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ensuring excellence in juvenile defense and promoting justice for all children
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The overarching goal of the Juvenile Defender Delinquency Notebook, 2nd Edition is to empower defenders to practice holistic and zealous representation in the defense of children who find themselves before our nation's justice systems. We also believe that this publication illustrates the complexities inherent in the defense of children and, consequently, the specialization and training necessary for this area of practice.

The earlier version of the Delinquency Notebook, published in 2000, has proven to be a valuable tool for both new and experienced defenders, and we hope you will find this revised edition to be even more useful. Of course, while the Delinquency Notebook is designed as an advocacy and training guide for juvenile defenders, we are mindful that general materials of this sort must always be tailored and customized to reflect state law and local practice. Therefore, please use this Delinquency Notebook as a guide, recognizing that although it is comprehensive in scope, it is not intended to be all-inclusive.

A note regarding the use of gender pronouns and reference to the client's parent: for purposes of ease and clarity, throughout the Delinquency Notebook we refer to the client as "she" and all other players (the parents, prosecutor, judge, probation officer) as "he." To preserve the flow of language, we also use the singular form of the word "parent" to refer to the client's parent, parents, legal guardian, or caretaker.

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The editing and production of the Delinquency Notebook has been a truly collaborative project, and we are hopeful that it will have a positive impact on the defense of children in our country. In this spirit, please feel free to copy and distribute portions of the guide liberally.

Patricia Puritz
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National Juvenile Defender Center
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Defenders who represent children in delinquency proceedings have tremendous opportunities to help young people and to practice in a complex and rapidly changing area of law. Because developing the best strategies for your client's case requires attention to multiple considerations, as well as an interdisciplinary understanding of youth, you will use all of your legal ingenuity to defend against your client's delinquency charges. Additionally, you will need all of your interpersonal skills to be effective with your clients, their parents, and other personnel involved in the juvenile justice system.

What to consider before your first case

Become familiar with local juvenile court practice. Before you begin practicing in juvenile court, learn your local and state court rules, rules of juvenile and criminal procedure, rules of evidence, and rules of professional responsibility. The court rules for states with special rules for delinquency cases (and other information regarding juvenile defense for all states) are available at http://www.njdc.info/state_data.php.

One of the best sources of advice is an experienced juvenile defender. Given the complexity of juvenile defense and the high stakes for your clients, it is a good idea to identify a mentor as you begin your practice. Even if you are returning to juvenile work after a hiatus, the continuous evolution of court programs and resources makes it important to be able to turn to an experienced guide. If you are not part of a large office, seek out local defenders or other experienced attorneys for advice. Another potential source of assistance is the juvenile justice or family law committee of your local or state bar association. The National Juvenile Defender Center or an affiliated Regional Juvenile Defender Center may also be able to help you find a mentor. (See Appendix D for contact information.)
I. Basic Introduction

A. Origins of the juvenile justice system

Near the end of the nineteenth century, reformers called for the protection of children from the harshness of criminal justice systems. By the middle of the twentieth century, 46 states, three territories, and the District of Columbia had established juvenile courts with rehabilitative, rather than punitive, ideals. In these courts, children were to be treated separately from adults in benign, informal, non-adversarial proceedings. The court was to determine not whether the child was guilty, but whether she had a need for treatment or rehabilitative services. When deciding what actions to take on behalf of the child, the state was to function as guardian or *parens patriae*, literally "parent of the country". Additionally, judges were not always legal professionals, and lawyers had no regular role to play in these informal proceedings. Finally, more often than not, a social worker or probation officer investigated cases and reported his findings to the court.

In the late 1960s, however, the United States Supreme Court ushered in a new era of procedural protections in the juvenile justice system. It was becoming increasingly clear that the seemingly benign informality of the juvenile court was often actually leading to harsher treatment, more punitive outcomes and injustices. As a result, the Supreme Court, in a series of rulings, extended many of the due process protections available in adult criminal proceedings to juvenile delinquency proceedings. These cases forced states to acknowledge that their juvenile justice systems were, in fact, adversarial and required them to establish due process protections for youth involved in these systems. It must be noted that subsequent decisions, however, have maintained some distinctions between adult and juvenile proceedings.
There are seven fundamental Supreme Court cases concerning juvenile justice with which you should be familiar:

**Kent v. United States**, 383 U.S. 541 (1966), established that a juvenile facing the possibility of transfer to adult court must receive a hearing at which the youth is entitled to representation by an attorney who has been granted access to relevant records of the client held by the government and a written ruling from the court on the transfer decision.

**In re Gault**, 387 U.S. 1 (1967), established that due process requires that juveniles in delinquency proceedings are afforded notice of the charges against them, the right to counsel, the right to confront and cross-examine witnesses, and the right against self-incrimination (i.e., the right to remain silent).

**In re Winship**, 397 U.S. 358 (1970), held that a youth cannot be adjudicated delinquent for violating a criminal law except upon a showing of proof beyond a reasonable doubt.

**McKeiver v. Pennsylvania**, 403 U.S. 528 (1971), held that children in the juvenile justice system have no federal constitutional right of trial by jury.

**Breed v. Jones**, 421 U.S. 519 (1975), established that the double jeopardy clause prevents trial in criminal court of a child who was previously subjected to a delinquency proceeding for the same offense.

**Fare v. Michael C.**, 442 U.S. 707 (1979), held that whether a juvenile's waiver of rights was voluntary and knowing depends on the totality of the circumstances.

**Schall v. Martin**, 467 U.S. 253 (1984), found that the preventive detention of children accused of delinquent acts pending adjudication does not violate due process.

### B. The current state of juvenile indigent defense

Decades after **In re Gault** and other important cases established the need for due process protections for youth in delinquency proceedings, many states still fail to ensure these rights. The National Juvenile Defender Center's assessments of indigent defense services in delinquency cases (available at http://www.njdc.info/assessments.php) have consistently found that **In re Gault**'s promise has not been fully realized, and confusion remains as to the role and obligation of defense counsel in juvenile court. Furthermore, systemic issues and barriers continue to challenge the juvenile indigent defense system including: the timing and appointment of counsel; inadequate access to resources, support staff and other basics
of legal practice; poorly compensated counsel with huge caseload burdens; inadequate time to properly interview clients and prepare for cases; and low morale and high turnover.

Further challenging to the work of juvenile defenders is the fact that children in juvenile court often present a broad range of compelling mental health, physical health and educational issues. Increasingly, many youth in the justice system have been directed there by other failing social service systems. Defenders also grapple with complex and special issues related to the representation of: 1) very young children (under 12); 2) lesbian, gay, bisexual, and transgender youth; 3) girls; and 4) youth charged as adults. Glaring class and racial disparities are also ever-present in juvenile court. Because juvenile defenders are expected to understand and address these complex issues while mounting a defense against charges, these challenges inevitably impede the preparation and delivery of an adequate defense.

Despite the aforementioned difficulties, reform has and continues to take root, fostering hope for continued improvement. Across the country, juvenile arrest rates are decreasing. Policymakers are beginning to question the logic of "zero tolerance" school policies and their impact on juvenile court dockets. Efforts are underway across the country to "right-size" the juvenile court, limiting both the transfer of juveniles to adult court and the influx of very young children into the juvenile court.

Most recently, the United States Supreme Court's March 2005 decision in the case of *Roper v. Simmons*, 125 S.Ct. 1183 (2005), finding it unconstitutional to apply the death penalty to those who were under 18 years of age at the time of their crimes is a significant victory for all children. While the holding was limited to youth facing capital punishment, language in the opinion acknowledges the differing levels of culpability of adults and youth and an understanding of children's evolving emotional, behavioral, and cognitive development. In the majority opinion, Justice Kennedy wrote, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

As the juvenile court has changed, the role of the juvenile defense attorney has evolved, as well. For example, in the due process-oriented juvenile court, the defense attorney's obligations are to protect the rights of the child client and to advocate zealously for the expressed interests of that client at each stage of her case. Additionally, because defenders are on the front lines dealing with youth and systems, they are particularly well equipped to participate in advocacy efforts in the community and to shape policy for youth. Thus, although defenders are already overburdened, it is important for them to continue to find ways to push efforts in all venues to reform the juvenile justice system and ensure justice for youth.
C. How a typical case proceeds

While jurisdictions may have different terms for particular stages of a case and/or slight variations in the order of proceedings, delinquency cases generally follow a basic structure. This guide will address each of these stages, and the chart below should aid you in visualizing the general flow of a case.
II. COMPARING DELINQUENCY AND CRIMINAL PRACTICE

A. Similarities

While there remain fundamental differences between the juvenile justice system and the criminal justice system, there are similarities:

- The juvenile court system is an adversarial system that procedurally and substantively parallels the criminal court system. Children are adjudicated in juvenile court for alleged violations of many of the same misdemeanor and felony statutes that adults face in criminal court. For the most part, juvenile court applies rules of procedure and evidence that are substantially similar to criminal court rules. (One notable exception is the right to trial by jury, which is not guaranteed in juvenile proceedings by the United States Constitution, but is provided by some state statutes.) Juvenile defenders must know the rules that apply in their court. (See http://www.njdc.info/state_data.php for links to court rules in states that have separate juvenile rules.)

- Juvenile defenders are obligated to provide clients with zealous pre-adjudicatory, adjudicatory, disposition, and post-disposition advocacy. Juvenile defenders, like criminal defense attorneys, should be competent and professional tacticians and advocates, and they are bound to act in accordance with the expressed interests of their clients.

- The consequences of a delinquency adjudication can be severe and lifelong, similar to a criminal court conviction. Despite the distinctions between juvenile dispositions and adult sentences explained below, do not underestimate the serious nature of a delinquency proceeding and a finding of delinquency. Depending on the jurisdiction and individual facts, youth may be placed in secure care, receive adult sentences, and/or have their juvenile records used against them in subsequent court proceedings (for example, to enhance sentences for later prosecution in adult court). Additionally, despite the original intentions for confidentiality in juvenile court proceedings, youth adjudicated delinquent face similar biases, prejudices and limitations as those imposed by criminal convictions.

B. Differences

Although the basic tenets for defending your client are similar, there are a number of significant differences between the juvenile and criminal justice systems:

- One of the primary goals of the juvenile justice system remains largely rehabilitative in focus, whereas the purpose of the criminal justice system is nearly exclusively punitive. The criminal justice system has largely abandoned the responsibility of rehabilitation of offenders. Though "get tough" legislation has increased the number of children who are tried as adults, for the youth who remain in the
juvenile justice system, the juvenile system still espouses the ideals of treatment and rehabilitation. Indeed, most states have "purpose clauses" in their statutes for juvenile court (available at http://www.ncjj.org/stateprofiles/overviews/faq9.asp) which specifically include the goal of rehabilitation of youth. You should be familiar with your state's purpose clause and make note of it in court when appropriate.

- **Parents/guardians/caretakers play a much greater role in the juvenile justice system.** Because children do not have the same rights and responsibilities as adults, their parents/guardians/caretakers have an increased role in delinquency cases. Although you represent the child and not the adult, the parent/guardian/caretaker can have a significant impact (positive and/or negative) on the outcome of your client's case, and you must consider how your interactions with them will affect the direction of the case.

- **Juvenile delinquency proceedings are not considered to be criminal in nature in most states.** Juvenile court is often organizationally distinct from criminal court and may fall under a civil court division or a family court division. Some states have unified family courts where all matters related to children are heard. Additionally, children can be prosecuted for status offenses, which include non-criminal behavior, such as truancy, being beyond parental control, or running away. While adjudications for status offenses may be considered minor in nature by some, the actual ramifications can become quite serious. For example, a status offender who violates a valid court order can be charged with a new offense and face detention or commitment, forcing them deeper into the justice system.

- **Juvenile justice dispositions include a range of options unavailable in criminal sentencing.** Juvenile dispositions are expected to meet the treatment needs of individual children in the least restrictive environment possible or, at least, to balance treatment considerations with community safety concerns. Therefore, dispositions can include a wide range of supervision, treatment, and alternative programs instead of incarceration. Additionally, juvenile court commitment or probation periods usually end by the youth's 21st birthday, when most juvenile courts cease to have jurisdiction over dispositions in delinquency matters. However, approximately one-third of all states have adopted "blended sentencing" statutes or "extended juvenile jurisdiction" (EJJ) designations in juvenile court, under which a juvenile is eligible to receive a juvenile disposition and an adult sentence. States with blended sentencing for transfer cases are divided between states that require the court to choose either an adult or a juvenile sanction and those that allow a combination of adult and juvenile sentences.

- **There are legal issues related to the juvenile justice system that are irrelevant to adult defendants in the criminal justice system.** Contributing to the complexity of juvenile defense work is the fact that juvenile defenders must not only concern themselves with delinquency representation, but also with related civil or administrative proceedings, such as special education hearings, school disciplinary hearings, and abuse and neglect proceedings. While these proceedings demand additional research and specialization by the defender, they also provide excellent opportunities to supplement your discovery and investigation in the pending delinquency case and may allow you to shift your client away from juvenile court jurisdiction altogether.
• **Terminology.** The juvenile court’s focus on the specialized treatment of youth inspired the use of different terms from those used in criminal court. For example, in many jurisdictions (and in this guide), terms such as respondent, adjudication, and disposition are used in place of defendant, trial, and sentencing, respectively. It is imperative that you are familiar with the language used in your jurisdiction.

### III. THE INTERDISCIPLINARY APPROACH

Because the juvenile justice system is adversarial and rehabilitative and because children are physically, morally, cognitively and emotionally less developed than adults, juvenile defenders often have a more complex relationship with their clients than do attorneys representing adults. Additionally, working with youth in the juvenile justice system often presents unique challenges including:

- Even for youth at an average level of development, adolescents function differently than adults when making decisions and assisting in their own defense.¹⁷
- An estimated 50 to 75 percent of youth in juvenile justice facilities have a diagnosable mental health disorder.¹⁸
- Drug and alcohol abuse and dependence occurs at a much higher rate among youth involved in the juvenile justice system than in the general population.¹⁹
- The juvenile justice system is often a "dumping ground" for children who are not receiving adequate mental health services or other treatment in the community.²⁰
- Research suggests that anywhere from 30 to 70 percent of incarcerated youth have an emotional, learning, or behavioral disability,²¹ and it is estimated that over 30 percent of incarcerated youth have a disability that would qualify them as in need of special education.²² Learning and other disabilities can result in school trouble, but also give rise to rights to services and protection from exclusion from school.²³
- Children depend on adults for most basic needs, but many in the delinquency system have not had these needs met by the adults in their lives.

Psychologists, psychiatrists, social workers, sentencing advocates, educational specialists and others are invaluable resources in many juvenile delinquency cases and can be useful at almost every stage of a juvenile court proceeding. Not only can these collaborations assist you in developing a strong defense according to your client’s expressed interests, but these professionals have the expertise to identify and help address many of the issues your client faces.
Confidentiality concerns

In all collaborations, you must be vigilant in protecting the attorney-client privilege of confidentiality. While evaluations and background information can be invaluable in support or development of your defense strategy, you must be cognizant of the limitations of the privilege and, therefore, of the collaboration. Others who work with children are not necessarily governed by the same rules of professional conduct as attorneys, and you must assess whether their work will be protected by the attorney-client privilege in your jurisdiction. For example, if a non-lawyer is assisting in the defense (e.g., by performing an evaluation for potential use in court, helping with investigation, locating services to suggest at disposition), the attorney work-product or attorney-client privileges may protect from disclosure of the information procured by the non-lawyer. If instead he is providing a service not related to the provision of legal advice (e.g., counseling, job training), these privileges probably do not apply. Regardless, it is a good idea to ensure that anyone you invite to become a part of your team shares your defense-oriented purpose and goals and understands his confidentiality obligations. When you retain an expert or expand your team, clearly defining this relationship will be a necessary part of the hiring process (see Chapter 3).

Mental health professionals

In the pre-adjudication context, mental health professionals can identify behavioral, emotional, or learning disabilities and help secure services in the community that may render detention unnecessary. Mental health professionals can also educate and advise you about child development stages and abilities in order to improve communication with your client. At adjudication, a mental health professional may testify about your client’s competency and/or whether she had the requisite mens rea. Finally, at disposition, these professionals can help design a plan that will address the underlying problems and provide you with a viable alternative to a sentence of incarceration (see Chapter 11). (See Chapter 3 for a thorough discussion of mental health and competency issues, including seeking the services of an expert.)

Social workers

Social workers can support the defense strategy in a delinquency case with information obtained by documenting the client's psycho-social and educational history. A social worker is also capable of providing treatment assessments and recommendations, as well as facilitating the provision of
community-based resources for the client and family. If you are a part of a
defender office that does not have a social worker on staff, you should consider
contacting one that does and ask how that office was able to fund the position.
If you are a private attorney, you may be able to consult with the social worker
at a defender office for advice and referrals, or you should consider requesting
court-funded social work assistance for your cases.

Education specialists

Education specialists can assist in addressing your client’s educational needs
and facilitate the process of getting a special education assessment, if
warranted (see Chapter 13). Improving your client’s educational situation can
have a huge impact on your client’s case and the court. If you are unable to
identify an education specialist in your area, you should check with the local
school system or local colleges for referrals.

Other evaluators and professionals

Do not forget that many children come to juvenile proceedings with existing
evaluations from other court matters, such as neglect, custody, divorce,
probate, and status offender proceedings. A defender should obtain any
existing evaluations both for use in court and to inform case strategy; however,
direct contact with evaluators or service providers may be even more helpful.
By calling the evaluator, not only may you gather valuable insight into your
client and her case, but you may also find that the counselor would be a good
witness in support of your client’s release or could provide a helpful letter at
disposition. In the alternative, you may save yourself valuable time by
discovering that the evaluator has information that is harmful to your case.

Advocacy organizations

Legal services groups, law school clinics, juvenile justice or civil liberties
organizations, or private firms may be willing to assist you as sources of
referrals or by raising issues in court as mentors and/or co-counsel. For
example, such organizations may specialize in inadequate educational
programming, institutional abuse, police misconduct, disabilities and housing
issues, among others. Keep in mind that with all such collaborations, the
earlier the discussions, the better chance that the effort will help the situation
of your client. Some suggested organizations appear in Appendix D.
Be creative when you think about networking with others. In addition to the professionals and organizations listed above, remember that your client may have attorneys for other types of proceedings, with whom collaboration would also be beneficial.

Juvenile defense is a specialized practice that can be enhanced through the interdisciplinary approach. Regardless of how much support you have, however, the success of your representation depends on your having a trusting, honest relationship with your client. Chapter 2 presents methods for approaching your early interactions with a new client.
Initiating the Attorney-Client Relationship

Your relationship with your client is central to effective representation. Make every effort, from your first meeting on, to ensure that it is strong. Do not expect your client to trust you immediately; it is more likely that rapport will build over time as you demonstrate commitment to her case and respect her wishes. The recommendations in this chapter are meant to help you think about building a relationship with your client as you collect vital information during your early meetings with her. Take into account your personality and interpersonal style as you develop a method of getting to know your clients.

What to consider before your first case

- Your client’s neighborhood, environment, and background. Each client will be unique, but there will most likely be commonalities among youth who end up in court in your jurisdiction. Think about how your client’s upbringing—such as the sort of neighborhood she grew up in and the school she attends—affects how she thinks, speaks, and acts as well as how she relates to you.

- How to communicate with your client. Educate yourself about child and adolescent development. Books like the *Handbook on Questioning Children* and continuing legal education programs, such as the MacArthur Foundation’s *Understanding Adolescents: A Juvenile Court Training Curriculum* (available at http://www.njdc.info/macarthur.php), are great places to start.

—ACCD-NJDC Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems, Preamble
I. ETHICAL CONSIDERATIONS

A. Legal advocacy vs. “best interests”

The rehabilitative focus of juvenile court can create confusion about the role of defense counsel. Defenders will find themselves tempted to focus on the perceived “best interest” of the child rather than on legal advocacy. You are obligated to keep in mind, though, that it is through counsel that the child exercises the most fundamental due process guarantee: the opportunity to be heard. In delinquency cases, all other perspectives are accounted for: community safety is represented by the prosecution, the parent’s interests by him or his counsel, and the view of “best interests” by probation and child care agencies. Defense counsel’s function is to articulate and advocate as zealously as possible for the expressed legal position and desires of the child, your client. The best decisions are made when all positions are fully articulated and tested via the adversarial court process.

The Institute of Judicial Administration-American Bar Association Juvenile Justice Standards state that the defense counsel’s principal duty is to advocate, within the bounds of law, for the best outcome available under the circumstances, according to the client’s view of the matter. Similarly, the ABA Model Rules of Professional Conduct provide that so long as your client is not so incompetent as to be unable to adequately act in her own interest, your client must be accorded the prerogative of making decisions concerning the objectives of representation. In that the Model Rules contemplate application to children as young as ages five or six, delinquency clientele are conclusively within these critical decision-making guidelines.

In practice, advocating for your client’s expressed interests, as opposed to your view of her best interests, means that you must allow her to make decisions. Although, you have the
expertise required to navigate the court process, predict possible outcomes of choices your client must make, give advice based on your evaluation of your client’s situation, and speak for your client, she has fundamental control of her defense. At each and every stage of the case, you will use your knowledge to help her make informed decisions, but you must confer with her and abide by her decisions concerning the objective of representation. In this regard, representing a child client is just like representing an adult. For example, sometimes a client will feel a strong desire to testify so she has had a chance to explain herself to the judge. Even if you think she will hurt rather than help her case, you must put her on the stand. Your role is to provide counsel and ensure that she understands the possible legal consequences of testifying in a particular case. Once she has decided to testify, regardless of how you feel about the decision, your role shifts and you must assist her in presenting herself well on the stand.

**Juvenile Justice Standards**

The IJA/ABA Juvenile Justice Standards and rules of professional conduct provide guidelines for control and direction of the case.

As long as she is competent, the client has control over key decisions relating to the goals of the representation. The lawyer is responsible for determining and pursuing the legal strategies to achieve these goals.

The following guidelines are from the IJA/ABA Juvenile Justice Standards:

*The client, after full consultation with counsel, is ordinarily responsible for determining:*

- the plea to be entered at adjudication;
- whether to cooperate in consent judgment or early disposition plans;
- whether to be tried as a juvenile or an adult, where the client has that choice;
- whether to waive jury trial; and
- whether to testify on his [or her] own behalf.

*Decisions within the exclusive province of the lawyer, after full consultation with the client, include:*

- what witnesses to call,
- whether and how to conduct cross-examination,
- what jurors to accept and strike,
- what trial motions should be made, and
- any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client.
B. Conflicts of interest

Zealous advocacy includes giving each client your undivided loyalty. It is a violation of ethical rules to represent a client if you have a conflict of interest in her case. The ABA Model Rules of Professional Conduct state: "A lawyer shall not represent a client if … the representation would be directly adverse to another client or there is a significant risk that the representation of a client would be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer." As you are considering taking on a new case, ask yourself if you have learned anything from any previous or current client that could be useful in preparing the defense of this new client. If the answer is yes, then you have a conflict of interest and you should decline the new case. Common examples of conflicts of interest include: representing more than one person charged in relation to the same events, or representing a respondent in one case and her complaining witness or other witness in a different case. Even if you think that a conflict is more apparent than real, the mere appearance of a conflict is problematic because adolescents are quick to notice and react to perceived unfairness. For this reason, you should also consider whether you have a personal or professional relationship with someone that will compromise your zealousness on behalf of your client or inhibit your client's trust in you. Discuss concerns with your client openly and directly so that she can decide whether she still wants you to represent her.

If you perceive a conflict of interest between two potential clients, do not discuss the facts of the case with either client until you have tried to eliminate the conflict. Immediately seek the judge's permission to withdraw from the conflicting case. If there are few lawyers available, you may be pressured to represent co-respondents in the same proceeding. This is extremely problematic because one client's best defense may lie in suggesting that the other client committed the alleged offense. All jurisdictions have ethical rules addressing conflicts of interest. Cite these rules in arguing to the judge that another attorney should be appointed to represent the co-respondent. Remind the judge that a conflict of interest could be a reason for the case to be overturned on appeal. Research the procedures in your jurisdiction for appointing counsel so that you can help secure another attorney for the child. If the judge grants your request to withdraw, your ethical obligations include turning over any case files and information promptly to the child's new attorney.

Even if the judge declines your request to withdraw, you can proceed with representation only if you reasonably believe that you can provide competent counsel to each of your clients and if both clients give their informed, written consent to the shared representation. If you proceed without informed consent, you risk disciplinary action for violation of ethical rules. Explain the nature of the conflict to each child in an individual conversation. Allow
each child to ask questions of you confidentially. If both clients grant their informed consent and you proceed with representation, make sure that the conflict and its resolution are reflected in the case record.

II. TIPS FOR QUESTIONING CHILDREN

Before you focus on the content of your early conversations with your client, think about how you will approach your meetings with her. Take her age, background, and abilities or disabilities into account when you speak to her and ask her questions. Adolescents process and use language differently than adults. Adolescents, especially if they are under-educated or have mental disabilities, are prone to becoming confused by linguistic ambiguities or lengthy questions, have an immature understanding of time, and may have difficulty constructing narratives. They may also interpret language literally and be unable to handle abstractions well. Whenever you speak with children and adolescents, phrase your questions with care in order to elicit accurate information. Specific suggestions adapted from Anne Graffam Walker’s *Handbook on Questioning Children* follow.33

Suggestions for questioning children

General precepts:

• *Aim for simplicity and clarity in your questions.* If the child uses simple words and short sentences, so should you.

• *Be alert for possible miscommunication.* If a child’s answer seems inconsistent with prior answers or doesn’t make sense to you, investigate the possibility that there is some problem 1) with the way the question was phrased or ordered, 2) with a literal interpretation on the part of the child, or 3) with assumptions the question makes about the child’s linguistic/cognitive development or knowledge of the adult world.

• *Make sure you understand the child.* You cannot be embarrassed to ask your client to define slang terms. Very few adults are fully fluent in street slang, and it is important to know what the terms a child is using mean. Do not guess.
Some specifics:

- Break long sentences/questions into shorter ones that have one main idea each.

- Choose easy words over hard ones: use simple expressions like “show,” “tell me about,” or “said” instead of more formal words like “depict,” “describe,” or “indicated.”

- Avoid legal jargon like “What if anything” or “Did there come a time.”

- It is important that you and the children use words to mean the same thing, so run a check now and then on what a word means to each child. Although children generally are not good at definitions, you can still ask something like, “Tell me what you think a ___ is,” or “What do you do with a ___?” or “What does a ___ do?” Do not expect an adult-like answer, however, even if the word is well known. The inability to define, for example, “wind” does not mean that the person does not know what wind is. Definitions require a linguistic skill.

- Avoid asking children directly about abstract concepts like what constitutes truth or what the difference is between the truth and a lie. In seeking to judge a young (under nine or ten) child’s knowledge of truth and lies, ask simple, concrete questions that make use of a child’s experience. E.g., “I forgot: how old are you?” (Pause.) “So if someone said you are ___, is that the truth, or a lie?” Young children equate truth with fact, lies with non-fact.

- Avoid the question of belief entirely (“Do you believe that to be true?”).

- Avoid using the word “story.” (“Tell me your story in your own words.”) “Story” means both “narrative account of a happening” and “fiction.” Adults listening to adults take both meanings into consideration. Children listening to adults, however, might well hear “story” as only the latter. “Story” is not only an ambiguous concept, it can be prejudicial.

- With children, redundancy in questions is a useful thing. Repeat names and places often instead of using strings of (often ambiguous) pronouns. Avoid unanchored “that’s” and “there’s.” Give verbs all of their appropriate nouns (subjects and objects), as in “I want you to promise me that you will tell me the truth,” instead of “Promise me to tell the truth.”

- Watch your pronouns carefully (including “that”). Be sure they refer either to something you can physically point at or to something in the very immediate (spoken) past, such as in the same sentence, or in the last few seconds.
• In a related caution, be very careful about words whose meanings depend on their relation to the speaker and the immediate situation, such as personal pronouns (I, you, we), locatives (here, there), objects (this, that), and verbs of motion (come/go; bring/take).

• Avoid tag questions (e.g., “You did it, didn’t you?”). They are confusing to children because a youth may lose track of what the subject is. Avoid also Yes/No questions that are packed with lots of propositions. (Example of a bad simple-sounding question, with propositions numbered: “[1] Do you remember [2] when Mary asked you [3] if you knew [4] what color Mark’s shirt was, and [5] you said, [6] ‘Blue?’” What would a “Yes” or “No” answer tell you here?) It does not help the fact-finder to rely on an answer if it’s not clear what the question was.

• See that the child stays firmly grounded in the appropriate questioning time frame and situation. If you are asking about the past, be sure the child understands that. If you shift to the present, make that clear too. If it is necessary to have the child recall a specific time/date/place in which an event occurred, remind the child of the context of the questions. Do not use phrases like, “Let me direct your attention to.” Try instead, “I want you to think back to...,” or “Make a picture in your mind of when...,” or “I’m going to ask you some questions about...”

• Explain to children why they are being asked the same questions more than once by more than one person. Repeated questioning is often interpreted to mean that the first answer was regarded as a lie or was not the answer that was desired.

• Be alert to the tendency of young children to be very literal and concrete in their language. “Did you have your clothes on?” might get a “No” answer; “Did you have your p.j.’s on?” might get a “Yes.”

• Do not expect children under about age 9 or 10 to give “reliable” estimates of time, speed, distance, size, height, weight, color, or to have mastered any relational concept, including kinship. (Adults’ ability to give many of these estimates is also commonly overrated.)

• Do not tell a child, “Just answer my question(s) yes or no.” With their literal view of language, children can interpret this to mean that only a Yes or a No answer (or even “Yes or No”!) is permitted—period, whether or not such answers are appropriate. Under such an interpretation, children might think that answers like “I do not know/remember” and detailed explanations would be forbidden.
Sentence-building principles for talking to children

Vocabulary:

- Use words that are short (1-2 syllables) and common. For example, call it a “house” instead of “residence.”
- Translate difficult words into easy phrases. Use “what happened to you” instead of “what you experienced.”
- Use proper names and places instead of pronouns, e.g., “what did Marcy do?” instead of “what did she do?”; “in the house” instead of “in there.”
- Use concrete nouns that can be visualized (“backyard”) instead of abstract ones (“area”).
- Use verbs that are action-oriented, such as “point to,” “tell me about,” instead of “describe.”
- Substitute simple, short verb forms for multi-word phrases when possible. Try, for example, “if you went” instead of “if you were to have gone.”
- Use active voice for verbs instead of the passive. For example, ask “Did you see a doctor?” instead of “Were you seen by a doctor?” Note: One exception is the use of the passive “get” (“Did you get hurt?”), which children acquire very early and is easier to process than “Were you hurt?”

Putting the words together:

- Aim for one main idea per question/sentence.
- When combining ideas, introduce no more than one new idea at a time.
- Avoid interrupting an idea with a descriptive phrase. Put the phrase (known as a relative clause) at the end of the idea instead. For example, “Please tell me about the man who had the red hat on” instead of “The man who had the red hat on is the one I’d like you to tell me about.”
- Avoid difficult-to-process connectives like “while” and “during.”
- Avoid negatives whenever possible.
- Avoid questions that give a child only two choices. Add an open-end choice at the end. “Was the hat red, or blue, or some other color?”

The bottom line: Keep it short and simple.
III. INTERACTIONS WITH YOUR CLIENT

A. Initial meeting and interview

Ideally, your initial meeting with your client (and possibly her parent) will take place in your office with ample time to get to know each other. In reality, you are more likely to meet your client just before a court appearance, with little time or privacy in which to hold a productive conversation—for your purposes or hers. You must be prepared to conduct a quick yet efficient initial interview with your client, remembering that establishing a good relationship with her is as important as collecting vital information about the case. Document A1 in Appendix A is a sample form that can help you collect the critical information you will need prior to a detention hearing. Please feel free to adapt this form for your own use. As you interview her, maintain a calm, even tone so as not to make your client feel anxious or rushed. You will conduct a more extensive interview later, during which you will have more time to gather additional information.

If you are truly rushed or there are complex issues you need time to address before you can adequately represent your client, you should request a delay from the court. If the judge will not grant a later call or continuance, state repeatedly for the record that you are not prepared and cannot effectively represent your client. See Chapter 7, page 133, for more detail. Of course, when considering whether to request a delay, always take into account the need to prevent your client from being detained any longer than is absolutely necessary.

If you get cases in advance of court proceedings, your first conversation should cover the same crucial areas as if you were rushed, but you will have time to address each issue thoroughly and ask more questions on additional topics. It is also a good practice to send a letter to each client when you are assigned to her case. Many attorneys use a form or standard letter to introduce themselves and their job, as well as to request that the client call to schedule a first meeting. Document A2 in Appendix A is a sample introductory letter you can use as a starting point.

Your first in-person conversation with your client is significant to the entire case. It will lay the foundation for a strong attorney-client relationship and, therefore, effective representation. Be sure to include these crucial steps:

1. **Introduce yourself and your role to your client**

   Tell your client who you are and what your job is, emphasizing that you work for her (and not her parent or the judge), are on her side, and will keep your conversations between just the two of you. Explain the attorney-client relationship.
privilege and emphasize how serious it is in the law and to you. Give her your card and tell her she can call you anytime. The encounter might open along these lines:

Hi, my name is ____. I’m your attorney. How are you doing? [Pause, listen.] Have you ever had an attorney before? No? Let me tell you a couple of things about having an attorney. First, our relationship will be different than any other you’ve had with an adult. I work for you, not your mom, not your dad, not the court—nobody but you. My job is to help you understand what’s going on in court and help you decide what you want to do on this case. Then, I’ll work in court and outside of court to help take care of this case. I don’t tell you what to do, and I will only do what you want me to do. Do you have any questions about that? [Pause, listen.] The second thing I want to let you know is that everything you tell me is confidential, it’s secret. Do you know what I mean by that? Would you tell me what you think it means in your own words? [Pause, listen.] Yeah, that’s right. And there is a law that says no one can make me tell what you’ve said to me. That makes it so you and I can talk about anything, and you don’t have to worry, it is just between us. I will not repeat it to anyone without your permission. Does this make sense? [Pause, listen.] Do you have any questions about what I just said? [Pause, listen.] [At this point, hand your business card to your client. Document A12 in Appendix A is a camera-ready sample of an assertion of Miranda rights you can have printed on the back of your cards; if you choose to do so, you will want to explain its purpose.]

Your individual style will dictate the exact language you use, but the point is to convey absolute loyalty to your client. Your clients will often have poor self-esteem and come from low-income families. They may also be untrusting of adults as a result of many unfortunate experiences. The extra effort to build rapport will pay off in innumerable ways, not the least of which is avoiding eliciting mistruths or half truths which can waste time and lead into unproductive defense theories. Furthermore, the benefits of a demoralized child experiencing camaraderie and trust with a non-threatening adult may be enormous.

2. Ask about your client

Asking about your client’s grade in school, likes and dislikes, favorite activities, and home situation gives her a chance to get comfortable talking to you. It also provides you with a chance to collect valuable information and to assess her cognitive level. (For example, she might mention a teacher she likes who will
be a useful ally later.) Use her answers to tailor your language, explanations, and questions to her capabilities. (For example, high school students who have studied government should know that the Constitution provides rights, which can help introduce your explanation of the right to counsel.) If you are pressed for time in your initial meeting, you may have no choice but to skip this step, but be sure to remember it when you next have a conversation with your client.

3. Explain what is going on

Your client probably understands little about the court process—even if she has been through it before. Part of gaining her trust is showing her that you care about her questions and concerns. Before you begin asking case-related questions of her, take a minute or two to briefly explain her situation and what you need to accomplish in this quick meeting. You may say something like:

_We are about to go into court so the judge can decide whether you can stay at home between now and when he listens to longer arguments about your case. We will have more time later to talk about everything that happened to you and for me to answer all of your questions, but right now I have to get some information from you pretty quickly so I can explain things to the judge at this first hearing._

4. Ask for written permission for access to confidential information

A central goal of your first meeting is to get written consent for the release of confidential information to you. The release is crucial to your investigation. School files, medical records, mental health evaluations, and other documents will help you not only in defending against the charges, but also in creating a disposition plan (see Chapter 11). It is important to send for these records as soon as possible because it can take time for other agencies to send the documents to you. For the information to be useful, you will need it as soon as possible. Because these documents contain confidential information, in most cases you will need written consent for the information to be released to you.

The rules vary as to whether it is the parent, the child, or both who have to sign a release of information, so you need to know the laws in your jurisdiction. Find out when it is necessary to have a parent’s signature and when it is not, so you will be prepared if your client’s parent is uncooperative or absent. Determine if your state takes into consideration the age of a child and the subject matter of the records. For example, a state may give a 16-year-old the authority to release school records or a 13-year-old the ability to consent to release of mental health information but require a parent’s consent for collecting other documents.
A sample release of information form is included as Document A3 in Appendix A. Adapt that form to your state’s laws and explain to the child and parent at your first meeting why it is important for you to get these records. You can reiterate the strength of the attorney-client privilege if they express concerns about how the information will be used. Give your client a copy of the release she has signed. (Note that the release of information form gives you permission to collect records but not necessarily to share them with others; see page 231 in Chapter 11 for information about laws governing sharing educational and medical records.)

5. Conduct an interview about the case, in as much detail as you have time for

If the parent has been present up to now, this is the time to ask him to give you and your client privacy. Explain that attorney-client confidentiality extends only to you and your client. Describe the risk of the parent being called to testify about this conversation. Tell him it is better for everyone if you talk to your client alone for a few minutes.

Begin this part of the conversation by asking your client’s permission to take notes, explaining that you want to write things down to help you remember all the important information she tells you. Tell her specifically that you will not share your notes with anyone. As you listen, pay close attention to your client’s personality, intelligence, and communication ability, as well as the facts she provides. These observations will help you recognize possible educational disabilities, mental health problems, and/or other issues addressed in later chapters of this guide.

If you have time, try letting your client tell her whole story first, without interruption, and then start over by asking questions about each part of her explanation. Ask questions while keeping in mind your time constraints, immediate concerns, and the tips for framing questions from earlier in this chapter. Begin with the crucial issues, such as:

- *What happened in this case?* Where did the incident take place, when did it happen, who was there, why was she arrested? If the client claims she was not present for the alleged incident, where was she, and how can she prove it? Reading through the police report with your client may help her articulate her version of the events.

- *Does your client have a prior record or any pending cases?* If so, what can she tell you about them? What were the offenses? What was the disposition? Is your client now on probation or parole? What are the conditions of probation or parole? Who is her probation/parole
officer? Does the probation/parole officer know about the current charge yet? How does your client think the probation/parole officer will react to the most recent charge?

- **Where is your client staying right now, and is the situation there okay?** Is there assaultive behavior at home, a current family crisis, lack of supervision, narcotics dealing by family members, etc.? Did the offense occur at home or while your client was on the run from home? If she does not want to stay where she is, does she have another place to stay? What about other family members or friends? Are there adults who could help supervise her, such as someone whose house she could go to after school? Can that person come to court to say he will take your client in, and will your client’s parent agree to that arrangement?

- **Who does your client think will testify against and for her?** Make suggestions to help her think of possibilities and keep track of her answers in a witness chart, where you can keep—and readily relocate—contact and other information about each person as you collect it.

There are, of course, many more questions you will want to ask, some depending on the nature of the case and others as a result of your client’s answers to these questions. Again, use your time wisely, reminding yourself and your client that you will have more time later. If you have time, ask:

- **Is the police report right about what happened?** Is anything missing? Is there other information that explains why the incident happened?

- **Will your client’s parent come to this hearing?** If not, why? How can you contact the parent? Are there other relatives or adults who might be able to come if asked? Who are they, and how can they be reached?

- **Where does your client go to school?** Does she miss class? How often? Has she been in trouble at school? What are her grades? Is she receiving special education services? Does she participate in any extracurricular activities? Has she won any awards? Are there any teachers or administrators there who would say good things about her?

- **Does your client have a job?** Is it full-time or part-time? Has she ever worked before? When did she work? Are there any employers who can act as references?

- **Is there any other social information that can be used to support pre-adjudication release?** Does she participate in clubs, sports, or religious activities? How can she show that she is responsible (e.g., does she
babysit for her siblings while her parent is at work)? Does she have any hobbies?

• Does your client have any substance abuse or medical problems? Will a parent, probation officer, or detention center employee bring up these problems in court? Has your client ever been in treatment? Did she successfully complete treatment (even if now using drugs)? If treatment is incomplete, what supplemental services might be suggested?

• Has your client participated in any counseling programs? Is there a counselor who could serve as a reference?

• What are your client’s dreams/hopes for herself? What does she want to do when she is an adult? Where does she see herself in five years? Ten? Twenty?

More detailed questions regarding particular situations appear below.

6. Explain your client’s proactive role during the case

Take a couple of minutes to convey to your client how her future conduct will affect the outcome of her case, for better or for much worse. Initially, you can get that message across with a simple, generic description focused on the most important areas: 1) avoiding any further trouble with the police, 2) going to school, and 3) behaving well at home. This part of the conversation may be more productive if you include the parent; you can quickly surmise whether bringing in a parent could reduce your client’s trust in you at this point. (Note that you may also want to consider having a private conversation with the parent; see Section IV of this chapter.) Find out what you can about your client’s home situation and social behavior, but most importantly, emphasize the implications of your client’s actions outside the courtroom. Again, while expressing these ideas in your own style, you may say something like:

Let’s talk a few minutes about what you can do to help your case. Do you have any ideas about that? What kind of things do you think you could be doing that could help things out at this point? What do you think the judge will be watching for now? [Pause, listen. Respond positively to her ideas. Build on and refer back to her ideas as you move forward.]

I think there are three main things that the judge looks at. First is your record. I see you have XX charges. It’s really important that you don’t get in trouble while this case is going on. If you do, the judge will take that as a sign that you think court is just a big joke, nothing important. And this will tick off the judge in a big way and make him decide to lock you up in detention. Getting in
trouble right now, while this case is going on, is a much bigger deal than getting in trouble when you don’t have a case going on—Tell me you’ll be careful…[Pause, listen.] It’s going to mean that you’re going have to watch not only what you are doing, but be careful about who you are hanging out with. Can you be careful about what your friends are doing, too? [Pause, listen.] Like, if you are at the mall and a friend starts shoplifting, you need to just get out of there. Right away. If you’re out with friends and someone pulls out a blunt, you gotta leave, immediately. Don’t try to talk them out of it, don’t bother explaining things, just leave. If the guys roll up in a car and you’re not sure it’s their car, say no thanks to a ride. You just can’t risk being near people who are doing something wrong, even if you weren’t doing anything wrong. I know that is unfair, but it’s the situation you’re in at this point. What do you think will be the hardest thing about this? [Pause, listen.]

Second, judges look at school. You can’t be messing up in school. Prosecutors go out of their way to find out about school problems because they know if a judge hears about it he’ll want to lock you up. So, be on time. Don’t miss any classes. No fights, no talking back to teachers—just don’t get into trouble at school. We’re going to talk in a few minutes about how things are going in school, but the main thing now is remember that you need to keep school as your focus.

Third, judges watch what is happening at home. Basically, if you’re not doing what your parent says, a judge thinks, “Well, okay, I guess if home isn’t working out then detention is where you should be staying.” Try to follow the rules at home, help around the house, get along with your brother and sister. Your parent loves you, but when the judge asks him how you are doing, he has to tell the truth. Make it easy on him so he can say you’re doing well, and that since this case you’ve been really getting it together. When a judge hears that, he’s likely to think, “Okay now, I guess we don’t need to think about detention if things can turn around like this at home.”

You should be listening for your client’s good qualities, as well as red flags. Focus your client on her strengths and her positive potential, emphasizing how doing well in these three ways can make a huge impact on the outcome of the case. Discuss strategies for addressing any problems in these three areas and review the status of those remediation plans at each subsequent meeting with your client. She has to understand how important her behavior is while her case is in progress, and you should be prepared to work with her to find viable solutions as problems continue or arise. It may be easier to convince her of the significance of her role if you ask her to think about how her behavior must look to the judge. (Using this reasoning also helps make clear that what seems like
criticism does not come from you, but from concerns about the judge’s perception.) Your assistance may include helping her obtain special education school services, family counseling, medical or social services, or other assistance. The many benefits of these strategies will become clear as the case progresses.

7. Listen to your client and find out what she wants

You must act on your client’s expressed interests at every stage of the case. Before you enter the courtroom and speak on her behalf about anything, find out what her goals are for the hearing. Explain the possibilities for what you will say as well as how you will present the arguments and let her determine the best course of action.

B. Further conversations

As early as possible, you will want to gather as much information as you can from your client. Depending on what you know—from her, the police report, or other sources—about the circumstances of the offense and arrest, you will engage your client in different lines of questioning. Your goals in gathering this information are to begin to determine what legal defense is appropriate in the case, consider the potential for meritorious suppression and other pre-adjudication motions, and identify possible witnesses for the prosecution and defense. (An explanation of how to process and consolidate this information appears in Chapter 6.) Remember to take time to explain to your client why you are asking questions and how her answers may help her case. See Chapter 6 for an overview of possible grounds for suppression and suggested questions associated with each legal issue. In any situation, ask whether your client was ill or under the influence of medication, drugs, or alcohol; if she was, her decision-making capabilities may have been compromised. (In the event that illegal drugs or alcohol caused the impairment, weigh the benefits and risks of introducing that information in court.) Then, research applicable law to determine whether there are grounds to exclude harmful evidence from court.

C. Continued contact

It is very important that you maintain regular contact with your client. After your initial client interviews are complete, you should still meet with or talk to your client regularly, at least once every two weeks if the child is in the community and at least once every week if the child is detained. Regular contact with your client allows you to maintain your rapport and helps provide you and your client with deadlines for performing specific tasks. It also reminds your client of the pending case and her pre-adjudication obligations to the court.
It is a good policy to meet your client on her turf and preferably in her home, as long as you can meet in private when necessary. This strategy provides insight into your client’s home situation and alleviates concerns about how or if she will come to meetings at your office. Be aware of any safety concerns related to traveling to an unfamiliar neighborhood and plan accordingly.

Though the substance of each conversation will differ, the fundamentals remain the same. Always:

• Show your client that you care about what she thinks and what happens to her,
• Keep your client informed about developments in her case,
• Let your client know of work you are doing on her case,
• Answer your client’s questions plainly and clearly,
• Be timely and responsive to all your client’s inquiries, and
• Keep your promises.  

Be careful not to promise your client anything you are not absolutely sure you can deliver; you risk losing her trust if you fail her. In general, if you always keep in mind that you work for your client and act upon her expressed interests, these displays of respect and frequent consultations will become a natural part of the development of each case.

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I learn more from spending one hour in a child’s home than by spending five hours taking a social history from the child.

—Juvenile defender

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IV. YOUR CLIENT’S PARENT

Interacting with your client’s parent is a complicated issue unique to juvenile court. You must be clear at all times that you work for the child, but at the same time, you need to cultivate the parent’s cooperation. Do what you can to work with or around the parent.

Ideally, the parent wants to be an ally. In some cases, though, he will be the complainant, or you will discover troubling information about his relationship with his child. Regardless of his willingness to help your client’s case, be clear about how he can be involved and how he cannot. You have to be able to talk to your client alone, so you can be sure she is not altering anything she tells you for the parent’s benefit. Similarly, you should talk to the parent alone so you can collect information free from any distortions designed to influence the child. You can also use these individual interviews to frame things for the benefit of each party. (For example, you could explain to the parent that your client’s behavior,
though unacceptable, is typical for adolescents or explain to the child that her parent’s nagging is a sign of concern for her.)

It will often become apparent during these interviews that there is a significant parent-child conflict. It could be a typical disagreement over curfew, sibling rivalry or perceived favoritism, or privacy boundaries and/or a more serious problem, such as neglect, abuse, or desire on the part of one or both parties to stop living together. Smoothing over relatively minor problems, on your own or with the help of a social worker, will benefit your client and her case. Encouraging a parent to enroll in counseling with her child or to enroll her child in desired counseling alone can also be helpful. If the parent was the complainant and counseling is successful, you may be able to bring a statement to the prosecutor that the parent no longer wants the case pursued, which could earn a dismissal or nolle prosequi (see Chapter 6, page 107). (Handling serious parent-child issues is more complicated and transferring a case to dependency court, for example, can be a significant step to a more appropriate resolution.)

Let the parent know what impact his statements to the court, probation officer, and others will have. A parent may try to get help for his child by relating to the judge the details of difficulties at home without realizing he is actually encouraging the judge to order detention. Understand that the parent may be justifiably frustrated and let him vent to you, but help him figure out how to convey what he means to others in a way that is less harmful to his child. Do not advise the parent to lie, of course, but assist with framing the complaint: “There are some curfew problems” sounds much better than “She stays out all night. I don’t know where she goes, who she’s with, or what she’s doing.”

Further thoughts about dealing with parents at various points in the case, including strategies for winning over an uncooperative parent, are provided in Chapter 7 on page 137, as well as in other sections in which they are relevant.

Remember that you must continuously assess the child’s comprehension of what you say and her ability to articulate her thoughts to you. If you are having trouble communicating with a client, consider whether that difficulty is indicative of a mental health problem or disability and whether these issues could mean she is incompetent to face adjudication. Chapter 3 addresses these difficult and complex issues.
Client-directed juvenile defense requires you to articulate your client's goals to the court and apply legal strategy to achieve those goals. Inevitably, however, some of your clients will have mental health and/or competency issues that present challenges for your representation. These clients may have difficulty understanding and communicating with you and the court, and you will have to carefully determine how to proceed as their defense counsel while honoring your ethical duties.

**What to consider before your first case**

- **Identify developmental issues or competency concerns in your client.** Learn about child and adolescent development. This information will help you identify possible developmental or competency areas for exploration.

- **Learn the competency law, if there is any, in your jurisdiction.** Some states have clear rules or statutes for how to proceed if a child's competency is called into question; others lack defined policies. Be sure you know the consequences of requesting a competency evaluation and think strategically about whether to do so.

- **Know your client's rights.** Your client has a due process right to be competent to proceed and to raise competency as part of her defense. She may also be entitled to expert assistance in the preparation of her defense.
One of the greatest challenges in juvenile court is determining when, if, and how to handle mental health or competency issues on behalf of your client. A growing body of research indicates that most youth in the justice system meet the criteria for at least one mental health disorder and that it is reasonable to estimate that one in five has a serious mental disorder. Additionally, it can be difficult to distinguish mental health problems or incompetency from the childhood trauma and immaturity of many juvenile clients. In light of these facts, it is important to recognize that mental health and competency are relevant to your client's case and that the court may raise these issues on its own, even if you would prefer otherwise.

As mentioned in Chapter 2, focused attention and careful listening in your initial interview with your client will help you recognize language and comprehension difficulties, as well as less obvious limitations. These observations will help guide your thinking about possible mental health and competency issues facing your client.
In this chapter we will discuss two types of forensic evaluations (mental health and competency), the legal questions they can assist in answering, and how and when to use them in juvenile court. Forensic evaluations seek to apply scientific knowledge to a legal question.

**Mental health evaluations**

Forensic mental health evaluations can be used to examine culpability, to prepare for transfer, and/or to aid with dispositional planning. (When looking at culpability, it is acceptable for the exam and report to include information regarding your client’s version of the charged offense.)

**Competency evaluations**

Forensic competency evaluations are used to determine if your client has all of the necessary capacities to participate in her defense, including tasks like assisting counsel, entering a plea, taking the stand, and choosing a jury. Competency also relates to your client's capacity to make a knowing and voluntary confession to police. A competency evaluation should not include information regarding your client’s version of the alleged offense.

You and your client should consider requesting the assistance of a mental health expert in preparing her defense. If she is indigent, the government may have to pay for an expert under *Ake v. Oklahoma* and its progeny, discussed later in this chapter. Be cautious, however, when determining whether to ask for or acquiesce to a request for a mental health or competency exam. Negative findings can have extremely harmful ramifications for your client. Become very familiar with all relevant statutes and rules in your jurisdiction. Also keep in mind that in some courts, you will not be able to control whether the judge orders an evaluation, and you will need to use the strategies outlined in this chapter and your ingenuity to limit the harm an evaluation may cause.

**II. HOW AN EVALUATION CAN AFFECT YOUR CLIENT’S CASE**

It may initially seem that getting as much information as possible about your client's mental health or competency would be helpful, but keep in mind that there are risks to doing so. Some evaluations or mental health diagnoses lead courts to lean toward more restrictive placement than is reasonable given the offense. A mental health expert may find that your client is a danger to herself or others and recommend that she be incarcerated or placed in
a residential program. In a competency evaluation, the expert may determine that your client is incompetent due to a mental illness and recommend psychiatric institutionalization that can last much longer than any disposition based on the offense.

During a mental health or competency evaluation, your client might reveal incriminating facts about the present offense or other incidents. If the prosecutor becomes aware of this information, he could use it to bolster his case and/or weaken yours. If the judge learns of it, it could lead him to adjudicate your client delinquent or make her disposition more severe.

In less serious cases, raising mental health or competency issues can expose your client to much lengthier periods of court involvement when she might otherwise have been placed on a short period of probation. This concern does not mean that you should always discount mental health and competency issues in less serious cases, rather you should be prepared to advocate for less restrictive alternatives to the court if you raise such issues.

Raising mental health or competency issues may also increase scrutiny of your client's family. If the court learns that the family has failed to arrange treatment for or cannot cope with a child's diagnosed mental health condition, there is a risk that your client will end up institutionalized or in abuse/neglect proceedings.

Be sure to consult with experienced defenders and study your state's statutes to learn all of the potential ramifications in your jurisdiction. The risks of asking for a competency determination depend largely upon the law in your state. Some states have statutes or case law that limit the likelihood of your client being placed in a psychiatric institution or specifically call for the least restrictive alternative in a finding of incompetency. In other states, there is no clear law.

III. LEGAL ISSUES AN EVALUATION MAY ADDRESS

Despite all of the risks, both procedural and evidentiary, evaluations can lead to your client's best defense in a number of different juvenile court contexts.

A. Mental health evaluations

A mental health evaluation will provide the court with an assessment of your client's mental health and should describe her strengths, immaturity, disabilities (including mental and
emotional functioning), and recovery from trauma. You should consider the advantages of proffering this related information to the court when:

1. Your client is facing transfer/waiver to adult court.
   Generally, the critical issue in a discretionary transfer hearing is whether the court finds that your client is amenable to treatment. A mental health evaluation that includes a developmental assessment may be the strongest way to argue that your client can be rehabilitated and has not previously received adequate services to address significant disabilities, trauma or delayed development. In addition to having positive facts about your client, this evaluation and testimony supporting your claim that she is amenable can be the strongest evidence you offer. (See Chapter 8 for more information on transfer.)

2. Culpability is at issue.
   A mental health evaluation can support a claim that your client did not have the intent required to commit the petitioned offense. Even if your client's mental state at the time of the offense does not rise to the level of a defense, it may be solid grounds for mitigation at disposition.

3. You believe that her case should be diverted.
   If your client's mental health or simple immaturity led to her court involvement, you may decide to file a motion to dismiss and argue that your client's primary issue is her mental illness or limitation. An evaluation that measures your client's development, including intellectual and emotional functioning, can support a claim that voluntary community-based programming will address the issues that led her to court. For example, imagine you have a client that you suspect is mentally retarded. She is charged with indecent exposure because she flashed her breasts to a young family on her way home from school; she thinks the event was really funny. You have arranged for a mentor to transport her from school since her mother is at work in the afternoons. Your expert's evaluation showing that your client has developmental delays and cognitive limitations supports your motion for dismissal.

4. You are preparing for disposition.
   In instances when you know that your dispositional recommendation will be contested, an evaluation that highlights your client's strengths and testimony that speaks to effective services to meet your client's needs can influence the judge to find that your recommendation is the most reliable.
B. Competency evaluations

Competency evaluations analyze whether your client has the capacity and/or abilities to proceed/assist in her own defense or to knowingly and voluntarily waive her *Miranda* rights. Raising competency and requesting a competency evaluation may help in the preparation of her defense when:

1. **Your client may not be capable of assisting in her defense.**

   If you are wondering whether she has the capacity to assist in her own defense, you may want to have her evaluated for adjudicative competence. Dr. Thomas Grisso released two books on adjudicative competence in June 2005. One is a guide for clinicians, and the other, *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals*, is written specifically for lawyers. An evaluation finding that your client is not competent to proceed can be used to support a motion to dismiss, but be aware that it may also lead to involuntary commitment to a mental institution. Document A7 in Appendix A is an example of a motion to dismiss based on a finding of incompetency. As mentioned earlier, be sure to evaluate all possible outcomes and the law in your jurisdiction.

2. **Your client does not understand what it means to enter a plea.**

   If you question whether your client has the ability to knowingly waive her trial rights and/or understand what she is admitting to in a plea, consider ordering a competency evaluation. Dr. Grisso's 1998 book, *Forensic Evaluation of Juveniles*, provides recommended methods for assessment. You should refer the evaluator to this book and other references when requesting the evaluation to ensure that your defense expert uses validated methods when assessing your client. If a competency evaluation finds that your client is not competent to enter a plea, you may be able to use this evaluation to ask for diversion of her case. Depending on the laws of your jurisdiction, however, she may be required to attend educational sessions about the court process to see if she is capable of attaining competency.

3. **Your client did not understand her right NOT to give a statement to the police.**

   When interrogation is involved, you should explore whether your client knowingly, voluntarily, and intelligently waived her *Miranda* rights. There are tests that a mental health expert can administer specifically...
designed to determine if a child’s Miranda waiver was valid. A finding that your client's waiver of Miranda was not valid will provide the judge with a basis to suppress the statements that she gave to the police. Document A6 in Appendix A is an example of a competency evaluation determining the validity of a Miranda waiver.

IV. METHODS OF EVALUATION

The goal in getting an expert's evaluation of your client is to assist you in preparing your client's defense and to assist the court in its decision-making. When looking at the mental health or competency of your client, it can be difficult to determine which method of evaluation will provide the most helpful information to answer the legal question(s) at hand. There are hundreds of types of evaluations, assessments, and tests that can be used in juvenile court. Depending on the context, you will decide, or advocate for, which method of evaluation seems most appropriate and which evaluator (with the appropriate training and credentials) should conduct it.

A. The developmental framework

Traditional competency and mental health evaluations often do not provide a thorough assessment of the disabilities, trauma and immaturity that contributed to your client's actions at the time of the alleged offense or her ability to participate in decision-making about her case. Whether the legal question at hand is competency, culpability, amenability, or another issue, consider requesting that the evaluation be conducted within the framework of a developmental assessment. Suggest, in writing, that in addition to the usual inquiries, you are interested in learning about your client's:

- thought processes
- identity development
- attachments and family history
- friendships
- empathy
- school history and services
- trauma history, symptoms and treatment
- cultural background
- aggression
- delinquency history and services
- use of alcohol and drugs and any treatment
- strengths
A developmental assessment reveals how immaturity, disabilities, and trauma are woven together. These highly descriptive reports help the court understand a client’s behavior and individual needs. Document A8 in Appendix A is a sample developmental assessment.

Developmental assessments consist of:

- two or more structured interviews with your client totaling more than eight hours
- interviews with parents and others who know your client
- review of school, child protective service, mental health, medical and other records
- information about her adjustment in detention (if applicable)
- police reports and statements
- reading, writing and math assessments
- moral dilemmas within your client’s experience
- a checklist of post-traumatic symptoms
- a timeline of your client’s life, including moves, changes in school, loss of important individuals, abuse and other traumatic events

If competency is at issue, the developmental assessment can provide a framework for an assessment of your client’s comprehension of *Miranda* rights or include easily understood hypotheticals to evaluate her capacity to assist counsel. Neuropsychological, educational and other testing, which require additional hours beyond what is described above, may also be utilized to complete the developmental picture of your client.

While developmental assessments provide a wealth of information, they also merit caution. There is a danger that the evaluator will obtain harmful details or elicit statements that could be used against your client. In the course of a developmental assessment, your client may be asked several times to describe the alleged offense in detail. The evaluator may ask your client about any discrepancies between her descriptions and the statements of others. In writing, direct the evaluator to avoid discussing the alleged offense if it is not necessary for the evaluation (e.g. when the question is your client’s competency to waive her *Miranda* rights).

Evaluators familiar with developmental assessments will observe your client’s decision-making based on how she responds to hypotheticals. The evaluator may also ask her to recount significant interpersonal choices made recently. Descriptions of her decision-making will be sought from family and other caregivers to gain information and closely observe the differences between the way your client is described by others and her behavior in the interviews. Keep in mind that experienced evaluators will pay careful attention to your client’s functioning prior to the offense and methodically consider, through record review and questioning individuals who know your client, information which corroborates or contradicts characteristics observed during the interviews. Accurate assessment requires
the evaluator to recognize that your client’s reaction to the offense, separation from family, potential post-arrest sobriety, and fears about the future significantly affect her current functioning.

Based on the full assessment of how your client is progressing, a developmental assessment will generally list your client’s needs specifically and describe what services it will take to meet those needs. Again, direct the evaluator not to include this information in writing if it is not warranted. For example, it is not necessary to include service needs in a determination of whether your client had the requisite mens rea to commit the offense. If a treatment recommendation will strengthen your client’s defense, then working with the evaluator to convene a family meeting will offer a valuable way to assess your client’s likely response to treatment. The evaluator can observe parent-child interaction and the strengths of your client and her family. These strengths are important elements of rehabilitation. The evaluator can also gauge the degree to which your client and her family understand your client’s needs. For an example of a Developmental Assessment please see Document A8 in Appendix A.

B. Clinical evaluations

The descriptions that follow provide basic information about the major methods of evaluations you will see in juvenile court. Advice for using or countering them in court appears on page 61 of this chapter. Any of these evaluations will be more thorough when conducted within the developmental framework as described above. As a general rule, you should specifically request that your expert use the guidelines given in the previous section.

1. Diagnostic evaluations (from the DSM-IV-TR)

Diagnostic evaluations should provide a picture of your client's emotional adjustment and functioning. Diagnoses (e.g., of post-traumatic stress disorder, bipolar disorder, etc.) are derived from the Diagnostic and Statistical Manual of Mental Disorders 4th Edition Revised (DSM-IV-TR).¹ Mental health professionals — psychologists, psychiatrists, neuropsychologists, and social workers with specialized licensing — are trained to assess symptoms and offer a diagnosis that fits into the DSM-IV-TR construct. In the DSM-IV-TR, each disorder is accompanied by a set of diagnostic criteria and explanations of specific features and symptoms, including the disorder's prevalence in certain communities and its age-, culture-, and gender-specific features. Common diagnoses in juvenile court include conduct disorder, oppositional defiant disorder, and attention deficit hyperactivity disorder (ADHD). A diagnostic evaluation will often include information about psychological testing used to determine a diagnosis. The diagnosis in and of itself tells you very little unless the evaluator
thoroughly describes the tests he administered, the interviews he conducted, the reports he reviewed, and the responses he heard from your client.

DSM-IV-TR diagnoses are given across five axes. The idea behind a multiaxial diagnosis is that each axis provides you with a different piece of information. The information is separated into axes to facilitate a comprehensive evaluation rather than an undue focus on the presenting problem.

- **Axis I** provides information on various disorders and conditions that may be the focus of treatment, e.g., anxiety disorders, mood disorders, or eating disorders.
- **Axis II** is for disorders that represent more enduring patterns of behavior, e.g., personality disorders and/or mental retardation.
- **Axis III** lists medical conditions that may or may not be related to the disorders in Axis I or Axis II, e.g., hyperthyroidism or enuresis (bedwetting).
- **Axis IV** is for psychosocial and environmental problems that are impacting the functioning of the client.
- **Axis V** provides a number that indicates your client's current Global Assessment of Functioning (GAF). The GAF is a 100-point tool used to rate the overall psychological, social and occupational functioning of people over 18 years of age. (It excludes physical and environmental impairment.) A children’s scale was developed by Dr. David Shaffer and colleagues at Columbia University and should be used with your juvenile clients. Document A10 in Appendix A is a sample of the Children’s Global Assessment Scale (C-GAS) and should be copied for clinicians who still use the GAF for children.

**SAMPLE DIAGNOSIS**

<table>
<thead>
<tr>
<th>Axis I:</th>
<th>Dysthymic disorder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Axis II:</td>
<td>Mental retardation, mild</td>
</tr>
<tr>
<td>Axis III:</td>
<td>No diagnosis apparent</td>
</tr>
<tr>
<td>Axis IV:</td>
<td>Death of mother one year ago</td>
</tr>
<tr>
<td>Axis V:</td>
<td>Current C-GAS: 60; highest in past year: 80</td>
</tr>
</tbody>
</table>

*Explanation:* The above diagnosis would mean that your client has had a persistent mood disturbance with frequent periods of depressive mood (dysthymic disorder) for at least a year (two years is required for adults). The child is mildly mentally retarded, which means that she has some cognitive deficits. The child has no apparent medical conditions and the loss of her mother is a significant stressor that likely contributes to her depression. The C-GAS indicates that your client is perceived to have moderate ability to function at the current time.
2. Psychological evaluations

A psychological evaluation, conducted by a psychologist, will describe your client's mental and emotional functioning. More important than the tests they will administer is the descriptive information about the findings and the client. Although test results lead the psychologist to his conclusion, the narrative is critical because a good evaluator (who has been well instructed as to your requirements for an evaluation) will discuss your client's strengths. The report should use plain language and explain why the psychologist issued the opinion given. No matter the question presented, the evaluator should offer conclusions based on testing, clinical interviews, and report reviews. A sample psychological evaluation appears in Appendix A as Document A9.

Be clear with the evaluator if you want him to limit his analysis to a narrow issue; otherwise he will probably 1) comment on whether he found a connection between the identified psychological problems and your client's behavior, 2) offer recommendations for treatment, and 3) present a prognosis regarding the likelihood of success of the client (with and without treatment). Those types of opinions can be very useful (e.g., for a dispositional recommendation) but may also introduce issues you would rather not raise in court.

Psychological evaluations almost always include some battery of tests and/or assessments. The clinical interview, the court order, and your instructions will help the psychologist determine which test instruments or assessments are most appropriate. For example, in a transfer evaluation, the psychologist may choose to conduct a developmental assessment that includes an intelligence test and a variety of other scales to determine if the child is amenable to treatment. Psychological tests measure a variety of factors that should relate to the questions presented, such as levels of depression or anxiety, intellectual functioning, interpersonal sensitivity, recovery from trauma, development, and communication skills.

A psychological evaluation may be helpful as you prepare your client's defense if you have questions about her:

- Cognitive abilities,
- Sensorimotor skills,
• Communication skills,
• Academic functioning,
• Social skills,
• Trauma,
• Behavioral issues (such as anger or anxiety), and/or
• Emotional functioning.

3. Neuropsychological evaluations

A thorough neuropsychological examination, conducted by a neuropsychologist (a doctor with specialized training in both mental health and brain functioning), will offer all of the information in a psychological or diagnostic evaluation, as well as an analysis of your client’s brain functioning and impairment. Neuropsychological tests must be interpreted in conjunction with other clinical information to be useful and are not always appropriate for clients with cognitive deficits. A carefully conducted neuropsychological evaluation can, however, help explain cognitive and behavioral disorders in terms of actual brain functioning. Consider requesting one if you suspect that your client has suffered a head injury or has brain damage from any source, including prenatal exposure to drugs or alcohol.

Neuropsychological evaluations should include clinical interviews and reviews of your client’s records, as well as provide measurable data about her cognitive abilities or deficits. As with psychological testing, there are various types of neurological assessment tools that can be used to assess cognitive impairment and functioning. As you prepare your client’s defense, you may find that measuring some aspects of her cognition through a neuropsychological evaluation will help her case. Relevant cognitive areas may include:

• Reasoning and problem solving ability;
• Ability to understand and express language;
• Working memory and attention;
• Short- and long-term memory;
• Processing speed;
• Visuospatial organization;
• Visual-motor coordination; and/or
• Planning, synthesizing, and organizing abilities.
4. Psychiatric evaluations

A psychiatric evaluation, conducted by a psychiatrist, should offer information about your client's history and development, as well as information about medication management. In many instances in juvenile court, however, psychiatric evaluations are very brief (lasting less than an hour) and are used to determine if a client needs to be hospitalized or whether she would benefit from medication. If you know that your client is on psychotropic medication or that she has been prescribed psychotropics in the past, you may need a psychiatric evaluation for her defense. You will have to work very closely with the psychiatrist in juvenile court to get a thorough evaluation.

Comprehensive psychiatric evaluations should, like other evaluations, include information about emotional, behavioral, or developmental progress/limitations; list all records reviewed, interviews conducted, and tests administered; and describe the presenting issue, the question at hand, and a clear history of the child. In addition, a good psychiatric evaluation usually includes the following:

- Results of the psychiatric interview of the child;
- Complete information about the physical and psychiatric health/illness and treatment of the child, including medication history;
- Health and psychiatric histories of parents and other family members; and
- Results of any indicated laboratory studies, such as blood tests, x-rays, or special assessments.\(^46\)

Many defenders will tell you that psychiatric evaluations seem to be diagnosis-driven rather than descriptive and explanatory. You may, however, need to seek out a psychiatric evaluation when medication is a factor and/or your client presents symptoms that may be ameliorated with medication. If you or the court chooses to pursue a psychiatric evaluation, work closely with the psychiatrist to ensure the evaluation and report include the details and descriptive information that will support the defense of your client.
5. Psychosocial evaluations

Psychosocial evaluations tell your client’s story. A psychosocial evaluation can be conducted by any mental health professional, including a clinical social worker (whose services may be the least expensive), and should include a thorough review of records and a number of clinical interviews. If done properly, they include a great deal of information about your client’s history and current status in the community: where she has lived, her family background, her educational progress, any medical or mental health issues, abuse or neglect, any court record, community activities, participation in religious activities, job history, sports, and any other forms of community involvement. A psychosocial evaluation can be especially useful for dispositional recommendations and transfer analysis and will provide the court with a thorough and more strength-based picture of your client at any phase of the proceedings (even as early as detention review). It differs from all of the evaluations described above because it usually does not include a formal diagnosis, battery of tests, description of medications, or analysis of brain functions. However, when the evaluations described previously are conducted within the developmental framework, they should include all of the information found in a psychosocial evaluation.

C. Competency evaluations

The above clinical evaluations may help answer questions raised when determining the competency of your client. However, an evaluation focused specifically on competency will explore whether your client has the capacity to either 1) proceed to adjudication or enter a plea or 2) knowingly and voluntarily waive her *Miranda* rights. Competency evaluations require different analyses than general mental health exams because of established legal standards and specialized evaluations. Moreover, competency evaluations for youth differ from those of adults because they should include a developmental assessment.

Developmental immaturity can affect your client’s ability to appreciate and participate in the legal process. For example, your client may be able to tell you that the role of the judge is to make decisions, but if you question her further, you may discover that she does not know what decisions he actually makes. Some evaluators will issue an opinion regarding your client’s competency; others will simply offer the information the court needs to decide whether your client is competent.
1. Competence to proceed/enter a plea

Although no national standard exists for juvenile competency, lower courts have made it clear that youth have a due process right to be competent to proceed in court. Some states have adopted specific procedures for determining juvenile competency, but the prevailing law to test for competency remains the criteria established in Dusky v. United States, 362 U.S. 402 (1960).

Under Dusky, a defendant is competent to stand trial if she possesses:

- Sufficient present ability to consult with her lawyer with a reasonable degree of rational understanding, and
- A rational as well as factual understanding of the proceedings against her.

The U.S. Supreme Court has held that due process does not require a different standard of competency for entering a plea than for standing trial. States can, however, "adopt competency standards that are more elaborate than the Dusky formulation[.]

2. Competence to waive Miranda rights

To safeguard the constitutional privilege against self-incrimination, a set of rights for people subject to interrogation was established in Miranda v. Arizona, 384 U.S. 436 (1966). Any waiver of the rights set out in the Miranda decision must be "knowing, voluntary, and intelligent." Fare v. Michael C., 442 U.S. 707 (1979), applied this standard to juveniles and stated that the court must consider the totality of the circumstances when deciding if a waiver of rights is valid. Essentially, "while the mere fact of being a juvenile does not invalidate a waiver, juveniles as a class are at greater risk than adults of having deficiencies in the intellectual or emotional characteristics required to satisfy the standard for valid waiver."
In your initial and other interviews with your client, you should take note of any behavioral characteristic or language limitation that does not seem age-appropriate and so raises questions about her abilities. The challenge comes in determining when a competency evaluation will provide the information you need to assert your strongest defense. Some additional cues that competency may be an issue worth exploring:

• If your client is under 15 years old,
• If your client is receiving special education services in her school program,
• If your client is more than one grade below age level or is failing more than one core course,
• If her record has a psychiatric evaluation indicating a mental health diagnosis,
• If your client has a history of receiving mental health services,
• If there is a lengthy court history of any kind,
• If when you ask her what she watches on TV, it is far below her age level,
• If your client has a hard time with basic concepts and/or cannot make decisions,
• If your client appears to be severely withdrawn, anxious, or disconnected,
• If you have difficulty communicating with your client, and/or
• If your client is facing waiver/transfer to adult court. 54
V. REQUESTING AN EVALUATION

A. Methods of requesting evaluations

Think strategically about any request for an evaluation of your client. The method you choose to obtain an evaluation will have an impact on both the outcome of the evaluation and your client's case. Your goals are to retain control over the report and findings, avoid costly fees, and have a say in choosing the evaluator. To some degree, the method you use to request the evaluation will be determined by how your jurisdiction has chosen to provide experts for indigent defendants.

Simply requesting an evaluation in open court can pose several risks to your client. It allows the prosecution to become privy to your case strategy; it reveals that you have some concerns about your client's mental health and/or competency; and it may result in the findings going to the judge and prosecutor before you have had a chance to examine them. If you find you have no choice but to request an evaluation in court, state clearly and on the record that you are seeking a defense expert and thereby shielding all reports and findings with the attorney work-product privilege.

To avoid many of these risks, there are a number of alternative methods for accessing a defense evaluation. Some possibilities include:

1. File an *ex parte* motion for an evaluation. (See Chapter 7, page 157 for an explanation of *ex parte* motions.) In the written motion, state that you are seeking an evaluation to assist in defense preparation and be clear about the issue at hand; e.g., the voluntariness of a *Miranda* waiver, adjudicative competence, or a dispositional recommendation. If you get an opportunity to argue the motion orally, or if oral presentation is the preferred method for the motion in your jurisdiction, it should still be done *ex parte*, and you should argue that your client has a right to expert defense assistance (see Section V Part B of this chapter). A sample *ex parte* motion requesting the appointment of a psychological expert, Document A11, appears in Appendix A. In an *ex parte* motion requesting funding for an evaluation, you should be strategic about how much information you give the court. Try to put enough details in your memo in support of the motion to convince the judge to give you the funds, but limit this information as much as possible so as not to be prejudicial to your client.

2. Ask the public defender office to pay for retaining a private evaluator.

3. Arrange for an evaluation on a sliding scale that your client's family can afford.
4. Seek a free evaluation from a:
   - Hospital clinic (they may have social workers, psychiatrists and/or psychologists),
   - County medical society or association (they may do some pro bono work),
   - Psychiatric department at a university hospital,
   - Psychology department at a public or private university,
   - Social welfare agency,
   - Community mental health clinic, or
   - Private mental health expert who takes pro bono cases.

B. Getting funding for a mental health expert

Some public defender offices have funds available to pay for mental health experts to assist in preparing juvenile defenses. If your office does not have such funds, but you and your client decide that a mental health evaluation is important, you should argue to the court that she is entitled to the assistance of an expert of her choosing at the government's expense. Before making this argument, conduct careful research to determine whether your client's right to an expert is supported by current law or whether you will need to advance an argument that the law of your jurisdiction should be changed. There is considerable variation across jurisdictions in the statutory and case law governing the right to expert assistance in preparing a criminal defense.

The U.S. Supreme Court announced that in certain instances there is a federal constitutional right to expert assistance in Ake v. Oklahoma, 470 U.S. 68 (1985). Glen Burke Ake was charged with capital murder, and he requested that the State pay for a psychiatric evaluation to prepare his insanity defense. The Supreme Court found that the trial court's refusal to provide Ake with an expert was a denial of due process in violation of the Fourteenth Amendment, given that Ake was able to make a preliminary showing that his mental health would be a significant factor in the trial. The Court applied a three-factor balancing test that considered the defendant's interest in the trial's accuracy, the economic burden of the State of providing assistance, and the risk of error if the psychiatric expert was not provided. The Ake opinion recognizes that a defense expert is needed to "conduct a professional examination on issues relevant to the defense, to help determine whether the insanity defense is viable, to present testimony, and to assist in preparing the cross-examination." To perform these essential functions, when the defendant's sanity at the time of the offense will be a significant factor at trial, "the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense." The Court has characterized Ake as "an expansion of earlier due process cases holding that an indigent criminal defendant is entitled to the minimum assistance necessary to assure him
a fair opportunity to present his defense and to participate meaningfully in [the] judicial proceeding.\footnote{59}

Despite \textit{Ake}'s broad language and implications, the ruling left many questions unanswered.\footnote{60} Without subsequent Supreme Court guidance, jurisdictions have implemented \textit{Ake} in different ways. If you move the court to appoint or pay for a mental health expert for your client, the first issue to check is whether your jurisdiction recognizes a right to expert assistance for youth in juvenile court. In rare jurisdictions, courts have explicitly applied \textit{Ake v. Oklahoma} in delinquency proceedings.\footnote{61} Elsewhere, you can and should make a strong argument in favor of extending \textit{Ake} to the delinquency context.

As with any effort to promote legal reform, you will need to research applicable case law in order to prepare and argue your motion effectively and to minimize the chance that your case will lead to an unfavorable precedent. One important issue to check is whether your jurisdiction recognizes the right to expert assistance outside the capital defense context. While the weight of federal authority extends \textit{Ake} to noncapital cases, state courts are split on this issue.\footnote{62} Zealous advocacy may include making a good-faith argument, after thorough preparation, that your state courts' interpretation of \textit{Ake} is too narrow.

Another ground of possible support for your client's right to a mental health expert is state statutes governing the availability of legal and financial assistance for indigent criminal and juvenile defendants ("assistance statutes"). Unless you are a part of an office whose budget includes funds to hire mental health experts, you should be aware of statutes that may require the government to cover the expense of an expert for your client. While some assistance statutes only guarantee experts in capital cases, many other statutes (or cases interpreting them) make expert assistance available in noncapital cases or do not clearly limit the use of experts to capital cases.\footnote{63} Research applicable statutes and subsequent judicial interpretations to determine whether and under what circumstances the government must provide mental health experts in delinquency hearings. Moreover, if you believe that your state's statute does not satisfy the constitutional guarantees of \textit{Ake} coupled with the juvenile due process cases, then you should consider a Fourteenth Amendment or state constitutional challenge to the statute.

Whether you are grounding your client's right to a mental health expert in constitutional or statutory law, you should press the court to interpret the right as expansively as possible. Lower courts continue to struggle to determine the scope of the right announced in \textit{Ake}, the standard for determining when to appoint an expert, and the question of whether the expert must be partisan or may be neutral.\footnote{64} Your efforts to push this area of law in a favorable direction will benefit not just your immediate client, but also the youth that you and other defenders represent in the future.
C. Selecting an evaluator

Choosing an evaluator is a key part of protecting your client. Regardless of the type of evaluation you are seeking, it is a good idea to consult other juvenile defenders for the names of qualified and experienced juvenile mental health experts. If this effort is fruitless, try contacting a university psychiatry or psychology department to ask for references.

Look for a mental health expert who:

- Has significant experience evaluating and working with youth,
- Has forensic training and experience,
- Knows the juvenile law in your state, and
- Has undergone training regarding or otherwise has awareness of cultural biases.

For a competency evaluation, your expert should also:

- Know the legal requirements and considerations to explore in determining competency (see page 36 of this chapter), and
- Have experience assessing the developmental capacities of youth.

Interview a prospective evaluator much like you would a prospective employee. If he is not clear and credible with you, then you cannot expect that he will be any better in writing or in court. You should:

- Ask to see a copy of his CV;
- Question him about his experience and training in evaluating and working with youth;
- Question him about juvenile law and/or competency standards that apply in your jurisdiction;
- Discuss his understanding of and willingness to adhere to rules of confidentiality/privilege;
- Request a sample report to see what types of testing and information he provides, noting in particular if he focuses on the strengths of the child in question or simply emphasizes a diagnosis, weaknesses, and problems;
- If the evaluator has a different ethnic background than your client, ask about the evaluator's ability to recognize and understand cultural differences in the context of an evaluation; and
• If you think you will need to put the evaluator on the stand, you should have a face-to-face meeting to get a sense of how he presents himself and articulates his findings.

Once your request for an evaluation is granted, funds have been secured, and you have selected an expert, it is time to focus on the evaluation itself.

D. What to include in the request to the evaluator

Make a very specific written request to your expert regarding what you want in the evaluation and report.

Specify:

• The legal question that the evaluation is to address (e.g., assessment of amenability to treatment), emphasizing that that is the only topic that should be addressed;

• The relevant law (e.g., statutory criteria for transfer or competency determinations);

• The relevant mental states and capacities (e.g., if you are asking for an adjudicative competency evaluation, outline the capacities necessary for assisting in one’s own defense);

• All relevant information about your client, such as records;

• Your willingness to provide, at the evaluator’s request, additional information that would be helpful;

• Recommendations for validated testing instruments that do not harm children’s due process rights; and

• The time frame within which you need the evaluation completed.66

The more you provide a road map of exactly what you need, the more likely it is you will receive a report that can assist in your client’s defense. To specifically request that the evaluation be conducted within the developmental framework (as discussed earlier in this
chapter) that looks at disabilities, trauma and immaturity in order to answer the legally-relevant question at hand, use the following sample list of questions tailored to your client in your request to the evaluator:

1. **Does this young person have problems processing information?**
   - Listening
   - Organizing, prioritizing, strategizing
   - Reading, writing, spelling or doing calculations

2. **Does this young person have symptoms and history of fetal substance exposure?**
   From early childhood, difficulty with:
   - Attention regulation
   - Getting easily overstimulated
   - Limited self-calming skills
   - Comprehending and following instructions
   - Being disorganized in play and on tasks
   - Getting frustrated quickly
   Other symptoms:
   - Does not learn from experience, repeating the same mistakes
   - Surprised by obvious consequences of actions
   - Oblivious to simple rules that other children routinely obey
   - Stimulant medication does not produce improvement
   - Behavior modification does not produce improvement
   - Seems younger than his/her chronological age
   - History of biological parents’ alcohol, drug and cigarette use prior to conception and during pregnancy?

3. **Does this young person have the symptoms of ADD/ADHD?**
   - Attention/concentration difficulties or distractibility for child’s age
   - High activity level for child’s age
   - Impulsiveness (less able to stop behaviors) for child’s age
   - High injury rate for child’s age
   - Without hyperactivity, excessive daydreaming for child’s age
   - Poor social skills/problems with peers for child’s age
   - Has he/she had a diagnosis of ADD and ADHD? When? By whom? Results of treatment?

4. **Does this young person have low intelligence?**
   - Dates and results of IQ testing, with subtest scores
   - Deficits in adaptive functioning (social behavior, daily living skills, independence, comprehension of others’ expectations, indiscriminate compliance to please others)
   - Reading and math grade level
5. Was this young person traumatized? (Has he/she suffered from physical abuse, sexual abuse, exposure to violence, loss of important individuals, and/or significant personal failures?)

Possible symptoms remaining from this trauma:

- Slowed development
- Trouble concentrating
- Fearfulness (being on constant alert)
- Nightmares
- Emotionally detached or numbing feelings (including with substances)
- Self-dislike
- Controlling
- Mistrust of others
- Irritability
- Depression/suicidal thinking and behavior
- Unusual dependence on peers/adults
- Aggressiveness/belligerent outspokenness
- Self-protective when threatened
- Difficulty self-soothing/self-calming
- Oversensitive/perceives others as hostile, mean, and unfair
- When feelings are hurt, flooded with anger from the past out of proportion to the present provocation

6. Does this young person have immature thinking?

- Difficulty anticipating consequences/planning
- Childish decision-making when scared
- Minimizes danger/not recognizing worst possible outcomes

7. Does this young person have an immature identity?

- What is he/she good at?
- Does he/she have a positive, realistic view of self in the future?
- Does he/she have a strong sense of belonging to family?
- Does he/she have strong relationships with positive peers?

