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

Post-Disposition Practice Tool

Making Post-Disposition Advocacy Achievable

Heavy workloads and the culture in many courts can make it difficult for juvenile defenders to stay connected to clients post-disposition. Even after disposition in juvenile court, young people face legal issues that affect — and often threaten — their liberty, their safety, their due process and civil rights, and their access to future opportunities. We cannot expect young people to know how to navigate these issues on their own. If defender offices and legal practices

are unable to provide post-disposition access to counsel, juvenile defenders should explore partnering with law school clinical programs and other local legal services agencies. No child should be left without legal counsel while in the deep end of the system.

This practice tool provides questions for consideration, strategies, and practice tips for post-disposition advocacy.

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PRACTICE TIPS

Juvenile defenders often face high workloads and may find it difficult to balance post-disposition matters with the high volume of pre-disposition cases. This practice tool offers some tips for managing post-disposition advocacy:

- Keep two running lists of youth who are post-disposition: one of youth placed at home (likely “on probation”) and one of youth in any out-of-home placements. Keep these lists in a place where you see them regularly. This will help keep post-disposition clients in your sight, and on your mind.
- Identify clients you anticipate might have particular challenges post-disposition. Even if you can't assist all clients, try to focus on those who may most benefit from your advocacy.
- Calendar specific time each week to devote to client check-ins or a particular post-disposition matter. Making post-disposition outreach and advocacy routine, even in small quantities, may help you integrate it into your practice and lead to improved outcomes for youth.
- Set a calendar reminder or develop some other alert system to remind yourself about time-specific issues, such as the right to seal or expunge records; when to consider Motions to Terminate Probation Early or Motions for Early Release; when to apply for registry removal; etc.
- Develop a form letter or a standard motion for some of these more common interventions that can be used repeatedly and save valuable time later.
- Make a simple chart to track the impact of your post-disposition efforts to inspire yourself and others (e.g. records cleared, probation closed successfully, appeals taken, early release, etc.)
- State-specific juvenile post-disposition and collateral consequences materials are continually being developed. Contact the National Juvenile Defender Center at inquiries@njdc.info or visit www.njdc.info for information about your jurisdiction.

Preserving Your Client's Appellate Rights

Juvenile defenders must take the time to discuss the pros and cons of an appeal with their youth clients. Understanding the complexities of an appeal is difficult and youth need immediate assistance in assessing whether to pursue one. It is the trial lawyer's responsibility to consult with clients about their right to appeal.¹ As a practical matter, in many jurisdictions, it also falls to the trial attorney to file the initial notice of appeal for the client, even if that attorney will not be handling the appeal.

- **Have you counseled your client about potential issues for an appeal?**
 - Did you explain the appeals process to your client?
 - Did you explain the pros and cons of an appeal to your client?
- **Do you understand whether your client wishes to pursue an appeal?**
- **Did you file a notice of appeal on your client's behalf, if appropriate? Every jurisdiction has a specified time limit in which a notice of appeal must be filed. Even if you will not be the attorney who ultimately takes the appeal, you still need to help preserve your client's rights to an appeal.**
- **If you are unable or unwilling to take on the appellate representation, is there someone to whom you can refer the client for appellate assistance?**
 - Have you provided the appellate attorney with your view of the appealable issues and other context that might not be readily identifiable from the transcripts?
- **Are there other state and federal collateral attacks on the case, such as *habeas corpus* (a writ challenging incarceration due to a legal error) or *corum nobis* (a challenge to the adjudication on "fundamental fairness" grounds) that are possible in this case?**
 - Have you explained these to your client?
 - Do you understand whether your client wishes to pursue any of these?

For Clients Remaining at Home

MAINTAIN CONTACT WITH CLIENTS REMAINING AT HOME

In some jurisdictions, a significant portion of youth end up in out-of-home placements as a result of technical violations of probation. When juvenile defenders maintain contact with their clients remaining at home, they are more likely to help clients avoid probation violations or revocation. In some cases, juvenile defenders can even work with their youth clients to have probation terminated early if things are going well.

- **Do you know who your client's probation officer (PO) is?**
 - Would the probation officer be willing to notify you if there are potential issues before filing a revocation or petition to modify probation?
- **Have you made contact with your client (or guardian, if that is appropriate) in the past month to see how things are going? The past three months? Six? Year? If regular monthly contact is not feasible for you due to workload, distance, or some other factor, is there someone else in your office who could schedule regular check-ins? A paralegal, social worker, or law student intern?**

¹ Roe v. Flores-Ortega, 538 U.S. 470 (2000).

- Has your client been able to manage the conditions for remaining at home? If not, could you file a motion to modify and request alternative conditions that are more in line with your client's strengths and interests? If your client is doing well, how can you document that in case you need it later? The system is set up to document challenges, but doesn't always do a good job of building a record of progress, achievements, and strengths.
 - Are there any obstacles making it difficult to fulfill the conditions?
 - Does your office have a social worker who could help the client overcome those barriers? Can you move to modify the terms of probation to address this and avoid revocation?
 - Has the probation department done all it is required to do to support your client's success on probation? If not, have you contacted probation to rectify the problem? If probation continues to fall short, you have an important strategic decision to consider with your client. Should you petition the court to order probation to offer more support? Will this get your client the support they want and alert the court that potential alleged violations are not their fault? Or will this get your client into a court-ordered service that, while on its face looks helpful, can end up hurting your client if it is not effective or is not something they want? **CAUTION: These are important strategic decisions that must include thoughtful discussions with your client.**
- **If your client is consistently doing well, can you move for early termination of probation or modification of the term of disposition to something less restrictive?**

PROBATION REVOCATION ADVOCACY

In most states, youth have a due process right to counsel at probation revocation hearings. The consequences of revocation are serious: children can be removed from their homes and schools or face other significant restraints on their liberty. Juvenile defenders should be prepared to respond to the allegations, and to develop a new disposition plan should revocation occur.

- **Have you had sufficient notice to conduct investigation?**
- **Have you had time to talk to your client about the allegations and to learn their perspective? Have you discussed how the allegations could impact their current legal status?**
- **Constitutionally, every child has the right to two separate hearings at the probation revocation stage: a hearing to provide notice of the violation allegations and decide whether there is cause to believe a violation has occurred, and a second hearing to adjudicate the alleged violation.² Many jurisdictions combine these into a single hearing, but that technically requires a child to agree to the single hearing. Have you and your client considered the strategic implications of each approach?**
 - What does your client ultimately want to see happen? If your client is so frustrated with probation that they are looking at placement as a respite, have you provided counsel and offered to help resolve challenges?
 - Do you have enough information about the allegations to properly defend against them?
 - Have you and your client discussed the costs (e.g., more detention) and benefits (e.g., more preparation) of seeking a continuance?
- **If your client is found to have violated terms of the probation, do you have a disposition plan prepared?**
 - In some jurisdictions, even if a violation is found, the court is not required to revoke. Do you have arguments in favor of this approach?
 - If revoked, do you have arguments for reinstating your client on a new term of probation, with different services or obligations that will address your client's needs and strengths while also answering the court's concerns?
 - If reinstatement on probation is not possible, do you have arguments for a less restrictive form of placement?

² See *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Additionally, many states have case law or statutes setting up a similar two-step procedure.

For Clients Placed Out-of-Home

In some jurisdictions, judges have continuing authority over youth, even after they have been placed out-of-home. In others, that authority is transferred to the state agency. However, there may be mechanisms under local law for judges to “review” a youth’s progress, even if the judge has no legal enforcement power. Such oversight can put pressure on state agencies to make necessary changes. In other situations, civil law suits or collateral habeas proceedings may be possible, even if you cannot personally represent the client.

PRE-PLACEMENT DETENTION

Youth may sometimes be held in detention facilities while “awaiting placement” in another institution or residential program. Defenders can help ensure youth do not languish awaiting placements.

- **Is there a waitlist for the facility to which your client has been ordered? If so, will the child be held in detention pending placement? What is the expected time the child will be held while awaiting placement? Have you argued for “time-served” or “credit” for the time your client spends awaiting placement?**
- **If the facility to which your client has been ordered is considered “non-secure” or “staff secure,” can you use that to strengthen your argument against secure detention pending placement?**
- **Are there services your client wants that were ordered at disposition, but are not being provided because of the delay in placement?**
 - Could this service be provided in the community if your client is released?
 - If so, can you move for a modification of disposition under local rules?
- **If your client has been held in a facility at a security level higher than what was ordered, have you considered litigating a due process violation or a *habeas corpus* issue?**
- **Are you checking in with or preferably visiting your client at least weekly? Regular contact is particularly critical for clients who are detained. If you are unable to visit weekly, can you make a weekly phone call? If that is not feasible, is there someone else in your office who could schedule regular check-ins such as a paralegal, social worker, or law student intern?**

STAYING IN CONTACT WITH YOUTH PLACED OUT-OF-HOME AND MONITORING THEIR CONDITIONS OF CONFINEMENT

Youth have a right to be treated fairly and humanely while in out-of-home placements and may need legal assistance to ensure their safety and rights are protected. They may also be placed far from home and have little access to family. Having an attorney that is keeping a watchful eye can, in and of itself, affect how facilities treat a particular child.

- **Does your client have access to a telephone to call you if there’s a problem?**
- **What are the procedures you may need to complete in order to be on your client’s “call list”?**
- **What procedures are necessary if you want to call or visit your client?**
- **Did you ask your client if they feel physically safe in the facility?**
 - Do LGBTQ clients feel safe from physical or sexual harassment or abuse by other residents or staff?
 - Do particularly young or otherwise “targeted” youth feel safe?

- **What is the facility's internal grievance procedure?**
 - Does your client understand how to file a grievance?
 - Is there a way for you to assist with raising grievances on your client's behalf?
- **Will you be notified if the facility or agency intends to move your client to a more restrictive facility?**
- **What are the local policies, regulations, or laws regarding juvenile solitary confinement?**
 - Has your client been placed in solitary confinement? If so, for how long?
 - Does your client understand what solitary confinement is so that he or she can tell you when it happens? Does the placement facility use another euphemism for solitary confinement, such as "room restriction," "in the box," "disciplinary isolation," or some other term?
- **Is the facility providing an adequate educational program, as mandated by federal law?**
 - Does the child attend school in the facility? If not, have you asked your client if they would like to attend school?
 - Does your client think their educational needs and rights are being met at the facility?
 - How many hours of daily instruction are provided?
 - If the child has a special education individualized education plan (IEP), is that being implemented in the facility? Does the IEP address your client's education needs and stated goals? Does the client need to be evaluated or re-evaluated for special education services?
- **Have you asked your client if they feel as though their medical needs are being met? Do they have access to necessary medical and mental health providers?**
 - Are facility staff aware of your client's pre-existing medical needs (including medications)? Does your client believe the staff are providing appropriate treatment and care?
- **Have you asked your client if they are able to practice their religion in the facility, as required by federal, state, and local law?**
 - If not, can you address this with the court, if that is what your client wishes?
 - Is a referral to a civil attorney more appropriate?
- **For any of these confinement issues, have you considered talking with facility staff, filing a complaint with the facility, or raising it with the juvenile court? Have you considered consulting with a civil rights attorney or legal clinic about a state or federal court action?**

EARLY RELEASE ADVOCACY

- **Is there a mechanism under the commitment order, state law, or agency policy allowing for early release from the facility?**
 - Does early release require the attorney to file a motion or otherwise initiate action?
- **Does your client qualify for early release? Who do you need to involve for this to happen? Have you taken the necessary steps and/or advised the client and family about early release?**

REENTRY PLANNING ADVOCACY

- **What will happen when your client is ultimately released from the out-of-home placement? Will your client continue on some form of supervised release or is all supervision over?**
 - Have you discussed the release conditions with your client and family so they understand any obligations, opportunities, or potential pitfalls under the continued supervision?
- **Are you able to assist your client with reentry to the community upon release?**
 - Are facility staff or probation required to provide reentry planning and assistance?

- Is the person(s) responsible for reentry fulfilling their role?
- Are your client's strengths and challenges addressed in the reentry plan, or is it a cookie-cutter plan that has no client-led pathway to success?
- **Does your state suspend or terminate Medicaid benefits when the recipient is placed in a secure facility?**
 - To ensure your client receives the medical and mental health care they need upon release, who will make sure your client's Medicaid is reinstated? You? The facility? Probation? Parent or guardian?
- **Does your client face legal barriers to reentry? Are you capable of fulfilling this legal role or have you identified someone to whom you can refer your client? Each of the following may impact your client's ability to succeed on any level of supervision after being released from confinement:**
 - Will your client meet obstacles in trying to register for school? Obstacles in getting credits transferred from placement?
 - Does your client have a safe and stable place to live?
 - Will your client's juvenile record hinder their employment opportunities? (See the Clearing Client Records section for help addressing this problem.)
 - Are there other concerns your client or your client's family have about the transition home which requires legal assistance?

For Clients on Registries

In most states, youth can be placed on public or semi-public registries, depending on their offenses. The most common is a sex offender registry, but there may also be youthful offender, chronic offender, and other registries. Avoiding registration requirements at disposition is optimal. However, if a client is required to register, juvenile defenders should ensure the client is aware of registry consequences — and seek to get their client removed from the registry, whenever possible.

- **Have you talked with your client about “compliance” with registration requirements? Where to register? When? How often? What to do if there's a problem?**
- **Does your client understand that crossing state lines may trigger registration in another state? Does your client know where to find out about those requirements?**
- **Are there ways for your client to get off the registry? Does it require any action on your client's part, like filing a motion or petitioning the court for a hearing? How and when is that permissible? Who can your client look to for help with this process years from now?**
- **Have you talked with your client about the collateral consequences of being listed in a registry?**

PRACTICE TIP

- Review the probation / supervision order with your client to refresh their memory about the requirements and provide them a copy for their continued reference.

Clearing Client Records

The mechanisms for clearing clients' court and/or arrest records are complicated and vary between jurisdictions. In some states, clients will not even be eligible for record sealing until years after their involvement with the court has ended. Even so, juvenile defenders should advise their clients about options for sealing and expunging their records, and ensure they have the tools necessary to pursue record clearing at the appropriate time.

- **Even if juvenile court records are confidential, what implication does that have for the child in education, housing, or employment applications? If you do not know the answers, consider reaching out to local or national reentry advocates and experts to assist.**
 - Have you counseled your client about the implications of having a juvenile record and strategized ways to minimize those implications?
 - Have you counseled your client on how to answer questions about prior arrests and convictions on applications for work, school, housing, and financial aid?
- **Have you talked with your client about the eligibility requirements and procedures for sealing, expunging, or otherwise clearing a juvenile record in your jurisdiction? Is this something for which your client will be eligible? Does your client need to file a request with the court or is the record automatically cleared?**
 - Are you tracking the first possible date your client could be eligible to clear their record?
 - If you cannot help with record clearance, have you provided the child (or the child's family) with a referral to someone who can help when the time is right?
- **What records are covered by clearing orders? Delinquency court only? References to delinquency cases in other court files (e.g. child welfare cases)? Police records, both state and local? Records of other agencies (e.g. probation, school, prosecutors)?**

Reminder: Post-disposition is a critical time for young people involved in the court system. It can make the difference between a young person accessing employment, education, housing, and other necessities; getting their records sealed; or being caught in the revolving door of the justice system. At a minimum, review the practice tips at the beginning of this document and make a plan for how to maintain contact and support your clients after they have been adjudicated.

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