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J U V E N I L E D E F E N D E R

Disposition Practice Tool

Disposition determines the scope of the juvenile court system’s continued involvement in a child’s life and any infringements upon their liberty. While client-directed advocacy is important at all stages, it is critical at disposition, especially in cases when the client is facing a serious charge, has a significant court history, or is viewed as “high needs.” Children must fulfill the conditions ordered at disposition and the juvenile defender must ensure the child’s disposition plan is well-considered and clearly and positively presented to the court. Effective disposition advocacy

will improve the likelihood that the disposition outcome will lead to youth success.

While statutes, rules, and practices in each jurisdiction differ, this practice tool provides juvenile defenders with strategies and tactics that can strengthen disposition advocacy.

Disposition planning begins the day you meet your client.

EARLY INVESTIGATION

The information you gather during early investigation of the case for use at detention hearings, plea/diversion discussions, and/or in trial preparation is also critical for disposition planning. Keep disposition in mind as you investigate the case; strategizing at the start of the case will strengthen your options at disposition.

- **Collect school records:** Examples of positive achievement are important to highlight at disposition, as are areas in which your client faces challenges so you can contextualize or mitigate them. Consider collecting information about:
 - Grades / certificates of achievement
 - Attendance
 - Discipline record or lack thereof
 - Outside learning (such as tutoring) / counseling records / individualized education plans
 - Extracurricular activities
- **Interviews with witnesses:** Any person you interview may have information that impacts disposition. If you are interviewing witnesses early in the case, prepare for the interview as if you will not have access to them again before disposition. Consider disposition issues every time you speak with a witness:
 - **Alleging Witness** - If you have the opportunity to interview the complaining witness, consider asking what they hope will happen at disposition. If it is punitive, you will gain insight into a potential victim impact statement you may have to contend with at disposition and you may be able to educate the witness about delinquency system consequences. If the alleging witness does not want to see your client harshly punished, getting your own victim support statement may be helpful at disposition.
 - **Eyewitnesses** - Eyewitnesses may be able to minimize or contextualize your client's involvement in a way that is helpful for disposition mitigation.
 - **Character Witnesses** - Witnesses who can attest to your client's positive character traits can be very influential at disposition. While a court appearance or testimony is often better, letters and signed statements can also be helpful. Examples of potential character witnesses include teachers, counselors, coaches, faith leaders, employers, or other positive adult role models.

UNDERSTANDING WHAT OTHER STAKEHOLDERS WILL REQUEST

Probation officers, prosecutors, complaining witnesses, and even your client's family members likely all have opinions about what disposition is best for your client. Understanding these perspectives and being prepared to counter them if they conflict with your client's goals is important. Early discussions with them may also allow you to share your client's strengths and supports prior to any plan or request being finalized.

- **Did you contact/speak with the probation officer (with your client's consent) about the probation pre-disposition report?**
 - Will providing information about your client's individual strengths and supports, as well as their individual interests, positively influence probation's pre-disposition report?
- **Did you receive a copy of the pre-disposition report prior to the hearing?**
 - Every jurisdiction has different rules about when or how court-ordered reports must be provided to the defense prior to the disposition hearing. Are you receiving what you are entitled to in accordance with the rules? Did a lack of compliance with the rule hamper your preparation for the hearing? Is it an effective, strategic decision to litigate such violations? If you are not receiving pre-disposition reports from probation in time to thoughtfully review and respond to them, have you considered non-litigation options to raise timeliness with probation or the court as a systemic issue?

- **Does the pre-disposition report you received highlight your client's strengths?**
 - If strengths are missing, do you have a plan to highlight them in your advocacy?
- **Does the report accurately reflect your client's individual goals and/or challenges?**
 - Are the recommendations targeted to address your client specifically, or is the report a generic list of programming without individual application to your client?
 - Have you and your client developed alternative, less-restrictive disposition plans to offer the judge that address concerns raised in court? Have you and your client considered "creative" solutions geared to your client's long-term success that provide options for the judge?
- **Did you discuss the pre-disposition report with your client?**
- **Are the pre-disposition report's recommendations in line with your client's expressed interests? If not, is your client willing or able to manage the recommendations?**
 - If there is something your client is unable to manage, did you and your client discuss an alternative that is more manageable?
 - If there is something your client is unwilling to manage, did you and your client identify a potential alternative that is more appropriate?
- **With your client's consent, have you reached out to family members, complaining witnesses, or others who may offer an opinion at the disposition?**
 - Did you talk with your client's family about disposition and the critical role they play?