8. Does this young person have immature moral reasoning?

- Sees fear of punishment as sole or sufficient reason to follow rules
- Resolves moral dilemmas in terms of balancing or exchanging individual interests
- Sees morality in terms of living up to family or community expectations or “being a good kid”
- Unable to reason about moral behavior in terms of maintaining social order
E. What the evaluator needs

After you find a qualified mental health expert and make a detailed written request to him for the evaluation, he can begin collecting the information he needs to write his report. He will review records, conduct clinical interviews, and meet with third parties.

1. Records

Provide your mental health expert with copies of all records you can obtain (through discovery, a release of information form signed by your client, subpoenas duces tecum, etc.) and for which you gain appropriate releases from your client. (See Chapter 11, page 231 for a cautionary note about sharing information about your client.) These records may include:

- Your client’s court record;
- Any previous evaluations;
- School records, including attendance and disciplinary records;
- Copies of any educational evaluations and individualized education plans (see Chapter 13);
- Abuse and neglect records;
- Any other helpful records, such as police statements, medical records, probation records, service provider reports or logs, ancillary family court records, and/or employment records; and
- All discovery in the case (only when alleged offense should be discussed).

2. Clinical interviews

The clinical interviews are a key source of information. The expert will meet with your client to assess her mental health status, to identify disorders and impairments, and to elicit strengths and interests. The clinical interviews may take a number of hours and may need to be conducted over several visits. Developmental assessments, as described above, include at least ten hours of clinical interviews with your client. Certain methods of evaluation mentioned above include testing and/or administering assessments. Most clinical interviews will require that your client discuss her family background, schooling, peer relationships, interests and struggles. You should discuss these interviews with your client ahead of time and try to answer any questions she may have about meeting with a mental health expert.
Interviews must take place in locations that can assure privacy and the protection of confidentiality. To assist your client, try to arrange for the meetings to take place somewhere that is convenient and comfortable for her. Some evaluators prefer to conduct interviews at their offices; be sure you are confident that your client can and will be at the assigned place at the scheduled time. If your client is detained, work with the evaluator and the detention facility to find an appropriate location for the interview.

3. Information from third parties
A thorough evaluation will include interviews with family members and other important persons in the child’s life to round out and confirm the information from the child herself. School teachers, clergy, and peers can also provide important and helpful information about your client’s experiences.

Be mindful of timelines in juvenile court and be clear with your evaluator about when the report needs to be completed. On your part, be sure to deliver records as quickly as possible, help make prompt arrangements for the clinical interviews, and assist in coordinating third-party interviews. Follow up with the evaluator to make sure he has everything he needs and will be able to meet your deadline.

F. What the written evaluation should include
It is good practice to speak to the evaluator about his overall assessment of your client after he has reviewed the information you have provided and conducted his interviews, but before he has committed his conclusions to writing. If his conclusions will not be helpful in court, ask that he not write a report. If you will not need it as evidence, there is no reason to generate potentially discoverable material. If you do ask the evaluator to write a report, it is important to know what to look for when you receive and read it. Although the types of evaluations differ, there are some pieces of information that they should all include, such as:

- A description of the presenting issue,
- A clear restatement of the question(s) to be addressed,
- A description of the child's developmental history, academic status and achievements, peer relationships, family, and activities and interests,
- A thorough explanation of how the evaluator came to his conclusion (with all professional jargon identified and explained), and
• Information from at least the three main sources: 1) records, 2) clinical interviews with your client, and 3) third parties.

Mental health evaluations that are used in the context of transfer or disposition hearings to address mental state or for a motion to dismiss, should provide information that will assist the court in making the necessary decisions. Competency evaluations should provide the court with information about your client’s mental, emotional, intellectual, and developmental capacities to proceed, enter a plea, or understand/waive her *Miranda* rights.

Again, samples appear in Appendix A as Document A6 (competency evaluation) and Document A9 (psychological evaluation).

If the evaluator did not answer the question presented or is missing any other necessary portion of a thorough report, ask him to add the missing information and send a new report. If the evaluation does not assist in the preparation of your defense (because it is incomplete or its findings are harmful to your client's case), you may choose to request a new one from another evaluator. It is your obligation to ensure that the report does not compromise your client's rights. Thoroughly review the report and analyze it before you decide whether and how you will use it in court.

### CHECKLIST FOR REVIEWING EVALUATIONS

- Is the correct legal issue addressed?
- Did the expert identify sources of information?
- Are any important information sources missing?
- Did the expert note how much time was spent with the examinee?
- Did the expert consider the juvenile’s behavior from a developmental and situational perspective?
- Is there a rich description of the examinee and the legally relevant behaviors?
- Is there a clear relationship between any opinions offered and the data underlying them?
- Has the expert made his or her reasoning clear?
- Did the expert consider and appropriately rule out alternative explanations or conceptualizations?
- Does the report comport with the relevant statutes and court rules?
- Were the tests used appropriate, especially taking into consideration the examinee’s age, sex, and ethnicity?
- Does the evaluation enhance your ability to defend your client?
VI. COURT-ORDERED VS. DEFENSE-INITIATED EVALUATIONS

Given the sensitivity of the information an evaluation can uncover, there are a variety of issues to consider when either you or the court decides to explore your client's mental health or competency. This section suggests ways to control the dissemination or use of mental health information about your client, but you should be aware that this is an emerging area of law. Stay abreast of new research and laws; be creative and strategic in order to protect your client.

A. Court-ordered evaluations

Depending on your jurisdiction, the court may decide on its own authority to order an evaluation of your client's mental health or competency. If defenders in your court have little or no influence over decisions regarding court-ordered evaluations, do your best to employ the strategies outlined below and/or employ any other tactics at your disposal to limit access to or distribution of your client’s mental health information. If all of these strategies fail, you can counter the evaluation when the prosecutor presents it as evidence (see page 61 of this chapter).

When someone other than you and your client requests an evaluation

If you are not the party requesting an evaluation, you should be concerned about what is being requested, who will conduct the evaluation, what the report will say and who will see the report. Allowing your client to be clinically evaluated may be as dangerous as putting her on the stand without any preparation. Keep in mind that courts may have different motives for ordering evaluations; for examples, they may be interested in assessing risk. Do what you can to protect your client. If you are concerned that an evaluation will work against your client’s legal interests, consider using the following tactics:

1. Oppose the request

Oppose any request by the prosecution or court order for an evaluation. Because a non-defense mental health expert will provide his report directly to the judge and the prosecutor, they will gain access to statements made by your client as well as the expert's findings and analysis. If the court insists on evaluating your client despite your opposition, state your opposition for the record.
2. **Ask the judge to limit the request**

Insist for the record that the court's mental health or competency evaluation order include a provision that prohibits all statements and information in the evaluation, beyond those necessary to address the court's specific issue, from being used against your client. For a competency evaluation, also insist for the record that the court's evaluation order include a provision prohibiting the evaluator from discussing the facts of the alleged offense with the child. Securing such orders may strengthen future challenges to inappropriate use of information and will buttress the record for appeal.

3. **Ask to be present during the evaluation**

Under *Estelle v. Smith*, 451 U.S. 454 (1981), your client arguably has the right for counsel to be present at a court-ordered evaluation that may elicit information to be used against your client, as the Supreme Court found this to be a stage of the proceedings at which the Sixth Amendment right to counsel attaches. Your presence can ensure that the evaluator does not ask questions, and your client does not offer responses, about the facts of the case when it is unnecessary for the evaluation. You can also instruct your client not to answer questions that are not relevant to the issue at hand. In addition, witnessing the evaluation provides advance warning about the contents of the report the evaluator will eventually write.

4. **Ask that the report be released to you first**

Request that the evaluator’s report be released to you before the prosecutor sees it. Ask to have the opportunity to review it and move to strike or redact specific portions that raise Fifth Amendment concerns before it is given to the State. If your request is denied, ask that, at the very least, you receive the report at the same time as the prosecutor.

5. **Insist that you receive all materials related to the evaluation**

Seek an order that all raw materials (such as test scoring sheets, interview notes, and your client's test responses) be preserved and made available for review. The standards of practice for forensic psychologists require that these materials be made available to clients and their legal counsel, and other experts should follow similar policies. Receiving this information is the only way to obtain meaningful review of the expert's conclusions (by you or your retained expert).
6. Prepare to argue against the quality of the evaluation
Court-ordered evaluations often are done in much less time and with much less information than is necessary to complete a thorough and thoughtful assessment of your client. Counter these evaluations with the standards described in section VII of this chapter.

7. If possible, seek an independent evaluation
Although you may have initially decided that exploring your client's mental health or competency would not assist you in presenting her best defense, a high caliber defense evaluation could be used to rebut the court's expert.

8. Argue case law
In addition to case law in your jurisdiction, look at *Estelle v. Smith*, 451 U.S. 454 (1981), in your analysis of how to present arguments against using evaluations in court. In *Smith*, the United States Supreme Court found that a defendant who was compelled to undertake a validly ordered competency exam, did not waive his *Miranda* rights before the evaluation, and did not introduce the evaluation as evidence at trial, was protected by the Fifth Amendment from having his statements during the evaluation used against him in a capital sentencing proceeding. The Court stated that "[a] criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him.... Because respondent did not voluntarily consent to the pretrial psychiatric examination after being informed of his right to remain silent and the possible use of his statements, the State could not rely on what he said to ... establish his future dangerousness." *Smith* acknowledges that a psychiatric examination can become a form of custodial interrogation and part of the adversary process when it ranges beyond the issue of competence. Although the reach of *Smith* remains unsettled, it provides a possible line of argument for limiting the scope and use of an evaluation.
B. Defense-initiated evaluations

If you and your client decide to pursue expert assistance in preparing her defense, be sure to protect the information gathered to the fullest extent possible. Information is more likely to be shielded from prosecutorial discovery if the expert does not testify. Unfortunately, the law on protecting the work of non-testifying defense experts from prosecutorial discovery is unclear and highly jurisdiction-specific. You should also note that indigent youth may be at heightened risk of forced disclosure because state statutes sometimes condition access to government funds for experts on turning information over to the prosecution. These statutes interact with three doctrines, often overlapping, that may protect the investigation and reports of defense experts from being discoverable: the work product rule, attorney-client privilege, and the constitutional right to effective assistance of counsel.

The work product rule provides a shield against discovery, so counsel can pursue all promising lines of defense. It can be argued that this rationale extends to protecting communications between defenders and non-testifying experts. Additionally, many states have protected communications and reports by mental health experts by bringing the work of these experts within the umbrella of the attorney-client privilege, as long as the expert does not eventually testify. Be sure that the evaluator understands and agrees to uphold attorney-client privilege to the fullest extent possible, even if he learns of information that he might otherwise be likely to report (e.g., the child talks about past delinquent activities). Finally, some courts have held that the right to effective assistance of counsel protects defense-retained experts’ work from use by the prosecution.

However, if you decide to introduce evidence of your client’s mental or emotional condition in court or even if you hire an expert with the aim of developing evidence for trial, you may be compelled to provide your expert’s report to the court and prosecutor. The information contained in an expert’s report is no longer protected, once you choose to raise the issue of your client’s mental health. Make sure that your client understands before the evaluation begins that what she says to the evaluator may be repeated later in court. If you are considering requesting a mental health evaluation of your client and/or introducing this information in court, you should consider the case of Buchanan v. Kentucky, 483 U.S. 402 (1987). In Buchanan, the Supreme Court held that "if a defendant requests [a psychiatric] evaluation or presents psychiatric evidence,... the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution." In this case, the defense and prosecution jointly moved for an evaluation of the defendant, which the defense then used to support its affirmative defense of extreme emotional disturbance. The Court distinguished its decision...
in Buchanan from its earlier decision in Smith by explaining that where the defense elects to use such information as part of its case, the prosecution would be unable to rebut these arguments without its own use of the psychological evidence. Given remaining questions from Buchanan, you should collect all the records necessary for preparing your expert and be alert to any potential for their use by the State.

VII. USING OR COUNTERING AN EVALUATION IN COURT

After reading a report, whether from your evaluator or the court's, you must develop a strategy for handling it. It may be that a court-ordered evaluation you opposed says good things about your client that you want to highlight for the judge. Or it may be that an evaluation you worked hard to get reveals too much or has negative conclusions about your client that you want to keep out of court. More likely is that the evaluation says some positive things and some negative things about your client, and you will have to use your judgment in determining if and how to introduce it or how to counter it if it is being introduced by the prosecutor. Read the report carefully and assess its possible implications.

Your job is to make sure that, on direct examination of your or a court-ordered evaluator, you bolster the strength and validity of an evaluation that helps you present your defense. Alternatively or in addition, you should use cross examination of an evaluator to show faulty methods, weak tests, and a lack of information in an evaluation that hurts your defense strategy. The best way to support or oppose the findings of an evaluation is to learn about the evaluator's methodology and the tools he used to assess your client. There are several possible angles from which to approach the expert you are questioning. Think critically about everything you know about an evaluation. Consider:

**The qualifications of the evaluator**

If you selected the expert who conducted the evaluation, you will already know his qualifications. If the expert was hired by the court, find out what his qualifications are. Use this information to bolster the expert's testimony or to critique his ability to assess your client. (Help with introducing your expert witness on direct exam appears in Chapter 10 on page 205; ideas for questioning the prosecution's expert witness appear in Chapter 10 on page 196.)
The completeness of the evaluation

If you made the request for an evaluation, you should have provided the evaluator with all the relevant materials and made sure that the report did not lack any significant information (about your client, how the evaluation was conducted, the test results that led to the conclusions, etc.). If the court’s evaluator neglected to include relevant information, use that fact to discredit his report.

Substance of the evaluation

Use what you know about the evaluation to bolster or counter its substantive findings. The materials referenced throughout this chapter provide a wealth of information about the methods and results of different assessments. Evaluators should follow professional guidelines for administering each of these assessments; adherence to them offers legitimacy to a report and failure to meet the specifications provides reason to question findings. The type of evaluation conducted determines the source for information about it:

DSM-IV-TR diagnoses

In addition to learning about screening and assessment tools, you should also be aware of some of the issues surrounding diagnosis. The major issue about a DSM diagnosis that defense attorneys must remember is that it is deficit-based rather than strength-based: it highlights all of the bad things that can be said about your client and none of the good things.

Opponents of the DSM argue that patients frequently fail to fit into any particular category or fall into several and that diagnoses are arbitrary. So much time is spent trying to fit a square peg into a circular hole that the focus on providing successful interventions is lost. There is also a great deal of frustration when diagnoses are used merely as a means to secure payment for services. You should elicit these issues on cross examination when your client’s diagnosis is unsubstantiated in the expert’s report and testimony.

Another concern juvenile defenders have with DSM diagnoses is the over-diagnosis of conduct disorder and oppositional defiant disorder. When you break down the diagnostic criteria for these disorders, you see
that typical adolescents exhibit many of the same symptoms. For example, the essential feature of oppositional defiant disorder is "a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior" that are “almost invariably present in the home setting, but may not be evident at school or in the community.”

Use the specific criteria of a diagnosis on cross examination to break down the wholesale acceptance of a damaging diagnosis by a court expert.

**Testing and assessment tools (for psychological, neuropsychological, psychiatric, or psychosocial evaluations)**

There are literally hundreds of kinds of tests and assessments that can be administered to evaluate youth. They measure everything from depression to intellectual functioning to substance abuse. An analysis of many types of tests for youth can be found in the guide *Screening and Assessing Mental Health and Substance Use Disorders Among Youth in the Juvenile Justice System.*

You can download this guide, which was published by the federal Office of Juvenile Justice and Delinquency Prevention, in its entirety at [http://www.ncjrs.org/pdfiles1/ojjdp/204956.pdf](http://www.ncjrs.org/pdfiles1/ojjdp/204956.pdf). It provides basic descriptions of assessment tools and tests, including average length of time to administer each test, the age range for which each test is appropriate, whether each test is validated by research with youth in the juvenile justice system, and what information or issues each test measures.

This guide will help you analyze the relevance of an expert’s evaluation for your client. If an evaluator uses a test not described in the guide, do your best to find out as much as you can about it, but question why he used an instrument not validated for youth in the juvenile justice system. Whether you are presenting a report to the court or conducting direct or cross examination, your ability to defend your client will be markedly enhanced by taking the time to understand the tests used to inform a clinical expert’s opinion. You can emphasize how appropriate a certain test is for your client or attack its validity.

**Determinations of competence to proceed/enter a plea**

Dr. Thomas Grisso has been a leader in developing and analyzing psychological tools for use with youth in delinquency proceedings. Dr.
Grisso's guide, *Evaluating Juveniles' Adjudicative Competence: A Guide for Clinical Practice*, provides evaluators with question topics for determining adjudicative competence. The guide presents a structured interview, called the Juvenile Adjudicative Competence Interview, with questions that address the types of limitations that youth may face due to their developmental status. This interview helps evaluators explore whether youth have the understanding and appreciation needed to assist in their own defense or to answer the questions in a plea colloquy.

The topic areas addressed in the interview are:

- Nature and seriousness of the offense
- Nature and purpose of the juvenile court adjudication
- Possible pleas
- Guilt and punishment/penalties
- Roles of participants (prosecutor, defender, probation officer, judge, jury)
- Ability to assist counsel, including plea agreements
- Reasoning and decision-making (having a defense lawyer, how to assist the defender, whether to admit or deny the charges, deciding about a plea bargain)
- Ability to participate at the juvenile court hearing (attending, maintaining self-control, testifying)

You can use this information to point out that your evaluator addressed all of the relevant topics in his evaluation of your client, or you can question the completeness of evaluations by experts who use less thorough methods.

**Competence to understand/waive Miranda rights**

A *Miranda* competency evaluation differs from an adjudicative competency evaluation, as it should specifically examine your client's understanding of the *Miranda* warnings. Dr. Grisso created and validated four test instruments for the evaluator to examine whether your client knowingly waived her rights. These tests are laid out and described in Dr. Grisso’s, *Assessing, Understanding, and Appreciation of Miranda Rights: Manual and Materials*. One test, Comprehension of *Miranda* Rights, asks your client to paraphrase the *Miranda* warnings to assess her general level of comprehension. The second test, Comprehension of *Miranda* Rights-Recognition, asks your client to
recognize whether statements are similar to or different than the *Miranda* warnings. The third test, Comprehension of *Miranda* Vocabulary, evaluates whether your client understands the actual vocabulary used in the warnings. The fourth test, Function of Rights in Interrogation, helps the evaluator determine if your client understands the effect of *Miranda* warnings in the legal context.

Through these tests, Dr. Grisso has provided a methodology for evaluators that can also be a road map for your examination of the expert witness. Direct examination of an experienced and knowledgeable evaluator who uses Dr. Grisso's test instruments can reinforce the thoroughness of the assessment of your client's understanding of *Miranda* rights. Cross examination of a less able evaluator who does not use validated methods will make it clear to the court that their assessment is an unreliable *Miranda* competency evaluation. Again, the key to challenging or supporting an evaluation in court is understanding the specific elements used in assessing your client.

Your client's mental health and competency affect her participation at each phase of her case. Her functional capacities and ability to comprehend legal and other concepts are relevant in considering her participation in any alleged incident and come into play as early as her arrest by the police and processing by a probation officer. These early stages of a case are addressed in Chapter 4.
Arrest & Processing

You will not often have the chance to advocate for your client during arrest and processing by the police. It is important to be familiar with issues related to police conduct and procedures, however, because effective representation at these early stages—or, if you were not present, careful investigation into the events that took place—can have a huge impact on her case. In addition, probation officers typically have great power over juvenile cases, so you should be sure that your first interactions with your client’s probation officer are thoughtful and strategic.

What to consider before your first case

1. **Police procedures in your area.** The police have regulations governing arrests and interrogations, line-ups and other investigative procedures. Secure a copy of the handbook detailing those regulations, so you can ensure that the police officers who interact with your client follow them. Additionally, you should analyze whether stated police procedures are lawful.

2. **The role and power of probation in your court.** Investigate what probation officers can and cannot do in your jurisdiction and develop relationships with those who are assigned to your clients. Read the law that describes their role and authority and analyze whether the probation department’s practices are in accord with it. Think strategically about how probation officers can help you and what obstacles they may create for your client.

The right to counsel should attach as soon as the juvenile is taken into custody by an agent of the state, when a petition is filed against the juvenile, or when the juvenile appears personally at an intake conference, whichever occurs first.

—IJA-ABA Juvenile Justice Standards, Standards Relating to Pretrial Court Proceedings, Standard 5.1
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I. REPRESENTATION AT THE TIME OF ARREST

Although you will not always be involved in a case at its earliest stages, the earlier you start to play a role, the better. Your advice to and representation of your client early on in her case can have a significant impact on how the case proceeds.

Some jurisdictions have procedures to ensure that youth have access to representation at the time of arrest, but in most places, you will only know that a child is under arrest if she is already your client, and she contacts you. There are two typical scenarios in which you will learn about an arrest early enough to get involved: 1) your client calls you to tell you that the police are looking for her, or 2) she calls you from the police station. In either situation, you should be prepared immediately to counsel your client and advocate on her behalf.

A. If the police are looking for your client

Though many of your clients will have been arrested at the scene of an alleged offense, in some cases a client will know that she is facing arrest (e.g., if she has violated probation, run away from placement, or committed a new offense) and will contact you for advice.

1. Initial interview of a client wanted by the police

When you speak to your client, you should accomplish the following:

- Determine if your client is safe right now or if someone is going to hurt or harm her.
• Review the attorney-client privilege and reassure your client.

• If you are talking over the phone, confirm that she is in a place where she can talk privately. If not, adjust your questions so she is not answering in a way that could be harmful.

• Learn why your client believes she is wanted by the police, what your client knows about the nature of the charges, and what she knows about the events underlying the charges.

• Determine if your client thinks she will be found and arrested before you will have a chance to discuss the possibility of a voluntary surrender with the police. Discuss whether your client will voluntarily surrender. (Note that you will be better prepared to address this issue after completing Step 2. Voluntary surrender is discussed in Step 3.)

• Ask your client about information relevant to pre-adjudication detention, such as her prior criminal record, willingness of her parent or other relative to accept custody pending adjudication, and, if applicable, sources and available amount of bail. (See Chapter 7 for more information on pre-adjudicatory proceedings.)

• Ask your client for permission to contact the police to get more information.

• Make sure your client understands her rights and that she will assert her right to remain silent and have counsel present if arrested. Remind your client to say “I want my lawyer, and I want to call her now.” If you are concerned that she might be too scared to verbally assert her rights, help her write them down on a piece of paper she carries with her and can hand to the police if arrested.

• Make a plan for future communications. Reassure your client that you want her to contact you if she is arrested.

• Ask your client if there is anything else you should know about the incident or her circumstances.

2. Verifying the existence of an open warrant

After you speak to your client, you will want to find out if the warrant she is worried about actually exists. In addition, there may be related information you can gather. Depending on your jurisdiction, there are different ways to conduct this research. You want to be efficient without jeopardizing your
client, so be careful about whom you contact and what you say. Possible sources of information include:

_The police._ It is an option to call the police directly to inquire about a warrant. If you speak with an officer or detective, be very careful not to divulge any incriminating information about your client.

_The court clerk._ You may be able to call the clerk of your jurisdiction’s court and inquire about the status of a case. That information should include any pending warrants.

_The court computer system._ If your jurisdiction has shared computer access to case information, you may be able to quickly and easily find out about an open warrant without contacting anyone.

_The probation officer._ Your client’s probation officer was likely notified if your client ran away from her placement or otherwise violated her probation requirements, so he can be a helpful contact in many situations. Again, be careful not to share information that could incriminate your client.

_The prosecutor._ Though probably not the best initial source of information, the prosecutor may be willing to discuss a stipulation of conditions for release or at least begin working toward an agreement for release, if necessary.

3. **Helping your client consider voluntary surrender**

As an officer of the court, you cannot actively advise a client to disregard a court order, including an arrest warrant. However, if you believe in good faith that the warrant was issued in error, you may take steps to test its validity. You should also confer with the client regarding the advisability of surrender and the logistics of doing so. There are several reasons to recommend voluntary surrender. The Hertz, Guggenheim & Amsterdam *Trial Manual for Defense Attorneys in Juvenile Court* suggests the following factors to consider:

- Reduction of the charges and/or a timetable or conditions of release (if you have been able to negotiate them with the prosecutor).
- The client will have a better chance of being released after arraignment. If she acts responsibly now, you will be able to argue to the judge later that the child’s voluntary surrender demonstrates that she is unlikely to flee the jurisdiction pending adjudication.
Fugitive status is only likely to complicate the case when the client is subsequently apprehended and practically guarantees that the child will be detained.

- By surrendering at a prearranged time and place, the client can avoid public embarrassment and possible physical injury.
- By surrendering with you present as counsel, you and the client can assert the client’s constitutional rights and avoid custodial interrogation.

If there are unusual circumstances surrounding the warrant and/or your client does not want to voluntarily surrender, you must defer to her decision about how to proceed and advise her of the consequences. Recall that your duty to protect your client’s confidences means that you are not obligated to tell the court or police your client’s whereabouts or if she has contacted you, unless she gives you permission to do so.

4. Arranging the client’s surrender

Pick a time and a place agreeable to both your client and the police. In most cases, even if you have an agreement with the police for voluntary surrender, they may still arrest your client before the surrender. Your client could be stopped by an officer unaware of the surrender plans, or the police may choose to arrest her in an attempt to intimidate her. Advise your client accordingly.

Accompany your client to the police station. Even if the police have promised not to interrogate your client, make sure that she understands her rights and plans to not talk to the police without consulting with you first. Give her a card that asserts her *Miranda* rights and tell her to give it to the police. Document A12 in Appendix A provides a camera-ready sample of a two-sided card that asserts *Miranda* rights and provides contact information for the client, her parents, and you. (Alternatively, you can print just the assertion of rights on the back of your business card.) At the very least, tell her to ask to speak to her lawyer, and make sure she writes down your phone number.
B. Stationhouse representation

If you find out that your client is in police custody, you will want to take the following steps to prevent her from facing time in detention and from inadvertently making things more difficult for the two of you as her case continues:

1. Get your client on the phone

If your client has called you from the station, this step is unnecessary. If, however, you heard about her arrest from some other source, you may have some trouble convincing whoever answers the phone at the station to let you talk to your client. Remain cordial at all times. The Hertz, Guggenheim & Amsterdam Trial Manual for Defense Attorneys in Juvenile Court offers the following example of what to say to the police:

   “Officer, until I speak with my client, it’s my duty, as her lawyer, to tell you that she does not wish to answer any questions until I get there. Now, if I can have a chance to talk with her on the phone right now, so that I can get a better sense of what this case is all about, it may be that I’ll end up advising her to cooperate with you and possibly to cut a deal. But, I cannot make any decision about that, and I certainly cannot advise my client about that unless you let me talk with her on the phone.”

Though it is extremely rare that you will advise your client to cooperate, especially without being present, you may still say that you will consider such action. If this approach does not work, take down the officer’s name and badge number as well as the name and phone number of the officer’s superior. If the superior of the officer will not budge, go to the police station and try in person. You can also try calling the prosecutor or his supervisor to seek their assistance in getting to your client (and putting the State on notice that any statements taken after your previous call to the police will be inadmissible). Whatever you do, be assertive and persistent in order to get access to your client as soon as possible.

2. Have a conversation with your client

Once you have your client on the phone, you will want to ask her questions and give her advice. First, encourage her to politely ask for privacy while she is talking to you, but regardless, avoid any substantive discussion of the incident because of the danger of eavesdropping. You can explain to your client that you want to hear about what happened, but it isn’t a good idea to
talk about it just yet. The following list of key topics to cover is adapted from the Hertz, Guggenheim & Amsterdam *Trial Manual for Defense Attorneys in Juvenile Court*:

- **Representation.** Secure your client’s permission to represent her.

- **Assertion of rights.** Advise your client to assert her constitutional rights to the police. Tell your client to notify a police officer (while you are still on the phone to hear) that she does not want to talk to any police officers or prosecutors without her attorney. She should also say that all future communications with her should first go through you and you alone. Hertz, Guggenheim & Amsterdam propose this sample language:

  “Say nothing to the police. Tell them nothing at all. Don’t answer any questions from the police until you and I have had a chance to talk privately.

  If the police try to question you or talk to you at all, about anything, tell them your lawyer told you not to talk. If they say anything about having evidence against you or if they tell you what the evidence is or if they bring in someone else who says something against you, then they are just trying to get you to talk. Don’t fall for it. If they promise to drop the charges after you confess or if they threaten to stick you with more charges if you do not talk, they’re just trying to trick you. Don’t fall for any of their tricks. Whatever they say, tell them your lawyer told you not to talk and that you refuse to talk.

  Sometimes, the police tell arrested kids that their lawyers don’t know anything and that only the police know what’s good for the kid. That’s just another police trick. They’re trying to get you to say something so that they can get the judge to lock you up for a long time.

  So, make sure you don’t say anything to them. Just keep saying that your lawyer told you not to talk.”

- **Caution.** Warn your client not to speak about her case with cellmates, co-respondents or even family members and friends at this time. Explain that a large number of co-respondents end up testifying against their close friends to save themselves. Also, explain that the police may eavesdrop on visits or telephone conversations. Finally, explain that what she tells family and friends is not confidential, and they can be forced to testify against her in court.

- **Injuries.** Ask your client if she is injured or requires any medical attention and if the police have mistreated her in any way. If your client complains of being injured, document the injury, asking questions like:

  *When were you injured? Where were you? Who injured you? Did anyone else see the injury happen? Can you explain what*
happened? Did you hear the police explain to anyone else what happened? Did you see a doctor? Who? Where? What did the doctor do for you? Did the doctor take blood, do any tests, write anything down? Who was with you when you saw the doctor? Did anyone take pictures of your injuries or body?

• Identification procedures. Tell your client that if the police want her to participate in a line-up or other identification procedure, she should politely refuse. She should say that she wants her lawyer present and that the police should either contact her lawyer or allow her to contact you. If the police proceed over your client’s objection, advise her to cooperate physically and then to write down as much as possible about the people in the line-up and how it was staged.

• Searches. If the police ask your client for permission to search her home without a warrant or ask the client to lead the police anywhere or show them anything, she should always say, “I’m sorry, but my lawyer told me to say ‘no.’” If anyone attempts to inspect or examine your client’s body or take any physical samples, she should say, “I’m sorry, my lawyer told me to tell you to wait until he/she gets here,” but she should not physically resist or refuse if the police insist on taking the samples anyway. Advise your client in accord with state laws on breath-sobriety tests if her refusal can result in penalties regardless of guilt in an underlying DUI charge.

• Charges. Ask your client what the police said they were charging her with. Make sure to ask specifically if she has been informed of any charges at this point. Given the danger of police eavesdropping, make sure that your client restricts her responses to only what the police told her, not what she is afraid of being charged with or what really happened.

• Parent. Ask your client whether the police have contacted her parent or mentioned anything about releasing her to her parent or another relative.

• Bail. If bail is applicable, ask your client if the police have mentioned whether bail has been set. If it has, ask if she knows for what amount.

• Next steps. Try to reduce your client’s anxiety by explaining the steps you will take immediately on her behalf. Explain how you are going to try to get her released and tell her that you will get back in touch with her. If you are going to the police station, tell her you are on your way and give her a reasonable estimate of how long it will take you. In addition, warn your client that there is a possibility the police may not let you see her, but you will try.
3. Have a conversation with the police officer who has your client in custody

Your first priority is to talk to your client. In trying to get your client on the phone, however, you may have an opportunity to talk to a police officer who has taken your client into custody before custodial interrogation begins. The Hertz, Guggenheim & Amsterdam *Trial Manual for Defense Attorneys in Juvenile Court* advises that you use this conversation to:

- Politely inform the officer that you are representing your client.
- In a cordial manner, find out as much information as you can about the case.
- Bring up the possibility of your client being released to her parent pending arraignment and express the parent’s concern about the client and great desire to have her at home. You should discuss any reasons to support the client’s release, such as school tests, disabilities, responsibilities at home, diminutive size, young age, etc.
- If applicable, inquire about bail or conditions of release. Ask the officer whether bail has been set. If it has been set, how much is it?
- Find out the precise current location of your client and whether she will be moved.
- Put the officer on notice that all further communication should be directed to you and not your client. Inform the officer and/or the officer’s supervisor that:
  1. You are asserting your client’s right to remain silent. If you are going to the police station, ask that no interrogation take place until you arrive at the police station and have an opportunity to consult further with your client. (When you go, bring Document A13 in Appendix A, a letter declaring that your client is asserting her *Miranda* rights.)
  2. Your client refuses to consent to any searches or other police investigation.
  3. Your client is asserting her right to have counsel present at a lineup or other investigative procedure.
- Formally request that the officer inform his colleagues and entire chain-of-command of your requests.
- If your client has requested or may need medical treatment, ask the officer to take her to the hospital. Make sure to find out where your client is being taken for medical treatment. If appropriate, inform the officer that you will meet them there.
• Take down the officer’s name, rank, and badge number. Ask the officer where he will be in the next couple of hours and how you can contact him.86

4. Have a conversation with your client’s parent

After you have finished talking to your client and the police on the phone, contact your client’s parent. Be sure not to release confidential information about your client in the course of this conversation. The following list of suggested topics for interacting with your client’s parent is adapted from Hertz, Guggenheim & Amsterdam.87

• Discuss the parent’s willingness to take custody of your client upon release from the police station. If the parent refuses because he wants your client to spend some time in detention, communicate quickly and clearly the danger that she may be physically, verbally, or psychologically abused while there and will likely foster negative peer associations if kept in detention for more than a brief time. Find out if there are any relatives or other adults in your client’s life who the parent would be willing to allow to take custody. If the parent agrees to take custody, arrange for you or someone from your office to meet him at the police station or make sure he has precise instructions on how to get his child.

• If the police have not agreed to release your client, obtain useful social information from the parent, such as home behavior, school performance, past or present employment, and prior delinquency record. Ask whether your client is on probation or pending adjudication in another case, and try to find out other information concerning your client’s ability to stay out of trouble, if released.

• Ask about any conversations the parent has had with the police, including what the parent has told police and any information he has learned about the case. This may be an appropriate time to discuss the potential impact of any negative information he provides to the police or the State. Explain that you are not asking him to lie, but to make informed decisions about what information he will share.

5. If possible, go to the police station where your client is being held

Your presence at the police station ensures effective protection of your client’s rights and sends a strong message to her about the level of commitment you
have to her case. The following key steps are adapted from Hertz, Guggenheim & Amsterdam’s *Trial Manual for Defense Attorneys in Juvenile Court*:

- Be sure you are prepared. Bring a wristwatch, your attorney and standard identification cards, business cards, a camera, and a copy of a letter asserting your client’s *Miranda* rights (Document A13 in Appendix A), etc. Make sure you have a pen and paper, so you can record times and descriptions of all events as well as the names of the people involved, once at the station.

- Show the desk officer your attorney identification and explain that you represent your client and need to see her immediately. If there is a delay of more than a few minutes, repeat your request and, if necessary, ask to see the officer’s supervisor. If the police say that you can see your client once they are finished booking her, insist on seeing her right away and that any questioning should stop until you can see your client. Document all of your requests and the police’s responses. Write down the names of the officers.

- Once you have a chance to see your client, reiterate the need for her to assert her constitutional rights to the police if she has not done so already.

- Ask your client if she has made any written or oral statements or been subject to any identification or testing procedures. If yes, attempt to obtain all available information, including copies of any written statements or notes. Urge your client to reassert her rights if the police try to get more information.

- Ask if the police plan on subjecting the client to further identification, investigative procedures, or tests. Request to be present at those proceedings.

- Once you have finished talking to your client, ask the police about your client’s release to her parent. If they are against release or have not yet decided, use the positive social information you obtained from your conversation with her parent to argue for her release. If the police will release your client, stay to coordinate that release. If the police intend to keep your client in custody:
  1. Have your client tell a police officer in your presence that all questions concerning this case should be directed to you first.
  2. Make sure your client has your contact information.
  3. Give a business card and a copy of your client’s written assertion of rights (Document A12) to the supervising officer and/or desk officer as you leave.
II. REPRESENTATION AT A LINE-UP OR OTHER INVESTIGATIVE PROCEDURE

A. Basic information

The police in your jurisdiction may employ a variety of techniques when seeking witness identification of a suspect. They may conduct a line-up; a “show-up” (asking the witness to look at one individual at a time, perhaps by driving around near a crime scene); or a photo array. It is important that you understand how these procedures are supposed to be administered; some general information appears below, but you should learn more about the practice in your area. Document A14 in Appendix A, a motion for discovery of police training materials, suggests one good way to collect information.

The specific circumstances will vary, but your role during an identification proceeding (if you are present) is to be an observer, as described in Part B of this chapter. There are times when you may want to interfere with suggestive circumstances or actions by the police officer(s). In each situation, you will have to determine what tactic will be most advantageous to your client’s case. While you want to ensure that the identification proceeding is fair, keep in mind that some of what you observe may be useful later at a suppression hearing. (Note that there is much disagreement about the reliability of identification methods, even when they are conducted appropriately. Finding out more about these types of challenges to identification procedures could be helpful to your clients.)

Anything you observe or can discover that calls into question the validity of the identification procedure can be used later to request the suppression of the identification. (See Chapter 6, page 113 for a more thorough discussion of suppression of evidence.) Document A15 in Appendix A, a motion requesting information about identifications at which the defense attorney was not present, demonstrates how you can investigate these procedures after they occur. Document A16 in Appendix A is a motion arguing that a witness identification is inadmissible at adjudication because it was the result of “unduly suggestive” information. Even if an identification is held admissible, you can still use information about it to make arguments in court questioning its validity.

B. Steps to take

In general, your job during identification procedures is to take careful notes, get the names of all participants, and ask questions such as those suggested on the following page. Find out what procedures are to be used before they are actually implemented to ensure that you are prepared for any problems that might arise.
Question the witnesses

Ideally, you will have already interviewed the witnesses before they appear for a line-up. If you have not, ask to talk to each identifying witness alone before he sees the line-up or is otherwise asked to identify the offender. Keep in mind, however, that this request to talk alone might be denied. If you are able to speak with the witness, ask him:

- To please describe the perpetrator in detail.
- What were the perpetrator’s distinguishing characteristics?
- Do you know anyone else involved in the case (including the accused)? If yes, how?
- Have there been any previous identification procedures, whether from photographs or in person, and have you actually identified anybody?
- What instructions have you received from the police or prosecutors regarding this procedure?

Assess the validity of the line-up

Again, think strategically about what errors to mention to the police and which to note as potential suppression grounds that you will raise later. Be aware that:

- A line-up should be composed of at least six people.
- These people should resemble the client in age, skin color, height, weight, body type, hair style, clothing, and accessories.
- They should be dressed in street clothes without a single piece of prison or police garb.
- If there is more than one witness scheduled to view the line-up, the witnesses should be separated from each other at all times during the identification process, including while waiting for the process to begin.\textsuperscript{99}

Take notes

You should record the following information concerning the line-up:

- The date, place, and time of the line-up;
- Names, descriptions, and contact information of all witnesses who are present to view the line-up;
• Names, badge numbers, and positions of all police officers and prosecutors present;

• What the police say to each witness;

• What each witness says to the police;

• How the line-up is conducted, including distances, lighting, directions to the subjects, and the circumstances surrounding any identification; and

• Anything suggestive about the line-up, whether you made objections and, if so, what the responses were.90

Observe any other investigative procedures

Although it is rare, there may be circumstances when you are able to be present at the testing of physical evidence or gathering of other evidence. In those situations, observing the testing procedures and the handling of evidence can result in findings that will ultimately be beneficial to your client’s case. You should:

• Record the names and contact information of all technicians and officers present.

• Ask them to explain the procedures, materials, substances, chemicals, and other details before testing begins.

• Ask them to explain what determines positive, negative, or unreliable test results.

• Ask whether the testing procedures will affect the substances being tested.

• Request that a sufficient amount of the substance be left for defense testing.

• If anyone refuses to answer your questions or cooperate, take down their names.91

If you are working on a case that rests heavily on physical evidence and/or forensic testing, it is worthwhile to learn about the quality of testing facilities and procedures in your area.
III. INITIAL REPRESENTATION AT THE DETENTION FACILITY

You may need to advocate for your client’s release at a detention center if you are unsuccessful at convincing the police to release your client, the police detain your client before you can intervene, or your jurisdiction’s rules call for detention decisions to be made by “screeners” at facilities rather than by police.

Just as with police, screeners or other officials at detention centers who evaluate incoming youth may be influenced by information you can provide about positive factors in the client’s situation (good school attendance and behavior, supportive family and/or religious, sports, or community activities) and/or factors that make detention problematic or inappropriate for her (her age, immaturity, physical and mental disabilities, medication, or special education needs).\textsuperscript{92} Know what your local statutes and/or court rules say about detention. For example, if your state only permits detention if a youth is dangerous and your client is accused of a non-violent crime, the detention center may have no grounds for holding her. In urban areas, particularly, simple inability to contact a parent is sometimes used as grounds for initial detention decisions, but that may not be a legally justifiable reason to detain a child. Learn what your jurisdiction’s process is for evaluating incoming youth; if the facility uses a risk assessment instrument, familiarize yourself with the risk factors it includes, so you can point out the circumstances that do not apply to your client.

More on detention-related advocacy appears in Chapter 7. For a complete explanation of the defender’s role in preventing detention, see the National Juvenile Defender Center’s training guide \textit{Legal Strategies to Reduce the Unnecessary Detention of Children} (available from NJDC upon request).

IV. REPRESENTATION AT PROBATION INTAKE

After a youth has been arrested, she—and, in many cases, her parent—will be interviewed by a probation officer. This process is usually called probation intake and typically requires that the probation officer review the child’s record, obtain her social history, and consider the seriousness of the crime alleged. The probation officer will make recommendations about 1) whether the case should be prosecuted, diverted out of the delinquency system, or dismissed and 2) if the case is to be forwarded to the prosecutor, whether or not the client should be released pending the outcome of the case. Check your jurisdiction’s juvenile statutes and court rules to determine the scope of a probation officer’s discretion in your area. You can also find tremendous detail about the intake process in the probation department’s policy manual, which should be made available to attorneys upon request.
A. Preparing for probation intake

If you are appointed or retained as counsel before your client meets with her probation officer, some preparatory work can positively influence the probation intake and, possibly, the preliminary arraignment. You can assist your client by 1) ensuring that the parent and the client are prepared for the probation officer’s interview and 2) collecting positive social and other relevant information about the client. You will also want to get some preliminary information from the probation officer, so you can discuss options with your client.

1. Preparing your client and her parent

Inform your client and her parent that:

- Regardless of any promise of confidentiality, everything they tell the probation officer may be relayed to the judge and prosecutor.

- They should not discuss the alleged incident with the probation officer. They can explain that you instructed them not to answer questions about it. At the same time, they should convey that they are all taking this matter seriously, regardless of their feelings about guilt or innocence.

- They should provide as much information about the client’s good behavior and activities as they can. This can include attending school, following rules at home, spending time with friends who are positive influences, etc. Remind your client and her parent that exaggerating is not a good idea, because the probation officer may attempt to verify the information independently.

- They need to dress appropriately and behave courteously.

2. Collecting positive social information about your client

You need to be able to take the information given to you by the client and her parent and use it creatively to present a positive and persuasive picture of your client’s typical behavior. Obtain and verify as much positive information as you can about your client, including school performance, part-time work, religious and recreational activities, and behavior at home. Get copies of positive academic documents, such as transcripts or any certificates or awards for good behavior or achievement. Ask a supportive teacher, coach, or clergy member to write a letter describing his relationship with your client and his knowledge of her good behavior, such as her regular attendance at school, practices, or services. The goal is to demonstrate to a probation officer that there are no significant treatment needs, problems, or issues complicating the client’s life that necessitate court intervention.
Call the probation officer assigned to the case before you and your client meet with him. Use this conversation to ask about the probation officer’s expectations for the intake and what parts of the outcome may be negotiable. (Also try to find out what the probation officer knows in order to determine if the information he provides is consistent with your understanding. You do not want to make representations in court based on information from your client or her parent that contradict school or other reports the probation officer will cite.) Based on your conversation with the probation officer, consult with your client. Talk about what outcomes are realistic and what counterproposals you will offer in the event that the probation officer doesn’t recommend or agree to outright dismissal. If you are hoping to convince the probation officer to agree to some form of diversion, discuss what options would be acceptable to your client. Explain to her that diversion can mean mediation, community service, an agreement to make restitution to the victim, or other options in your jurisdiction. (Know what diversion programs are available in your area so you can make specific suggestions.)

B. Negotiating with the probation officer

The outcome of a meeting with a probation officer depends on many factors particular to your case and jurisdiction, but your goal is always to advocate for the best possible result for your client. The meeting may be your opportunity to get the case diverted, or it may simply serve as an initial chance to influence the probation officer’s opinion of your client. Regardless of your objective, try viewing the probation intake process as a kind of preliminary form of plea bargaining in which you creatively use your negotiating skills without compromising your ability to proceed to adjudication if necessary. Factors, options, and strategies are more expansively outlined in Chapter 9. Use the positive information you have gathered, whenever you think appropriate, during your conversation. Offer a preliminary synopsis of the information you have gathered, providing copies of the letters or school documents you obtained. The idea is to set the tone that this particular client is a good kid and that, to the extent some kind of delinquent conduct can be substantiated, it is out of character with the client’s history.

Asking for a recommendation of dismissal

Ideally, you will be able to convince the probation officer to recommend a dismissal of your client’s case. If the client is clearly innocent—she was not at the scene of the offense, the victim asserts that she is not the offender, or she has some other clear proof of innocence—the probation officer should be amenable to supporting dismissal (or to not passing the arrest report to the prosecutor, as is the practice in some jurisdictions). You should provide him
with materials that provide adequate support for his recommendation to dismiss, such as a note from the victim that the client was not responsible or alibi witness statements. In cases where there is a complete legal (as opposed to factual) defense, you may want to go directly to the prosecutor to request the dismissal or negotiate a *nolle prosequi* (see Chapter 6, page 107). Be careful about disclosing alibi witnesses or other defenses early in the case; however, as you do not want to provide their names if you have not investigated the situation or they have no warning that you are disclosing information about them.

**Asking for diversion**

If the probation officer cannot or will not recommend that the prosecutor dismiss, the next best option is diversion from formal juvenile court processing. Diversion programs vary from state to state, and you should be wary of those that mandate that your client admit guilt in order to participate in diversion. (More information on specialty courts, which serve as diversion options in some jurisdictions, appears in Chapter 13.) Diversion can, however, provide a good opportunity for a child to demonstrate that she can succeed in the community and to avoid having the alleged offense on her record.

**If the case will proceed**

If it becomes clear that, because of the seriousness of the charges or the rules of your jurisdiction, the probation officer is going to send your client’s case on to a prosecutor, you should focus on convincing the probation officer to support a reduction in the severity of the charges. Police departments may overbook charges and providing positive information or additional facts about your client may sway the probation officer toward recommending a different charge.

If the probation officer’s discretion is too limited to achieve the desired outcome or his proposal is unacceptable to your client, advise your client to prepare for the case to move to the judicial docket. You can remind a frustrated client that the probation intake process has served the purposes of advancing discovery of the State’s case and preparing her and her family for the preliminary court hearing and/or plea negotiation with the prosecutor.
C. Follow-up calls and correspondence

If you are able to secure any form of non-judicial resolution for your client, you should have a substantial exit conference with her and her parent. Revisit any family, school, or other problem areas you identified in earlier conversations and obtain your client’s and her parent’s commitment to a remedial plan, explaining that the probation officer can reverse his position if the client gets in any more trouble before the file is completely closed. (This is particularly important if there is to be any period of continuance or in jurisdictions which provide for some continuing informal supervision or counseling for a period of time prior to the case being closed.) Thoroughly explain all legal ramifications of the agreement, including the provisions for expungement, as well as whether and under what circumstances the case may be reopened or transferred for judicial treatment. If the outcome was anything other than complete dismissal, emphasize the impact this case can have on any future proceedings, especially those of a similar nature.

If your office has a paralegal or social worker who can follow up with your client to make sure she is fulfilling her obligations based on the agreement with the probation officer, you should make sure that person receives all the pertinent information. Regardless, but in particular if you don’t have assistance of that nature, you should make sure that your client and her parent understand that they should contact you if any complications develop. (For example, if your client’s case is diverted on the condition that she engage in mediation to address fighting behavior, but the complaining witness or a co-respondent is continuing to harass your client, it may be necessary to secure a protective order or seek other relief.)

If the case will proceed, you must begin to prepare for adjudication. The first steps of that process are discovery and investigation, addressed in Chapter 5.
Providing effective assistance of counsel requires you to conduct thorough and prompt discovery and investigation. Through discovery, defenders have access to evidence and information from the prosecution that can significantly impact the direction of the case. Discoverable information alone, however, is not sufficient to prepare a defense. Defenders have a responsibility to conduct an independent investigation into the facts of the case and to analyze the evidence relevant to each element of the charged offense(s).

**What to consider before your first case**

- **Discovery rules.** Does your jurisdiction or the prosecutor have an open or closed file system? Is there full or limited pre-adjudicatory discovery? Does the prosecutor have any affirmative duty to provide you with all relevant discovery? Are there discovery deadlines?

- **Investigative rules.** When you interview potential witnesses, are you obligated to provide the prosecution with names or notes? If you want to interview a child witness, do you need the approval of the child’s parent?

- **The investigative procedures of police.** Try to get a copy of the local police force’s relevant handbook or administrative regulations and speak with local defenders already familiar with these procedures.

- **Advice to give friendly witnesses who are questioned by the police.** Can potential defense witnesses refuse to talk to the police?

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or condition alleged...

—IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Standard 4.3
I. DISCOVERY

Discovery is a broad term that encompasses the information and evidence available from the prosecution through a variety of formal and informal devices before your client’s adjudication. The constitutional right to discovery was affirmatively announced in *Brady v. Maryland*, 373 U.S. 83 (1963), which held that it is the prosecutor’s duty to provide to defense counsel, upon request, any material and exculpatory evidence. The court stated that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Additionally, exculpatory evidence includes information that can be used to impeach the credibility of a witness for prosecution. You should cite *Brady* in all of your discovery requests. Also be aware of statutes or rules in your jurisdiction that may guarantee additional discovery beyond the *Brady* requirements.

A. Strategy

Make thoughtful discovery requests

Because rules of discovery vary so greatly from place to place, it is extremely important to become familiar with case law, statutes, local rules, and local practices before filing formal motions or making informal requests. Keep in mind also that you do not have to request discovery from the prosecution for all the information you may need to develop your case;
you should think strategically about what you need and want from the prosecutor and how
the request itself may impact the case. When making your request, consider:

- Can you get the same information elsewhere without tipping off the prosecution
to your defense theory? (For example, can you ask for school records of the
alleged incident—which may include damaging information about your client—
directly from the school instead of from the prosecutor?)

- Could this discovery request draw unwelcome
attention to a weakness in the prosecution’s case or
your own?

When responding to the prosecution’s discovery requests, do so
thoughtfully and only to the extent necessary. Ask yourself:

- Is the requested information protected by the attorney-
client privilege, work-product doctrine, or the Fifth
Amendment? If so, oppose the request.
- Are you complying precisely with the prosecutor’s
request? Are you giving too much? Do not turn
over any more than you must.

Protect yourself against discovery violations

Considering the serious nature of discovery violations, you must
carefully document every conversation you have with the
prosecution. Keep a running log of calls and conversations
(especially casual courthouse conversations), and be sure to
document every discovery request you make in your case. If you
have done so and memorialized each conversation in a letter to
the prosecution, you may be in a position to request significant sanctions for the
prosecution’s failure to provide full discovery, should you learn of a violation.

In some jurisdictions, the prosecution is barred from instructing a witness not to talk to the
defense attorney, and such interference is grounds for having the witness’s testimony
excluded from adjudication or dismissal of the case. If you are informed by a witness that
he has been instructed by the prosecution not to talk to you, have him repeat himself to your
investigator or a third-party witness. Carefully document your interaction with the witness
and what he tells you about the prosecutor’s instructions. Ask the witness to sign a
statement indicating that the prosecutor instructed him not to speak with the defense. You
can use this statement to file a motion requesting the appropriate sanction. Document A22
in Appendix A provides an example of an alternate strategy; it is a motion requesting the
court to order prosecution witnesses to speak with defense counsel.

We’ve started using a standard
discovery motion form that gets
filed the minute our office is
assigned a case. Murder,
burglary, shoplifting—we use
the same form for them all and
ask for every possible
discoverable item under the sun.
Of course, the attorney assigned
has to follow up and request
anything that is unique to the
case, but it sure has been
helpful to have the request in
from the get-go. I have had two
cases where I’ve been able to
march into court and slam the
prosecutor for noncompliance.

—Juvenile defender
B. Procedure

Though the discovery process will vary slightly from state to state, the basic steps are essentially the same. To collect information from the prosecution, you must:

1. **Know what you are entitled to in your state**

   Discovery entitlements vary greatly by jurisdiction, so it is essential to learn the rules governing discovery where you practice. You will be entitled to the police report, as well as the petition against your client; you might or might not be entitled to a list of prosecution witnesses, witness statements, test results, and other evidence that is primarily documentary or physical in nature. Your state may also have an equivalent to the federal Jencks Act, which requires the government, in a criminal case, to provide the defense with copies of prior witness statements at the conclusion of the direct examination of that witness. 97

2. **Begin the discovery request**

   Prompt initiation of the discovery process is key to effective representation. For every case you take, immediately make a written request to the prosecutor. Create a standard document in the format that is required in your jurisdiction (i.e. letter, motion) that asks for everything to which the defense is entitled. (Information on pre-adjudicatory motions appears in Chapter 7 on page 152.) Implement a system in which your office uses that form to make a discovery request immediately upon assignment or acceptance of a case. Document A17 in Appendix A is a general demand for discovery.

   Once you have police reports in a particular case, scrutinize them for additional evidence that the prosecution may have but was not covered in your initial demand. Watch for documents that merely summarize witness statements that exist in another form or conclusions of test results that do not include the information from the technician. File a supplemental request for any missing items. For a sample of motions requesting specific items, see also Document A18 (requesting court records of the complainant); Document A19 (requesting exculpatory evidence) and Document A20 (requesting physical evidence and scientific tests), all in Appendix A.

   It is also a good idea to talk with the prosecutor about discovery. Schedule an informal conference with him or drop by his office and ask if he has a minute. Ask for the discovery then, and use your conversation as a time to get a sense of his position on the case. Follow up your discussion with a letter or motion
memorializing any agreements or promises the prosecutor made and/or requests for information that you made, but had not included in your initial written discovery demand.

3. Follow up on all discovery requests

Keep date-stamped copies of each discovery request and send follow-up requests when the information is not delivered by the appropriate deadline. If necessary, file a motion to compel discovery and, if that produces no results, a motion for sanctions for failure to comply with discovery. (Document A21 in Appendix A is a sample motion to compel demonstrating the use of Brady.)

The prosecution may try to resist a discovery request by asserting that the information is privileged. Try to investigate whether the claim of privilege is legally and factually legitimate and contest the claim if necessary.

Remember that the obligation to provide discovery is generally ongoing, so the prosecutor is required to supplement the information he has already provided if he learns more about your case. If you learn of new information you want from the prosecutor before he provides it to you, send a letter and/or file a motion for additional discovery.

A useful way to track discovery and investigation efforts is to create charts. For discovery, list along the left column the items requested. Along the top row actions: motion filed, talked with prosecutor, received discovery, supplemental request, and so on. Enter the appropriate date of each action at the intersection of each row and column. Keeping such a chart will allow you to confirm at a glance whether you have everything you need and help you to challenge a prosecutor’s discovery failures in court.

4. Know and fulfill your own discovery obligations

In addition to knowing what you are entitled to receive from the prosecutor, you are also required to turn information over to him. Your jurisdiction probably has rules or statutes detailing what information you must provide. You may be required, for example, to provide notice and witness information regarding alibi and mental health defenses.

Think strategically about how you can investigate and prepare a case without unnecessarily creating discoverable materials. For example, notes of an interview with a witness are probably not discoverable, whereas a written, signed statement from one probably is.
II. INVESTIGATION

It is your responsibility to conduct a prompt investigation of the evidence relevant to each element of the offense(s) charged. This duty exists regardless of a client’s admissions, statements, or stated desire to admit responsibility. While your initial client interview and discovery are excellent sources of information, your own investigation may be the best method of collecting information about the case. Your working theory of the case should dictate your investigative priorities. Analyze potential defenses, as described in Chapter 6, and search for evidence to demonstrate whatever you determine you need to prove. However, do not allow your theory of the case to curtail your initiative or prevent you from pursuing other potentially promising avenues of investigation.

A. Procedure

Thorough investigation is key to zealous advocacy. Some general tips:

Start as soon as possible. The sooner you initiate your investigation, the more likely it is that witnesses will remember important events in your case, evidence will be available, and there will be enough time to receive responses to any discovery requests you make. Armed with more information, you will be in a better position to influence the outcome of the case.

Conduct your investigation in person, as much as possible. Face-to-face contact makes it more difficult for witnesses to avoid giving information and for record-keepers to delay producing documents. You or your investigator may also be able to develop a rapport with the witness or person providing information, which may lead to more helpful insights into your case. Furthermore, the best way to assess the demeanor and mannerisms of a potential witness is to meet him in person.

Always have an investigative partner. You should always be accompanied by an investigator or another competent adult, both for safety reasons and so that you have a witness who can testify later about information learned in investigation. If your office or court will provide you with such assistance, take advantage of that resource (see Document A23 in Appendix A, a motion requesting funds to hire an investigator).

Bring basic investigation tools. These include: a tape measure, flashlight, camera, pen and paper, business cards, blank forms for signed statements from witnesses (see page 97 in this chapter), and subpoenas. Some defense attorneys keep a box with these items in their car trunks or briefcases.
Keep yourself organized. Create one chart to keep track of every piece of information or evidence and another to keep track of potential witnesses as you identify them. The investigation chart can include categories for the information you need to demonstrate, what evidence or testimony can prove it, and your progress toward collecting that evidence or finding a witness to testify. The witness chart should have headings for address and phone number, any additional information about how to contact the person, whether the witness is helpful to the State or the defense, and the purpose of the witness (to provide verification of an alibi, to speak to some element of the offense, etc.). Be sure to follow up on anything you do not receive in a timely fashion and to use your chart to remind you of anything you have not yet attempted to find or collect.

Record everything. Make sure to write down what a witness says (unless your discovery rules make it preferable for you not to have a written record) as well as any relevant times or measurements. Photographs and diagrams are also invaluable.

Whether you have help or must work on your own, complete the following steps to the best of your ability:

**Get written permission from your client to collect information about her**

You should have a signed authorization to release information forms (Document A3 in Appendix A) from your initial client meeting. This form is necessary to obtain otherwise confidential records.

**Conduct a thorough, critical client interview**

Expand on your initial conversation(s) with your client to gather as much detail as possible from her. A thorough review of the police report, warrant, and other basic documents with your client is an excellent way of obtaining information regarding the scene, victim, respondents, and witnesses. (You may also want to request your client’s or her family’s assistance in getting full names, addresses, and phone numbers of these or other potential witnesses.) Have the client diagram the scene, showing the location and movement of all parties and witnesses during the event. Listen carefully to your client’s
statements. Talk to the parent separately about the youth’s initial account of the alleged offense to catch any inconsistencies or revised memories of the event.

Talk to your client about any confusion or concern you have about her statements to you. If your questions aggravate her at all, note that these are the exact questions or inconsistencies the prosecutor will be waiting to pounce on to destroy her case. Make clear, though, that she has your permission to revise her earlier version of the facts if she needs to, so you will know the truth. You do not want to encourage her to alter her story to please you, but to reveal or correct details she did not explain well before. It is simply unrealistic to expect that all clients will be honest and forthright before you have earned their trust. You should remind each client of the confidentiality of your communications and explain that there are many different ways to mount a successful defense. Discuss how misinformation will waste time and very likely work against the client when the information is refuted at plea negotiation or in court. Explain to your client the grounds for potential defenses, so she can understand why it is important to share everything she remembers and to find witnesses or other information.

Meet with all potential defense witnesses

Contact anyone who could be a favorable witness and arrange for you or your investigator to meet him in person. Do your best to make the potential witness feel comfortable as you ask him to tell you his version of the events and answer questions about the incident. Your goal is to determine whether you will want him to testify on your client’s behalf. (Remember that you need not make the final decision about putting a witness on the stand until you present your case during adjudication.) Complete and issue subpoenas for every person you decide could be a valuable witness (see Section III of this chapter) after providing a courteous warning that it is on its way.

Make a witness chart

Keep track of likely witnesses and their contact information on a chart. This chart will be useful for a variety of purposes. You can review your potential witnesses and note whom you have interviewed, as well as whom you will ask to testify. You can review the prosecution’s potential witnesses and make note of what you have found out about each one, what further investigation is necessary to be prepared for cross examination (remember that you should know the answers to any questions you plan to ask), and how you can attack the witness’s testimony. See Chapter 10, page 193, for more information on cross
examination. (For instance, your chart might note the age and potential unreliability of a young witness for the prosecution, flagging that issue as one to raise in a motion to exclude his testimony; see Document A24 in Appendix A, an example of such a motion.)

Look into the client’s court history

Retrieve your client’s court record(s) and all accompanying files from the relevant court(s) with which she has had contact, including abuse/neglect. If the client has a past delinquency case in which you did not represent her, contact her former attorney to see what additional information you can obtain. Records from other courts will suggest issues to explore and potential witnesses to interview and may have reports and/or evaluations about your client.

Look into the client’s social history

Obtain school, medical, mental health, employment, and other records, as well as information about community involvement, such as participation in sports teams or other after-school activities. Gain access to transcripts of any past school disciplinary proceedings or other administrative hearings (see Chapter 13). This information may be useful at trial as direct or rebuttal evidence, but it may also be foundational information for a disposition plan. Your job is to prepare simultaneously to win and lose—always looking forward to a potential disposition hearing no matter how strong a defense you have to the charges.

Visit the crime scene

See what you can learn from visiting the location where the alleged offense took place. Think about how the event unfolded, what witnesses could see from their respective viewpoints, what impact the time of day or weather might have had on visibility, and other aspects of reliability. Take pictures, measure distances, and make diagrams to help you and the judge or jury understand the scene. You may also want to return to the scene later with your client or other witnesses, so you can re-enact the events together.

Collect physical evidence and other relevant information

Collect any relevant physical evidence, if possible, keeping in mind what potential evidence may have already been lost, moved, altered, or destroyed.

I always visit the crime scene. Cross examination based on inalterable geographic facts tells the witness that I know what I’m talking about and am on firm ground. This may make the witness less willing to disagree with me in more crucial areas of the cross.

—Juvenile defender
Other useful information may be available from some of the sources listed in the “Investigative resources” section of this chapter.

**Hire forensic experts to do analysis of evidence**

In addition to finding out about the prosecutor’s forensic experts, you should consider hiring your own. Your experts may conduct the same tests as the prosecutor’s (if you have reason to question the prosecutor’s expert’s results) or any other tests, the results of which might benefit your case through the use of evidence such as, ballistics, handwriting, or DNA samples. As with mental health and competency evaluations, try to prevent the prosecutor from learning about any expert analysis requested until you know that it is favorable to your client. Although it may be difficult to keep expert analysis of physical evidence confidential, you do not want to tip off the prosecutor to defense strategy or unintentionally give him access to work-product analysis. If you need court funds to pay an expert’s fees, file your motion *ex parte* and, if necessary, move to have it sealed (see Chapter 7, page 157). Document A25 in Appendix A is a motion requesting that the court appoint a computer expert to assist the defense.

**Attempt to interview adverse witnesses**

Attempt to interview adverse witnesses to get information that will help your investigation or can be used for impeachment. Unless you are fairly certain that a witness will talk to you, you probably want to drop by to conduct an interview rather than calling ahead. Many people find it harder to close a door on someone than to hang up the phone.

If an adverse witness refuses to talk to you at the request of the prosecutor, you may, depending on your jurisdiction’s rules, have evidence of a discovery violation by the State. If so, proceed as suggested in the discovery section of this chapter (see page 89).

Some adverse witnesses will refuse to talk to you without the prosecutor being present. The prosecutor may even instruct witnesses to tell you that they want him present at an interview. Research your local law to see if there is a statute on the subject and, if so, whether it permits such an instruction. There may not be a good argument against the prosecutor’s presence unless you feel there is evidence of intimidation or coercion. If the witness is permitted to request the presence of the prosecutor, reconsider the necessity of the interview. If you do choose to follow through, make sure that schedule conflicts or other actions on the part of the prosecutor do not effectively deny you access to the witness. Even
significant delay of an interview could arguably be denial of access if it limits your ability to prepare case strategy in a timely manner.

If an adverse witness agrees to talk to you, try to learn what testimony he expects to be asked to present in order to gain information about the prosecution’s case and collect material for impeachment during adjudication (see Chapter 10, page 198). If the witness will let you, you may want to take a statement from him. (Weigh the value to you of having documentation of his statements to you against the possibility that any witness statements you take are discoverable by the prosecution.) If you do choose to take a statement, write down what the witness says and ask that he review what you have written, initial each page, and sign the document to confirm the accuracy of the statement. (You can create a cover sheet with the name of the person whose statement follows, as well as when and to whom it was given, and an end sheet verifying the accuracy of the transcript to be signed by the witness.)

Make an effort to interview the police officers involved in your client’s case; although they may be hesitant to speak with members of the defense team, they are invaluable to your investigation. Call the local police station to find out the best time to reach a particular officer. If an officer is avoiding you and not returning calls, wait for him at the station when he is due to come on shift or call his supervisor or the prosecutor and ask that the officer be instructed to cooperate with you.

If you know that any of the witnesses you want to interview are represented by counsel, be careful. In general, ethical rules bar attorneys from communicating with represented parties about the subject of representation unless the other attorney consents or the communication is authorized by law or court order. You may, however, be able to speak with someone who has a lawyer for an unrelated matter.

B. Investigative resources

Some places to look for information that could help your case are listed below and on the following pages. Record collection and information gathering can take far longer than you might anticipate, so make your requests for these materials as early as possible. Keep in mind that if you are making requests of the court in an effort to obtain any materials, it is generally preferable to do so ex parte whenever possible. (See Chapter 7, page 157 for an explanation of motions ex parte.)
The police department

Police departments usually have a central office that handles subpoenas for officers and records. Know the names of the documents used by the police in your jurisdiction, so you can ask for them correctly. Because the police and prosecution work very closely, note that any information you request of the police will probably also be provided to the prosecution. Information likely to be in the possession of the police department includes:

- Police manuals or other internal police procedure memos or guides;
- Police reports;
- Line-up photographs;
- Mug shot and color arrest photos;
- Tapes or transcripts of 911 calls and radio runs;
- Physical evidence for testing and examination;
- Crime records, sometimes kept by street address;
- “Stop Check” or “Station Adjustment” information (when a person is stopped and warned by the police without being officially charged with any misconduct);
- Information about special police officers and private security guards; and
- Complaints or internal affairs investigations against a particular police officer.

Department of Corrections or Department of Juvenile Justice records

These should include:

- Prior placement information, if your client has been previously committed; and
- Probation records and notes.

Courts

As noted above, there are a number of different records you can access through courts:

- *Criminal records.* Criminal records (for both clients and witnesses) include plea agreements and probable cause determinations.

- *Juvenile records.* Juvenile records remain confidential in most jurisdictions. Learn the local rules for obtaining the current record of a child witness and, if possible, any relevant past juvenile record of an adult witness. You may only be able to see them with a court order.
• Family court records. Obtain records of any related family
court/dependency proceeding(s). These may include reports or
clinical evaluations helpful to explain some of your client’s
background and may reveal a history of abuse or neglect.

• Civil records. Records regarding domestic relations, home ownership,
landlord-tenant cases, civil protection orders, and other matters.

• Warrant information. Are there any outstanding warrants for your client?
Are there any for witnesses or for alternative suspects?

Medical/hospital/agency records

Because medical and counseling or therapeutic treatment records are
confidential and are protected by a variety of state and federal laws, learn your
jurisdiction’s procedure for requesting such records. You can see records with
an information release from the subject, but your client is the only person likely
to sign such a release. For other individuals, you may only be able to see records
with a court order or by subpoena in tandem with a motion.

Telephone and other communication records

The procedures for obtaining communication records, whether telephone,
mobile phone, or email, depend to a great degree on the content of the record.
In general, the content of stored electronic communications, such as e-mail text
or recorded voicemail, is protected by privacy laws. If, however, the client is
the originator or an intended recipient of the communication, you may be able
to access this content with your client’s consent.

More basic communication records, such as customer information, date, time, and
number called or e-mail sender and recipient may be provided by the
telecommunication company or internet service provider upon request. In
practice, however, access to these records will usually require a court order. They
may also be available from the prosecutor as Brady material. Be sure to familiarize
yourself with your jurisdiction’s laws and procedures.

Internet sources

Considering the transient nature of the Internet, the following web addresses
may change. Often, starting with a general search engine, such as Google
(http://www.google.com), is helpful. Other useful information and website
include:

  Locating people:

  *Yahoo People Search: http://people.yahoo.com*
Locating businesses and information on businesses:

Many of the sites listed above for locating people can also provide information on businesses. The following sites are specifically designed for finding businesses:

- Lycos Yellow Pages: http://yp.lycos.com
- Bigbook: http://www.bigbook.com
- Hoovers Online: http://www.hoovers.com
- D & B Sales and Marketing Solutions: http://www.zapdata.com
- Business.com: http://www.business.com

Locating attorneys:

- Martindale-Hubbell: http://www.martindale.com
- Find Law: http://www.lawyers.findlaw.com
- Attorney Locate: http://www.attorneylocate.com

Locating vital records:

- Ancestry’s Social Security Death Index: http://www.ancestry.com
- Informus: http://www.informus.com
- U.S. Vital Records: http://www.vitalrec.com
- Vital Check Network: http://www.vitalcheck.com
Medical/psychological information:

Clinical Pharmacology Online: http://cp.gsm.com
MedExplorer: http://www.medexplorer.com
Medline Plus: http://www.medlineplus.gov
Medscape: http://www.medscape.com
Web MD: http://www.webmd.com
Medicine Net: http://www.medicinenet.com
Psychology Info Online: http://www.psychologyinfo.com

General investigative information:

National Association of Investigator Services:
   http://www.pimall.com/nais
I Sleuth: http://www.isleuth.com
Investigative Information Brokers: http://www.lawcheck.com
Crime Time Publishing: http://www.crimetime.com

Other public records and general information

• Information from City Hall, such as street maps, property records, aerial photographs, building plans, or construction projects.

• Information from your local Department of Public Works, including luminosity tests, power/street light information, road repairs, and tree foliage on a certain date.

• Information from local utility companies, such as whether or not a certain residence had its power or energy turned off.

• Information from the fire department, including ambulance and firefighter call information.

• Information from local homeless shelters, soup kitchens, drop-in centers, clothing distributors, health clinics, and other service providers for the homeless.

• Climatological data for establishing the weather conditions on the day of the alleged incident can be retrieved from the National Climatic Data Center at http://www.ncdc.noaa.gov.

• To obtain military records, you will need to send a signed release or subpoena together with the social security number, name, and approximate dates of service to the National Personnel Records Center. Contact information and details are available at http://www.archives.gov/facilities/mo/st_louis/military_personnel_records.html.
• For veterans’ disability benefits information, contact Veterans Affairs, http://www.va.gov.

• The FBI, in addition to your local jurisdiction’s police force, can trace guns. Contact the National Criminal Information Center, http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm.


III. SUBPOENAS

A. Procedure

A subpoena officially demands that the individual to whom it is directed appear in court for a preliminary hearing, adjudication, and/or disposition. Depending on your jurisdiction’s rules, you may or may not be responsible for writing subpoenas and/or having them served on your witnesses. Regardless of the exact procedure, the following must occur:

• You must initiate the process,
• The witness must receive the subpoena, and
• The court clerk must approve and/or have record of the service.

If you are unsure if you will call a witness, you may be able to have the subpoena served and wait to file it with the court until the last minute. Check your court rules; if they allow you to file the subpoena at any time before the hearing, waiting to file may be an effective strategy for your defense.

You may also need to follow your court’s procedures for establishing your client’s indigence in order to file in forma pauperis subpoenas, thereby avoiding any fees normally associated with the service of subpoenas.

If you are responsible for serving subpoenas, learn the rules in your jurisdiction for doing so. In general, there are two methods for service: personal (delivery of the subpoena directly into the hands of the witness or his agent) and constructive (indirectly providing the subpoena or notice of it to the witness, such as publishing an advertisement in the local newspaper). Most states have very specific laws about service and when you can use different methods. Make sure that you (or whoever serves the subpoena for you) note the date and time of the service on the subpoena.
If a witness refuses to accept a subpoena, the server should:

- Inform the witness that the witness has been served and is expected to appear in court on the trial date,
- Note “refused service” on the subpoena,
- Write a memorandum for the file concerning the witness’s refusal, and
- Be prepared to testify in court about the witness’s willful avoidance of service.

If you can afford the additional expense, a professional process server may have more time to locate hard-to-find witnesses and will be able to keep thorough records.

B. Purposes

You should serve a subpoena on every person you want to appear in court to answer questions regarding your client’s case. Depending on the situation and bias of the witness, a subpoena may serve several purposes, such as:

*Helping ensure that the witness appears.* Some witnesses will be uninterested in participating in your client’s case or reluctant to come to court and testify, and so may respond only to fear of the consequences of ignoring a court order. Other witnesses will be willing to come but need official documentation to show an employer or school administrator in order to secure permission to miss work or class.

*Protecting your client in case a witness does not appear.* If a witness fails to appear, having a copy of the subpoena with which he was served demonstrates to the court that you are not at fault. This record may give you grounds for a continuance, if a delay is appropriate and furthers defense goals. If you proceed without the witness, you retain some record that he could have presented testimony relevant to some aspect of the case. (See Chapter 10, page 220, for more advice regarding situations when a witness does not appear.)

*Ensuring that a hostile witness will provide helpful information.* If you want to call a witness to testify against his will, you will need to issue a subpoena to bring him to court. (If the witness appears, you need to inform the court that he is a hostile witness and request that you be allowed to use leading questions while he is on the stand.) Hostile witnesses may include school administration or special education personnel, institutional or program administrators, probation or parole officers, or anyone whose views and interests are adverse to your client. A well-constructed set of questions can reveal to the court facts helpful to your
client’s case, perhaps including an admission of failure to provide your client with the treatment or services she was supposed to have received due to a disability and/or after a prior adjudication.

*Encouraging a reluctant or hostile witness to provide written facts for stipulation.* If a witness is opposed to appearing in court (whether due to inconvenience, discomfort, or embarrassment at his history with your client), he may be willing to provide a written statement of the facts to which you would want him to testify. If the prosecutor agrees to stipulate to the admission of this statement, the witness can avoid testifying and you still bolster your client’s case. Before entering the stipulation, however, consider whether it will have the same credibility or weight as a live witness.

C. Subpoenas *duces tecum*

In some situations, you will serve a subpoena on a person when what you really need are files or records in that person’s possession. For example, you may require the assistance of a secretary at the police office or hospital to collect information about your client, or you may need telephone records accessible via an employee of the local phone company. In those cases, you will use a subpoena *duces tecum* (“bring with you”) in which you request both the presence of the individual to which the subpoena is directed and the specific documents you need. If the person provides you with the materials you request in a timely manner, you can file a motion effectively retracting the subpoena, so he does not have to appear in court. Document A26 in Appendix A is an *ex parte* motion for issuance of a subpoena *duces tecum* for the complainant’s medical records.

As you collect information about your client’s case, think about whether new information you find demands new discovery requests directed to the prosecution, especially if you suspect that exculpatory information is being withheld. Analyze how each piece supports or damages your defense. Be ready to adjust perspectives and strategy. Guidance regarding the process of developing your defense follows in Chapter 6.
As you collect information about your client’s case, you will develop and finalize a plan for her defense. This chapter offers some ideas for building that plan. Many excellent advocates generate defense strategies more intuitively; these suggestions are provided as a place to begin as you determine what approach works best for you.

Remember that although the legal strategizing described in this chapter is your responsibility, you should not make decisions about how to present your client’s case without her input. She will rely on you to understand and evaluate legal possibilities, arguments, and restrictions, but you should ask her opinion and structure the case objectives according to her preferences and goals. Certain key decisions, such as whether she will testify, are hers alone.

What to consider before your first case

1. The substantive and procedural law in your jurisdiction concerning all available defenses. What defenses are available? What do you have to do to establish an affirmative defense? What do you have to do to establish an alibi defense? Are you required to give notice of certain defenses?

2. Local rules governing suppression of evidence. When are the deadlines for filing suppression motions? What case law governs suppression decisions?

3. Where to turn for advice. Experienced attorneys in your office can be invaluable sources of recommendations as you develop defenses in your early cases. To whom can you turn?
1. PRIMARY CONSIDERATIONS

Once you have enough information to begin assessing your client’s case as a whole, think through your options and explain them to your client. Always keep in mind that the State alone has the burden of proving its case beyond a reasonable doubt; you need not meet this exacting standard to present a viable defense.

A. Potential grounds for dismissal or diversion

Your client’s preference in every case will be to eliminate all or some charges, or at least any consequences for them, if possible. Consider whether that option exists for each client, looking at:

*Physical jurisdiction.* Does the court have jurisdiction over this case? If the crime occurred even a block outside the physical jurisdictional boundaries for the court, it cannot hear the case. Write a motion requesting dismissal.

*Legal jurisdiction.* Does this case belong in delinquency court? Does it more appropriately belong in dependency court? After considering the facts of a case, it may appear that the action should be removed to the abuse/neglect/dependency court. (An example of a potentially appropriate case for removal is one in which a client is charged with prostitution but was supporting herself on the street because she ran away from a relative who was sexually abusing her.) Removing appropriate cases must be done in careful consultation with your client. In addition to arranging for the abuse/neglect case to be opened, coordinate with the prosecutor and judge to ensure that delinquency charges will be dismissed.
The petition. If the petition is defective on its face, you can ask for a dismissal. (For example, if the petition alleges that your client committed an offense on the date after such an event took place, the prosecutor cannot prove his case.) Think strategically about when to complain to the court about such errors, especially if they are minor enough that the State can easily file for leave to correct them.

Potential for a nolle prosequi. If the charge is minor and the client has no prior record, the judge may be willing to agree to a nolle prosequi (sometimes called “nolle,” hereinafter referred to as “nol pros”). A nol pros is “the voluntary withdrawal by the prosecuting attorney of present proceedings on a criminal [or delinquency] charge.”100 While a nol pros differs from dismissal in that it technically leaves the case open for some period of time for the prosecution to seek additional evidence, it usually means the case is being set aside to give the client time to take some positive steps forward. After an agreed-upon period of good behavior, the case can be recalled for dismissal. (See Document A27 in Appendix A, a motion for a continuance that actually arranges for dismissal.) If you can arrange a nol pros, emphatically warn your client to avoid the circumstances that brought her to court, especially during the open period of the nol pros. Committing a new offense may lead to reopening of the original case together with any new charge and will probably mean facing a jaded prosecutor. You may also be able to secure a nol pros if you or your investigator convinces the complainant in your client’s case to sign a statement that he does not want the charges pursued.

B. Possible defenses

Categories of defense theories include claims of innocence, affirmative defenses, and reasonable doubt. Analyze the information you have about the case to determine what defense(s) may apply. The appropriate option for your case will depend on your client’s explanation of the events, the credible evidence the judge is likely to hear, and your knowledge of the juvenile court system in your jurisdiction. Developing a defense is important even if you think your client will not choose to proceed to adjudication. An articulable defense is effective in negotiations with the prosecutor and may also be grounds for mitigation at disposition.

Before you advise your client in making a decision about whether to go to adjudication or not, you are obligated to determine how strong the State’s case is relative to the defense theories you could present, as well as the typical outcomes for cases like hers. If your client decides that she does not want go to adjudication, then your strategy shifts to negotiation of a favorable plea agreement (see Chapter 9) and disposition mitigation (see Chapter 11).
Claims of innocence

Claims of innocence vary; some clients will not even have been at the scene of the offense, others will admit to having been present, but insist that the police account of the incident is incorrect, perhaps because the offense did not take place at all, it occurred differently than alleged, or she was not the one who committed it.

“I wasn’t there”

If your client was not present at the alleged time and place of the offense, you will prepare to present her alibi by organizing evidence and/or witnesses to prove that she was at another location when the crime took place.

“It didn’t happen/It wasn’t me”

If your client’s explanation of the events related to the alleged offense differs from that which the prosecutor will present, you will prepare to present evidence and testimony to show the court that the prosecution theory is incorrect in ways that prevent it from meeting the burden of proof.

Affirmative defenses, excuses, and justifications

These defenses will require more explanation to your client; they do not involve claiming that she did not commit the offense, but instead that she cannot legally be found guilty of it because she lacked the necessary mental state or because she had an excuse or justification. An affirmative defense may require your client to present evidence sufficient to meet a certain standard of proof, usually a preponderance of the evidence. Other defenses may simply require your client to raise them, after which the prosecution must disprove the defense. Affirmative defenses that may be relevant to juvenile court include: self-defense, defense of others, defense of property, duress, necessity, mistake of fact, entrapment, impossibility, incompetency, infancy, insanity, and intoxication. Remember when considering these possibilities that interactions with school officials are, in some cases, not subject to the same rules as other conduct, so these defenses may not apply in cases in which the alleged offense took place at school. Also note that local statutes and case law will determine the applicability of each of these defenses and the potential for using others not listed here.

If you and your client decide to use an affirmative defense, check your local and state laws and court rules to see if you must provide notice to the prosecutor of that defense. Document A28 in Appendix A is a sample of a form notice that can be filed in any case in which an affirmative defense will be put forth (and providing the minimal information required, as is strategically wise).
Self-defense. Your client is likely to expect this defense to apply in cases in which it is not applicable. Be sure you know your jurisdiction’s self-defense laws and explain them to your client. Typically, self-defense is only valid if your client reasonably believed that she had to, at that moment, use force against the person who was unlawfully holding or attacking her. Another requirement for the permissibility of self-defense is that the client can only use a force equal to that which is being used against her (she cannot claim self-defense if she shot someone who slapped her) and, in some states, there is a duty to retreat, if possible (your client cannot claim self-defense if she could have escaped from an aggressor instead of fighting back). Additionally, self-defense may require a lack of provocation or initial aggression on the part of the defendant; the question of who was the first aggressor is an important issue of fact about which there can be much disagreement.\textsuperscript{101}

Defense of others. Again, you will need to check your jurisdiction’s laws, but typically, the standards relevant to self-defense also apply in the defense of others. Adolescents often have a high degree of loyalty to friends and a keen sense of justice; they may expect the law to support an attempt to protect another person from perceived danger. You may need to tell a client who stabbed a boy who had harassed her sister earlier that day that her action was not legally defensible because she had other options, and her action was not necessary to repel an imminent attack. Many states have now passed statutes defining when exactly defense of third parties is justified. The common modern view is that a person may use deadly or non-deadly force to the extent that such force reasonably appears to that person to be necessary to defend the third party and the force used is no greater than is believed necessary to prevent harm.\textsuperscript{102}

Defense of personal property. Defense of property laws vary widely across the country. If your client used non-lethal force to protect a belonging, she generally may be able to claim defense of property. Defense of property never justifies lethal force. Some states do require that she post a warning to trespassers or first request that the person taking the property not do so.\textsuperscript{103} In such a jurisdiction, you will need to find out, for example, if the client who punched a classmate trying to grab her iPod told him to get his hands off of it first before you advance this defense. Additionally, she must not have used force beyond which the situation reasonably requires\textsuperscript{104} (e.g., she cannot punch a classmate when simply taking the iPod out of his hands would suffice). Finally, to successfully assert that an act was justified based on defense of property, that act must have occurred promptly after the property was discovered missing.\textsuperscript{105}
Duress. In general, duress is an available defense when your client has committed an offense because another person has threatened imminent death or serious injury to her or another person if she did not commit the offense. Your client must have reasonably believed that the threat was genuine and must not have had a reasonable means of escape other than compliance. Research local laws about when the defense of duress is permitted. Though difficult to prove, you may successfully argue this defense in situations in which you could not do so for an adult because your clients will often be young enough that their reasonable vulnerability to threats is heightened. If your client was carrying drugs because a gang member said he would kill her family if she did not, you may be able to claim she was acting under duress and was effectively forced to commit the offense. Duress is not a defense to intentional homicide.

Necessity. This defense arises if your client committed an offense to prevent a greater harm from happening. If your client explains that she drove without a license because she was the only one home when her grandmother needed to be taken to the hospital, for example, you may be able to use a necessity claim. Note that the taking of an innocent life is never defensible by necessity. As always, check your local statutes and case law for your jurisdiction’s definition of this defense.

Mistake of fact. A reasonable error of fact is a defense if it negates the mens rea (criminal intent) required for the offense of which your client is accused. If successful, it can reduce or eliminate a charge for which she would otherwise be found guilty. Mistake of fact is never a defense to strict liability crimes, for which criminal intent is not an element. For example, a child who shot and killed a friend while playing with a gun she believed was empty is not guilty of intentional murder, although she could be found guilty of manslaughter if the requisite level of negligence is present. Be sure to differentiate between transferred intent (“I meant to shoot someone else”) and the lack of intent (“I thought there were no bullets and I couldn’t shoot anybody”). In addition to showing that your client did not have the requisite intent due to a mistake, a successful mistake defense will require you to show that the mistake that the child made was honest and reasonable. A mistake of criminal law (e.g., a client honestly believed it was legal to possess marijuana) is virtually never a valid defense.

Entrapment. Entrapment can be difficult to prove; you must demonstrate that your client committed an offense she would not have committed had she not been enticed by a police officer (or other public servant). A buy-and-bust drug sale is not entrapment without specific facts that support the defense. Read your state’s case law on the subject.
**Impossibility.** Traditionally, courts have distinguished between “legal impossibility” (a situation where the act was not criminal even though the actor believed it to be) and “factual impossibility” (the act would have been criminal but was prevented from being so by circumstances unknown to the actor). Historically, legal impossibility was a valid defense and factual impossibility was not. In a significant number of jurisdictions, however, the defense of impossibility is no longer available in any case due to court decision or statute. Many states have laws criminalizing acts that purported to be criminal, such as the sale of a pill the seller claims is an illegal drug even though she knows it is aspirin. Even if you can successfully use the defense of impossibility in your jurisdiction, you may want to warn your client about future consequences of repeating her actions. A client who is found not guilty (or whose case is dismissed once you give the prosecutor notice of the impossibility defense) because the drugs she thought she was buying turned out to be oregano is potentially at risk for future delinquency.

**Incompetency.** A client should be found incompetent to stand trial if she is unable to assist with preparation for her defense, likely because she has some deficit that prevents her from understanding the proceedings and/or effectively communicating with her attorney. Incompetency is not an affirmative defense but a fundamental right not to stand trial. A finding of incompetency stops or delays the adjudication from going forward rather than resulting in a finding of not guilty. Competency is a complex issue and is addressed more thoroughly in Chapter 3. You should be familiar with your state’s statute or practices regarding competency, so you can strategize about raising the issue. In some places, the consequences of a competency finding can be more severe than those for a delinquency adjudication; for example, it could result in your client’s indefinite confinement in a psychiatric institution. If you raise the possibility of claiming incompetence with your client, remember to do so sensitively. You could say you are worried that what happens in court is complicated and might be hard for her to understand, so it would help you if she talked to someone else about it.

**Infancy.** This is a defense that originated at common law based on the assumption that young children cannot form the mens rea necessary to be convicted of a crime. Though children under seven years old were conclusively presumed incapable of crime by common law, children between the ages of seven and fourteen were rebuttably presumed incapable. Many states have set ages at which capacity or incapacity is presumed by statute. Know the rule in your state to determine whether the defense will work. Infancy issues largely overlap with incompetency issues, so consider which is the best avenue to take.
Insanity. Insanity claims are excluded from many juvenile courts because juvenile systems operate under the assumption that youth can be rehabilitated because they are not yet developed enough to have ingrained psychological problems. If the defense is available in your jurisdiction, be sure you have a full understanding of the potential consequences of using it, as they may include involuntary commitment. (A thorough discussion of mental health issues appears in Chapter 3.) As with the infancy defense, a client for whom you might use an insanity defense is also likely to fall into the incompetency category.

Intoxication. Generally speaking, voluntary intoxication due to the ingestion of alcohol or drugs does not relieve an individual from criminal responsibility. If intoxication was at a very high level, your client may have been unable to form the requisite mens rea, negating an element of the crime. The burden is often on the defendant to prove the fact of intoxication. Involuntary intoxication can be somewhat easier to assert under the right conditions. For example, if your client had an unexpected and extremely adverse reaction to a doctor-prescribed medication or she unknowingly ingested a “date rape” drug, she could use the defense, since both situations involve innocent behavior by the accused. Her ignorance that the joint she was smoking was laced with PCP may not constitute involuntary intoxication, however, since her behavior was not without fault.

If you use more than one defense, be sure they are consistent with each other. It is possible to argue that your client was misidentified and she has an alibi; the two arguments complement each other. However, arguing misidentification (she was not there) and self defense (if she was there, she was protecting herself) is inconsistent. Weigh your options and make strategic decisions; do not argue every possible theory to the judge and hope he accepts one of them.

Reasonable doubt

In some cases, the lack of evidence against your client may be your entire defense. Remember you do not have to prove innocence, and you can advocate effectively by showing how the prosecution has failed to prove each piece of its case beyond a reasonable doubt.

The standard of proof “beyond a reasonable doubt” is the highest evidentiary burden in our justice system, and your argument at adjudication should remind the court that the burden of proof lies exclusively with the prosecution. Some defenders fail here: they assume the court or jury is already focused on the burden, or they are reluctant to appear to be lecturing a learned judge on basic law. It is important, however, to focus the court’s attention. See if you can find ways to weave reasonable doubt arguments into the presentation of the facts in your
opening or closing, possibly by structuring your presentation around a litany of reasons to doubt. Your references can be subtle or gentle, but do not assume that it is not necessary to raise the issue of reasonable doubt in a bench proceeding.

Even if you have an extensive case to present, you will want to focus on poking holes in the prosecution’s presentation. Therefore, in addition to determining how, if at all, you are going to present a client’s case, you should constantly be thinking about how to establish the insufficiency of the State’s case. Consider each element of the crime the prosecutor must prove, as well as ways to inhibit his ability to do so. You can create reasonable doubt by:

- Using cross examination to reveal an inconsistency, bias, or other problem with a prosecution witness’s testimony;
- Putting on rebuttal witnesses to contradict prosecution claims;
- Introducing evidence that contradicts prosecution claims; and/or
- Convincing the court to suppress evidence.

Make a chart of the relevant elements and the prosecution’s witnesses and evidence for each one, so you can be sure to identify every omission and weakness.

C. Potential for suppression of evidence

Regardless of how you and your client decide to argue her case, the suppression of evidence the prosecutor plans to use against your client is a powerful tool to weaken, or even eliminate, the State’s case. Keep in mind that the rules for suppression are confusing to many adults and may take extra time and patience to explain to your child client. For each piece of evidence the prosecution wants to present, consider the possibilities for filing a motion to suppress. (See Chapter 7 for more information on preparing and filing motions generally.) Even if your motion is denied, suppression hearings can be a means to obtain additional discovery or to lay a foundation to impeach a witness at adjudication. Suppression arguments usually rely either on the Fourth Amendment search and seizure rules or Fifth or Sixth Amendment Miranda-related rules, as well as the accompanying case law and any applicable statutes. In addition, some state constitutions afford greater protection than federal laws.

Miranda rights issues

Miranda v. Arizona, 384 U.S. 436 (1966), provides strong protections of your client’s right against self-incrimination, and you should find out if the police failed to meet its requirements before interrogating your client. Your state statute may add requirements regarding the
presence, or at least offer of presence, of your client’s parents at any interrogation. If the police took a statement from your client, ask her in great detail about the interaction she had with the police in an effort to determine if she was in custody, if she was informed of her rights, and if she understood her rights before she waived them. It is typically the prosecutor’s burden to prove a valid waiver of *Miranda* rights.

Explain to your client that you are trying to figure out if the police broke any rules in getting her to talk to them, because if they did, the prosecutor cannot use her statement against her in court. You may want to give your client a card with an assertion of *Miranda* rights on it for possible future use; a camera-ready sample appears in Appendix A as Document A12. Questions to ask your client include:

- Was your client informed at any time by the police (or any other government agent): That she had the right to remain silent? That anything she said could be used against her? That she had a right to a lawyer before making a statement? That if she could not afford a lawyer one would be provided for her?

- If so, when and where did she receive these warnings? What did she say in response?

- Was she asked whether she understood each warning? If yes, how did she respond?

- Did the police question her before giving the warnings? If so, what did they ask? What did she say in response?

- Was she asked whether she was willing to make a statement after receiving these warnings? If yes, how did she respond?

- Was she asked to sign a form or card with these warnings written on it? Did she?

- Does your client know how to read? How good is your client’s knowledge of the language in which the written or oral warnings were given? Did she understand what she read and what she signed?

- Was anyone else around during the questioning (a parent, probation officer, additional police, etc.)? Did any of those people make your client feel like she had to talk or say something in particular?

With a child client, it is important to ask questions that truly probe her understanding to ensure there was a knowing waiver of any rights. Ask additional questions to determine whether your client understood her waiver of rights. “Tell me what ‘the right to remain silent’ means to you.” Have your client describe in her own words what each right means, and the impact of giving up
that right. Ask her to define specific words in her waiver, starting with the word “waive,” if it is used. If your client’s perceptions are off-base, don’t educate her now. You may need her to testify to her understanding in a hearing. Do tell her to ask for an attorney before talking to the police in the future.

Search and seizure issues

Explore filing a motion to suppress if police wrongfully searched your client’s person or property, especially in instances in which they did not have a warrant. Typically the burden of proof is on the prosecutor to prove that the police action fell within a recognized exception to the warrant requirement of the Fourth Amendment, and often the witnesses they need to meet their burden do not appear. Ask your client very specifically about that event to determine why she was stopped and how the police search proceeded. Be sure to ask for information regarding whether she was detained or arrested when they searched her, whether they asked for or got permission before conducting the search, whether she was scared or threatened by anything (ask directly about the visibility of a gun or other weapon, remembering that many clients will not readily admit to feeling intimidated), and other details.

Explain to your client that you are trying to figure out if the police had a right to be where they were and do what they did. Tell her that one of the rights the Constitution guarantees her is to be free from illegal searches and seizures by the police, and that means the police cannot stop her for any length of time or search her unless they have a reason to suspect she committed a crime.

Take this (and every) opportunity to remind her that in the future, she should tell police that she does not want to talk and she wants an attorney. If you are new to working with young clients, you will underestimate how quickly they will forget this instruction or how easily they will be intimidated into talking to the police. Tell your client clearly that she does not have to answer questions (except to give her name, which may be required during police stops in some states[121]). If you have a good rapport with her, tell her that you want to hear her say it out loud to you in order to practice in case she gets stopped by the police again.

Here are some legal considerations and suggested questions regarding specific search and seizure scenarios.

*Terry* “stop and frisk” questions

The U.S. Supreme Court decision in *Terry v. Ohio*, 392 U.S. 1 (1968), provides guidelines for police to conduct a “stop and frisk” of a person. *Terry* allows the
police to stop a person based on less than probable cause. The stop must be predicated on the police officer’s “reasonable suspicion” that criminal activity is taking place and must last no longer than necessary to confirm or dispel that suspicion. “Reasonable suspicion” is assessed based on the totality of the relevant circumstances; identify cases with fact patterns similar or related to your client’s to argue that the police acted unlawfully in her case. A limited search, or a “frisk,” for weapons may be conducted during the stop only if police also have a reasonable suspicion that the person is armed and dangerous. If a protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry. However, contraband found during a search for weapons may be seized and used as evidence if its incriminating character was immediately apparent to police during their patdown search. If, based on the person’s responses and the frisk, police do not have probable cause to make an arrest, the person must be allowed to continue on her way. Under the “fruit of the poisonous tree” doctrine, evidence obtained as the result of an illegal search must be excluded from court. If you think your client’s arrest may have violated Terry stop procedures, ask the following:

- Did the police have an arrest and/or search warrant?
- What was your client doing when the police stopped her? Where was she?
- What did the police do to initiate the encounter? What did they say and do?
- Did the police say why they were stopping her?
- What was she wearing?
- Was she with anyone else?
- How many officers were there? What did they look like? Does she remember their names?
- Did the police ask her any questions? How did she respond?
- Did the police ask her to do anything, such as to “Take your hands out of your pockets”? Did she do what she was asked?
- Did the police search her? If yes, did they ask permission to search? How exactly did they search her? What did they find?
- Did the police handcuff her? Was she placed in a police car? Was she isolated from the other people she was with?
• Did the police ever threaten her or intimidate her in any way?

• Did the police take any of her belongings? Did she give the police any of her belongings? Did they give her a receipt?

• Was your client arrested before or after she was questioned? Before or after she was searched?

Document A4 in Appendix A provides an example of a motion to suppress evidence based on a search that violated *Terry* rules.

**Automobile search and arrest questions**

The U.S. Supreme Court and other courts continue to refine the law governing automobile search and seizure, so it is important to stay abreast of new decisions. The legality of a search may turn on details including whether police had probable cause to stop the car, the reason for the search, whether and when the car's occupants were arrested, whether anyone consented to the search, and what exactly was searched. Generally speaking, warrantless searches of automobiles can be justified by three types of individualized suspicion: if police have probable cause to believe that the car contains contraband, if the search follows a valid arrest of one of the car's occupants, or if a *Terry* stop of a person in a car creates a reasonable suspicion that the car contains a weapon. Regimes of warrantless searches not based on individualized suspicion - such as checkpoints - are permissible only if established for some reason beyond the government's generalized interest in crime control. Police may also search an automobile when an individual voluntarily consents, even if individualized suspicion is lacking.

As in other areas of Fourth Amendment doctrine, it is critical to get as much information as possible from your client about an automobile search because seemingly small distinctions may determine whether the search was legal. For example, after arresting a person who was riding in a car, police may contemporaneously search only the passenger compartments of the car. This is a limited search incident to arrest, for the purpose of finding weapons or evidence that the arrestee may have concealed. (If the car is impounded, police may later conduct an inventory search following standard procedures.) When police are acting on probable cause to search the car itself, in contrast, the search may extend to the entire car, including the trunk, the passengers' belongings, and the interior of any containers that may contain the object of the search.
If you are faced with a case that involves the use or contents of an automobile, some questions to ask include:

- Who were the driver and passengers when the car was stopped? Who was sitting where? What were they doing?

- What did the police say about why they stopped the car (or followed her to the car)?

- Why does your client think the police stopped the car (or followed her to the car)?

- How did she react to the police? What did she do and say? (Did she try to elude the police? Did she try to hide or get rid of anything?)

- Did the police search the car? What areas were searched (trunk, glove compartment)?

- During the search, did the police open any closed or locked containers inside the car?

- What did the police say before they searched the car?

- Was there a reason for the police to suspect that any of the passengers were armed and dangerous?

- Was there a reason for the police to believe that they would find something illegal in the car?

- Did the police ask permission to search the car? How did they ask? Was permission given voluntarily? Did that person have authority to consent?

- Did the police force open the car or any part of it? Did they use keys? How did they get the keys?

- Was anything in the car? What? Exactly where was it?

- If your client was driving, does she have a license? Did she have it with her? If she was not driving, who was? How old is that person? Does that person have a driver’s license?

- Who owns the car? Had the owner given the driver permission to drive the car?

- When your client was arrested, where was she in relation to the car? Where was the car?

A motion to suppress evidence obtained via an automobile stop (arguing that the marijuana seized by the police was not in plain view) appears in Appendix A as Document A5.
Schools and other search and seizure settings

There is extensive case law defining the Fourth Amendment prohibition against unreasonable searches and seizures in various settings. One important example is New Jersey v. T.L.O., 469 U.S. 325 (1985), which relates to searches at schools. The Court held that the Fourth Amendment applies to searches and seizures conducted by public school officials. A search is justified if there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated the law or rules of school (but probable cause to believe that the student violated the law is not necessary). The decision held that a school search is permissible in scope if it is reasonably related to the objectives of the search and not excessively intrusive in light of the gender of the student and the nature of the alleged infraction.

There are a myriad of other cases addressing search and seizure questions that may affect whether evidence is admissible against your client. If a school official or a police officer took anything from your client’s person, home, place of work, or automobile; from any place where the client was; or from anyone else, ask:

- What was taken? From where? Describe the circumstances.
- Were there any eyewitnesses? (If so, get witness information.)
- Did any of the searchers say anything to your client or anyone else? What did they say? What did your client say?
- Did the searcher ask your client for permission to search her or her belongings or the house? If so, how did she respond?
- If a building (house, apartment, etc.) was searched, did the police say why they were searching? Where were your client and others while the building was searched?
- Was there anything said about a search warrant? What was your client told about the warrant? Did your client read the warrant? If so, what did the warrant say?

Medical examinations/tests questions

If the arrest was the result of an alleged physical altercation or illicit substance possession or use, ask your client if she was subject to a physical exam or tests. The collection of blood and urine samples for testing are “searches” within the meaning of the Fourth Amendment. This area of law is changing quickly as
courts confront challenges to new law enforcement investigatory technology and techniques. If she was tested, ask:

- Was any blood taken from your client?
- Was any of your client’s hair taken?
- Was your client tested for drugs or alcohol (to her knowledge)? Was any of her urine taken?
- Was her body otherwise examined or inspected in any way?
- Did any doctor, nurse, or mental health professional examine her? If so, where? When?
- Describe the examination, test, or inspection: Who was present at these examinations, tests, or inspections? Did anyone say anything about what the tests showed?
- Was your client asked for permission to take the examination, test or inspection? If so, how did she respond?
- Was your client’s parent there? If so, did he consent to the test?
- Was your client told she had a right to refuse the tests or to have an attorney present for the tests? If so, how did she respond?

You will file slightly different motions depending on the nature of the evidence you are trying to suppress. Document A29 in Appendix A is a motion to suppress a statement on the grounds that the respondent’s confession was involuntary. Document A30 in Appendix A is a motion to suppress physical evidence because it was obtained by an unlawful search.

As you prepare to file your motion, prepare also to defend it at a subsequent hearing. Know who has the burden of proof in every instance, make a list of witnesses to support your arguments, and be ready to argue your motion and cross-examine prosecution witnesses. (See Chapter 7 for more information about motions practice.)

II. DEVELOPING THEORY AND THEME

The theory and theme of your case are intertwined and may be difficult to develop in some cases. Ideally, you will be able to construct the theory of your defense organically as you collect information and evidence and before you plan the structure of your defense presentation. In complex cases or as a new defender gaining experience, it may take more effort and time to determine how best to frame a given case.
Theory
The theory of your case is a summary of your chosen method of defense. The witnesses, evidence, and arguments you present should all contribute to making this central point.

Theme
The theme of your case is the non-legal analogy, story, or phrase you use to convey your theory. Developing a strong, clear theme is just as important in an adjudication proceeding before a judge as it is in front of a jury. The theme provides a concise and memorable frame for your theory. Your theme will:

• Repeatedly reinforce your theory in the judge’s mind;

• Provide a memorable catch word or phrase to elicit images and/or emotions in the judge as he reviews the case; and

• Force the prosecution to argue not only its own case, but also to argue against yours, even if you do not put on a single witness.

Some examples:

<table>
<thead>
<tr>
<th>Case scenario</th>
<th>Theory</th>
<th>Theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your client had no idea why the police were arresting her</td>
<td>Innocence claim: She was at school</td>
<td>As the teachers will tell you, she was at school and not at the scene of the offense</td>
</tr>
<tr>
<td>A victim was stabbed; the knife used has the fingerprints of another teen who was present during the incident but not your client’s</td>
<td>Innocence claim: She didn’t touch the knife</td>
<td>The co-respondent is lying; the fingerprints tell the truth</td>
</tr>
<tr>
<td>Your client punched another student at school because he was pinning her to the ground</td>
<td>Affirmative defense: Self-defense</td>
<td>Her perspective is what counts; she is like a small puppy who has to bark loudly and bite to protect herself from a bigger one</td>
</tr>
<tr>
<td>Your client took an iPod off the teacher’s desk believing it was the one she owned and had left in class the day before</td>
<td>Affirmative defense: Mistake of fact</td>
<td>She didn’t know it wasn’t hers; it’s a mistake anyone could make, they look alike</td>
</tr>
</tbody>
</table>
III. STRUCTURING THE DEFENSE

Once you have determined how best to frame your client’s case, you will need to decide how to present her defense during adjudication. You should confer with your client, but your legal expertise and knowledge of courtroom proceedings is the main source of adjudicatory strategy and planning.

Your approach to adjudication will be determined by what, when, and how you present evidence. First, analyze the information that will be presented. Ask yourself what you want to convey about each piece of evidence, regardless of whether you or the State will offer it. Look at your charts of witnesses, discovery, and investigation. Derive from them a complete list of your witnesses and evidence, and note next to each one what he, she, or it helps to prove. (Make clear what evidence you will enter with each witness.) On a separate piece of paper, do the same for the prosecution’s witnesses and evidence. Put the two pages side-by-side to compare them and look for strengths and weaknesses in each case. Think about how the State will address each element of the offense and decide what your alternative message is or what you want to get across to the judge or jury, either on cross-examination or during the defense phase.

Next, think about the order in which you will present your testimony and evidence. Ideally, you will determine how to make your presentation flow logically for the court, but that may not be possible for logistical and/or strategic reasons. Most of your witnesses need to miss as little work or school as possible; it is better to accommodate their schedules than to lose any valuable testimony. While deciding what evidence to present and the order of witnesses, try to apply these time-tested rules:

*Use the smallest number of witnesses possible.* Do not leave out any important information, but only use as many witnesses as necessary. The more testimony you present, the more likely it is that your witnesses will contradict one another or somehow open up an opportunity for rebuttal by the prosecution.

*Start strong and end strong.* Sandwich your presentation with witnesses who speak well and have an important contribution to make to the defense. You want to show the court immediately that you have a strong case and leave a good impression as you complete your presentation.

*The court (or jury) is likely to remember later testimony better.* After your first witness, put your weaker witnesses on the stand and then move on to the stronger witnesses. The judge will have the later parts of your presentation more freshly in his mind moving into closing arguments, and you want those recollections to work in your favor.
Use any paid experts early. In general, there is no need to pay experts for any extra time unless there is a strategic advantage to your client.

Keep your client as your last witness if she testifies. This strategy has several advantages. It provides you and your client a chance to reevaluate, given all the testimony and evidence that has been presented, whether it still makes sense for her to testify. Chapter 10, page 206, gives more advice regarding this risky decision. If she does take the stand, she will have heard all the other testimony before she speaks because, unlike other witnesses, she has a right to be in the courtroom while others testify.

IV. KEEPING YOUR CASES ORGANIZED

For a defender with too many cases and too little time, streamlining your administrative tasks can be the difference between getting home for dinner and being the last to turn off your office light. Little techniques, routines, and ways of keeping things in order even when your schedule gets chaotic are also critical to the effectiveness of your work and meeting your ethical duties to clients.

A. The making of a case file

One very important place to be organized is your case file. If thinking about administrative duties like how to put together a case file seems like a waste of time, consider that with a well-organized case file you can avoid:

- Looking unprepared as you dig through a file to find papers in court, on the phone, or while negotiating a deal;
- Wondering if you have violated client confidentiality by losing sensitive documents; and
- Wasting time as you flip through pages to figure out what you need to do next on a case.

A well-designed file organizing system will:

- Give you built-in reminders of hearings and due dates for briefs, motions, and discovery; and
- Make decision making easier.

Your goals are to streamline and create uniformity. The following suggestions may be helpful, especially for defenders who work in offices that lack effective protocols.
Separate case files

For every matter a client has, use a new case file. That means one file for the original car theft charge, another for the probation violation that resulted from the curfew violation, and a third for assault charges that arose while detained on the probation violation. Though the cases are connected, each should have its own case file folder. Separation is important primarily for logistical reasons: court orders look similar and are easy to mix up, information needed for one matter may not be needed for another, or files get over-stuffed. If you have multiple files on a single client, use a large folder or expanding file to keep the individual files together.

File tabs

Label every file with the client’s name, birth date, and court case number.

File folder cover

On the outside of each file folder, include:

• *Your name and phone number, printed.* Use a stamp, tape your card on the front, or have pre-printed files.

• *Hearings-at-a-glance.* You want to be able to quickly look at the front of the file to see when the next hearing is set. The easiest way is to simply keep a list of the next hearing and date that you will update each time a new hearing is set. A neater method is to have a table or grid printed that can be stuck on the front of files (or to have a stamp made with a three-column grid). These grids could look something like:

<table>
<thead>
<tr>
<th>Date</th>
<th>Hearing</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/23/08</td>
<td>arraignment</td>
<td>pled ng</td>
</tr>
<tr>
<td>3/27/08</td>
<td>detention rvw hrg</td>
<td>released</td>
</tr>
<tr>
<td>4/5/08</td>
<td>pre-adjudication hrg</td>
<td>continued</td>
</tr>
<tr>
<td>4/12/08</td>
<td></td>
<td>set for trial</td>
</tr>
<tr>
<td>5/1/08</td>
<td>Adjudication</td>
<td></td>
</tr>
</tbody>
</table>
Inside of front cover

The inside of the front cover is easy to access quickly. There, you can put:

- **Client information label.** Keep basic client information on the inside of the cover, so you don’t have to flip through the file for a quick phone call. If possible, buy case-management or other software that will allow you to have the client name, case number, case charges, phone number, and birth date printed on labels. Print two for each file, and use one at the top of the inside of the file folder (the other will go on your client information sheet, described below). Some of this information may be confidential, so keeping it on the inside of the folder is essential. The label might look like:

```
JANE DOE
DOB 5/1/94
Case No. JD3-44-5555 — Burg 2, Theft 3
Phone: 310-477-5678
Other contact numbers:
```

- **Time log.** Keeping track of your actions not only reminds you of what you’ve done on the case, but also makes it easy to refer to it. ("Your Honor, I have tried several times to reach the State’s witness. Looking at my log here, I see that I left messages on X, Y, and Z dates. On ABC date, I sent a letter. I have received no return call. I believe that the witness is refusing to respond to my requests for an interview and ask the court to order…"). Equally important is how a log can protect your client if you should become sick or unable to work for any period of time. Your partner, another attorney in your office, or a newly-appointed attorney will be able to more easily start work on the case. And, while many public defenders are not required to keep track of hours worked, it is not a bad idea to do so because it can help you analyze how you are using your time and where you can become more efficient.

Many attorneys keep track of hours in 6 minute increments; others round up to 15 minutes or even to a half hour. Make your own log sheet and consider putting a guide to time increments along the top for the sake of consistency. Staple the page inside the front of your file folder, and add pages as each one fills up. It might look something like the chart on the following page.
Inside the file

Use a two-prong or other system that will secure papers to the back cover of the file. Do not have loose papers floating around because it will be impossible to keep them in order, and you are likely to drop the file folder at some point, or at the very least, have a page fall out here and there. A case file that does not have some method of keeping the pages securely is the case file of an attorney who is endangering clients’ confidentiality. Inside the back of the file, include:

- **Client information sheet.** The top page of the contents of the file should be a client information sheet. This way, no matter how many pages are in the file, you will be able to easily go to where client information is located. The top of this sheet is the place for the second label you printed when you were preparing the inside front cover. In addition, list the client’s address, parent’s name and contact information, other important adult information, the probation officer’s name, and other basic information about the case. Keep it simple; this is the page you will turn to when sending a letter or trying to track down a client.
• **Client intake information.** The next page should be the notes from your client intake interview. Here you will have a record of what school the client is attending, whether mental health is an issue, and other information you gathered at the first meeting. Some of this information is tangential to the actual charges, but it is critical to your ability to advocate for release and at disposition. As such, it should remain separate from data relating to the charges.

• **Case information.** This includes:
  - Charging documents,
  - Police reports,
  - Other discovery,
  - Other client interviews,
  - Defense investigation,
  - Notes of conversations,
  - Motions and other documents related to pre-adjudication hearings,
  - Adjudication documents/preparatory materials,
  - Case organizing tools (like investigation and witness charts), and
  - Materials related to a potential disposition plan.

Every conversation and meeting should have a date and notation, even if just one line (“6/4/08 T/C with Sam Jones – He will send school records today.”) Some attorneys use a new page in the file for every contact; others keep a log. Keeping meticulous track of your work on each case is a habit worth developing.

In a simple case, keeping notes of conversations, court orders, and all other events in chronological order with the most recent first in the file is fine. For a more complex case, many attorneys find that keeping each type of document separate and then in chronological order is most efficient. So, for example, you would have a separate section with only notes of conversations and another section for court orders.

**Complex Cases**

For cases headed to adjudication or those involved in more than limited negotiation, investigation, or planning for disposition, a multi-leafed file is extremely helpful. You can add dividers to a regular file or buy the ready-made type. For extremely complex cases or cases with extensive police or other reports, consider dividing the case into multiple files or three-ring binders with dividers.
B. Organizing numerous files in a large caseload

It is difficult to manage a large number of cases, and figuring out a method to organize the case files in a way that complements your calendaring system and task lists is essential. Whatever filing system you use should fit your work style. Methods include:

**Alphabetical**

*Pros:* The easiest way to file and find cases. Simple and consistent.

*Cons:* Does not provide a physical way of prioritizing cases.

**Date of next hearing**

*Pros:* You can look at case files and see what is coming up, prioritizing by time.

*Cons:* Categorizing by the time of the next hearing may not take into account the work needed.

**Type of hearing**

*Pros:* There are predictable tasks for each type of hearing and having case files grouped by type of hearing helps organize your work. For example, you can ensure that every case set for a pre-adjudication hearing has an investigation plan.

*Cons:* You will need to take a file out for non-hearing purposes, such as negotiation, and the extra time involved in finding it and getting it back in the right place may outweigh the benefits.

**Alpha-mix** (i.e., all files in alpha-order except cases set for adjudication)

*Pros:* Cases set for adjudication, which require more frequent monitoring, are set aside, while others are easy to find.

*Cons:* As above, the type of hearing does not dictate the amount of attention required, although cases set for adjudication do require certain tasks.

A good calendaring system and a steady, multi-faceted “To-Do” list is the best way to manage the work on a large caseload.
C. Adjudication notebooks

Using an adjudication notebook with tabs gives you more time to think and makes it easier to react to developments in court. Consider pre-printing tabs on dividers you can use repeatedly. Keep several binders ready to be filled, and transfer or copy the documents you will need from your case file into a binder for each adjudication (and back after its conclusion). Standard tabs might include:

- Pretrial motions,
- Opening,
- Evidentiary issues anticipated,
- Cross examination questions,
- Impeachment documents,
- Direct examination questions,
- Police reports and other key documents, and
- Closing.

Some attorneys copy relevant sections of the police reports or interviews and keep those next to cross examination notes, so they can find them easily for impeachment. Others choose to tab statements or reports with witnesses’ names. If discovery is extensive, consider putting it in a separate binder for use during adjudication.

Before adjudication, of course, come pre-adjudicatory hearings. These can have outcomes crucial to your client’s case. After thinking through your theory of defense, you should be ready to make strategic moves at pre-adjudication proceedings, described in Chapter 7.

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I admit it, I am a secret nerd. I like making trial notebooks. I use one for literally every trial I do, even shopliftings. I keep about ten three-ring binders sitting on the shelf in my office, each with dividers already printed out. I just grab one and load it up with case info. It keeps me organized, plus, I swear it scares the prosecutor.

—Juvenile defender
The lawyer should advise the client of his or her rights at the intake hearing...

If the client is detained ... the lawyer should immediately consider all steps that may in good faith be taken to secure the child’s release from custody.

—IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Standards 6.2 & 6.4

Strong pre-adjudicatory defense practices are critical to successful representation. Effective advocacy at pre-adjudication hearings can change the outcome of a case, help you build a relationship with your client, and set the stage for a better disposition for your client.

What to consider before your first case

- Your jurisdiction’s statutes and court rules concerning the preliminary hearings. What specific procedural rights are guaranteed to a child in a preliminary hearing? Will detention be at issue and, if so, what are the factors to be used by the judge to determine whether or not the child is released pending adjudication? Citations for each state’s detention statutes are available at http://www.njdc.info/state_data.php.

- The possibilities for alternatives to detention. Know the location of and available services at community programs in your jurisdiction. Be familiar with detention facilities as well.

- If applicable, the contact information of reputable bail bonding company. Ask experienced attorneys in your office and/or helpful court clerks for recommendations.
I. Before the Preliminary Hearing
   A. Thinking about timing
   B. Initial interview with the client
   C. Parent interview
   D. Follow-up telephone calls and correspondence

II. Probable Cause Hearing

III. Arraignment

IV. Pre-Adjudication Detention Hearing
   A. Preparing for the hearing
   B. Conduct of the hearing
   C. What to do if your client is detained

V. Bail
   A. Pre-hearing interview
   B. Types of bail

VI. Pre-Adjudication Motions
   A. Rationale
   B. Procedure
   C. Typical motions

I. BEFORE THE PRELIMINARY HEARING

In this context, the term “preliminary hearing” refers to the client’s first appearance in front of a judge or magistrate. It can include all or some of the following:

- Appointment of counsel for the client,
- Probable cause hearing,
- Pre-charging detention hearing,
- Arraignment,
- Pre-adjudication detention hearing,
- Scheduling pre-adjudication hearings, and/or
- Scheduling an adjudication date.

The next three sections of this chapter will address how to represent your client at probable cause, arraignment, and detention hearings (whether they are held separately or in immediate succession). Regardless of what your jurisdiction’s preliminary hearing entails,
you should be as prepared as possible before you enter the courtroom. Preparation includes becoming familiar with all the rules governing pre-adjudicatory proceedings in your jurisdiction. Document A31 in Appendix A, a motion for recusal for violation of a statute mandating that the judge who conducts a detention hearing may not also conduct a fact-finding hearing, provides an example of the potential power of such rules. (Even if your jurisdiction does not have a similar rule, the reasoning behind such a rule can give you ideas for creative arguments.)

A. Thinking about timing

In every case, you will have to balance the potential advantages of having more time to prepare for court appearances and the benefit to your client of having her case proceed efficiently.

Requesting a delay

As explained in Chapter 2, the ideal initial interview with your client takes place long before she enters a courtroom. In reality, no matter how hard you try to keep to that ideal in your cases, there will be times when you have to meet a new client only a few minutes before her first court appearance is scheduled to begin. If you have not had time to prepare for the initial hearing, you must state that fact in court; your strategy will vary depending on the circumstances of the preliminary hearing.

If the hearing will be substantially pro forma

If the preliminary hearing is going to be substantially pro forma (for example, it will include only arraignment and setting future court dates), you can ask the judge for a brief delay of the case, so you have some time to find a quiet, relatively private area to conduct a quick initial interview, during which you should do your best to remain calm and composed no matter how rushed you feel. (Refer to Chapter 2 for more information regarding that first conversation and remember that you will conduct a full interview after the hearing.) If the judge resists your request for a brief delay, put on the record a clear statement that you require additional time to prepare. If the hearing is not being recorded, ask that the clerk make a written record of your request and your reasons for it. Remind the judge that you cannot advocate on behalf of a youth with whom you have not yet spoken. Cite the U.S. Supreme Court case Strickland v. Washington, 466 U.S. 668 (1984), which holds that the Sixth Amendment right to counsel is violated if the defense attorney is required to represent a client under circumstances that cause counsel’s representation to be ineffective. Lower courts have issued subsequent decisions that reinforce the importance of the timely appointment of counsel, so check your state and circuit decisions for cases that may bolster your argument.
If the hearing will address more significant issues

If the preliminary hearing is going to address detention or other issues of serious consequence, you must have time to thoroughly interview your client and prepare her and her parent for the proceeding. It is imperative that you ask the judge for time to prepare. Should the judge balk, be sure to make a motion for a continuance on the record; use the Sixth Amendment and associated case law arguments and add Fifth and Fourteenth Amendment liberty interest and due process arguments, as well as any additional support from statutes, court rules, and/or your state constitution. If you explicitly state that insufficient time to meet with your client is a denial of fundamental rights and note the argument for the record, you may well convince the court to reconsider its position. At the very least, you have begun to lay the groundwork for later challenges.

If the judge is not responsive to your arguments and you are forced to go forward, you should make repeated notation of your unpreparedness and inability to advocate for your client throughout the hearing and summarize your claim at the conclusion, providing specific examples. If your client is detained or other objectionable orders are issued, promptly order the transcript of the hearing. You can use it to bolster arguments for release at a subsequent detention review hearing or even as support for a writ of habeas corpus (see Chapter 11, page 246). The importance of such arguments cannot be overemphasized; if defenders do not vigorously argue for adequate preparation time, judges and prosecutors will become acclimated to frequently incarcerating children on insufficient grounds and without effective assistance of counsel. The lasting impact of detention on children is significant.

Ensuring a speedy adjudication

Although requesting more time may be necessary to ensure that you are able to zealously and effectively represent your client, be careful about long delays. In general and especially if your client is in detention, prompt action is important. Children have a different sense of time than adults; they have a reduced ability to foresee the future and cope with delays. It may be useful to point out to the court, if the prosecutor requests a delay that you are arguing against, that a youth’s sense of accountability is diminished when sanctions are delayed.

While juveniles were not afforded the Sixth Amendment right to a speedy trial in the historic In re Gault decision, states have adopted ways of ensuring that juveniles are not denied this right. Some states simply extend the Sixth Amendment right to a speedy trial
via case law in their state constitution. These states generally require that courts weigh the four factors from *Barker v. Wingo*, 407 U.S. 514 (1972), which are: 1) length of delay, 2) reason for delay, 3) defendant’s assertion of the right, and 4) prejudice to the accused flowing from delay. Other states have statutes or court rules requiring specific timelines, allowing anywhere from 10 to 120 days between petition and adjudicatory hearing.

Use your ability to efficiently prepare and to assert your client’s right to a speedy trial to your strategic advantage. You may be able to convince the court not to grant a prosecutor’s request for a continuance, and you can, therefore, capitalize on the State’s lack of preparation. Asserting your client’s right to speedy trial by clearly objecting to delays on the record puts her in a stronger position to seek release from detention or, if her speedy trial rights are violated, even dismissal of charges.

**B. Initial interview with the client**

Whether your first meeting with your client takes place in your office or during an hour-long delay granted by the court, you want to use the time you have to begin a trusting relationship and to gather information crucial to her preliminary hearing. Advice for interviewing children, as well as lists of initial questions which you will need to modify based on how much time you have and the circumstances of the case, appear in Chapter 2. Additionally, a model interview form for use when your client is facing detention is available in Appendix A Document A1. You need answers to at least the most crucial questions suggested before your client’s probable cause and detention hearings.

If you suspect that the preliminary hearing will include any judicial inquiry, it is particularly important to get as much information as you can about your client’s past and current circumstances, including home situation, family relations, school performance, employment, recreational or social activities, counseling/treatment or other agency contacts, and details about past and current delinquency cases. (Again, more detailed suggestions appear in Chapter 2.) You will want to have a plan to address the court’s likely concerns without giving away too much information.

**C. Parent interview**

The parent interview is a critical element of preparation. Judges frequently ask parents about all aspects of their child’s history, so a well-prepared parent, vigorously supporting and amplifying the defense goals, significantly enhances the likelihood of a positive result for your client. An unprepared or alienated parent, on the other hand, is likely to make your client’s situation worse and your job more difficult. Your strategy for preparing a parent

Pre-Adjudications Proceedings
should vary depending on his attitude toward your client and her case. The first step is to get in touch with the parent; if he is not present when you first meet your client, ask the client for her home phone number and any work or other numbers she has for her parent. Once you have the parent on the phone or in your presence, you can begin to gauge what he is thinking about your client’s case. (See Chapter 2, page 29 for more advice on interacting with your client’s parent.)

If the parent is cooperative and anxious to help

Take advantage of this positive situation. Encourage the parent to help your client as her case proceeds, explaining the importance of his role. Collect useful information as you talk with the parent. Be sure to cover the following:

- **Ask the parent the same questions you asked your client.** (See the questions on page 24 in Chapter 2, which cover family, medical, social, and court history-related information.) His answers will corroborate the information your client provided or raise conflicts to resolve, as well as help identify any problem areas. Ask about discipline issues, the parent’s ability to provide consistent supervision of the child, the parent’s thoughts about the case and the potential outcome, and what the parent would like to say to the judge.

- **Talk about ways the client can improve her behavior.** Let the parent know that you will be asking the client to do what is necessary to ensure the judge is pleased with her conduct, explaining that it is related to the outcome of the case. Solicit the parent’s input and assistance to support that conduct. Enlisting family support is critical for your client. To emphasize the importance of the parent’s assistance, ask the parent to contact you with regard to either lack of improvement in identified problem areas or unanticipated problems. That way you and the family can develop a successful plan to address the problem. If the parent and attorney have been cooperating, they can present a united response to judicial concerns.

- **Make sure that the parent will be present at the hearings.** In cases that involve hearings or detention reviews continued for the parent to be able to attend, employment and other complications are not acceptable excuses for a parent’s inaction. Empathize with the parent about how difficult it is to rearrange work and other schedules, but be clear about the urgent nature of the proceedings. Consider asking the parent to accept service of a subpoena to appear if that will get him excused from work. If it is absolutely not possible for the parent to be in court, be sure that some other adult relative or responsible person (like a close friend or neighbor, or a minister) is present to voice the parent’s interest and concern for the client’s welfare.
• Inform the parent (and/or another adult present in court on the child’s behalf) how important it is to be positive and respectful to the judge and probation officer. The presence of a supportive parent at a detention hearing may make the judge more likely to order release. As discussed in Chapter 4, it is also critical for the parent to relate positive information about the child to the probation officer. The parent’s appropriate demeanor will help to convince the court of the likelihood of the child’s success and the availability of a positive home environment.

If the parent is openly hostile

An openly hostile parent, guardian, or foster parent can be problematic. If you encounter resistance to initial attempts to enlist the parent as an ally, try to negotiate a deal. Ask for concrete reasons why the parent does not want his child to come home, and offer to suggest a variety of conditions of release tailored to address the parent’s concerns. (Those conditions, which the court may well have required regardless, might include setting a curfew, mandating family counseling, or requiring improved school attendance.) You can also emphasize to the parent that, as far as the court is concerned, this is the child’s last chance to redeem herself, so the parent will effectively have a partner in disciplining the child. As always, the child is your client, so you must counsel her regarding any potential agreement and she must give her consent to the specific conditions, ideally in advance of your discussion with her parent. If all parties agree and the court releases your client, advise both the client and the parent to contact you if there are any problems.

Parents are often counseled by school personnel, counselors, and probation officers to have their children arrested or detained in order to “get help.” If a parent is being uncooperative because of that line of thinking, it is important that you explain why delinquency court is the wrong avenue to seek help for a troubled youth. Explain to the parent that there are more appropriate and more effective alternatives to detention. Be ready to offer specific suggestions. Inform the parent that even a very brief period in detention can be traumatizing and dangerous to a child and longer stays will provide the client contact with, and familiarity with the conduct of, more seriously chronic delinquents. Point out also that detention centers have deficient education and treatment services.

If the parent refuses to accept custody of your client

A parent’s refusal to accept custody of her child will reflect negatively on the parent and, most importantly, the client. If a parent adamantly refuses to take
custody and you have been unable to find a willing and competent adult relative or family friend to take on a supervisory role, you should seriously and thoughtfully consider advising your client to allow you to refer her to your jurisdiction’s welfare agency in order to secure an alternative to detention. Read carefully your state’s abuse and neglect statutes or child in need of services laws. Consult with attorneys who practice in that arena. Making a homelessness referral or filing a neglect petition will facilitate finding a non-delinquency placement for the child and move the focus where it belongs: on the family. This path requires extraordinary client counseling to ensure that she understands and accepts the possible consequences. In the face of a severe parent-child conflict, pursuing this course of action may be the only viable way to avoid delinquency institutionalization—and if the parent does not want the child, might be a preferable outcome.

If you cannot meet with the parent

Often, you will not have had a conversation with your client’s parent. If you think a parent is likely to make harmful comments about your client at the hearing (describing her bad behavior, insisting he does not want the child to return home, or incriminating her in additional offenses), try one or both of the following methods to prevent the parent from damaging your client’s case:

- Ask the prosecutor, before the hearing begins, if he will agree to a delay if the parent appears at the hearing. Explain that you have not had enough time to speak to the parent and cannot adequately represent your client until you have done so.

- Ask the judge to grant a delay as soon as you see that the parent has appeared in the courtroom.

D. Follow-up telephone calls and correspondence

After interviewing the client and/or her parent, you will need to:

- Send a signed release of information form (Document A3 in Appendix A) to the client’s school. Verify the existence or lack of a disciplinary record, locate favorable references regarding the child’s grades and attendance, and identify any currently recognized special education needs.

- Send a signed release of information form and request to employers and counselors to verify information, obtain records, and locate favorable references.

- Call or meet with the client’s former or current probation officer. If the probation officer is going to make recommendations to the court for the hearing, determine
what is important in the officer’s mind. If the officer’s recommendations are restrictive, try to negotiate his support of the plan you have formulated with your client and her parent.

• Confer with the prosecutor before the hearing to determine his position on your client’s case and listen for any concerns. Consider whether to ask the prosecutor to agree, before the hearing, to the conditions of release you plan to propose in court (you can make reference to any agreement you have reached with the probation officer to support your negotiations).

II. PROBABLE CAUSE HEARING

Before your client can be detained, the prosecution has a burden of showing that there is probable cause to believe that your client committed a delinquent act. In most states, the judge must determine 1) whether probable cause exists to believe that the charged offense was committed and 2) whether probable cause exists to believe that the accused committed the offense. If your client was arrested without a warrant, the prosecution must establish probable cause at a hearing. A probable cause hearing is unnecessary if the police arrested your client pursuant to a warrant, because the judge determines the grounds for arrest before signing the warrant.

Your client can choose to waive her right to a probable cause hearing, but in general, she will benefit from demanding that one take place. Probable cause hearings may have several beneficial outcomes:

• If the State fails to establish probable cause, the client cannot be detained, and the petition may be not prossed or dismissed. (Document A32 in Appendix A is a motion for dismissal of a charge based on failure to prove probable cause; it includes arguments against transfer to criminal court, a topic addressed in Chapter 8.)

• The probable cause hearing will give you information about the prosecution’s case. Furthermore, if the prosecutor or police overcharged the case, the court may not find probable cause or may only find it for a lesser-included charge. A lesser charge may change the judge’s calculation when it comes to determining whether the child should be detained.

• If any witnesses testify at the probable cause hearing and the hearing is on the record (you should make every effort to ensure the hearing is transcribed or at least taped), the transcripts can be used during adjudication to impeach witnesses with any prior inconsistent statements. (A discussion of impeachment appears in Chapter 10 on page 198).
Despite these advantages, there are rare instances in which waiving a probable cause hearing may be prudent, such as:

- When the detention hearing and probable cause hearing are part of the same proceeding, the judge is vacillating between secure and non-secure detention or detention and release, and a finding of probable cause is very likely, you may not want to expose the judge to more details of the alleged offense. This may particularly be the case when you have negotiated stipulated release conditions with the probation officer or prosecutor.

- When the probable cause hearing will likely alert the prosecutor to fundamental flaws in the case or new information that he otherwise might not recognize until adjudication, you may want to waive the hearing. Make sure that whatever action you take does not postpone a successful resolution of your client’s case. These types of flaws may lead to your client’s release by veteran or due process-oriented judges or incline the prosecution to favorable, quick plea negotiations, so you should reveal them as early as you believe you can achieve those results.

- If you have concerns about a witness’s identification of your client and do not want him to see her—and thereby confirm for himself that your client looks familiar—at the hearing, that concern may outweigh any potential benefits of holding the hearing. (In the alternative, you could make the case for a closed hearing in that situation. Cite witness misidentification research to support your motion. Materials on eyewitness identification are available online at http://www.nlada.org/defender/forensics.)

If your client exercises her right to a probable cause hearing, the proceeding may or may not include any presentation of evidence or testimony. The hearing could consist entirely of the prosecution’s offer of a short statement of facts sworn to by the arresting officer. If the prosecution does put a police officer or other witness on the stand, you can use the opportunity to cross examine him. Note that because there is no constitutional requirement that the probable cause hearing be “accompanied by the full panoply of adversary safeguards,” the procedural requirements vary. Your jurisdiction may permit hearsay, illegally obtained evidence, or other evidence not admissible at adjudication at probable cause hearings.

You should not put your client on the stand or in any way suggest that she or you admit to her involvement in the crime. Be careful not to say anything that suggests that your client knew anything about the incident. Do not provide any information about the incident or your client’s version of it at this time. In contrast to your strategy at most court appearances, at a probable cause hearing, you will simply attack the prosecution’s case rather than presenting your own. If the prosecutor’s presentation is incomplete in any way, you can argue that the State has failed to offer a legal or factual basis for probable cause. Look for errors such as improper attestation of a police statement (it should be signed by the arresting or other officer with personal knowledge of the facts), failure to address every element of the crime, or a weak connection between your client and the crime.
III. ARRAIGNMENT

In the arraignment, your client will be brought before a judge, informed of the charges against her, and expected to enter a plea of guilty or not guilty (admit or deny the charges).\textsuperscript{149} The arraignment generally includes the following steps:

1. \textbf{Notice of charges}

The client and her parent must be notified in writing before the hearing of the “specific charge or factual allegations.”\textsuperscript{150} These notice requirements may be supplemented by state statute or case law. If your client is not detained, she should receive notice well before the hearing date.

2. \textbf{Formal reading of charges}

Once in court, the charges against your client will be read into the record (if the juvenile court is a court of record; unfortunately, some are not).

3. \textbf{Continuance for absence of parent}

The judge may offer to continue the case because the parent is absent. In general, continuance is in the client’s interest because it will give you more time to prepare. If the client is in detention or wants her case to progress as quickly as possible, however, ask the judge to waive notice to the parent. (See page 134 of this chapter for a discussion of issues of postponement.)

4. \textbf{Plea}

You should almost always enter a plea of “not guilty” on behalf of your client. There are extremely unusual circumstances when the client should enter a guilty plea at arraignment, such as when doing so is the only way to prevent a prosecutor from filing for transfer to adult court. If you have carefully considered the possible outcomes and think it is in your client’s interest to plead guilty, thoroughly counsel her regarding consequences and alternatives and then abide by her decision. (See Chapter 9 for a complete discussion of plea bargaining; if your client wishes you to enter plea negotiations and accepts the results, she can enter her guilty plea at a later court appearance.)

5. \textbf{Set the next court date}

\textit{If the child is detained.} Set plea negotiation and adjudication dates as soon as possible without compromising your preparation. Your jurisdiction may have rules mandating a quick adjudication date if your client is detained, which you can cite if necessary.
If the child is released. Set plea negotiation and adjudication dates as late as reasonably possible to allow for thorough preparation and to allow your client to have a longer period of time in the community to prove good conduct to the judge. If the judge attempts to set an adjudication date that does not give you enough time to prepare, state the problem for the record. The U.S. Supreme Court guaranteed children in *In re Gault* the same right as adults to a “reasonable opportunity to prepare [for trial]” with sufficient time “in advance . . . to permit preparation.”¹⁵¹ Many judges will allow a reasonable delay if you explain that you need to investigate the facts, complete discovery, file pre-adjudication motions, await the prosecution’s response to requests and arguments, appear in court to resolve the issues raised, and potentially negotiate a plea.

IV. PRE-ADJUDICATION DETENTION HEARING

Strong detention hearing advocacy is imperative. It is your job to explain to the judge why your client should stay in the community. Failure to keep your client out of detention can hurt her case in several ways:

- The fact that your client has been detained pre-adjudication will give the adjudication judge an unfavorable first impression. Pre-adjudication detention correlates with increased likelihood of institutional placement.¹⁵²
- Your client has a better chance of assisting you with her defense if she is in the community with access to witnesses as well as the scenes of arrest and the alleged offense.
- If placed in detention, a child is likely to receive inadequate educational, health, or treatment services, and she faces the risk of being abused or brutalized.¹⁵³
- Only if allowed to return to her community will the client (and her family) have the opportunity to improve school behavior, home conduct, and social activities. This opportunity is crucial to demonstrating that the client can make good choices in the future and is taking her case seriously, both of which will influence disposition.

Note that though this section is an accurate discussion of representation at detention hearings, it is necessarily incomplete. For a thorough explanation of the topics described below, as well as information about detention advocacy outside of the courtroom (such as, with police, probation officers, and detention facility screeners) and strategies for reforming systemic problems related to the detention of children, please see the National Juvenile Defender Center’s *Legal Strategies to Reduce the Unnecessary Detention of Children* (available from the National Juvenile Defender Center upon request).
A. Preparing for the hearing

Both general and client-specific preparation is necessary before you begin representing children at detention hearings. Make sure you:

Know your timeline

Know your jurisdiction’s statute regarding how soon after arrest your client must receive a probable cause and detention hearing. Federal case law provides some guidelines, but it is not definitive for delinquency cases.

In the 1975 case *Gerstein v. Pugh*, the Supreme Court required that a probable cause hearing must be held “promptly” after any warrantless arrest. In 1991, in *County of Riverside v. McLaughlin*, the Court defined “promptly” as 48 hours, but added that a hearing held within 48 hours “may nonetheless violate *Gerstein* if the arrested individual can prove that his or her probable cause determination was delayed unreasonably.” Prior to *McLaughlin*, the Court had applied *Gerstein*’s requirement of a probable cause hearing to juvenile delinquency cases in the decision in *Schall v. Martin*, 467 U.S. 253 (1984). *Schall* held that pre-adjudicatory detention for juveniles is permissible and did not impose a bright-line time limit for holding a detention hearing. It is unclear whether the 48-hour time limit of *McLaughlin* applies to juvenile cases, and states have set limits, typically ranging from 24 to 72 hours, at their discretion.

If your client is detained without a hearing longer than your state’s statute allows or longer than 48 hours (regardless of the statutory requirement), argue for her release. Argue that she has not received a timely probable cause determination as she is guaranteed by *Gerstein*. Try to use *McLaughlin* as well. You can note that the *McLaughlin* rationale that “[a] state has no legitimate interest in detaining for extended periods individuals who have been arrested without probable cause” is equally valid for youth. Although the Court did not recognize a due process violation in *Schall*, you can make an argument based on Fourteenth Amendment protections, pushing your court to apply *McLaughlin* to juvenile cases. If your state allows for detention beyond 48 hours, you should also consider filing a petition for a writ of *habeas corpus* that challenges the statute to request your client’s release (see Chapter 11, page 246).
Know the criteria for detention

Learn the statutory factors that must be met for a youth to be detained pending adjudication. Most states allow detention only if 1) there is a risk of flight or 2) a child is a danger to herself and/or others. Although some judges may not adhere to the statutory limitations on their discretion in decisions to detain, you should familiarize yourself with your state’s law, so you can make arguments based on it and acclimate judges to following it.

Know your detention facilities

Become familiar with the secure and non-secure detention facilities available in your jurisdiction. This information will 1) help you formulate creative alternatives to standard detention and 2) allow you to give concrete, specific, informed reasons why a particular option is or is not appropriate for your client. Visit detention facilities to see for yourself if they are run well; ask clients about their experiences there; and conduct other investigation to find out what services are really offered and what problems exist. Consult with veteran practitioners about the quality or drawbacks of all available programs. You should generally advocate for children to be placed in the least restrictive location, but there may be reasons to counsel your client otherwise. Non-secure detention programs, for example, may be so poorly run that clients rapidly find themselves remanded back to secure detention for petty misconduct, which will tarnish the judge’s view of your client and harden the prosecution’s position in her case.

Know other, less restrictive alternatives

If the judge will not allow the client to be released without significant restrictions, you will want to argue for one or a combination of the alternatives listed below (or others of your own devising). Make use of the programs available in your jurisdiction, and remember that just because a given alternative has not been used in your area before does not mean you cannot ask for it. Possible alternatives to detention include:

• Home detention (sometimes known as “house arrest”) other than to go to school, a job, or other approved activities;
• Wrap-around or after school programs with early curfew;
• Electronic monitoring;
• Release to relatives with a safe environment and strong supervision capabilities;
• Bail;
• Home detention on weekdays, placement in a group home on weekends;
• Full-time detention in a private group home;
• Detention in a shelter house; and/or
• Secure detention with school or work release.

In some jurisdictions, the judge may leave the determination of the appropriate level of detention to the juvenile correctional administrative agency. Suggest such administrative delegation only if you are absolutely confident that you will be able to obtain a better decision from the administrative agency. \(^{162}\)

**Get an accurate, comprehensive copy of your client’s juvenile court record**

If you have not already gathered this information, make sure you have it so you can dispute any incorrect claims the probation officer, prosecutor, or judge makes and so you can prepare your arguments with your client’s record in mind.

**Collect positive information about your client**

You will want to enter every detention hearing armed with as much positive information about your client as you can gather. The process for collecting that information is described in Chapters 2 and 5. For detention hearings, in particular, emphasizing your client’s ties to her community is crucial. You will need to show that your client belongs in the community and that she is not likely to abscond. One way to demonstrate your client’s strengths is to bring witnesses from the community to testify to your client’s positive activities or behavior. If a witness cannot come to court or you do not want to ask him to testify, ask him to submit to the court a letter describing his connection to your client and belief that she should not be detained. (Document A33 in Appendix A is a sample letter and set of instructions to send to a potential letter writer before a detention or disposition hearing.) This type of information is a powerful way to show that your client is neither a risk of flight nor a dangerous person.

After you have prepared yourself thoroughly, but before the hearing, you should:

**Consult and negotiate with the probation officer**

Contact the probation officer assigned to your case before the hearing. Find out any new information about your client and the alleged offense. As a preemptive effort, you should try to enlist the support of the probation officer
for the plan you have developed with your client and the parent. Begin with the least restrictive option, but depending on the probation officer’s resistance, you may need to negotiate more restrictive alternatives. In the end, you may agree to disagree and present different recommendations to the court. Finally, if your client has a record of dismissed or of *nol prossed* charges, insist that the probation officer refrain from mentioning them in court.

**Consider consulting with the prosecutor before the hearing**

You may want to discuss your proposals for pre-adjudication release with the prosecutor, regardless of whether you have obtained agreement from the probation officer. Because the prosecutor can substantially control the case, it may be advisable to seek an agreement with him for stipulated conditions of release. The judge may appreciate being able to move court along without protracted arguments. If you know, however, that a prosecutor is likely to argue vigorously against your client’s release, it may be better to save your arguments for the courtroom rather than alerting the prosecutor to them. Consulting with veteran attorneys as to a particular prosecutor’s style and attitude can be helpful.

**B. Conduct of the hearing**

While local practice may differ, detention hearings generally include:

1. **Probation officer’s report**

   The probation officer will provide the court with information regarding your client he gathered during intake (see Chapter 4, page 82). If your client has had a prior interaction with juvenile court, this report will include part information, as well. The report will cover what the probation officer knows about:

   - Prior record and any pending cases;
   - Failure to appear at prior court dates;
   - Whether the client is currently on probation or parole and, if so, how the client has been doing;
   - School performance;
   - Parent’s comments about the client’s behavior at home and adherence to curfew; and
   - Psychological or substance abuse issues.¹⁶¹
The probation officer generally makes a recommendation to the court, based on this information, about whether your client should be detained.

2. Prosecutor’s response

The prosecutor will often agree with the probation officer’s recommendation, or he may argue for a more restrictive placement.

3. Defense response

Your response to any requests for the detention of your client should come in two parts: using the statutory requirements to argue that your client should legally not be detained and offering an alternative method of addressing the judge’s concerns about your client.

**Addressing the statutory requirements**

These suggestions are adapted from the discussion by Hertz, Guggenheim, and Amsterdam in their *Trial Manual for Defense Attorneys in Juvenile Court*.

**Regarding risk of flight**

Any of the following facts, if appropriate, provide evidence that your client acts responsibly and is not a risk of flight:

- The client voluntarily surrendered at the police station or to a probation officer;
- The client did not flee when released by the police before the preliminary hearing;
- The client has appeared in prior court proceedings;
- The client has kept appointments with a probation/parole officer;
- The client’s parent will be responsible for ensuring that the client appears for adjudication;
- The client has a job;
- The client has good school attendance;
- The client is active in sports, clubs, or religious activities; and/or
- The client has a minimal or no prior record.\(^\text{164}\)

When I have a client who wants me to argue for release in a case when I just know there is no way he will be released, I give it my best shot for two reasons—first, of course I have to because it’s what the client wants. But another thing is that, with a new client in particular, it really changes my relationship with him. He gets to see me in action, see that I’m for real, I’m there for him, standing up against everyone else, pushing for what he wants, doing a good job at it, and when we lose, we lose together. The next time we meet, he’s much more likely to trust what I say and to speak openly with me. It can be hard to get that with a teenage client.

—Juvenile defender
Even if your client has missed court proceedings or appointments with a probation/parole officer in the past, you should still point out the following facts, if applicable:

- There was a legitimate reason for her failure to appear;
- The events took place long ago when the client was less mature; and/or
- The surrounding circumstances have changed (perhaps the client had family problems that are now resolved).

**Regarding dangerousness**

You can present evidence to demonstrate to the court that your client is not dangerous, including, if applicable:

- Adult testimony that your client has not exhibited violent behavior;
- Adult testimony offering specific examples of behavior contradicting any assertion of dangerousness; and/or
- Your client’s lack of criminal history.

If the client was or is involved in another case in which she was accused of violent acts, try to minimize their significance by reminding the court, if applicable, that:

- The client is entitled to a presumption of innocence regarding her prior or pending charges;
- The convictions happened a long time ago, and your client has matured since then;
- There were special circumstances in the client’s life at the time that no longer exist today; and/or
- There were mitigating facts in the prior convictions.\(^{165}\)

**Presenting alternatives to detention**

You can always argue that detention facilities are not appropriate for the client. Research your local detention facility, so you can explain in concrete terms what it lacks, including physical deficiencies, insufficient protection of the safety of the children detained there, and poor or nonexistent services. Then present the court with an alternative to detention that would better address the client’s needs.

This alternative plan can take any of a myriad of forms, as suggested on page 144 of this chapter. See Chapter 11 for a more thorough discussion.
of creating such proposals in the similar context of disposition. Your
goal is to convince the court that your alternative is superior to
detention. For example, if your client has had problems with school
conduct, you should suggest the need for a different, more appropriate
school placement (see Chapter 13 for information on special education)
and note that it would be impossible to coordinate that change if the
client is in detention. If your client has psychological or substance abuse
problems, locate an appropriate treatment program in the community
and explain that she cannot get equivalent services in detention.

C. What to do if your client is detained

If, despite your efforts, the judge places your client in detention, you should:

*Insist that your client receive necessary services.* If your client requires special care,
such as special education services, medical treatment, medication, or enhanced
protection because of any particular vulnerabilities, ensure that the judge
includes that information in the detention order. Fax a copy of the order to the
detention center administrator and follow up with a phone call or visit to make
sure the necessary services are in place.

*Talk to your client.* Explain that you are going to keep working for her, getting
ready to present her case and continuing to argue for her release. Make sure she
has your phone number so she can reach you from the detention facility, and tell
her that you will visit her (and then do so). Emphasize that her conduct in
detention will either support or complicate your efforts to obtain release at the
next hearing, and she should contact you if she anticipates or has any
disciplinary or other problems, so you can promptly address them.

*Talk to your client’s parent.* Explain how to visit the client in the facility, providing
details such as where it is located and when visitors are allowed. Describe what
you will be doing to prepare the defense and seek detention release at a future
hearing. Enlist the parent’s assistance in obtaining additional evidence, locating
witnesses, and finding ways to demonstrate at a detention review hearing that the
child should be released.

*Lobby the agency making detention placement decisions, if applicable.* If the court has
given the juvenile detention administrative agency discretion in determining in
which facility to place your client, lobby the agency repeatedly for the least
restrictive option. If that is unsuccessful, use any available method of
appealing the agency’s decision.
Schedule a detention review hearing. A change of circumstances in the client’s home or community—such as if the family moves into better housing, an abusive family member moves out, a parent returns, extended family support materializes, the client’s school agrees to provide additional services, or you find a place for your client in a treatment program—can influence the judge at a follow-up detention hearing or another subsequent court appearance. File a motion to request that the court revisit its detention decision given the relevant developments. Document A34 in Appendix A is an example of a motion to reduce detention; it presents social information acquired since the detention hearing and alerts the court that the client’s aunt and uncle have offered to allow her to reside with them. Document A35 in Appendix A is a motion to release from secure detention based on a violation of a state statute limiting how long a child can be held in detention without an adjudicatory or transfer hearing.

Regardless of the outcome of the initial detention hearing, you should be prepared for future hearings regarding detention, because the issue may come up again at later stages of your case. If your client is adjudicated delinquent, for example, the judge will consider whether to place her in detention pending her disposition hearing or pending placement after that hearing. Keep in mind how harmful even a short period of detention can be, and advocate zealously for your client’s release in all circumstances.

V. BAIL

Not all states allow children to post bail; the National Juvenile Defender Center’s Legal Strategies to Reduce the Unnecessary Detention of Children (available upon request) includes a state-by-state list of bail statutes. Bail for juveniles is problematic because children rarely have their own money in the amounts required for bail, so allowing release only with bail can effectively deny release. If it is a viable option for your client, however, you should advocate on her behalf for low bail in the least restrictive form.

A note of caution: make sure that your client has no other outstanding charges or custody orders before the family posts bail. Bail could be posted for one charge, and she could remain detained on another. All charges or orders should be dealt with collectively in order to avoid successive incarcerations, which could exhaust both the family’s financial capacity and the bail bonding company’s cooperation.

A more detailed discussion of the defense role in the bail determination can be found in Hertz, Guggenheim, and Amsterdam’s Trial Manual for Defense Attorneys in Juvenile Court, from which this section is adapted.
A. Pre-hearing interview

Your goal at a bail hearing is to convince the judge to set bail at a low amount. First, argue that your client, as a young person, does not have much money. So, if bail for an adult would typically be one amount, it should be a much lower amount to reflect that youth are more limited in their ability to access money. If the judge persists in focusing on the family as the source of funds instead of the child, shift your argument. Know your bail statutes or standards for detention and use them to frame your argument. Try to address all statutory factors that guide the bail/detention decision. For example, demonstrate that because of the client’s family’s financial constraints and strong ties to the community, the family cannot afford high bail, and the client will appear in court even if bail is low. You will have much of the relevant information already, but make sure that before appearing at the bail hearing you review or find out the following:

• **Length of time in the community.** How long has the parent lived in the community? How long has the client lived in the community?

• **Ties to the community.** Does the client have relatives who live in the community? Does she or her parent have close friends nearby? Does she or her parent work in the community? Do the client and any siblings go to a local school? Does the family belong to a local religious or other community-based organization?

• **Personal finances.** What bail can the family make? How much money does the client’s family make in a year? If the parent is employed, what is the parent’s gross and net annual salary? If the parent is unemployed, what is the parent’s amount of unemployment benefits? Does the family receive any supplemental income, such as social security, welfare, or public assistance? What is the value of all of the family’s significant assets, such as home, car, and bank accounts? What is the total of all the family’s liabilities, such as debts, installment payments, mortgages, and cost of supporting dependents?

B. Types of bail

Generally, the types of bail are:

• **Cash bond.** Requires cash or security payment in full.

• **Real property bond.** Requires filing a deed or other title document with the court clerk.

• **Surety bond by a licensed bail bonding company.** The client’s family will need to pay a premium (usually 10% of bail) and post collateral security, such as a house or automobile. The bonding company will keep the premium and, should the client fail to show, will have the right to take the property from the family. The 10% premium is a fee that will not be returned to the family.
If your client is not satisfied with the outcome of the bail hearing and her circumstances change, you can file a motion to modify bail; Document A36 in Appendix A is an example of such a motion.

VI. PRE-ADJUDICATION MOTIONS

A. Rationale

Engaging in aggressive pre-adjudicatory motions practice will allow you to preserve your client’s rights, earn her trust, advocate for change in the juvenile court system, and combat the major advantages enjoyed by the State.

Defenders are sometimes hesitant to file motions in juvenile court. Excuses regarding short juvenile court time frames do not outweigh the fact that the consequences of adjudication are often no less serious than a finding of guilt in criminal court. Making sure you fulfill your role in an adversarial system will not damage your professional relationships with others in juvenile court. In fact, it is likely to enhance those relationships. Judges, probation officers, and even prosecutors are often dismayed by the less-than-zealous representation provided by defense attorneys in juvenile court. At the moment you are pressing a motion, they may not like being challenged or could be impatient if you are “slowing down” the processing of cases. If you bring motions for which you have articulable grounds, however, you will gain their respect over time. Asserting your client’s rights, even if no one else in the courtroom agrees with you, does not mean that you cannot turn around and negotiate a deal based, in part, on your ability to comfortably sit and chat with the prosecutor. You will get the best outcomes for your clients when the prosecutor knows you will make him work. Your chances of success rarely improve when you adopt a passive litigation strategy.

Although defenders may be deterred by the lack of clear case law on many issues as applied to juveniles, you have a duty to preserve significant issues for appeal so that appellate courts have the opportunity to apply fresh interpretations. You may be right to think that you will lose an argument over a particular issue, but the prospect of losing does not excuse you from the obligation to file the motion. Even if a motion is not successful, mounting an aggressive effort shows your client that you are willing to fight for her and the court and prosecutors that you will not placidly accept a system that causes harm to children.
The reasons to file motions are compelling and numerous. They include:

- Preservation of issues for appeal (see Chapter 10, page 213);
- The chance to obtain what you seek in the motion;
- Indirect improvements in a given case; and
- Indirect improvement in the relationships between prosecutors, the court, and juvenile defenders in your jurisdiction.

Examples of positive effects on the case include:

- The judge becomes more sensitive to objections made to the introduction of evidence because of a motion filed prior to adjudication, even though the original motion is denied;
- The prosecutor, out of concern that an appellate court might reverse, avoids introducing evidence that you sought unsuccessfully to suppress;
- Newspapers refrain from publishing your client’s name after you seek, but fail, to have the court closed;
- The state juvenile services agency begins to seek therapeutic placement early in the case as a result of a failed attempt to have your client found incompetent after you raised mental health issues; and/or
- Witnesses at motions hearings are locked into their testimony, allowing you to be better prepared for cross examination.

Examples of positive changes in juvenile court relationships and culture include:

- The State begins to fulfill its discovery obligations routinely rather than litigate the issue in every case;
- Defense attorneys are less likely to be viewed as, and act as, guardians *ad litem* rather than zealous advocates;
- After multiple hearings, judges begin to be aware of patterns of police misconduct;
- Repeated motions to dismiss for violation of time limits results in more efficient docketing;
- Motions to have children removed from dangerous, neglectful, harmful detention facilities educates the court, resulting in increased reluctance to incarcerate; and/or
- Petitions to have the juvenile services agency found in contempt for failure to place a child in therapeutic settings in a timely manner as ordered precipitate the funding of more appropriate placements.

The mix of a rehabilitative and adversarial system creates a tough balancing act for defenders. You never stop pushing for your clients’ rights in court, and you’ve got to get along with everyone outside of court. The nature of juvenile court makes the same balancing act in adult court seem like minor league play.

—Juvenile defender
B. Procedure

You need to know the rules regarding motions practice in your jurisdiction. These include:

**Deadlines.** Become familiar with your local court rules specifying the deadlines for filing motions and be sure to meet them. In jurisdictions with short time limits, you may need to file broad motions to preserve your position at the outset and later file more specific supplemental motions. You may also file a motion requesting an extension of the deadline for filing pre-adjudication motions to ensure that you have adequate time to prepare substantive motions.

**Delivery.** Motions are normally made in writing, and copies usually need to be filed with the clerk of the court and served upon the prosecution and any other counsel of record. Check your jurisdiction’s rules carefully; many have requirements as to time for delivery. By definition, there is an exception to the rule of providing the prosecutor with a copy if you file a motion *ex parte* (see page 157 of this chapter).

**Hearings.** You may request in your motion a court hearing regarding the issue at hand. Hearings on motions can consist of oral argument or presentation of testimony or evidence to persuade the judge to make a particular order. In some situations, such as when you are attempting to suppress a piece of the prosecution’s evidence, a hearing will be required; in others, such as motions to compel discovery, you should think strategically about whether a hearing is necessary. (You typically do not request a hearing for an *ex parte* motion and, if you do, should ask that it be closed.)

**Timing.** Some juvenile courts are accustomed to taking motions at the start of adjudication, rather than at a separate occasion beforehand. In the event of a relatively minor motion, this can be an effective way to dispose of some issues or create a more substantial record. In other situations, however, conducting motions during adjudication may undermine the importance of a motion or the effectiveness of the ruling. Arguments regarding motions during adjudication are more likely to be rushed; a judge might be prejudiced by evidence even as he deems it inadmissible; and it makes it harder to know how to present your case if evidentiary rulings are still up in the air when you are in the middle of an adjudication. If you are concerned about the implications of waiting to review a motion until adjudication has started, be sure to demand a pre-adjudication motions hearing.
Written orders. After reading and listening to your arguments and opposition from the prosecution, the court will decide whether to accept or reject your arguments. Be sure that ruling is issued in writing and on the record. Any time you win or lose a motion, you should prepare a written order for the judge to sign that, at a minimum, states the name of the motion filed, who brought it, the fact that the court was fully advised about the grounds for the motion, and the judge’s ruling. Including this order when you file your motion facilitates a ruling from the court and ensures that that ruling is on the record, which is essential for filing an appeal (see Chapter 10, page 213). When relevant, the order you draft should include findings of fact and conclusions of law on which the judge’s ruling is based. For example, you might file a motion for the appointment of an investigator in which you allege that 1) your client is indigent and 2) an investigator is necessary to effectively prepare your defense. If the judge finds that, although your client is indigent, he is not entitled to an investigator, you need to include the finding of indigency in your draft order to help clarify and narrow the issue for appellate review.

C. Typical motions

Procedures for each jurisdiction vary, as do standard motions and/or the common names for them. Regardless of their local variation or purpose, all motions or memoranda in support of motions should explain the relevant facts of the case and thoroughly cite supportive federal and/or state constitutional provisions, statutes, and/or case law, as well as relevant local rules of practice. Your motion and memoranda give the judge reasons, citations, and language to use when granting the motion. Including federal claims (using the Fourteenth Amendment or otherwise) creates the possibility of filing federal appeals later.

Written motions can serve a variety of purposes. These include:

**Discovery motions and investigation-related motions**

In most places, you will file motions related to discovery for every case and may need to use other motions to complete your investigation. Discovery motions demand information from the prosecutor (as is necessary and permitted based on rules in your jurisdiction); investigation-related motions may relate to records or reports created by the police, probation officer, prosecutorial laboratory, or arson/fire department. In many instances, you will use subpoenas or subpoeanas *duces tecum* to collect the information you need. See Chapter 5 for more information about these initial motions, as well as subpoenas.
Suppression motions

You will want to file a suppression motion in any instance in which you have a feasible argument that evidence the prosecution plans to present was obtained illegally, in violation of your client’s constitutional rights.

Unless the prosecution concedes your point, you will present arguments and testimony supporting your motion at a subsequent hearing on suppression. Be sure you are aware of rules, such as who has the burden of proof, as you prepare your motion and for the hearing. If the judge rules in your favor and suppresses evidence central to the prosecution’s case, you may weaken his arguments enough to get the case dismissed, prevent him from proving his case against your client beyond a reasonable doubt, or at least convince him to agree to a more favorable plea bargain than he would originally accept. Suppression hearings can also provide a basis for the impeachment of witnesses or for requesting a new judge for adjudication who has not been exposed to suppressed evidence. Because motions for suppression can be so critical to your client’s case, you should begin considering them early on as you plan your defense. Chapter 6 includes more information about different types of suppression motions and arguments (see page 113).

Motions in limine

Motions in limine seek to prevent or protect the admission of evidence, but they are based on arguments regarding admissibility for reasons other than those related to how the evidence was obtained. Motions in limine are the proper way to raise arguments based on hearsay, prejudice, irrelevance, or privilege. (See Document A37 in Appendix A for a sample motion in limine arguing that certain statements are hearsay and so the prosecutor cannot enter any evidence or testimony relating to them.) Be sure you know the rules governing motions in limine in your jurisdiction.

You should make a motion in limine before adjudication to prevent the prosecutor from ever mentioning the evidence during adjudication. Although there may be a hearing on the motion, it will rarely include witness testimony, since the argument is based not on the facts of the case, but the admissibility of the evidence itself. The judge has discretion over whether or not to make an advance ruling on the motion.

Motions in limine are especially useful in adjudication proceedings before juries because the jury will never be exposed to evidence ruled inadmissible. They are also useful in bench trials because they prevent a distracting disruption during adjudication. Keep in mind, though, that judges can also be prejudiced by
hearing about evidence even if they rule to exclude it. If you are concerned that a judge will be prejudiced against your client based on what he will learn from your motion, you may want to consider asking that another judge make the motion in limine decision. In the alternative, you could consider filing a motion for recusal after receiving the ruling.

If and when you receive a favorable ruling from a judge, you can ask that he instruct the prosecutor to ensure that his witnesses do not mention the inadmissible evidence. On your part, be careful after a successful motion in limine that you do not “open the door” to excluded information by asking questions that make the evidence relevant. For example, if you have filed a successful motion in limine to prevent the mention of a gun that was in your client’s possession when she was arrested, and the police officer stopped your client because he saw that she had a gun, do not ask the police officer on the stand why he approached your client or imply that he had no reason for doing so.

Even if your motion in limine is denied, object on the record when the evidence that was the subject of the motion is offered. Renewing your objection may be necessary to preserve the issue for a later appeal.

**Motions ex parte**

Motions ex parte, by definition, are not served on the prosecutor and do not require his presence in court. Typically, these motions are used to seek funds for services and travel expenses to meet with experts and witnesses. (Document A11 in Appendix A is a sample ex parte motion requesting access to a defense expert. Document A26 is an ex parte subpoena ducem tecum requesting medical records.) Gaining access to crucial services and investigations without alerting the State protects your developing theory of defense whether or not you ultimately use the information you obtain.

The rules governing motions and hearings ex parte vary greatly across jurisdictions. In some places, an ex parte proceeding requires everyone other than the court reporter be absent from the courtroom. In some jurisdictions, motions ex parte are not placed in the court file, and all copies of the motion are eventually returned to the defense attorney or destroyed. In other jurisdictions, ex parte proceedings are conducted without the prosecutor but in an otherwise open courtroom, and you must petition separately for the motion to be excluded from the court file. Be sure you are familiar with your jurisdiction’s rules, so you can use motions ex parte to their full potential.
Other motions

You will need to use motions to make other requests of the court, such as to dismiss for error in the petition (see Chapter 6, page 107), sever a case from a co-respondent’s (see Chapter 10, page 220), hold competency hearings (see Chapter 3), provide funding for investigative tests or examinations, extend any deadlines, request a dismissal for failure to comply with time limits if the prosecution requests an extension, and almost any other request you can think of.

We have included in this guide a collection of motions from experienced juvenile defenders to demonstrate how a strong, thorough motion should be formulated. They are compiled in Appendix A and referenced in the text at the relevant sections.

The prosecutor will also file motions, and you should prepare to file motions in opposition and to argue against them in any motions hearing. The prosecutor may also choose to file for the transfer of your client’s case to adult court. (The timing of that request will vary based on your jurisdiction’s rules.) Chapter 8 addresses the processes by which transfer can occur and how to represent a client in danger of transfer.
Increased emphasis on punishment in criminal justice has resulted in more juveniles being tried in adult court. Transfers of jurisdiction (also called waiver, bind-over, certification, or decline) have significantly increased in number over the last decade. Many states have laws that automatically transfer children to adult court for certain crimes. Others may also give broad prosecutorial discretion to file children’s cases in adult court. Considering the high stakes and complexity of these proceedings, the best way to defend your client in a transfer hearing may be to secure the supervision and assistance of an attorney with more experience in this area.

**What to consider before your first case**

- The transfer procedures of your jurisdiction, including the jurisdictional requirements and the rules of evidence in transfer hearings. Each state has its own rules governing transfer. Does your state allow transfer based on the age of the accused? The type of crime? Is transfer automatic or at the discretion of the prosecutor or judge? Links to extensive state-by-state information are available at http://www.ncjj.org/stateprofiles/asp/transfer.asp

- Where to find an interdisciplinary team. Given the adversarial nature of transfer hearings, non-legal partners (such as psychiatrists, psychologists, and social workers) are invaluable and, when amenability to treatment is an issue, necessary. Ask experienced attorneys for recommended professional partners.

- Who will handle the case if it is transferred. Exchange appropriate information with the defender who will take over the case in adult court.
I. TYPES OF TRANSFER

Each state handles transfer (which, depending on jurisdiction, can also be called waiver, bind-over, certification, or decline) according to its own statutes and court rules. You should become well-versed in the transfer regulations in your jurisdiction, so you can anticipate when it will be an issue and be prepared to argue against it, if possible. Whether transfer is a possibility or an inevitability in your client’s case may depend on the seriousness of the alleged offense, the age of the client, and/or her previous record. Know your jurisdiction’s rules in detail; Document A38 in Appendix A, a motion to dismiss a request for transfer, demonstrates the potential power of noting a prosecutorial violation of those rules.

States use a variety of methods of transfer, including statutory exclusion, direct file, and jurisdictional waiver, that can be discretionary, presumptive, or automatic.

Statutory exclusion

Many states automatically exclude certain cases from juvenile court jurisdiction based on criteria, such as the charged offense, the child’s age, or the child’s prior record. A child subject to statutory exclusion is treated as an adult from the time the case is initiated. In other words, once a prosecutor has decided to charge your client with an excluded offense, he has no further discretion, and the case must be filed in adult court. As discussed below, some statutory exclusion laws create flexibility by permitting “reverse waiver,” which allows youth to contest their transfer before the adult court judge.
Direct file (prosecutorial discretion)

Sometimes called “prosecutorial discretion” laws, direct file statutes provide that certain cases can be heard in either juvenile or adult court at the prosecutor’s election. The criteria that determine whether a case is eligible for direct filing vary widely from state to state. If your client’s case falls under a direct file provision, the prosecutor has complete discretion over whether to initiate proceedings in juvenile or adult court. As with statutory exclusion, states may allow children to contest the prosecutor’s decision in adult court through a reverse waiver proceeding.

Types of waiver

In many states, juvenile courts retain original jurisdiction over delinquency cases but have the discretion to send certain cases to adult court by waiving their jurisdiction. Broadly speaking, under a waiver law, the judge has more decision-making power relative to prosecutors than in a statutory exclusion or direct file situation. However, depending on the type of waiver that applies, the amount of discretion the judge can exercise ranges from substantial to nominal.

Discretionary waiver

Discretionary waiver laws permit juvenile court judges to decide whether a respondent’s case should move to adult court or be retained in juvenile court. The judge weighs evidence presented by the prosecution and defense in a transfer hearing and determines if a youth is amenable to treatment available through juvenile court. The prosecution has the burden of proving that transfer is appropriate. Most states require the prosecutor to satisfy a “preponderance of the evidence” standard, but some states impose a higher burden.

Although state waiver laws vary, they tend to require that judges rely on some of the eight factors the U.S. Supreme Court laid out in an appendix to its decision in *Kent v. United States*, 383 U.S. 541 (1966). Commonly referred to as the “Kent criteria,” these are:

1. The seriousness of the offense;
2. Whether the offense was aggressive, violent, premeditated or willful;
3. Whether the offense was against a person, as opposed to property;
4. The “prosecutive merit of the complaint [;]”
5. The desirability of merging the child’s trial with that of adult co-
defendants;

6. The sophistication and maturity of the child;

7. The child’s record; and

8. The likelihood of the child’s rehabilitation by services available via
the juvenile court.\textsuperscript{168}

Forty-five states provide discretion to juvenile court judges in at least some
instances of transfer.\textsuperscript{169}

\textbf{Presumptive waiver}

Presumptive waiver statutes provide that selected cases are subject to a
rebuttable presumption that transfer to adult court is appropriate. Eligibility
for presumptive waiver varies by state but generally depends on a child’s age,
charged offense, or prior record. The prosecution must make an initial showing
that the case meets the criteria for presumptive transfer. (Some states impose
additional evidentiary burdens, such as establishing probable cause to believe
that the child committed the charged crime.) If the prosecutor succeeds in
proving that the case is within the presumptive waiver category, the burden
then shifts to the child to show that transfer is not appropriate based on her
amenability to treatment. The juvenile court must waive jurisdiction if the child
is unable to rebut the presumption in favor of transfer to adult court. Some
states make selected cases subject to presumptive waiver.\textsuperscript{170}

\textbf{Mandatory (or automatic) waiver}

Mandatory waiver provides that a juvenile court must transfer a case to adult
court once it determines that certain statutory criteria are met, typically related
to the child’s age, charged offense, or prior record. Although nominally a
“waiver” of jurisdiction, this type of provision essentially strips the juvenile
court of discretion over the transfer decision. In most states that use mandatory
waiver, the juvenile court only considers whether there is probable cause to
believe that the case falls within the statutory category. Mandatory waiver
differs from statutory exclusion because it still requires that the case originate
in juvenile court; an excluded case is initiated in adult court.
Reverse waiver

Reverse waiver is a mechanism that allows a child who is being prosecuted as an adult to argue in adult court that the case should be returned to juvenile jurisdiction. If a child’s case reaches adult court through statutory exclusion or direct file, a reverse waiver hearing will be the first time any court has considered whether an individual child’s case is appropriate for adult prosecution. Adult courts in these reverse waiver situations will, therefore, consider the types of factors, such as the Kent criteria, that a juvenile court would weigh in deciding whether to waive jurisdiction. In other states, reverse waiver is available even after a juvenile court transfer hearing. This situation is more like an appeal, in which you must convince the adult court to override the juvenile court’s prior decision according to the specific standard used in your state.

II. PRELIMINARY CONSIDERATIONS

A. Implications of transfer

Your initial responsibility when a client faces transfer to adult court is to assess the advantages and disadvantages of such a move. In most cases, it will be clear that transfer presents serious risks, and so, with your client’s approval, you will strongly advocate to keep your client in juvenile court. Risks of transfer to adult court include:

Longer sentences. Typically, transfer to criminal court means that the possibilities for punishment include longer sentences than can be imposed in the juvenile justice system. Generally, youth in criminal court will be sentenced to the same mandatory minimums adults face, and the punishments can even extend to life without parole. Only a handful of states exempt juvenile offenders transferred to adult court from the mandatory minimum sentences that are imposed upon adults.\(^{171}\) Similarly, the vast majority of states now permit life without parole for certain offenses, and very few of these states prohibit such a sentence from being imposed upon a juvenile offender transferred to criminal court.\(^{172}\)

Time in adult prison. Unlike service or treatment programs geared toward children or even secure juvenile facilities, adult prisons are not intended to accommodate youth. Children in adult prisons are vulnerable to and can be influenced by older, more intimidating adult criminals. Studies have shown
that youth incarcerated in adult prisons are more likely to recidivate than those who remain in the juvenile system."\(^{173}\)

*Permanent loss of juvenile status.* In many states, once a youth is treated as an adult, she will always be prosecuted as an adult in the future, regardless of her age or the severity of new charges. This concern is most salient for young clients and less relevant to clients near the age at which your state ceases to send youth to juvenile court.

In rare cases, there can be benefits to transfer. Consider whether these are relevant in your client’s case and, if so, whether they outweigh the associated risks. Advantages can include:

*Trial by jury.* In most jurisdictions, defendants have the right to trial by jury only in adult court. You may make an educated guess that a juvenile court judge would likely reject the defense you are planning to advance but that the same argument would resonate with a jury.

*Sentencing restrictions.* In juvenile court, dispositions are often based on the service and treatment needs of the respondent, so a child could face sanctions that reflect her life circumstances rather than the severity of her offense. In adult court, the range of available punishments for each crime is determined by statute. It is possible that a troubled client accused of a minor offense may receive a significantly less harsh sentence in adult court than she would in juvenile court.

*Possibility of overriding existing juvenile sanctions.* Think strategically about the potential outcomes of a criminal case. Your client’s conviction for a non-violent crime could open the door for the court to terminate her existing delinquency commitment and put her on criminal probation for the new crime.

*Compromising with the prosecutor.* If your client is accused of a serious, violent felony and you have had adequate time to investigate the case, it may be easier to negotiate an attractive plea offer if your client is willing to accept transfer. In general, you will not know enough about your client’s circumstances at this early stage of the proceedings to be prepared to negotiate a plea; this option is only for those rare cases when there has been enough delay to conduct some investigation.

When advising your client, take into account the ramifications of “once an adult, always an adult” laws. Transfer often occurs at the very beginning of a case, when you have the least information about your client, the alleged offense, and the prosecution’s case. When in
doubt, always oppose transfer as long as your client agrees to do so. Regardless of the outcome of transfer proceedings, they can provide useful insight into a prosecutor’s case. (This is especially true if the prosecutor must demonstrate probable cause at the transfer hearing.) Holding a hearing also creates a record for appeal.

B. Client consultation

Your expertise and recommendations are important, but the final decision regarding contesting transfer rests with your client. You should present to her the pros and cons of transfer as they apply to her case and thoroughly explain the differences between proceeding in the juvenile and criminal systems so she can make an informed choice. You should continuously keep her updated on developments and allow her to control the progression of the case.

C. Meeting with the prosecutor

Your discussion with the prosecutor will depend on the specifics of your state’s statute regarding transfer, the personality of the prosecutor, and the courthouse culture. In nearly all cases, you will be trying to convince the prosecutor to keep your client’s case in juvenile court. That may mean requesting that he reduce the charges to a charge for which automatic waiver does not apply, that he not file in adult court, or that he not argue for transfer at a hearing. Be careful not to let the conversation become a plea negotiation; you will not have the information you need to enter into a plea agreement (see Chapter 9), and you do not want to let the prosecutor use the threat of transfer to secure a severe punishment in juvenile court.

Often, the best strategy at such early meetings is simply to gauge where the prosecutor stands and ask for time (perhaps a few days) to conduct a preliminary investigation into the case. With more information, you can speak more convincingly about contesting probable cause for more serious charges or finding appropriate rehabilitative services for your client.
III. THE TRANSFER HEARING

Under a waiver statute, the juvenile court will review your client’s case to decide whether to waive jurisdiction according to the applicable mandatory, presumptive, or discretionary standard. Cases subject to mandatory or presumptive waiver will often incorporate a hearing on probable cause, at which you should represent your client as described on page 139 in Chapter 7.

In jurisdictions or cases in which your client is transferred to adult court through statutory exclusion or direct file, there will be no juvenile court hearing to review the transfer decision. If adult jurisdiction is not desirable in your client’s case, you should initiate a reverse waiver proceeding whenever permitted by statute to fight the transfer.

A. Transfer hearing basics

If transfer is discretionary, you should be aware of the rules governing transfer hearings.

*Discretionary transfer hearing.* Any discretionary transfer must meet the procedural specifications articulated in *Kent*:

1. A hearing must be held,
2. The juvenile is entitled to defense counsel for the hearing,
3. Counsel is entitled to access to the juvenile’s social records, and
4. The judge must state the reasons for transfer.\(^{174}\)

*Fundamental question.* More specific procedural guidelines vary by state, but the overarching question the hearing should help the judge answer is: Given the seriousness of the offense, if established, and the background of the child, should the child face criminal sanctions, or is she amenable to rehabilitative treatment offered by the juvenile system? Many states rely on the *Kent* criteria. Hearings will often first address probable cause to ensure that the case is valid and eligible for transfer and then focus on the child’s history and circumstances.

*Burden of proof.* You should become familiar with the rules governing burden and standard of proof in your jurisdiction. Typically, in cases of discretionary waiver, the prosecutor must show by a preponderance of the evidence that there is a statutory justification for transfer. The burden may be on you, however, to demonstrate that your client would benefit from treatment. Knowing these rules will help you strategize and advocate for your client.
B. Preparation

*Kent v. U.S.* clearly states that you should have access to your client’s social history, which can be obtained from the probation officer, prosecutor, and your own research. As soon as the prosecution files a motion to transfer your client, file discovery motions and use the release of information form (Document A3 in Appendix A) to access all educational, medical, probation, and other records. (Discovery and investigation are explained in more detail in Chapter 5.) Be sure to file a motion for continuance until investigation, evaluations, and preparation are complete. When and if you must request a continuance, be sure it is as brief as possible if your client is detained. Giving yourself ample time to prepare is critical because in many senses, the outcome of the transfer hearing is as important as—and can be more important than—the ultimate resolution of the underlying charges.

After filing discovery motions, evaluate whether you need to retain a mental health expert in order to conduct an evaluation. An independent assessment of your client’s maturity, strengths, weaknesses, and potential for rehabilitation can be crucial to your presentation at the hearing. If you arrange for an expert, he will need time to meet with your client (more than once, most likely) and write up reports. See Chapter 3 for more information.

You will also want to begin looking for an appropriate treatment or other program for your client. As at disposition, being prepared to present to the court a viable option for rehabilitation works to your advantage. You must secure your client’s permission before progressing with this step, and the program’s level of restriction to your client’s freedom should correspond to the severity of the offense as well as her prior record. (See Chapter 11 for more information.)

C. Strategy

As in other stages of delinquency proceedings, there may be a tendency in court to conduct transfer hearings in an informal manner. You can change the tone by objecting to any departure from court rules and presenting your arguments and evidence formally and with meticulous attention to every detail. The court proceeding should reflect the serious nature of the hearing and should leave a thorough record for appeal. As noted, most transfer hearings will effectively have two parts, a probable cause determination and a review of transfer criteria. In some places, probable cause is presumed for the purpose of making the transfer decision. (Often, the most serious charge is presumed and so determines the applicable rule for waiver. Be sure you know your jurisdiction’s rules, so you can most effectively negotiate with the prosecutor.)
Probable cause

Unless probable cause is presumed in your jurisdiction, the hearing will begin much like a probable cause hearing at the beginning of a standard delinquency adjudication (see Chapter 7, page 139). You cannot offer your own evidence, but instead will respond to the prosecution’s. You will rely on the results of your discovery and investigation and should file all reasonable motions for suppression of evidence (see Chapter 6, page 113). Be sure to take advantage of possible suppression requests that rely on rules only applicable to juveniles, such as a requirement that a parent be present during interrogations.

Even if the judge finds probable cause, this portion of the hearing may provide valuable information about the prosecutor’s case, which you or the adult court defender can use in preparing for adjudication or trial. In some cases, the facts will be overwhelmingly in the prosecution’s favor and may incline the judge toward transfer. In those instances, you should consider conceding probable cause so that the hearing focuses entirely on your client’s amenability to treatment. This strategy can also protect your client from unnecessarily giving away her defense.

Amenability to treatment

At this point in the hearing, you should offer evidence that speaks to each element of the statutory criteria for transfer in your jurisdiction and that demonstrates your client’s potential for rehabilitation. Your presentation may be similar to one you would make at a disposition hearing (see Chapter 11). You will want to bring in witnesses to talk about the positive factors in your client’s life, to testify to any mental health conditions, and to describe how a particular service or treatment program would meet your client’s needs and the court’s concern for public safety.

Psychologist/psychiatrist evaluation

The evaluation of an expert who has thorough background information about your client and adequate time to meet with her can be invaluable in court, and is likely to make a strong impression on the judge. An evaluation may also be necessary for referrals to treatment programs. The court may order an evaluation, or you may arrange an independent
evaluation by an expert of your choice. An independent evaluation can be useful even if the court does order an evaluation, to highlight gaps or inaccuracies by the court’s experts. Review Chapter 3 for a discussion of these issues.

Acceptance to a treatment program

The admissions director of a particular program, clinical staff from the program, or a representative from your state’s referring agency should be able to speak intelligently about a treatment program’s suitability for your client and her prospects for improvement upon entering the program.

Sophistication and maturity

If the judge will consider the sophistication and maturity of your client when making a transfer decision, as recommended in Kent, present relevant evidence. Think about the hallmarks of immaturity and lack of sophistication. Does your client rely on her parent for basic necessities? Does she go to school (instead of work)? Does an adult take care of things like setting up doctors’ appointments, buying groceries, and making decisions about school? What is a typical day like for her? Does she have learning or other disabilities that make her less sophisticated or able to act as an adult than her chronological age would suggest? Does she understand the consequences of her actions? Does she hang out with kids her own age or younger? What kinds of things does she do with her time? Is she playing games or reading books that are indicative of her immaturity?

Make sure that as you make a case for immaturity you do not undercut your argument of amenability to treatment and other juvenile court services. Keep in mind that many of the children you will represent may have adult-like responsibilities, such as caring for siblings, cooking, or making school and other decisions without the assistance of an adult. The ability to manage these tasks does not mean a child is sophisticated or mature. In addition, remember that, particularly for children who have suffered abuse and neglect, development can be spotty. Maybe your client has the ability to think like an adult in some situations or has been forced to take on adult responsibilities, but has no skills or maturity in other important areas.
IV. POST-HEARING DUTIES

A. If the case is transferred

Whether or not you will continue to represent your client once her case is in criminal court, you have a responsibility to assist her in the transition to adult court and the initial stages of her transferred case. Be sure to:

1. Advise your client

You should be sure that your client (and her parent) know the time and location of the criminal court arraignment. If applicable, notify your client of any change to her circumstances that will occur pending her next court appearance (such as, removal from juvenile detention to the adult jail).

2. Transition to a new attorney

Talk with your client about transitioning her case to a new attorney. If possible, be present at your client and the new attorney’s first meeting. Provide the attorney with all the information and documentation you collected regarding your client. Have your client and her parent sign a release of information form so you can immediately turn over your files to the new attorney. Submit a brief memo to the attorney handling the adult case explaining what led to the transfer, or give your client a letter to give to the attorney in which you introduce yourself and explain that you want him and/or any appellate attorney to be aware of the fact that this child has had juvenile proceedings under Case #123-45 (as well as in any prior cases) and that you are available to answer any questions they may have. Another possible strategy is to find out when the arraignment is and ask for leave to file a notice of juvenile court record in the criminal court identifying the juvenile court number, the dates upon which the minor appeared in juvenile court, and what happened on those dates.

Even though the attorney may be aware that the case was transferred, he may not be aware of the details of the case or your client’s circumstances, which may be germane in criminal court (in arguments for reverse waiver or at trial) or on appeal. For example, a youth could be indicted in criminal court on a charge lesser than the one for which her transfer was approved. This type of change is arguably grounds for getting the case removed back to juvenile court and is at least an issue that needs to be preserved for appeal. Communication between the attorneys who handle juvenile and adult proceedings is vital to ensure that such issues are recognized.
3. File an appeal

Become familiar with your jurisdiction’s rules regarding appeals of transfer decisions, so you can file in a timely manner. In some places, appeals cannot be filed until a child is convicted in criminal court; in others, they are interlocutory and should be filed immediately. Before you can file an appeal, you will need the record of the transfer hearing and the court order resulting from it. Based on the requirement in Kent v. United States, respectfully request on the record that the judge’s transfer order include a thorough explanation of his reasoning.

B. If the case is not transferred

You should continue with your client’s case in much the same way as you would have had transfer not been at issue. If the judge who presided over the transfer hearing learned of evidence that he ultimately suppressed or may have otherwise become prejudiced against your client during the hearing, consider asking for another judge to adjudicate the case.

Remember that the prosecutor may be allowed to file an appeal contesting your victory at the transfer hearing, as well. Know when it must be filed so you can prepare to fight it.

In some cases, prosecutors will use the threat of transfer to push you and your client toward a plea bargain. Though you should try not to succumb to intimidation, there will be cases (with and without related transfer concerns) in which you will enter into plea negotiations. Chapter 9 provides advice for navigating that process.
Plea Bargaining

Guilty pleas are widely overused and, many would argue, abused in the juvenile justice system. Because many juvenile defenders are saddled with enormous caseloads and because courts want to move through their dockets, there is significant pressure on defenders, clients, and parents to resolve juvenile cases quickly through guilty pleas. Moreover, tightly structured plea agreements can offer more certainty than adjudication. Despite these factors, you must evaluate each case independently and defend it as zealously as possible according to the expressed interests of the client, however she chooses to proceed.

What to consider before your first case

- Your jurisdiction’s rules of professional responsibility regarding plea negotiation. Plea bargaining is not to be taken lightly; it is one of the fundamental decisions reserved to the client.

- The law of your jurisdiction regarding withdrawing plea agreements. What happens if your client later wishes to withdraw the plea? Under what circumstances may she do so?

- The law of your jurisdiction concerning the judge’s role in plea agreements. How likely is the judge to accept the plea agreement reached by you and the prosecutor? If the judge declines to rule consistent with the offer, what are the consequences and options?

- The impact of entering a plea on the right to appeal. In many jurisdictions, a plea extinguishes all rights of appeal (except as to defects in the plea hearing). In others, the plea can be entered with leave reserved to appeal a pre-adjudicatory issue. If helpful, consider arranging a stipulated-facts adjudication to maintain the outcome of the plea without giving up the right to appeal.

The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency.

— IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Standard 7.1
I. Before Considering a Plea

A. Investigate your client’s case

Typical caseloads for defenders of indigent juveniles can be overwhelming, and it may be tempting to negotiate pleas for your clients just to lighten your burden, particularly if your first assessment of a case is discouraging. Remember, though, that you have an obligation to zealously protect the rights of each and every client and to ensure that they understand the direct and collateral consequences of a plea. Furthermore, even when a youth has said she committed the alleged offense, a well-developed defense at an adjudication hearing can make a significant difference to the disposition of her case and, therefore, to her future. Before you recommend to your client that she consider a guilty plea, ask yourself:

- Have I sufficiently investigated this client’s case? Have I interviewed the prosecution’s witnesses and, particularly, any independent witnesses? Have I reviewed all other evidence?
- Have I completed discovery?
- Have I fully reviewed the statutory elements of the crimes alleged and researched the applicable law?
- Do I know and have I researched every defense available to this client?
- Have I fully researched my ability to suppress any of the evidence I expect the prosecution to introduce against this client?
Once you have completed all of these preliminary steps, you may determine that adjudication is not likely to end in her favor. At that point, it is appropriate to assess the implications for your client of entering a plea.

B. Analyze your findings

Numerous factors are relevant to an informed assessment of your client’s case and will help you to discuss her options with her. Thinking through these factors will also be useful should she decide to enter negotiations with the prosecutor. Circumstances to weigh include:

- Relative strengths and weaknesses of your case and the State’s case, including availability, willingness, and credibility of witnesses;
- Likelihood of prevailing in pre-adjudication motions, particularly motions to suppress evidence, identifications, or statements (see Chapter 6);
- The viability of affirmative defenses or other defense theories (see Chapter 6);
- The likely impact of the client’s prior record;
- The position you have pre-negotiated with the client’s current probation or parole officer, if any, which can be useful in negotiating with the prosecutor;
- The harm caused by the alleged offense, such as trauma to vulnerable victims and/or the scope of violence or property damage;
- The outcomes and status of juvenile co-respondents’ and adult co-defendants’ cases;
- The age, size, or disabilities of the client relative to co-defendants/respondents and victims;
- Positive reports and letters regarding social, school, recreational, volunteer, or religious activities, which could show that allegations are out of character for your client;
- The effort and success or failure of the client and her family in addressing social and educational problem areas since her arrest or your initial conference with them;
- The skill, energy, compassion, and personal predilections of the prosecutor regarding particular types of crimes, victims, or contexts;
- Whether the judge is likely to penalize the client or the prosecution for taking the case to adjudication;
- The client and her family’s interest in taking a principled stand in the face of police misconduct, school or institutional negligence, or other abuses, as well as the potential for existing collateral litigation or investigations;
• The numerous collateral consequences of a guilty plea, including the possibility of a juvenile record counting towards three strikes laws, sex offender registration requirements, and/or hindering the client’s access to schools, jobs, military service, and housing; and

• Any other drawbacks to entering a plea, such as whether a guilty plea will compromise your client’s (or her family’s) immigration or public benefits status (including public housing) or what effect your client’s guilty plea will have on any other court proceedings or related issues, such as probation or school suspension.

II. COUNSELING YOUR CLIENT

The decision to enter a plea is your client’s. Although the attorney must counsel the client as to likely outcomes, most state rules of professional responsibility specify that the decision to plead or go to trial is solely the client’s. You will have had continuous conversations with your client and her family as your investigation has progressed. After you weigh all the information you have collected, you should have a conversation with your client focused specifically on whether or not to begin plea negotiations. Remember that no matter how strongly you feel in making a recommendation to your client, when she tells you she wants to enter a plea or continue to adjudication, you must abide by her decision.

You also have an ethical duty to communicate to your client any plea offer extended by the prosecution. No matter how insufficient the offer may seem to you, your client has the right to hear it for herself.

Whether the plea is your idea or the prosecutor’s, your conversation should be thorough, so your client can make an informed decision. Ask her to restate in her own words what you have said to see if she truly comprehends your explanation of the options and relevant factors. At a minimum, make sure you cover the following:

• Review the factors you have already considered (listed above) and a thorough explanation of the pros and cons of entering a plea, stated in terms your client can understand.

• Address concerns that are important to your client, even if they seem inconsequential or childish.

• Articulate the reasons you believe your client would be better off after plea negotiations than after adjudication or vice versa.

• Explain, in detail and with age-appropriate language, what rights she will give up if she enters a plea. Make sure your client understands the rights and the implications of waiving them.
• State what you can with certainty and be clear about potential outcomes that remain uncertain. Listen carefully as she responds to potential outcomes, so you can use that information in discussing what plea agreement conditions would be acceptable to her.

• Clarify what the client will (or will likely) be required to do as a result of any plea and disposition. Review each obligation, such as keeping to a curfew or attending school. Discuss how this agreement will require her to change her behavior and talk about how realistic it is that she will do so. It is almost always easier to defend a case that must be proven beyond a reasonable doubt than a probation violation that must meet only a lower standard.

If your client decides to enter a plea, you should continue your conversation by preparing for further negotiations with the prosecutor. Review any problem areas you identified earlier to determine whether your client has improved her situation and/or behavior, perhaps by reenrolling in and attending school, attending family counseling appointments, or meeting curfew. If she has not, discuss in this new context the importance of her positive behavior. Describe how you can use positive developments in negotiations as well as the potential for these issues, should they remain unaddressed, to create complications at disposition.

Before you conclude your conversation, review in fine detail the case investigation, both to get the client’s final input and as further background for negotiations. Be sure you have a clear understanding of the outcomes your client is willing to accept and under what conditions she prefers to reject the prosecutor’s offer and continue to adjudication. Recall that unless you have very clear instructions from your client, you must consult with her about any alternative offers made by the prosecutor during negotiations.

An alternative to keep in mind: If the circumstances warrant a plea but your client is unwilling to admit her involvement in the offense, you may want to suggest—if your jurisdiction allows it—that she enter an “Alford plea,” named for the U.S. Supreme Court’s decision in North Carolina v. Alford, 400 U.S. 25 (1970). The Alford case recognized that “[a]n individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.” This strategy allows your client to enter a plea accepting punishment while maintaining her factual innocence.
III. PLEA NEGOTIATIONS

If your client has decided she wants you to go ahead with plea negotiations and you are satisfied that she understands her rights and is making a decision that fits with the goals she has articulated to you, contact the prosecutor to negotiate and formalize her plea agreement. Your conversation with the prosecutor is your opportunity to advocate for the best possible deal, so prepare for it thoroughly. Before you meet with the prosecutor, be sure to:

• Know your local ethical and legal rules for the conduct of plea negotiations and the entry of guilty pleas;
• Know your local rules for the possibility and process of withdrawing a guilty plea, should that become necessary;
• Prepare yourself to talk about the strengths of your client’s case and weaknesses of the prosecution’s case; and
• Consider the reasons why a guilty plea might be in the interest of the prosecution.

During the negotiations, always continue to prepare your client’s case. You may learn more information to strengthen her position, and you must be ready to abandon the negotiations if your client decides not to take a plea. If you stop preparing, you put your client in a weak bargaining position and impede your own ability to carry out her defense.

A. Points to make

When you meet with the prosecutor, emphasize the parts of the information you have gathered that frame your client in the best light and make the prosecutor’s position look weakest, being careful not to reveal too much should your client ultimately decide not to enter a plea.

Make a plan before you meet with the prosecutor. Think about how you want the conversation to go. Think of your conversation as an act of persuasion and map it out like you would an argument in court or a brief. What do you open with? What logical progression will leave the prosecutor feeling like all he wants to do is get rid of this case? Think about your first offer, and then plan your back-up position. Be cautious—don’t find yourself suggesting more concessions or conditions than the prosecutor would have demanded. It may make sense to let the prosecutor start out with offers. The more you can lead the prosecutor to suggest the deal you want, the better off you will be in court. If he thinks it was his idea to begin with, he will strongly support it to the judge.
**Emphasize your client’s strengths**

Talk about your client’s positive activities in or connections to her community, like being part of a sports team or attending religious services. Be aware that some prosecutors may not focus on social issues, instead thinking of the case only in terms of legal strength. Try to draw these prosecutors into recognizing the rehabilitative nature of juvenile court.

Also keep in mind that in juvenile cases, your client’s familial situation can be a positive factor to bring to the prosecutor’s attention. Supportive, involved parents can be an invaluable resource in negotiating with a prosecutor. If your client agrees, keep parents apprised of the status of plea negotiations and remember that, if they agree to the terms, a plea agreement can include their involvement.

**Emphasize the prosecutor’s weaknesses**

Remind the prosecutor of the reasons reaching an agreement would be beneficial to him. If appropriate, talk about how lengthy adjudication would be or how time-consuming and expensive it would be for the prosecution to prove difficult issues of law and fact. In some cases, the prosecution may wish to spare the complainant the burden of testifying or to avoid bringing reluctant witnesses to testify. Hint at the ways that you have been developing the defense case so that it is clear you are fully prepared to proceed to adjudication if your client does not accept the plea. If you have investigation that shows that a witness is likely to say something in court that differs from his statement to the police, consider telling the prosecutor. Know your prosecutor and what motivates him to agree to reasonable plea bargains.

**Be creative**

Be creative when negotiating the plea agreement with the prosecutor. Respond to what you know about the prosecutor’s concerns regarding the case. Consider whether your client’s willingness to testify against more culpable co-respondents may win her favorable treatment or if the prosecutor will be mollified by your client’s offer to stay away from a particular neighborhood and to perform community service.
B. Results to secure

While negotiating an agreement, your words and attitude should always imply or explicitly make clear that you can only work with an offer that will convince your client that she is clearly better off not going to adjudication. Entering into negotiations does not commit you to reaching an agreement, and protecting your client’s expressed interests remains your responsibility and goal. If your client does not have a damaging record, the allegations are not serious, the prosecutor is demanding terms that exceed customary norms, or the prosecutor is not responding reasonably to your attempts to reach a compromise, point out that the client can still opt for adjudication and that you will advise her to do so unless the prosecutor makes a fair offer. Remember, just like negotiations in other settings, sometimes you have to be willing to walk away if you do not get what you want. If you are not making acceptable progress, it may help to take a break for further investigation by both sides and to give the prosecutor time to consider your proposal.

Charges

You should virtually always arrange for your client to plead to charges less serious than those the State could prove in adjudicatory proceedings; that outcome is part of the inherent compromise of the process. If your client is only offered what she would get at disposition after adjudication, what is the point of entering a plea? If she and/or her parent are simply trying to avoid the hassle of appearing in court, have they weighed that concern against the possibility that, if the child continues to adjudication, an unexpected turn could mean the judge does not find her delinquent?

Disposition

Agreeing on what the prosecutor will recommend at disposition is another crucial part of plea negotiations. Reducing the number of counts or the severity of the charges is of limited significance if the prosecutor does not agree to a particular sentence. (See Chapter 11 for a thorough discussion of disposition.) You should also consult your probation department’s policy manual, if one exists, to see what direction it suggests to the probation officer for his recommendation to the court. Often, this recommendation carries the greatest weight in court.

The type of agreement you seek will depend on the rules in your jurisdiction, as well as your creativity in applying those rules. In some jurisdictions, you will be able to negotiate with the probation officer and prosecutor separately. You may counsel your client to agree to a plea with the prosecutor so that he
will agree, in exchange, to recommend a particular disposition. You also can go to the probation officer and urge him to suggest the lightest disposition possible. When you are in court, you will present your client’s own preferences, which may be different than what either the probation officer or prosecutor suggest. In this scenario, the players all recognize that each has a role and a perspective to present to the judge. The recommendations may be similar or vary widely; regardless, your job as the defender is not to follow blindly the recommendations of others but to act as an advocate for your client’s expressed interests.

Other jurisdictions have practices or rules by which the prosecution and defense commit to recommending a certain outcome. Proceed carefully in this circumstance. Always try to avoid agreements where you are not able to argue for a further reduced disposition. Do not find yourself giving up your adversarial role for an agreement that you do not have to make. Look closely at rules and practices, keeping effective advocacy as your goal. It goes without saying that you must not promise such an agreement to the prosecutor before consulting with your client.

In some jurisdictions, plea agreements must be reduced to a written, signed document. In other places, putting the agreement on paper is not required. If your court allows unwritten agreements, even when time is tight, make sure you memorialize every detail of your negotiations and follow up with a letter to the prosecutor stating each term of the plea bargain as you understood it and as your client is willing to accept. That way you will have a complete explanation of the agreement to give to your client’s probation officer and a record to use to protect your client should any questions or problems arise.

IV. ENTERING A PLEA

A. Counseling your client to make the final decision

After you have negotiated with the prosecutor and discussed the deal with your client, ask yourself the following questions as a final check before your client enters her plea:

- Is there no realistic possibility of acquittal? Have the charges been negotiated to the least the State could possibly prove (or better), and is the sentence the least a judge could reasonably be expected to impose? If not, why does the client want to plead guilty? Is she afraid of going to adjudication? Is she worried that she will annoy the judge if she exercises that right? Does she believe the judge will look more favorably on her if she pleads?
• Is someone pressuring the client to plead guilty? For example, does her parent want the case to be over or not miss more work time? Does the client (and her parent or other influential third party) understand all the consequences of a juvenile record?

• Have you influenced the client’s decision to plead guilty in any way? If so, how? Does the client feel comfortable disagreeing with you? Would continuance of the negotiations to obtain more social or case information of any kind possibly improve the outcome? Are you afraid of proceeding to adjudication because that might annoy the judge or prosecutor or take up the court’s time or because you do not feel prepared?

• Does the client understand that she has the right to go to adjudication and that the decision belongs to her alone? Have you explained that the outcome after adjudication is likely to have no worse dispositional outcome than a plea would achieve, if that is the case?

• Does the client understand the other rights she is giving up by pleading guilty?

• Does the client understand what she will be required to do to fulfill her end of the plea bargain? Does she think she can fulfill these conditions?

B. Preparing your client

Conditions of the agreement

If your client, after conferring with you, decides that entering a plea is the right choice in her case, it is time for an important conference with her. You must be certain that your client understands her decision and prepare her for the courtroom procedure of formalizing the plea agreement. (Document A39 in Appendix A is a motion to withdraw an admission resulting from a child’s continued claims of innocence after entering a plea.) Review in detail, and with appropriate emphasis, all conditions of the deal she is accepting. Be sure that your client and her parent are entirely clear on their obligations and the consequences of any failure to meet them. Set up timetables for your expected future communications with her.

Courtroom etiquette

In addition to preparing your client to follow through with the plea arrangement, you will need to prepare her for her appearance in court. Prepare her as though she were going to be testifying at adjudication. Counsel her regarding proper attire and etiquette with the judge; for example, she should not be chewing gum during the hearing or wearing a shirt with a slogan that suggests she is not taking the proceedings seriously. (Recognize the need to be
sensitive in this conversation because teenagers dress differently than adults and appearance is closely tied to identity.)

The plea colloquy

Review each aspect of the plea colloquy she can expect to have with the judge. Practice the colloquy, using the sample below or a copy of the colloquy used in your jurisdiction, if it is sound. Ask your client to respond to every question as if you were the judge. Use what you know about the judge’s style to prepare your client for less standard questions (maybe this judge tends to ask “Why did you do it?” or “How do I know that you won’t do it again?”). Be sure that your client’s demeanor matches the seriousness of the situation and that she can express remorse for her actions. With regard to the judge’s inquiry as to whether any promises have been made, carefully prepare your client to respond by stating all favorable conditions or limitations of the plea agreement. In case the client forgets any of the terms, be prepared to state them yourself.

Disposition

If a disposition hearing is to immediately follow the hearing at which your client will enter her plea, incorporate all the counseling you would do before a pre-disposition interview. Chapter 11 offers a detailed explanation of how to approach that stage of the proceedings.

If you have properly prepared your client for the colloquy and have memorialized the agreement with the prosecutor, entering the plea should be a relatively straightforward process. Just in case problems arise, however, you should have your local rules and statutes ready for guidance on how to proceed. Also, refer to Santobello v. New York, 404 U.S. 257 (1971), and similar state cases that allow you to enforce the agreement against the prosecutor or withdraw the plea should the prosecutor try to alter the terms of his promise.  

C. Sample plea colloquy

A study by Barbara Kaban and Judith C. Quinlan of court-involved youth in Massachusetts found that children have great difficulty understanding legal terms and phrases that judges commonly use during plea colloquies. Children’s lack of understanding persisted even after lengthy explanation of the type defense counsel would provide before a plea. Kaban and Quinlan developed a sample colloquy as an example of the language and structure a
judge should use to ensure that a child’s plea is knowing, intelligent and voluntary. You should encourage judges in your jurisdiction to use or review this colloquy adapted from Kaban and Quinlan’s work to help secure children’s due process rights:

My name is Judge [name]. What’s your name?

You are in court because you have been charged with committing a crime. Your lawyer tells me that you want to work out a solution to your case without going to trial. That solution is called a “plea.” Before I accept your plea, I must ask you a few questions to make sure you understand what you are doing today. If you don’t understand my questions or anything I say, please tell me. If I don’t understand anything you say, I will tell you.

How old are you?

Where were you born?

Do you go to school?

What school do you go to?

What grade are you in? [or] What was the last grade you were in when you went to school?

Who is here with you today?

Was [parent or guardian] present when you talked to your lawyer today?

Did you have enough time to talk to your [parent or guardian] about the decisions you are making today?

Did you have enough time to talk to your lawyer about the charges?

Did you have enough time to talk to your lawyer about the decisions you are making today?

Did you take any medicine today? Did you take any medicine yesterday?

[If yes:] What medicine did you take?

Did you use any drugs yesterday or today?

Did you drink alcohol yesterday or today?

[If the answer is yes to any of the related previous questions:] Does the medicine/drug/alcohol make it hard for you to understand what I am saying to you today?

Did you get a copy of the petition stating the charges against you?

Have you read the petition?
Please tell me what you have been charged with doing. [If the child does not answer correctly, the judge should explain the charges to the child. The judge should then explain the elements of the charge that the prosecutor would have to prove for the child to be adjudicated delinquent.]

When you accept a plea, you are admitting that you broke the law. When you admit to breaking the law, there is a range of consequences that I can impose. I can put you on probation or send you to live someplace away from your home.

Do you know what happens when someone is placed on probation?

[If yes:] Tell me what you think happens when someone is placed on probation.

[If the child does not answer correctly:] When you are placed on probation, you will have a probation officer who will check up on you. You will also have a set of conditions that you must obey. For example, you may have a curfew—that is a time each night when you must be at home. Another condition may be that you have to go to school every day and not get in trouble when you are in school. The probation officer may come to your house or your school to check up on you. If you do not do what you have agreed to do when on probation, you can be brought into court on a probation violation, and you may face more serious consequences. One of the more serious consequences a child can face is commitment to [your jurisdiction’s youth agency]. Tell me what you think happens when someone is committed to [your jurisdiction’s youth agency].

[If the child’s explanation is inaccurate, provide the following explanation:] When you are committed to [your jurisdiction’s youth agency], you are taken away from your family and placed in the custody of [your jurisdiction’s youth agency]. [Your jurisdiction’s youth agency] is commonly called [acronym]. Have you heard of [acronym]?

[If the following explanation is accurate in your jurisdiction, use it; if not, replace it with a clear, child-friendly explanation of the procedure in your court:] When you are committed to [acronym], you may be committed until age 18. Once you are committed to [acronym], [acronym] decides which program will best meet your needs. [Acronym] can place you in a program where you can’t go outside unless you are supervised by staff members. Or [acronym] can place you in a less secure program where you can come and go more freely. [Acronym] decides where you will go and how long you will stay in the program. You will have to live at the program [acronym] selects, and you may have to stay there for months or even for years. The decision about how long you will stay in the program depends on your behavior once you are there.

Now please tell me in your own words what happens when someone is committed to [acronym].

When you offer a plea as you are doing today, you give up certain rights. You give up the right to a trial. Please tell me what you know about a trial.

[Whatever response the child provides probably will not be a full or accurate description of a trial. The judge should then provide the following information or an alternate explanation]
appropriate for your jurisdiction:] You can have a trial with only a judge, like myself. Or you can have a trial with a jury. A jury is made up of 6 or 12 grown-ups who don’t know you or anyone involved in the case. You would help your lawyer choose the people on the jury. It is the jury’s job to listen to the evidence and decide whether you are guilty or not guilty. You don’t have to say anything during the trial if you don’t want to. After the jury hears all the evidence, they decide if you are guilty or not guilty. The jury members all have to agree on their decision. If you decide to have a trial with only a judge, then only one person, the judge, listens to the evidence and decides whether or not you are guilty.

In a trial, the judge or the jury must assume you are innocent. It is the prosecutor’s job to prove that you are guilty. The prosecutor must prove you are guilty beyond a reasonable doubt. That means that the judge or the jury, after listening to all the evidence, must be certain you did [recite elements of the crime] before they can find you guilty. If they are not certain, they must assume that you are innocent.

When you decide to give up your right to a trial, it means you are giving up several important rights. For example, it means that you won’t hear what the witnesses against you would say. It means that your lawyer won’t get a chance to question those witnesses. And it also means that you won’t get a chance to call your own witnesses to tell your side of what happened. If you chose to go to trial, you would also have the right to remain silent and you would not be required to testify. Do you understand that you are giving up these rights?

Do you have any questions for me about a trial?

Do you want to give up your right to a trial today?

Has anyone promised you anything to make you give up your right to a trial?

Has anyone forced you to give up your right to a trial?

Has anyone threatened you to make you give up your right to a trial?

[Judge affirms for the record that the child has made a knowing, intelligent, and voluntary waiver of the right to a trial and signs the waiver portion of the tender-of-plea form.]

Your lawyer wrote down what you are willing to agree to do in order to end your case today. The prosecutor wrote down what [he/she] thinks you should do. If I do not agree with what your lawyer has written down, you can change your mind and still have the right to go to trial. Do you understand that?

[To the prosecutor:] Please state the facts of the case.

[To the child:] Did you understand what the prosecutor said?

Is that basically what happened?
After hearing the facts of the case and assuring myself that [child’s name] understands what [he/she] is doing today, I am going to:

accept the terms and conditions suggested by the child [or agreed to by the child and the prosecutor]. Those terms and conditions include [recite terms and conditions].

[or]

disagree with what your lawyer has suggested you are willing to do to end your case today. I would order the following terms and conditions [recite terms and conditions]. [Child’s name], you don’t have to accept the terms and conditions I would order. You can change your mind and go to trial. Before you make up your mind, I am going to give you a few minutes to talk to your lawyer. Will you accept what I would order?

[Child’s name], please tell me what you have agreed to do today. [If child cannot recite all the conditions, repeat any condition that is omitted.]

If you don’t do everything you agreed to do today, you can be brought back into court and committed to [your jurisdiction’s youth agency]. Do you have any questions about what you have agreed to do?

By agreeing to this plea you are admitting to this court that you did what you were charged with doing. You told me that you were born in the United States, so this probably does not apply to you [or, You told me you were not born in the United States]. It is my job to tell you that if you were not born in the United States or are not yet a citizen of the United States, admitting to these facts may mean that you have to leave this country. Or if you leave the United States to visit another country, you may not be able to come back into this country. Or it could mean that you may not be able to become a citizen when you get older. Do you have any questions for me about what I have just told you?

[Name of attorney], are there any other questions that I should ask [name of child] to ensure that [he/she] fully understands this proceeding?

[Name of child], do you want to ask me anything about what I have said or what you have agreed to do?

If your client chooses not to enter a plea, her case will move on to adjudication. Chapter 10 offers advice for advocacy at those proceedings.
Adjudication

Zealous defense includes taking cases to adjudication. Although rates of pleas are extremely high in most juvenile courts, and it is likely that prosecutors and judges in your area will expect you to follow suit, it is your duty to raise the bar by putting cases on for adjudication.

The best way to succeed at adjudication is to prepare thoroughly, beginning the moment you get your case. During the adjudication, you must be ready and able to think on your feet, responding quickly to any surprises or new developments. Preparation and organization are crucial for attorneys of all experience levels. As a new attorney, you can learn a huge amount by observing experienced defenders, consulting with them, and getting critiques of your own work. At all times in court, but especially in a jury adjudication, demonstrate with your demeanor that you like, respect, and are partnering with your client. A jury will take a cue from you about whether to fear or help this person.

What to consider before your first case

- **The statutes, rules of procedure, and rules of evidence governing juvenile court in your jurisdiction.** You must be familiar with local procedures and rules so you can present your case appropriately and object if the prosecutor makes any errors or attempts to offer inadmissible evidence.

- **How to execute standard evidence litigations.** Find an experienced attorney and/or instructional book that explains such litigations, including those for laying a foundation, authenticating, objecting, and impeaching.

- **How to make a record for appeal.** You should always be thinking about potential future appeals of your client’s case; learn the rules governing appeals in your jurisdiction so you can enter any necessary statements or materials into the record.

Counsel’s paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights.

—ACCD-NJDC Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems, Preamble
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## I. PRELIMINARY ADJUDICATION CONFERENCE

A preliminary conference between you, the prosecutor, and the judge can help make adjudication progress smoothly. Conferences are particularly important in more complex cases, but can be useful before shorter proceedings, as well. The most common reasons to schedule a pre-adjudication conference are to:

**Confirm your exchange of information**

Make sure that you and the prosecutor have exchanged witness lists, witness statements, exhibit lists, and any other information required by your local rules.
Discuss how the adjudication will proceed

To set sufficient time for adjudication on the court calendar, the defense and prosecution share estimates of how long each part of the adjudication will take. You will need to estimate how long you need for each of your witnesses and/or experts to testify. It is in your interest to estimate accurately, so the adjudication can move smoothly.

Set stipulations

Carefully consider the evidence before you and decide which elements of the prosecution’s case are not worth making an issue of in court and which elements of your case the State may similarly agree to accept without argument. You will generally want to stipulate to facts that are not in dispute and that would shed unfavorable light on your client if they were argued in court. Be sure to consider:

*Procedural stipulations.* Are there any procedural rules you want to agree upon to make adjudication go more smoothly, perhaps with regard to witnesses or the jury? For example, you could ask the prosecutor to stipulate to allowing a defense witness to testify before the conclusion of the State’s presentation of its case because the witness is only available on a certain day.

*Witness/evidentiary stipulations.* Are there any particular evidentiary stipulations that will make the trial proceed more smoothly or faster without adversely impacting your client’s case? With regard to subpoenas *duces tecum* or chains of custody, are there certain evidentiary custodians who do not need to be present at trial? For example, you may want to stipulate to the identity of a stolen watch if conceding the point will prevent a sympathetic complainant from testifying about its personal and sentimental value to her.

*Factual stipulations.* Are there any facts you want to stipulate to in order to make the trial go more smoothly or faster without adversely impacting your client’s case? For example, you may not need or want to dispute the fact that your client was in the 7-11 the day it was robbed.

You should not enter a stipulation to an element of a charged offense, even one that is easily proven (such as that a street is a public way or that the offense was committed at night) just to facilitate the progress of a court proceeding. If you stipulate, you should be able to articulate what you gain from the stipulation that advances your client’s case and not your relationships with the judge, prosecutor, or other parties.
In some situations, you may want to request that the court take judicial notice of some factual proposition. Judicial notice can be taken of facts generally known or of indisputable accuracy, and so there is no need for argument or presentation about it at adjudication. Check your jurisdiction’s rules to learn if and when judicial notice is possible or mandatory and at what stage of the proceedings you can request it.

II. OPENING STATEMENTS

Although it may not be typical practice in your jurisdiction to offer opening statements in juvenile court, present one anyway. By insisting on making an opening statement, you can help shift the culture of your court toward taking juvenile proceedings seriously. You can benefit both from paying close attention to the prosecutor’s opening statement and from carefully crafting your own. (For sample opening statements, please refer to Documents A40 and A41 in Appendix A.)

The prosecution’s opening statement

Listen closely and take notes. The prosecutor’s opening statement may be your first glimpse of some of his evidence. Note what evidence and testimony the prosecutor promises in his opening, and check throughout the adjudication to determine if he delivers on his promises. If he does not, you will be able to point out just how he failed to prove his case in your closing argument. Furthermore, if you think you can argue for the inadmissibility of any of the evidence the prosecutor offers, you can object to his mentioning it in his opening statement. (Be sure to insist that all this evidence be described in as little detail as possible, so the judge will not be prejudiced by it should he exclude it.)

The defense’s opening statement

Your opening statement is your opportunity to introduce your client’s case to the judge framed in just the way you choose. Keep it short, clear, and direct. Keep your audience, either a judge or jury, in mind as you prepare the opening. Memorize your opening so you can focus on making a strong delivery. A judge will likely appreciate brevity; a jury will be open to rhetoric and suggestion (such as a direction to watch witnesses carefully, noting their manner as they approach and leave the witness stand). Your opening should introduce your defense theory and the theme of your argument. Try to condense your opening into three main points that connect to your theory and theme. If you can keep the statement to three points, you will have narrowed
and tailored it to advance your strongest facts, and you take advantage of the fact that it is easier for people to remember things in groups of three. Sticking to three main points is also an easy way to make sure your closing statement mirrors your opening. You may want to write a draft of your closing while, or even before, you prepare your opening, so you can be sure you are framing your case in a manner appropriate to your conclusion.

Be careful not to promise too much in your opening. The judge or jury will remember what you said you would produce and notice if you do not follow through. The prosecutor is likely to make you regret your error, just as you would if he promised evidence he did not deliver. Rely only on evidence that you know will be admitted and on the flaws in the prosecution’s case.

III. PROSECUTION’S PRESENTATION

A. Direct examination

Be attentive while the prosecutor examines his witnesses, so you can react quickly and effectively to questions and answers. Be prepared to object instantaneously to any inappropriate remarks or questions by the prosecutor or witness (see a list of common objections on page 211 of this chapter). Take notes to remind you of questions you want to ask on cross examination and related points you want to make later. Note which element or elements of the offense the prosecutor is trying to prove with each witness’s statements so you can attempt to discredit their contribution during your closing. Think about the connection of each piece of testimony to the rest of the case to look for holes or contradictions.

B. Cross examination

Careful preparation is the key to successful cross examination. Look at the results of your discovery and investigation, read witness statements thoroughly, and meet with the prosecution’s witnesses before their court appearances if you are able. Think about what weak points in each witness’s statements you want to emphasize. Cross examination questions should either support and bolster your defense or counter and refute the prosecution’s arguments. Although cross examination is limited to the scope of the direct questioning for each witness, your questioning should not be determined by the prosecutor’s emphasis on what is important. Identify areas to focus on in order to discredit the witness’s testimony or emphasize a different point. Do not let a witness re-tell his story and, thereby, bolster the prosecution’s case.
Keep in mind that if your defense requires the judge to disbelieve the statement of a witness, you will have to provide some explanation for why he should do so. You have two basic options. You can assert: 1) that the witness is lying or 2) that the witness is mistaken. If you will argue that the witness is lying, you must suggest a likely explanation for why he would do so. For example, a witness may be claiming that your client stole something from her because she is angry that your client stole her boyfriend. It may be easier to convince the judge that a witness is mistaken because there are many potential explanations that do not require the judge to believe that a witness acted in bad faith.

You do not have to ask questions of each witness. Only cross examine a witness if you have a specific and realistic purpose; many witnesses, such as police officers or victims, will not change their statements or in any way help you make your case. If you do not score a point for your case with each cross examination subject, then do not use that line of questioning.

If you do ask questions, rely mostly on those to which 1) you know the answers and 2) the witness can respond with only one word. The best attorneys write out cross examination questions before adjudication. Whether you commit them to memory or read them in court does not matter. To control the witness’s answers, your questions should contain the answer you want and never have more than one subject. Rather than an open-ended question, make a statement that ends with a questioning phrase or inflection. For example, “You saw X, didn’t you?” or “You saw X?” To keep questions to one subject, you will have to break down what you are asking into multiple questions: “You saw a car?” “The car you saw was blue?” “The blue car you saw was speeding?” Even better is: “You saw a car?” “It was blue?” “It was speeding?” This minimalist approach nearly eliminates a witness’s ability to misunderstand your question or waffle on details. It will feel awkward at first, but with practice it is powerful.

To ensure that you have all of the information you need to prepare your questions, you can file pre-adjudication motions. For example, Document A42 in Appendix A is a motion requesting information about “promises, rewards, or inducements” offered to any of the prosecution’s witnesses. Document A43 in Appendix A is a motion for disclosure of information regarding expert witnesses for the prosecution.

What follows are suggestions for cross examining specific kinds of witnesses that frequently appear in delinquency proceedings. For each type of witness and category of question, you must anticipate all potential areas for cross examination and thoroughly research them, so you can effectively illuminate gaps in the prosecution’s case. Keep in mind that the style of your cross examination should be appropriate for each witness; for example, an aggressive,
fast-paced cross examination of a young and vulnerable child witness is not likely to win
points with the court.

**Crossing a police officer**

Police officers make extremely good witnesses for the prosecution. They are
often perceived to be more credible than lay witnesses. Testifying in court is a
part of their job, and they have trained for it and have experience doing it. As
a result, police officers tend to be skilled at conveying information to the court
such that it will be most damaging to your client. If you choose to question a
police officer, maintaining control of him during cross examination is essential.
As with other witnesses, use short, closed-ended questions in which you
introduce only one new fact per question. Potential areas of cross examination
for police officers include:

- Errors on the police report
- Information, witnesses, or evidence absent from the police report
  *For example, if there is no mention of a weapon in the report, but the officer
testified about a weapon: You wrote this report? It includes all information
material to this incident? And you just testified you found a weapon on my
client? Please read to me where in this report it mentions a weapon.*
- Deviations from official police regulations
- Deceptions the officer relied upon to obtain evidence
- Bias against your client or in favor of the prosecution or the police
department
- Excessive force in the encounter with your client

**Crossing a mental health expert**

Psychologists and psychiatrists for the prosecution are also usually skilled
witnesses. (See also Chapter 3 for more details on mental health experts.) You
must be thoroughly prepared to challenge the testimony of the expert and the
reasons and basis for the expert’s opinions. As with all examinations, you must
know the answers to your questions before you ask them. Potential areas of
cross examination include:

- Less than ideal circumstances of the mental examination, such as
  limited time with your client, a limited number of meetings with her,
or problems with the location of the meetings
• Limitations on findings based solely on one interview
• Bias towards the prosecutor, who retained the expert and who influences whether the expert will continue to receive court referrals
• Past contradictory writing or testimony
• Limits of various tests upon which the expert based his examination
• The expert’s credentials or experience in these kinds of cases
• A learned treatise or article which either criticizes the expert’s methodology or contradicts his conclusion
• Payment for testimony

Crossing an expert witness

The same warnings and suggestions for cross-examining police officers and mental health experts apply here. Think strategically about stipulating to the qualifications of the prosecution’s experts. Unless you can challenge the expert status of the witness (such as if he has never worked with children), you should consider stipulating to his qualifications, so the judge or jury does not hear a list of his credentials. Potential areas for cross examination include:

• Qualifications, training, or experience, especially with regard to the subject matter of the particular case (if you have not stipulated to the expert’s qualifications)

• Bias towards the prosecution, as evidenced by past cases in which the expert has testified for the prosecution and/or the terms of the expert’s compensation

  *For example: You have testified in court before? In fact, you’ve testified X times in the last year? The year before you testified Y times? Each time you have testified in the last two years, you’ve been a witness called by the State, correct? And each time you testify, you are offering your expert opinion, correct? And the State pays you for your time testifying? So in the last two years, the State has paid you for Z number of cases, correct? Don’t you also have cases in which you don’t testify in court? And some of those also are cases in which the State has paid you, correct? All in all, you’ve estimated that X percent of your work is paid by the State? And today, for this case, you are also being paid by the State?

• Any discrepancy between the general reasons and bases for the expert’s opinions and with the specific facts of your case, possibly using a hypothetical question to highlight potential reasonable doubt (e.g., if the expert is relying on a study that tested circumstances different from those of your client’s case)
• Past contradictory writings or testimony

• Misleading elements of any hypothetical questions posed by the prosecutor to elicit an opinion or inaccurate representations of the facts of this case

Crossing an identification witness or eyewitness

Potential areas of cross examination include:

• Distorted or inaccurate perception

• Anything the witness did not see or failed to mention

• Limited opportunity to view the respondent

• Poor eyesight or hearing
  
  For example: Today you are wearing glasses, correct? The glasses are to improve your vision? You are nearsighted? Nearsighted means you have some trouble seeing at a distance? You don’t wear contacts? The day of this incident, you did not have your glasses, right? The glasses were at home? You testified earlier that you saw Jane at the scene of the incident? You were not wearing your glasses at that time, were you? And the person you observed was in a group, right? And the group was made up of students? Who were all similar in age?

• Taking medication or on drugs/alcohol at the time

• Inability to give a detailed description

• Poor lighting, because of time or day or weather conditions or for any other reason

• Differences between the person described and the person identified

• Stress or fear surrounding the incident

• Police/prosecutorial influence over the identification

• Overly suggestive identification procedures

• Bias against your client

• Difficulties with cross-racial identification

Crossing a co-respondent

Potential themes for cross examination include:

• The desire to exculpate oneself and avoid punishment
  
  For example: You are charged with the same thing as Jane, right? If you
are found guilty here, this will be on your record? If you are found guilty here, you will face punishment? Perhaps probation? Curfew? Community service? Detention? You don't want to go to detention, do you?

- The desire to curry favor with the prosecution or the judge
- Bias against your client
- The witness’s own criminal behavior or involvement in the alleged offenses

**Crossing the complainant**

Think strategically about how to address the complainant; if he is sympathetic, attempt to elicit responses from him that downplay the sympathy the judge or jury may be feeling. Remember that this case is about your client and why she is not guilty. Potential areas of cross examination include:

- Resentment against your client
  For example: Jane was a student in the typing class you teach, right? You sent her to the principal’s office three times this semester, didn’t you? Each time you sent her for talking back to you, right? You felt she was insubordinate? Refusing to follow your instructions? Talking back to you in front of the whole class? You found her behavior disruptive to class order? You found her behavior frustrating? The last time she was sent to the principal’s office she made a complaint against you, didn’t she? She told the principal that you had made a racist comment to her? This occurred the week before the alleged assault?
- Bias against your client
- Reasons why the witness may want your client to be convicted, such as pressure from the prosecution and the police, or insurance money
- Any doubt or uncertainty that the respondent committed the crime
- Desire to protect another person who was also a suspect in the crime
- The possibility that the complainant was the real perpetrator of the crime

**C. Impeachment**

Successful impeachment of a witness can damage the prosecutor’s case. Become familiar with the rules governing impeachment in your jurisdiction so you can use them well, taking advantage of the fact that witnesses in delinquency cases are frequently young
and/or biased. Listen for inconsistent statements among the prosecution’s many witnesses, and keep in mind that cautious, protracted cross examination can elicit testimony inconsistent with prior statements or reflective of other prejudices that you may be able to use to impeach a witness.

Your jurisdiction’s rules may permit you to impeach a witness if you can demonstrate that he is biased or prejudiced against your client, has made prior inconsistent statements, has prior criminal convictions that reflect on his honesty, has committed other prior “bad acts,” or is frequently untruthful based on reputation or the opinion of an impeaching witness. Each time the prosecution brings a witness to the stand, be ready to offer evidence relevant to impeachment. Specifically, be ready to address the following for each type of impeachment:

**Bias/prejudice**

This method of impeachment often becomes relevant when the witness has something at stake. For example, the angry girlfriend of the victim, a co-respondent who may also face punishment, or a police officer effectively being paid to offer testimony all have reasons to be biased against your client.

**Prior inconsistent statement**

You can impeach a witness with intrinsic evidence, by cross-examining him, or with extrinsic evidence, by introducing a document or calling a new witness to show that he made the prior inconsistent statement. Each jurisdiction has rules about how and when you can use these methods to impeach a witness. If you can, it is powerful to prove an inconsistent statement with a record of that statement or the testimony of another witness. If the witness you are attempting to impeach made a statement in court contradictory to one she made in a deposition, another court appearance, his journal, or any other written document, walk him through his conflicting claims. During cross examination, ask if he remembers making or writing the original statement and continue this line of questioning until he admits to having changed his assertion. If he will not admit to it, try to submit the document as evidence. If you do not have written documentation of an original statement, put an impeaching witness on the stand if you can. Generally, if you impeach a witness with extrinsic evidence of a prior inconsistent statement, the witness must be given a chance to explain or deny the prior statement. Note also that in some jurisdictions and under certain circumstances, a prior inconsistent statement may be admissible as substantive evidence in addition to impeachment evidence.
Criminal conviction

Know the foundational elements or technical requirements for introducing this evidence. Limit your questions to the information permitted in your jurisdiction, which may include only the actual conviction and not the underlying conduct. An impeachment for a criminal conviction is not based on the conviction itself but the associated proof of past dishonesty. Your line of questioning might include: Isn’t it true you’ve been convicted of fraud? You cheated someone out of money? You lied about it? In this type of cross examination, you may want the witness to quibble with your words or attempt to explain it away, so it is okay to use looser questions that invite waffling. If the witness denies your assertions, have a certified copy of the conviction to enter as evidence. Any quibbling over its existence or meaning will show that the witness is willing to misstate his involvement.

Prior bad acts (not convictions)

This type of impeachment is not available in all jurisdictions. Where it does exist, the bad act must reflect negatively on the witness’ credibility.

Reputation for untruthfulness

The rules for using this method of impeachment vary by state; in any case, it is more difficult to use than the others mentioned above. You must demonstrate that the witness has a strong reputation in the community for untruthfulness or, in some jurisdictions, bring someone to the stand to speak of his strong personal opinion regarding the witness’s untruthfulness. An impeaching witness may be a teacher who can speak to the original witness’s widespread reputation at school for cheating on tests.

D. Challenging evidence

To ensure that the prosecutor does not present evidence to the judge or jury that is not properly authenticated or otherwise inadmissible, become extremely well versed in the evidentiary rules imposed by the Constitution and your jurisdiction. Rely on these rules to make prompt and well-grounded objections to any improper evidence. (For more information about making objections and a list of common objections, see page 211.)
There are several points to keep in mind as you respond to the State’s evidence:

**Reliability**

To be admissible, evidence must be reliable. You should attack the competency to testify of any witness who lacks personal knowledge of the events or circumstances that he is reporting. For physical evidence, the prosecutor will attempt to lay a foundation for admission by asking questions of the relevant witness to show that the item is genuine. For physical evidence or forensic results, this includes establishing a chain of custody to show that the evidence before the court is what the prosecutor claims, meaning that the original evidence was never tampered with or misplaced. After the prosecutor’s authenticating questions and before the evidence is admitted, you have the opportunity to ask your own questions testing reliability. Whenever possible, you should challenge the authenticity or chain of custody for damaging evidence to try to prevent its admission.

**Inadmissible evidence**

_Evidentiary rules._ Evidentiary rules about admissibility are complex and varied. During the discovery and adjudication preparation process, review your jurisdiction’s rules of evidence and assess each object or piece of information the prosecution is likely to offer to determine possible grounds for an objection. Perhaps the most common argument for inadmissibility is that a statement is hearsay. Hearsay is an out-of-court statement offered to prove the truth of its assertions. Be on the lookout for “double hearsay,” or an inadmissible hearsay statement that is contained within an otherwise admissible form of hearsay (such as, a police report that is admissible as a business record but contains an inadmissible quote from an eyewitness.) For every layer of hearsay offered into evidence, the prosecution must show why the statement is an exception to the rule of inadmissibility. A list of common hearsay exceptions appears on page 213.

_Constitutional rules._ Along with objections based on evidentiary rules, be aware of any objections you can make based on your client’s constitutional rights. For example, the rule against hearsay evidence frequently overlaps with the guarantees of the Confrontation Clause. The United States Supreme Court clarified this provision in _Crawford v. Washington_, 541 U.S. 36 (2004), ruling that the Confrontation Clause bars the admission of testimonial statements made previously by an unavailable witness who was not subject to cross examination at the time. The _Crawford_ ruling, and subsequent lower court decisions defining its scope, serves as a reminder of how important it is to stay informed about
new court decisions that can help your client. In a jurisdiction where suppression issues are litigated at adjudication rather than beforehand, your client has the right to a hearing outside the jury’s presence on the admissibility of evidence that she is challenging on constitutional grounds to which an exclusionary rule applies.

**Impermissible purpose.** Evidence that is admissible for one purpose may be inadmissible for another. For example, your client’s prior delinquency record may be admissible to show a common scheme of conduct, but it will be inadmissible to show her propensity to commit bad acts. If possible, you should be prepared to argue to the judge that the prosecution’s purpose in offering damaging evidence is improper.

**Privilege.** In order to protect relationships in which confidentiality is important, certain people may be barred from testifying against your client. Be aware of the privileges that may apply and of the rules about waiver. You should ensure that your client does not waive any privilege unintentionally, and think carefully about whether to advise your client to waive certain privileges in order to admit testimony that may help her. Privileges that may be recognized in your jurisdiction include: doctor-patient, psychiatrist-patient, social worker-client, and clergy-penitent (or other religious counselor).

**Scientific and forensic evidence**

Do not be intimidated by a prosecutor’s presentation of scientific evidence. If the prosecution offers evidence based on a novel scientific approach, you may argue that it is inadmissible based on the standard of reliability used in your jurisdiction (see page 205 for an overview of common admissibility standards). If the evidence is admitted, you can and should give the judge or jury reasons to question the scientific methods or results. There are many resources to help you learn about and challenge scientific evidence, including the online library available through a partnership between the National Association of Criminal Defense Lawyers and the National Legal Aid and Defender Association (www.nlada.org/Defender/forensics).

The prosecutor will usually present scientific or forensic evidence through an expert witness. Refer to page 196 for general advice on how to cross examine a State’s expert. In addition, prepare yourself to question the science and procedures behind the expert’s testimony. It may be that this expert represents a minority opinion within his scientific area, or that his testimony is inconsistent with the contents of a book he is willing to acknowledge as a learned treatise. You should also examine the manuals, protocols, and quality control measures of the prosecution’s laboratory to determine whether proper
procedure was followed in your client’s case, and whether the laboratory meets professional standards. A shortcoming in any of these areas can give the judge or jury a reason to doubt scientific results that seemed impressive when stated by the expert.

**Highly prejudicial evidence**

In a case before a jury, if the prosecutor plans to introduce evidence that will be highly prejudicial, you should try to prevent the jury from hearing discussions about its admissibility. Knowing that such evidence exists at all may affect the jury’s deliberations, even if the evidence is later excluded. Ask the judge to hear your objection and arguments at the bench or, if the jury can hear bench discussions due to the courtroom’s design, you can consider asking that the jury be excused temporarily.

**Lack of evidence**

You can point out the prosecution’s lack of scientific evidence to the judge as a source of reasonable doubt, although you must be careful not to make an improper “missing evidence” argument. If possible, your goal is to show that the State had forensic tools available that could have produced a stronger case, but chose not to use them. For example, in a shooting case you can question a police officer to establish that the police could have, but did not, use gunpowder residue testing to establish whether your client fired the gun. You can look at police or laboratory manuals to learn about best practices or rules that may not have been followed in your client’s case. Of course, you cannot advance this type of argument with regard to State’s evidence that you convinced the judge to suppress at an earlier stage of the proceedings.

**IV. MOTION FOR DIRECTED VERDICT**

A motion for a directed verdict, also known as a motion for acquittal or motion to dismiss for failure to make a *prima facie* case (and sometimes informally called a “half-time” motion) depending on your jurisdiction and on whether you are before a judge or a jury, is an assertion that the judge should direct a verdict of acquittal because the prosecution has failed to prove its *prima facie* case. You should always enter a motion for a directed verdict after the prosecution rests its case, regardless of the chances the court will accept it, because it is often necessary to preserve the right to appeal based on sufficiency of the evidence. This motion is generally argued orally, but can be written. (See Document A44 in
Appendix A, a motion for judgment of acquittal arguing that the respondent’s actions were not among those at which the statute in question was aimed and that the prosecution failed to prove intent.

V. DEFENSE’S PRESENTATION

A. Direct examination

You should not make final decisions about which witnesses to call until the prosecution has presented its entire case and you can assess the relative value and risk of putting each possible witness on the stand. Ask yourself whether it is absolutely necessary to put a witness on the stand. Can you make the point or introduce evidence in another way? Never underestimate the ability of a witness to make things worse.

Even if you doubt that you will put a witness on the stand, thoroughly prepare yourself and all of your potential witnesses for direct examination and cross examination by the prosecutor. Think carefully about points you want to make with each witness, questions that will best illustrate those points, and questions you anticipate the prosecutor will ask.

Keep the following key points in mind as you plan and execute direct examination of your witnesses:

*Keep testimony short.* Do not ask too many questions; you will create unnecessary opportunities for your witness to contradict or confuse himself. Too much testimony can also distract the judge from the witness’s main points.

*Ask open-ended questions.* You will have helped the witness prepare, so you and he will know what questions are coming and should be ready. Be careful, though, not to ask questions that are so broad that the witness goes off track.

*Know why you are asking each question.* If you do not get the response you are looking for, reframe your question until the relevant information comes out. If your witness cannot answer a question, assist him in recalling the response by refreshing his recollection with a document or other relevant record.

*Help the witness be as dynamic and illustrative as possible.* The witness chart you make to structure your defense (see Chapter 5, page 94) should include the purpose of putting each witness on the stand as well as any related evidence; you may also want to use it to brainstorm ideas for demonstrative evidence or
testimony the witness can use to help explain himself. These may include drawing the scene of the offense, acting out a movement the witness saw someone make, or any other action that will make your point vividly.

**Expert testimony**

If you are putting an expert on the stand, you will need to qualify him for the court before you begin questions regarding your client’s case. With each expert, you must carefully prepare your qualification to elicit facts and experience that are particularly relevant to the issue at hand (for example, ask your forensic psychologist to list the courses he has taught and articles he has written on juvenile competency). Focus on:

*Education and training.* Use this opportunity to demonstrate, especially to a jury but also to a judge, how smart and impressive your expert is; do not stipulate to his qualifications.

*Past court appearances.* Citing other cases and jurisdictions in which your witness was accepted as an expert and provided testimony helps build credibility.

*The strength of the relevant scientific theory.* In about half of the states, the theory your expert applies must be tested according to the rules from *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993). The *Daubert* standard requires demonstrating that the “expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.”[^1] *Daubert* also outlines several non-exclusive, non-essential factors to assist in making a determination of admissibility. These factors are: whether the theory or technique has been (or can be) tested; whether it has been published in a peer-reviewed journal; whether it is “generally accepted”; and, in the case of technique, its known or potential error rate and existence of standards of operation.[^2] Because the *Daubert* decision was based upon Federal Rule of Evidence 702 rather than any constitutional provision, states were not mandated to adopt its holding, and a significant number of states still adhere to the older test from *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which was rejected by the *Daubert* court. The *Frye* test provides that scientific evidence is admissible based upon its “general acceptance” in the relevant field of the scientific community.[^3] Still other states use a combination test or their own tests, so you must become familiar with the test employed in your jurisdiction. Also note that the Federal Rule of Evidence 702 has been amended in response to *Daubert* and the cases applying *Daubert*, and it supersedes *Daubert* as the standard of admissibility in federal courts.[^4]
As you move into the scientific questions and answers, remember to keep the testimony simple. You do not want to confuse the judge or jury with complicated information.

B. Putting your client on the stand

Deciding whether to recommend that your client take the stand is one of the most critical aspects of your defense. The first factor you must weigh is whether you think the State has made its case beyond a reasonable doubt. Many respondents have taken the stand only to strengthen a weak prosecution case. Next, weigh the potential benefits versus the costs, both in your presentation of the case and outside it (for example, if your client will implicate herself in another offense by waiving her right to remain silent). Your client may help her case if she can provide information that the court will not hear any other way, but if the judge or jury have any reason to doubt the veracity of anything she says, she can severely harm her chances of winning the case. Consider also whether your client can avoid hurting her case when the prosecutor questions her. If she cannot hold up under cross examination, she probably should not testify. Engage her in several mock direct and cross examinations before deciding how to advise her. In making your recommendation, you will want to weigh the following key issues, adapted from the Hertz, Guggenheim & Amsterdam Trial Manual for Defense Attorneys in Juvenile Court, among other considerations:

- The advantage of giving your client the opportunity to tell her side of the story, particularly in front of a jury, who will want to hear from her;
- Whether your client has something to say that supports your theory of the case and cannot be shown by another witness;
- Whether your client has a bad temper or will otherwise present herself poorly;
- Whether your client seems credible (consider her ability to speak in public, make eye contact, and maintain composure);
- Whether your client has made a prior statement she will contradict;
- Whether there is any damaging evidence or information the prosecution will be able to bring out because your client testifies; and
- In what ways cross examination of your client will affect the strengths and weaknesses of the prosecution’s case.

If your client is going to testify, make sure you prepare her thoroughly before she takes the stand. Talk about what questions you will ask during direct examination; these should be open-ended, and your client must be prepared to tell her story. Though you want her to appear to be speaking freely, you should prepare her to limit her comments to parameters you set to protect her from damaging cross examination. Explain that you will bring out any unfavorable information (such as prior convictions) that you expect the prosecutor will
bring up in cross examination because explaining them on your terms will limit the harm the prosecution can do.

You should also prepare your client for examination questions from the prosecutor and have attorneys with different questioning styles cross-examine her as practice.

Whether your client will testify or not, she should come to court dressed appropriately and neatly. (Her dress in previous meetings will provide clues as to how concerned you should be about her appearance and specific examples of what to wear or avoid.) You should give her a tutorial in appropriate courtroom demeanor and language, including tips such as remembering to sit up straight, address the judge as “Your Honor,” and avoid reacting verbally to events in court.

C. Entering evidence

Think through what you need to do to get evidence admitted and be familiar with the procedures necessary in your jurisdiction. It may be useful to own a copy of *Evidentiary Foundations* by Edward J. Imwinkelried,¹⁸⁶ which describes the requirements for the introduction of different types of evidence and lists questions you can use to lay a proper foundation.

Think broadly about what you might want to introduce. Possible evidence includes any relevant private document/writing, letter, conventional or computer business record, telephone record or recording, physical evidence, or test results your discovery and investigation uncovered (see Chapter 5 for more investigative suggestions). You may want to enter a photograph, including one that you took yourself to illustrate something about the scene of the offense. (Document A45 in Appendix A is a motion using the innovative alternate strategy of requesting that the jury visit the crime scene.) Some guidelines and suggestions for getting these items into evidence include:

*Authenticating evidence.* To authenticate evidence upon offering it to the court, ask questions of the relevant witness to verify that it is what you claim. Ask the witness to identify the evidence and explain how he did so. Depending on whether you are entering a letter, business record, or other document, ask: “Do you recognize the handwriting? How do you keep records? Who produced this document? How do you know?”
Chain of custody. You may need to establish the chain of custody for physical evidence that has been analyzed in a lab to demonstrate that it is the correct sample and has not been tampered with. Ask the relevant expert/technician about each step involved in moving it to the lab as well as its handling there.

Practice how you will handle physical evidence. Everyone in the courtroom can be distracted by your trouble with a piece of physical evidence. If you want to have impact, think through and practice how you will use physical evidence in court. How will you hold the gun? What will you do with papers? How will you deal with something in a sealed evidence bag? Do not be afraid to use the State’s physical evidence. Pick it up, ask a witness or the judge to look at it again, use it in your examinations. Try to use the prosecution’s exhibits to highlight facts important to your case.

Demonstrative evidence. Demonstrative evidence can be very powerful during adjudication. Be sure to know the litany for entering it in your jurisdiction. (In general, you will need to label the exhibit, ask the witness to make the appropriate marking—such as an X where he was standing—and have the witness date and initial the exhibit.) Good models or diagrams that are to scale are likely to be accepted by the court and helpful to the judge or jury. If you are participating in a physical demonstration of some kind (like asking the witness to recreate the movement before a punch), be sure to ask permission before you touch anyone else in the courtroom. Demonstrating respect for all witnesses and others can only help your client’s case. You may also use the State’s demonstrative aids and charts to your advantage. Have your witnesses (or, on cross, the State’s witnesses) make additional marks on charts or photographs the prosecution has had a witness mark to emphasize your point.

Keeping track of your evidence. Prepare a checklist of each exhibit, identifying what it is, the number or letter assigned, and whether it was admitted into evidence. This system will help you keep yourself organized and ensure that all of your exhibits become part of the record. It is not uncommon, particularly in the afterglow of a scathing cross, to simply forget to take the final step of moving a document into evidence. Even if this oversight has no practical effect on the trial court’s decision, it can preclude an appellate court’s consideration of the exhibit. (See page 215 of this chapter for more on entering evidence into the record.)
D. Cross examination

Pay close attention to the prosecutor’s cross examination questions so you are prepared to object and can be thinking about points to clarify during (and, possible strategies for) redirect examination. Protect your witnesses: You should be ready to intervene on a witness’s behalf if the prosecutor is making fun of him or being too tough. Even if your objection is overruled, you will have accomplished something by interrupting the prosecutor’s rhythm.

E. Redirect examination

Redirect examination is your opportunity to reframe anything the witness’s response on cross examination made unclear or appear unfavorable. This is your last chance to clarify anything confusing or to remind the judge or jury of the witness’s strengths.

Rehabilitation

Redirect is also the appropriate time to rehabilitate an impeached witness. If your witness was impeached for making a statement inconsistent with one he had given prior to testifying, you can ask questions on redirect that will help him show that he made a mistake. You are not ordinarily allowed to introduce evidence of a prior consistent statement to refute the inconsistency. If, however, your witness was impeached based on bias or fabricated testimony, you may be able to introduce evidence of a prior consistent statement made before the time of the alleged bias or fabrication either as substantive evidence or to rehabilitate the credibility of the witness. For example, if the prosecution intimates that your witness is biased against the complainant because of a fight, you may introduce a prior statement made by your witness, consistent with his testimony, from before the fight to show that the fight had no influence on his claims.

If your witness was impeached for untruthfulness, find another witness to speak positively of his reputation. If your witness was impeached for a prior conviction, allow him to emphasize how long ago it was, provide context or explanation for it, or talk about how he has changed since he made that mistake. Keep in mind, though, that some things are better left alone. Consider whether asking questions will harm your witness’s credibility further before deciding how to proceed. A witness can make the situation worse by trying to explain an action or statement in a way that seems not to be credible or like an effort to shift blame.
VI. CLOSING ARGUMENTS

Note that, in some jurisdictions, to preserve the issue for appeal, you must file another Motion for Directed Verdict after you conclude your case and before closing arguments. Be sure you are familiar with the rules in your state. (For a sample closing argument, please refer to Document A46 in Appendix A.)

The prosecution’s closing argument

As the prosecutor summarizes his case, take notes to keep track of each point of his argument. Your focus should be on proving that there is reasonable doubt of your client’s guilt; while you are listening to the prosecutor’s summation, think about ways to point out his failure to present evidence he promised in his opening statement, highlight doubt that remains despite the evidence that he did present, and refute assertions crucial to his case. Listen carefully to make sure that the prosecutor is not overstating or mischaracterizing evidence.

Your closing argument

Your closing argument should not be defined by what the prosecutor has said; you are still arguing the case you planned and presented. Repeat your theory and theme (see Chapter 6, page 120), coming back to the three points you made in your opening statement (see page 192 of this chapter). Refer to the prosecution’s evidence, as well as your own, to raise claims of reasonable doubt. If there are points in the prosecution’s argument that you need to address, do so, but do not let his perspective shape the case. Make clear to the court how the prosecution has failed to meet its burden of proof and/or based its argument on doctrines, in particular presumptions and inferences, you can rebut. Your closing is the final piece of argument the court will hear from you, so it should be thoughtful, well-prepared, and polished. If the prosecutor is allowed to present again after your closing, you need to think carefully about how your closing argument can be used against you and anticipate what the prosecutor’s argument might be. Whenever possible, you want to weaken the prosecutor’s impact by acknowledging damaging evidence and explaining why there is reasonable doubt nonetheless.
VII. OTHER ISSUES TO CONSIDER

A. Making objections

Zealous defense requires objecting when the prosecutor makes statements or asks questions that are improper. Become familiar with the rules of your jurisdiction, so you are ready to make effective objections at any moment in the proceedings. You should also be aware of any constitutionally-based objections you can raise. Voice your objection immediately to prevent the evidence from being heard; if the judge asks you to state your basis, you will have a moment to compose your argument.

Think strategically in each instance about whether making an objection will likely help your case or if it might be harmful. Even if you are sure your objection will be overruled, it may be important to raise it so that you make a record for appeal. When the judge sustains an objection you have made, remember to ask that the inappropriate statements be stricken from the record. If the error was significant enough, move for a mistrial.

Potential objections

What follows is a list of common objections to keep in mind during adjudication. Making all relevant objections can be crucial to your client’s case and any later appeals.

*During the prosecutor’s opening statement*
- Defense evidence
- Speculative
- Personal belief
- Unprovable evidence/facts

*When the prosecution asks questions*
- Ambiguous/confusing
- Asked and answered (cumulative)
- Best evidence
- Bolstering witness credibility
- Compound question
- Foundation
- Improper characterization
- Improper impeachment
- Irrelevant
- Argumentative
- Assumes a fact not in evidence
- Beyond scope of direct/cross
- Collateral matter
- Conclusion
- Hearsay
- Improper hypothetical question
- Incompetent witness
- Leading (on direct)
• Misstates evidence
• Narrative
• Parol evidence rule
• Privilege
• Testifying

When witnesses answer questions
• Assumes a fact not in evidence
• Conclusion
• Improper characterization
• Lack of personal knowledge
• No question pending
• Opinion
• Prejudice
• Speculative

When the prosecution enters exhibits
• Authentication
• Chain of custody
• Foundation
• Inadmissible evidence
• Non-certified copy

During the prosecution’s closing argument
• Commenting on the defense not offering evidence
• Commenting on the defense not putting on witnesses
• Misstating evidence
• Misstating the law
• Personal attack of your client or your team
• Personal opinion
• Prejudice
• Personally vouching for the veracity of a witness or the integrity of evidence

You should also be prepared with arguments to convince the judge to overrule any objections the prosecution makes. Review your questions and each piece of evidence and know the basis for its admissibility.
If the prosecutor makes a hearsay objection, you can argue that the evidence falls under an exception, such as:

- Admission of a party
- Declaration against interest
- Excited utterance
- Learned treatise
- Public record
- Prior identification
- Business record
- Dying declaration
- Former testimony
- Past recollection recorded
- Present sense impression
- State of mind

B. Making and preserving the record for appeal

Appeals are vastly underused in juvenile cases in most jurisdictions around the country, but they are a powerful tool that can improve the outcome of your client’s case. They can only be successful, however, if you adequately preserve the record of issues during your client’s adjudication and other proceedings. The recommendations below can also help your case by reminding the court that it does not operate in a vacuum and that its rulings are subject to review. Trial courts hate being reversed and are likely, if reminded of the right to appeal, to be more careful to make rulings that are consistent with settled law. (See Chapter 12 for a discussion of filing appeals.)

Whether you or someone else will litigate the appeal, it is incumbent upon you to make sure the record is factually complete and that you have raised every credible argument throughout the course of your case. Although you have to make strategic decisions to forego certain arguments in favor of stronger ones, you should nevertheless err on the side of inclusion. You never know what issue is going to carry the day on appeal. It is important to keep in mind that your action and inaction will affect the appeal. Remember that appellate judges will learn only what is in the certified record and transcripts, so include everything you would want a reviewing attorney and judge to know about your case. Thus, during the proceedings, make sure that you:

Speak clearly

Make transcribing your words easy; do not talk too fast, and spell out names. Make sure that your witnesses know to do the same and that you do not allow anyone’s grunts, nods, or nonverbal conduct to stand as responses to questions. If a witness does make a nonverbal response, make a statement to ensure that the record will reflect the reply.
Describe relevant nonverbal communication

When the witness testifies, “The minor was standing this close to the undercover agent,” say, “May the record reflect that the witness is holding his hands approximately three feet apart.” Even though the juvenile court judge sees it, the appellate judges cannot. Similarly, when a witness makes a mark on an exhibit, explain what the mark looks like and where it is: “May the record reflect that the witness has placed a blue ‘X’ just on the west side of the mark he previously designated as a street lamp, on the northwest corner of College and Main streets.” This provides a key to the exhibit if it is properly made part of the record and a substitution for the exhibit if it is mistakenly excluded from the record. You may ask the prosecutor to agree to your description if it is not made contemporaneously with the witness’s testimony. If the prosecutor gives a description with which you do not agree, state your disagreement or objections clearly for the record.

Put everything on the record

Because you never know what is going to be an issue on appeal, especially when you are in the earlier stages of the proceedings, put everything on the record. If a witness is in court, state that fact on the record. If you attempted to interview the State’s witness before trial and he refused to talk to you, put that fact on the record. If you tried, but could not get a document from the State or an agency, explain your efforts and the result on the record. File copies of subpoenas that were issued. Insist on written responses when someone tells you that documents you requested have been lost, destroyed, or do not exist.

Try to avoid off-the-record discussions with the judge and prosecutor. If you find it difficult to ask that conversations be on the record (as may be the case in courts in which it is not standard practice), try blaming it on the appeals division or appellate attorney. Explain to the court that you have been asked to put everything on the record. While the judge may balk at first, if you ask consistently, it should become standard practice. If you are forced to have a conversation with the judge and prosecutor off the record, ensure that any significant facts or decisions are later placed on the record. You can summarize the conversation when you go back on the record, stating any decisions that were made, or you can later submit a motion, memorandum, or letter to the court memorializing any transaction or perceived error that occurred in a sidebar or chambers discussion.
Make sure all evidence is made part of the record

Remember to seek to move each of your exhibits—documents, photographs, or physical evidence—into evidence. (More on collecting evidence appears in Chapter 5; more on entering evidence appears in this chapter on page 207.) Many times, attorneys for the parties will retain possession of evidence, admitted or not, after a hearing on a motion or an adjudication proceeding. (You may want a copy of the diagram that the complaining witness marked. The prosecutor may want to keep the photos of the scene to use later.) You must make sure that everything that was part of the court’s consideration is ultimately made part of the court file whether it is in the official record or in the form of a proffer. The best practice is, at the end of the proceeding, to request that each item be given to the clerk to be made part of the record. If you want a copy of something, you can request permission to copy the document and ask the State to stipulate to the authenticity of the original when you return it (preferably the same day). Make sure that anything that the State admitted into evidence or showed to the judge is also made part of the record.

Similarly, if you have used a PowerPoint or other digital presentation in an examination or during your opening or closing statement, print out the slides, mark them, and make them part of the record. In addition, you may even include a disk. If you think it was helpful for the judge to view the slides, then it is likely that the appellate court will benefit from them as well. Be aware that there is no guarantee that you will be permitted to include these materials as part of the record, but it does not hurt to try.

Make a record of any excluded evidence and rejected requests or objections

Make a proffer on the record of rejected evidence, overruled and sustained objections, pleadings, and proposed jury instructions. This is best done in writing (in which case you should state on the record that you are filing an offer of proof), but may be done orally as well. Whichever form it takes, your offer of proof should contain:

1. Identification of the excluded evidence (specific documents or a witness’s testimony);

2. The facts you believe the evidence would show (“witness X would testify that…”);

3. The ultimate issue(s) for which the evidence is relevant; and,

4. The basis for your belief that the evidence is admissible (citing statutory or constitutional authority and/or case law).
If the judge sustains an objection to a question or series of questions you are attempting to direct to a witness who is on the stand, at the conclusion of the witness’s testimony, but before the witness is excused, ask to make an offer of proof through the witness. Explain to the court that you want to ask the witness the questions to which the objections were sustained so that the reviewing court will know the specifics of the excluded evidence. This will leave no room for dispute as to what the witness would have said and, once the judge has heard the evidence, may even cause him to reconsider his ruling. (This is especially effective in the case of excluded expert witnesses.) In the alternative, ask to make an oral offer of proof in summary form or explain that you will provide the court with a written offer of proof before the conclusion of the proceedings.

Ask for a basis for adverse rulings and clarify the judge’s statements

Ideally, the court’s rulings on motions will be in the form of written orders (see Chapter 7, page 155). Often, however, it will not be possible or practical to prepare a written order that outlines the factual and legal findings that underlie a ruling by the judge. Do not assume that those findings will be obvious to the appellate court, even if they are obvious to you. When you get an adverse ruling, ask the judge for the basis of his decision. If you think that the judge has predicated his ruling on a factual finding, do not hesitate to clarify that for the record. For example, a judge may simply say, “Motion denied,” after argument on a motion for the appointment of an investigator. At the first possible opportunity, you should ask, “Your Honor, for the record, may I please have a basis for your ruling.” Suppose the judge then says, “Well, this is only a class two felony. I don’t think you need an investigator, you can do it yourself.” You should then clarify, “Judge, again for the record, am I correct that Your Honor does not reject our assertion that my client is indigent, but instead you have determined that we have not made a sufficient showing that he has a need for the investigator because the charge is only a class two felony.” You have now made the issue much clearer—and probably stronger—for the appeal.

You should also be sure to clarify the issues when the judge overrules your objection or sustains the prosecutor’s objection. Often, objections will be handled during court proceedings without stating a basis. When the judge rules against you, ask for the grounds; otherwise, the appellate court is left to guess why the judge ruled the way he did. Though you may think the basis is obvious, it may be difficult to determine in reading a cold record. If you think the judge is wrong, then you need to make sure the appellate court has the tools to agree with you.
Ask for materials to which you are denied access to be sealed for the record

If you have subpoenaed records but the judge denies your access after his in camera review (perhaps, police disciplinary files or the complainant’s mental health records, etc.), ask the court to seal the records and include them in the case file. You may also ask the judge for a general description of the nature of the documents that he is withholding and his reasons for withholding them. Without this information, the appellate attorney and court can only speculate as to the errors committed.

Renew objections

Even if you have made a motion in limine to keep certain evidence out, object again at adjudication so that reviewing courts will not deem the issue waived. Where you object to the entire testimony of a witness (for example, that of an expert whom you believe is not qualified) make a standing objection to all of his testimony so that you do not have to continuously object. Make sure you never appear on the record to have acquiesced to something you objected to earlier in the proceedings because you did not bother to state it explicitly.

Make requests that you know will be denied

Sometimes, the only way an unfair or illegal practice can be successfully challenged is through an appeal, and the only way to challenge it on appeal is to raise it first in the juvenile court. If it is common knowledge in your jurisdiction that the court will not appoint an eyewitness identification expert, request one anyway. If detention hearings are held without the presence of a lawyer, put that fact on the record when you make your first appearance. If you believe that the probation department is recommending custody because of a lack of treatment options in your jurisdiction rather than the needs of your client, include questions regarding that concern in your examination of the probation officer. Again, you never know when an issue will be ripe for consideration by the court. Consider calling a series of lunch meetings with other attorneys in your office or area to strategize about problems and think about what case fact patterns would be best to test a new or recurring issue that you want resolved.

Keep a contemporaneous log of what happened in court

Although the clerk of the court is required to record everything that happened during the course of the case, you should also keep your own log. This strategy will help ensure the accuracy and completeness of the record and can help you
or the appellate attorney determine which transcripts to order and whether it is necessary to file a motion to correct or supplement the record. It is much easier to review your notes at the conclusion of the proceedings than to attempt to reconstruct what happened later.

**Make sure the record that is prepared is the record that you preserved**

Even if you are not going to handle the appeal, there are some steps that you can take immediately after adjudication concludes that will help to 1) ensure that you have preserved all of your client’s rights and 2) assist the appellate attorney in making sure that all of the relevant information you were so careful to preserve is part of the record that is ultimately prepared. See Chapter 12, page 251, for more information.

A few suggestions to keep in mind:

Begin explaining the possibility of appeal to your client before the conclusion of the case. In the event that you lose at adjudication, you will need to have a conversation with your client about the possibilities for appeal as described in Chapter 12 on page 254. It is best not to wait until the conclusion of the proceedings, however, to explain the appellate process to your client. After you have lost a motion and are explaining to your client what that means for her case, you should also take the opportunity to begin to introduce the concept of the appeal. You may say something like:

*Now, we lost the motion to suppress your statement, which means that the prosecutor is going to get to tell the judge what the police officer says that you said. I think that the judge made the wrong decision, but I can’t do anything about that right now. Instead, we have to figure out how to deal with the statement. However, that doesn’t mean that we never get to complain about the judge’s ruling. Of course, if we win, it doesn’t matter, and we will just forget all about the judge’s ruling. But, if we lose, then we have an opportunity to complain to some other judges about the judge’s ruling today. We get to go to his supervisors and explain why the judge made a mistake when he said that the State could use the statement. And then we have to explain how that mistake caused us to lose the trial. That is what is called an appeal. I don’t want you to get fixated on the judge’s decision right now, because we need to focus on how to win this trial even with that decision. I just want you to keep the idea of an appeal in the back of your mind because it is one more thing that we can do if we lose.*
Of course, fully describing the appellate process and the difficulty in succeeding on appeal will ultimately require more explanation than this brief introduction.

**Pass on information to appellate attorneys after a case is transferred.** In many jurisdictions, if a juvenile client is transferred to adult court, a new attorney is assigned to handle the case. The new attorney may not be aware of the juvenile court proceedings. Consequently, if your client loses in adult court, the adult appellate attorney will have no idea that the juvenile court record exists, and you cannot depend upon your client to relay information. Help alert the adult appellate attorney to this other record and the issues that can be raised relating to the juvenile portion of the proceedings, by using the suggestions in Chapter 8, page 170 on transitioning a case that is transferred to adult court.

**Talk to appellate attorneys in your jurisdiction.** In many jurisdictions, a separate unit of a public defender’s office or a different panel of attorneys handle appeals. If you live in such a jurisdiction, reach out to the appellate attorneys so that you can familiarize them with the procedures and idiosyncrasies of your court, and they can tell you what they need to help them in their appeals. Arrange a lunchtime meeting for juvenile defenders and invite an appellate attorney to give a presentation about how to best make a record or what issues to preserve at adjudication.

**Learn first-hand what a lawyer needs to successfully handle an appeal.** Whether you practice in a jurisdiction that divides appellate and trial work or one in which you handle your own appeals, you should try to handle at least one appeal of someone else’s case. Looking at the record from a case you know nothing about makes the need for a complete record painfully clear.

### C. Failures to appear

During your career, relevant parties will fail to appear in court, so you should be prepared to handle this problem. Issues to consider will depend on who is absent.

**If the client is absent**

Your client must be present for the adjudication to proceed under the Sixth Amendment’s Confrontation Clause. Ask the judge for a continuance or at least a short break to find out when she is going to arrive or if there is a legitimate reason for her failure to appear, in which case the court might continue the case and not issue a warrant. Recall that you must handle the issue without violating confidentiality.
If the parent is absent

In some jurisdictions, parents are required to be present at their child’s adjudication. If that is the case and your client’s parent fails to appear, you may want to ask for a guardian ad litem and social services so the case can proceed, particularly if your client is in detention. The role of the guardian ad litem varies greatly across states. Before requesting one for your client, learn about the role of a guardian ad litem in your court. If they must advocate for what they perceive to be your client’s best interests, consider how this will impact your client’s defense. In the alternative, if it would help your client’s case for the parent to be present or just to delay the proceedings, try to get the court to grant a continuance.

If a defense witness is absent

If a critical witness is absent, you will generally want to inform the judge that you require a continuance in order to provide your client with a vigorous defense. You should have copies of your subpoenas ready to demonstrate to the court that the witness was properly notified and subpoenaed. Depending upon the circumstances, you may have to agree to a bench warrant for the witness or to continue your case without the witness.

If a prosecution witness is absent

Think strategically. If a witness critical to the prosecution’s case is absent, you may consider demanding that adjudication proceeds as scheduled and within speedy trial time limits. If the witness is not critical and you believe that your client may benefit from extra time before adjudication, you may want to choose not to oppose the prosecution’s request for a continuance.

D. Co-respondents

Do not represent co-respondents. (See Chapter 2, page 16 for a discussion of conflict cases.) Because the likelihood of conviction is much higher in co-respondent cases and such cases are inherently riddled with conflicts of interest, you will generally attempt to get your client’s adjudication severed from those of any co-respondents in her case. (A sample motion to sever appears in Appendix A as Document A47.) If your client is the ringleader of a group of co-respondents, severance is very important because you will not want the courtroom full of people blaming your client throughout the adjudication. If, however, she was acting under the influence of other youth who are or look older than she, it may help emphasize her comparative lack of culpability to hold the adjudications together. Make
sure your discovery and investigation include information about any co-respondents so you can make informed decisions about what strategy is best for your client’s case.

**If the adjudications are severed**

Though the question of who will be tried first—your client or a co-respondent—is probably beyond your control, the decision will influence your adjudication preparations and negotiations. You may want to explore with your client and the prosecutor the possibility of an agreement to testify against the co-respondent in exchange for a reduced charge or sentence. Be aware that the co-respondent may be making the same offer to the prosecution and may testify against your client. Attend the co-respondent’s adjudication to become aware of additional discovery you should obtain, as well as to observe potential witnesses in your client’s case.

**If the adjudications are not severed**

Consider coordinating your defense with the co-respondent’s attorney, if doing so does not jeopardize your client’s interests. Be aware that the co-respondent may take a plea or testify against your client, and you should limit your cooperation with his counsel accordingly. If the co-respondent argues that your client was primarily responsible for the alleged crime, you will need to consider his strategy, in addition to the prosecutor’s, as you prepare and present your defense.

Despite your best efforts, sometimes your client will be adjudicated delinquent. In some cases, you will have expected that outcome; in others, it will be a surprise and disappointment. Regardless, you should be thinking about potential dispositional outcomes throughout your case and preparing for a disposition hearing long before you know whether it will occur. Chapter 11 addresses representation at such a hearing.
Disposition is a critical stage of delinquency proceedings. Planning for disposition begins when you first meet your client. It is your responsibility to confer with your client about dispositional options and to strongly advocate for those she ultimately requests. You cannot rely solely upon the person officially charged with recommending a disposition (a probation officer or social worker) to locate appropriate services for your client. Judges want options for disposition, and it is your duty to present them to the court.

What to consider before your first case

- The full range of private and public community resources as well as in-state and out-of-state placement and treatment programs available for your client— and how to arrange placement in them. You should not accept cases in juvenile court until you become familiar with dispositional possibilities in your area and alternative programs that accept children with treatment and service needs common among court-involved youth.

- The substantive and procedural law of your jurisdiction concerning disposition (particularly the exact language as to guidelines, considerations, alternatives, and graduated sanctions). Be ready to make legal arguments about the appropriate disposition for your client.

- How to use an interdisciplinary team before and during the disposition hearing and who the members of that team might be. Social workers, psychologists, psychiatrists, and other experts can be invaluable partners when developing and presenting a disposition plan. Ask experienced attorneys in your office for recommendations.
I. ELEMENTS OF A DISPOSITION PLAN

If your client has been adjudicated delinquent, you become responsible for zealously advocating for the best possible disposition plan. What is “best” is defined by your client with your input and advice. This portion of a case is a crucial part of your efforts on behalf of your client. Learn about the community-based programs and incarceration facilities in your area before taking on a juvenile case. Throughout your career as a juvenile defender, it is imperative to stay abreast of new and emerging dispositional options for your client.

There are many elements you can consider in fashioning a disposition plan for your client, and the needs, strengths, limitations, and history of each client will suggest even more permutations. You and your client should consider a full range of support services, positive family and community connections, constructive controls (like an after-school placement), and alternative sanctions.
A partial list of options to consider making part of your proposal for your client includes the following, adapted from The Sentencing Project’s “Elements of a Juvenile Defendant’s Dispositional Plan.” This list should spark, not limit, ideas and planning for your client’s disposition.

**Supervision**

- **Living arrangements and residential options.** Consider where and with whom the child could live. Options include the parent’s home, residences of other family members or adult friends, group homes, halfway houses, and secure residential treatment centers. A serious proposal to place a child in a relative or friend’s home requires a visit to that home and a thorough conversation with the responsible adults in advance of making the recommendation. A move to a different geographical location can have beneficial effects, such as reducing interaction with a victim or co-respondent or moving near a school well-suited to meet your client’s educational needs. If you are proposing a move to another state, the Interstate Compact on Juveniles will govern that transfer. (You will need to get copies of the appropriate referral papers, complete them, and follow up with the agency personnel to expedite each step of the process. This is a simple process you should oversee yourself, so it is not delayed. The forms can be obtained through the probation, child and family services, or correctional agency which facilitates Interstate Compact issues in your jurisdiction.)

- **Relinquishing a right/sacrificing freedom.** The most common form of this option involves “house arrest,” which may be linked to electronic monitoring (see below), but you should think broadly about other, less restrictive provisions. These can include limits upon car use or travel; rigid structuring of your client’s time; restrictions on privacy; or voluntary submission to searches, breathalyzer tests, and the like at the behest of law enforcement.

- **Short-term incarceration.** Many jurisdictions permit short-term incarceration as “punishment” for youth, although it has limited utility or positive benefit. Though this is not an option you will want to promote initially, if a judge will not agree to a less restrictive plan, structuring a compromise agreement that includes provisions for releasing your client relatively quickly can at least minimize the harm to her. In some jurisdictions, a child can be eligible for part-time incarceration, which allows her to leave the detention facility for work or school or only requires detention periodically, such as on weekends.

- **Day reporting/treatment programs.** There are some juvenile day reporting centers or programs. Day reporting offers daily accountability and observation, including optional drug testing, schooling, counseling, and activities.

- **Community advocate/third-party monitor.** You may want to consider arranging for one or more individuals in the community to monitor your client’s compliance with her disposition plan. Properly arranged, a third-party monitor can extend supervision beyond that normally provided by probation or parole officials, which may lead a judge to accept a less restrictive disposition plan than he would otherwise. These monitors can include employers, counselors, teachers, clergy, or other community members.
• **Electronic monitoring.** Some courts use electronic monitoring to enforce a curfew (the monitor records when the child leaves and returns home) or to enforce limits on the child’s movement and associations (tracking with GPS systems). This level of restriction is not one you will usually want to suggest for your clients, but it is preferable to incarceration and may be the only alternative the judge will accept. Note that most of these systems require that there be a phone line in the client’s home and that any features, such as three-way calling or call forwarding, be taken off the phone.

**Rehabilitation**

• **Psychological assessment or treatment/counseling.** To assist the child with problems which give rise to delinquent behavior, you may want to arrange assessment or treatment for alcohol and drug dependency and/or for emotional and psychological disorders, including unacceptable sexual conduct. Some clients will respond to counseling in areas, such as substance abuse, anger management, and family relationships. You should be prepared to provide the court with documentation of your client’s acceptance into a program, the location of treatment, qualifications of the treatment facility personnel, and the anticipated duration of treatment. (See Chapter 3 for more information about obtaining an evaluation of your client’s mental health needs.)

• **Education.** It is crucial to include in your disposition proposal a plan to continue your client’s education. You may recommend that your client stay in or enter a public or private school, a GED preparation course, a remedial or special education program, tutoring, or an after-school program. Many of your clients will never have learned in an environment appropriate for their cognitive disabilities, and you can stress to a judge what a difference appropriate education can make to a child’s behavior. Note that under the Individuals with Disabilities Education Improvement Act (IDEA), youth have a right to appropriate educational and remedial services; see Chapter 13 for more information about special education advocacy.

• **Employment/vocational training.** If your client is old enough to work, assuring the judge that she has a job can encourage him to release her into the community. You should be prepared to specify at the disposition hearing who will supervise her at work, her hours of employment, her salary, and the duties of the position. When employment is impossible or inappropriate, you can suggest vocational training to your client. Find out about options for apprenticeship or mentoring in your area.

• **Community service.** A child’s unpaid work as a volunteer at a community agency, religious institution, school, or law enforcement entity may constitute a genuine “payback” for an injury or damage. The service may offer your client a positive experience, while assuring supervision for the duration of participation. Community service could also include providing public information services, such as speaking to schoolmates, groups of offenders, or adult groups. Some juvenile offenders are well positioned to inform the public about the seriousness of being involved in delinquent activity or means for preventing certain types of offenses. Know about organizations that help to connect court-involved youth with this kind of opportunity.
Additional considerations

• **Victim restitution.** Payment of the victim’s monetary loss in order to compensate for damages or financial loss suffered as a result of the offense, though often limited by a client’s ability to obtain an income, is sometimes a viable option. Symbolic restitution, in which your client repays some part of what the complainant has lost or contributes some amount to charity, is also a possibility to consider. Note that with the advent of victim advocates in many jurisdictions, you should prepare for the complainant’s presence at disposition. Even if you will not propose restitution, you will want to balance the sympathy generated in the courtroom. Emphasis on mitigating factors of your client’s circumstances, especially special needs, in the complainant’s presence can elicit empathy and benefit the client. As long as it is not contrary to your client’s interests, there is no reason why a disposition order should not take into account the reasonable needs or desires of the complainant. A juvenile offender’s offer to stay away from an individual or a neighborhood, or to assist a victim in some way, may be appropriate.

• **Special arrangements.** Youth in the juvenile justice system often require dispositional arrangements with unique elements tailored to their special needs or circumstances. Examples include steps to address medical needs, solve transportation problems, transfer probation to another jurisdiction, obtain financial assistance (such as public assistance or Medicare benefits), or help with immigration problems. As a defender, you should anticipate these needs and address them in your disposition.

• **“Blended sentencing” or “Extended Juvenile Jurisdiction.”** About one third of all states have adopted "blended sentencing" statutes or "extended juvenile jurisdiction" (EJJ) designations in juvenile court, under which a juvenile is eligible to receive a juvenile disposition and an adult sentence. Laws vary from state to state; existing statutes grant juvenile court judges, and/or criminal court judges in transfer cases, the authority to impose a dual disposition. Blended sentencing in juvenile court, which in some places occurs as the result of a prosecution designated as EJJ, generally leads to a juvenile disposition followed by an adult correctional sentence. Typically, the adult sentence is suspended during the juvenile portion of the disposition, and it may sometimes be vacated if the juvenile successfully completes the conditions of her juvenile disposition.

Incarceration should not be a part of your proposed dispositional plan, and you should argue vehemently against it, should the prosecutor or judge suggest it as a viable alternative. Research indicates that the juvenile incarceration system is seriously flawed and that children in correctional facilities are subjected to over-crowding, poor services and inadequate care. Racial and ethnic minorities continue to be significantly overrepresented in confinement facilities. Children with emotional or mental disturbances are also frequently, and futilely, directed towards incarceration facilities as a way to obtain services. Additionally, training schools and similar facilities are often far from population centers, making it difficult for youth to maintain contact with their families and exacerbating the challenges inherent in transitioning back into the community following their dispositions.
Juvenile incarceration facilities also generally lack adequate supervision of and care for residents. Common deficiencies include: lack of adequate living space, high risk of injury, inadequate suicide prevention strategies, and insufficient healthcare. Incarceration forces already vulnerable and troubled youths to endure the difficult process of institutional adjustment, an experience that can be especially destructive to juveniles who suffer from mental illness. In terms of physical needs, many facilities fail to provide adequate treatment for and education about substance abuse, unprotected sex and other health risks.

Locked juvenile facilities should only be utilized when absolutely necessary. Non-confinement treatment programs have been shown to be more effective at rehabilitation of juvenile offenders and preventing recidivism. Be sure that your research of potential alternative programs for your clients includes a thorough investigation into the credibility and success of the staff and services provided.

II. CREATING A PLAN FOR YOUR CLIENT

A. Individualize

The wide range of possible elements of a disposition plan reflects the unique nature of juvenile court, as well as the varied needs of the youth who appear there. Each client has her own strengths and weaknesses, as you will have discovered throughout her case, and her own opinions about what sanctions are preferable or acceptable. (More about counseling your client through disposition preparation and a hearing follows in later sections of this chapter.) You should work with your client to tailor your disposition plan to address problems in her life and to reinforce positive aspects, remembering that the plan should be thorough enough to satisfy the court, but lenient enough to reasonably expect your client to meet her obligations. For example, you could advocate for a plan designed to improve your client’s educational circumstances by helping to enroll her in a different school; combat her mental health or substance abuse problem by finding her a counselor to provide regular therapeutic sessions; remove her from dangerous situations by relocating her to the home of a relative other than her parent; and reinforce her positive relationships by ensuring that she has regular meetings with her clergy member or other significant adults in her life. In a case involving a serious offense, you could find a program designed for children like her—a residential facility for girls who have been sexually abused, for example—and argue for her to be placed there instead of in a correctional institution.
A disposition plan individualized for your client will benefit her and is more likely to win her approval and compliance. It is also more likely to be accepted by the court as an alternative to incarceration because it will directly focus on the issues that led her to court involvement and address the judge’s concerns.

B. Ask for input

Again, the possibilities for a disposition plan are essentially endless. Though it is your responsibility to learn as much as you can about the programs and services in your area, you need not craft each plan alone. Educational advocates, social workers, probation officers, civil legal service providers, community-based treatment or activities providers, psychologists, and psychiatrists may be invaluable in helping you assess your client, identify areas of concern, and provide appropriate recommendations. In some cases, you may petition the court to reimburse these people for their assistance.

You can also consult with experienced defenders, probation and parole officers (other than those assigned to your client), and agency social workers to determine what the quality and availability of court or youth services programs are in your client’s area. Community organizations and county or state agencies often publish service directories. Ultimately, you will be the one to advocate zealously for the plan your client chooses, but seeking additional advice will ensure that you have created a plan that utilizes all available resources and increases the likelihood that the plan will be adopted by the court.

C. Adjust for the seriousness of the offense

Though you should always advocate for the plan your client selects, you must demonstrate to the court that your plan addresses the realities of the case. The limits on your client’s freedom will have to reflect the severity of the offense for which she was adjudicated delinquent, though not necessarily in the way the prosecutor or probation officer might initially propose. For example, if the probation officer is likely to recommend placement in a correctional facility, you may ask for a consortium of community services to create a wrap-around program that ensures community safety and meets rehabilitation needs. Be ready to offer compromise plans; your fallback position in this example could be placement in a specialized residential treatment program.

Dispositions in the community

In cases in which the judge will consider placing your client in the community, you have the greatest range of options for disposition. Taking into
consideration your client’s needs and the case, you should look at the options listed above and determine whether to prepare the groundwork for or arrange things, such as: alternative school placements, tutoring, an after-school program, mentoring, anger management or family counseling, community service, outpatient drug treatment, employment, a third party monitoring program, job training, or volunteer work. Your goal is to demonstrate to the court that your client has concrete, positive, viable plans.

**Out-of-home placement**

If the court is unwilling to release your client into the community, you may still advocate creatively on her behalf. Find alternatives to your jurisdiction’s locked correctional facility. If appropriate, argue for placement in a local group home for a finite period of time, followed by a plan for transition back home. If your client is likely to be ordered into secure placement because of recidivism or the seriousness of charges, advocate for a residential program that is suited to your client’s needs, closer to home, or otherwise preferred by your client.

**D. Be ready to implement the plan**

In theory, the probation officer contacts service providers and completes the paperwork and other requirements to arrange placements. In many cases, however, the only way to ensure that those processes are satisfactorily and efficiently completed is to handle them yourself. In some jurisdictions, just offering your assistance may be sufficient to spur action, but in most instances you and/or your support staff will have to make the arrangements for your client. If you do not take over the process, at least review your client’s referral documents to correct any errors or misrepresentations they contain. Your efforts will be crucial to finding your client a space in an appropriate program and demonstrating to the court that she can begin receiving services or treatment immediately or soon after a disposition order.

You should become intimately familiar with the placement process in your jurisdiction, including all necessary forms, exact required steps, people involved, and how you can provide information or other assistance to expedite the process. Securing a placement for your client usually includes working with the intake unit of the agency responsible for funding placements. You will need to encourage intake personnel to initiate the process and keep it moving. This effort will include brainstorming about potential placements, completing necessary applications and other paperwork, confirming intake approval, following up on referral status, arranging pre-placement interviews, and finalizing approvals.
You may also ask that your client visit a potential placement to help determine if it is a good fit for her. Document A48 in Appendix A is a post-adjudicatory motion requesting a temporary release from detention to visit a potential disposition placement (as well as a delay of the disposition hearing to provide more time to find an appropriate placement). If you are considering taking your client to a facility or elsewhere, be sure you know and are prepared to take on the risks of doing so. You should be concerned about flight (if your client is in detention); seatbelt safety or other car/insurance issues; false claims of sexual or other assault; and secure all necessary permissions from the court, parent, or facility. In all cases, you should take another adult with you. Dealing with all of these issues may be complicated, but taking your client to a facility can make a big difference in her case. It is extremely persuasive to the court to show up at disposition with confirmation that your client has been accepted to a program and is willing to go there.

The placement process may involve providing certain information about your client. To facilitate placement, be ready to provide:

- Updated psychological and other evaluations regarding mental health assessment and treatment recommendations (see Chapter 3);
- Vaccination record and medication history;
- Social Security numbers and HMO/medical insurance information; and
- Educational history, including special education (see Chapter 13).

When providing information, consider whether it is confidential and whether you have your client’s written permission to release it. Medical and health care information is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which governs the transmission of private health information by healthcare providers, including residential juvenile facilities. Defense attorneys are not subject to HIPAA rules, but may be affected by state privacy laws that are stricter than HIPAA. Educational records are protected by the Federal Educational Rights Privacy Act (FERPA), which requires written parental consent to pass on a child’s school records to anyone—even if you already have permission to possess the records—and contains serious sanctions for non-compliance. Also think about whether the records you are turning over contain information that could be harmful to your client. Be sure to consider whether release of personal and private information is essential.
III. INITIAL PREPARATION FOR THE DISPOSITION HEARING

A. Start immediately

Preparation for disposition begins at the time you meet your client. Although your goal is to win at adjudication and avoid disposition entirely, you nevertheless should lay the groundwork for a positive dispositional outcome from day one. Fortunately, you will already be doing so as you prepare to zealously defend your client at pre-adjudication hearings and adjudication proceedings. As described in earlier chapters, you will want to find out all you can about your client’s interests, goals, school, work, family, and medical and mental health history. This information will identify potential areas to address at disposition by suggesting sanctions and/or by demonstrating improvement that took place as the case progressed. You can begin thinking early on about what services your client might need and get a head start on securing a spot in any particular program.

As explained in Chapter 2 (see page 26), begin working with your client to develop a remediation plan as soon as possible after you meet. Continuously review the success of the steps your client has taken during the pre-adjudication period, and be prepared to adjust and fine-tune the services.

B. Monitoring your client’s pre-disposition success

Whether you have created a voluntary remediation plan with your client or the court has required one at a detention hearing, you should monitor your client’s success in meeting goals and conditions. Doing so means staying in regular contact with your client and any service providers assigned to your client’s case. You want to make sure she is fulfilling her obligations and be prepared for what a parent, third-party monitor, counselor, correctional officer, or other supervisor might report to the court at disposition. Counsel your client (and her parent) to notify you immediately if there are any difficulties with compliance with court orders or service providers. Be particularly vigilant about following up with your client’s education providers to ensure that she is attending school and succeeding in her education placement. Truancy is often a major concern for prosecutors and judges, who see it as a harbinger of recidivism.

Whenever you find out about a problem, help the client brainstorm a solution or find an alternative plan or program. Stress to your client the importance of improving her behavior and evaluate what types of changes or programs are most effective for her. Recognize improvement and encourage parents to provide positive feedback, as well.
If your client is detained pending adjudication and disposition, your most significant task may simply be maintaining regular contact with her. There is a real risk that children in detention will become embittered and frustrated, which can cause difficulties in the facility and in court. Remember that a child’s perception of time differs from an adult’s. A week may feel like a month to your client. Take care to check in on your client and to keep her well-informed of your efforts on her behalf as often as possible.

C. Mental health evaluations

As you prepare for the early stages of the case and collect information about your client, you may see indications that she could be in need of mental health services or have an undiagnosed disorder. If you think your client’s disposition placement should include therapy or mental health treatment, you should consider requesting a mental health evaluation from an expert. Be sure to request an evaluation early so the expert’s reports are ready by the time of the disposition hearing. You can help prevent delays by making sure the evaluator has all the information he needs, offering your input, and assisting with scheduling appointments for your client. See Chapter 3 for detailed information about when and how to use mental health evaluations on behalf of your client.

IV. AS THE DISPOSITION HEARING APPROACHES

A. Pre-disposition interactions with a probation officer

Before her disposition hearing, your client—and, most likely, her parent—will meet with a probation officer. The probation officer will then prepare a report based, in part, on these interviews, focusing on family history, past contacts with the court system (including neglect and status offender history), the offense that led to the disposition, home environment, educational adjustment, medical and counseling history, recreational and social associations, and any other relevant information. The importance of preparing your client for this interview cannot be overstated. Many judges will defer to the “expertise” of the probation officer who prepared the report and accept his recommendations for disposition. Your client and any family member interviewed should treat this interview as if she were speaking with the judge.

Preparing your client

Explain to your client as precisely as possible what she should and should not say during the interview. Tell her that she should not discuss any nol prossed
or dismissed charges, and if the probation officer asks about them, she should say that her lawyer told her not to talk about them and to contact you if there is any question.

As to the current charges either admitted or adjudicated, the client should not only be candid and descriptive, if requested, but explicitly acknowledge the wrongfulness of the conduct and express remorse for any damage or injury done. Carefully review and discuss the elements of the charges and the underlying facts, and rehearse the client’s explanation. Make clear that denial or minimization will hurt the client later. Clients who maintain their factual innocence or have entered an *Alford* plea should be counseled accordingly.

Encourage the client and family to express empathy for the victim, when appropriate. Try to enhance the client’s sensitivity to the concerns of the court. Work with her to acknowledge that selling drugs is like selling poison that will generate addiction or that stealing a car can cause major distress and financial harm to its owner. Too often children are reluctant to do more than blurt a one-sentence description, trying to minimize or rationalize their actions. While this response stems from anxiety, the probation officer and the court will likely assume it reflects lack of remorse or cooperativeness, creating potentially disastrous consequences at disposition.

**Preparing your client’s parent**

The probation officer will also meet with your client’s parent. Ideally, you will have been able to give the parent advice similar to that which you offered his child, explaining the significance of this pre-hearing interview and suggesting that he emphasize positive factors and avoid talking about negative ones. If your client’s parent is less amenable to a minimally restrictive disposition, and therefore, not interested in taking instruction from you, do your best to convince him that alternative plans or placements are preferable to commitment because of harmful conditions at secure facilities or chances for improved behavior after treatment. A parent’s statements to the probation officer can have a major impact on the probation report, so you want to elicit as much cooperation as you can.

Regardless of how you think your client’s and her parent’s interviews with probation went, you should speak to the probation officer before and after their meetings. You will provide any information that may assist your client and, before the probation officer finalizes his report, learn what recommendations he is considering. If the probation officer pleasantly surprises you with a less restrictive plan than you anticipated proposing, reserve your plan
as an alternative option in the event that the judge voices concern about probation’s plan at
the hearing. When the probation officer’s proposal is more restrictive than yours, take the
opportunity to emphasize the client and family’s strengths to him and advocate for your
plan. An attorney armed with the details of and insights into family and social history can
be persuasive to an overwhelmed probation officer. Furthermore, by offering a busy
probation officer your assistance in making the arrangements for your proposal, you may
encourage its adoption. However these interactions proceed, make sure to get a copy of the
probation officer’s report before the disposition hearing.

B. Preparing your client

Talk to your client about what will happen at the disposition hearing, what she should be
prepared to say, and the potential outcomes.

What will happen

Explain the procedure of the disposition hearing by describing the probation
report. Make clear that your role is, as always, to protect your client’s
expressed interests, including disputing any errors or misrepresentations in
the probation officer’s report or other supplemental documents and trying to
convince the judge that your disposition plan is best. Review the report and
anything else that will be filed with the court in fine detail with your client so
you are prepared to speak for her. See Chapter 9, page 180 if your client is
entering a plea in conjunction with the disposition hearing.

What she should be prepared to say

In most cases, only if the client has good verbal skills should she testify. If
your client does speak, she should focus on posture, expression, nodding her
head affirmatively at critical junctures, and not losing her temper at negative
comments. Remind her to address the judge as “Your Honor” and to be
polite. If your client will find it difficult to testify, consider having her write
a letter to the judge expressing her support for and desire to succeed at the
disposition plan you are recommending. You should review and edit the
letter with your client before turning it over to the court.

What the potential outcomes are

Very few clients are going to be excited by the possible outcomes of their
dispositions, but the counseling necessary to minimize concerns will vary
with each child. A client who admits her guilt, is prepared to show remorse
in court, and was adjudicated delinquent of a minor offense will probably be less anxious about her situation. A client who insists, despite clear evidence, that she is innocent and who is likely to be sent to a correctional facility after adjudication for a serious offense will require more pre-hearing counseling. Rely on concrete details to describe how the court sees the case, and explain that a difficult outcome may be unavoidable. Be careful not to sound judgmental; it is not that you do not take your client’s side, but that the facts presented make it impossible to avoid serious consequences. Review your goal, for example, of finding a placement in a residential treatment facility as a highly preferable alternative to a correctional facility. Regardless of a client’s situation or outlook, be honest about the scope of potential results of the disposition hearing. Don’t get your client’s hopes up about an unrealistically lenient disposition plan or fail to mention a harsh sanction your client may face.

Be particularly sensitive to the outlook of a client who is detained awaiting adjudication or disposition. She may be encouraged, by detention staff or her own impatience, to accept placement in a correctional facility to speed up the resolution of her case. Remind her of the ultimate benefit of taking the time to work for the best dispositional plan possible.

For a client whose potential disposition includes being placed on probation with conditions (which is usually the official arrangement when a client’s sanctions allow her to remain in the community), be sure also to explain the implications of those conditions. Make clear that your client must be prepared to take the conditions of her probation very seriously because violating them can lead to a new court hearing and a much harsher sentence, including incarceration.

C. Preparing your client’s parent

As at every stage of court proceedings, your arguments to the judge will carry more weight if the parent corroborates them, and they may fall apart if the parent contradicts them. Prepare the parent to articulate his support for your proposed disposition plan and his willingness to take on any role he might have in helping the child succeed.

You will encounter parents who are not anxious to be helpful in this way. Remind a parent, who has a negative attitude, of any progress their child has made since the initiation of the case. This may be a good opportunity to praise your client in her parent’s presence, which will provide your client with some much-needed encouraging feedback and her parent with a good example of positive reinforcement. Outside your client’s presence, you can
emphasize how harmful a severe disposition, such as incarceration, can be and, perhaps, provide promising information about the outcomes for children placed in the alternative program you recommend.

D. The disposition packet

In many cases, you will want to write a disposition memorandum to the judge and include supporting materials. This is your opportunity to sway the judge’s thinking before you and your client appear in court. File a memorandum if:

- Disposition hearings in your jurisdiction are non-evidentiary (filing a memorandum is the only way to submit evidence to the court at this stage of the proceedings);
- You have independently (not as part of a plea or other negotiations) put together a disposition plan you would like to propose to the court;
- You know or anticipate that your disposition plan will differ significantly from the prosecutor’s or probation officer’s suggestions;
- You have specifically reserved permission to argue for less restrictive alternatives than those outlined in your plea agreement; or
- The judge is not likely to honor your plea agreement.

You will not need to offer a memorandum if:

- You have obtained an agreement from the prosecutor and judge to waive the dispositional study and enter an agreed-upon disposition (most common in cases in which the offense is minor or the disposition simply adds time or conditions to an existing probation agreement or placement); or
- The judge will honor your plea agreement as negotiated with the prosecutor.

If you are going to submit a memorandum to the court, file it along with documents that support your recommendation. The memorandum and supporting documents are the disposition packet. Deliver this packet to the clerk’s office, prosecutor, and judge just before your client’s disposition hearing.

Memorandum Contents

The main purpose of the memorandum is to propose your disposition plan. Describe your plan in detail and provide support for it. The memorandum should frame your client in the best light possible; the judge may be influenced by an initial favorable impression even as he hears the prosecutor’s arguments later. Describe any mitigating circumstances and reasons a harsh disposition is
unnecessary (such as your client no longer associates with her co-respondents, or her remorse and improved behavior are signs that she will not reoffend).

The memorandum can also include arguments against incarceration when it is a possibility. You can cite studies, articles, and reports (such as those cited in the description of the harmful effects of incarceration in this chapter on page 227) to support such arguments.

**Attachments**

Whenever possible, attach to your memorandum any documentation or information that reflects positively on your client and supports your disposition plan. Include anything that demonstrates responsible behavior and thinking by your client or a positive connection between your client and the community. This is also a way to provide the court with much more information than may be allowed in oral argument and create a more thorough record for appeal. Documents you might enclose include:

- A positive report card;
- Letters from service providers describing any program in which your client participated, as well as any good behavior and improvement she demonstrated there;
- A letter from a service provider stating that your client has a space reserved in a program beginning on a specified date and describing that program;
- Letters from members of your client’s community (neighbors, teachers, coaches, clergy, relatives) describing your client’s good conduct or potential for change (see Document A33 in Appendix A for a sample request for such letters which can be tailored for use before a detention or disposition hearing);
- A letter from your client expressing remorse, commitment to improving her behavior, hope for a positive outcome from your disposition plan, or other positive attitudes;
- Documents confirming your client’s participation in any positive activities (school attendance report, after-school activity registration, awards, trophies, artwork, or other products of a positive activity such as proof of entering any treatment program);
- A copy of a new Individualized Education Program and descriptive materials about the program (see Chapter 13 for more on special education and note that these records are protected by FERPA, as explained on page 231 of this chapter, so you must first obtain written parental consent for their release); and/or
• A supportive letter or report from staff at the detention facility (if your client was detained) describing her good behavior and explaining why she does not belong in a secure facility.

V. AT THE DISPOSITION HEARING

A. Advocating for your plan

Your goal is to demonstrate to the court that your disposition plan is the option that best meets your client’s needs and addresses community safety concerns. At a non-evidentiary disposition hearing, you will have that message in your memorandum; in jurisdictions in which you can present evidence and testimony, you should do so. In any case, try to fill the courtroom with adults who support your client. The presence of relatives, neighbors, or other members of the community can encourage a judge to allow a child to remain at home. Representatives from any community programs in which you hope your client will enroll should also attend, if possible (you can issue subpoenas to help them miss work; see Chapter 5, page 102). Their presence shows the judge he can be confident that your client can carry out your plan as you have described it and has the support to do so.

Presenting evidence

You should present evidence to reiterate the claims you made in your memorandum and to contradict or clarify any untrue or misleading claims the probation officer or prosecutor makes. You may want to address:

• *The delinquent act(s) at issue*. Emphasize to the court any mitigating factors, extenuating circumstances, subsequent displays of remorse, apologies, or acts of restitution.

• *Prior record*. Point out that your client has no prior offenses or minimize any that do exist.

• *Education*. If appropriate, include special education needs—and your plan to address them—to demonstrate hope for significant change in your client’s success in school and, thus, general behavior. Submit any relevant documentation, such as your client’s new Individualized Education Program (IEP). (See page 231 of this chapter on the risks of releasing these materials and Chapter 13 for information regarding special education.)

• *Family history*. Detail any factors that have improved (or will improve), such as newly initiated family counseling, involvement of more family members in your client’s life, or promise of increased supervision at home.
Offering testimony

The best way to submit much of the information outlined above will be by examining witnesses during the hearing. Prepare anyone you ask to testify for your questions, as well as any cross-examination you anticipate from the prosecutor. Particularly valuable testimony might include that of a parent, a mental health expert who evaluated your client, or a service provider, all of whom can talk about your client’s needs and potential for improvement.

Remember that the prosecutor can offer witness testimony, as well, and that you should be prepared to cross-examine anyone he calls to the stand, especially the probation officer if he agrees with the prosecutor and opposes your plan.

B. Formality of the proceedings

Disposition hearings often proceed informally, but can take on a more formal structure if the outcome is strongly contested. You should have some idea by the time the hearing begins how much opposition your plan will face, so you can prepare accordingly. Think strategically about your arguments, using the level of formality—and the judge’s corresponding level of concern about strictly following court regulations—to your client’s advantage.

No contestation/minimal formality

If the probation officer and prosecutor agree to your disposition plan, you need not worry about procedural informalities the judge may allow, as long as you are sure to make your points on the record. State your arguments for the plan and reference any supporting materials in the disposition packet or that you are submitting to the court. Reserve the ability to make further argument in case the judge makes the unlikely decision not to follow the suggested plan before him.
Some contestation/some formality

You may face some opposition to your plan from the probation officer, prosecutor, and/or judge. In those cases, you generally will want to begin your argument by referencing any memorandum prepared for the hearing, as well as any new or additional evidentiary submissions, as you would in an informal hearing. A relaxed atmosphere may have advantages for your client: the court may allow you to introduce evidence in a less complicated manner than would otherwise be permissible, and you may have an easier time convincing the judge of the value of your plan if you can speak informally. If it becomes clear that the court does not agree with your assessment of the appropriate disposition for your client, shift into a more formal approach so the record will be well-preserved for appeal. Argue that the prosecutor failed to submit evidence supporting his plan, especially including any factual findings your jurisdiction’s disposition statute requires. For example, if you can and if there is legal merit, note for the record that the prosecutor:

- Has not proven that services the probation officer recommends meet your client’s treatment or educational needs;
- Has not proven that your client requires care, discipline, protection and/or supervision from the state; and/or
- Has not proven that his proposal for the client’s disposition is the least restrictive alternative.

Serious contestation/full formality

You will want to make a formal and thorough presentation if:

- The probation officer and/or the prosecutor will insist that your client should be sent to an incarceration facility, the most restrictive punishment;
- Your client wants to expose some institutional or systemic abuse (like police brutality, denial of educational rights, or problems in the detention facility); and/or
- Your client maintains her claim of innocence.

In these cases, pre-hearing memoranda and exhibits offered in court should include a broader and deeper range of documents, such as:

- Written policies of agencies, facilities, or alternative treatment programs;
• Research relevant to treating your client’s needs;

• Research regarding the harmful consequences of placing youth in secure institutions in general and any articles or other information about the problems in the facility in your area in particular;

• Documentation of your client’s special needs (like expert evaluations), provided you have written permission as required (see page 231 of this chapter); and

• Relevant statutes, court rules, and case law.

You can use these materials to prove that your plan—and not the prosecutor’s or probation officer’s—will meet your client’s needs and protect the community at the same time.

In a full hearing, think about bringing in witnesses. Consider who can bolster your arguments:

**In support of the placement**

*A social worker.* A social worker, or a knowledgeable employee of an agency involved in your jurisdiction’s placement process, can describe the types of placement available and the process by which the client will be enrolled in the placement for which you are advocating.

*A clinical psychologist.* Put the person who evaluated your client on the stand to describe how the program you are proposing meets the client’s needs as the expert has identified them.

*The admissions director (or another representative) of the program in which you are recommending that your client enroll.* He can speak in detail about each aspect of treatment or assistance his program provides and why your client is an appropriate candidate to receive these services.

**Against the state correctional facility** (on direct examination or as a rebuttal to the prosecutor’s case)

*Anyone investigating the facility.* Many secure facilities are or have been under investigation in response to reports of harmful and/or dangerous conditions. Bring in a representative of a child advocacy organization or other agency who can describe the findings.

*The facility’s medical director.* Issue a subpoena *duces tecum* (refer to Chapter 5, page 104) for all records of injuries to children held in the facility in the past year.
Other staff from the facility. Try to find a unionized worker or other employee who has reason not to fear retaliation to testify to deficiencies in the physical plant, education services, mental health or substance abuse treatment, discipline and morale. Investigate whether he can testify that the types of programs or treatment in which the probation officer or prosecutor claim your client will participate either do not exist at the facility or are of poor quality.

Authors of negative reports or studies. Find other people who can speak about the problems with the facility or with juvenile corrections in general. Try asking reporters whose news articles have focused on abuses for suggestions from among their sources.

C. Obtaining special dispositional conditions or orders

Most disposition judgments, usually in the form of orders of probation or commitment, will contain standard conditions or findings. Keep in mind, though, that judges may be amenable to adding conditions mandating that a parent, probation or parole officer, agency, or residential placement personnel be responsible for taking certain action or providing certain services. Learn the rules in your jurisdiction about what orders the judge can include and to whom he can direct them. If your judge is open to these requests, make them either informally or by written motion. Sometimes just one additional line on a court order can be enough to place your client’s needs at the top of someone’s list.

Examples of when to consider this possibility include:

- If your client’s parent is alcoholic, substance abusing, and/or threatening to the child, as well as if he has poor parenting, or communication skills, you could ask that the judge make family counseling with the parent a condition of probation. This effort signifies an obvious shared responsibility that can modify parental conduct or assist in protecting a client from complaints the parent may make later.

- If your client is going into residential placement or a correctional facility, orders to provide individual psychotherapy, substance abuse counseling, or other services may improve conditions for your client or be useful later in obtaining a quick release or transfer for your client.

- You may want to request that alternative program or commitment agency personnel provide, for example, the art, dance, or computer classes the client could thrive in and has always wanted. Some state statutes grant broad authority for juvenile court judges to enter orders directed to responsible adults to promote health, safety, and treatment interests of the child. If the judge orders a disposition that is more severe than the plan you and your client proposed, this strategy may resurrect some elements of your plan.
VI. AFTER THE DISPOSITION HEARING

Your responsibilities to your client continue after the judge issues a disposition order. There are some steps you should take immediately to continue your zealous advocacy; you should also be thinking about how to protect your client’s interests as she carries out the disposition assigned to her.

A. Counseling your client

Meet with your client immediately after the disposition hearing. Clearly and thoroughly explain what happened at the hearing, review the court order and its demands on your client in detail, and answer any questions your client may have. Be sure to:

- **Talk to your client about what will happen next.** Advise her to make a good impression on her probation officer and/or service provider(s). Warn her about the serious risks and consequences of violating any part of her probation requirements or dispositional obligations or of getting into trouble in her program.

- **Make sure your client knows you are still her advocate and expect to hear from her.** Your client should know to call you if she has any problems with her disposition, including complaints about the conditions in a facility, deficiencies in treatment or services, new restrictions from the probation officer, and/or an inability to fulfill a requirement of the judge’s order. You should be particularly emphatic about this point with a client who has received a blended sentence (see Chapter 1, page 7); her probation or corrections officers should not treat her as an adult but instead help her make every effort at rehabilitation and successful completion of her juvenile disposition. (Any inappropriate treatment can become support for an argument against the imposition of the adult portion of the sentence.) Tell your client that you will check in with her no matter what, but that she is your best source of quick and accurate information.

- **If it is possible in your jurisdiction, tell her that you will go back to court to protect her or improve her situation.** Explain that once you know what your client’s complaints are, you can bring them to court so the judge can address them. She has to accept the disposition order for the time being, but you may be able to get it changed later.
B. Review hearings

The rules about when and how you can request disposition review hearings vary by jurisdiction. There are many potential purposes for these hearings, and you should use them to the extent possible to protect your client. You may want to ask the judge to schedule review hearings when he enters the initial disposition order. In any case, you should move the court for a review hearing when you need to raise any of the following issues:

**Pending placement**

If your client was assigned to a program other than the one to which you arranged admission, there may be a delay in securing a place for her. If space does not open in a reasonable amount of time (the length will vary depending on the circumstances under which she is waiting, but should not be long if she is detained), you should notify the court and request a hearing. A review hearing will allow you to present evidence about how long your client has been waiting for placement and to argue again for your dispositional plan.

**Failure of service provider to deliver what the court order requires**

If your client is in a facility or program that does not adequately provide the treatment or services the judge ordered or subjects your client to unsafe, unsanitary or overcrowded conditions, a review hearing will give you the opportunity to argue in court that she needs to be relocated or reassigned. The review hearing also puts the court on notice that your client is not receiving what she needs to succeed.

**Changes to your client’s situation**

Bring to the court’s attention anything that alters your client’s needs or presents disposition possibilities that did not exist at the time of the initial hearing. Perhaps a relative in another county or state has volunteered to take custody of your client, or your client’s parent has successfully completed a drug treatment program.

C. Extraordinary writs

If you believe your client has been unlawfully placed in a secure facility, the writs of habeas corpus, mandamus, and prohibition become available. These mechanisms are part of the common law and have also been codified in some states. The writs are considered
extraordinary remedies that are available only to preserve a right that cannot be protected by a standard legal or equitable remedy. In the context of pre-adjudication detention, these writs can be used when the juvenile court has illegally ordered your client’s detention. In the context of post-disposition, these writs are available to address erroneous commitments to incarceration facilities.

Before petitioning a court for a writ, you must determine based on the case and your jurisdiction’s rules which writ or combination of writs to seek. The writ of habeas corpus is specifically used to challenge unlawful confinement. Phrasing the challenge as a request for mandamus or prohibition, however, may be more likely to succeed in some cases, depending on how the jurisdiction in question has modified the common law. Multiple writs are frequently sought in the alternative, especially mandamus and prohibition.

You may also have discretion to decide in which court to file a writ; you should make that decision based on governing state law and the temperament of possible courts or judges. For example, you should ask experienced attorneys how a specific juvenile court judge might react to a decision to challenge detention in a higher court. Remember that whether or not the youth is released, the original juvenile court judge will probably make the later decisions on adjudication and disposition and will also preside at disposition review hearings. If you decide to seek a writ, be sure to research and follow all applicable procedural rules, which are specific to these filings and can be quite technical.

The types of writs are:

Habeas corpus (“that you have the body”)

The writ of habeas corpus is best known as a collateral attack on a conviction or sentence after a case has reached final judgment and all direct appeals have been exhausted, but it is not limited to that application. Habeas corpus can be used to challenge any illegal imprisonment or detention if no other remedy is available. To initiate habeas corpus proceedings on behalf of your client, petition a court to issue the writ directed at the party that has actual custody and the ability to physically produce the youth (usually the officer in charge of the correctional or detention facility). Many state constitutions grant original jurisdiction over habeas corpus petitions to all of the state trial and appellate courts, but whether those courts can actually entertain such petitions can vary based on statutory rules. The petition is normally made to the lowest court of general jurisdiction in the county or district in which the person is restrained. Technically, an issued writ requires the jailer or warden to bring your client (the “body”) to an evidentiary hearing, but courts can skip this step and rule directly on the merits.
**Mandamus ("we command")**

This writ is issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly. The proper respondent is the lower court judge or government officer. In this context, the higher court commands the juvenile court to perform its duty to make the detention or incarceration decision correctly by not holding the youth, or orders the officer in charge of detention or incarceration to release the youth.

**Prohibition**

This writ is issued by an appellate court to prevent a lower court from exceeding its jurisdiction or to prevent a non-judicial officer or entity from exercising a power. Again, the proper respondent is the lower court judge or government officer. Here, the higher court prohibits the juvenile court from ordering the detention or incarceration of the youth or the officer in charge from detaining or incarcerating the youth.

After your client is adjudicated delinquent and as her dispositional proceedings unfold, you should initiate the appellate process to contest any questionable decisions the judge made during the course of your client’s case. Whether or not you will be your client’s appellate attorney, you have important related responsibilities to fulfill. An explanation of preparation for and procedure surrounding filing appeals follows in Chapter 12. You will also need to remain in contact with your client about the conditions of her confinement, and especially whether she is receiving any services ordered by the court. Chapter 13 includes a discussion of how to handle these issues.
Appeals

Appellate practice is a critical but often neglected aspect of juvenile defense. Appeals are part of a commitment to complete, zealous litigation on behalf of each client, and can be a means of changing the prevailing juvenile law of your jurisdiction. Even if you do not normally handle appellate cases, familiarize yourself with the appellate process to ensure that you preserve all of your client’s rights for appeal and to facilitate a smooth and rapid transition from adjudication to the procedures that will be handled by appellate attorneys.

What to consider before your first case

- **How to preserve a record for appeal.** The adjudication record impacts which appeals can be filed and their outcomes. Learn to anticipate all possible appellate issues and act accordingly. (See Chapter 10, page 213 for specific advice.)

- **A juvenile’s right to appeal in your jurisdiction.** Check your statutes, court rules, and case law regarding appeals for juveniles to determine what rights your client has, including her right to a free copy of her juvenile court transcript.

- **The direct appeal and post-conviction process of your jurisdiction—especially filing deadlines.** Even if you do not handle appeals, you will likely be responsible for initial filings, so you must be knowledgeable about your jurisdiction’s appellate process.

- **People to ask for help.** Whether or not you will take on appeals, cultivate contacts in your jurisdiction with experienced appellate attorneys, law firms with vibrant pro bono practices, and law school professors.

In order to recognize the goals of the entire juvenile justice system, it is essential that there be one appeal of right afforded to all parties materially affected. Any party entitled to an appeal .... is entitled to be represented by counsel, and the appointment of counsel at public expense upon a determination of indigency.

—IJA-ABA Juvenile Justice Standards, Standards Relating to Appeals and Collateral Review, Standards 1.2 & 3.1
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I. PREPARING FOR APPEAL

A. Throughout the case

It is your responsibility to protect your client’s appellate rights. It is critical that you create a complete record during the course of the proceedings, ensuring that all relevant facts and decisions are on the record and that you have raised all of the appropriate legal issues. As noted earlier in this guide, you should constantly ensure that the record of the case includes all statements made in court, the judge’s rulings on motions and objections, and written offers of proof for excluded evidence. During adjudication, you should make sure that the court reporter’s work is accurate by reviewing tapes, your notes, and partial or full transcripts. Regardless of who will handle your client’s appeals, it is important to be familiar with the appellate rules and procedures in your jurisdiction to ensure that your client’s rights are fully protected. Although you do not want to assume you are going to lose, you nevertheless have to take steps to ensure that your case is ready for the appellate court in the event that you do not prevail at adjudication.

Sometimes attorneys think that it is better to leave a record ambiguous, in a belief that it will insulate your client from a correct adverse decision or will provide the appellate attorney with the opportunity to make “better” arguments in support of a previous claim. This is a fallacy. It is rarely, if ever, better to have an incomplete record. Failure to insist that a judge articulate the factual and legal basis for his ruling can lead to greater uncertainty on appeal and will usually work against your client.
B. After the disposition

You may need to take additional steps immediately after adjudication to properly preserve your client’s rights and to assist the appellate attorney. You can and should continue to ensure that the record of your client’s case is complete even after the proceedings have ended. There are several ways to supplement your initial efforts:

Ensure the transcript is complete and accurate

Order transcripts at the conclusion of the proceedings, even if you are not the appellate attorney. Ask the court to enter an order directing the official court reporter to begin preparing the transcripts for appeal. In some jurisdictions, local rules provide for two sets of transcripts, one for the appellate court and one for the client. Although some attorneys only order transcripts from what they perceive to be the relevant proceedings, it is a good practice to order all of them. You may have had a brief conversation about a discovery issue on the record that may be germane to the appeal. The State may have made a representation regarding a witness or document that was never resolved. Again, since a variety of issues may be raised on appeal, it is a good idea to provide the appellate attorney and court with everything.

The list you have made of every court date, along with what happened, contemporaneously throughout the case (as recommended in Chapter 10 on page 217) will be useful to check the completeness and accuracy of the court file you receive. If the court refuses to authorize the court reporter to prepare transcripts from every date, you have a resource to assist you in deciding which transcripts to order. This list will also assist the appellate attorney, who may find that a seemingly incidental event has significance to the appeal.

If you are concerned about the accuracy of the record at any time during the proceedings, request what exists of the transcript at that time to address the issue as soon as possible. Especially if your court uses electronic recording, review the transcript carefully to make sure that all objections, sidebars, legal arguments, and critical testimony are accurately transcribed. With your knowledge of the case, it is often possible to listen to the tape and reconstruct passages that a transcriber found inaudible. If possible, seek to reconstruct the record by agreement with the prosecutor. Many jurisdictions have specific rules governing how to reconstruct the record when there is missing evidence or gaps in the transcript.
Follow up on your preservation efforts

Check with the clerk to make sure that all exhibits that were introduced (or referred to) at adjudication and disposition are included in the court file. Where appropriate, ask the judge to enter an order impounding items of evidence, such as photographs, log books, and physical evidence. There may be instances in which a witness or the State will request the return of an original piece of evidence. Typically, it is a wise policy to resist such a request because the appellate court may not accept duplicates.

Make sure that you have made offers of proof (either written or oral) of evidence that was excluded during trial. Make sure that any records that the court sealed are in the court file and not in the judge’s personal files.

Supplement the record with any new information

If additional evidence comes to light after adjudication and disposition, you may file a motion to supplement the record. Especially in jurisdictions that do not provide for post-disposition proceedings for minors, the appeal may be the last opportunity you have to vindicate your client’s rights. Consequently, it is important in every case to ensure that the appellate court has all of the information it may require to review your client’s case.

Make strategic use of concurrent jurisdiction

Unlike adult court, in most jurisdictions the juvenile court retains jurisdiction over a minor after disposition. Thus, if your client is party to an appellate proceeding, the juvenile court and the appellate court will have concurrent jurisdiction over her case. Though that technicality will generally not impact your client’s rights on appeal, it does provide an opportunity to continue to develop a record for the appellate court even after the adjudicatory record has been prepared and certified. (See Section C on the following page for a discussion on preparing and certifying the record for appeal.) For example, your client’s disposition order may send her to a secure facility and require that she receive mental health services. During the disposition hearing, you stated on the record (thereby preserving the issue) that out-of-home placement was inappropriate. After the record is certified and the appellate proceedings commenced, you discover that your client is not receiving mental health services—a fact which may be relevant to your client’s appellate claims—and initiate a disposition review hearing. Once disposition review has concluded, you should file a motion to supplement the appellate record with the disposition review transcript. You will have strengthened your client’s position on appeal and reminded the juvenile court that the case continues to be subject to review.
C. Post-disposition motions

Post-disposition motions can serve a variety of purposes. Remember that filing these motions is not equivalent to filing an appeal. Do not be deterred from filing an appeal in the likely event that you lose these motions.

Finalizing the record

In some cases, you will need to file motions finalizing the record of the original proceedings. For example, you may need to file a motion asking that the court issue a memorandum of decision or certify a transcript of an oral decision. If there is an error or omission in the record, you can file a motion to correct or expand the record. If the juvenile court judge failed to address an issue you will raise on appeal or his statements about it were unclear or incomplete, you may need to file a motion asking that clarifying information be added to the record.

Asking for reconsideration

In some places, the juvenile court is overseen by a decision maker who is not a judge (variously called a magistrate, master, commissioner, or referee). Typically, a judge must sign off on the decisions of these magistrates, and you can file a motion for reconsideration or motion for a new adjudication in front of a judge. In some places, this action is called “taking an exception” to a magistrate’s decision. (Document A49 in Appendix A is a sample motion taking exceptions to a master’s recommendation.) Because these processes differ from place to place, you will need to learn the relevant rules and procedures in your jurisdiction. You should also consult with experienced attorneys familiar with typical practice in your area to determine in what cases such motions or requests are likely to improve your client’s outcome.

In jurisdictions with only judges, it still may be necessary or strategically wise to file similar motions. You may need or want to file a motion for a new adjudication in which you alert the judge to errors made throughout the proceedings and outline how those errors prejudiced your client. You can challenge the judge or jury’s verdict, detailing how the evidence failed to prove your client’s guilt beyond a reasonable doubt. Such a motion can also serve as an opportunity to clarify facts and legal arguments. Similarly, you may want to file a Motion to Reconsider Disposition, again outlining errors and requesting a different disposition.
Filing these and other post-disposition motions is an opportunity to place facts in the record that may have been omitted and to raise additional arguments so as to preserve them for appeal. You should check the rules in your jurisdiction to see if filing such motions is required to preserve issues for appeal.

D. Client consultation

As noted in Chapter 10, you should introduce the concept of an appeal to your client during the course of the proceedings. By having multiple conversations about the appeals process, you increase the likelihood that your client will ultimately understand it. Furthermore, if you wait until after the proceedings to begin explaining the appeals process, it is less likely that your client will be in a position to grasp what you are saying. When she hears the judge adjudicate her delinquent or commit her to a disposition, she will be fixated on her immediate fate. She will have a difficult time concentrating on what you are telling her about the appellate process. If you have introduced the subject to her when she was not under such stress, however, then she will likely be more receptive to the information.

Meet with your client—privately, and preferably outside the courtroom — as soon as is feasible after her disposition hearing to discuss the possibilities for appeal with her. Your conversation should cover several topics:

*How the appeals process works.* Before your client can decide whether she would like an appeal filed on her behalf, she needs to understand what that means. Explain to her that you will write up a complaint about something that was unfair or incorrect during her adjudication or other court proceeding and present it to the juvenile court judge’s supervisors. These supervisors can tell the judge that he made a mistake and needs to fix it by either starting the adjudication over or dismissing the charges. You should also explain your client’s right to file appeals (as it exists in your jurisdiction), making clear that not filing an appeal is waiving a right.

*What specific issues apply in your client’s case.* Engage in a preliminary review of the appealable issues in your client’s case. Tell her what issues you think are viable for appeal, and make clear what you think her chances are of succeeding in each potential appeal, as well as what success in each argument would mean for her. Be honest and straightforward, so your client doesn’t have unreasonably high expectations. If someone else is going to handle the appeal, explain to your client that these are just your initial thoughts and that the next attorney will do additional research to determine whether these are good claims to argue and whether there are other issues to raise.
Appeals you would like to file that will not impact your client’s case. Many issues that arise during a given case are no longer relevant by the time you can appeal them, but successful appeals will make a significant difference to juvenile cases that follow. For example, if your client was held in detention for an unreasonable length of time pending placement in a treatment program, she may have been moved by the time a judge reviews your appeal. Her appeal can no longer remedy the injustice to her, but case law limiting how long a child can await placement in detention would improve the situation of many children who were subsequently in similar situations. Even though the appeal will have no effect on your client’s current case, you need her permission to file in her name and so must explain your goal and request.

Who will represent your client on appeal. In some offices, you may be required to or may elect to handle the appeal yourself. You should be ready and willing to take on this responsibility if your client will otherwise be unable to proceed with her appeal. Many larger public defender offices have attorneys dedicated to appellate practice, and they will take over your case once the notice of intent to appeal is filed. Your client can also elect to have another lawyer take on her appeals. If you will not represent your client on appeal, you likely will need to begin the appellate process, and you should assist in the transition to the new attorney. If you do plan to be the appellate attorney, it is generally a good idea to have another lawyer review the case to see if an ineffective assistance of counsel claim could be raised. While it is always hard to have your work challenged, it is sometimes necessary for your client’s sake.

Whether your client wants to exercise her right to an appeal. The ultimate decision regarding whether to file an appeal rests with your client. It is your duty to ensure that her decision is informed by good advice, but you cannot act without her approval.

Clearly state that you welcome your client’s input on appellate issues and will keep her informed. As you are preparing the appeal, ask your client for her thoughts on mistakes that were made during the trial. Because she is focused only on her own case, your client will often have some terrific insights. She may also remind you of something that happened that is not reflected in the record. In addition, asking for input gives your client a sense of ownership over her case, which can be very helpful to her, particularly if she is in custody. Be sure to send her copies of everything you file and outline the next step in your cover letter. Your responsibility to communicate regularly about your efforts on her behalf continues through all stages of her case.
II. FILING AND LITIGATING THE APPEAL

Appellate practice requires strategic decision making. Consult with mentors regarding what tactics will be most effective in appeals and how best to carry out those strategies. You may find assistance in your office’s appellate section, in other attorneys’ offices, or in the appellate clerk’s office. The advice and support of an experienced attorney can be extraordinarily helpful as you become familiar with the appellate process.

A. Potential issues for appeal

You can bring appeals based on a wide variety of issues. Most of your appeals will address what you consider to be judicial errors, but you and your colleagues in the juvenile defense community should always be alert for opportunities to challenge new or preexisting laws. Examples of complaints you might make include:

- Pre-adjudication detention was illegal or for too long;
- The child should not have been allowed to waive counsel at detention hearing, arraignment, or any other critical proceeding;
- The child did not make or the court failed to ensure that she made a knowing and intelligent waiver of counsel at the detention hearing, arraignment, or other stage;
- The court erred in finding your client or family not indigent;
- The court order requiring parents to pay for (or reimburse the county for) counsel created a conflict of interest for defense counsel;
- Allowing the State to proceed on probable cause by way of proffer violated the child’s constitutional rights;
- The court erred in failing to appoint an expert (on false confessions, eyewitness identification, fingerprints, ballistics, mitigation for disposition, psychologist or psychiatrist);
- The court erred in denying a motion to suppress statements, evidence, or out-of-court and/or in-court identification;
- The court erred in admitting or excluding certain evidence;
- The court erred in failing to grant motion to sever adjudications;
- The court erred in quashing a subpoena or granting/denying a discovery request;
- The state failed to prove the respondent guilty beyond a reasonable doubt;
- The court erred in disposition because it failed to consider the least restrictive placement, the disposition order was excessive, or another flaw;
- The child received ineffective assistance of counsel, which prejudiced her case;
• The court erred in transferring the child to adult court or sentencing her to an adult sentence pursuant to extended juvenile jurisdiction;
• The child was denied or did not properly waive her statutory right to a jury trial; and
• A statute is unconstitutional, on its face or as applied, or otherwise invalid.

You also can and should raise appeals to contest an unlawful pattern or systemic issue, such as:

• Zero tolerance discipline policies in schools;
• Inappropriate use of detention;
• Practices at detention hearings that violate constitutional or statutory provisions;
• Problematic responses to probation violations;
• Questionable procedures for taking custody of youth; and
• Inappropriate dispositions.

In those cases, consider networking with other attorneys in legal aid offices, civil liberties organizations, and law school clinics. (A list of clinics and other potentially helpful organizations appears in Appendix D.) Your client’s case may provide a helpful addition to broader or class action litigation, and you can obtain invaluable advice and assistance. If you are going to file an appeal to address a recurring issue, try to select a case with egregious facts and a sympathetic client without denying any other client her right to appeal if desired.

B. Know the rules

Statutes, case law, and court rules govern the procedures for appeals in your jurisdiction. Know which is the immediate next court for your client’s case. Be cognizant of the following issues:

*Which rules apply.* Though some jurisdictions have rules specifically governing appeals for youth adjudicated in delinquency court, most apply criminal appellate rules, civil appellate rules, or a combination of the two. You need to know which rules apply to your client’s appeals. (In appealing cases involving extended juvenile jurisdiction designation or blended sentencing, you should determine whether juvenile or adult criminal rules apply. If you have discretion in the matter, think strategically about opting for one set of rules over another. If there is any uncertainty as to which rules govern an appeal, be sure to take steps to preserve your client’s rights under both sets.)
Timing. Know the deadlines for filing appeals-related documents in your jurisdiction and be sure to meet them. Failure to do so could cost your clients dearly and qualify as legal malpractice. Check your rules to determine if filing preliminary motions (such as to determine indigence and waive fees) extends time limits, so you or the appellate attorney can take advantage of any extra time to prepare appeals.

Standard of review. Depending on the issue on appeal and the rules of your state, appellate courts may use either a deferential or *de novo* standard of review. Under deferential review, the appellate court must grant deference to the finding of juvenile court judge, so there is a heavy burden on the appellant to demonstrate error. *De novo* review requires no deference to the original court’s decision and entails a new finding on the relevant issue using the same standard the juvenile court judge applied. In general, purely legal issues are reviewed *de novo*, whereas findings of fact are considered deferentially. Take into account the way the appellate court will examine your issues on appeal as you strategize about what appeals to file and how to frame your arguments.

Procedure. The requirements for filing appeals vary significantly by state. Regardless, you will want to promptly order transcripts. In most jurisdictions, the attorney who represented the client at adjudication is required to file a notice of appeal within a certain period of time (usually 30 days). Your default should always be to file such a notice. If your client later decides to waive her right, she can withdraw the appeal, but if you fail to file the notice by the deadline, she has permanently lost her right to appeal. Most notices of appeal are very basic. Subsequent steps will follow local rules of practice, which will also specify any procedural or other requirements; follow the guidelines carefully to ensure the appeal will not be thrown out on technical grounds. An outline of basic steps for direct appeals follows.

C. Direct appeals

Even if appeals from juvenile cases are rare or unheard of in your jurisdiction, you should use them to fulfill your responsibility to zealously advocate for your client’s interests. Sometimes just the mention of an appeal will encourage a judge to reconsider his position on a motion or objection, but if the judge erroneously rules against your client during adjudication, utilize the appeals process.

Consult the rules, as well as other attorneys, in your jurisdiction and compile a set of notes or instructions related to procedure and timing to keep your appeals on track.
1. **File a Notice of Intent or Notice of Appeal in juvenile court**

Regardless of who will file the appeal itself, you must file a basic notice of intent to file an appeal or a notice of appeal. These are usually filed in the juvenile court and served on the prosecutor. (Document A50 in Appendix A is a sample notice of appeal.)

2. **Seek a stay of the juvenile court’s decision**

Especially if the juvenile court has ordered that your client be incarcerated or has placed her on release with onerous conditions (or conditions she is not likely to meet), request a stay. In many jurisdictions, you must seek the stay from the juvenile court, but may appeal a denial immediately to the first level of appellate court. Though standards for granting a stay vary widely, you should be prepared to state why you have a substantial likelihood of success on the appeal and how your client will be harmed by the failure to grant the stay.

3. **Request that the record be prepared and certified for appeal**

After you have ordered the transcripts and checked to ensure that the court file is complete, request that the clerk of the court prepare and certify the record. Sometimes this process is automatic when you file certain documents in the appellate court. Even so, it is a good idea to get the process going early and to make sure that the clerk’s office has begun to prepare the record with enough time to meet its deadline.

4. **File a notice of appeal or docketing statement in appellate court**

The appellate attorney must file a notice of appeal or docketing statement with the appellate court. This notice alerts the appellate court to the existence of your appeal and, in some cases, alerts the court to request the record of the proceedings being appealed from the clerk of the court that heard the case. Check your rules to determine whom you are supposed to serve. In some states, when you are raising a constitutional challenge to a statute, you are required to serve notice on the Office of the Attorney General in addition to the prosecuting attorney. When in doubt, call the appellate clerk. (Document A51 in Appendix A is a sample docketing statement for an appeal regarding several issues.)
5. File necessary motions regarding time extensions

You can file motions asking for or opposing an extension of a filing deadline. You should file this type of motion if the court reporter or clerk does not file your client’s case record with the juvenile and/or appellate courts on time. Do not assume that the reporter or clerk will meet the filing deadline. Approximately one to two weeks before the record is due, you should call the clerk or court reporter’s office to find out the status of your client’s record. If it will not be ready by the deadline, you can file a motion with the appellate court requesting additional time in which to file it. In addition to ensuring that your client’s case will not be prejudiced due to a technical error, you signal to the appellate court that you are taking your duties seriously and put subtle pressure on the clerk to complete the record. This strategy also puts you in a better position to object to your opponent’s multiple requests for extensions of time to file briefs and gives you credibility when you have to request an extension yourself. Time is especially significant in juvenile cases, so it is important that you do not facilitate or tolerate unnecessary delays.

6. Write and file your brief

In the appellate brief, lay out your argument in its entirety. Describe the basis for your claim and use every available fact or piece of evidence to convince the appellate court to reverse the decision of the juvenile court. Rely as much as possible on established case law to support your argument. If you are arguing an issue of first impression, try to find helpful law in other jurisdictions.

Be sure to file your brief by the appropriate deadline. Most appellate courts have very specific rules governing page limits, text formatting, brief structure, number of copies and service requirements, and even color of cover page. You must adhere to these rules and any others regarding appellate briefs.

The State will have a certain amount of time to file its response brief, and, depending on the rules of your jurisdiction, you may be able to file another brief replying to the State’s response.

7. Solicit other parties to file amici curiae briefs

If you are challenging a law itself, rather than solely its application, try to solicit another party or parties to file a brief of amicus curiae (literally, “friend of the court”) on your behalf. This step is secondary to writing your own brief, but must occur simultaneously with that effort. Amicus briefs are typically due on the same date as the party brief they support. You may be able to engage child
advocacy organizations, medical, scientific or psychological organizations, educational associations, and/or law firms in your effort. An *amicus* can clarify points of law relevant but not central to your case or file a “Brandeis brief” with policy arguments that support your legal claims. You will need to have an idea of the issues that you want *amici* to weigh in on, as well as some of the arguments on which you believe they should rely. Typically, one entity will be responsible for writing a brief that other individuals and/or organizations will join as signatories. You should make sure that you and your *amicus* or *amici* have a clear understanding of who is responsible for drafting and editing the brief, soliciting additional signatories, filing a motion for leave to file an *amicus* brief, paying to print the brief, and filing the brief.

8. Oral argument

Oral argument is the time to convince the appellate judge(s) who have read the materials and briefs related to your appeal that your argument should prevail. The dialogue will be entirely between you and the judges (and, separately, the State’s attorney and the judges). As in juvenile court, you will need to be prepared and focused, but oral argument is a very different process than lower court delinquency proceedings. It is, therefore, important that you are thoroughly prepared for your argument.

You should have a strong handle on the facts of your case. To successfully argue the appeal, you must know the record well enough to direct the appellate court to the pages where relevant testimony, documents, or rulings can be found. In the case of a voluminous record, consider preparing a summary to reference during arguments. You should also know the facts of the cases cited in your and your opponent’s briefs and fully brief the key cases that will be the focus of the judges’ inquiry. You may also want to prepare an alphabetized list of all cases that are included in the briefs, with one or two lines stating the facts and the holding. This “cheat sheet” can help to trigger your memory of a particular case should a judge ask you about it.

You will have advance notice of the date of oral argument. Try to set up one or two “moots” with local practitioners and law professors who will subject you to mock oral argument as part of your preparation. Likely moot panel members are experienced appellate advocates, juvenile lawyers, and academics. Ask at least one person on your moot panel to take a view that opposes your arguments. You should engage in your first moot at least a few

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I have learned the hard way to follow every rule about filing appeals to the letter. I have had briefs rejected for having the wrong margin width and font size.

—Juvenile defender
days before your argument so that you have time to restructure your argument and clarify your positions in response to questions and/or issues that arise during your moot. Do not make the mistake of thinking that moots are only for the least experienced attorneys; even the most experienced appellate lawyer can benefit from a good moot.

The judges will have, and should be familiar with, the complete record of your client’s case at oral argument. They will expect you to hold a meaningful dialogue with them, initially focusing on the key strengths of your case and the weaknesses of the State’s position and then responding to their questions. You should not view interjected questions as interruptions but rather as opportunities to clarify and persuade. When an appellate judge asks you a question, answer it. “I’ll get to that in a minute” is not an acceptable response to the court. Keep an ear sharply tuned to suggestions from the judges as to alternative arguments or options which may unexpectedly affect your goals.

9. Await the decision
Depending on your jurisdiction and/or the discretion of the appellate court, the decision regarding your appeal may or may not be published. Be sure to share all the information you receive with your client as soon as possible. Many jurisdictions will send you a notice announcing that your decision will be filed on a particular day. If your client is incarcerated in the same town in which you practice, you should consider planning to drive out to see her immediately after you get the decision. In the case of a client who is housed further away, try to arrange an attorney-client phone call on the afternoon that the decision is due to be released. If your client is not in custody, invite her to go with you to pick the decision up or arrange for her to call or come to your office that afternoon. Ultimately, this process is all about your client; be ready to explain to her what the decision means and what, if any, next steps can or must be taken.

10. Be ready for the next step
Even before the appellate decision is issued, you should have an idea of what action you will take depending upon the outcome. Be ready to determine what, if anything, you need to do in order to take advantage of the decision if you are successful in the appellate court. Typically, the losing party has a certain number of days in which to file a petition or motion for leave to appeal in the next appellate court. If the State has lost and decides to appeal, consider filing a motion to have your client released on appellate bond. If you have lost,
talk to your client to determine whether she wants to appeal to the next court. Keep in mind that you usually only have a very short timeline for filing a petition for leave to appeal.

D. Interlocutory appeals

Interlocutory appeals are those which take place before juvenile court proceedings have concluded. Though usually only final decisions are ripe for appeal, many jurisdictions allow appeals from some types of interlocutory orders. Alternatively, you may be able to seek collateral review (see Chapter 11, page 245 for information about extraordinary writs). In cases affecting detention status, admissibility of a confession, transfer decisions, and/or procedural or pre-adjudicatory issues, you should investigate whether you have the option to file an interlocutory appeal instead of waiting for the conclusion of the substantive case. Sometimes, the mere request for an interlocutory appeal will inspire the court to reverse itself.

The procedure for filing interlocutory appeals, like direct appeals, varies from place to place, and you should become familiar with the rules in your jurisdiction. Some jurisdictions allow juvenile court judges to “certify” novel questions of law by requesting a ruling from an appellate court before the lower court proceeding is concluded. When a lower court is applying a new law or following a general order from a supervising judge, the court may be receptive to a request to certify a question for interlocutory appeal. Know whether this procedure is an option in your court and how to request it.

1. Get the partial transcript

As with direct appeals, there must be a written order on the record regarding the issue in question. You will need to order the transcript of the proceedings that have taken place so far.

2. File a petition for leave to file an interlocutory appeal

Typically, you will submit to the juvenile court and/or the appellate court a petition for leave to file an appeal of a non-final order. This petition must include:

- A statement of the legal issues in question;
- A statement of facts;
- A concise memorandum of law;
3. Request a stay

Depending on the potential implications of the decision on an interlocutory appeal, you may want or need to request a stay in juvenile court proceedings pending the outcome of the appeal. Stays are typically appropriate if 1) the client will be irreparably harmed or 2) the issue will become moot without one. Usually, you will first seek a stay in juvenile court, and the request will move to the appellate court for review if denied. Be aware of your court’s deadlines for accepting such a request, receiving opposing counsel’s response, and issuing a decision, as well as possible methods for avoiding delays in that process. Note also that depending on rules in your jurisdiction, the circumstances of your client’s interlocutory appeal, and whether you are simultaneously employing other tactics to address the relevant issue, you may want or need to request a stay before you enter the petition for leave to file.

4. Proceed as with a direct appeal

The rest of the interlocutory appeals process parallels the process for briefing and litigating direct appeals; refer back to that section of this chapter for a general description.

During the appellate process or at earlier points during the course of your client’s case, it may become apparent that she is also in need of assistance navigating systems outside the scope of the delinquency court. Basic information about collateral issues frequently relevant to youth in delinquency court follows in Chapter 13.
Related Proceedings

Your client may be entitled to a host of benefits and protections outside of juvenile court. Many factors (such as her age, status as a child out of the home, disability, and right to education) can give rise to legal rights and due process protections. Assisting your client in proceedings outside of juvenile court, even if only to provide her with a helpful referral, can empower her to begin to address important issues in her life and work toward keeping her out of juvenile court. Some proceedings may arise out of the same incident alleged in your delinquency petition, and your representation can provide an effective means for investigation in your juvenile court case. Other proceedings may seem more tangential, but are directly related to your ability to win your client’s release or convince a court to adopt your disposition plan. These are matters of great import to your client and may be at the root of the events that brought her to the delinquency system.

A detailed examination of these related proceedings is beyond the scope of this guide. What follows are brief descriptions of some common, related proceedings to use as a starting point.

What to consider before your first case

- Local rules, statutes, and regulations applicable to related proceedings. School disciplinary hearings, the expungement process, and rights to other proceedings will vary by state. Know your state rules, so you can be prepared to advocate for your client.

- If you decide not to represent a client in related proceedings, what other attorneys, advocates, or organizations can provide assistance or appropriate referrals for your client? Ask experienced attorneys or other allies where you can send clients for assistance and support.

—ACCD-NJDC Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems, Principle 9
I. SCHOOL DISCIPLINARY PROCEEDINGS

It is not uncommon for children in the delinquency system to be having trouble in school. As a child’s defender, sometimes you will learn of school disciplinary proceedings because the charges you are defending against arose from an incident at school. For example, your client may be facing expulsion and delinquency charges for an assault alleged in a schoolyard brawl. Other times you will hear of disciplinary problems only when you are investigating for a motion for release or a dispositional plan. You might be representing a client on car theft charges and find that she has been repeatedly suspended this year for talking back to teachers. Whether the school matter is directly related to the delinquency incident or not, school disciplinary problems will impact your case. Judges are more likely to detain and give harsher dispositions to children who are not doing well in school. Usually this reflects not an intent to punish the child for school problems but a concern that this very important arena in the child’s life is awry. The fact is, kids having trouble of any kind in school are more likely to get arrested or become chronic truants. Knowing school discipline rules and procedures means you can secure better outcomes in your client’s delinquency case, as well as make it less likely she will be a return client.

A school disciplinary hearing is an administrative hearing, which affords fewer due process protections than those of juvenile court. But children do not “shed their constitutional rights … at the schoolhouse gate.”203 The U.S. Supreme Court held in Goss v. Lopez, 419 U.S. 565 (1975), that children are entitled to basic due process rights before the school can decide to expel or suspend them. Goss held that due process for a short suspension (lasting less than ten days) entails, at a minimum, oral or written notice, an explanation of the evidence against the student, and an opportunity to respond.204 This will often mean merely a
meeting in the vice principal’s office. Furthermore, because there is no requirement that there be time between the notice and the hearing, the typical short-term suspension process can be the vice principal telling a student why she is in trouble and then discussing it with her then. In most cases, this scenario will meet the due process requirements of Goss for a short-term suspension. Goss does require, however, that the notice and hearing occur before the suspension unless the student poses a continuous danger to people or property. Only then may a school remove the student from campus before the notice and hearing occur.\[205\]

**Goss** did not specify the due process requirements for a longer suspension or expulsion, saying only that removal from school for more than ten days “may require more formal procedures.”\[206\] Lower court decisions on the issue vary. In some states, the school must provide the student with written notice and a written list of witnesses. Some courts have held that the student must be permitted to have an attorney to represent her in the hearing and to cross-examine any witnesses.\[207\] In other jurisdictions, courts have held that the administrative burden of these procedures is too high.\[208\]

You will need to read your state’s statutes and rules, research case law, and contact your local school board for local rules and procedures. This research should not be overwhelming; there is not likely to be a large body of law. Understanding your client’s rights as a student is essential to your role as a defender. Errors made in a school discipline setting can have a significant impact on your strategy in court and the power of your arguments.

**Using records of past disciplinary proceedings in delinquency court**

In addition to other education records, you should always obtain, by subpoena if necessary, the records of disciplinary proceedings. These will contain a variety of useful information, possibly including statements of people who will be witnesses in your client’s juvenile court case or evidence of mitigating factors explaining the behavior for which your client was suspended or expelled. The information in these records can support a motion for release, help bolster your position in negotiations, be used to impeach witnesses at adjudication, and strengthen your disposition recommendation. If, upon reviewing records, you find that due process was not afforded, you can use that information to argue to the juvenile court judge that he should disregard the school incident. You should also seek a rehearing or administrative appeal of disciplinary results that seem unfair or incorrect. Your ability to credibly dispute or minimize a school behavior problem will reduce the ability of the prosecutor or probation officer to use it against your client. Finally, if your client was arrested while she was kicked out of school, you can argue that this
situation calls not for further punishment, but a focus on getting her back in a school that will meet her educational needs and help her stay out of trouble.

If your client has disciplinary proceedings pending

In some cases, your client’s school will set disciplinary proceedings between your client’s arrest and disposition hearing. In those instances, you can help your client’s case by assisting her in the school disciplinary hearing. Help your client and her parent get ready for the hearing; preparation should include interviewing the principal, teachers, and/or other students who have knowledge of the relevant incident. Offer to attend (or to have a member of your staff or another informed individual attend) the hearing to act as your client’s advocate. If a knowledgeable adult can attend her hearing and contest any improper conduct or inaccurate statements, the result is much more likely to be fair and favorable for your client. Furthermore, if the delinquency complaint against your client arose from the same incident as led to the school disciplinary hearing, you can get valuable information by representing her at the disciplinary hearing. If possible, seek a rehearing or administrative appeal if the results of a hearing seem wrong.

II. SPECIAL EDUCATION PROCEEDINGS

This section provides a broad overview of special education advocacy; for a thorough treatment of this topic, see Special Education Advocacy Under the Individuals with Disabilities Education Act (IDEA) for Children in the Juvenile Delinquency System by Joseph B. Tulman and Joyce A. McGee (University of the District of Columbia School of Law, 1998), available at http://www.law.udc.edu/programs/ juvenile/pdf/special_ed_manual_complete.pdf

A. Individuals with Disabilities Education Improvement Act (IDEA)

The federal Individuals with Disabilities Education Improvement Act (IDEA) of 2004 mandates that children with impairments (as defined within the statute) have a right to a free, appropriate public education (FAPE). That right includes the provision of special education, related services, and transition services in the least restrictive environment in which they can be provided. Children from birth through age 21 may be eligible for services. States set the upper eligibility limit between the ages of 18 and 21.
Definitions

*Special education.* This term refers to a specially designed, free academic program that provides an appropriate education to meet the needs of a child with a disability.

*Individualized Education Program (IEP).* An IEP is a written statement for a child with a disability that details the child’s present level of academic achievement, measurable annual goals, how progress will be measured, the special education and related services to be provided, and the transition services to be provided (if applicable).

*Related services.* These are services to complement a child’s education, including transportation to school, speech therapy, psychological services, physical therapy, social work, or parental counseling.

*Transition services.* IEPs for children age 16 or older must include a plan designed to promote the child’s transition to post-secondary school activities, which may include vocational services or independent living training.

*Least restrictive environment.* Special education services must be provided so that the child is only as removed from the regular education environment as she must be to learn successfully. If possible, a child should remain in a classroom with non-disabled students and receive extra assistance rather than being placed in a class of only disabled students. A child should only be put in a more restrictive environment if she cannot progress in a less restrictive one, even with support.

**How a child becomes eligible for special education services**

In order to become eligible for special education and related services, a child must be evaluated and found to have a disability. The range of disabilities contemplated under the IDEA is broad: autism, learning disabilities, emotional disturbance, traumatic brain injury, attention deficit/hyperactivity disorder, mental retardation, hearing or vision impairment, dyslexia, and many other impairments can meet the definition of disability under the IDEA.  

Anyone can make a referral requesting that a child be evaluated. The school district must evaluate a child who is suspected of having a disability and must complete the evaluation within sixty days. The district must pay for the evaluation and must evaluate every area of suspected disability. Evaluators must be professionals qualified to perform whatever assessment is necessary for the suspected area of disability.
You should consider advising your client and her parent to seek a special education evaluation if your client is:

- More than one grade level below the norm for her age;
- Failing more than one core subject;
- Chronically absent; or
- Frequently cited for behavioral problems in school.

Creating an Individualized Education Program (IEP)

Once a child is evaluated, a team of people, called the “IEP Team” (Individualized Education Program Team) reviews the evaluation data. The IEP Team is made up of individuals specified by law. It must include representatives of the school district, the child’s parent, regular and special ed teachers, and others. With the consent of either the parent or the district, anyone who has knowledge about the child and her needs can be a member of the IEP Team. That means the child’s attorney, her court-appointed special advocate (CASA), or another adult who cares about the child can participate.

The IEP Team decides whether the child is a person with a disability as defined under the IDEA and whether she needs special education and related services. If the answer to both questions is yes, then the IEP Team puts together a written IEP, the components of which are specified by law. The IEP Team is the only entity to make determinations regarding the content of the IEP; a parent or district acting on their own cannot make determinations as to eligibility or what a child’s education program should include.

The IEP has tremendous potential to address the needs of the child, including behavior problems that may or may not be related to the disability. The program must address each particular child’s needs, supplying specialized services to help her progress in school. The IEP needs to specify goals and objectives and how progress toward those goals will be measured. If the child is not progressing, then further assessment and modifications and revised goals should be implemented. It is not uncommon for children to be languishing in special education programs that are not appropriate for them; an important place for advocacy is making sure that the services provided are really what the child needs.

B. Special education advocacy in delinquency cases

Special education advocacy is a specialized area of legal practice to which attorneys sometimes commit themselves full time. If you are part of a large public defender office with a special education team, work with those colleagues to address your client’s special
education needs and use the resolution of those problems to your client’s advantage in her delinquency case. If you do not have such support and will advocate for your client’s special education needs yourself, there is a lot you can do to help your client in this arena, even with limited expertise. Securing special education services, or making sure that the services your client is getting are the right ones, can go a long way in bolstering your arguments in juvenile court. Take time to familiarize yourself with the IDEA. Explore resources in your community. There may be private attorneys who specialize in education law and are willing to take on cases pro bono or under the fee-shifting provision of the IDEA. Your local legal services office may also take education cases. If legal services does not handle these cases, consider meeting with someone from that office and describing the need you see. Case priorities can change, and if they hear about a need, their attorneys might consider targeting education cases. Look in your community for organizations, such as peer advocacy groups, parents’ groups, or groups concerned with specific disabilities.

Keep in mind that the parent, not the child, is the actor in IDEA proceedings. That means that, in stark contrast to the delinquency case, if you are participating in IDEA proceedings, you will represent the parent, not the child. If your client and her parent seek the same result in regard to the child’s educational placement, you can advocate for that outcome with little concern. If your client and her parent disagree, you should ensure that you meet your professional and ethical obligations to your client by avoiding any potential conflict of interest issues.

If the parent is the prevailing party in an IDEA claim, the court can award attorney’s fees to the lawyer who represented him. (Note also that if the court determines that the suit was frivolous or unreasonable, attorney’s fees may be awarded to the local education agency instead.) The availability of attorney’s fees means you may be able to collect payment for your extra work or more easily encourage other attorneys in your area to represent children who need special education services.

**Your client’s IEP**

In order to make arguments in court relying on a client’s special education needs, your client should have an IEP describing what those needs are and how they must be met. Sometimes a client will already have an IEP when you take on her case; you may, however, still need to review her educational needs. Look at her IEP. How old is it? Does it need updating? Ask the child, teachers and parents, “Is this working?” In many cases, the very fact of the delinquency matter will be a red flag for problems in school. IDEA requires an annual review of IEPs and a new assessment of eligibility every three years. Review and additional assessment can occur more often, however. Parents or other IEP Team members
can request a review or more evaluation if the IEP is not working. In the event of a conflict with the school, the parent can also file for a due process hearing to challenge any problems with his child’s assessment, IEP, or provision of services.

In some cases, you may decide to suggest that the parent of a client who does not have an IEP seek an assessment of his child’s educational abilities. Because children in the juvenile justice system are more likely than those in the general population to suffer from disabilities, pay attention to signs that a new client has difficulty reading, writing, or processing information. If you believe that a client may have special education needs that have not been identified, encourage her and her parent to seek an assessment. Be sensitive to the stigma associated with being a special education student, and explain the advantages of having an IEP. If she and her parent agree that requesting an assessment makes sense, and the child is determined to be eligible, participate in planning the IEP and stay involved so that its requirements are met.

**Using an IEP in court**

Each client’s special education needs will figure differently into her delinquency case. Some basic suggestions follow.

*Use the implications of your client’s IDEA-eligibility to her advantage.* An IEP will describe your client’s impairment, as identified by the expert who evaluated her, in detail. A disability that impairs learning may be relevant to the delinquency case in several ways. For example, you may be able to use the information to argue that your client is not competent to understand *Miranda* warnings and waive her rights. If her disability is severe, you may have grounds to argue that she was not acting with criminal intent when she committed the offense of which she is accused.

*Use your client’s IEP to keep her in the community.* Your client is entitled to all of the services described in her IEP regardless of her involvement in the juvenile justice system. Use the IEP to keep her in her community, or at least to prevent major disruption in her education. Argue at a detention hearing that your client should not be placed in a detention facility, or at a disposition hearing that she should not be placed in a training school, because she will not receive instruction and services as mandated by her IEP. If your client did not have an IEP at the time of the offense for which she is facing punishment, or if her services were not meeting her needs, make clear to the judge how likely it is that her behavior will improve with a new IEP.
Use the IDEA’s protection in discipline cases. The IDEA says that a child cannot be expelled from school for conduct that is a manifestation of her disability. (Note that there are exceptions for drug or weapon possessions, and causing serious bodily injury to another.) The team who created the child’s IEP must determine whether the particular behavior is a manifestation of her disability or not. This provision of the Act is a critically important way to protect your client’s educational rights. Although the IDEA does not prohibit schools from reporting to authorities criminal activity of students with disabilities or preclude the juvenile court from exercising jurisdiction, a school may not report misconduct in an effort to avoid its responsibilities under the IDEA.

Use the IDEA’s protection of a right to a FAPE. Even if a student is expelled from school, she retains her right to a free, appropriate public education under the IDEA. She must continue to receive special education and related services that help her reach her IEP goals, even while expelled. Although the IDEA permits a child to be placed in an alternative educational setting, the interim placement is limited to 45 school days. Unless changes are made to the IEP by the IEP Team or the school gets an order from a hearing officer, the student is entitled to return to her original school. The IDEA provides strong support for your arguments for educational services to be a focus of your client’s disposition. One argument, for example, is that any placement in detention must be consistent with the requirements of the child’s IEP. Another argument is that by virtue of the Americans with Disabilities Act (ADA), the delinquency court must take the child’s disability into account in its dispositional order and accommodate the child’s special needs. This strategy could help you to get your client placed or moved into a different, more appropriate placement.

Using the IDEA to protect incarcerated youth

Most youth with disabilities who are incarcerated have a right to be receiving special education services. A good education is of paramount importance for all of your clients; it is an essential ingredient to being able to stay out of trouble. It is even more important to get the right educational services for a client who is disabled and incarcerated. She is missing out on the contact of non-delinquency involved peers, being deprived of a normal school and home life, and facing the difficulties of incarceration and a record. Her impairment creates added challenges in dealing with those realities. Ensuring that incarcerated children with disabilities get the best education they can is an essential aspect of preparing them for adult life.
Juvenile Facilities

Federal and state laws determine the ages of eligibility for services in juvenile correctional facilities. Every child up to age 18, including one incarcerated in a juvenile correctional facility, has a right to special education services if her impairment meets the definition of a disability under the IDEA. A young person aged 18 through 21 also must receive special education services in a juvenile facility unless there is a state law that says otherwise. Look at your state law to determine what the rights are for youth aged 18 to 21.

Adult Facilities

A child under the age of 18 who is incarcerated in an adult facility has a right to receive special education services if she has a qualifying impairment. In some states, a youth aged 18 through 21 who is incarcerated in an adult facility will only be eligible if she had been identified as a child with a disability prior to being incarcerated in the adult facility.

You can play an extremely important role by making sure your client in a juvenile facility is evaluated, has a viable IEP, and is receiving the services specified. For a client facing adult incarceration, your insistence that she be assessed and found eligible under the IDEA before she is incarcerated will make her eligible for special education services at the adult facility. Your attention to this need could be the difference between hope and despair for your client while she is incarcerated and once she is released.

III. CHALLENGING CONDITIONS OF CONFINEMENT

In many places across the country, juvenile detention and correctional facilities provide unsafe, unsanitary, and overcrowded conditions. These dangerous and harmful situations are not acceptable. If you hear about system-wide violations, there are a number of actions you can take to combat the problems.

In 1998, the American Bar Association and the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention released a report that presents six methods to expose hazardous conditions of confinement. They are:

- Effectively informing the Department of Justice of the problems so its Civil Rights Division can use the Civil Rights of Institutionalized Persons Act (CRIPA) to bring actions against your state or local government;
- Establishing an ombudsman program to address complaints;
• Using the Individuals with Disabilities Education Act (IDEA) to protect children in facilities (as described in the previous section);

• Calling for the involvement of your state Protection and Advocacy (P&A) System, which has the authority to assist incarcerated juveniles with disabilities, including mental health problems;

• Making use of your state Administrative Procedure Act (APA), which regulates executive agency behavior for rulemaking and applying resulting policies to individuals; and

• Encouraging administrators of juvenile detention or correctional facilities, and collaborating with them, as they undergo self-assessments to improve conditions.

The report, Beyond the Walls: Improving Conditions of Confinement for Youth in Custody, provides a comprehensive toolbox of laws and advocacy strategies for use by juvenile defenders and others. The full report is available at no cost from the National Juvenile Defender Center website at http://www.njdc.info/publications.php.

You should consider a full range of advocacy options, if necessary, to challenge illegal and unsafe conditions in your state's detention and correctional centers. In addition to the resources described in Beyond the Walls, you might consider litigation to vindicate the rights of individual clients or a class of confined youth. You may wish to contact local and national experts on prisoners' rights or children's rights litigation - such as the ACLU National Prison Project, the Youth Law Center, the Center for Children’s Law and Policy, or the Juvenile Law Center - to determine whether your strategy makes sense for your jurisdiction and how other organizations can help. Depending on the problems your clients face, it may also be appropriate to consult specialists on mental health, disability, or education law.

Juvenile defenders, with special access to the stories of confined youth, can play a key role in building community and legislative support for improving conditions. A well-organized media campaign can publicize the living situation of youth in detention or correctional facilities, and raise awareness about the need for improvements. Lobbying efforts aimed directly at state legislators may also be effective. No politician wishes to be seen as contributing to deplorable conditions that harm children and expose state agencies to lawsuits.

Ultimately, improving conditions of confinement depends on facilities' adoption of better management practices. The IJA-ABA Juvenile Justice Standards contain recommendations for confinement practices, including facility architecture, correctional administration, and disciplinary procedures within institutions. The American Correctional Association has also created a set of process standards for juvenile facilities that form the basis for that organization's accreditation program. The Performance-based Standards Project for
Youth Correction and Detention Facilities, developed by the Council of Juvenile Correctional Administrators with funding from the Office of Juvenile Justice and Delinquency Prevention, provides a comprehensive system for agencies and facilities to identify, monitor and improve conditions and treatment services provided to incarcerated youth using data-driven standards and outcome measures.219

The Youth Law Center and the Center for Children's Law and Policy, in conjunction with the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, have also developed standards for assessing conditions at a juvenile detention facility. The standards are easily adaptable to other types of facilities that hold youth, as well. The standards are based on a combination of court decisions, federal statutes, other national standards and best practices. This system is known by the acronym “CHAPTERS,” which stands for key elements in conditions of detention:

- **C**: Classification and Intake;
- **H**: Health and Mental Health Care;
- **A**: Access to the Outside Community;
- **P**: Programming;
- **T**: Training and Supervision of Employees;
- **E**: Environment;
- **R**: Restraints, Punishment and Due Process; and
- **S**: Safety.

The CHAPTERS standards offer questions to ask to assess conditions in each of these areas, and a recently-developed “how to” guide suggests people to interview, documents to review and activities to observe for each subject. You may contact the Center for Children's Law and Policy or the Youth Law Center to learn more about these tools. (Please see Appendix D for contact information.)
IV. USING THE ADOPTION AND SAFE FAMILIES ACT

If your client is already in foster care or involved in child welfare proceedings when her delinquency case begins, or if she will be removed from her home as a consequence of the case, the federal Adoption and Safe Families Act (ASFA) may help her. Defenders should be aware of its significance and find ways to assist clients in navigating the state’s foster care system. Seek counsel from an abuse/neglect attorney in your area to learn more about using the ASFA. You may need to refer your client for assistance.

ASFA is intended to move children into safe and permanent homes—through reunification, adoption, guardianship, or some other permanent living arrangement—as quickly as possible. Although ASFA primarily applies to children in child protective proceedings, it covers any child who is placed in Title IV-E eligible foster-care, which includes juveniles who have been adjudicated delinquent. Title IV-E provides federal reimbursement to states for foster care services, through the Social Security Act. In order to qualify for Title IV-E funding, the juvenile court must remove your client from her home, based on a finding that remaining in the home would be contrary to her welfare. You should advocate for the judge to make this declaration if your client is seeking a placement outside her home. ASFA requires the following procedures for a delinquent child to move into eligible foster care:

- The child welfare and/or probation agency must make reasonable efforts to prevent removal from the home, reasonable efforts to reunify the child with her family, and, if removal is deemed necessary, reasonable efforts to place her in a permanent situation.
- In most cases, the child welfare and/or probation agency will be required to make reasonable efforts to reunify the child with her family, and so must hold permanency hearings every 12 months after your client is placed in eligible foster care. The purpose of permanency hearings is to determine a permanent plan for the child, prioritizing in the order of reunification, adoption, or legal guardianship.
- If the facts of the delinquency case merit it, the child welfare and/or probation agency should request permission from the juvenile court not to make reasonable efforts to reunify the child with her family. If the judge agrees, the permanency hearing for the child must be held within thirty days.
V. SPECIALTY COURTS

In recent years, some jurisdictions have created “boutique” or specialty courts as alternatives to traditional delinquency and criminal proceedings. The focus, structure, participants, and procedures of specialty courts vary greatly by type of court and by jurisdiction. Juvenile defenders should pay close attention to these characteristics and ensure that children in specialty courts are not being deprived of their right to counsel or other due process rights. Examples include:

- **Drug court.** Drug courts serve juveniles accused of drug and alcohol offenses, who are willing and able to participate in treatment, and who are at risk to re-offend.

- **Mental health court.** These generally cater to juveniles who have entered the justice system but have been diagnosed with mental illness and require specialized mental health treatment for their rehabilitation.

- **Teen/peer/youth court.** Teen courts typically serve pre-teens and teenagers who have no prior offenses and who have committed relatively minor, non-violent crimes (like shoplifting or vandalism). Other teens preside over hearings and set sanctions, often community service.

- **Gun court.** Gun courts target juveniles who have committed gun offenses that did not result in serious injuries. They often focus on goals related to community awareness or mobilization. Unlike most specialty courts, gun courts generally supplement, rather than replace, juvenile court proceedings.

Cases can be sent to specialty courts in several ways. Depending on the court, youth may be referred by law enforcement, recommended by school officials, or diverted following intake or the initial stages of prosecution in a traditional court. Jurisdictions vary in the number of cases heard in a specialty court, the ease or difficulty of gaining entrance to a specialty court, whether or not specialty court “sentences” appear on the juvenile’s record, and the qualifications of court officials. In general, boutique court proceedings are less formal than traditional court proceedings (in part because they do not adhere to due process requirements) and lead to non-traditional punishments (such as reparations and community service rather than incarceration).

Supporters of specialty courts maintain that these alternative venues devote more attention to treatment and rehabilitation than the traditional court system. They also contend that boutique court dockets tend to clear more quickly and at a lower cost. According to some studies, offenders whose cases are handled by boutique courts tend, when compared to youth placed in detention, to have lower rates of recidivism and better chances of receiving ongoing treatment and outpatient care. Teen courts where all court “officials” are fellow teenagers aim to influence offenders through peer pressure and a need for peer approval.
Teen courts may also benefit the court “officials,” who gain experience with the justice system. Finally, boutique court sentences usually do not appear on juveniles’ records.

Critics of the specialty courts, on the other hand, have characterized them as poor alternatives to the adversarial system because they typically require juveniles to admit guilt and give up their due process rights in order to participate. Particularly in drug courts, but in other specialty courts as well, the defense attorney is expected to compromise his role as a zealous advocate by becoming a part of the treatment team, which also includes the judge and the prosecutor. Some critics are skeptical of the validity and effectiveness of treatment plans imposed by specialty courts. In addition, mental health experts have voiced concerns that mental health courts sometimes give well-meaning law enforcement officers the undue opportunity to bring mentally ill youth into the justice system, where they do not belong.

Learn about the options in your area, and consider them critically. If any of your clients may be diverted to a specialty court, consult with experienced juvenile defenders to discuss the pros and cons.

**VI. EXPUNGEMENT**

In many jurisdictions, a child with a juvenile court record can seek to have her record expunged, or cleared. Expungement is usually contingent on the child having a clean record for a certain amount of time after a delinquency case has ended. The procedure for securing expungement of a juvenile record varies from jurisdiction to jurisdiction, so you should determine the specific rules for your area. Many courts have pamphlets that explain the expungement process, and it is a good idea to confer with an experienced attorney for more detailed advice.

In most places, you initiate the expungement process by filing a formal motion to a civil trial court. The motion must declare that your client has satisfied all of the requirements of the expungement or rehabilitation statute; see Document A52 in Appendix A for a sample. Typically, once you file the motion with the court clerk, the court will set a hearing date. If unopposed by the prosecutor, the court will usually allow expungement. If the prosecutor does oppose it, you must persuade the judge that expungement is warranted by arguing that statutory conditions have been met or by showing that the youth has remained free of trouble and having a record will deny her opportunities that would otherwise be available to her. The specific elements your client must prove will be determined by statute.
The possibility of expungement proceedings can serve as an incentive for a child to stay out of trouble after being found delinquent. Successful expungement can help the child later in her life by removing the constraints of collateral consequences of her adjudication and the potential harm of public access to her records. (Although juvenile court proceedings typically remain confidential, more and more states are abandoning confidentiality laws and allowing public access to juvenile court records.)

The range of issues you might encounter during a delinquency case is broad. Experience will make you a more efficient and effective advocate, but each client will be different and each case will continue to raise new and interesting issues. The National Juvenile Defender Center hopes that as you gain experience and explore new issues, you will use our network to seek and provide assistance to other juvenile defenders.
Endnotes

CHAPTER 1

1 Coalition for Juvenile Justice, A Celebration or a Wake? The Juvenile Court after 100 Years 19 (1998).

2 Id. at 18-21.


4 See, e.g., McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (holding that children in the juvenile justice system do not have the right to be tried by a jury).

5 State by state information on disproportionate minority contact (DMC) with the juvenile justice system is available at the websites of the Building Blocks for Youth initiative, http://www.buildingblocksforyouth.org/statebystate/ (last visited on March 6, 2006) and the W. Haywood Burns Institute, http://www.burnsinstitute.org/dmc/ (last visited on March 6, 2006).

6 For the most recent available data, showing that juvenile arrests nationwide declined for nine consecutive years from 1994-2003, see Howard N. Snyder, Juvenile Arrests 2002, OJJDP Juvenile Justice Bulletin, NCJ 209735 (August 2005).


10 McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (holding that the federal Constitution does not guarantee children in the juvenile justice system the right to be tried by a jury); but see, e.g., Texas Stat. Ann. § 54.03(c) (guaranteeing the right to a jury in delinquency adjudications); Wis. Stat. Ann. § 48.31(2) (guaranteeing the right to a jury in delinquency adjudications, if the jury is requested before the end of the plea hearing); N.M. Stat. Ann. § 32-1-31(A) (guaranteeing the right to a jury in any delinquency case that would entitle an adult defendant to a jury).


12 See, e.g., 143 Cong. Rec. SI45 (daily ed. Jan. 2, 1997) (statement of Senator John Ashcroft) (asserting that "the purpose of the [adult] criminal justice system is to punish").

13 See, e.g., Julianna P. Sheffer, Note, Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System, 48 Vand. L. Rev. 479 (1995) (arguing that commentators have been premature in pronouncing the demise of the juvenile justice system’s focus on rehabilitation).


16 Id. at 13-14.

17 For a discussion of common ways in which adolescent thinking can differ from adult capabilities, see ABA Juvenile Justice Center, Juvenile Law Center, & Youth Law Center, Kids Are Different 8-10 (Robert G. Schwartz & Lourdes M. Rosado, eds., 2000), available at http://www.njdc.info/pdf/macac1.pdf.

18 Coalition for Juvenile Justice, Handle with Care: Serving the Mental Health Needs of Young Offenders 8-11 (1998).


24 81 Am. Jur. 2d Witnesses § 389 (2005) (discussing circumstances under which written materials provided by non-lawyers to defense counsel will be privileged, and explaining that the extent of privilege turns on whether technical material is necessary for legal advice); 81 Am. Jur. 2d Witnesses § 403 (2005) (communications to an expert for the purpose of informing counsel's legal advice are privileged, but privilege does not automatically extend to all employees or agents of an attorney); 81 Am. Jur. 2d Witnesses § 405 (2005) (discussing the scope of the attorney-client privilege as applied to physicians, psychiatrists, and psychotherapists retained by the defense); see also People v. Gurule, 51 P.3d 224, 249-50 (Cal. 2002) (treatment records generated by mental health experts serving as defense witnesses for an accomplice were protected by attorney-client privilege and therefore not discoverable by the defendant); Van White v. State, 990 P.2d 253, 269-71 (Okla. Crim. App. 1999) (finding attorney-client privilege was violated when psychiatric expert originally appointed for the defense was ultimately called to testify only for the prosecution, but noting disagreement on this point of law); State v. Thomson, 495 S.E.2d 437, 439 (S.C. 1998) (explaining and applying a balancing test to determine whether attorney-client privilege applies to a defendant's communications with a psychiatrist hired by the defense).

CHAPTER 2


27 Model Rules of Prof'l Conduct R. 1.2(a), 1.14(a) (2002).

28 Model Rules of Prof'l Conduct R. 1.14(a) cmt. 1; compare Guggenheim, supra note 26 (arguing that youth aged 7 and older should be permitted to direct delinquency counsel).

29 Model Rules of Prof'l Conduct R. 1.2(a) (2002).

30 IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Standard 5.2.

31 Model Rules of Prof'l Conduct R. 1.7(a) (2002).

32 See id.
33 Walker, supra note 25. Adapted and used with permission.

34 See generally 1 Randy Hertz, Martin Guggenheim & Anthony Amsterdam, Trial Manual For Defense Attorneys In Juvenile Court 133-154 (1991) [hereinafter 1 Hertz]

CHAPTER 3


40 For a further explanation of the developmental framework, see Marty Beyer, What’s Behind Behavior Matters: The Effects of Disabilities, Trauma and Immaturity on Juvenile Intent and Ability to Assist Counsel, Guild Practitioner 58:2 (2001).


42 Id. at 27.

43 Id. at 34.


45 Id.


47 See, e.g., In re Causey, 363 So.2d 472 (La. 1978) (upholding competency as a due process right for juveniles in Louisiana); In re Carey, 615 N.W.2d 742 (Mich. Ct. App. 2000) (upholding competency as a due process right for juveniles in Michigan); see generally 1 Hertz, supra note 34, at 306-307.


51 Id. at 402.


54 State legislatures may also mandate that juveniles must have competency evaluations before being transferred into adult court. See, e.g., Ark. Code Ann. § 9-27-502.


56 Id. at 77-83.

57 Id. at 82.

58 Id. at 83.


61 In re Allen R., 506 A.2d 329 (N.H. 1986) (trial court abused its discretion in denying reimbursement for expense of psychologist hired by attorney representing indigent juvenile in delinquency hearing); In the Matter of J.E.H., 972 S.W.2d 928 (Tex. App. 1998) (holding that “the rule in Ake is applicable in juvenile proceedings just as it is in adult criminal trials”).


64 See generally Giannelli, supra note 60.


66 Beyer, supra note 40.


68 See Estelle v. Smith, 451 U.S. 454, 468 (1981) (holding that a defendant must submit to a court-ordered competency examination but that Miranda protections apply to any questioning used to obtain information for a capital sentencing proceeding).

69 Id. at 469.


72 Id.


74 Giannelli, supra note 60, at 1405 n. 645 (citing cases).

75 Id. at 1409-10 (collecting cases).


77 DSM-IV-TR, supra note 41, at 100.


79 Grisso, Clinical Practice, supra note 37.

80 Id.

CHAPTER 4

82 See 7 Am. Jur. 2d Attys at Law § 5 (2005); see also Chapman v. Pacific Tel., 613 F. 2d 197 (9th Cir. 1979) (explaining that attorneys are obligated to cooperate with a court order and that this obligation is not excused by a belief that the order is invalid).

83 See 1 Hertz, supra note 34, at 63.

84 Id. at 31-32.

85 Id. at 33-34.

86 Id. at 41-44.

87 Id. at 44-47.

88 Id. at 47-49.

89 Id. at 50.

90 Id.

91 Id.

92 Adapted from 1 Hertz, supra note 34, at 52-53.

93 Id. at 56-57.

94 Adapted from 1 Hertz supra note 34, at 57-58.

CHAPTER 5


96 See 1 Hertz, supra note 34, at 256-262 (reviewing the prosecution’s right to discovery from the defense).


98 IJA-ABA Juvenile Justice Standards, Standards Relating to Counsel for Private Parties, Standard 4.3 (a) - (b) (1996).


CHAPTER 6


102 Id. §§ 170-71.


104 Id. at (II)(a)(3).

105 Id. at (II)(a)(4).


108 Id.

109 Id. § 152.
110 Id. § 144.
111 Id. § 153.
114 Id. § 93.
115 Id. § 115.
119 Id. § 169.
120 Id. § 171.
121 The U.S. Supreme Court in 2004 upheld Nevada’s “stop and identify” statute, which requires a suspect to disclose his name in the course of a Terry stop. The officer’s request for identity disclosure must be reasonably related to the circumstances justifying the initial stop. Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S. 177 (2004). At least twenty other states have “stop and identify” statutes: Alabama, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Kansas, Louisiana, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, Utah, Vermont, and Wisconsin. Id. at 182.
125 One recent example of a case addressing the establishment of reasonable suspicion is Florida v. J.L., 529 U.S. 266 (2000). In that case, the Court held that an anonymous tip stating that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun lacked sufficient indicia of reliability to establish reasonable suspicion because the police had only a report from an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about the suspect.
126 Terry v. Ohio, 392 U.S. 1, 29 (1968) (stating that the sole justification of the search in such situations is the protection of the police officer and others nearby).
127 Id. at 26; Minnesota v. Dickerson, 508 U.S. 366, 373 (1993).
129 Florida v. Royer, 460 U.S. 491 (1983) (finding that law enforcement conduct toward a suspect exceeded the bounds of an investigative stop and was therefore illegal in the absence of probable cause).
135 Id. at 457.

139 *Id.*

140 *Id.* at 342.


CHAPTER 7


144 1 Hertz, *supra* note 34, at 54, 56-57.


146 1 Hertz, *supra* note 34, at 120-21.

147 *Id.* at 121-122.


149 1 Hertz, *supra* note 34, at 83-85.


151 *Id.*


156 The California Supreme Court concluded in *Alfredo v. Superior Court*, 865 P.2d 56 (Cal. 1994), that the McLaughlin time limit does not apply to juvenile proceedings.

157 See Calvin, *supra* note 142, App. A.


160 See Richard Baum, Comment, *Denial of Fourth Amendment Protections in the Pretrial Detention of Juveniles*, 35 Santa Clara L. Rev. 699 (1995) (arguing that the 48 hour time limit for probable cause hearings should apply to juveniles). For more assessments in favor of applying the McLaughlin rule to juveniles, see the dissenting opinions by Justices Mosk and George in *Alfredo v. Superior Court*, 865 P.2d 56 (Cal. 1994).

161 1 Hertz, *supra* note 34, at 92-94, 102-103.

162 *Id.* at 102-03.

163 *Id.* at 94.

164 *Id.* at 97-98.

165 *Id.* at 98-99.

166 *Id.* at 110-11, 113-14.

CHAPTER 8


173 Coalition for Juvenile Justice, Childhood on Trial: The Failure of Trying and Sentencing Youth in Adult Criminal Court 23 (2005).


175 Id. at 557.

176 Id. at 561.

CHAPTER 9


CHAPTER 10

180 For more remarks on stipulations, see 2 Randy Hertz, Martin Guggenheim, & Anthony G. Amsterdam, Trial Manual for Defense Attorneys in Juvenile Court 736 (1991) [hereinafter 2 Hertz].


182 Id. at 593-94.


185 2 Hertz, supra note 180, at 784-87.


188 Id. § 3(a).

189 Id. § 3(b).
CHAPTER 11


192 Griffin, supra note 170.


195 Coalition for Juvenile Justice, supra note 18, at 37-40.


198 See Conward, supra note 193, at 2448-49.

199 See id. at 2449-50.

200 See Altschuler, supra note 197, at 219.


CHAPTER 13


205 Id. at 582-83.

206 Id. at 584.

207 See, e.g., Mahaffey v. Aldrich, 236 F.Supp.2d 779 (E.D. Mich. 2002) (holding that in Michigan a student's due process rights were violated when he was given written notice and the opportunity to have legal representation, but was not given a right to cross examination as provided in the district's code of conduct).

208 See, e.g., Wagner v. Fort Wayne Cmty. Sch., 255 F.Supp.2d 915, 925-28 (N.D. Ind. 2003) (finding that the burden on a public middle school in Indiana outweighed the value of additional due process rights to a student).


210 Id. § 1401(3).

211 Fees are available to the prevailing party in an administrative or judicial proceeding under the IDEA. 20 U.S.C. § 1415(i)(3)(B).

212 Id. Courts awarding attorney's fees under the IDEA have interpreted the term "prevailing party" in line with Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Serv., 532 U.S. 598 (2001).


214 34 C.F.R. § 300.2.

216 Puritz & Scali, supra note 23.

217 IJA-ABA Juvenile Justice Standards, Standards Relating to Correctional Administration and Standards Relating to Architecture of Facilities.

218 For more information, see the American Correctional Association website at http://www.aca.org.

219 For more information, see the Performance-based Standards Project website at http://www.pbstandards.org.


This collection of documents is designed to help you improve your practice by serving as exemplary samples both in content and form. You can use them as models for documents that serve their particular purposes and as inspiration for your own creative, innovative efforts on behalf of your client. Note that although the authors of the motions used case law that was current and Shepardized at the time of writing, the law is evolving and cases cited may no longer be the most recent. Furthermore, of course, you will need to cite the cases and statutes from your jurisdiction when you file motions in your court.

This compilation is only a small sample of the motions and other documents we received from practicing defenders who so generously shared their work and an even smaller fraction of the possible documents you can use in preparing and litigating your case.
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DOCUMENT A1: SAMPLE INTERVIEW FORM

DETENTION INTERVIEW FORM
TO BE ADMINISTERED BY JUVENILE DEFENDER

Explanation for youth of attorney-client relationship:

- I am your lawyer. That means my job is to help you to understand what is happening in your case. I also speak for you in court.

- I work for you. I do not work for the judge or the prosecutor. I do not work for your parent(s).

- Anything you tell me will be confidential. This means that I cannot tell anyone else what you say to me unless you say that I can. I cannot tell the judge anything you tell me unless you say it is okay.

- If anyone else asks you for information about your case, do not answer their questions. Just say that your lawyer told you not to talk about the case. I am going to give you a card that you can show to people to explain that you do not want to talk.

Client Information:

With whom does client live?__________________________________________________

Does the guardian know about the hearing today? YES NO NOT SURE

Does client think the guardian will come to court today? YES NO NOT SURE

IF YES, what the guardian will probably say about the client in court today:

________________________________________________________________________

________________________________________________________________________

Will the guardian agree to take client home tonight? YES NO NOT SURE
**Alternate Supervision:**

Is there any one else client can stay with? \(\text{YES \ NO \ NOT SURE}\)

IF YES, what is this person's name: ______________________________

Relationship to client: ____________________________________________

Does client think this person can come to court today? \(\text{YES \ NO \ NOT SURE}\)

Does client know how to contact this person? \(\text{YES \ NO}\)

Home phone: ________________________ Cell phone: ________________________
Address:_________________________________________________________________

**Delinquency History (if there is no court file):**

Has client ever been arrested before? \(\text{YES \ NO \ NOT SURE}\)

IF YES, about how many times has client been arrested? \(1 \ 2 \ 3 \ 4 \ 5 \text{ or more}\)

When? __________________________________________________________________

Has client ever been to court before? \(\text{YES \ NO \ NOT SURE}\)

IF YES,

(1) When: ____________________ Why______________________________________

What happened in that case?
________________________________________________________________________________
________________________________________________________________________________

(2) When: ____________________ Why______________________________________

What happened in that case?
________________________________________________________________________________
________________________________________________________________________________
(3) When: ____________________  Why______________________________________
What happened in that case?
________________________________________________________________________________
________________________________________________________________________________
Has client had a probation officer before?  
YES  NO  NOT SURE

IF YES, does client remember name of probation officer?__________________________

Does client remember what officer did:
☐ release conditions: __________________________
☐ health treatment: __________________________
☐ mental health treatment: __________________________
☐ education: __________________________
☐ supervision: __________________________
☐ OTHER: __________________________

Running Away:

About how long has client lived in this community:__________________________

Has client ever run away from home?  
YES  NO

IF YES, client has run away about how many times: 1 2 3 4 5 or more

Last time client ran away: __________________________

About how long client stayed away from home: __________________________

Can client tell interviewer why s/he ran away?
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
DOCUMENT A1

**Education and Truancy:**

Is client in school now? NO

**IF NOT IN SCHOOL,** did s/he get GED or drop out? DROPPED OUT

Was client in regular classes or special classes? SPECIAL

**IF IN SCHOOL,** is client in regular classes or special classes? SPECIAL

**IF IN SPECIAL CLASSES,** what kind?

- for kids who have trouble learning (special education)
- for kids who have trouble paying attention (attention deficit/hyperactivity disorder)
- OTHER: __________________________________________________________

Does client go to school all the time? NO

How many days does client go to school per week? 1

Is there anything happening at school that makes client not want to go there? NO

Can client tell interviewer about it? _____________________________________________

________________________________________________________________________

________________________________________________________________________

**Employment and Activities:**

Does client have a job? NO

**IF YES,** what is the job? ____________________________________________________

Is there anything else that the client does every week that he/she enjoys?

- sports team
- religious group
- volunteering/public service
- extra class (art, music, etc.)
- OTHER: __________________________________________________________
Health and Mental Health:

Has the client ever talked to a counselor or doctor to get help with emotional or mental problems?

YES  NO  NOT SURE

Has the client ever been in a hospital or sent to stay someplace in order to feel better emotionally?

YES  NO  NOT SURE

IF YES, when?
☐ Doesn't remember
☐ Thinks it was: ________________________________________________________

Does the client remember where? _________________________________________

At this time, is the client taking any medicine regularly?  YES  NO  NOT SURE

IF YES, what is it for?
☐ Doesn't know
☐ Thinks it is for:________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Vulnerability to Harm:

Has client ever been in detention before?  YES  NO  NOT SURE

Did client feel safe when in detention?  YES  NO  NOT SURE

In detention, did anyone hurt or try to hurt client?  YES  NO  NOT SURE

IF YES, what happened?
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

________________________________________________________________________
If the child needs medical or psychotropic drugs, when in detention, did the client get his/her medicine:

NEVER       SOMETIMES       ALWAYS

IF NEVER OR SOMETIMES, what happened?
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Anything else client wants to tell the judge:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
June 20, 2005

Client Name
Street
City, ST 40569

Dear Ms. Name,

My name is Your Attorney. I am a lawyer, and I have been appointed by the Public Defender office in Our City to represent you in juvenile court. You are my client, which means that I work for you. You and your family do not have to pay me.

You are accused of petit larceny, which means taking someone else's property. Your next court date is May 3, 2005 at 10:30am in the City Juvenile Court.

It is important for us to meet as soon as possible so we can talk about your case and figure out how I can help you in court. Please bring with you the names, addresses, and telephone numbers of anyone who you think can help with your case.

Please call my secretary at (222) 333-4444, extension 55, so you can schedule a meeting with me. I am looking forward to meeting you.

Sincerely,

Your Attorney
Public Defender
Authorization to Release Information

I hereby authorize [Your Name] of [Your Office], or any person or persons duly authorized by [him/her] to:

- Verify all financial information pertaining to me with employers, banks, credit unions, loan companies or any other source.
- Obtain all necessary medical information, evaluations, or memoranda from doctors, psychologists, social workers clinics and hospitals concerning my and my child's examinations, diagnoses, treatment or hospitalization. Obtain information from any school, counseling, labor department, welfare or other agency that has rendered its services to me or my child.

I hereby authorize all proper officials of all such organizations to forward to [Your Name], [his/her] employees, or any persons duly authorized by [him/her], such requested information for one year from this date for use in regard to legal proceedings.

I understand that the information disclosed may be from records whose confidentiality is protected by state and/or federal law and may contain information pertaining to psychiatric, HIV/AIDS, drug and/or alcohol diagnosis and treatment and that this authorization may be revoked by me at any time except to the extent that action has been taken in compliance with this request.

Client: ____________________  Parent: ____________________

__________________________  ______________________________
Child/Witness Signature  Parent/Guardian Signature

Client's DOB:

Date:
STATE OF ____________
COUNTY OF ____________

In The Matter Of The Welfare Of
***
d.o.b.

NOTICE OF MOTION AND
MOTION TO SUPPRESS EVIDENCE
AND TO DISMISS

Youth ID. ***
Family No. ***
Case No. 99-***

NOTICE OF MOTION

PLEASE TAKE NOTICE, that on December 15, 1999, at 900 a.m. or as soon thereafter as counsel may be heard, *** will seek the relief specified below.

MOTION

Mr. ***, by and through his counsel, moves this Court for an Order suppressing the evidence discovered during the course of an unlawful search. This motion is based upon all relevant files, the attached supporting memorandum of law, and any arguments of counsel the Court may permit.

Respectfully submitted,

OFFICE OF THE ________ COUNTY PUBLIC DEFENDER
__________, CHIEF PUBLIC DEFENDER

By_____________________
Assistant Public Defender
Address
Phone

Dated: _____________
STATE OF MINNESOTA        DISTRICT COURT-JUVENILE DIVISION
COUNTY OF __________  

In The Matter Of The Welfare Of ***

) MEMORANDUM IN SUPPORT OF
) MOTION TO SUPPRESS EVIDENCE
) AND TO DISMISS
)
) Youth ID.
) Family No.
) Case No.

STATEMENT OF FACTS

*** has been charged in a delinquency petition with two counts of possession of a dangerous weapon on school property, Minn. Stat. 609.66 (1998). The charges arose from the following alleged events:

According to the police reports on September 28, 1999, *** and a group of friends were smoking cigarettes in the parking lot of their school. A police officer approached *** and the other boys and ordered them to "place their hands on the wall." (Officer ***, Case Supplement 1). Officer *** pat searched all of the students. During the course of the search, Officer *** found a pair of brass knuckles and a box cutter on ***'s person.

ARGUMENT

THE SEARCH WAS UNLAWFUL

The analysis set forth in Terry v. Ohio, 392 U.S., 30-311 (1968), as applied in Minnesota, involves a two-part test. First, to validate a stop, an officer must have a "reasonable articulable suspicion that a suspect might be engaged in criminal activity." Minnesota v. Dickerson, 508 U.S. 366 (1993). Second, in order to conduct a pat down, an officer must reasonably believe that a suspect might be armed and dangerous. Id.; Welfare of M.D.B., 601 N.W.2d 214 (Minn. Ct. App. 1999). In other words, the officer must be able to point to specific facts which, taken together with rational inferences from those facts "reasonably warrants the interference." Terry, 392 U.S. at 21.

Under State v.Evans, 373 N.W.2d 836 (Minn. Ct. App. 1985), there is no exception to the "armed and dangerous" requirement if an officer discovers a small amount of contraband, but suspects a suspect may be in possession of more. Although a pat search is allowed where an officer has "rational and specific reasons to fear for his safety," this fear must be reasonable and based on articulable facts, not a "hunch or speculation." Id. A routine search conducted in an effort to find contraband is not lawful. Id.; see also M.D.B., 601 N.W.2d 214.
1. **The Search Was Not Lawful As An Attempt To Determine If *** Had Additional Cigarettes.**

As stated, there is no exception to the *Terry* requirements allowing an officer to pat search a suspect to determine if he or she has additional contraband. *Evans*, 373 N.W.2d at 837. In *Evans*, officers observed four youths smoking in a park. *Id.* at 836. Upon approaching the suspects, the officers discovered that the cigarette contained marijuana. *Id.* The officers decided they "would routinely pat down all four parties to see if there was any weapons or controlled substances." *Id.* at 838. The Court discussed the armed and dangerous predicate for a pat search, stating that the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, a392 U.S. at 27.

The suspects in *Evans* were searched in a park, during the day. *Id.* at 839. There were no actions that indicated that they might be armed. *Id.* The court suppressed the additional narcotics found during the search, stating:

"The only justification found...is that the officers decided to conduct a routine frisk. The officers had a hunch, which hindsight shows was correct...The circumstances did not give rise to a belief that any of the suspects possessed a (greater) quantity of marijuana. (Additionally) the officers did not have specific and articulable facts justifying a protective weapons search." *Id.*

In this case, Officer *** initially claimed that the search was conducted to determine if *** or his friends had any additional tobacco. This explanation provides less justification for the search than the officers had in *Evans*. Unlike the juveniles in *Evans*, *** and his friends were not smoking a narcotic substance; they were smoking cigarettes. It is not logical to assume that, while possession of a single marijuana joint by a juvenile does not give rise to a justification for a pat down search, possession of a cigarette does. Under *Evans*, an officer's suspicion that a juvenile caught with a small amount of an illegal substance, or a cigarette, does not justify a pat search for additional contraband. Consequently, the evidence obtained during the search must be suppressed.

2. **The Search Was Not A Legitimate Frisk For Officer Safety.**

An officer may conduct a limited pat down search for weapons if that officer has rational and specific reasons to fear for his safety. *Evans*, 373 N.W.2d at 837. However, there was no such justification in this case. Approximately an hour after the incident, Officer *** wrote an initial report of the incident indicating that he had searched *** and the other boys "In an effort to determine if any of the six remaining individuals that I had observed smoking were in possession of any more tobacco products." (Report, Officer ***, Supp. 1) However, he later wrote an additional supplement in which he claimed that the presence of other students created an "escalating situation." (Report, Officer ***, Supp. 2)
According to Officer ***'s second report, *** and his friends were standing with their hands against a wall and students who had stopped to watch had been directed to the other side of the parking lot. The report also indicates that one of ***'s friends said, "This is bullshit." The presence of some curious high school students and a single off-hand remark by a teenager who had been caught smoking do not indicate the Officer *** had "rational and specific reasons to fear for his safety." See Evans, 373 N.W.2d at 837 (citing Terry, 392 U.S. at 21).

Officer ***'s justification for the search is especially dubious in light of the fact that he specifically stated that the search was to determine if any of the "individuals were in possession of any more tobacco products," and only later added the "officer safety" explanation.

Additionally, assuming arguendo that the report is an accurate reflection of the events, it does not contain any information that would support a rational and specific reason for Officer *** to fear for his safety. There were two armed police officers on the scene. Officer *** had already ordered *** and the other boys to "place their hands against the wall," which all the boys did. The other officer had moved the student spectators to the other side of the parking lot. Neither *** nor his friends had made any furtive gestures, threats or movements that would indicate that they might be dangerous.

Finally, the officers were investigating them for allegedly smoking cigarettes. Underage smoking is not a crime of violence that would imply that the alleged offenders were dangerous. It is a status offense that warrants a ticket, not a delinquency violation. Because the search was not justified as a frisk for officer safety, the evidence subsequently obtained should be suppressed.

CONCLUSION

In light of the aforementioned law and facts, **** respectfully requests that the evidence obtained in the course of the illegal search of his person be suppressed.

Respectfully submitted,

OFFICE OF THE _______ COUNTY PUBLIC DEFENDER

__________, CHIEF PUBLIC DEFENDER

By_____________________

Assistant Public Defender
Address
Phone

Dated: ________________
IN THE MATTER OF : IN THE COURT OF COMMON PLEAS
L : OF **** COUNTY, PENNSYLVANIA
A MINOR : JUVENILE DIVISION
Docket No. ********

MOTION TO SUPPRESS EVIDENCE

AND NOW, this 10th day of January 2005, comes the above named juvenile, L, by and through his attorney, IM, Public Defender, and moves that the Master suppress evidence, and in support thereof represents as follows:

1. The above-named juvenile, L, is seventeen years of age, with a date of birth of **** *, 1987.

2. On August 11, 2004, the juvenile was charged with the following allegations and summary offenses: possession of marijuana, 35 Pa.C.S.A. § 780-113(a)(30)(F); possession of paraphernalia, 35 Pa.C.S.A. § 780-113(a)(32)(M); changing lanes without signaling, 75 Pa.C.S.A. § 3334 (S); and driving with junior license after midnight without accompanying adult, 75 Pa.C.S.A. § 150(c)(1) (S).

3. As stated in the police report, on June 13, 2004, at 1:05 A.M., Patrolman K observed a vehicle containing five individuals slowly driving westward on East *** Street.

4. Patrolman K observed the vehicle turn south on *** Street without signaling. He activated his siren and lights, pulled the vehicle over, approached the vehicle and spoke with the driver, L.

5. At that time, another unit arrived and Patrolman K asked for the juvenile's license, registration, and proof of insurance. When the juvenile opened the glove box to retrieve the documentation, which included a junior driver's license, the officer stated in the report that he observed a plastic bag containing a green leafy substance inside the glove box.

6. The police report states that the juvenile had grabbed the paperwork and quickly closed the glove box. He was asked to reopen the box and when he did, Officer K reports, the plastic baggie dropped out.

7. The juvenile was removed from the vehicle and handcuffed. The suspected marijuana was removed from the vehicle and a cell phone was taken from the juvenile.

8. The four female passengers, ages 15, 16, 16, and 18, were talked to by the officers and released. The vehicle was locked and left at the scene.
9. The juvenile was released to his parents at the police station. These charges followed.

10. The police report also contained a statement by the second officer at the scene, Officer D, who wrote that he too observed the green leafy substance in the glove box when the juvenile opened to retrieve his documents.

11. The juvenile contends that he did signal his turn on to *** Street and Officer K had no reason to pull him over and that therefore the initial stop of his vehicle was not based on a traffic violation.

12. The juvenile further contends that neither officer was in a position to observe the suspected marijuana in the glove box in plain view. The vehicle was not parked under a street lamp and there was no light in the glove box.

13. The juvenile also contends that the only light in the vehicle was provided by the officer's flashlight which was shined into the vehicle only after he had closed the glove box.

14. The juvenile believes and avers that the evidence herein was obtained in violation of his rights under the Fourth amendment to the United States Constitution and Article I, section 9, of the Pennsylvania Constitution in that the initial traffic stop was illegal and in that the plain view doctrine is not applicable.

WHEREFORE, the juvenile requests that a hearing be held on this Motion and that the Master suppress the evidence obtained at the time of the traffic stop.

Respectfully submitted,

IM
Assistant Public Defender
Client Name: H.T.  
DOB: ******  
Age: ***  

Referring Attorney: **********  

Presiding Judge: ************  
****** County Juvenile Court  

Interviews: Date; Home visit to the T residence:  
Met with M.T. (mother), briefly with F.T. (father), and H.T.  
2 ½ hours  

Date; Home visit to the T residence:  
Met with H.T. and M.T. (mother)  
1 hour  

(Both interviews were conducted with the assistance of Post-Doctoral fellow, ****, Ph.D.)  

Collateral Contacts:  
******, Social Worker, ****** Mental Health Center  
******, M.D., ****** Hospital  
******, E.T.L., **** Middle School  
******, Probation Officer, **** Juvenile Court  
******, Department of Social Services  

Records Reviewed: (list of various medical records and police reports)  

**Referral Information:** H.T. was brought before the ***** Juvenile Session on multiple charges of Breaking and Entering, Daytime. Legal involvement was initiated when H's mother, M.T., called the police, hoping they would talk to H.T. During the officers' visit to the T. residence, H.T. offered inculpatory information, which ultimately precipitated the current charges. Ms. T expressed concern to H's attorney that H did not understand the position he was in while the police were present. The attorney sought an evaluation of H to assess his ability to make a competent waiver of his rights against self-incrimination and to legal counsel during the police questioning.  

A waiver of Miranda rights (Miranda v. Arizona, 1966) is considered valid in the State if it is made "voluntarily, knowingly, and intelligently." If the defendant is a juvenile under 14, the presence of an "interested adult" is also required (Commonwealth v. A Juvenile, 1983). The standard for weighing the validity of such a waiver is the "totality of the circumstances" (Fare v. Michael C., 1979), including both characteristics of the suspect and features of the situation.  

**Warning of Limits of Confidentiality:** H's mother and father were informed that I was a psychologist, asked by H's attorney to assess H's level of functioning at the time of his police interview, and to make a recommendation to him about H's ability to understand his right to silence and to counsel during that interview. They were informed that none of the information gathered would remain confidential, but instead would be provided to Mr. K [attorney]. He, along with H.T. would decide whether it was relevant or useful to their case, and if so, the information might be provided to the Court in the form of a written report, or oral testimony. All family members were informed that they had the right not to answer any questions they chose.
The defendant understood that both Dr. ***** and I were working with his attorney. He stated that "nothing's going to be secret...If it's helpful, we're going to tell it to the judge." He appeared to get the gist of this warning. His attorney was present for both visits, and allowed the interviews to proceed.

Background Information Relevant to Issues of Competence:

**Family Information:** H.T. is the 14 year old son of M.T. and F.T. He has a 10 year old brother, D.T., and an eight year old sister, C.T. The family lives together in a large apartment in *****. Both of H's parents work. His father runs an after school program. His parents are originally from Santo Domingo, Dominican Republic. The family speaks both English and Spanish, with Spanish being the first language. School records indicate that H's first language is Spanish.

Reports from providers for the family indicate that there are some difficulties in the parents' relationship with one another. Ms. T has reported that Mr. T can get verbally abusive to their son and to her. She acknowledged that he has hit [the defendant], but that it was in the form of a spanking and was a long time ago. She denied that Mr. T hit her. Recent hospitalization records for H suggested that he has been concerned about the possibility of a parental separation.

A January 2000 Court update from Department of Social Services indicated that the T family became involved with DSS in March 1997, following a supported 51A on physical abuse by H's father. Because of Mr. T's background in child development, the incident of hitting appeared to be isolated. In May 1999, according to the City Juvenile Court Probation Officer, D.B., Ms. T filed a CHINS-Stubborn after H allegedly stole $300.00 from his father, broke into a neighbor's home, and was becoming disrespectful to his mother, was vulgar in school, and was eventually suspended from school. In July 1999, another 51A was filed, alleging that Mr. T hit H after H stole the $300. DSS worker J.W. reported that this 51A was screened out because the issues were already being addressed. DSS reportedly planned to help the T family in the following ways: an in-home family team to work with the T's, tracking and after-school services for H, and a referral to the city nurturing program to help H's parents deal with his problematic behavior. Notably, a 10/99 Juvenile Court clinic evaluation by N.W. also recommended an Intensive Family Intervention team and tracking, as well as a new medication evaluation to address H's impulsivity and focusing problems, and a transfer from the ***** Middle School to more appropriate services. N.W. reiterated that H is not in the custody of the Department.

**Developmental and School Information:** Ms. T reported H has a lifelong history of problems. As an infant he had many ear infections which contributed to his delayed speech development. H reportedly did not speak until he was four. Since that time he has had speech and language difficulties in both Spanish and English. H was evaluated early on in school, but Ms. T reported that he did not receive speech therapy until second grade. His overall language comprehension and expression have been delayed throughout his school history. His overall language comprehension and expression have been delayed throughout his school history. Ms. T felt that the school has not been helpful, and in fact Henry has not made progress. She felt he had been socially promoted through the school system, but had never learned to read and write. At this point, H is enormously aware of his limited abilities. His inability to succeed in school has contributed to his increasing behavioral problems in the school and home environments.

H has lived in **** all his life. Public school records indicated that he attended the A and B schools for K1 and part of K2. He transferred to the ***** school from K-2 through part of third grade, when the family moved. He then attended the M School through fifth grade. He began middle school at the **** in 1996 in a 502.4 substantially separate classroom. M.R., ETL from the Middle School indicated that H had been transferred to the *** in November 1999 (eighth grade) because of being verbally threatening and abusive to teaches and students at the *****. He started in a Language Based Classroom designed for children with language processing problems. He did better for a while in a classroom with a strong teacher, but eventually his problem behaviors reemerged. When these behaviors reemerged, he was transferred to the Learning and Adaptive Behavior (L/AB) Center. This program is designed for children whose behavioral problems predominate their learning problems. Ms. R thought he might need a L/AB Cluster where on site clinicians were available.
In April 1999, the T's had an independent educational evaluation conducted for H at the F Hospital for Children. This report documented "global academic deficits and underlying problems with memory/retrieval, language, organization, executive functioning and processing." These difficulties were noted to be consistent with "Developmental Reading Disorder (Dyslexia)" but required further cognitive assessment to confirm the diagnosis. Special educational testing suggested deficits of up to five years below grade level in reading, spelling, and math. Specific language testing suggested severe delays in both receptive and expressive language areas. H's most recent CORE re-evaluation (10/99) produced an IEP documenting the following problems: expressive language, language processing, word retrieval, impulse control, expressive vocabulary, receptive language. Additional current neuropsychological testing results are reported below.

His most recent Special Education Assessment acknowledges his language based processing problems, and recognizes his greater level of skill in non-verbal tasks: "He has difficulty with both recall of detail and main idea when reading. He has word retrieval problems, difficulty with sequencing, following multistep directions, comparisons, organizational issues, regrouping, phonics, and task completion.

Medical and Psychiatric Information: On 15 January 1998, H fell out of a window in the T's third floor apartment. According to H he was reaching for a toy which had fallen out of the window and slid down the roof. H denied any desire to hurt himself but the story about the toy created skepticism in his mother. H broke a leg and an arm, but reportedly produced no positive findings on a CAT scan. Ms. T reported, however, that since that time H has started to talk to himself. He "mumbles whatever he is thinking." She has never heard him refer to other voices in his head. H was not hospitalized at the time.

Because of his impulsivity, irritability and aggression, the T's took H to *** Medical Center in June 1999 to assess whether he needed any psychiatric medications. (They had previously assessed his needs for medications when he was nine or ten. H was tried on Ritalin, but the T's were not happy with the outcome.) Mr. T reported that H's medications were tried, adjusted, changed, readjusted, and changed again. He was quite frustrated by the process, and felt H was being treated as a "guinea pig." Ms. T noted that since the medications began, H's behavior and functioning had deteriorated sharply. The alleged Breaking and Entering behavior, his talk of suicide, back-talking, his increased appetite, dizziness, headaches, fainting, and vomiting all arose following the medication. As of shortly before my meetings with H and his parents, his parents had discontinued all H's medications.

In January 2000, Ms. T went to *** Medical Center seeking therapy or a day treatment program for H because of increasing temper problems. Records at that time indicated that H was diagnosed with Attention Deficit Hyperactivity Disorder, Impulse Control Disorder, Depression, and Enuresis (bedwetting). The doctor changed his medications to include Risperidol (anti-psychotic) for his impulse problems, noting past failed trials of Depakote (mood stabilizer), Adderall (stimulant medication for attention problems), Ritalin (stimulant medication for attention problems), and Clonodine (anti-hypertensive used for attention problems). His behavioral problems at home were escalating.

According to O.B., Intensive Adolescent Services Advocate (tracking and case management services), H was referred to her on 16 March 2000. On 29 March 2000 H reported to Ms. B that he was thinking about hurting himself. This occurred in the context of his not wanting to go on an outing with other adolescents in the Youthworks program. Ms. B had him evaluated immediately by a social worker, P.S., LCSW, and it was determined that H was not a risk to himself, and in fact was using this as a ploy to get out of going on the outing. Ms. T. reported that H had engaged in similar behaviors previously.

Ms. B also reported that on 18 April 2000, H got into an argument with his younger brother. H had become quite disorganized, aggressive, and threatening to his brother and the incident resulted in destructive acts toward property in the family apartment. Ms. T was very concerned. Ms. T paged Ms. B the next day asking for assistance. Ms. B picked up H and Ms. T took them to the emergency room. H was admitted to the
Crisis Adolescent Program on 19 April 1999. He stayed there until 26 April 1999 and was discharged to home. The next day while waiting at his outpatient therapist's office at B Medical Center he became quite aggressive, throwing books, and threatening. A security guard was called, and he was immediately taken back into the Crisis Adolescent Program. Notably, Ms. B reported that H had been explicit before he left the unit about not wanting to go home. She questioned the level of manipulation used to thwart his placement at home.

E.K., a social worker on the Crisis Adolescent Program noted that H's method of processing information affects everything he thinks and does. He starts conversations but cannot complete them. He speaks any thoughts in his head, without clear organization. He cannot follow the logical of an argument to its completion, and so gets caught up in his own illogical thinking. He does not seem to understand consequences. H was diagnosed with Oppositional-Defiant Disorder, moderate Major Depression, and his impaired cognitive level was noted. H was also placed on Neurontin (mood stabilizer), Remoron (anti-depressant), Serequel (anti-psychotic), and Celexa (anti-depressant). He was given an EEG, with no significant results. H stayed at the CAP for several more days before his behavior was deemed less manageable and that he needed the services of a locked hospitalization unit. He was transferred to **** Hospital.

Dr. J.D. saw H while at the Crisis Adolescent Program. She wrote a letter summarizing H’s problems and needs. She reviewed his treatment history, concluding “Nothing has helped stabilize H's behavior except containing him in a structured environment.” She noted that H's significant learning disabilities make it difficult to know how he understands his environment, but that it is “disorganizing and frightening for him to be in settings where unpredictable and unstructured events can occur.” She recommended a residential treatment and a school environment for H, with short, structured home visits.

J.C., MD, is a psychiatrist who treated H at P Hospital. He reported that when H was transferred to their unit the first diagnostic consideration was Bipolar Disorder (Manic-Depression). He felt, however, after observing H for several weeks, that H did not have Bipolar Disorder but instead simply had a Conduct Disorder. He had assured me that he did not use that diagnosis cavalierly (implying that not all young people who have behavior problems simply have Conduct Disorder), but he indeed felt that H had Conduct Disorder. He felt that H was manipulative: playing games, lying and fabricating foolish stories out of whole cloth. He was provocative with female patients and would touch them inappropriately, not ceasing when told to stop. He stated that H was verbally threatening, although he had no aggressive outbursts. Dr. C's concern was that H would end up being so provocative, he would end up getting hurt. While Dr. C dismissed the possibility of Bipolar Disorder, his suggestion of Conduct Disorder does not help understand the nature or etiology of Henry's behavior problems.

P Hospital records indicated that when H was first admitted he was quite defiant, provocative, annoying to peers, argumentative, and could become verbally "explosive" and threatening, although not physically aggressive or assaultive. He did not evidence psychotic symptoms. Dr. C's report went on to say that H did not make much effort toward or take responsibility for addressing his problems. He simply expected "magically" that they would be fixed. Dr. C did not feel that H was receptive to feedback from staff or peers, and that his "tendency to lie and confabulate" interfered with individual and group treatment. Dr. C did note that H had some discussions about his father's aggression and the pending dissolution of his parents' marriage. When asked about the impact of H's processing difficulties on his ability to follow the P program and benefit from it, Dr. C felt H had "all the sophistication he needs to conform his behavior."

Since H has been in P, his medications were altered. They included: Nuerontin, 1200 mgs (mood stabilizer), Clonidine, .1 mg. (anti-hypertensive used for impulsivity and attention problems), Celexa, 10 mgs. (anti-depressant), Wellbutrin, 150 mgs. (anti-depressant used for attention problems), Cogentin 1 mg. (to address side effects), and Seroquel, 100 mgs. During my conversation with Dr. C he reported that H had not been evaluated neurologically. When his fall from the window and lengthy history of learning and behavior problems were raised, he indicated that he did not think the neurological information would be "enlightening for his current condition," suggesting that it might be relevant to his learning situation. Dr. D's
perspective does not appear to be consistent with other professionals who have dealt with H's behavioral problems. Dr. C felt that H needed a structured setting, short of a hospital, and that he would be transferred back to the CAP.

He eventually did receive a neurophysical evaluation while at P Hospital, as had been recommended when H was evaluated at the B Hospital in April 1999. It was conducted by N.L., Ed.D., on June 12, 13, and 15, 2000. H's limited attention span required that testing take place over the course of three meetings. Cognitively, H's verbal and non-verbal (visual-spatial, perceptual-motor) reasoning skills are extremely discrepant. His language based skills are very compromised ("Borderline" functioning range), with difficulty understanding basic word meanings, and more abstract concepts. In contrast, all of H's visual motor skills were of average ability or above (scoring at the high end of the "average" range of functioning). H is quite able to solve many kinds of problems visually, and by manipulating objects. Testing placed H at the 1st grade level for spelling, the 2nd grade level for reading, and the 4th grade level for arithmetic. Memory was noted to be adequate when he was able to encode the information properly in the first place (which requires repetition). He had difficulty properly encoding verbal information. His visual memory was noted to be excellent.

Dr. R went on to document that H has "longstanding central auditory and language processing difficulty and dyslexia." His learning problems are not accounted for by H's difficulty with attention. Encoding verbal information for proper storage and retrieval is a significant problem.

Mental Status and Behavioral Observations: H.T. is a 14 year old Latino boy of Dominican descent (13 at the time of the arrest and the interview with me). H was irritated on both occasions that we came to interview him. After brief introductions during the first meeting, H went off to the YMCA to play, while we met with his mother. During the second interview, it took much coaxing and cajoling to keep H engaged in a one hour interview. During this appointment H's presentation fluctuated from clam to highly frustrated, storming away from the table. He preferred to be in control of the interview, sharing what information he deemed to be important. He did not like being questioned, especially when the questions were difficult or he did not know the answers.

H's thinking processes were very loose and disjointed during this interview. He often moved fluidly from one topic to similar but not necessarily logically connected topics. The point he was trying to make often had to be fished out by asking lots of follow up questions, and even then he sometimes could not be clear. He would often move to thoughts or images in his head, when he did not know answers or became angry, as a way to distance from those areas of inadequacy. Interviewing H thoroughly was very difficult because his attention was limited and he often had to be redirected to the topic. He also sometimes was simply unwilling to pursue a topic.

Information Relevant to Issues of Competence:

Account of the Interrogation: H indicated that he went to school the day of the alleged offenses. When he came home from school, he asked to go to the YMCA. When he returned at approximately 4:00 PM, he had a "bad attitude." M.T. reported that when she confronted H on his behavior and attitude, and threatened to call the police, he dared her to do so. She called H's CHINS probation officer, D.B. who suggested that M.T. call the police. M.T. wanted the police to come talk to her son about his behavior. She had not intended to have him arrested. She called the police, and three uniformed officers came to the house: two men and one woman. M.T. reported that H maintained a "tough" attitude even after the police arrived. H reported that the officers walked through the apartment, and looked through the dark rooms with a flashlight. He believed they were looking for drugs, so he tried to tell them that he did not drink or use drugs.
They congregated around the kitchen table in the following formation:

```
\[\begin{array}{c|c}
\text{Male Officer (standing)} & \text{Female Officer (seated)} \\
\hline
\text{M.T. (seated)} & \text{H.T. (seated)} \\
\end{array}\]```

H was aggravated that the police were there. He stated that he was trying to ignore the police, but "I had to listen." He recounted that at various points during their interview, he was very angry. For example when one officer reportedly told him not to smile, H was "so mad," he "wanted to knock him out." The police officers asked questions about the alleged offense. The male officer at the end of the table asked the questions. M.T. reported that she views the police as "people you are supposed to talk to." Thus she "told them everything...If there was something I shouldn't say, they would have told me." She reported the alleged offenses. The police officers asked H to confirm or deny her statements. H reported that the officers kept asking him if he used drugs, and he told them "a million times" that he did not.

The woman whose apartment was allegedly broken into came up during the interview. She told her side of the story, and again H was asked to confirm or deny her statements.

M.T. reported that the police officers did not yell or raise their voice at H or at her. They did not make insinuating or threatening comments. Nor did they make enticing comments or promises of any kind to solicit information. When H was asked if the police officers were loud, yelled, or scared him with threats, he responded, "It was so quiet, that I think the cop was afraid of me."

At the end of the review of the allegations, it was the female officer who asked M.T. whether she wanted them to take her son into custody. She also reportedly told M.T. that she should exercise "tough love," and that H "didn't seem to care," and might need a lesson.

They gave her the option of leaving him in the home, or taking him into custody. Ms. T abdicated her choice and told the police that they should do what was best, and thus the officers decided to take H to the station.

M.T. reported that the police then read H his rights. She reported that they stated that they had to read these rights, and they simultaneously put the handcuffs and shackles on H. At this point, M.T. felt that it was too late, and that she had no more options. During the discussion, she thought she could have put an end to the conversation. M.T. reported that they did not show H or her a card with the warnings written on it. They did not ask H (or her) if he understood the warnings. They did not offer any explanations of the warnings. They did not ask him to repeat back the warnings or to put them in his own words. M.T. did not have any private time to confer with her son. After he was cuffed and shackled they took him out of the apartment.

**Understanding of the Relevant Rights and Meaning of the Interrogation:** When asked what the "right to remain silent" meant, H stated, "I got the right to speak." When asked when he had the right to be silent, he said, "I don't know. In court." H then began to ramble about how angry he was during the interview. He felt the "cops" were trying "to be friends with me, and I was like, get out of my face." He then shifted to television images of police officers, not that the police tell you you have the right to remain silent, and then to "keep your head down, so they can put you in the car." Later in the interview when he was asked again about these rights, H became frustrated because he did not know the answers. He said that the right to remain silent was like being told to "shut up," and "not to say anything" because if he "committed a
crime and was telling a lie," the officer "doesn't want to hear what I have to say." He stormed away from our interview after these questions and had to be cajoled back to the table. H did not know what it meant to have any of this information used against him.

When asked about his right to an attorney, H said one has an attorney "in case you are guilty." The attorney gives "papers to the judge of proof," and tells the judge "I'm not guilty." H did not know what an attorney might do, if in fact a defendant had not committed a crime. H made no indication that he thought his attorney could be present during the questioning with the police. In general, H's definition of a right was "a privilege." He would not elaborate further. When asked what rights he had when the police were there, he said, "right to be silent, right to be [sic] freeze, to talk, to listen, to lie, not to lie."

H was asked if in fact the officers told him he had the right to remain silent or to an attorney. He said no, and that they did not tell him what he said could be used in Court. H then spun off again, angry: "These cops did not want to help me. They just wanted to arrest me." H did say that if he had been made aware of why he was being taken to Court, he would not have been so angry, and would have taken the consequences.

**Comprehension of the Interrogation as it Related to H:** H was angry and confused about the police officers' role. He reported that he was the one who told his mother to call the police. He knew his mother was disappointed in him, and he "couldn't take it." He heard her ask the police to talk to him because of his behaviors. He reported that his mother wanted the police to help him, not arrest him. When H was asked by this evaluator if he knew the police could arrest him, he stated, "No, they can't arrest me. I said right to their face, you can't arrest me." H became angry as he recounted these events. When he became calmer, he stated that he knew the police could arrest him, but "they shouldn't have." He gave the example that if a person argued with a police officer or threw a beer can in front of an officer he could get arrested.

H was asked why he stayed at the table to speak with the officers. His first response was that he did not want to be disrespectful. His mind then went to: "If they hit me with a stick, they would have got stabbed." When asked if he thought they would hit him, if he did not talk to them, he said he was not sure, but he did not think that he could have told the officers that he did not want to talk with them. Later in the interview, H stated that he talked to the police because if he did not, "they might say I'm guilty...I wanted to be respectful. I had no choice anyway. If I don't respect a cop, [he] might arrest me." He did not know if his mother wanted him to speak with the officers.

H did not seem to have any awareness that he could have sought legal counsel during this interview.

**Clinical Summary:** H.T. is a 14 year old boy, charged with Breaking and Entering. His attorney, J.K., Esq. requested an evaluation of H around the circumstances of H's police interview at the time of his arrest. Attorney K questioned whether H made a valid waiver of his *Miranda* rights.

The first issue that was raised during this evaluation was whether or not H was in custody during the time of the interview when inculpatory information was offered. Police records indicate that *Miranda* warnings were issued at the outset of the conversation. H's mother believes that these warnings were not issued until after all the information about the alleged offenses was discussed. H does not recall the warnings at all, but his mother is clear that they were read.

Therefore, if the warnings were read just moments before H was arrested and taken out of the apartment, the question arises as to whether the circumstances of "custody" attach to the earlier interview. If the warnings were indeed read at the outset, the question is whether H could have made a valid waiver.
With regard to the custody question, H's general belief was that he did not have a choice about talking to the police, that he could not have gotten up and politely declined to discuss the situation. In his mind, several consequences might have accrued from this behavior, such as the police assuming he was guilty, or his immediate arrest. At one point he even mentioned the possibility of getting hit. M.T. stated that she felt she could have "changed her mind" (from having called the police in) earlier in the interview, although this was not particularly compelling since she did not even exercise the choices she was offered (whether or not the officers should take H to the police station). Thus, it appears that H's sense of freedom to leave the situation was compromised.

With regard to the question of the validity of the waiver, several factors contribute to the "totality of the circumstances." The first is H's overall cognitive and intellectual impairment. H has a lifelong history of developmental language delays. He began with a significant delay in the development of speech (not until age four). He has been in special education services since quite early on, including speech therapy. At present he is at least five years behind in both receptive and expressive language skills. Various tests of word identification and reading comprehension place him at the second and third grade levels. Current neuropsychological testing confirms his language deficits, diagnosing him with the language disorder, Dyslexia. While H is reasonably able to process information visually, he has severe problems receiving, storing, making sense of and retrieving information provided to him verbally. Concretely, his mother feels he can read and write only very poorly. What this means is that H does not take in information in a clear logical way, to then manipulate and use and apply to the next circumstances. This is particularly relevant for new information or abstract, complex information. It is clear simply from interacting with H that he has trouble maintain a line of thought, following logically from one point to the next, appreciating the consequences of his ideas and behaviors, and understanding some basic information. This information is directly relevant to his ability to understand the concepts relevant to a Miranda waiver, and to applying those concepts to his own circumstances.

H also has a burdening psychiatric history, indicating that his emotional functioning is compromised. To date he has demonstrated attentional problems, depression, mood volatility, and possibly psychotic symptoms (these seem to have been transient, and do not appear to be fully understood yet). He also has an as yet unclear neurological profile. It was very clear that H's irritability and out right anger impaired his thinking processes. When H was calm, he functioned somewhat better than he did when he became frustrated (which happens easily). This also bears on his functioning during the police interview. He started the evening with "an attitude," which did not abate, but apparently worsened at times while the police were present. When H becomes angry his mind wanders and gets caught in fantasy material that excites him, but draws him off the topic or task at hand. This confounds his already compromised ability to make sense of incoming information, and to formulate appropriate responses.

H's behavioral functioning is also quite impaired. H was still hospitalized as of the writing of his report. Following his stay at P, he went to S Hospital. At P, his treating psychiatrist labeled H as having Conduct Disorder, which may be accurate (in part), but does not appear to fully capture H's problems. H's lifelong learning disabilities have been inadequately addressed. He is now trying to complete middle school unable to adequately read or write. His anger and frustration have piqued and his behavioral controls have worsened. It is essential not to simply interpret H's temper as a Conduct Disorder, because that inadequately appreciates those problems that lie at the core of his behavioral problems.

H's cognitive, emotional, and behavioral problems all contributed to his significant inability to fully understand his Miranda rights, or to appreciate how they applied to his own circumstances. H could not articulate clearly that he could choose not to talk to the police, and he seemed to have little awareness that he had the right to counsel. His mother did not intercede on his behalf for these rights. She in fact thought that the police were there to be helpful and they would have stopped her if she should not have shared something.
The other factors that contribute to the "totality of the circumstances" are the situational features of the interview when the police were in H's home. According to M.T. the officers did not use pressuring or threatening tactics. They did not coax H into sharing information manipulatively. There were three of them, however, and for the bulk of the conversation, in essence, were surrounding H. He did not feel that he was free to leave or to choose not to answer their questions. H's developmental level and level of emotional and cognitive disorganization make it more likely that he would acquiesce to the questions of the police, and suggest that he does not have the internal resources to confront the situation on his own behalf. His mother had made the call to the police, so might not have been perceived as his ally in the moment. Even if she were, she made no attempts to confer with H, step in on his behalf, nor did the police officers facilitate any private conversation between them. He also was clear that he had disappointed his mother, and perhaps was expected to comply.

In sum, H is a fairly compromised young man with limited abilities to process information in a high stress situation. It appears that he did not fully comprehend the long term consequences of talking with the police, and how this might impact his case. Overall, without the ability to understand or utilize this information, it appears that his ability to autonomously waive his rights to avoid self-incrimination and to counsel was compromised.

Respectfully submitted,

_________________________
Licensed Psychologist
The juvenile, *****, hereby moves this Court pursuant to Rules 13 and 14, Mass. R. Crim. P. to dismiss the above numbered indictment. Alternatively, the juvenile seeks his release from unlawful detention. As grounds therefore, the juvenile states that:

1. He is charged in this indictment with assault and battery on an elderly person causing serious bodily injury. G.L. c. 265 § 13K.

2. The incident underlying the above numbered indictment occurred on or about July 24, 2001. Evidence concerning this incident was presented to the grand jury in September and October 2001. The above numbered indictment was returned by the grand jury on December 20, 2001.

3. The juvenile was arraigned on the indictment on February 12, 2002 and has been held on $25,000.00 cash bail since his arraignment.

4. The juvenile has undergone three evaluations to determine whether he is competent to stand trial.

5. On June 18, 2002, the juvenile's expert psychologist, Dr.******, evaluated the juvenile. In a report dated August 3, 2002 (Exhibit 9 at the Competency Hearing), Dr****** concluded that the juvenile "does not understand the trial process, the roles of the players involved, cannot appraise proceedings or likely outcomes of decisions. He does not have the capacity to participate with his attorney in a defense due to his lack of reasoning skills and above noted deficits." (Exhibit 9, ***** report, at page 6.)

6. In September 2002 the juvenile was evaluated by Dr. ********, a psychologist with the Boston Juvenile Court Clinic. In a report dated September 23, 2002, Dr. ******** wrote that although the juvenile, "showed a few signs of competence to stand trial . . . His grasp on [ ] trial related issues would deteriorate under pressure . . . [He] did not understand that being charged with an offense was not the same thing as having been convicted. He understood little or nothing about plea-bar gaining, . . . [and] he had no understanding of how a trial determines guilt or innocence." He concluded that, "It is very unlikely that **** will have a solid understanding of what goes on in his trial, even if he has extra instruction and support." (Commonwealth's Exhibit 1 at the Competency Hearing; ******* report at p. 4.)

7. In November 2002, the juvenile was evaluated by the Commonwealth's expert, Dr. *****, a psychiatrist. Dr ****, in a report dated November 9, 2002 concluded that the juvenile, "does not meet the minimal standard at this time for competence to stand trial. He does not have sufficient ability to consult with his attorney with a reasonable degree of understanding, nor does he have sufficient factual understanding of the proceedings against him." (Exh. 0 at the Competency Hearing, **** report at p. 4.)
Finally, in February 2003, the juvenile was evaluated by Dr. ***** of the *** Court Clinic to determine whether he could be committed to a mental health facility by reason of mental illness. Dr. ***** concluded that the juvenile is not mentally ill, does not meet the criteria for civil commitment. (**** Report at p. 25.) Dr. ***** also concurred with the conclusion that the juvenile is not competent to stand trial and cannot become competent. (**** Report at pp. 24-25.)

Each of the evaluators noted that the juvenile has serious memory problems and does not retain information that he is taught. (Exhibit 9, **** report at p. 5; Commonwealth's Exhibit 1, ***** report at p. 2; Exhibit 10, **** report at p. 3.)

Each of the evaluators pointed to the juvenile's diagnosed mental retardation or low IQ and attendant deficits in his receptive and expressive language skills and reasoning ability as the reason for his not being competent to stand trial. (Exhibit 9, **** report at pp. 3 & 6; Commonwealth's Exhibit 1 ***** report at pp. 3-4; Exhibit 10, **** report at pp. 3-4.)

Dr. ***** the only evaluator who specifically addressed the issue, concluded that the juvenile's deficits are, "organic in nature and cannot be remediated through specific teaching methods. They will not improve over time." (Exhibit 9, **** report at p. 4.) Dr. **** concluded that, "Given [the juvenile's] life-long noted cognitive deficits he cannot be taught the information needed and his deficits cannot be remediated through instruction." Dr. **** testified at the competency hearing that the juvenile's deficits cannot be overcome through specific teaching techniques.

The evidence that was admitted at the hearing on the juvenile's competence to stand trial on January 22 and February 5, 2003 demonstrated that the juvenile's deficits are such that he cannot be "made competent" to stand trial.

None of the evaluations indicates that the juvenile is mentally ill or suffers from a mental illness such that he could be committed to a mental health facility pursuant to G.L. c. 123 §§ 8 &16(b). (Although the juvenile has previously been diagnosed with ADHD, none of the current evaluators gave him this diagnosis and ADHD is not a mental illness for purposes of committing the juvenile by reason of mental illness. See, 104 CMR § 27.05.)

Continued detention of the juvenile when there is not a substantial probability that he will become competent violates his right to the due process of law as guaranteed by the Massachusetts and U.S. Constitutions. See, Jackson v. Indiana, 407 U.S. (1972 ); Department of Mental Retardation v. Kendrew, 418 Mass. 50, 54 (1994), (there is no statutory authority for the commitment of a mentally retarded person who is not also mentally ill).

Because the juvenile cannot be made competent, this case must be dismissed.

Wherefore, the juvenile requests that the above numbered indictment be dismissed. Alternatively, the juvenile requests that he be released from detention forthwith.

Dated: ******

By his attorney
**********
Address
SAMPLE DEVELOPMENTAL ASSESSMENT

At the request of his attorney, I interviewed 15-year-old A at the detention center on ________ (for a total of about 11 hours), interviewed his mother, father, sister and brother in their home as well as two friends and reviewed school records and police documents. My opinions are based on the materials I reviewed and clinical interviews organized around a developmental assessment which I utilize with juveniles to evaluate amenability to rehabilitation services.

A is a small, depressed, intelligent teenager who cooperated fully during long hours of interviewing. He is studious-looking and unusually quiet and polite. When asked his views he articulated ideas on numerous subjects well. A remains in shock and a state of shame about the unintentional consequences of his actions. He is horrified by what happened and is struggling to understand his poor decision-making in the months before this tragedy. He says that his time in detention has been beneficial, giving him the opportunity to "really think about things" and get close to his family again. To understand what would be necessary for A's rehabilitation requires carefully considering how far he has progressed in his cognitive, identity and moral development and in recovering from trauma.

A's parents were born in a small town in Mexico. They married and had their first child when they were both 20. All four of their children are U.S. citizens by birth. A's parents speak mostly Spanish. A's mother has worked in the same restaurant for 26 years, and his father has worked for his employer for 15 years. They live in an area plagued with gang activity and violence. A and his family go to the Catholic church a few blocks away where A attended CCD in 5th grade. A's 23-year old brother is employed and lives nearby with his girlfriend and their 1- and 5-year-old daughters. A's 20-year-old sister lives in the family home with her 2- and 4-year-old daughters; she dropped out of 9th grade and lived with the father of her children in her parents' home for several years until they separated. She is employed and their maternal grandmother, who lives in their home, cares for her children while she works. A's 17-year-old brother dropped out of 10th grade. At home, A was required to keep his room clean, take out the garbage and put away the clean clothes. A is very proud of his parents who he says came to the U.S. with nothing and have worked hard. The walls of the living room are covered with pictures of the children, grandchildren and the family together. They are a close-knit family, with both parents, the maternal grandmother, the four children, grandchildren, and their daughter's boyfriend living together until A's oldest brother and his sister's boyfriend moved out in the past year; at one point in the household, five adults and his 17-year-old brother were all employed.

1. THE EFFECTS OF TRAUMA ON A

Family Problems. Although his family has a strong work ethic, has been stable and family members are very concerned about A, he has faced numerous family problems which he was unable to talk about in the past. His early elementary school years were apparently happy, with his grandmother ("a second mother to us") taking care of the children while his parents worked. Up until 4th grade, he described his life as being at home most of the time, playing Playstation with his brother and playing basketball and soccer in a field in the neighborhood. A has not been to
Mexico since he was in 4th grade: he has many happy memories of his visits there. He enjoyed helping his grandmother plant corn and talking to her and spending time playing outdoors with his cousins in the small town where it seemed to him there were no problems and he had many extended family members. "Here you have to worry about people hurting you all the time. In Mexico kids just wander around."

The death of A's paternal grandparents in Mexico was very hard on his father. At the same time, his parents struggled to cope with the adolescent problems of his oldest brother and his sister. They were disappointed when his brother dropped out of school when he became a teen father and his sister followed in his footsteps.

A felt well taken care of by his sister until he was in 4th grade and at age 15 she had her first baby and her boyfriend moved in with the family; a few years later she had a second daughter. In addition to separation from his family in Mexico and the loss of his sister's attention, his biggest family problem according to A was that although initially his father did not approve of his sister's boyfriend, gradually he and their father became close; his father was a supervisor and hired his sister's boyfriend and they went to work together. He reported that his sister's boyfriend made his father think A did things he did not do, and his father was never satisfied with him anymore. A was bitter that his father no longer spent time with him: "He took all the attention away from my Dad. He was like his son. They would drink beer together. I worry about my sister. Her babies' father is not good for her." This loss was very significant at a time when A needed fatherly guidance. A said he basically stopped communicating with his parents, although he continued to be obedient, did his chores and complied with curfew.

Missing His Best Friend. Another significant loss for A was his neighbors X and Y moving away. In 6th and 7th grade, he enjoyed playing soccer with X who was close to his age. He looked happy when he described spending time with his brother, X and Y, playing and making music and talking. He said he had some close friendships with girls after that, but not with guys. When I talked with Y, he said that the four of them had good times upstairs at A's home. He said A wrote great music lyrics about teachers pressuring him and not feeling loved by his parents. His brother said that his song lyrics were about the pressure A felt from street violence, teachers at school, and his sadness that their father did not play around with them like he had when they were little.

After our first day of interviews, A said he went back to his unit and wrote his first song lyrics since coming into detention. When asked about the songs he wrote and sang with his brother and friends, he said his lyrics were about "bad things that could happen, being out and people coming around busting guns at you. Life shouldn't be like this. I always pictured life being a great thing. Knowing everybody, with nothing to worry about. But everywhere I went people were looking at me hard, throwing up gang signs. I thought it was a free country, but the police wait outside my front door to ask me where I am going, what I have on me. Once they picked me up, found nothing, and dropped me off in another neighborhood where they knew I would get beat up."

School Pressure. A felt pressure from his teachers. He said all but a few of them were overly critical of him. He said they told him that they knew his siblings, who had all gone to the same school, and they expected him to be problem students like they were: "The attendance people came to our house for my brothers...Some teachers were racist. They did not understand me or care about me."
Some teachers find something wrong with you all the time. If my brother came to school to pick me up, the teachers knew him from the past, and gave me a hard time about why my brother was in school. The reading teacher never liked me. She only liked the kids in the gifted class. We would just play around and the teachers would yell at us. My favorite teacher, a Puerto Rican, would let me come to her class. She would talk to me, let me do my homework, always had something nice to say. She was the only one at that school. Two other teachers told me I was smart. But to most of them, I was the youngest kid in my famous family."

A felt pressure as the youngest in the family after his three siblings had disappointed his parents by dropping out of school. "My parents worked and worked. We put them through a lot, my brothers, my sister and I. All they wanted was for their children to finish high school…I wasn't going to drop out like my brothers and sister. I wanted to do something with my life…I was real stressed out. I was pressured to be perfect. I was the last child." Although he wasn't sure if he would say that he and his parents have two different cultures—one a small-town Mexican family orientation and the other urban American—he said, "they don't know what it's like to be a teenager here. They didn't understand. I knew they'd be disappointed in me." A had trouble expressing his feelings about his family problems. He said he felt ungrateful complaining about his parents. Unfortunately, A did not have counseling to learn about how common these parent-child problems are in immigrant families and how to talk with his parents about the competing pressures from conforming to old-fashioned family values and American teenage realities.1

Fear of Violent Confrontations. For at least two years, A has felt increasingly worried about gang violence in his neighborhood. He described knowing several young people who were shot. This experience has had a major effect on him. He worried every time he walked down the street: "They drove by and stared at me, shouted at me, flashed gang signs at me, and threatened me." He never knew when someone might get out of a car and beat him up. "I tried never to walk alone. If I did, I'd run to a safe spot where there were people." He had to be aware of what he wore in order to avoid colors that could incite gang members to beat him up, Asked what colors were safe, he said only a white shirt and blue pants, but there was no way he could wear that every day. "This is not the movies. In life, violence is real. It messed me up knowing someone who went to the hospital. You don't know if they'll come out. A lot of people have died in my neighborhood. Real life is full of surprises. Death is always there. You never know what's going to happen."

His brother confirmed that during the summer people in his neighborhood were being attacked every day: "They would actually take it out on anybody. You didn't have to look like a gangbanger. If you ignored them, they would jump you. If you ran, they would chase you." A counted three times he had been seriously threatened in less than two weeks before his arrest.

I interviewed his neighbor B, who was his classmate and girlfriend. She described him as a "totally sweet" friend who was caring towards her and listened to her problems. She criticized his parents' lack of concern for his school problems and the pressures he faced on the street. B said there

were constant threats from gangs in their neighborhood and that he completely lacked guidance about how to deal with them. She said his brother was a gang banger who did not help A cope with the pressures of the street. She said his family was so negative about his siblings dropping out of school that they did not help A achieve in school: "He was constantly put down at home." She said he was so smart that he could help her with her advanced math but that his home was too crowded and he had no place to do his homework and no encouragement.

In response to the question of whether it is possible for a teenager to stay out of gangs in his neighborhood, A responded "I only started talking to gang members in 8th grade. Before that I was going to stay away from gangs. But I was being watched, threatened. I should have stayed away. I wish I knew back then what I know now... It was harder to stay out of a gang after X and Y moved. Joining a gang is not the right thing to do. But no one wants to die at a young age. Gang banging isn't the answer, but you can get killed if you do stand up to gangs; it's sure to catch you in a beating." To keep away from gangs, he said a teenager would have to move away. He wishes parents had moved "far away from that neighborhood," but he does not know if they can afford to move. He worries about his family's safety in the neighborhood.

Family problems, his friend's move, school pressure and the fear of violence were traumatic events in A's life after age 10. A said that he did not talk to his family members or guy friends about his sadness or fears. He said he talked a little to his friends who were girls, but there was no one he could confide in about (a) pressure on the street or (b) pressure from high expectations at home (and school). He internalized it all, and did not realize until now how intense the pressure was and how having to contend with it alone undermined good decision-making.

Trauma typically slows down development in children and can interfere with various aspects of the child's functioning. While other children are growing emotionally, the traumatized child is distracted from normal developmental tasks and is occupied with coping with fear, betrayal and feelings of worthlessness.

Depression is a common reaction to trauma. When I interviewed him, A was depressed, not just because of his involvement in a tragic crime and his worries about the future. He has been plagued for years by sadness over his family, school problems and fears about violence. His song lyrics in 6th and 7th grade reflected his depression.

A is emotionally needy, like a younger teenager, but because of typical male adolescent bravado, he does not admit his desire for comforting over things that sadden and scare him. He was unaware that he was using marijuana to numb his feelings (which is common among traumatized children), although now he says, "You could smoke to escape your family problems, but a few hours later, your family problems come back."

Reacting to fear is also a characteristic of teenagers traumatized by violence. A was likely to feel more threatened and be on the alert more than teenagers from less violent neighborhoods. Fear

interferes with adolescents' ability to make choices. To outsiders it may appear that a frightened
teenager is over-reacting, but threat can only be evaluated from the perspective of each young per-
son at the time he felt in danger.

In my opinion, A's development has been delayed because he has coped alone with the stress of
traumatic family, school and neighborhood experiences. He is needier, more easily threatened,
and more depressed than other teenagers his age.

2. A'S IMMATURITY

In an *amici curiae* brief in *Roper v. Simmons* (the United States Supreme Court 2005 opinion against
the death penalty for juveniles), the American Medical Association and the American Academy of
Child and Adolescent Psychiatry (with other organizations) distinguished the brain development
and maturity of 17 and 18 year olds from adults, based on current research that applies directly to
A:

"Older adolescents behave differently than adults because their minds operate differently, their
emotions are more volatile and their brains are anatomically immature...These behavioral differ-
ences are pervasive and scientifically documented...Their judgments, thought patterns, and emo-
tions are different from adults, and their brains are physiologically underdeveloped in the areas
that control impulses, foresee consequences, and temper emotions. They handle information pro-
cessing and the management of emotions differently from adults.

Adolescents are inherently more prone to risk-taking behavior and less capable of resisting
impulses...Adolescents as a group are risk takers [and] ... exhibit a disproportionate amount of
reckless behavior, sensation seeking and risk taking...it is statistically aberrant to refrain from
such [risk-taking] behavior during adolescence. In short, teenagers are prone to making bad judg-
ments.

Cognitive experts have shown that the difference between teenage and adult behavior is not the
adolescent's inability to distinguish right from wrong...Rather, the difference lies in what scientists
have characterized as deficiencies in the way adolescents think, an inability to perceive and weigh
risks and benefits accurately... psychosocial maturity is incomplete until age 19, at which point it
plateaus. Adolescents score lower on measures of self-reliance and other aspects of personal
responsibility, they have more difficulty seeing things in long-term perspective, they are less likely
to look at things from the perspective of others, and they have more difficulty restraining their
aggressive impulses. Researchers have found that the deficiencies in the adolescent mind and
emotional and social development are especially pronounced when other factors-such as stress,
emotions and peer pressure-enter the equation. These factors affect everyone's cognitive function-
ing, but they operate on the adolescent differently and with special force. The interplay among
stress, emotions and cognition in teenagers is particularly complex-and different from adults.
Stress affects cognitive abilities, including the ability to weigh costs and benefits and override
impulses with rational thought. But adolescents are more susceptible to stress from daily events
than adults, which translates into a further distortions of the already skewed cost-benefit analy-
sis...
The typical adolescent is also more vulnerable to peer pressure than an adult... Adolescents spend twice as much time with peers as with adults. The pronounced importance of approval and acceptance by friends will make an already risk-prone or impulsive adolescent even more so. Adolescents not only are more susceptible to peer pressure, but they gravitate toward peers who reinforce their own predilections... an adolescent who spends time with risk-prone friends is more likely to engage in risky behavior.

Brain studies establish an anatomical basis for adolescent behavior. Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature, not only to the observer's naked eyes, but in the very fibers of their brains... First, adolescents rely for certain tasks, more than adults, on the amygdala, the area of the brain associated with primitive impulses of aggression, anger, and fear. Adults, on the other hand, tend to process similar information through the frontal cortex, a cerebral area associated with impulse control and good judgment. Second, the regions of the brain associated with impulse control, risk assessment, and moral reasoning develop last, after late adolescence... as teenagers grow into adults, they increasingly shift the overall focus of brain activity to the frontal lobes... [responsible for] decision making, risk assessment, ability to judge future consequences, evaluating reward and punishment, behavioral inhibition, impulse control... and making moral judgments.

Normal adolescents cannot be expected to operate with the level of maturity, judgment, risk aversion or impulse control of an adult... an adolescent who has suffered brain trauma, a dysfunctional family life, violence, or abuse cannot be presumed to operate even at standard levels for adolescents." (pp. 4-20; citations omitted).

A showed the adolescent immaturity described in the AMA brief. His actions were impetuous rather than considered and he took risks. He was susceptible to peer influences and had no control over the retributive violence in his neighborhood. Like other teenagers, he was prone to making bad judgments, especially when he was with other teenagers and/or felt threatened. Because of the trauma he had experienced, he could not be expected to function up to the level of others his age. His parents describe A as childlike. They say he has always been the most playful child in the family and enjoys playing practical jokes on family members. His sister refers to him as a "little kid," turning everything into play. She could not understand how he could like Playstation so much to spend hours on it still at age 14. His family noted that he has been sad and does not joke with them since he went to detention. His brother commented, "It is not a surprise that A has been well-behaved and achieved the highest level at detention-he is not one to fight. He gets along with everyone."

A'S IMMATURE THINKING

Adolescents gradually develop adult thought processes and problem-solving skills. Learning to anticipate outcomes and make mature choices evolves slowly until late in the teen years. Even

3 Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas. Petition for Writ of Certiori to US Supreme Court (www.abanet.org/crimjust/juvjus/patterson.html). For a more complete description of adolescent brain development, see Time magazine, 5/10/04.
intelligent adolescents are not capable of adult decision-making in part because their brains continue to develop beyond age 18. As one expert, Dr. Ruben Gur, has summarized: "The cortical regions [are involved] in the control of aggression and other impulses, the process of abstraction and mental flexibility, and aspects of memory. If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes." At age 14 (he turned 15 in detention), A showed immature thinking common in adolescents:

A did not think before acting.

Many intelligent 14-year-olds cannot weigh alternatives in a rational decision-making process. Learning to manage impulses develops slowly, and impulsiveness does not mean that a young person will always have poor judgment. For example, A described a threatening situation where he did not have time to think before acting: "A group of guys drove down the street where we standing. They opened the windows, stared at us, yelled at us, looked like they were going to get out with bats. We were drinking pop and we threw the pop bottles at the car. They took off."

Asked whether he considered his actions before throwing his pop bottle, he responded: "You're not thinking. When six guys are after you, you just throw it. What else could you do?" He said he ignored his worries that he should stay away from some of the things he was doing, but he could not explain why: "I don't know what happened. I wasn't thinking hard enough." He acknowledged that sometimes he did not think before acting because he was high. Apparently he also made some poor choices while he was with his brother.

A has the immature thinking typical of a young teenager when he describes his alienation from school. Both his adjustment in school and his academic performance gradually worsened from 6th through 8th grade. He reported that he felt picked on by teachers. He received misconduct reports in 7th and 8th grade for making comments to classmates, being tardy or cutting class, being disruptive in class, being disrespectful to teachers, and muttering obscenities under his breath. His behavior was interpreted as being threatening, although like others his age, he considered it typical of teenagers to say things they do not intend to act on. It is surprising that the school did not initiate counseling for A to determine what was causing his deteriorating behavior. It was apparent that he did not recognize the consequences of his behavior or getting "lazy, slack[ing] off in doing homework." In the past when he risked a failing grade, he would work harder to raise the grade. He did not take into account that in 8th grade the work was more difficult, making last minute recovery impossible. He continued to believe that he was on track to graduate from high school, despite his worsening grades and behavior problems in school.

A was given the option of passing into 9th if he went to six weeks of summer school. He said he diligently attended summer school in the beginning, but then woke up late and received several tardies and missed several days. He learned that if he did not complete summer school, he would be placed in an alternative school that would prepare him for 9th grade and if he did well, he would move into 9th grade in the middle of the year. He realized this was a better option for him because he felt that he had missed so much in 8th grade that he was not going to be ready for 9th grade. With the preparatory program he thought he would get much better grades in 9th grade. He said a friend went to the special academy and that he would be a good student if he went there as well. This is another example of his immature thinking: when he was unable to hold himself to the discipline of summer school, he told himself that he was going to stop hanging out with dropouts and get serious about school in the fall.
A did not accurately assess the risks of gang protection.
Adolescents often do not anticipate the outcomes of their choices, and describe their lives as "happening to" them. Not seeing the riskiness of their behavior is common among 14-year olds. A is ashamed now that because of his fear, he sought protection through a gang. He said his neighborhood was Latin Kings' territory, and he was determined not to join the Kings because there were rival gangs in all the territories around his neighborhood, which would make it dangerous to be a King. He said that he did not reach out to a gang. When he was playing basketball in the neighborhood, M (dob who turned 22 the night of the offense) and N (18½ the night of the offense) befriended him. A said they played basketball with him, and they started hanging out together. He stopped spending as much time with B because her family did not like him and ended up "chillin" with them more often. School pressures increased, and he started to hang around M and N more toward the end of the school year when it became clear that he would not pass 8th grade. "It just happened. The kids at my school seemed so young. The older guys were more mature and I liked that. When I was chillin' with them, we weren't gang banging. I didn't say to myself, I'm better than this. Why, out of no where, did I start hanging with them? When I started chillin' with N and M, little did I know." As he got more scared of confrontation or being shot, he concluded he was better off if he was always with someone on the street and reluctantly slid into becoming an Unknown for protection at age 14 (December, 2004). He said getting into the gang was relatively easy--being hit for one minute by M and N, which only gave him a few bruises. He said he never wanted to join a gang, and definitely not the Latin Kings. "It was bad enough I was with Unknowns. I didn't want something deeper." Sometimes Latin Kings had tried to recruit him, saying they had the most people and guns, but he said he was not interested. "Sometimes I considered myself an Unknown. But I didn't want to be like N, who looked like a gang banger with gang tattoos. I was young. But they wanted me because I'm not dumb. The gang was for protection. People were coming at me."

A's parents started to worry about his hanging around with older friends in the spring of 2005. Before that, they thought B and other friends from the neighborhood were fine. But as they got to know M and N, they decided they were nice guys who looked out for A and his 16-year old brother. They preferred to have A and his brother have their friends at their house, playing Playstation or upstairs playing pool and listening to music. They worried when the boys went out, especially with older friends. They described some evenings when they would sit on their front porch with A, his brother, N and M. A said he considered M a "cruising buddy." They went to parties together. Once or twice a week they smoked marijuana together. Sometimes his older brother got beer for them.

Because of his immaturity, A minimized the harm that could have happened from actions. "I didn't think chillin' with them would get me in so much trouble. We weren't gang bangers. We would not have attacked anyone. We didn't have guns. But if they jumped out of a car and attacked us, we'd have to fight back. In that neighborhood, you've always got to watch your back...My parents told me to walk away. How could you if there's a car full of them and you by yourself? If you walked away, they'd come after you. They'd wack you with a bat or shoot you. They'll chase you. In that neighborhood, if I even told the time to a King walking down the street, and a car full of rival gang member came by, they'll come at you, they'll think you're one of them. I never told my Mom about all this. I didn't want her to worry. I don't want to see my Mom cry." A regretted that he didn't tell his parents more about what he was facing on the street.
A said he had talked to a "high up person in the Unknowns" to arrange the process for leaving the gang before this offense: "He told me he'd rather have me going to school than seeing me waste my life. This summer I regretted joining the gang. It seemed cool at first kicking back with them. But it isn't really."

A's immature thinking is not the result of low intelligence. Just because he is bright does not mean that A is sophisticated when he has to make decisions under stress. When he did not have time to think and felt threatened, A's immature decision-making made him more like a younger adolescent than his outward appearance would suggest. Despite being surrounded by frightening gang violence, A was a naïve 14-year old. He relied on his brother and older friends to protect him. Because of his immature thinking, he could not appreciate the riskiness or imagine the worst possible outcomes of his actions.

A'S IMMATURE IDENTITY

Adolescents gradually refine a stable definition of themselves and their outlook on life. The central core of identity comes from nurturing and success. While A seems more confident in his family's love now, for years his parents' disapproval and feeling that he was a school failure undermined his developing a positive identity. Had he excelled in school or athletically, A would have had a foundation for pride in himself. The lack of opportunity in A's life is striking. He has caring, hard-working parents who provide a good home, but they have not arranged enrichment for A. He loved science fair projects, but he was not involved in science camp, museum classes, or other opportunities. He enjoyed soccer and basketball, but was not involved in any leagues and when asked said there were no athletic opportunities before high school. He would have liked to play more soccer and basketball, but he did not see how his parents could have helped him do so.

A attended ___ Elementary School from Kindergarten through 8th grade A got Bs and Cs until 6th grade. His scores on standardized testing during those years showed his intelligence. Asked if he would have enjoyed the gifted program in his school, he said it would have been more pressure and more homework which he did not want. Asked if he did not achieve up to his ability because it was not cool to be a good student, A said he was satisfied with being a B/C student. But his brother disagreed, saying that A was bright and could have done better in school, but that he was not excelling in order to fit in. Later when his grades dropped, A said all he cared about was not failing. But by 2002, he received below average in Reading, Mathematics and writing on the state's Standards Achievement Test. Asked why he got Cs and Ds in 7th and 8th grades, he said "I got lazy. I don't know why. I was not paying attention to my grades. I was not doing my homework. I didn't get along with the teachers. I started hanging out with people outside of school. I didn't realize it would stop me from graduating. Bs and Cs were okay. I was passing. I didn't want to have As and Bs. That's too much for me." Asked if he wanted to be a doctor or a lawyer, he said, "I thought about being a doctor, but it's too much school. I just want a good steady job. There's nothing wrong with becoming an electrician. People have to respect who I am."

In a neighborhood where he saw most teen males drop out of school and join gangs, A started to lose hope for an alternative path for himself. Since he did not have a strong independent identity, he followed his brother and older friends. Because he was not achieving in school, did not have enrichment or athletic opportunities, and felt criticized by his parents, A did not have a positive view of himself at age 14. He had a lot of development remaining to form a positive, mature identity.
A'S MORAL DEVELOPMENT

During adolescence moral development progresses toward understanding responsibility and rights. A demonstrated good moral values when he responded to ethical dilemmas. Asked about the use of steroids by athletes, A said he thought it was wrong. "They want to be bigger and stronger, but it is cheating." He also thought it was harmful for the athletes' health. He thought they should be cut for using steroids. He could not explain why some successful athletes use cocaine. He said they are wasting their lives. He thought the team should support them in getting treatment, but "you've got to help yourself." His uncle who used to live in Chicago was an alcoholic, which A thought was sad. He is proud of him that he stopped drinking.

When asked his thoughts about parents wanting to censor violent rap lyrics, A could understand why they did not want their children to listen to some rap. But he thinks other rap is real poetry. He admits some is violent, but "the singers are singing, not doing violence and listeners should not choose to do violence after listening."

When asked a military hypothetical about an officer ordering a private to burn down a village with civilians in it, A said the soldier should say 'No' and refuse to do it: "you shouldn't shoot innocent people."

The growth of empathy is an important part of moral development in children. A showed empathy for his parents, siblings and friends. He is an unusually loyal teenager and did not feel comfortable criticizing his parents. He said sympathetically about his parents, "They never stopped trying. They've done so much for us. Maybe it is better for them to be happy where they are than to have to move because of their sons." He talked empathically about his friend B's family problems, which she used to talk to him about. A sadly reported that his old friend Y had lost interest in music. His new neighborhood had more gang fighting and drugs than where they had lived, and Y ended up in a drug program: "It shocked me when he got so into weed and drinking."

A talked believably about how sad he feels for the victims and expressed sympathy for their families. It is extremely painful for A to talk about the victims. He feels such shame and sadness about the unintended death of one victim and the serious injuries to the other, and the loss experienced by their families. A understands the seriousness of this tragic offense. He knows that when violence like this offense occurs, it is harmful to the whole community.

He is struggling to understand his responsibility. Unlike many young people who take little responsibility for their unintended actions, A does not protest that he should not be blamed. He takes responsibility for having bad judgment and not leaving. He knows it was wrong to burn the car. If he had seen any choices, he said he would have left, but he felt trapped. It is also unusual that A does not blame M and N to avoid taking responsibility himself. He has difficulty expressing his feelings, but was able to do so with careful questioning and encouragement.

An important element of A's moral development is his religious upbringing. A said his brother designed a tattoo for a friend to give him on his back a year ago. It is a cross with his name on it and "Forgive My Sins" written around it. He is glad to go to church services on Saturday in deten-
tion. On Tuesdays a woman comes into detention to study the Bible with him. He reads the Bible every night and said it encourages "deep thinking." A said he continues to ask God for forgiveness for what he did. He worries that what he did is unforgivable. He says "God does not talk back, but the important thing is to be close to God." He recounted a Bible story where someone stole something and God punished him and gave him forgiveness.

3. A'S REHABILITATION

In my opinion, A can be rehabilitated:

- He is remorseful for the unintended death of one victim and serious injury to the other
- During his stay in detention, he has demonstrated serious thinking about his immature decision-making
- According to his Youth Counselor, Mr. ____, A is the "perfect resident" - he has no problems in the detention center and does not show aggression or hostility
- He is bright and wants to work on understanding why he made the choices he did
- Because his development was delayed by trauma, he is more emotionally immature than youth his age and he has considerable maturing remaining
- He is highly motivated to finish high school and be employed
- He has not had any prior services, although he needed mental health treatment, school assistance and recreational activities for several years.

A says he needed to talk about his problems and he would have talked to a counselor, but no one ever suggested it to him. He went to the school counselor about an academic problem, but she did not help and immediately called his mother. He did not know how a teenager could get a counselor, whether there was a counselor in his neighborhood, or whether there was a counselor in the office where he went to see the pediatrician when he was younger. None of the other children in his family went to counseling when they had their problems, but he thinks his parents would have liked it if he had.

A is the type of young person who the Juvenile Court was originally intended for: he is immature and will likely outgrow the self-protective behaviors he was involved in with friends in his violent neighborhood. Researchers have identified the characteristics of juveniles who are unlikely to offend again. These are young people who will "age out" of juvenile delinquency because their behavior is the result of immature judgment rather than antisocial tendencies. Juveniles involved
in "adolescent-limited delinquency" (in contrast to those likely to become adult offenders) have the following characteristics:

- First delinquency is in adolescence (not before teens)
- Involved in positive behavior as well as delinquent act
- Delinquent act with others, in which juvenile plays a small part in relation to others
- Acts result from bad judgment leading to dangerous situations
- Acts primarily to gain adult attention or status

A fits these characteristics of a young person unlikely to become an adult offender. He had not been adjudicated at age 14. When he made the effort, he did well in school, and family members and friends described his musical and athletic talents. He regrets following older guys into a situation where he felt too threatened to walk away.

"Being locked up in here, I have gotten more close to my parents. I talk to my parents different now. We didn't talk before. We never sat down and had a father-son conversation. Now I don't worry about what my sister's boyfriend says to my dad. Actually sitting down and talking to them, you realize a lot when you are in here." He expressed how much he misses his family, even though his parents visit twice a week at detention, and his older siblings are allowed to visit sometimes. Since he has been locked up, A says that he had thought a lot about his activities and associates. "Are they real friends? Friends are someone you can talk to and trust. You know they won't do something to you: just my parents, my brothers and sister, my girlfriend." It saddens him to know how unhappy he has made his parents. "My Mom is taking this very hard. I feel sorry to put my Mom through this...They keep saying, 'We want the best for you. We want you to graduate.' I feel good for them being proud of my grades in detention."

A said he has not had trouble keeping out of fights in detention. Asked about how he would handle someone making racist comments to him if he were working, A responded, "I don't like that. It shows stupidity. I want him to respect me. But I wouldn't want to lose my job. I would say something, but polite." Even though he was used to going to an all-Hispanic school, he said everyone respects each other on his section in detention where he is the only Hispanic.

A said that the residents in detention "fool around too much" and do not take the detention school seriously. He said that his math, history and English classes are providing an opportunity for him to learn at his level. I brought in a history of the area in Mexico where his family is from. He read out loud very well and understood what he was reading. He was surprised to learn some facts he did not know and showed an interest in learning more. He talked about how much his family's small town in Mexico had changed over the years they visited, going from dirt roads to paved streets and sidewalks. A had better map skills than any 15-year-old I have interviewed in detention. He knew the details of their drive from Chicago to Mexico.

World in Orlando, Florida, go to the beach in Georgia, see the Statue of Liberty in New York City and visit his aunt in Los Angeles. He could easily point out on the map where each of these places is.

A described his favorite book *Always Running* by Luis Rodriquez, that "made me think a lot. He lived in his garage because his mother kicked him out." When Rodriquez was young, his family moved from Mexico to LA, where he began stealing as a young child, dropped out of school and joined a gang. He faced a prison sentence, was a heroin addict, and most of his friends had been killed in gangs at the point that he committed himself to community work and going to community college and became a writer. A shows admiration for this young Mexican immigrant who left the gang life and contributed so much to his community.

In my opinion, A has the following needs:

- To develop mature decision-making skills by learning how to anticipate consequences and make good choices
- To talk about the feelings of hurt and fear that he kept inside for years and to learn what to do with the anger at himself that he describes
- To learn how to face his depression without numbing his feelings with alcohol or drugs
- To become skilled at non-violent conflict resolution, especially when he feels threatened
- To recognize his intelligence, complete high school, and enroll in a vocational program to prepare him for a career as an electrician or another trade

A's needs can be met in a juvenile rehabilitation program with strong individual and group counseling and educational services.

A said he hoped he would be allowed to go to a juvenile program for treatment because "it will be good for me. I will think a lot. I will become a leader, not a follower. I will finish school.  He agrees that he needs rehabilitative services to think before acting, get away from gangs, violence and drugs, as he wrote: "I want to change my old ways, make new friends, be employed, move out of my neighborhood, get closer to my family, get to know more about my culture and анснеостор (sic). I would like to also teach people about life, how it is not a game, and help young kids think about what they are doing."

5 For research concluding that the interests of community are not served by putting juveniles in adult prison, see Donna Bishop, et al., 'The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term,' 43 *Crime & Delinquency* 548, 1997.
In the adult system A would not get the educational or mental health services he needs. Ultimately, with such significant unmet needs as a teenager, upon release from prison as an adult he is not likely to be productive.\(^5\) In adult corrections, A would be at risk of physical harm and suicide and would be more likely to reoffend than if he were placed in a juvenile facility.

Likelihood of worsening mental health. Depressed juveniles are at greater risk for suicide in a facility where staff do not recognize that suicidal adolescents are different from suicidal adults.

Surveillance is not sufficient to prevent suicide in adolescent inmates. Treatment, activity, and positive relationships between staff and youth, which are unlikely in an adult facility, are necessary aspects of adolescent suicide prevention. Facility and staff limitations in adult corrections result in children being held in isolation without supervision, which has been shown to increase the risk of suicide. The suicide rate of juveniles in adult corrections is much higher than in juvenile facilities. A is depressed and would be at risk of worsening mental health and suicide in an adult facility.

Risk of physical harm. Teenagers are at risk in adult prison because they are emotionally needy, and they cannot get individual attention and treatment. The typical teenage desire to be liked makes them do things for acceptance that they are too naive to realize others retaliate for in an adult facility. Research has shown that juveniles in adult institutions are more likely to be sexually assaulted and physically harmed than those confined in juvenile facilities.\(^6\) Adult prisoners would likely realize how immature and vulnerable A is.

Future offending. In adult corrections, unsophisticated juveniles get worse because they are exposed to criminal adults. In Florida, where thousands of juveniles are tried in adult courts, a study has shown that the youth in adult prisons had a higher recidivism rate than those who served time in juvenile facilities.\(^7\) Similar results were found in a comparison of 15- and 16-year olds with identical charges in New York and New Jersey. The New Jersey teenagers were sentenced as juveniles and the New York teenagers were sentenced as adults, with the same average length of incarceration in both groups; after release, the youth who had been in adult facilities had a higher recidivism rate.\(^8\)

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\(^7\) Bishop et al., "The transfer of juveniles to criminal court." *Crime and Delinquency*, 42, 1996.

PSYCHOLOGICAL EVALUATION OF JOHN DOE

NAME: John Doe
CASE NO: J-4287-9X
DATE OF BIRTH: 1-3-84
AGE: 14
EDUCATION: 9th grade

DATE OF EVALUATION: 1/8/98
DATE OF REPORT: 1/14/98

IDENTIFYING INFORMATION/REASON FOR REFERRAL/NOTIFICATION

John Doe is a 14-year-old white adolescent who was referred for evaluation by the Honorable ****. John had been arrested for possession of marijuana and auto theft and Judge **** ordered a psychological evaluation to determine any treatment or placement needs that John might have at this time.

Accordingly, John was interviewed and tested on January 8, 1998. Prior to initiating the evaluation its nature and purpose were explained to John and his mother, who accompanied him to the evaluation. John and his mother were informed that the evaluation was for purposes of making treatment and placement recommendations with respect to the current case, that the evaluation was not confidential, and that any information they revealed might be included in a report, which would be provided to his public defender, the state attorney, and the judge. John and his mother understood this notification and agreed to participate in the evaluation process.

SOURCES OF INFORMATION

The following sources of information were relied upon in completing this evaluation:

Clinical Interview with John Doe (1/8/98, .50 hours)
Administration of Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A, 1/8/98)
Interview with Jane Doe, John's mother (1/8/98, .50 hours)
Review of arrest/incident reports (1/6/98)
Telephone interview with LS, John's school counselor (1/9/98, .25 hours)
Review of John's school records at **** High School

RELEVANT HISTORY

John is the older of two boys born to and raised by his parents. ****, his younger brother, is 10 years old. John currently lives with his mother and younger brother. Mr. Doe moved to Atlanta one year ago after announcing his intention to divorce.

Ms. Doe indicated that, over the past year, John has shown a pattern of troubled behavior including lying, skipping school, talking back to her, staying out late, and sleeping late, sometimes missing school. She reported that John had no academic or significant behavior problems through 8th grade (he was a B/C student). In 9th grade, his grades began to suffer, and he received all Ds and Fs on his most recent report card. He has been suspended twice, once for fighting with another student and once for threatening a teacher.

Ms. Doe first reported that she was not aware of her son having any problems with alcohol or drugs. More detailed questioning, however, indicated that Ms. Doe had found John drinking beer in the home on a few occasions but she clearly minimized the significance of this, stating it was inevitable that children will...
Appendix A

Sample Documents

DOCUMENT A9

experiment with alcohol. Ms. Doe reported not being aware of any drug use on her son's part, however, and she denied any history of emotional or behavioral problems prior to the past two years. Ms. Doe reported being unaware that John had been ordered to participate in substance abuse treatment but rather, believed that he was ordered to receive counseling, which, she believed, was being provided by LS. Ms. Doe acknowledged that John may have experienced other difficulties that she is unaware of and she attributed this lack of knowledge to her busy work schedule (she has worked 4PM to midnight at a convenience store since her husband left the home).

A report by John's school counselor, LS, was generally consistent with comments offered by Ms. Doe. Mr. Doe corroborated Ms. Doe's report of her son's academic achievement, and he indicated that testing with the school psychologist did not identify any escalating intimidating behavior with peers at school, and noted that the incidents for which John was suspended were quite serious. Mr. Samuels also reported that other students had also voiced concerns about Ms. Doe's involvement with her son, as she had not responded to two requests for a meeting to discuss his repeated absences, poor academic performance, and acting-out behavior.

Records provided by the Department of Juvenile Justice indicated that John had previously been arrested for possession of a controlled substance and ordered to undergo substance abuse counseling. Arrest records obtained by this writer indicated that John initially fled from police when observed driving a stolen car. After being stopped, John allegedly lunged at officers and tried to escape before being apprehended. Officers at the scene reported that John appeared to be under the influence of drugs or alcohol at the time of his arrest.

BEHAVIORAL OBSERVATION & CLINICAL INTERVIEW

John and his mother were interviewed in this writer's office. They arrived promptly for their appointment. John is a tall, lean young man who came to the evaluation casually but neatly dressed, wearing jeans, tennis shoes, and a white t-shirt. When interviewed with his mother, John appeared angry, and frequently contradicted his mother, even about minor and irrelevant issues. He was more cooperative and less disagreeable when interviewed alone. Overall, John was cooperative with the evaluation process.

When interviewed, John was oriented to time, place, and person (i.e., he knew when it was, where he was, and who he was). He spoke at a normal rate and tone. His speech was logical and goal directed and his responses to questions were typically informative, although at times, his responses appeared guarded. The above indicates that the structure and form of his thought process was not in any way impaired. Similarly, the content of John's thought process was not considered to be impaired insofar as he did not voice any unusual ideas or beliefs (i.e., delusions). John also denied experiencing other symptoms indicative of major mental disorder (i.e., hallucinations).

John's attention and concentration appeared unimpaired as indicated by his ability to remain involved in the interview process. He was considered to be a good historian overall, but, as is described in more detail below, he appeared to be somewhat guarded and defensive, and there were some indications that he intentionally withheld information from this examiner that he thought might be detrimental to his case.

In order to further assess John's current adjustment and functioning, he was administered the MMPI-A, a structured, self-report measure of behavior and psychopathology. Validity indices of the MMPI-A indicated that John responded to the inventory items in a reliable and consistent, although somewhat defensive manner, perhaps in an attempt to present himself in a positive light. Thus, while valid, the MMPI-A profile produced by John may underestimate his current difficulties to some degree.

Teenagers who obtain MMPI-A profiles similar to that produced by John show a disregard for social standards and are likely to display impulsive and acting out behaviors. They may experience school-related, legal, and family problems as a result of the above. As compared to their peers, they are more focused on their own needs and interests, to the exclusion of others. Although they may make a good first impression on
others, their self-focus is likely to prevent establishment of enduring relationships. Significant family difficul-
ties, frustration with parents, a desire to leave home, and feelings of being misunderstood are also suggested
by John's MMPI-A profile.

Testing with the MMPI-A also portrayed John as experiencing a moderate level of distress, which may
be characterized by feelings of depression and anxiety. There remains the possibility that these reported
symptoms are, in part, related to his current circumstances and involvement with the legal system. Indeed,
the MMPI-A profile suggests the possibility that John may engage in a pattern of behavior whereby he acts out
impulsively followed by expression of remorse and regret. The MMPI-A profile also suggested the possibility
of drug and/or alcohol abuse.

As noted above, John was judged to be somewhat guarded during the interview, and he selectively
revealed information to this writer. For example, John admitted to stealing the car, describing it as a joyride,
and claimed that he found the drugs in his possession in the car's glove box. While John maintained that he
did not use drugs he was unable to explain why he took them from the glove box. John claimed that the
arresting officers were guilty of police brutality and he admitted to attempting to strike on officer, but only in
self-defense. He denied being under the influence of any substances when arrested. John admitted to trying
marijuana and alcohol in the past but stated that he did not use any drugs on a regular basis because it inter-
fered with sports. Contrary to his mother's report, John denied ever using alcohol in the home with friends.

John was also less than forthcoming about his contact with the juvenile justice system. Apparently
unaware that this writer had access to his juvenile justice record, John reported a prior arrest for loitering and
indicated that he was placed on community control. As noted below, however, John was previously arrested
for possession of a controlled substance. When confronted with this inconsistency, John at first claimed that it
was a mistake and he became angry, asking this examiner if he was calling him a liar. John then acknowl-
 edged the incident but claimed that he had forgotten about it, and he maintained that he had been wrongfully
accused.

John admitted to skipping school and stated that he wanted to drop out and get a job. He cited his
prior record of acceptable grades as evidence that he was able to do school work if he wanted to. He acknowled-
ged difficulties with his mother but attributed them to her being over-worked and him being a teenager.

John was willing to talk about his parents' separation. He reported being angry with his father and
described him as taking advantage of his mother. John sees himself, his brother, and mother as suffering
financially as a result of his father's departure.

Overall, John did not see himself as having any significant difficulties. He portrayed his recent aca-
demic difficulties as fleeting and he downplayed the significance of the behavior leading to his suspensions.
He claimed that he only fought after another student instigated the fight, and he denied threatening his
teacher but claimed that she harbored negative feelings towards him because he had challenged her in class
before. John denied any emotional or psychological difficulties at this time or in the past. He portrayed diffi-
culties with his mother as minor and largely the result of her over-concern. He denied recent or current use of
alcohol or drugs and described his involvement with the juvenile justice system as resulting from nothing
more than mistakes or poor judgment, which would not occur again.

DIAGNOSTIC IMPRESSION

The diagnostic picture at this time is somewhat unclear, largely as a function of inconsistencies
between John's self-report and accounts offered by third parties. Overall, however, information provided to
this writer suggests that John has a substance abuse or dependence problem at the current time. Specific sub-
stances that John may be abusing are unclear but may include alcohol and marijuana, and there remains the
Appendix A: Sample Documents

**SUMMARY AND RECOMMENDATIONS**

John Doe is a young man with a two-year history increasingly problematic behavior that is characterized by intimidating and aggressive behavior towards peers and adults, theft, academic underachievement, and substance abuse.

Given the above, John is in need of intensive treatment at this time. First, although John maintains that he is not abusing substances at this time, information provided to this writer suggests that placement in an intensive substance abuse treatment program is indicated. Following completion of either a residential or intensive outpatient program, John will need intensive follow-up and monitoring that includes random drug testing.

Additionally, John will also benefit from structured supervision by and contact with DJJ. John may also benefit from involvement in individual therapy. There may be some concern about John's peer group at this time and some restrictions with respect to this may be indicated. Involvement in prosocial activities (e.g., organized sports or clubs) will be helpful and should be considered as part of his intervention plan. If John does leave school, stable employment or participation in an alternative training or educational program is indicated.

The relationship between John's recent behavioral difficulties and his parents' marital difficulties is unclear, but John may benefit from having the opportunity to discuss these and related issues. Reports by John's mother suggest that she might benefit from parent training or individual therapy.

Positive prognostic indicators include John’s relatively good adjustment until the past two years, his history of academic achievement, and his mother’s support and involvement. Factors that prove to be of some concern regarding positive changes on John’s part include his unwillingness to acknowledge what appear to be clear problems (e.g., his substance use), his tendency to minimize the severity of some of his behavior, and the pattern of increasingly criminal behaviors. Certainly, without significant intervention, John is at risk for continued and more serious delinquent/criminal activities.

Thank you for this opportunity to serve the court. As always, if you have any questions about my evaluation, please do not hesitate to contact me.

Respectfully submitted,

Jane Doctor, Ph.D
Licensed Psychologist
CHILDREN’S GLOBAL ASSESSMENT SCALE (C-GAS)

Rate the subject’s most impaired level of general functioning for the specified time period by selecting the lowest level which describes his or her functioning on a hypothetical continuum of health-illness. Use the intermediary levels (e.g., 35, 58, 62).

100-91 Superior functioning in all areas (at home, at school and with peers); involved in a wide range of activities and has many interests (e.g., has hobbies or participates in extracurricular activities or belongs to an organized group such as Scouts, etc.); likeable, confident; “everyday” worries never get out of hand; doing well in school; no symptoms.

90-81 Good functioning in all areas; secure in family, school and with peers; there may be transient difficulties and “everyday” worries that occasionally get out of hand (e.g., mild anxiety associated with an important exam, occasional “blow-ups” with siblings, parents or peers.)

80-71 No more than slight impairment in functioning at home, at school or with peers; some disturbance of behavior or emotional steps may be present in response to life stressors (e.g., parental separations, deaths, birth of a sibling), but these are brief and interference with functioning is transient; such children are only minimally disturbing to others and are not considered deviant by those who know them.

70-61 Some difficulty in a single area, but generally functioning pretty well (e.g., sporadic or isolated antisocial acts, such as occasionally playing hooky or petty theft, consistent minor difficulties with school work; mood changes of brief duration; fears and anxieties that do not lead to gross avoidance behavior; self-relationships, most people who do not know the child well would not consider him/her deviant but those who do know him/her well might express concern.

60-51 Variable functioning with sporadic difficulties or symptoms in several but not all social areas; disturbance would be apparent to those who encounter the child in a dysfunctional setting or time but not to those who see the child in other settings.

50-41 Moderate degree of interference in functioning in most social areas or severe impairment of functioning in one area, which might result from suicidal preoccupations and ruminations, school refusal and other forms of anxiety, obsessive rituals, major conversion symptoms, frequent anxiety attacks, poor or inappropriate social skills, frequent episodes of aggressive or other anti-social behavior with some preservation of meaningful social relationships.

40-31 Major impairment in functioning in several areas and unable to function in one of these areas, i.e., disturbed at home, at school, with peers or in the society at large (e.g., persistent aggression without clear instigation; markedly withdrawn and isolated behavior due to either mood or thought disturbance, suicidal attempts with clear lethal intent); such children are likely to require a special schooling and/or hospitalization or withdrawal from school (but this not a sufficient criterion for inclusion in this category).

30-21 Unable to function in almost all areas, e.g., stays at home, in ward or in bed all day with out taking part in social activities, or severe impairment in communications (e.g., sometimes incoherent or inappropriate).
20-11 Needs considerable supervision to prevent hurting others or self (e.g., frequently violent, repeated suicide attempts) or to maintain personal hygiene or gross impairment in all forms of communication (e.g., severe abnormalities in verbal and gestural communication, marked social aloofness, stupor, etc).

10-1 Needs constant supervision (24-hour care) due to severely aggressive or self-destructive behavior or gross impairment in reality testing, communication, cognition, affect or personal hygiene.

C-GAS Score__________________

Children’s Global Assessment Scale-For children 4-16 years of age. David Shaffer, M.D., Madelyn S Gould, Ph. D., Hector Bird, M.D., Prudence Fisher, B.A. Adaption of the Adult Global Assessment Scale (Robert I. Spitzer, M.D., Mirrian Gibbon, M.S.W., Jean Edicott, Ph. D.)

OVERALL CLINICAL IMPRESSION

Considering your total clinical experience, what is the intensity of disorder in the patient at this time?
+3 Markedly Improved
+2 Moderately Improved
0 No Change from Baseline OR Baseline
-1 Minimally Worse
-2 Moderately Worse
-3 Markedly Worse

Score:______________
EX PARTE MOTION - DO NOT FILE IN COURT JACKET****

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division - Juvenile Branch

In the Matter of : Docket No. X-2222-22
: Social File No. 003333
***** : Honorable Judge Name
: Status Date: November 10, 2004
Respondent :

EX PARTE APPLICATION FOR APPOINTMENT OF THE CHILD GUIDANCE CLINIC AS PSYCHOLOGICAL EXPERT

*****, through undersigned counsel, respectfully moves this Honorable Court, pursuant to D.C. Code § 11-2605(a) and the Fifth and Sixth Amendments to the United States Constitution, to appoint Dr. Expert, Ph.D, or his authorized designate from the Child Guidance Clinic, to evaluate ***** and advise undersigned counsel regarding issues related to the impact of past traumatic events on his alleged conduct on October 19, 2004. In support of this motion, counsel states the following on information and belief:

1. ***** is charged with one count of threats to do bodily harm, in violation of D.C. Code Section 22-407. *****'s status hearing is scheduled for November 10, 2004. ***** expects to schedule a trial date at the upcoming status hearing.

2. The charges against ***** stem from his arrest on October 20, 2004, for threats allegedly made during the course of an interview at the ***** Center on October 19, 2004.

3. ***** was brought to the ***** Center to be interviewed because he is currently the subject of a neglect proceeding. ***** was allegedly abused and neglected by the individual that he allegedly threatened during the interview. The neglect proceeding is docketed at X-555-55, and is scheduled to be tried in front of Judge Name on December 13, 2004.

4. Counsel believes that in order to adequately prepare *****'s defense in the above-captioned case, it is essential to seek the advice of an expert with significant experience in abuse and neglect issues. Counsel is requesting a court order and payment for the services of Dr. Expert, who has agreed to assist in this matter upon appointment by the Court.

5. Dr. Expert has extensive experience in conducting psychological evaluations of adolescents. Dr. Expert is the Supervisory Clinical Psychologist at the ***** Clinic for the District of Columbia Superior Court. His training and many years of experience render him eminently qualified to provide the services for which funding is requested herein.
6. Because Dr. Expert is employed by the Child Guidance Clinic, the present request will cost the Court considerably less than a traditional defense expert. *****'s request also will not require the use of the voucher system, as appointment of Dr. Expert will only require the Court's signature on the attached ex parte order for evaluation and testimony. Moreover, the overall cost of this case is already much less than it would be if the ***** Law School Clinical Program had not become involved. As the Court knows, the ***** Juvenile Justice Clinic does not bill the Court for the cost of investigation, litigation, consultation, legal research, and a range of other services. Thus, the Court's appointment of Attorney, supervised by Attorney Supervisor, from the Juvenile Justice Clinic has already garnered considerable savings for the Court.

7. Under D.C. Code § 11-2605, ***** has a statutory right to court payment of a psychological expert because he is unable to afford the services of such an expert and defense counsel has determined that such an expert is necessary to the preparation of an adequate defense.

8. ***** also has a Constitutional right to court payment of the services of an expert. See Ake v. Oklahoma, 470 U.S. 68, 76 (1985).

9. Because the threats in this case were allegedly made during an investigative interview in which the ***** Center was exploring allegations of physical abuse by the complainant towards ***** counsel believes that this case may raise issues that affect mens rea, such as battered child syndrome, provocation, and/or post traumatic stress disorder. The effects of abuse and neglect, and the bearing of those effects on mens rea and culpability, are not easily explored by a lay person, or presented to the fact-finder, absent the assistance of an expert with training in child psychology and the effects of traumatic events.

10. Counsel asks the Court to grant this motion seeking a court order for expert services because the Court will be in a much better position to decide this case with Dr. Expert's assistance.

11. Counsel submits that she cannot adequately prepare *****'s defense without the advice and assistance of a psychological expert at the investigatory and trial preparation stages. Counsel also believes that Dr. Expert's findings may also be admissible at trial to support a defenses relating to provocation and intent. Counsel's determination that Dr. Expert's services are necessary to the preparation of an adequate defense, however, is independent of whether Dr. Expert's testimony would ultimately be admitted as evidence on *****'s behalf.

12. Counsel asks the Court to sign the attached order supporting counsel's ex parte application for appointment of the Child Guidance Clinic as a psychological expert. Because counsel seeks Dr. Expert's assistance as a defense expert, counsel asks the Court to order that any evaluation or written report generated by the Child Guidance Clinic in connection with this matter shall not be disclosed to the Court or to the government unless and until the respondent authorizes such disclosure.
WHEREFORE, for the foregoing reasons and any others that may arise, ***** respectfully requests that the Court grant this motion and order Dr. Expert or his designate from the Child Guidance Clinic to evaluate ***** and to provide undersigned counsel with assistance in preparing *****’s defense.

Respectfully submitted,

____________________________
Attorney, #77777
Student attorney for *****

____________________________
Attorney Supervisor, #888888
Supervising attorney
Organization
Address
Phone

DATE FILED: November 9, 2004
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *****'S EX PARTE APPLICATION FOR APPOINTMENT OF THE CHILD GUIDANCE CLINIC AS PSYCHOLOGICAL EXPERT

I. INTRODUCTION

Undersigned counsel, after reviewing the facts and circumstances of the present case, submits to the Court that she cannot adequately prepare a defense nor sufficiently fulfill her obligations to ***** or the Court without the services of an expert witness who is able to evaluate ***** and advise counsel regarding the effects of his past history of abuse and neglect on his alleged actions on October 19, 2004. ***** is without funds to retain an expert. ***** requests that the Court grant his motion for court appointment of the Child Guidance Clinic as an expert on both statutory and Constitutional due process grounds.

II. THE COURT MUST PROVIDE ***** WITH THE SERVICES OF AN EXPERT BECAUSE HE IS UNABLE TO AFFORD THE SERVICES AND THE SERVICES ARE NECESSARY TO AN ADEQUATE DEFENSE.

A. ***** has a constitutional and statutory right to court order of the services of an expert where such services are necessary to an adequate defense.

The right to court order of expert services is grounded in the fundamental Constitutional principle that all persons accused of crimes are entitled to "meaningful access to justice." See Ake v. Oklahoma, 470 U.S. 68, 76 (1985). In Ake, the Supreme Court held that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, due process requires that a state provide access to a psychiatrist's assistance on this issue if a defendant cannot otherwise afford one. In so holding, the Supreme Court acknowledged that:

When a State brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. This elementary principle, grounded in significant part on the Fourteenth Amendment's due process guarantee of fundamental fairness, derives from the belief that justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding at which his liberty is at stake. Id. at 76.
The Constitutional due process right to assistance of expert services in certain circumstances has been expanded and codified in the District of Columbia by D.C. Code § 11-2605(a). Under D.C. Code § 11-2605(a), "the court must provide a defendant with expert services…whenever there has been a showing that the accused is financially unable to obtain the service and the service is 'necessary to an adequate defense.'" *Dobson v. United States*, 426 A.2d 361, 367 (D.C. 1981). In considering a request for such services, "the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense." *Gaither v. United States*, 391 A.2d 1364, 1368 (D.C. 1978). Requests for expert services must be evaluated according to a standard of reasonableness, focusing on whether a "reasonable attorney would pursue" such services in aid of a defense.

B. A reasonable attorney would pursue the services of a psychological expert in aid of *****'s defense because the effects of a history of abuse and neglect are relevant to his defense in ways not commonly known by lay persons.

**** is charged with making threats to do bodily harm. The threats were allegedly made at an interview at the ***** Center. ***** was brought to the ***** Center for an interview because he is the subject of a neglect proceeding. ***** was allegedly abused and neglected by the individual that he allegedly threatened during the interview.

Evidence of past child abuse in cases involving allegations of violent acts by children against parents has been deemed relevant by courts. Additionally, courts have also permitted expert testimony on that issue to assist the finder of fact in understanding the very complex issues raised by such evidence. See, e.g., *Ohio v. Nemeth*, 82 Ohio St.3d 202, 694 N.E.2d 1332 (1998) (holding that battered child syndrome is a valid topic for expert testimony in the defense of parricide); *Washington v. Janes*, 121 Wash.2d 220, 850 P.2d 495 (1993) (holding that evidence of battered child syndrome is admissible to help prove self-defense whenever such a defense is relevant). The dynamics and effects of past instances of abuse are complex, and are not readily understood by lay people. See, e.g., RUTH S. AND C. HENRY KEMPKE, CHILD ABUSE (1978).

Under D.C. Code § 11-2605, defense attorneys are entitled to considerable deference in determining what services are necessary to provide an adequate defense. See, e.g., *Brown v. District of Columbia*, 727 A.2d 865, 870-71 (D.C. 1999) (holding trial court committed reversible error in denying defendant's *ex parte* motion to engage the services of an expert child psychologist to determine whether defendant's daughter suffered from school phobia, where such diagnosis may have established an affirmative defense). An expert is necessary to aid in the preparation of *****'s defense because of the nature of the allegations and because ***** may assert a claim of provocation. Traumatic events experienced by ***** prior to October 19, 2004, will significantly impact the claim of provocation. Laypersons, such as counsel, would have difficulty fully understanding the interplay between abuse and neglect, and the threats alleged on October 19. Thus a reasonable attorney would most certainly seek to employ the services of a psychological expert such as Dr. Expert under these circumstances in attempting to prepare and present a defense.

C. The determination of whether ***** is entitled to court payment of expert services is wholly independent of any determination regarding the admissibility of Dr. Expert's testimony at trial.

The Court's determination of whether ***** is entitled to court payment of expert services should be made without regard for whether Dr. Expert's testimony will ultimately be admitted at trial. The statutory standard for determining whether an indigent defendant is entitled to court payment of expert services asks only whether the defendant can afford the services of the expert, and whether expert services are "necessary to an adequate defense." See D.C. Code § 11-2605(a). Neither the statutory language nor cases applying this statute in any way indicate that the Court's determination with respect to payment of expert services depends upon the ultimate admissibility of such expert testimony. See, e.g., *Dobson v. United States*, 426 A.2d 361, 367 (D.C. 1981); *Gaither v. United States*, 391 A.2d 1364, 1368 (D.C. 1978).
Instead, courts in the District of Columbia have focused on the reasonableness of the defense attorney’s determination that the services of an expert are necessary to prepare a defense. This standard contemplates not only the potential evidentiary value of a proposed expert, but more importantly the potential assistance that an expert may provide in identifying issues that will be important during the investigatory stages of trial preparation, and in identifying potential areas of cross-examination of government witnesses. As the court concluded in *Gaither*, "when an expert is appointed under § 11-2605(a), he is not primarily an aide to the court. To the contrary, the very purpose is to provide expert service necessary to an adequate defense. He can be a partisan witness." *Gaither*, 391 A.2d at 1368. Moreover, as a respondent has no obligation whatsoever to put on an affirmative defense, it would seem contrary to that principal to interpret § 11-2605(a) to depend upon the admissibility of a proposed expert’s testimony.

WHEREFORE, for the foregoing reasons and any others that may arise, ***** respectfully requests that the Court grant this motion and appoint Dr. Expert or his designate from the Child Guidance Clinic to evaluate ***** and to provide undersigned counsel with assistance in preparing *****’ defense.

Respectfully submitted,

____________________________
Attorney, #77777
Student attorney for *****

____________________________
Attorney Supervisor, #888888
Supervising attorney
Organization
Address
Phone

DATE FILED: November 9, 2004
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division - Juvenile Branch

In the Matter of : Docket No. X-2222-22
: Social File No. 003333
***** : Honorable Judge Name
: Status Date: November 10, 2004
Respondent :

ORDER

This matter having come before the Court on *****'s Ex Parte Application for Appointment of the Child Guidance Clinic as a Psychological Expert, it is this ________ day of _________________, 2004,

ORDERED that *****'s Motion is GRANTED. Dr. Expert, or an authorized designate from the ***** Clinic, shall evaluate respondent, *****; shall consult with *****'s defense counsel; and shall testify if deemed appropriate and necessary by defense counsel. Any evaluation or written report generated by the ***** Clinic in connection with this matter shall not be disclosed to the Court or to the government unless and until the respondent authorizes such disclosure.

__________________________________
Judge Name
Superior Court of the District of Columbia
Address

cc: Attorney
Address
Phone
**Assertion of Miranda rights**  
(front of card / back of business card)

---

**Notice to Police and Prosecutors**

I will not waive my constitutional rights to remain silent and to have my attorney present.

I do not wish to answer any questions without speaking to my attorney first.

I will not consent to participate in any search until I have spoken to my attorney.

Signed: ________________________________

---

**Contact information**  
(back of card / unused)

---

My name: ________________________________
My parent(s) name(s): ________________________________
Their phone number(s): ________________________________
My address: ________________________________
My phone number: ________________________________
My date of birth: ________________________________
My attorney’s name: ________________________________
My attorney’s phone number: ________________________________
My attorney’s registration number: ________________________________
Declaration of Rights

To Shift Commander, [Precinct]

[Address]

On [Date], I, [Your Name], Esquire, Attorney for [Office], put you on notice that my client, [Client's Name] (Date of Birth [D.O.B]) is asserting all of his/her rights as guaranteed by the United States Supreme Court in *Miranda v. Arizona*.

My client shall not talk to anyone about any criminal matter outside of my presence. My client does not want to waive the right to have me present and requests that no one ask him/her to do so without my presence first to advise him/her. My client shall not give any consents, submit to any tests, or make any waivers of any legal rights without first consulting with me.

Signed,

____________________________________
Attorney for __________________________
Attorney # ___________________________
Telephone Number ____________________

I presented a copy of this "Declaration of Rights" Form to [Officer's Name], Badge/Star # [Number] on __________ at ___:___.

Signed,

____________________________________
Attorney for __________________________
Officer _____________________________

*Carbon copy or photocopy for Officer.*

*Original for Attorney.*
The juvenile, ****, hereby moves this Court pursuant to Rules 13 & 14, Mass. R. Crim. P. to enter an order directing the Commonwealth to produce to his counsel any and all Boston Police training materials and rules or regulations on the interrogation of suspects.

1. The juvenile is charged in the above numbered indictment with assault with intent to rob and in the complaints with two counts of armed robbery.

2. A motion to suppress statements is currently pending.

3. Discovery of BPD training materials and rules and regulations on interrogations is needed to properly prosecute the juvenile's motion to suppress.

4. The juvenile's statement is the primary evidence against him on the armed robbery complaints.

5. Disclosure of any these materials is necessary to ensure that the juvenile's rights to a fair trial and the effective assistance of counsel as protected by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts constitution are guaranteed.

Wherefore, the juvenile requests that this Court enter an order requiring the Commonwealth to produce to his counsel any and all Boston Police training materials and rules or regulations on the interrogation of suspects.

Dated:

****
By his attorney,

******
License
Organization
Address
Phone
COMMONWEALTH OF MASSACHUSETTS

********

COMMONWEALTH

v.

*****

THE JUVENILE'S MOTION FOR MEANS OF IDENTIFICATION

Pursuant to the Fifth and Sixth Amendments to the United States Constitution and Article 12 of the Massachusetts Constitution, the above-named juvenile hereby moves this Court for an order directing the Commonwealth to disclose the following means of identification:

1. The names and present addresses of every person who has identified or failed to identify the juvenile following any identification procedure conducted by the Commonwealth;

2. Each method of identification, i.e., photographic display, corporeal line-up, etc. in which each person named in response to paragraph 1 identified or failed to identify the defendant and the date, place and time of each such identification procedure;

3. The name and present business address of all law enforcement officer(s) or other person who conducted the identification process;

4. The photographs used in each photographic display and to produce copies of each such photograph;

5. The date and location of each photographic or corporeal display;

6. The identity of every other individual who was photographically or corporeally involved in such identification procedure.

As grounds therefore, the juvenile states that the requested information is necessary so that the Defendant may adequately cross-examine any such identification witnesses and otherwise prepare his defense, including, but not limited to by filing motions to suppress suggestive identification procedures.

Dated: *****

By his attorney,

*****

Organization
Address
Phone
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS JUVENILE COURT DEPARTMENT
Nos. AB 01 C -------

 COMMONWEALTH  )
V.  ) THE JUVENILE'S MOTION TO SUPPRESS
*****  ) TESTIMONY OF AN UNDULY SUGGESTIVE OUT-
OF-COURT IDENTIFICATION AND THE RESULTING
IN-COURT IDENTIFICATION

The juvenile, *****, hereby moves pursuant to Mass. R. Crim. P. 13, the 4th and 14th Amendments to the Constitution of the United States and Article XII of the Massachusetts Declaration of Rights, to suppress testimony of the out-of-court identification of the him by Police Detective ***** as well as any proffered in-court identification of him by Detective *****. See Commonwealth v. Johnson, 420 Mass. 468 (1995). As grounds therefore, he states that:

1. He is charged in this indictment with unarmed robbery.

2. The incident underlying this indictment occurred on or about July 14, 2003.

3. According to Detective *****'s grand jury testimony, he apprehended a Mr. ***** in the act of robbing the victim. (September 2, 2003 Grand Jury at 10, attached hereto and incorporated herein). Thereafter, Mr. ***** gave a statement to Police Officer ***** in which he declined to name his co-venturers, but did say that he had been arrested with the same two individuals the previous week in a stolen car. (Id. at 26-27.) This information was communicated to Detective *****, who thereupon searched Boston Police Records and found a police report of Mr. *****'s arrest with ***** and *****., the two juvenile co-defendants in this case, on charges related to receipt of a stolen motor vehicle a short time before the June 12 incident. (Id. at 29-33.) Detective ***** then viewed the booking photographs of ***** and ***** individually, and identified each photograph as a photograph of the persons who committed the robbery with Mr. *****. (Id.)

4. Detective ***** had not previously provided an accurate or detailed description of the persons who allegedly participated in this robbery with Mr. *****.

5. Sometime later, Detective ***** was shown the same booking photographs of Mr. ***** and ***** in separate photographic arrays. The detective again identified the photographs as photographs of the persons who had participated in the charged robbery with ***** (Id. at 33; 18.)
6. The out-of-court identification of the defendant through viewing a single booking photograph after being informed of ****'s statement was an unduly suggestive identification that was the product of the undue suggestiveness.

7. The subsequent identification of ***** from a photo array is the product of the unnecessarily suggestive single photograph identification.

8. Any in-court identification of the juvenile by Detective ***** is tainted by the unnecessarily and unreasonably suggestive out-of-court identification and is not reliable.

9. There is no independent source for any proposed in-court identification.

10. The use of such unreliable testimony at the trial of the juvenile would deprive him of the due process of law, his right to a fair trial and his right to confront the evidence against him as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and Article 12 of the Massachusetts Constitution.

ARGUMENT

The juvenile has a due process right to identification procedures meeting a certain basic standard of fairness.  


When deciding whether a particular confrontation was unnecessarily suggestive, the court is to assess the totality of the circumstances surrounding the identification. Id. at 302. The following factors are to be considered: "(1) The extent of the witness' opportunity to observe the defendant at the time of the crime; prior errors, if any, (2) in description, (3) in identifying another person or (4) in failing to identify the defendant; (5) the receipt of other suggestions, and (6) the lapse of time between the crime and the identification." Commonwealth v. Johnson, 420 Mass. 458, 1261 (1995), quoting Commonwealth v. Botelho, 369 Mass. 860, 869 (1976).

Here, the witness gave only a very vague description of the two suspects who fled prior to receiving the suggestion that ***** had previously been arrested with the others and then reading the prior arrest report and viewing the booking photographs. The introduction of such unreliable testimony at the juvenile's trial would deprive him of his right to a fair trial. See, Commonwealth v. Jones, 423 Mass. 99, 109 (1996) (Common law principles of fairness dictate that an unreliable identification arising from especially suggestive circumstances should not be admitted in evidence).
Wherefore, the juvenile requests that this Court suppress any testimony of the out-of-court identifications made by Detective ***** as well as and any in-court identification.

Dated:  

*****

By his attorney,

License
Organization
Address
Phone

CERTIFICATE OF SERVICE

I, ____________, hereby certify that I did serve one copy of the foregoing on ___________ by mailing the same to her first class postage prepaid.
STATE OF *******
COUNTY OF ******

In the Matter of the Welfare of ) RESPONDENT'S DEMAND
) FOR DISCLOSURE
NAME: )
DOB: ) FAM No.
) YID No.
Respondent. ) Case No.

TO: **** COUNTY DISTRICT COURT-JUVENILE DIVISION, AND
***** COUNTY ATTORNEY

Pursuant to Rule **, Juvenile Rules of Court, NAME, by his/her counsel, ***** demands that the State of
***** forthwith make the following written disclosures within five (5) days:

1. The names, addresses, and telephone numbers of the persons whom the State intends to call
   as witnesses at the trial together with their prior record of convictions, if any, and the names
   and addresses of those having information relating to the case;

2. The names addresses, and telephone numbers of the witnesses, if any, who have testified
   before a grand jury in the case against the Respondent;

3. Notice of, and permission to inspect and reproduce, all written summaries of the substance
   of oral statements made by witnesses the State intends to call at trial;

4. Notice of, and permission to inspect and reproduce, all written or recorded statements made
   by the Respondent and any alleged accomplices or conspirators together with the substance
   of any oral statements made by the Respondent and any alleged accomplices or co-
   conspirators whether said statements were made before or after arrest;

5. Notice of, and permission to inspect and reproduce, books, papers, documents,
   photographs, and tangible objects which the State intends to introduce in evidence at the
   trial, or which were obtained from or belong to the Respondent, or concerning which the
   State intends to offer any evidence at trial;

6. Notice of, and permission to inspect and photograph buildings or places concerning which
   the State intends to offer any evidence at trial;

7. Notice of, and permission to inspect and reproduce, any results or reports of physical or
   mental examinations, scientific tests, experiments, or comparisons made in connection with
   this matter, together with the original notes of the persons who conducted said
   examinations, tests, experiments, or comparisons;

8. Notice of the record of prior convictions, if any, of the Respondent;
9. Notice of, and permission to inspect and reproduce any written or recorded statements and any written summaries of the substance of oral statements made by witnesses to the prosecuting attorney or agents of the prosecuting attorney which formed the basis for the probable cause statement filed by the County Attorney; and

10. Written notice of all matters described in the Rule of Juvenile Procedure.

Further, the defense requests disclosure of all evidence and information to which the Respondent is entitled under Brady v. Maryland, 373 U.S. 83 (1963). Under Brady, the State is required to provide the defense with all information which tends to negate or reduce the guilt of the accused together with all information which might tend to mitigate or reduce potential punishment. This request includes evidence and information relevant to the credibility of witnesses for the government, including potential impeachment material for all State witnesses. United States v. Bagley, 473 U.S. 667, 676 (1985). The State’s obligation to provide this disclosure extends to evidence and information in the possession of any member of the prosecution team or of law enforcement and other government agencies involved in this case. Kyles v. Whitley, 514 U.S. 419, 437-38 (1995).

Further, the Respondent requests the State to disclose and permit investigative reports prepared by the State of , its agents, or employees in the investigation or evaluation of this case together with the original notes of the arresting officers, if any. Said documents are necessary and essential to the preparation of a proper defense.

If subsequent to compliance with this demand, the State discovers any additional information, material, or witnesses, the Respondent hereby demands that the State promptly notify the Respondent of the existence of the additional material or information and identity of the witnesses.

Respectfully submitted,

[Signature]

Name
Organization
Address
Telephone

DATED: this ___ day of ____ 2005.
STATE OF __________ _____
COUNTY OF __________

DISTRICT COURT - FELONY DIVISION

TO: THE COURT; *** AND MR. ***, ASSISTANT COUNTY ATTORNEYS.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that on June 24, 2002, at 9:00 a.m., or as soon thereafter as counsel may be heard, before the Honorable Judge assigned to hear this matter, the defense will move this Court for the following requested relief:

MOTION

The accused, ***, by and through his counsel, hereby moves this Court for an order allowing disclosure of the following documents and records concerning the alleged victim, ***, to defense for use at the trial of the above matter:

(a) any and all juvenile court records of ***, including delinquency and status matters;
(b) all records and files of the Juvenile Community Corrections Department pertaining to ***, specifically those maintained by his probation officer, Jane Doe.

The grounds for this motion are as follows:

(1) The accused’s right to due process and fundamental fairness guaranteed by the Fifth Amendment of the United States Constitution as applied to the States through the Fourteenth Amendment and by Article 1, Section 7 of the Minnesota Constitution.

(2) The accused’s right to confrontation of witnesses and to a fair trial as guaranteed by the Sixth Amendment of the United States Constitution as applied to the States through the Fourteenth Amendment and Article 1, Section 6 of the Minnesota Constitution.

(3) The Minnesota Rule of Criminal Procedure Rule 9.01, subd. 1(1)(a), subd. 2(1), (3), and the underlying philosophy of the discovery rules allowing access to information that may negate or reduce the guilt or culpability of the defendant.
(4) That such disclosure is necessary to maintain the integrity of the system of administration of justice, as required by Minn. Stat. § 260B.245, subd. 2.

(5) Such argument of counsel as may be made at the hearing.

This motion is based upon all records, files and proceedings, upon the United States and Minnesota Constitutions, upon the attached memorandum of law, upon any other materials that may be presented prior to or at the time of the hearing, and upon whatever oral argument the Court may entertain.

Respectfully submitted,

OFFICE OF THE _______ COUNTY PUBLIC DEFENDER

_______, CHIEF PUBLIC DEFENDER

By: _________________

Lic.
Assistant Public Defender
Address
Phone

Dated: this ___ day of ____, ___. 
ARGUMENT

I. THE COURT MUST ALLOW DEFENSE COUNSEL ACCESS TO THE JUVENILE COURT AND PROBATION RECORDS OF THE JUVENILE COMPLAINANT. THE DEFENDANT'S RIGHT TO A FAIR TRIAL AND TO CONFRONT EFFECTIVELY HIS ACCUSERS MUST PREVAIL OVER ANY COMPETING INTERESTS.

Defense counsel acknowledges prosecution's two opposing arguments to the requested relief with respect to the Juvenile Court and Probation records. First, defense counsel recognizes the notion of confidentiality concerning Juvenile Court and Probation Department records in Minn Stat. Ann. § 260B.171, subd. 1, 4(d) (2002) and Minn. R. Juv. P. 30. Second, defense counsel recognizes the notion of confidentiality concerning Juvenile Probation Department records in the Data Practices Act, Minn. Stat. Ann. § 13.84, subd. 4. However, while recognizing these confidentiality interests, it is important to note that such confidentiality is not absolute.

For instance, Minn. Stat. Ann. § 260B.245, subd. 2 (2002) provides in part that nothing contained in that section shall preclude the juvenile court, under circumstances other than those specifically prohibited, "from disclosing information to qualified persons if the court considers such disclosure to be in the best interests of the child or of the administration of justice." Minn. R. Juv. P. 30.02, subd. 3(B)(3) similarly provides for a court order disclosing juvenile court records when "necessary for the functioning of the juvenile court system." Furthermore, under Minn. Stat. § 13.84, subd. 5, confidential court services data may be disclosed: "(b) pursuant to a statute specifically authorizing disclosure of court services data"; or "(c) with the written permission of the source of confidential data"; or "(f) pursuant to a court order."

Additionally, Minn. R. Evid. 609(d) attempts to set forth the confidentiality of juvenile records maintained in Minn. Stat. § 260B.171 by stating, "evidence of juvenile adjudications is not admissible under this rule (impeachment by evidence or conviction of another crime) unless permitted by statute or required by the state or federal constitution" (parenthetical added). Yet, the Committee Comment reminds us that this prohibition on disclosure yields to competing constitutional issues when it states, "it is conceivable that the state policy protecting juveniles as embodied in the statute and the evidentiary rule might conflict with certain constitutional provisions, e.g., the Sixth Amendment confrontation clause. Under these circumstances the evidentiary rule becomes inoperative." See Davis v. Alaska, 94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed.2d 347 (1974), construed in State v. Schilling, 270 N.W.2d 769 (Minn. 1978).
The rights to fundamental fairness and to due process, which obviously encompass an interest in the administration of justice, along with the right to confrontation and cross-examination, require disclosure of the alleged victim's juvenile records. For the accused to cross examine and to confront a witness in a meaningful manner, the defense must be given sufficient, relevant information.

The right of cross-examination provides the defendant with the opportunity to challenge the credibility of the witness through impeachment. Both case law and the Rules of Evidence recognize the impact of conviction for crimes of dishonesty on crimes that would be felonies if the witness were an adult. See Minn. R. Evid. 609; State v. Patterson, 329 N.W.2d 840, 841 (Minn. 1983). It is defense counsel's position that ***'s juvenile adjudications are both recent and relevant under this rule, and thus are necessary for the jury to judge ***'s demeanor, credibility and to assess his ability to portray a reliable picture of the events in question.

The right of cross-examination includes not only the opportunity to attack a witness' credibility, but also the opportunity to expose a witness' bias, motive, self-interest, or ulterior motive in testifying. Bias may be demonstrated by anything that reasonably tends to show an effect on a person's testimony. See State v. Underwood, 281 N.W.2d 337 (Minn. 1979). The defense must be afforded a meaningful opportunity to present a complete defense. California v. Trombetta, 467 U.S. 479, 485 (1984); State v. Richards, 495 N.W.2d 187, 191 (Minn. 1992). The disclosure of all of ***'s juvenile probation and court records is necessary to effectuate this right.

The Minnesota Supreme Court has made it clear that the accused's right to confrontation supercedes any statutory privilege where the accused seeks to introduce evidence which may negate his guilt. State v. Hembd, 305 Minn. 120, 232 N.W.2d 872 (1975). In the words of the United States Supreme Court, the statutory privilege protecting a witness' juvenile records "must fall before the right of petitioner to seek the truth in the process of defending himself." 415 U.S. at 320. In State v. Morales, 630 P.2d 1015 (1981), the Supreme Court of Arizona followed the logic of Davis when reversing the defendant's conviction for first-degree murder. The Morales court held that a statute prohibiting disclosure of juvenile court records and requiring confidentiality of Department of Corrections records may not be used to prevent discovery of those records when necessary to a defendant's right to confront witnesses against him and to test the witnesses' credibility. Id. at 1018.

Moreover, in State v. Schilling, 270 N.W.2d at 772, the Minnesota Supreme Court refused to disclose a witness' juvenile adjudications because such evidence only had minimal weight in supporting defense counsel's theory of the case. This suggests that courts should be more likely to disclose evidence that provides real damage to the prosecution's case. Similarly, Schilling recognized that the importance of the witness to the prosecution's case is an important consideration in determining whether a defendant has a right to cross-examine a witness about possible bias. Schilling, 270 N.W.2d at 772. Because of the importance of ***'s testimony to the prosecution, it is vital that this Court protect the accused's right to confrontation and cross-examination.

While it is difficult to argue in the abstract, having not seen the requested records, it is the defense's position that, because of concern about the juvenile complainant's probation being revoked, he would be more likely to lie concerning whether he had a weapon and why he had the simulated controlled substance. This would be true especially if *** were on probation for a violent crime, possession of a firearm, discharge of a firearm, or a drug violation. If *** were to have acted in some similar fashion in the circumstances of the case at hand, such behavior would not bode well for his probation status. Thus, he would have a motive to lie on the matters at issue, to the detriment of the defendant. The information in the requested juvenile records would allow the defense properly and justly to expose this motive to the jury.
Additionally, this information would allow the defense to explore whether or not the witness, ***, was the aggressor in this matter. See Minn. R. Evid. 404(a)(2); State v. Keaton, 104 N.W.2d 650 (Minn. 1960). In arguing for disclosure, defense counsel points to the recent case of State v. Carroll, 639 N.W. 2d 623, 628 (Minn. Ct. App. 2002), which involved Minnesota’s rape shield statute. Carroll explicitly states: Every criminal defendant has a right to fundamental fairness and to be afforded a meaningful opportunity to present a complete defense. The Due Process Clauses of the Federal and Minnesota Constitutions require no less. The right to present a defense includes the opportunity to develop the defendant’s version of the facts, so the jury may decide where the truth lies. The Confrontation Clauses of the Federal and Minnesota Constitutions serve the same purpose, affording a defendant the opportunity to advance his or her theory of the case by revealing an adverse witness’ bias or disposition to lie. To vindicate these rights, courts must allow defendants to present evidence that is material and favorable to their theory of the case. Id. at 627.

Furthermore, although the Minnesota Supreme Court has recognized the rehabilitative function of keeping juvenile records confidential, this rationale has been clearly eroded by recent statutory and case law. Schilling, 270 N.W.2d at 772. See State v. Little, 423 N.W.2d 722, 725 (quoting comment to the Minnesota Sentencing Guidelines III.B.405, which provides that a child gets one criminal history point for every two felony offenses attained after age 14, for the proposition that juvenile adjudications are used when sentencing adult felons; purpose is "to distinguish the young adult felon with no juvenile record of felony-type behavior from the young adult offender who has a prior juvenile record of repeated felony-type behavior"); Minn Stat. Ann. § 245A.04, subd. 3(d) (2002) (requiring that information about a child in specified circumstances be given to the Commissioner of Human Services); Minn Stat. Ann. § 260B.163, subd. 1(d) (2002) (allows a person directly damaged in a delinquency case to be notified in writing by the court administrator of the date of any certification or adjudicatory hearing and the disposition of the case); Minn Stat. Ann. § 260B.171, subd. 2 (2002) (requiring that information about a child in specified circumstances be given to the Bureau of Criminal Apprehension); Minn Stat. Ann. § 260B.171, subd. 3 (2002) (requiring that information about a child in specified circumstances be be given to the child’s school superintendent or chief administrative officer); Minn Stat. Ann. § 260B.171, subd. 4(c) (2002) (allowing victims information about juvenile proceedings); Minn Stat. Ann. § 260B.171, subd. 4(e) (2002) (requires a judge to report a juvenile’s motor vehicle violations to the Department of Public Safety); Minn Stat. Ann. § 260B.171, subd. 6 (2002) (gives an attorney representing a child access to records); Minn Stat. Ann. § 260B.171, subd. 7 (2002) (allows prosecutors access to prior juvenile court adjudications with probable cause that such adjudications form, in part, the basis for the current violation); Minn Stat. Ann. § 260B.198, subd. 1(j) (2002) (requiring that information about a child in specified circumstances be given to the commissioner of public safety for use by the drivers license bureau); Minn Stat. Ann. § 260B.245, subd. 1 (2002) (allows use of an EJ conviction for purposes of sentencing); Minn Stat. Ann. § 260C.208, subd. 1 (2002) (allows for both a social service agency responsible for the residential placement of a child and the residential facility in which the child is placed to have access to juvenile court data). This suggests that disclosure of such records does not violate public policy if done for valid reasons. The ability to demonstrate innocence is certainly a valid reason requiring disclosure of all relevant requested information.

Lastly, in In re Welfare of C.D.L., 306 N.W.2d 819 (Minn. 1981), the Minnesota Supreme Court held that juvenile adjudications can be used to impeach a witness’ credibility in a juvenile court proceeding. See also Minn. R. Juv. P. 10.04 (2002) (requiring disclosure of delinquencies proven and adjudicated to defense in juvenile proceedings); see also In re Welfare of S.S.E., 629 N.W.2d 456, 460 (Minn. Ct. App. 2001) (noting in dictum that C.D.L. might be outdated in light of the fact that juvenile hearings are now open to the public if the juvenile is alleged to have committed a felony level offense and if the juvenile is at least 16 years old). Defense argues that this matter, based on the age of the defendant at the time of the alleged crime, should be in Juvenile Court. The State successfully moved this matter to adult court. The defense’s position is that
the State cannot move a matter to an open court and then claim the defendant is precluded from the requested juvenile records because adult court proceedings are open to the public.

II. IN THE ALTERNATIVE, THE COURT MUST AT LEAST EXAMINE THE RECORDS IN CAMERA AND PROVIDE THE DEFENSE WITH ANY EXCULPATORY OR IMPEACHMENT EVIDENCE CONTAINED THEREIN.

In the alternative, should this Court feel uncomfortable with granting Mr. Brown's request, defense counsel respectfully requests that the Court grant an in camera review of the records in question and provide the defense with any relevant evidence. This, too, would be in accordance with precedent.

In State v. Paradee, 403 N.W.2d 640 (Minn. 1987), the defendant requested access to all welfare department records of the alleged victim. The Minnesota Supreme Court stated its holding as follows:

"[w]hen a criminal defendant seeks discovery of privileged material and it is not clear to the trial court that the material is discoverable, the trial court should examine the material in camera to determine if it is discoverable."  Id. at 640.

The Court in Paradee relied heavily on the decision of the United States Supreme Court in Pennsylvania v. Ritchie, 408 U.S. 39 (1987), a case in which the accused sought discovery of confidential child abuse investigative records. The Supreme Court stated:

We find that [the defendant's] interest (as well as that of the Commonwealth) in ensuring a fair trial can be protected fully by requiring that the CYS files be submitted only to the trial court for in camera review. Although this rule denies [the defendant] the benefit of an "advocate's eye" we note that the trial court's discretion is not unbounded. If a defendant is aware of specific information contained in the file (e.g. the medical report), he is free to request it directly from the court and argue in favor of its materiality. Moreover, the duty to disclose is ongoing; information that may be deemed immaterial upon original examination may become important as the proceedings progress, and the court would be obligated to release information material to the fairness of the trial.  Id. at 60.

In line with this reasoning, Minnesota has favored the in camera approach when it relates to the admissibility of confidential records. See State v. Kutchara, 350 N.W.2d 924 (Minn. 1984); State v. Leecy, 294 N.W.2d 280 (Minn. 1980); State v. Elvin, 481 N.W.2d 571 (Minn. Ct. App. 1992); State v. Morgan, 477 N.W.2d 527, 529 (Minn. Ct. App. 1991)("the proper procedure for determining the relevance and materiality of confidential documents is a trial court's in camera examination of the records."); State v. Harmening, 376 N.W.2d 254 (Minn. Ct. App. 1985); State v. Hopperstad, 367 N.W.2d 546 (Minn. Ct. App. 1985). See also State v. Hummel, 483 N.W.2d 68 (Minn. 1992).

Moreover, concerning the use of juvenile adjudications to impeach a witness's credibility, the Minnesota Supreme Court has stated that the proper procedure is to request the court to examine such records and to have the court rule on their admissibility. Schilling, 270 N.W.2d at 773; State v. Sandberg, 406 N.W.2d 506, 510 (Minn. Ct. App. 1987); State v. Loveless, 425 N.W.2d 602, 604 (Minn. Ct. App. 1988).
CONCLUSION

In the interests of a fair trial and in order to preserve *****’s right to confrontation and cross-examination, the defense must be allowed discovery of all juvenile court and juvenile probation records of the juvenile complainant. In the alternative, these records must be examined in camera by the Court for discovery of relevant evidence.

Respectfully submitted,

OFFICE OF THE _________________

By: __________________________

Lic.
Address:
Telephone:

Dated: this ___ day of ___, ___.

DOCUMENT A19: MOTION FOR DISCOVERY OF EXCULPATORY EVIDENCE

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS
NOS. AB 01 B-----

COMMONWEALTH

V. ) THE JUVENILE'S MOTION FOR DISCOVERY

*****

THE JUVENILE'S MOTION FOR DISCOVERY
OF EXCULPATORY EVIDENCE

The juvenile, ***** hereby moves this court, pursuant to Rule 14, Mass. R. Crim. P. to enter an order directing the production of any and all exculpatory evidence that is within the knowledge, possession, custody or control of the Commonwealth or which becomes known to the Commonwealth during the pendency of this matter, including but not limited to:

a. evidence that is inconsistent with his guilt as charged;

b. evidence which tends to mitigate his guilt or supports an argument that he is guilty of a lesser included offense only;

c. any evidence which impeaches the testimony of a Commonwealth witness, including evidence of any inconsistent statements made by a Commonwealth witness;

d. reports or other evidence of any identification procedure which included the juvenile's physical presence or any photograph of the juvenile which did not result in an identification of the juvenile;

e. evidence of any promises, rewards or inducements given to any prospective or potential witness; and/or,

f. reports or other information that identifies any person other than the juvenile as being one of the participants in this robbery, including reports of any and all persons investigated as the second robber in this case and any and all reports of informant information concerning the identity of the robbers or either of them.

As grounds therefore, the juvenile states that:

1. He is charged in the above numbered indictments with participating in the armed robbery of the A & B Barber shop and its patrons on December 29, 2001. While the Commonwealth's evidence established that two persons robbed the barbershop, only the defendant has been arrested and charged with the robbery.


4. The juvenile specifically seeks discovery of any and all exculpatory evidence, including inconsistent statements contained in the file of the Commonwealth's victim/witness advocate(s). Commonwealth v. Liang, 434 Mass. 131 (2001).

5. Any and all evidence tending to show that the juvenile has been misidentified or that there has been a failure to identify the juvenile tends to call into question the accuracy of a witness's identification of the defendant as one of the robbers.

Wherefore, the juvenile requests that this court enter an order directing the Commonwealth to produce any and all exculpatory evidence in its possession, custody or control.

Dated: *****

By his attorney,

*********

License
Organization
Address
Phone

CERTIFICATE OF SERVICE

I, *****, hereby certify that I did serve one copy of the foregoing on Assistant District Attorney ***** by faxing and mailing the same to him.
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.          JUVENILE COURT

COMMONWEALTH          )
)

v.                    )
)

XXXXXXXXX            )
Respondent           )

MOTION FOR PRODUCTION OF PHYSICAL EVIDENCE AND SCIENTIFIC TESTS

Pursuant to Mass. R. Crim. P. 14(a)(2), the above-named Respondent hereby moves this Court for an order directing the Commonwealth to produce, for the Respondent's inspection and copying, all physical evidence, including any photographic and videotape evidence, and scientific test results which the Commonwealth has in its possession, custody or control, without regard to whether such physical evidence or scientific tests will be used at the trial of this matter.

The term "scientific tests" includes, but is no way limited to, results of any fingerprint analysis, ballistics analysis, handwriting analysis, documents analysis.

As grounds therefore, the Respondent states that the requested information is necessary so that the Respondent may adequately prepare his defense. Respondent further states that he requires access to photographic copies of all crime scene photographs prepared in this matter, as the xerographic copies produced to date are not sufficiently clear to allow defendant to prepare for trial.

Wherefore, Respondent requests that this Court enter an order directing the Commonwealth to produce, for the Respondent's inspection and copying, all physical evidence, including any photographic and videotape evidence, and scientific test results which the Commonwealth has in its possession, custody or control, without regard to whether such physical evidence or scientific tests will be used at the trial of this matter.

Dated: XXXXXXX

By his attorney,

Organization
Address
Phone

CERTIFICATE OF SERVICE

I, ___________, hereby certify that I did serve one copy of the foregoing on Assistant District Attorney ________ by causing the same to be delivered to his office in hand.

____________________
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Family Division -- Juvenile Branch

In the Matter of :  


Docket No. J-7676-54  
Social File 654321  
Judge Name  
Hearing: January 13, 2003  

Respondent :

MOTION TO COMPEL BRADY AND DENY M.B.'S REQUEST TO SET ASIDE  
COURT'S ORDER TO UNSEAL AN INCORPORATED MEMORANDUM  
OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

***** by and through undersigned counsel, respectfully moves this Court, pursuant to the  
Confrontation Clause of the Sixth Amendment, the Due Process Clause of the Fifth Amendment, Brady v. United States, 373 U.S. 83 (1963), D.C. Code §§16-2331 and 16-2332 and related case law, to compel the government to produce discovery as previously ordered.

In support of this motion, counsel states the following:

1. On October 5, 2002, ***** was presented in the above-captioned case at an initial hearing on several assault-related allegations. One of the complainants in this case is M.B.

2. During the probable cause hearing, counsel learned that M.B. is currently pending charges of assault with a dangerous weapon (knife) with ***** as the complaining witness. Counsel immediately requested, pursuant to Brady v. United States, 373 U.S. 83, a copy of all police reports, statements, and related discovery in the case of M.B. The Court granted the request, declined to delay the probable cause hearing until production of the materials, but ordered the government to provide the requested Brady material no later than Friday, October 11, 2002. *****'s case was also continued for further initial hearing on October 11, 2002.

3. At the further initial hearing, the government failed to produce the requested material as ordered, but indicated that a note would be placed in the Corporation Counsel file. Counsel asked Magistrate Judge One to enforce the previous order and Judge One directed counsel to raise the issue with the assigned calendar judge.

4. *****'s case was continued for a status hearing on Friday, October 18, 2002 on Calendar 2 before Judge Two.

5. At the status hearing, counsel asked the Court to enforce the initial order to produce Brady materials. Assigned Assistant Corporation Counsel (ACC) S.G. advised the Court that she was aware of the issue, but new to the case and needed time to look into the matter. Ms. G. assured the Court that she would be in touch with defense counsel. Counsel met with G. briefly after the status hearing. Ms. G. again indicated that she understood her obligations
pursuant to *Brady* and reassured counsel that she would look into the issue.

6. On October 25, 2002, defense counsel filed a Rosser letter with the Office of Corporation Counsel stating the following:

*Brady* Requests:

On October 5, 2002, Judge Name ordered the government to turn over to the defense specific *Brady* material related to M.B. by October 11, 2002. At this time, the defense has not received any *Brady* material from the government. We hereby request the following information regarding M.B.:

1. Any and all police reports,
2. Any and all police notes,
3. Any and all written, audio taped or video recorded statements of witnesses,
4. Any and all written, audio taped or video recorded statements of M.B.,
5. Any and all photographs,
6. Any and all tangible evidence,
7. Any and all recorded communications and reports related to those communications including, but not limited to, radio runs, 911 calls, TAC communications and all computer printouts of communications, and
8. Any and all evidence of uncharged alleged misconduct of M.B.

Counsel reiterate the general *Brady* request and note the continuing nature of that request. Should you uncover any *Brady* material at any time during the pendency of this case, please provide counsel with such evidence immediately.

7. On November 4, 2002, undersigned counsel met with Ms. G. in her office for a discovery conference. At that time, Ms. G. provided counsel with a copy of M.B.’s "juvenile record," but indicated that she wanted to speak with M.B.’s defense counsel and to review M.B.’s ACC file before providing any additional materials.

8. On December 10, not having heard back from Ms. G., defense counsel filed yet another Rosser letter reiterating the request for *Brady* materials. Specifically, the letter stated as follows:

On October 5, 2002, Judge Name ordered the government to turn over to the defense specific *Brady* material related to M.B. by October 11, 2002. At this time, the defense has not received *Brady* material from the government.

During the discovery conference, you provided us with case summaries for M.B. (three pages). This is insufficient to satisfy the order of Judge Name to turn over specific *Brady* material regarding this complaining witness. We now reiterate our request for the following information regarding M.B. and ask that these documents be turned over to the defense immediately:

1. Any and all police reports,
2. Any and all police notes,
3. Any and all written, audio taped or video recorded statements of witnesses,
4. Any and all written, audio taped or video taped recorded statements of M.B.,
5. Any and all photographs,
6. Any and all tangible evidence,
7. A viewing letter to view any and all tangible evidence,
8. Information regarding any deals, benefits or promises made to M.B.,
9. Information regarding whether any of the other complaining witnesses in this case were involved in the prior stabbing incident,
10. Any and all recorded communications and reports related to those communications including, but not limited to, radio runs, 911 calls, TAC communications and all computer printouts of communications, and
11. Any and all evidence of uncharged misconduct of M.B.

Counsel also reiterates the general Brady request and notes the continuing nature of that request. Should you uncover any Brady material at any time during the pendency of this case, please provide counsel with such evidence immediately.

9. On December 17, Ms. G. wrote a letter to both undersigned counsel and to M.B.’s attorney, Mr. R.W., advising Mr. W. that she would give him until December 27 (10 days) to file an objection to this Court’s October 5 order to produce Brady. Apparently, Ms. G. initially advised Mr. W. of *****’s Brady request sometime between November 4 and November 8, 2002. Ms. G. indicated in her December 17 letter that “[t]he government has no evidentiary objection to turning over police paperwork in M.B.’s file which it believes to be Brady material.” However, Ms. G. went on to write out four different grounds on which she thought Mr. W. should object to the Court’s order. As is clear to all parties, the government does not have standing to object on behalf of Mr. W.’s client. In fact, to do so in this case would constitute a conflict of interest as the government cannot end run around Brady obligations by seeking to invoke the veil of juvenile confidentiality through the complainant’s defense attorney. Constitutional principles of the Fifth and Sixth Amendment clearly supersede state confidentiality statutes. On December 28, 2002, Mr. W. filed a motion to oppose the Court’s order requiring the government to disclose Brady.

10. This Court was well within its authority to dictate a deadline by which Brady material must be disclosed and, absent an abuse of discretion, the government should have abided by that order. United States v. Starusko, 729 F.2d 256, 261 (3d Cir. 1984). This Court certainly did not act with any abuse of discretion in compelling disclosure of obvious, undisputed Brady material that has not only been known to the government, but that has also been in the possession, custody or control of the government since May 27, 2002, the date of M.B.’s arrest. Now 84 days after the Court’s initial order, the government still has not complied with the Court’s order and arguments on this pleading are not scheduled until January 13, 2003, fourteen days before *****’s trial. Once the prosecution is aware that it has Brady material in its possession, it has an ethical duty to disclose it immediately. Our Court of Appeals has condemned the practice of withholding Brady information until the last possible moment. “A prosecutor’s timely disclosure obligation with respect to Brady material cannot be overemphasized, and the practice of delayed production must be disapproved and discouraged.” Curry v. United States, 658 A2d 193, 197 (1995). The defense must have information sufficiently in advance of trial so that the defense can investigate the information and incorporate it into cross-examination and into the defense case. See United States v. Pollack, 534 F.2d 964, 973-74 (D.C. Cir. 1976)(disclosure must be made at such a time as to allow defense to use the material effectively in preparation and presentation of its case).
11. All of the requested materials fall well within the parameters of Brady, and contrary to the arguments made by Mr. W., nothing in the rules or procedures of D.C. Code §16-2331 or 16-2332 preclude disclosure.

12. First, defense counsel’s request and this Court’s order were entirely consistent with long-standing practice in the District of Columbia. Statutes §16-2331 and 2332 merely require that an “interested party” ask permission of the court before attempting to access juvenile records in the clerk’s office. Nothing in the statute requires that the request or order be in writing or any other “special” format. While judges in the District of Columbia have been vigilant in protecting the confidentiality of juveniles, the judges in this jurisdiction also routinely honor Brady, Lewis and Davis requests for juvenile records. It is pervasively understood that the Constitutional requirements of the Fifth and Sixth Amendment supersede District of Columbia statutes. Furthermore, Brady requests are routinely made orally, in open court and even mid-trial. In this case, on October 5, 2002 defense counsel learned mid-hearing of the existence of important Brady material - which happened to be in the form of pending juvenile charges. Defense counsel made an immediate Brady request as any advocate would and the Court honored that request as any judge should. There was nothing inconsistent or improper in the Court’s order.

13. Second and even more important, the cloak of confidentiality has already been largely lifted in this case given nature of what amounts to alleged criss-cross assaults. The identity and pendency of M.B.’s petition are already well known to all parties. In fact, the pendency of M.B.’s charge was necessarily disclosed to undersigned counsel as Brady. Of course ***** is an “interested party” in M.B.’s juvenile case as required by local statute. Moreover, again given the criss-cross nature of the allegations, the documents and information sought from M.B.’s case relate directly to information that is intertwined with the facts of *****’s case. This is not a case in which defense counsel is on a fishing expedition or in which defense counsel merely seeks to impeach a witness with a juvenile adjudication. To date, undersigned counsel has not asked for any confidential social information regarding M.B. and would object to disclosure of any confidential social information about ***** Counsel simply requested, and this Court lawfully ordered, disclosure of police reports and discovery to which ***** is entitled under the Confrontation Clause of the United States Constitution.

14. Third, even if the cloak of confidentiality was not already lifted in this case, the Supreme Court has made it clear that a state’s interest in preserving juvenile confidentiality must fall when that interest interferes with a defendant’s fundamental Sixth Amendment right to confront witnesses against him. Davis v. Alaska, 415 U.S. 308 (1974); Washington v. United States, 461 A.2d 1037

15. Finally, assuming arguendo, that mere disclosure of M.B.’s “juvenile record” as provided to defense counsel by Ms. G., could ever satisfy the obligations and parameters set forth in Davis v. Alaska, the material here was also requested under other more general principles of Brady. As stated above, the discovery sought in this case, namely statements, police reports and other documents, by *****’s counsel are directly related to the charges and allegations pending against *****. The value of Brady material lies in its use for cross-examination, the single most important tool for testing the reliability and credibility of witnesses. Davis v.
16. Furthermore, the type of evidence sought here is bias and bias is always relevant and admissible. *Delaware v. Van Arsdall*, 475 U.S. 673, 678-79 (1986); *Abel v. United States*, 469 US 45, 52 (1984); *Hollingsworth v. United States*, 531 A2d 973, 979 (D.C. 1987); *In re C.B.N.*, 499 A.2d 1215, 1218 (D.C. 1985); *Springer v. United States*, 388 A.3d 846, 857 (D.C. 1978). For example, the government must disclose information that any witness has or had a liberty interest at stake at the time of the investigation or trial as such witness may have a motive to curry favor with the government. *Coligan v. United States*, 434 A.2d 483, 485 (D.C. 1981); *Benjamin v. United States*, 453 A.2d 810, 812 (D.C. 1982). Bias may also be introduced through extrinsic evidence. *In re C.B.N.*, 499 A.2d 1215, 1218 (D.C. 1985). Thus timely disclosure of the requested material was critical as counsel may need to conduct further investigation upon review of the documents.

17. Not only is ***** entitled to statements, police reports, and other government evidence pursuant to general doctrines of *Brady* and *Davis*, but ***** is also specifically entitled to the material under additional theories related to the elements of her charge and her defense in this case. Counsel now hereby submits and additional five-page ex parte addendum setting forth these additional arguments. Neither the government nor M.B.'s defense counsel are entitled to a review of *****'s defense prior to trial. *Bowman v. United States*, 412 A.2d 10, 12 (D.C. 1980).

18. The charges in this case are serious and ***** has a fundamental right to confront witnesses against her at trial. Sixth Amendment; *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973); *Davis v. Alaska*, 415 U.S. 308, 316 (1974). *Brady* material must be disclosed to the defense "upon request" and failure of the prosecution to disclose evidence favorable to an accused upon request violates due process. *Brady* at 87; *Kyles v. Whitley*, 115 S.Ct. 1555, 1565 (1995).

Wherefore, for the foregoing reasons and all others that may appear to the Court, ***** moves this Court to compel the government to immediately disclose any and all *Brady* material arising out of the charges pending against M.B.

Respectfully Submitted,

______________________
Attorney, 303030
Counsel for *****
Address:
Phone:
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Family Division -- Juvenile Branch

In the Matter of

: Docket No. J-7676-54
: Social File 654321

*****, 
: Judge Name
: Hearing: January 13, 2003

Respondent


ORDER

Upon consideration of *****'s Motion to Compel Brady, it is hereby on January 13, 2003, HEREBY ORDERED that the Office of the Corporation Counsel shall immediately provide *****'s counsel with the following materials generated in connection with the arrest, charging and investigation of M.B. in J-914-02:

1. Any and all police reports,
2. Any and all police notes,
3. Any and all written, audio taped or video recorded statements of witnesses,
4. Any and all written, audio taped or video taped recorded statements of M.B.,
5. Any and all photographs,
6. Any and all tangible evidence,
7. A viewing letter to view any and all tangible evidence,
8. Information regarding any deals, benefits or promises made to M.B.,
9. Information regarding whether any of the other complaining witnesses in this case were involved in the prior stabbing incident,
10. Any and all recorded communications and reports related to those communications including, but not limited to, radio runs, 911 calls, TAC communications and all computer printouts of communications, and
11. Any and all evidence of uncharged misconduct of M.B.

___________________________
Judge Name
Associate Judge
District of Columbia Superior Court
500 Indiana Avenue, N.W.
Washington, D.C. 20001
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS
BOSTON SESSION
No. AB 01 C -------

SUFFOLK COUNTY JUVENILE COURT

________________________________
COMMONWEALTH )
) THE JUVENILE'S MOTION TO
) BRING WITNESS BEFORE THE COURT
) FOR INSTRUCTION ON THE DEFENSE
) RIGHT TO INVESTIGATE

The juvenile, *****, hereby moves this Court to bring the witnesses W1 and W2 before the Court and to instruct them that the defense has a right to interview them, and that the decision to consent to an interview with counsel for the juvenile and/or the counsel's investigator is W1's and W2's decision alone. As grounds therefore, the juvenile states that:

1. She is charged in the above numbered complaint with assault and battery with a dangerous weapon on W1.

2. W2 is a percipient witness to the alleged assault and battery.

3. As is set out in the attached affidavit of counsel's investigator, V1, V1 has attempted to interview W1 and W2.

4. When V1 attempted to meet with W1, her mother declined to permit him to meet with W1 and told V1 that the "DA" and a police officer had instructed W1 not to speak with anyone about the case.

5. "Witnesses belong neither to the Commonwealth nor to the defense. They are not partisans and should be available to both parties in the preparation of their cases... Our Constitution secures to a defendant the right to present his defense. Under art. 12 of the Declaration of Rights, a defendant 'shall have a right to produce all proofs, that may be favorable to him.' If the Commonwealth could prevent access to material witnesses by [instructing them not to speak with anyone other than a rep resentative of the Commonwealth], this constitutional guaranty would be seriously impaired. To say that a defendant has a right to present his defense and then to deprive him of the means of effectively exercising that right would reduce the guaranty to an idle gesture." Commonwealth v. Balliro, 349 Mass. 505, 516-517 (1965).

6. An instruction not to speak with defense counsel or his agent or with anyone other than a representative of the Commonwealth is "offensive to the doctrine of Commonwealth v. Balliro, ... that '(w)itnesses belong neither to the Commonwealth nor to the defense ... and should be available to both parties in the preparation of their cases.' ... Witnesses may decline of their own will to talk to either side or to both; but their choice should not be constrained, and when it is the State that interferes, we consider the vice to be constitutional, as indicated by our reference in Balliro to art. 12 of our Declaration of Rights." Commonwealth v. St. Pierre, 350 Mass. 650, 657-658 (1979) [citations omitted].
7. When there is a violation of the Balliro principle that witnesses belong to neither party, the correct procedure is to, "ask the judge to bring the witnesses before him, and to have him explain in some detail, on the record, the basis and dimensions of the principle, and then to make sure that counsel [are] given access to the witnesses on neutral ground without any overshadowing influence." St. Pierre, 350 Mass. at 658.

6. The decision whether to be interviewed lies with the witnesses. When there may have been a violation of the Balliro principals, the Court should bring the witnesses before it and inform them that this is their decision and their decision alone. Further, the Court should advise the witness that the defendant should be given access to witnesses in order to prepare a defense and, indeed, to make a reasoned judgment whether to defend or to plead guilty, that the defense should not be "deprived of the opportunity to [interview witnesses] by whim or caprice," and that "prior testimony of the witnesses before the grand jury and conversations with the district attorney [are] not reasons for declining to talk with defendant's counsel." See, Commonwealth v. Doherty, 353 Mass. 197, 210 (1967).

Wherefore, the juvenile requests that this Court bring W1 and W2 before it and instruct them as set out above.

Dated: *****
By her attorney,

________________________
License
Organization
Address
Phone

CERTIFICATE OF SERVICE

I, ___________, hereby certify that I did cause one copy of the foregoing to be served on ___________, by faxing the same to her this __ day of _____, 2005.

________________________
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS
BOSTON SESSION

COMMONWEALTH

V.

THE JUVENILE'S MOTION FOR
INVESTIGATIVE FUNDS

****

The juvenile, ****, hereby moves this Court to authorize his counsel to expend seven hundred fifty ($750.00) dollars to hire an investigator to assist him in locating and interviewing witnesses in this matter. See, M.G.L. c. 261, §§ 27A-27C. As grounds therefore, the juvenile states that:

1. He is without funds to pay for the costs of an investigator and is represented in these proceedings by court appointed counsel.

2. He is charged in this case with armed assault with intent to rob and assault and battery. The incident underlying this charge occurred on or about November 29, 2004 in Brighton, MA.

3. Discovery adduced to date reveals that there are at least four civilian witnesses to be interviewed as well as several police officers.

4. In order properly to prepare for the trial of this matter it is necessary to undertake investigation to locate potential defense witnesses and to interview the Commonwealth's witnesses. This investigation is "reasonably necessary to assure [****] as effective [representation] as he would have if he were financially able to pay [the costs of his representation]." G.L. c. 261, §27C(4).

5. Allowance of this motion is necessary to ensure that ****'s right to due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Articles I, X, and XII of the Massachusetts Declaration of Rights is protected.

WHEREFORE, the juvenile moves this Court to enter an order allowing his counsel to expend up to seven hundred fifty ($750.00) dollars for an investigation to locate and interview witnesses in this matter.

Dated: ****

By his attorney,

License
Organization
Address
Phone
MOTION FOR PRETRIAL VOIR DIRE OF CHILD WITNESS AND TO EXCLUDE AS INCOMPETENT AND UNRELIABLE THE TESTIMONY OF THE CHILD WITNESS AND INCORPORATED POINTS AND AUTHORITIES THEREOF

Respondent, ****, by and through undersigned counsel, respectfully moves this Honorable Court, pursuant to D.C. Superior Court Juvenile Rules 12(b) and 47-I, and the Due Process Clause of the Fifth Amendment to the United States Constitution to grant a pretrial voir dire of the child complaining witness and to exclude as incompetent and unreliable the complaining witness' testimony.

In support of this Motion, counsel states:

1. On __________, **** was charged with four counts of second-degree child sexual abuse pursuant to D.C. Code § 22-3009 and one count of threats pursuant to D.C. Code § 22-1810. Trial is scheduled for ________________.

2. The complaining witness is a seven-year-old male.

3. Due to the young age of the complaining witness, the court must determine whether the witness is competent to testify. A child is competent to testify if three criteria are satisfied: 1) the child understands the difference between truth and a falsehood; 2) the child appreciates the duty to tell the truth; and 3) the child is able to recall the events about which he is to testify. Howard v. United States, 663 A.2d 524, 530 (D.C. 1995); Galindo v. United States, 630 A.2d 202, 206-07 (D.C. 1993). The competency of a child to testify is a matter of law. Robinson v. United States, 357 A.2d 412 (D.C. 1976).

4. Although the complaining witness in this case states, when explicitly asked, that he understands the difference between the truth and a falsehood, there are indications that he does not fully understand and appreciate his duty to tell the truth.

5. Although the complaining witness in this case states, when explicitly asked, that he understands the difference between hearsay and first hand knowledge, there are also indications that he does not fully appreciate the difference between what someone else has told him and what he has experienced himself firsthand. As such, the complaining witness does not have the requisite ability to recall firsthand the events about which he is to testify and should be found incompetent to testify at trial.
6. In addition to the child's limited ability to appreciate the difference between truth and falsehood and to recall the events in question, the interview techniques used in this case are so suggestive that they have distorted the complaining witness' recollection of what actually occurred or did not occur and have substantially compromised the reliability of the statements already made by the complaining witness and the ability of the complaining witness to testify based on his own recollections. See Idaho v. Wright, 497 U.S. 805, 812-13 (1990) (affirming with approval the Idaho Supreme Court's conclusion that the use of blatantly leading questions, the presence of an interviewer with a preconceived idea of what the child should be disclosing, and children's susceptibility to suggestive questioning, all indicate the potential for the elicitation of unreliable information). Although the District of Columbia has yet to analyze the specific issue of taint in relation to the testimony of children, the analyses conducted by other jurisdictions may be instructive. See, e.g., Com. v. Delbridge, 855 A.2d 27 (Pa. 2003) (holding that allegations of taint should be examined during a competency hearing as taint goes to the question of whether the child has the ability to retain an independent recollection of the event); English v. State, 982 P.2d 139, 146 (Wyo. 1999) (expressing agreement with the reasoning of the New Jersey Supreme Court in State v. Michaels but holding that the competence inquiry includes the question of pretrial taint); State v. Carol M.D., 948 P.2d 837, 845 (Wash. Ct. App. 1997) (directing the trial court to conduct a pre-trial taint hearing on remand to determine whether the State improperly influenced statements and the testimony of the child witness); State v. Michaels, 642 A.2d 1372, 1377 (N.J. 1994) (holding that a pretrial taint hearing must be held to determine the reliability of statements and testimony elicited by suggestive and coercive interview techniques).

7. "The question of whether the interviews of the child victims of alleged sexual-abuse were unduly suggestive and coercive requires a highly nuanced inquiry into the totality of circumstances surrounding those interviews. Like confessions and identification ... special care [must] be taken to ensure their reliability." Michaels, 642 A.2d at 1375; see also Stephen J. Ceci & Richard D. Friedman, The Suggestibility of Children: Scientific Research and Legal Implications, 86 Cornell L. Rev. 33, 36 (2000) (finding that there is an overwhelming consensus among psychological researchers that children are suggestible to a degree that must be regarded as significant). "If a child's recollection of events has been molded by an interrogation, that influence undermines the reliability of the child's responses as an accurate recollection of actual events." Michaels, at 1375.

8. The investigatory interview with the child complaining witness is "a crucial, perhaps determinative, moment in a child sex abuse case." Id. at 1377 (citing Gail S. Goodman & Vicki S. Helgeson, Child Sexual Assault: Children's Memory and the Law, 40 U. Miami L. Rev. 181, 195 (1985)). The decision to prosecute often hinges on the information elicited by social workers or police investigators during these investigatory interviews. See id. (citing Diana Younts, Evaluating and Admitting Expert Opinion Testimony in Child Sexual Abuse Cases, 41 Duke L.J. 691, 694 (1991)). A suggestive investigatory interview can mold the child's responses and thus undermine "the reliability of a child's responses as an accurate recollection of actual events." Id.

9. The factors that can undermine the neutrality of an interview and create undue suggestiveness include 1) the interviewer's lack of investigatory independence; 2) the pursuit by the interviewer of a preconceived notion of what has happened to the child; 3) the use of leading questions; 4) a lack of control for outside influences on the child's statements, such as previous conversations with parents or peers; 5) the use of incessantly
repeated questions, especially where the questions suggest answers to the child; 6) the vilification of
the person charged with wrongdoing; and 7) the absence of spontaneous recall by the child. See
Michaels, 642 A.2d at 1377 (citing Younts, 41 Duke L.J. at 729-31; John E.B. Myers, The Child Witness:
Techniques for Direct Examination, Cross Examination, and Impeachment, 18 Pac. L.J. 801, 899 (1987);
Goodman, 40 U. Miami L. Rev. at 184-87; see also Stephen J. Ceci, et. al., Children’s Suggestibility
Research: Implications for the Courtroom and the Forensic Interview in Children’s Testimony: A Handbook of
Psychological Research and Forensic Practice (Helen L. Westcott et. al. eds., 2002). Suggestion can also
be subtly communicated to children through more obvious factors such as the interviewer’s tone of
voice, mild threats, praise, cajoling, bribes, rewards, and resort to peer pressure. See Michaels, 642
A.2d at 1377.

10. The defendant has the initial burden to make a showing that some evidence of the victim’s
statements were the result of suggestive or coercive interview practices in order to trigger a pretrial
hearing. See id. at 1383 (citing Watkins v. Sowders, 449 U.S. 341 (1981)). Once the respondent
establishes that sufficient evidence of unreliability exists, the burden of proof shifts to the State to
prove the reliability of the proffered statements and testimony by clear and convincing evidence. Id.

11. On Date 1, **** sought help from the police after being threatened by the mother of the complaining
witness. The police returned with **** to the scene of the threats to investigate.

12. Upon multiple interviews with the complaining witness by different members of the Metropolitan
Police Department, **** was formally arrested.

13. On Date 2, during the initial hearing, the government requested a five day hold so that the *****
Center could conduct a forensic interview with the complaining witness. **** was
released with conditions to his father pending the decision to petition the case.

14. On Date 3, the ***** Center conducted a forensic interview with the complaining witness. The
forensic interview lasted approximately forty-five minutes.

15. The lack of investigatory independence of the ***** Center; the pursuit by the interviewer of a pre
conceived notion of what has happened to the child; a lack of control for outside influences on the
child’s statements; the use of incessantly repeated questions that suggested answers to the child; and
the absence of spontaneous recall by the child constitute more than sufficient evidence to find that
the investigative techniques used in this case have created a substantial likelihood that the
statements and testimony of the child complaining witness are unreliable. As such, a pretrial
hearing should be granted in this case and the testimony of the complaining witness should be
excluded due to its unreliability.

16. Thus, as in the analogous cases of suggestive identifications and coerced confessions, a pretrial
hearing should be granted in this case to determine the reliability of the complaining witness’
statements and testimony as an accurate recollection of the events in question. See Michaels, 642
A.2d at 1382 (holding that “to ensure defendant’s right to a fair trial a pretrial taint hearing is
essential to demonstrate the reliability of the resultant evidence”); see also Manson v. Brathwaite, 432
U.S. 98, 114 (1977) (holding that a determination of reliability must be made before suggestive
identification testimony is admissible); Jackson v. Denno, 378 U.S. 368, 376-77 (1964) (recognizing that
the defendant has a constitutional right at some stage in the proceedings to object to the use of a
coerced confession and to have a fair hearing to determine the reliability of that confession).
WHEREFORE, for the foregoing reasons and any others that appear to this Court upon a hearing in this matter, **** respectfully requests that this Court grant the above Motion and exclude as incompetent and unreliable the testimony of the child witness.

Respectfully submitted,

______________________
Attorney, # 44444
Student Counsel for ****
Address
Phone

______________________
Supervising Attorney, # 555555
Supervising Counsel for ****
Address
Phone

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Grant a Pretrial Voir Dire of Child Witness and to Exclude as Incompetent and Unreliable the Testimony of the Child Witness and Incorporated Points and Authorities Thereof has been hand-delivered to the Office of __________, 123 Fourth Street, NW, Washington, D.C. 20001, Attention ______, this ___ of ______, 200__.

______________________
Attorney, # 44444
Counsel for ****
Address
Phone
VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

COMMONWEALTH OF VIRGINIA

v.

*****

MOTION FOR APPOINTMENT OF EXPERT

Comes now the defendant, *****, by and through his attorney, *****, Senior Assistant Public Defender, and moves this Honorable Court to appoint an expert to assist him in the preparation of his defense pursuant to the Due Process Clause and Equal Protection Clause of the United States Constitution and Article I, Section 8 of the Virginia Constitution, to wit: a computer expert with knowledge in the retrieval of information stored on computers and hard drives in addition with knowledge and expertise in the protocols to follow in the retrieval of this information.

The following grounds are offered in support of this motion:

1. **** is currently charged with six counts of production of child pornography in violation of Virginia Code §18.2-374.1 (B) 3, 4

2. Members of the Albemarle County Police Department executed a search warrant to *****'s home address on February 14, 2003.

3. Numerous items were seized by law enforcement, including but not limited to: computers, various discs, and other assorted media.

4. There are protocols to be followed to retrieve information from computers, which require expert training and knowledge.

5. Respondent requires expert assistance to confront the evidence the Commonwealth intends to present against him, specifically regarding the method(s) used by law enforcement to retrieve information from the computers, various discs and other assorted media seized on February 14, 2003.

6. ***** has been found to be indigent and does not have the resources with which to employ an expert to assist him in presenting relevant and material evidence relating to the validity of the police methods used to retrieve information from the computers, various discs and other assorted media.

7. The United States Supreme Court recognized an indigent defendant's right to expert assistance guaranteed by the Due Process Clause and Equal Protection Clause of the Fourteenth Amendments of the United States Constitution in the case of Ake v. Oklahoma, 470 U.S. 68, 77 (1985), stating: "We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the Court has not held that a
State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, see Ross v. Moffitt, 417 U.S. 600 (1974), it has often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system," id., at 612. To implement this principle, we have focused on identifying the "basic tools of an adequate defense..." Britt v. North Carolina, 404 U.S. 226, 227 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them."

8. The Virginia Supreme Court addressed this issue in the case of Husske v. Commonwealth, 252 Va. 203, 476 S.E.2d 920 (1996) and stated: "...an indigent defendant who seeks the appointment of an expert, at the Commonwealth's expense, must show a particularized need for such services and that he will be prejudiced by the lack of expert assistance."

9. ***** has no other means by which to confront the evidence the Commonwealth intends to use in this prosecution against him. The appointment of an expert would assist in procuring a fair trial for the defendant.

WHEREFORE, the defendant, ***** respectfully requests that this Honorable Court grant his motion and appoint an expert to assist him in the preparation of his defense.

Respectfully Submitted,

*****

By: _____________________________
License
Organization
Address
Phone

___________________________________________

CERTIFICATE

I hereby certify that a true copy of this motion was delivered to *****, Deputy Commonwealth's Attorney for the County of _____ at _______, this ____th day of _________.

___________________________________________
Name
EX PARTE MOTION FOR ISSUANCE OF SUBPOENA
DUCES TECUM FOR COMPLAINANT'S MEDICAL
RECORDS AND POINTS AND AUTHORITIES IN SUPPORT THEREOF

Respondent ******, through undersigned counsel, respectfully moves this Court, pursuant to Superior Court Rule of Criminal Procedure 17(c) and D.C. Code § 14-307, for authorization to issue the attached subpoena for the medical records of A.P., the complaining witness in this case. In support of this Motion, undersigned counsel states:

1. ****** is charged with one count of aggravated assault in violation of D.C. Code § 22-404.01. A status hearing is scheduled for March 3, 2005.

2. Through discovery undersigned counsel has learned that the complaining witness, A.P., received medical treatment at the Children's Hospital on January 20, 2005, for injuries allegedly stemming from this incident. Counsel needs the medical records generated by the hospital visit in order to prepare ******'s defense and to confront the witnesses against him at trial.

3. In Brown v. United States, 567 A.2d 426 at 427 (D.C. 1989), the Court of Appeals acknowledged that D.C. Code § 14-307 created a statutory doctor-patient privilege in the District of Columbia. One of the exceptions to this privilege may arise in criminal cases where "disclosure is required in the interest of public justice." See D.C. Code § 14-307(b)(1). A determination of whether "disclosure of [medical records] is required in the interests of public justice . . . is a determination to be made by the trial court and not by the attorney who causes the subpoenas to be issued." Brown, 567 A.2d at 427. The Court held that "prior leave of the court is required before any subpoenas may be served by anyone for the production of material covered by [D.C. Code 14-307] for use in preparing for, or otherwise in connection with, a trial." Id. at 428.

4. ****** requests the Court to issue a subpoena duces tecum in order to receive A.P.'s medical records for injuries allegedly stemming from this case. In seeking a subpoena duces tecum, a party must show the following: (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a "fishing expedition." Brown, 567 A.2d at 428. See also Nixon, 418 U.S. at 699-700.
5. The first of these criteria is satisfied whenever the subpoenaing party can show that there is
"sufficient likelihood" that the requested documents are "evidentiary and relevant." Nixon, 418 U.S.
at 700 (noting that there was sufficient likelihood that the tapes subpoenaed by the prosecutor
contained conversations relevant to the offenses charged.). In demonstrating "sufficient likelihood,"a party need not show definitively that the documents it desires to receive via subpoena are
"evidentiary and relevant" for that is difficult to show without having had an opportunity to
actually view the documents and learn of the documents' precise contents. Because a party cannot
affirmatively tell what it "can or will use until it has had the opportunity to see the documents," United States v. Gross, 24 F.R.D. 138, 141 (S.D.N.Y. 1959), it need not conclusively show that each and
every item subpoenaed will provide relevant evidence at trial. Rather, a party need only
demonstrate "a sufficient likelihood" that the documents subpoenaed appear "relevant and

6. The "sufficient likelihood" standard complements the purpose of Superior Court Rule of Criminal
Procedure 17(c), which permits "books, papers, documents or objects designated in the subpoena
[to] be produced before the Court at a time prior to the trial . . . to be inspected by the parties and
their attorneys." United States v. Gross, 24 F.R.D. 138, 141 (S.D.N.Y. 1959). Documents are allowed to be produced prior to trial so that they may be inspected
"for the purpose . . . of enabling the party to see whether he can use [them] or whether he wants to

7. In this case, the medical records sought clearly qualify as "evidentiary and relevant." ***** is
charged with aggravated assault against A.P., the complainant. The hospital records may contain
information that contradicts the complainant's account of the type and extent of injuries he
sustained, and of the manner in which he sustained them. Counsel must analyze the description of
A.P.'s condition contained in the medical records as well as the account of the incident he gave to
medical personnel in order to prepare this defense. The first of the criteria set forth in Brown is thus
satisfied here.

8. Turning to the second requirement, the materials sought are not otherwise procurable reasonably in
advance of trial by exercise of due diligence. These medical reports were not provided to under
signed counsel as Rule 16(a)(1)(C) or Rule 16(a)(1)(D) discovery materials by the government.
Further, D.C. Code § 14-307 creates a statutory doctor-patient privilege. Based on this privilege,
counsel, wishing to subpoena medical records, must obtain prior leave of the Court. Brown, 567
A.2d at 428. Thus, counsel has exercised due diligence in seeking alternative means of obtaining the
records.

9. The circumstances of this case satisfy the third requirement as counsel cannot properly prepare for
trial without the requested documents. Without access to the records, *****'s ability to exercise his
right to present a defense and to confront the evidence against him will be seriously impaired.
Because of the need to investigate and follow up on any information contained in the records, to
prepare cross-examination of the complaining witness, and perhaps to consult with an expert
consultant or witness, counsel needs these records at the earliest possible juncture.
10. Finally, counsel seeks these records in good faith. As stated above, there is a good faith basis for believing that the records generated by A.P.'s hospital visit will contain relevant information. This information might cast doubt on the complainant's account of how he was injured. Because the medical records sought are evidentiary, relevant, and otherwise unobtainable, and because production is essential to preparation of an adequate defense at trial, the Court should authorize the issuance of a subpoena duces tecum for these records.

11. The document the subpoena seeks in this case are medical records; therefore ***** must make an additional showing that disclosure is "in the interests of public justice" as required by D.C. Code § 14-307. See Brown, 567 A.2d at 427-28. That statute provides in relevant part that:

(a) In the . . . District of Columbia courts a physician or surgeon or mental health professional . . . may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity . . .

(b) This section does not apply to: (1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice . . .


12. In this case, the "interests of public justice" exception to the physician-patient privilege contained in D.C. Code § 14-307(b) are present. ***** is charged with aggravated assault against A.P., and the subpoena seeks only those records relating to the injuries allegedly caused by the incident underlying these criminal charges. Disclosure serves the public interest because, as set forth above, disclosure is essential to preserve *****'s right to confront the witnesses against him as well as his ability to prepare and present a defense.

WHEREFORE, for the reasons set forth above and for any other reason that may appear to the Court, ***** respectfully requests that this Motion be granted and that this Court authorize the issuance of the attached subpoena.

Respectfully submitted,

____________________________
Attorney, #10479
Student attorney for *****

____________________________
Attorney, #448420
Supervising attorney
Organization
Address
Phone
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

COMMONWEALTH

v.

*****

JUVENILE COURT

The juvenile, *****, hereby moves this Court through his undersigned attorney to continue the above matter generally. See M.G.L. c.276 § 87, Commonwealth v. Brandano, 359 Mass. 332 (1971). As grounds therefore, he states that:

1. He is before the Court on four complaints which charge him with breaking and entering the home of one M.S. in the day time on diverse dates between December 1999 and January 12, 2000.

2. No damage was done to property and no property was taken during any of these breaks.

3. The neighbor, M.S., offered to give the juvenile a key to her apartment so that he could enter her apartment without breaking in. (See police report attached hereto.)

4. Since the juvenile's arraignment on these charges on January 13, 2000 he has committed no new offenses. Since arraignment, the juvenile has, however been psychiatrically hospitalized on numerous occasions including the following:

   April 20 to April 26       ******** Adolescent Crisis Program
   April 27 to May 18        ******** Adolescent Stabilization Unit
   May 24 to June 28         ******** Hospital
   July 6 to July 21         ******** Hospital Adolescent In-Patient Unit
   July 21 to July 31        ******** Hospital Adolescent Resident Treatment Unit
   August 9 to October 26   ******** Hospital, Adolescent Residential Treatment Unit and Transitional Care Unit

5. Upon the juvenile's discharge from the Transitional Care Unit on October 26, he was placed by the DSS at the ***** School, a residential treatment program for emotionally disturbed children.

6. The juvenile continues to reside at ***** School, and it is anticipated that he will reside there for an indefinite period. The length of stay at ***** School depends on the juvenile's progress in the program. Juveniles typically spend at least six months in the program and could be there for several years.

7. The juvenile was recently evaluated for competency to stand trial by A.W. as a GAL for the court. On information and belief, Ms. W has found that the juvenile is not competent to stand trial.
8. The juvenile also has a great many special educational needs, which will be treated during his stay at ***** School. (See attached Neuropsychological consultation from **** Hospital).

9. In view of the juvenile's emotional and educational needs, he is not a good candidate for formal probation.

10. The main evidence against the juvenile (there were no witnesses to the incidents of breaking and entering) comes from statements made by the juvenile when interrogated by Boston Police officers.

11. The juvenile has been evaluated for competency to waive his Miranda rights and found to be not competent to waive Miranda. (Copy of report of ******* attached hereto and incorporated herein.)

12. The juvenile's placement at the ***** School is in the best interests of the juvenile and protects the public safety by providing him with needed treatment and educational services.

13. The further litigation of this matter would consume a great many public resources and does not further the interests of public safety which are already being met by the juvenile's placement at **** School.

Wherefore, the juvenile requests that this matter be continued generally for a period of six months and then be dismissed on the sole condition that the juvenile's participation in the program of treatment at the ***** School.

Dated: ****

*****

By his attorney,

**********
Organization
Address
Phone
DOCUMENT A28: NOTICE OF DEFENSES AND DEFENSE WITNESSES

STATE OF Minnesota
COUNTY OF *****

DISTRICT COURT-JUVENILE DIVISION
FOURTH JUDICIAL DISTRICT

In the Matter of the Welfare of: ) NOTICE OF DEFENSE(S)
NAME: ) DEFENSE WITNESSES PURSUANT RULE
DOB: ) RULE **, JUVENILE RULES OF COURT

TO: ******* COUNTY DISTRICT COURT-JUVENILE DIVISION, AND
******, COUNTY ATTORNEY

I hereby inform you, pursuant to Rule 24 of the Juvenile Rules of Court, that in the above-named case, the Respondent intends to rely upon the following defense(s) at trial:

____ Self-defense
____ Entrapment
____ Mental Illness or Deficiency
   ____ In addition to the defense of mental illness or deficiency, the Respondent relies on the defense of not guilty.
____ Duress
____ Alibi
   Following is the specific place or places where the Respondent contends s/he was when the alleged offense occurred: ________________________________.
____ Double Jeopardy
____ Statute of Limitations
____ Collateral Estoppel
____ Defense under **** Statutes § ****
____ Intoxication
____ Others:________________________________________

The following are the names and addresses of persons whom the Respondent intends to call as witnesses at trial (specify if an alibi witness):

Any and all witnesses listed in the State's police reports, medical reports, supplemental investigative reports, and any other witnesses as they become known to the defense.

Respectfully submitted,

_____________________

**************
Organization
Address
Telephone

DATED: this ____ day of ______ 2005.
IN THE CIRCUIT COURT OF *** COUNTY, ILLINOIS, JUVENILE DIVISION

In the interest of ) *******
T ) *******
A Minor )

MOTION TO SUPPRESS STATEMENT

NOW COMES MINOR-RESPONDENT, T, by and through her attorney, *******, and respectfully requests that this Honorable Court enter an Order suppressing from introduction into evidence all statements of T. In support of this Motion, Minor-Respondent states as follows:

1. On January 6, 2004 at 12:30 a.m., Minor Respondent was arrested on the charge of criminal sexual assault along with two of her younger siblings.

2. When the police officers responded to the scene at ****** Avenue, the officers apprehended the Minor Respondent in the hallway on the third floor of the above address.

3. The Minor Respondent knew her two siblings had also been arrested and that the two victims were alleging that they had been raped but the police officers did not inform her what the charge was.

4. In the hallway, the police officers handcuffed the Minor Respondent's hands behind her back. The police officers then put her in the back of a police car with her younger sister.

5. The police officers transported her to the police station and put her in a holding cell. Her sister was in the cell with her. The Minor Respondent got little to no sleep that night.

6. The police officers left the Minor Respondent in the holding cell for several hours. In the morning, the police officers then separated her from her sister and took her to another room.

7. The Minor Respondent still did not know what the charge was.

8. Although the Minor Respondent's father was present in this room, the Minor Respondent was never given an opportunity to confer with her father.

9. She asked to speak with her father alone and was refused.

10. At no point was the Minor Respondent able to ask her father for advice without the police officers being present. In fact, the Minor Respondent had little to no conversation with her father before and during the interrogation.

11. The Minor Respondent's father was at the police station not only for the Minor Respondent but also for the interrogations of the minor-respondent's two siblings. He was concerned for all his children and was under pressure. He was therefore distracted and not concerned solely with protecting the Minor Respondent's rights.

12. Further, the Minor Respondent does not live with her father and has not lived with her father since she was very young. Although the Minor Respondent talked with her father periodically over the telephone, the Minor Respondent did not have a strong relationship with her father nor did she see him on a regular basis.

13. Although a youth officer advised her that she did not have to tell the officers what happened, the youth officer never spoke with the Minor Respondent without the other police officers present. She
was unaware that the youth officer was there for any reason but to aide the police in their investigation.

14. The police officers questioned the Minor Respondent for twenty minutes. The officers read the Minor Respondent her Miranda warnings at that time but did not inform her of what she was charged with or that she could be tried as an adult. Other than stating the Miranda rights, the officers offered little explanation of these rights.

15. A female police officer proceeded to tell the Minor Respondent that the "others" had said she had done "it."

16. The Minor Respondent kept telling the female police officer that she did not have anything to do with the alleged crime but the female police officer refused to believe her and kept pressing her to confess.

17. The police officers presented the Minor Respondent with a written statement but she refused to sign it. The Minor Respondent could not read the statement as it was written in a manner "you have to go to school for." On information and belief, such a statement would have been written in cursive.

18. The female police officer then stressed to the Minor Respondent that she had to admit to something when all the others had said she had done something.

19. The Minor Respondent then made an oral statement that she had hit one of the victims but did not admit to any other acts.

20. The Minor Respondent was then taken back to another cell for three or four hours before she was transported to the Juvenile Detention Center.

21. Only when the Minor Respondent was transferred to the Juvenile Detention Center was she informed that she was being charged with criminal sexual assault.

22. While the Minor Respondent has been arrested twice before, the minor-respondent had never been interrogated before by police officers; and was therefore unfamiliar with her rights and the implications of any statement she made to the police. This interrogation was an unfamiliar setting for the Minor Respondent.

23. The Minor Respondent has not attended school for the past two years and has in fact not completed the seventh grade.

THE OUT OF COURT STATEMENT MUST BE SUPPRESSED

24. The Minor Respondent's will was overborne by the coercive nature of the interrogation, thereby making her oral statement involuntary.

25. On a motion to suppress, the State must establish by a preponderance of the evidence the voluntary nature of the defendant's confession. People v. Wilson, 116 Ill.2d 29, 38 (1987).

26. The United States Supreme Court has ruled that the privilege against self-incrimination applies to juveniles. In re Gault, 387 U.S. 1 (1967).

27. The Supreme Court recognizes that juveniles are more sensitive to the coercive atmosphere of an interrogation than adults: Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting
standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens ... he needs counsel and support if he is not to become the victim first of fear, then of panic. *Haley v. Ohio*, 332 U.S. 596, 599 (1948).

28. The Illinois courts also evaluate statements made by juveniles more closely than that of adults, recognizing that "[a]n incriminating statement by a juvenile is a sensitive concern and the greatest care must be taken to assure the admission was voluntary." *People v. McGhee*, 154 Ill.App.3d 232, 239 (1st Dist. 1987); *see also A.M. v. Butler*, 2004 U.S.App. Lexis 3944 * 26 (7th Cir. 2004) ("Every jurisdiction that has squarely addressed the issue, moreover, has ruled that juvenile status is relevant, either as a factor under the totality of circumstances test or by modifying the usual reasonableness standard.").


30. When the court determines whether a confession is voluntary, the court looks to the totality of the circumstances including the age, intelligence, experience, education, physical condition during the questioning, the legality and duration of the questioning, and any physical or mental abuse by police. *People v. Gilliam*, 172 Ill.2d 484, 500 (Ill. 1996).

31. The age of the juvenile factors strongly into whether a juvenile's statement is voluntary. For instance, the Seventh Circuit Court of Appeals recently found a statement involuntary based partly on the young age of the juvenile: ten years old. *In re A.M.*, 2004 U.S.App. Lexis *32-33; see also *Gallegos v. Colorado*, 370 U.S. 49 (1962) (confession of a fourteen year old found involuntary in part because of the tender age of the juvenile). The Minor Respondent was only fifteen years of age when she was interrogated and had not completed the seventh grade. Her age combined with her low level of education made her an easy victim of the police and made the interrogation more coercive. Experience with the criminal system also weighs heavily into whether a juvenile's statement is voluntary. *People v. Gilliam*, 172 Ill.2d at 500; *In re A.M.*, 2004 U.S.App. Lexis *32-33. While Minor Respondent had been arrested twice before, she had never been interrogated. She was also only given a standard version of her rights and no officer gave her explanation of what those rights meant. The Minor Respondent's age, lack of education, and little criminal experience made it unlikely that she fully understood her rights from a mere recitation of standard language.

32. In addition, the minor-respondent had received little sleep the night before and was concerned not only for herself but also for her siblings. The lack of sleep and concern for her younger siblings made the experience more frightening and scary.

33. Furthermore, often juveniles desire to please authority figures, such as police officers, thereby making them more susceptible to making a statement without understanding their right to remain silent. *Walters*, 33 LOY. U. CHI. L.J. at 509. In fact, the Seventh Circuit recently found the fact that a police detective "continually challenged" the juvenile's statement and "accused him of lying ... could easily lead a young boy to 'confess' to anything." *In re A.M.*, 2004 U.S.App. *3. In the instant case, the female police officer ignored the Minor Respondent's denial of any wrongdoing and kept insisting that she make a statement. This police officer even presented a written statement for the Minor Respondent to sign, which she could not read. Although the Minor Respondent did not sign this statement, the continuing insistence of her guilt and demand that she confess to "something" demonstrated to the Minor Respondent that she had to give something to the police officer in order to please her and end the questioning.
35. The presence or absence of an interested adult party during a juvenile's questioning is a particularly important factor in determining voluntariness but is not determinative. *In re G.O.*, 191 Ill. 2d 37, 51-52 1011 (2000); *People v. R.B.*, 232 Ill.App.3d 583, 594 (1st Dist. 1992).

36. Although the Illinois Supreme Court found a juvenile's confession voluntary where he was not given the opportunity to consult with a concerned adult, the court emphasized that an opportunity to consult with a concerned adult is an important factor to consider when deciding whether a juvenile's interrogation was voluntary, especially if the juvenile asks to speak with his or her parents: [A] juvenile's confession should not be suppressed simply because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation. Nevertheless, we believe that this is a factor that may be relevant in determining whether a juvenile's confession was voluntary. This is particularly true in situations in which the juvenile has demonstrated trouble under standing the interrogation process, he asks to speak with his parents or another 'concerned adult,' or the police prevent the juvenile's parents from speaking with him. While not dispositive, this is one of many factors to be examined when determining whether a juvenile's confession was voluntary." *In re G.O.*, 191 Ill.2d at 55 (emphasis added).

37. The fact that the Minor Respondent's father was physically present during her interrogation does not establish that he understood her rights or that his presence made the interrogation less coercive.

38. Even if the Minor Respondent's father understood her rights, he was never given the opportunity to confer with the Minor Respondent. The rule above speaks of a juvenile being able to confer with an interested adult not just the mere presence of a parent. A silent parent does not make the interrogation more voluntary.

39. Additionally, the Illinois Supreme Court considers whether the juvenile asks to speak with his or her parent. In the instant case, the Minor Respondent asked to speak with her parent but was refused.

40. The presence of a youth officer does not per se make a juvenile's confession voluntary. *In re Lashun*, 284 Ill.App.3d 545 (1st Dist. 1996). Rather, there must be a finding that the youth officer took affirmative actions to protect that youth's rights and demonstrated that he or she was interested in the youth's welfare. See *In re A.M.*, 2004 U.S.App. Lexis *36; *People v. Griffin*, 327 Ill.App.3d 538, 547-548 (1st Dist. 2002).

41. The mere recitation of the fact that the minor-respondent did not have to tell the truth was not an affirmative action to protect the minor-respondent's rights. The youth officer did not speak with the Minor Respondent alone nor did the youth officer explain what the Minor Respondent's rights were and what the implications of waiving them were.

42. Finally, the facts that the Minor Respondent could not confer with her father and that the youth officer did not demonstrate that he was interested in her welfare along with her young age, lack of much criminal experience, her physical condition, and her lack of education demonstrate that the Minor Respondent's will was overborne during the interrogation, thereby making any statement involuntary.

WHEREFORE, Minor Respondent T requests that this Honorable Court conduct a hearing on the issues explained above and issue an order suppressing from introduction into evidence any out-of-court statement of Minor Respondent.

Respectfully Submitted,

********
Attorney for Minor Respondent
Organization
Address
Phone
The juvenile, *****, hereby moves this Court to enter an order suppressing the physical evidence seized from him on or about June 4, 2002 during a search conducted by Officer ***** of the **** Police at the ***** Middle School and dismissing the above numbered charges. As grounds therefore, the juvenile states that:

1. On or about June 4, 2002, the juvenile who was then a student at the ***** Middle School in Boston arrived late for class.

2. The juvenile was stopped by Officer ***** as he entered the school and directed to the office for an administrative search.

3. Entering the school at the same time as the juvenile was one ***** also a student at the ***** Middle School.

4. Officer ***** directed ***** to the school office also.

5. Once at the office, Officer ***** directed ***** and the juvenile to empty their pockets and started to frisk the juvenile.

6. Upon being frisked, the juvenile attempted to leave the office, he was pursued into the hall by officer ***** stopped and frisked. During this search, a handgun was found.

7. As a result of this incident, the juvenile is before the court on an indictment charging him unlawful possession of a firearm, G.L. c. 269 § 10(a); and a complaint charging resisting arrest. G.L. c. 268 § 32B.

8. The detention, seizures, and searches of the juvenile were conducted in violation of his rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution and Article 14 of the Massachusetts Constitution in that they were not conducted pursuant to a warrant or lawfully obtained consent and were not supported by probable cause or reasonable suspicion.

9. The detention and search of the juvenile were conducted for law enforcement purposes.
10. To the extent that there is probable cause to believe that the juvenile "resisted" the efforts of Officer *****, such resistance occurred during the initial threshold inquiry and prior to the arrest of the juvenile or to any attempt to arrest the juvenile. For this reason, the juvenile cannot be charged with resisting arrest under G.L. c. 268 § 32B.

Wherefore, the juvenile requests that this Court enter an order suppressing the physical evidence seized from him on or about June 4, 2002 during a search conducted by Officer Charles ***** of the Boston School Police at the ***** Middle School and dismissing the above numbered charges.

Dated: 

By his attorney

________________
License
Organization
Address
Phone

CERTIFICATE OF SERVICE

I, __________, hereby certify that I did serve one copy of the foregoing on __________ by mailing and faxing the same to him.
MOTION FOR RECUSAL AND INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

***** by and through undersigned counsel, respectfully moves this Court, pursuant to D.C. Code §16-2312(j), the Code of Judicial Conduct for the District of Columbia Canon 3(E)(1), and the Fifth and Sixth Amendments to the United States Constitution, to recuse itself and to certify the above-captioned matter to another judge for the fact-finding hearing.

In support of this motion, counsel states the following:

1. On October 5, 2002, ***** was presented in the above-captioned case at an initial hearing on several assault related allegations. Trial is scheduled for January 27, 2003.

2. Judge ***** conducted both a detention and probable cause hearing on October 5, 2002.

3. D.C. Code §16-2312(j) provides in pertinent part that "[u]pon objection of the child or his parent . . . a judge who conducted a detention . . . hearing shall not conduct a fact finding hearing on the petition." ***** hereby objects to this Court presiding over the fact-finding hearing on the instant petition. Because §16-2312(j) sets forth a non-discretionary requirement, the Court must recuse itself.

4. The same non-discretionary requirement is reiterated in In re M.D.J., 346 A.2d 733, 736 (D.C. 1975)("[w]e note that a trial judge who has presided over a juvenile's detention hearing, must upon request, recuse himself from the fact-finding hearing on the same charge under D.C. Code 1973 §16-2312(j).")

5. The District of Columbia Court of Appeals addressed the intent of D.C. Code §16-2312(j) in In re W.N.W., 343 A.2d 55 (D.C. 1975):
   At a detention hearing in a particular case, the testimony which is adduced typically is hearsay in nature. At the fact-finding hearing, the normal rules of evidence apply. The statute operates to ensure that the judge who must make the finding of guilty or not guilty is not predisposed towards guilt by having been exposed to testimony which may not be offered or may be inadmissible in the fact finding hearing. Id. at 58.

6. In this case, not only did this Court hear information about inadmissible social factors, but the Court also presided over the probable cause hearing in which considerable hearsay was elicited.
7. Furthermore, a judge should not preside over a proceeding in which his impartiality is at issue. Cannon 3(E)(1) of the Code of Judicial Conduct for the District of Columbia Courts ("Code of Judicial Conduct") provides, in pertinent part, that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" (emphasis added). Thus it is clear that recusal is mandated not only when a judge's impartiality has been undermined, but also whenever there is the appearance of that danger. Impartiality is measured by an objective standard, meaning "that a judge must recuse from any case in which there is 'an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question [the] judge's impartiality.'" Scott v. United States, 559 A.2d 745 (D.C. 1989) (citing United States v. Heldt, 215 U.S. App. D.C. 206, 239, 668 F.2d 1238, 1271 (1981)).

8. In juvenile trials, where there are no juries, the fact finder must be ever more vigilant in avoiding impartiality and the appearance of impartiality. As Judge Schwelb the noted when he was sitting as a trial judge in this court presiding over juvenile matters: "[a] Respondent's right to be tried solely on the basis of admissible evidence ranks high among the values protected by our legal system." In re Dwayne W., 109 W.L.R. 1901, 1909 (May 22, 1981)(Schwelb, J.) Judge Schwelb also wrote: [Because] respondents are juveniles who have no right to a jury trial, [t]he government is. . . relieved of the burden of proving guilt beyond a reasonable doubt to twelve impartial arbiters of fact, and must satisfy only one. Under these circumstances, the responsibility of the trial judge, as the sole trier of fact, to decide the case solely on the basis of admissible evidence becomes critical, for there are no fellow jurors with whom he can deliberate to reach a consensus. Accordingly, when prejudicial and inadmissible evidence is brought to its attention, the Court must be especially careful to ensure that such extraneous material does not affect its disposition of the case.

9. While it is true that "appellate courts tend to attribute to trial judges remarkable powers of objectivity and detachment . . . these courts have recognized the problems inherent in these situations and have urged trial judges to avoid them. Id. at 1907.

10. The concerns raised may easily be addressed by certifying the matter to another Court. While the costs of certifying this case to another Court are minimal, the potential benefits are great. Wherefore, because the non-discretionary provisions of 16-2312(j) require the Court to recuse itself, and for any other reasons that may occur to the Court, ***** respectfully requests that this Court grant this Motion.

Respectfully submitted,

Counsel for *****
Organization
Address
Phone

---

1 Counsel recently learned that Judge Two is presiding over fact-finding hearing in J-999-88 in which ***** is the complainant and M.B. is the respondent. Because J-999-88 and the above-captioned case constitute cross complaints, ***** must necessarily object to certifying the case to Judge Two.
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division - Juvenile Branch

In the matter of:

*****,

Respondent

: Docket No. J-7676-54
: Social File No. 654321
: Judge Name
: January 15, 2003

ORDER

Upon consideration of the Respondent's Motion for Recusal and review of relevant statutes and case law, it is hereby ORDERED that *****'s motion is GRANTED.

It is further ORDERED that the above-captioned matter is HEREBY CERTIFIED to __________________ for a fact finding hearing.

____________________________
Judge Name
Associate Judge
District of Columbia Superior Court
STATE OF MINNESOTA  

In the Matter of the Welfare of,  

***  

C.A. File No.  
C.A. Case No.  
Youth ID No.  
Family ID No.  
TCIS Case No.  

DISTRICT COURT-JUVENILE DIVISION  

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  

STATEMENT OF THE FACTS  

*** is alleged to be delinquent pursuant to Minn. Stat. Sec. 260B.007, subd. 6(1) as a result of being charged with assault in the first degree and two counts of assault in the second degree, under Minn. Stat. Secs. 609.221, subd. 1 and 609.222. The charge resulted from the following situation as alleged in the police reports and reported in witness statements:  

On or about July 31, 2004, *** was visiting at ***’s, the alleged victim, residence with a ***, a woman that *** considers an aunt. *** and ** drank beer during the evening, and eventually, they began to argue. (Aff. Investigator *** at 1.) Witnesses in the house stated they heard arguing prior to *** leaving. It is not clear from the record exactly how the argument started. But, at some point *** shook and struck ***. (Aff. Investigator *** at 1.) In addition, *** stated that *** had physically grabbed her while making unwanted sexual advances. (Aff. Investigator *** at 1.) This was upsetting to both *** and ***. (Aff. Investigator *** at 1.) During the fight, *** struck *** three times with a knife. As a result, *** suffered a partially collapsed lung and now has three small scars. But, *** did not suffer any permanent damage. After the fight *** and *** left the house and were found by police officers shortly thereafter. *** was brought to the house for identification. It is as a result of this situation that he faces the current charges.  

ARGUMENT  

I. CHARGE ONE AGAINST *** MUST BE DISMISSED FOR LACK OF PROBABLE CAUSE BECAUSE THE INJURIES SUSTAINED BY *** DO NOT MEET THE REQUIREMENTS FOR ASSAULT IN THE FIRST DEGREE.  

A. Probable Cause  

A defendant may move to dismiss a pending criminal charge for lack of probable cause to believe that the defendant committed the offense charged. Minn. R. Crim. Pro. 11. The Minnesota Supreme Court has held that where asked to make a probable cause determination, the court must examine whether, "[g]iven the facts disclosed by the record, is it fair and reasonable...to require the
B. The requirements for great bodily harm are not support by the facts on the record. The record illustrates that it is not fair or reasonable for *** to stand trial for first-degree assault.

Under Minnesota law, where an assault results in the infliction of "great bodily harm" of the victim, the standard for assault in the first degree has been met. Minn. Stat. § 609.221 subd. 1 (2004). There are four ways through which great bodily harm can exist, "[1] bodily injury which creates a high probability of death; or [2] which causes serious permanent disfigurement; or [3] which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or [4] other serious bodily harm." Minn. Stat. § 609.02, subd. 8.

Serious Permanent Disfigurement

To meet the standard for serious permanent disfigurement, it is not enough to show that a victim has "relatively small" scars "in areas that were not particularly noticeable." State v. Gerald, 486 N.W.2d 799, 802 (Minn. Ct. App. 1992). In State v. Gerald, the court struggled with its decision to reverse a conviction for first-degree assault, but determined that the statute was clear and that the victim's scars, two scars of approximately a half an inch on the back of his neck and in his ear, were not sufficient for permanent disfigurement or other serious injury. Id. at 806. In State v. McDaniel, the court found that "serious permanent disfigurement" was present where the victim was left with a 6 centimeter raised scar on the front of her neck and a three-quarter inch scar on her chest. State v. McDaniel, 534 N.W.2d 290, 295 (Minn. Ct. App. 1995). Similarly, a single surgical scar constituted a "serious permanent disfigurement." State v. Anderson, 360 N.W.2d 703, 706 (Minn. Ct. App. 1985), pet. for rev. denied (Minn. 1985). Also, multiple scars on child victims' backs, that were permanent, were considered "serious permanent disfigurement" meeting the requirements for assault in the third degree. State v. Currie, 400 N.W.2d 361, 365 (Minn. Ct. App. 1987).

Under the case law governing the standard for "serious permanent disfigurement," D.R.F's scarring does not meet the requisite standards. According to the Hennepin County Medical Center ("HCMC") Services Record of the victim, *** has three wounds each two centimeters in length. (HCMC Services Medical Record of *** at 2.) Two of the scars are on his ribs and one is on his tricep. (Id.) These scars are most analogous to Gerald. There, the Minnesota Court of Appeals held that two scars of a half an inch each, one inside the victim's ear and one on the back of his neck were insufficient to reach the "serious permanent disfigurement" standard for they were "relatively small and in areas where they are not particularly noticeable." Gerald, 486 N.W.2d at 806. Similarly, in the present case, ***'s scars are smaller than those the victim suffered in Gerald. Further, two of the scars are not visible unless the victim does not have a shirt on and the scar on his tricep would be similar to the scar on the back of the neck in Gerald, not particularly noticeable. Contrast the present case with the 6 centimeter raised scar on the victim's neck in McDaniel. Such a scar is larger and much more noticeable than the one in the instant case. And, warranted the label "serious permanent disfigurement" especially when
combined with the three inch scar on the victim's chest. The three 2 centimeter wounds suffered by the *** in the present case simply do not constitute "serious permanent disfigurement."

Other Serious Bodily Injury

In State v. Jones, the Minnesota Supreme Court detailed what has frequently been cited as an example of "other serious bodily injury." State v. Jones, 266 N.W.2d 706 (Minn. 1978). In Jones, the court found that the totality of the circumstances surrounding the injuries suffered by the victim warranted a finding by the jury of "serious bodily harm" under the "other serious bodily harm" standard. Id. at 713. In Jones, the victim was unconscious, did not regain consciousness until the next day, was hospitalized for a week, almost suffered a miscarriage two weeks after the attack, and suffered numbness in her legs and dizziness throughout the months proceeding trial all as a result of the attack. Id. As such, her injuries were found by the Minnesota Court of Appeals to satisfy the higher standard required of great bodily harm. State v. Gorman, 532 N.W.2d 229, 233 (Minn. Ct. App. 1995) (citing Jones, 266 N.W.2d at 710).

The instant case is wholly dissimilar to Jones. *** did not lose consciousness, and even testified that he was not aware he had been stabbed until he saw the blood. Further, when *** arrived at the hospital, he has stable vital signs and was only required to stay at the hospital one night. (HCMC Medical Dictation Report for *** at 1-2.) The only reason that *** stayed at the hospital the second night was that the paper work took awhile and he decided it would be easier to stay the night again. (Id.) Further, the victim has stated that he has not suffered any permanent or lasting injury such as the numbness and dizziness suffered by the victim in Jones.

Though, *** did suffer a partially collapsed lung, in McDaniel, the same injury was not utilized as part of the finding of great bodily injury. McDaniel, 534 N.W.2d at 295. In McDaniel, the Minnesota Court of Appeals referenced that the collapsed lung could be considered in a "other serious bodily injury" analysis, but rested their decision on the two large and visible permanent scars the victim had and did not give weight to the collapsed lung, and at the very least considered it as one factor in addition to the scars that would have alone satisfied the requirement for great bodily harm. Id. As such, in the instant case, where the lung was partially collapsed, and only minor scarring occurred and the victim was in stable condition throughout, the totality of the circumstances do not warrant a determination of the existence of "other serious bodily injury."

Bodily Harm Which Creates a High Probability of Death

In order to satisfy the requirement for "bodily harm which creates a high probability of death," the injury itself must be life-threatening. Gerald, 486 N.W.2d at 805. It is not sufficient to say that the injury could have been life-threatening. Id. The record in the instant case does not support the conclusion that the injuries to *** were life-threatening. In both certification evaluations created by District Court Psychological Services and Hennepin County Juvenile Probation Investigations Unit, the injuries to *** are referred to as "life-threatening." However, this characterization is not supported by the facts. Nowhere in the HCMC Medical reports are ***'s injuries deemed life-threatening. To the contrary, upon evaluation at HCMC, it is noted that ***'s vital signs are stable and that pain was well controlled throughout his stay. (HCMC Medical Dictation Report for *** at 1.) Further, it is noted that "no symptoms associated with shortness of breath or respiratory distress" are noted. (Id.) Further, the
discharge instructions merely discuss cleansing and treating the scars. (Id.) Most telling is that the defendant was ready for discharge within 24 hours of arriving at the hospital. (Id. at 2.) Were ***’s injuries "life-threatening"? it would be almost certain that he would not have been ready for discharge just 24 hours after arriving at the hospital. Compare with the injuries and hospital stay suffered by the victim in Jones. Even an unconscious patient that did not regain consciousness for a day and stayed in the hospital for a week did not constitute "life-threatening" injuries. It is not correct, then, to characterize ***’s small wounds and readily treatable condition as "life-threatening."

Permanent or Protracted Loss or Impairment of Function of Bodily Member or Organ

Permanent or protracted loss or impairment of a function of a bodily member or organ is a step beyond the requirements of third degree assault, which require temporary, but substantial loss or impairment. The standard for third-degree assault has been found to include a temporary loss of consciousness.

State v. Larkin, 620 N.W.2d 335, 340 (Minn. Ct. App. 2001). This was determined because "although temporary, this loss or impairment of sensory brain function is total and thus 'substantial'". Id. As such, a loss of consciousness, even temporary is sufficient for the serious bodily injury standard of third degree assault. Compare to the instant case, where *** suffered a partially collapsed lung. He was conscious when he arrived at the hospital, had good vital signs, and was breathing on his own. Further, the lung was returned to normal with the temporary use of a chest tube. As it was a partial collapse and he was still able to breath, the injury cannot be characterized as total loss of function. Therefore, it does not even meet the standard for a third degree assault. Further, as stated before, a partially collapsed lung was not a deciding factor in McDaniel. More importantly, the issue of protracted or permanent loss of function was never discussed in connection with the injury. McDaniel, 534 N.W.2d at 295. It follows that ***’s partially collapsed lung cannot be utilized to support a claim for assault in the first degree. Most importantly, the victim has stated, and the HCMC records support that he has not and will not suffer and permanent or lasting effects as a result of the partially collapsed lung.

The current case does not involve the type of injuries required to support a charge of assault in the first degree. ***’s injuries are not and were not life-threatening, he has not suffered serious permanent disfigurement, nor has he or will he have permanent or protracted loss or impairment of a bodily member or organ. And, finally, the totality of his injuries do not rise to the level of "other serious injury." Therefore, it was improper to charge *** with assault in the first degree because it is not fair or reasonable to make him stand trial for that charge.

C. Regardless of the injuries, there is evidence in the record that supports a claim of self-defense or defense of others, which calls into question an assault charge, where intent to harm is a necessary requirement.

The injuries sustained by *** were a result of an altercation that occurred between *** and *** ***, ***, a friend of the victim and ***’s "aunt," and another witness in the house all stated that a fight occurred. Further, both *** and *** have stated that the incident occurred as a result of aggressive
behavior on the part of *** toward both *** and ***. Specifically, *** stated, that the two argued about things and they shoved each other and that *** shoved and struck *** with the back of his hand. In addition, *** stated that she was not ***’s girlfriend and that he had been making unwanted sexual advances to her on the night of the incident. This made her uncomfortable and concerned *** as he considers *** an aunt. *** stated that the advances got physical as *** grabbed her arm in an effort to get her to sit on his lap. Her arm was still bothering her over a month after the incident. It should be noted that *** is a 47 year old man who had a blood alcohol concentration of 0.204 at the time he got to the hospital. (HCMC Services Medical Record of *** at 3.) And, he had furnished alcohol to ***.

An investigation was never performed into the charge that ***’s reaction were provoked and justified by D.R.F’s actions. But, the record clearly shows that there is a question as to how this grown man whose blood alcohol was twice the legal limit at the time of the incident, *** was injured. The witness statements that there was an argument that precipitated the injury combined with ***’s statements that *** had shoved and hit *** and made unwanted physical sexual advances to her in ***’s presence clearly raises the issue of self-defense. In addition, though the Hennepin County Juvenile Probation Investigations Unit Certification Report states that *** was traumatized by the event and was in the hospital for three days and suffers some complications as a result of the incident, *** has stated he suffers no permanent or lasting injuries and does not wish to see *** go to jail. Perhaps this is, in part, due to his role in the evening furnishing liquor to a minor and instigating the fight.

The existence of evidence indicating self-defense, when combined with the lack of evidence of injuries sufficient for assault in the first degree make it clear that probable cause did not exist for assault in the first degree. As such, charge one of the State’s Petition for Presumptive Certification Motion must be dismissed.

II. AS THE CHARGE OF ASSAULT IN THE FIRST DEGREE IS NOT SUPPORTED BY PROBABLE CAUSE, PRESUMPTIVE CERTIFICATION DOES NOT EXIST BECAUSE ASSAULT IN THE SECOND DEGREE CARRIES A PRESUMPTIVE STAY SENTENCE RATHER THAN A PRESUMPTIVE COMMITMENT TO PRISON.

A. Requirements for presumptive certification as an adult.

Pursuant to Minn. Stat. Sec. 260B.125, subd. 3, it will be presumed that a proceeding involving a juvenile will be certified if the 1) the juvenile is 16 or 17 years of age at the time of the offense, and 2) that the charged offense would carry a presumptive commitment to prison were it committed by an adult or if a firearm was involved. Minn. Stat. § 260B.125, subd. 3 (2). Where a juvenile defendant is 16 or 17 at the time of the charged offense, it is only necessary to determine if the crime allegedly committed is one that carries a presumptive commitment to prison or involved a firearm. Id.

B. The remaining charges, of Assault in the Second Degree, have a presumptive stayed sentence. Therefore, they do not meet the second requirement for presumptive certification.

In order for presumptive certification to be proper, the juvenile must either be charged with an offense "that would carry a presumptive commitment to prison" were it against an adult or the charge must have involved a firearm. Id. Out of the charged offenses in the instant case, only assault in the
first degree carries a presumptive commitment to prison. Minn. Stat. Chap. 244 App. IV. When charged with assault in the second degree, an adult would face a presumptive stayed sentence of a year and a day. Id. A defendant charged with assault in the second degree would need a criminal history score of three or higher before the presumptive sentence would be a commitment to prison. Id. As charge one must be dismissed for lack of probable cause, the requirements for presumptive certification are not met on the face of the charge alone. And, therefore, presumptive certification is not permissible as connected to the offense charged.

C. None of the charges involve a firearm. As such, the test for presumptive certification has not been met.

None of the charged offenses allege the use of a firearm. And, pursuant to Minn. Stat. Sec. 260B.125, where the charge does not carry a presumptive commitment to prison, the child alleged to have committed the crime must have done so, "while using, whether by brandishing, displaying, threatening with, or otherwise employing a firearm." Minn. Stat. § 260B.125, subd. 3(2)) (emphasis added). No where in the record is any allegation that *** used or even possessed a firearm at any point during the incident in question. Therefore, the requirements for presumptive certification have not been met.

While the question of whether a knife would be a weapon intended to be included as an alternative means with which to satisfy the requirements for presumptive certification is one of first impression. But, where a statute's language is clear and unambiguous, it must be read to "give effect to its plain meaning." Minn. Stat. § 645.16 (2004); McCaleb v. Jackson, 307 Minn. 15, 17, 239 N.W.2d 187, 188 (Minn. 1976). This construction is of even greater import with respect to criminal statutes. State v. Tracy, 667 N.W.2d 141, 145 (Minn. Ct. App. 2003). "The rule of strict construction of criminal statutes is essential to guard against the creation of criminal offenses outside the contemplation of the legislature, under the guise of 'judicial construction.'" Id. (quoting State v. Soto, 378 N.W.2d 625, 627-28 (Minn. 1985)). And, while, the court is not required to give a statute the narrowest reading possible, it must be in line with the clear meaning of the statute. Tracy, 667 N.W.2d at 145 (citing State v. Wagner, 555 N.W.2d 752, 754 (Minn. Ct. App. 1996).

The language of Minn. Stat. Sec. 260B.125 is clear and unambiguous in its description of the requirements for presumptive certification. In describing the parameters of the use of a firearm, it lists all possible uses. Minn. Stat. § 260B.125, subd. 3(2). But, it does not mention or indicate any other weapon other than a firearm. Id. While the intent of the Minnesota Legislature is not detailed in the statute, by the specific nature of the statute it can be inferred that they felt that firearms were distinct in their dangerousness or otherwise distinct from other weapons to a degree that warranted using them as the basis for presumptive certification even if the underlying charge would not have carried a presumptive commitment to prison. As no other weapons are mentioned within the statute dealing with presumptive certification, it can not be argued that use of a knife would be sufficient to meet the requirements for presumptive certification, where the charge alleged does not carry the necessary presumption of a commitment to prison. As such, the alleged use of a knife in the present case does not create a situation in which presumptive certification is permissible.
III. EVEN IF PRESUMPTIVE CERTIFICATION IS APPLICABLE, THE PRESUMPTION IS REBUTTED BY THE RECORD, WHICH SHOWS THAT PUBLIC SAFETY WOULD BE SERVED BY ***’S CASE BEING RETAINED BY THE JUVENILE SYSTEM.

A. The two factors in the determination of public safety granted the most weight by the courts in determining whether presumptive certification is appropriate illustrate that it is not.

Pursuant to Minn. Stat. Sec. 260B.125, where probable cause is determined to believe the child committed the alleged offense, the burden is on the juvenile to rebut the presumption by clear and convincing evidence that public safety is served in retaining the proceedings in juvenile court. Minn. Stat. § 260B.125, subd. 3. There are six factors the court will examine in determining whether public safety is in fact served by retaining the proceeding in juvenile court. The six factors are: 1) the seriousness of the offense with respect to "community protection"; 2) the culpability of the child in committing the alleged offense, "including the level of the child's participation in planning and carrying out the offense"; 3) the child's prior record; 4) the child's history with programming, including willingness to participate and availability of appropriate programs; 5) the adequacy of the punishment available in juvenile court; and 6) the dispositional choices of the child. Welfare of K.A.P., 550 N.W.2d 9, 11 (Minn. Ct. App. 1996) (citing Minn. Stat. § 260B.125, subd. 2b). When examining these factors the court should give the greatest weight to the seriousness of the alleged offense and the child's prior record. Id.

Seriousness of the Alleged Offense

The incident involved an altercation in which the *** suffered three wounds from a knife. But, the record indicates that the offense was not one of premeditation or even viciousness. Rather, there is evidence that an argument occurred between *** and *** when both were drinking, and that *** had shoved and struck ***. [cite to affidavit of interview with DS] Further, there is evidence that *** had been sexually aggressive, physically, with *** in the presence of ***. Id. As such, *** has a strong claim, based on the record, that his actions of striking ***, were in self-defense, or defense of others. The inquiry would then have to be the reasonableness of the level of force used by ***. And, it would appear that when a 16 year-old-boy, who "appears somewhat younger than his age" is confronted with an intoxicated adult male who is physically assaulting a woman that he considers to be an aunt, would feel quite threatened. (Cert. Evaluation of *** from District Court Psychological Services at 4.) As such, though the offense involved injury to *** and was a serious situation, the offense itself may have a complete defense, which lessens the seriousness of the offense in the eyes of the court.

Contrast with some of the offenses that the court's have found sufficient to warrant certification. In Welfare of K.A.P., the court found that a fatal, unprovoked stabbing of a victim was sufficiently serious to warrant certification. Welfare of K.A.P., 550 N.W.2d at 11. Similarly, the defendant in Welfare of U.S., was held to have committed an offense of the serious nature contemplated by Minn. Stat. Sec. 260B.125, subd. 3(2). Welfare of U.S., 612 N.W.2d 192, 193 (Minn. Ct. App.). In U.S. the defendant was a part of a vicious, unprovoked beating of another juvenile on the way home from a party. Id. The defendant was one of three assailants who beat the victim so badly that he suffered "contusions and abrasions, a concussion, and a broken facial bone. In addition, his [the victim's] eyes and ears were swollen shut, and the doctor concluded that he was one blow away from a cranial hemorrhage or skull fracture." Id. The victim also testified that he lost his ability for work the summer the attack took place and that he and his family live in fear. Id. Another example of an offense of the serious nature con

In addition to the kidnapping, the defendant stole cigarettes from the store, and, more importantly, chased a police officer in an attempt to cut and/or stab him. Id. Contrast these situations with the present case. *** was visiting with his aunt and *** when *** became argumentative and aggressive. During the fight and altercation that ensued, *** felt that it was necessary to protect himself.

In doing so, *** suffered the injuries described above. Though, *** required medical attention and the situation involved a knife, it was not of the seriousness of the type of case that the courts have found to support presumptive certification. A situation involving a, possibly, complete defense of self-defense or defense of others in which the victim did not sustain permanent injury or injury sufficient to sustain a charge for first degree assault, it is not of the seriousness contemplated by Minn. Stat. 260B.125.

Prior Record

Similar to the seriousness of the offense, ***’s prior record does not warrant certification as an adult. In J.S.J. the defendant’s record involved a number of incidents involving a weapon, a few felony convictions including an assault for brandishing a knife at school and felony level burglary. Welfare of J.S.J., 550 N.W.2d at 294. Similarly, in U.S., the court found the defendant had a "significant record" stemming from nine misdemeanors, including two with firearms, and a couple felony level thefts. Welfare of U.S., 612 N.W.2d at 195. Contrast these with the present case. While *** has some history of delinquency it is not significant.

Further, the bulk of the problems are more than three years old. Most of the offenses are misdemeanors and of the felonies only one was adjudicated. (Hennepin County Juvenile Probation Investigation Unit Cert. