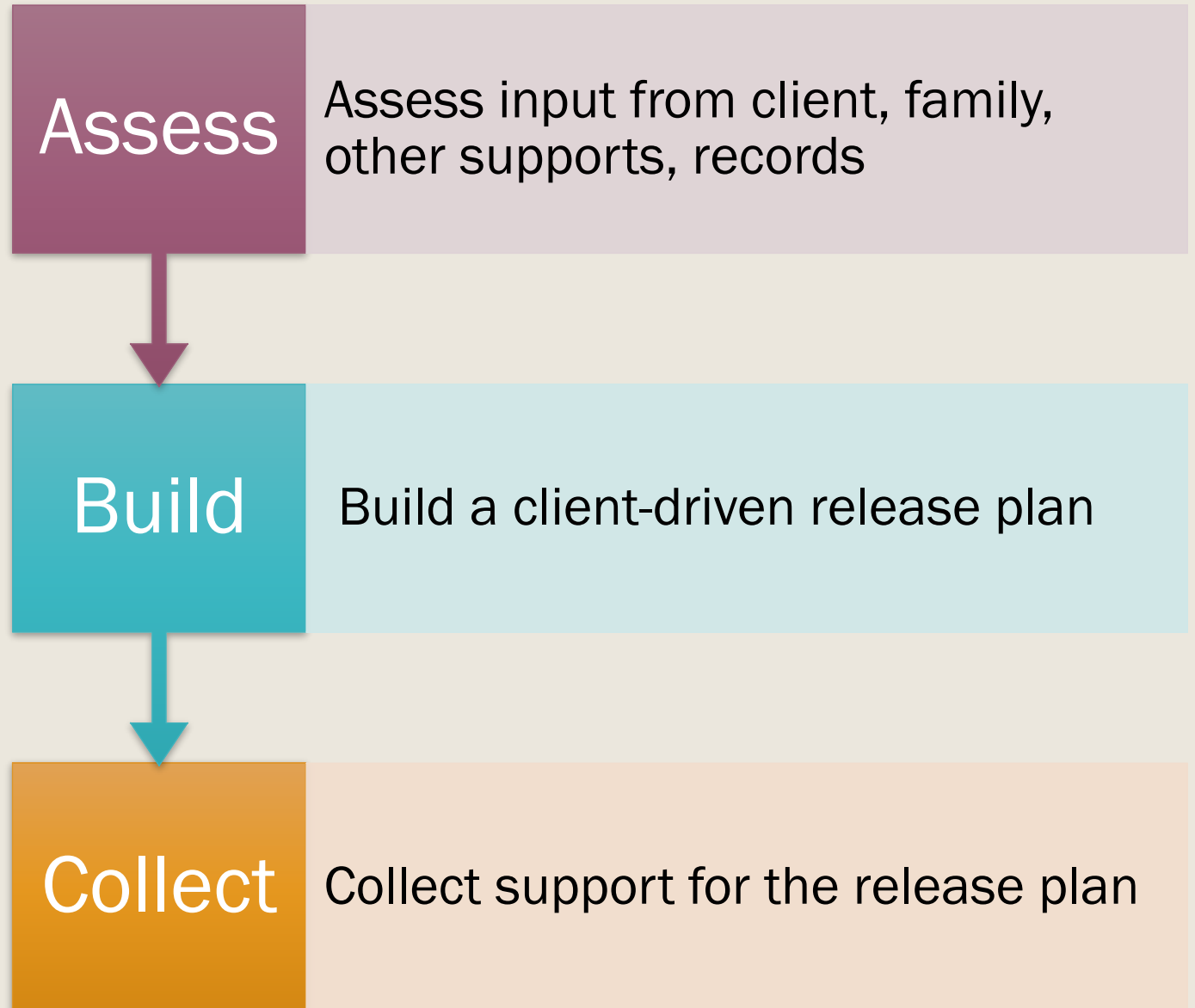


Laurence
Steinberg, Ph. D.

“PLASTICITY OPENS THE BRAINS WINDOWS TO THE OUTSIDE WORLD, BUT OPEN WINDOWS CAN LET IN POLLEN, NOISE, AND MOSQUITOS JUST AS EASILY AS OCEAN BREEZES, BIRDSONG, AND FRAGRANCES OF FLOWERS. WHEN THESE WINDOWS ARE OPEN ESPECIALLY WIDE AS THEY ARE IN INFANCY AND ADOLESCENCE, WE MUST BE ESPECIALLY ATTENTIVE TO WHAT COMES THROUGH THEM.”

“ADOLESCENCE IS OUR LAST BEST CHANCE TO MAKE A DIFFERENCE”

Client-Driven Release Plan



An illustration on the left side of the slide shows several large, stylized hands in various colors (white, brown, green) reaching out to hold a group of five diverse people. The people are standing on a small platform and have their arms raised in a celebratory gesture. The background is a dark purple with white stars and a small green plant growing from a pot. The overall theme is one of support and community.

Detention Alternatives

- ❖ What currently exists in communities?
 - *not necessarily in “the system”*
- ❖ What do young people say they wish was available in the community?
 - *client driven*
- ❖ What do caregivers say they wish was available in the community?
 - *family engagement*

Release Plan: “Freedom to Be”

Young people in detention said they wish they had:

Access to activities

- Recreation
- Artistic Outlets
- Emotional Outlets
- Free options for playing
- Youth Organizations

Education and skill-building support

- Supportive school environment
- Respect and caring from adults
- Safe outlets for emotion and anger during school
- Academic support while in juvenile system
- College preparation assistance
- Life skills education

Better Treatment by System

- Ability to stay at home
- A caring community
- Fair and respectful treatment
- Acknowledgement of unique needs (females, siblings, LGBTQIA+)
- Allow non-harmful use of technology by youth

Prosocial support systems

- Mentors and Prosocial Supporters
- Area for youth to release frustrations
- Respect and encouragement from others
- Reentry and aftercare services
- Positive and similarly situated peer groups
- Secure reporting of issues
- Freedom from stigma and judgement

Support for basic needs

- Healthcare
- Food
- Housing
- Clothing
- Hygiene and other personal care needs
- Water & sanitation
- Funding for basic needs
- Skills for transition to independent living
- Advice and support to navigate life management

DEVELOPMENTALLY SOUND SCHEDULE

Develop a release plan
that is realistic,
individualized, and built
on what works.

Weekly Schedule							
Time	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
8:00 AM							
9:00 AM	<u>Family, Community, Spiritual, or Other Mentorship Activity</u>						
10:00 AM		<u>School</u>	<u>School</u>	<u>School</u>	<u>School</u>	<u>School</u>	Community Service
11:00 AM							
12:00 PM							
1:00 PM				<u>Fresh Air / Free Time</u>			
2:00 PM		Tutoring	Tutoring	Tutoring	Tutoring	Tutoring	
3:00 PM							
4:00 PM		<u>Sports / Extracurricular Activity</u>	<u>Sports / Extracurricular Activity</u>	<u>Sports / Extracurricular Activity</u>	<u>Sports / Extracurricular Activity</u>	<u>Sports / Extracurricular Activity</u>	
5:00 PM				Travel			
6:00 PM		Travel	Travel	<u>Counseling</u>	Travel	Travel	
7:00 PM		<u>Fresh Air / Free Time</u>	<u>Fresh Air / Free Time</u>	Travel	<u>Fresh Air / Free Time</u>	<u>Fresh Air / Free Time</u>	
8:00 PM		Chore / HW	Chore / HW	Chore / HW	Chore / HW	Chore / HW	
9:00 PM							

The Detention Release Argument



CONTINUING TO FIGHT
FOR RELEASE

Detention Release Strategies?



Motion for rehearing



Motion to modify order



**Motion for release based upon a
change in circumstances**



**Furlough applications for specific
programs/events**



Motion to review detention status

Next Steps

- Monitor conditions of confinement if held
- **Help family navigate release process**
- If released, double check order – correct conditions?
- **Make sure client understands conditions and consequences if not followed**
- Maintain regular contact with client
- **Motion to modify conditions if necessary**
- Where necessary, document issues/conflicts

PC/Detention Resources

- A Right to Liberty: Resources for Challenging the Detention of Children (2019)
- ABA Report & Resolution Opposing Indiscriminate Shackling
- Affidavit of Dr. Marty Beyer
- Annotated Bibliography: Probable Cause & Detention
- Annotated Bibliography: Decriminalizing “Play”
- Annotated Bibliography: Stereotype Threat
- Annotated Bibliography: Implicit Racial Bias Studies
- Annotated Bibliography: Policing as Trauma
- Confined Without Cause: The Constitutional Right to Prompt Probable Cause Determinations for Youth
- Defense Manager-Supervisor Tool for Best Practices in Detention Advocacy
- Defender Self-Assessment Tool for Detention Advocacy
- Juvenile Facilities Checklist for Defenders (2019)
- Legal Strategies to Reduce the Unnecessary Detention of Children
- No Place for Kids: The Case for Reducing Juvenile Incarceration (Annie E. Casey Foundation Report)
- 10 Principles for Detention Practice
- Sample Motion to Oppose Psychological Evaluation
- Sample Motion to Reduce Detention
- Sample Motion to Reduce Detention with Harms of Detention
- Sample Motion for Child to Appear Free from Restraints
- Sample Risk Assessment Tool
- Shackling Court Rule Statute Summaries
- Systematic review: Impact of juvenile incarceration (2024)
- The Impact of Pre-trial Juvenile Detention on 12-Month Recidivism (2020)
- Harms of Detention Infographic
- JPI Report – Dangers of Detention

This resource is part of the Youth Defender Advocacy Program (YDAP) curriculum, a specialized trial advocacy training program for youth defenders.

The Detention Release Argument





WHAT WILL YOU WANT TO TRY?