Tell your client's story

DEVELOPING A DISPOSITION THEORY

- **Did you prepare a theory of disposition to present to the court? Does this theory explain who your client is, how they got here, and why they won't be back? Does the theory provide a reason for the court to order a less-restrictive disposition? For example:**
 - **Minimal Participant:** Client was a passive participant in the offense (the follower, not the leader).
 - **Pressure from Older Youth:** Client was pressured by older youth and would not ordinarily engage in such behavior.
 - **Non-Violent Nature of Offense:** If the offense was non-violent and there were no physical injuries, client is not a risk to the community.
 - **Rare or Changed Behavior:** Isolated nature of the offense and positive changes in client's behavior since the offense demonstrate this offense is not the client's true character.
 - **Remorse:** Provide evidence client is remorseful and understands that what happened was wrong.
 - **Self-Defense:** Does your client live in a dangerous neighborhood in which carrying a weapon is viewed as necessary for self-defense?
 - **Cultural Norms:** The young person's actions are viewed as necessity within your client's community or culture (e.g. a brother has to protect his siblings).
 - **Family Support:** Client stole something in a misguided but noble attempt to provide for a family member.
- **Does your theory transform your client from a "respondent" or "defendant" into an average adolescent? Does it contextualize or mitigate the offense and/or the need for intervention?**
 - In many cases, other stakeholders focus their narratives on what your client did and define children by the offense. At disposition it is the defender's role to reframe their client's court involvement by elevating the client's character strengths and framing their personal narrative to the context of what happened and why.

Provide an alternative disposition plan

PREPARING DISPOSITION MEMO AND MATERIALS

Juvenile defenders should advocate to minimize court supervision in their clients' lives and avoid incarceration. Defenders must be prepared to show the court and other stakeholders that less restrictive conditions are appropriate to address their concerns.

- **Have you worked with your client to develop a disposition plan to present to the court?**
- **Have you written a defense disposition report or memorandum to the court as an alternative narrative to the pre-disposition report prepared by probation? (Even if you decide not to submit it in advance, preparing your own report can help to organize and prioritize your arguments.)**
 - Does your plan include a recommendation about your client's legal status (dismissal in the interests of justice, post-disposition diversion, probation with limited conditions, etc.) that is in line with your client's expressed interests?
 - Does your plan specify where your client will sleep each night (at home, with a relative, in a group home)? This element is usually of utmost importance to your child client.
 - Does your plan offer less-restrictive programs or a schedule of activities your client supports and that address the court's supervision and programming concerns?



- Have you spoken to your client about the differences and similarities between the defense disposition plan and the probation plan? Have you discussed the possible outcomes of the hearing?
- **Have you spoken with character witnesses (family, teachers, clergy, employers, etc.) who may provide the court with a helpful perspective on your client’s strengths or demonstrate the support your client has in the community?**
 - Can they come to the hearing to speak on your client’s behalf?
 - Can they write a letter of support that you can provide to the court?
 - Can they provide you with other materials (certificates, awards, accommodations) that will demonstrate your client’s positive achievements to the court?
 - Are any willing to take an active role in your client’s supervision in the community?

Advocacy at disposition must be client-directed

PREPARING YOUR CLIENT FOR DISPOSITION

Ensure your client’s voice and perspective are presented at disposition. Juvenile defenders must learn their client’s goals for disposition, help them identify their strengths and challenges, and prepare them for what others may be saying or requesting at the hearing.

- **Have you prepared your client for the disposition recommendation that will be given by probation and/or the prosecutor?**
- **Did you discuss the process of the hearing, who will speak and when?**
- **Did you talk with your client about how and when you will offer your defense disposition plan?**
- **Have you prepared your client for possible negative scenarios?**
 - Does your client understand each of the steps you plan to take to try to avoid those scenarios?
 - Is there something you or your client can do in advance to help avoid those scenarios?
- **Does the judge expect your client to speak at the disposition?**
 - If so, what kinds of things does the judge typically ask young people at this stage?
 - If not, does your client want to say something anyway? Do you think it would be helpful or harmful? Have you discussed the possible pros and cons of speaking in court with your client?
 - Would role-playing the questions help?
- **Have you counseled your client about likely dispositional outcomes?**
 - Have you shared with them the harms of confinement, particularly if your client is fed up with probation or something happening at home and wants to ask for an out-of-home placement just “to get away”?

Help young people understand the disposition order

IF YOUR CLIENT IS PUT ON PROBATION:

- **Were you, your client, and your client’s family given a copy of the disposition order and conditions of probation?**

- Did you go over every condition with your client?
- Did you explain to your client what is expected for each condition, so they understand how to succeed? (For example, weekly drug testing does not mean any time your client wants to go in for testing, but on the day and at the time required by the testing program.)
- Does your client know what to do if they are having trouble fulfilling conditions of probation? Developing strategies with clients that may include reaching out to you or keeping logs of unsuccessful attempts to fulfill conditions may help stave off revocation in the future.
- If your jurisdiction has regular review hearings, discuss these hearings with your client so they know what to expect.

IF YOUR CLIENT IS REMOVED FROM THEIR HOME AND SENT TO A FACILITY:

- Did you speak with your client so they understand what is happening?
- Does your client understand the terms, length, and expectations of the out-of-home placement?
- Does your client's family know where your client is going and how to contact them?
- Whether or not you are authorized to provide post-dispositional advocacy, does your client understand who to contact if they need legal help while in any out-of-home placement?

Disposition is perhaps the most critical point of many juvenile cases and has both immediate and long-term consequences for your client's life. Taking a thoughtful, creative, and individualized approach to each and every disposition will help ensure that the client's goals and strengths are fully considered by the court and that the resulting disposition sets the client up for success.



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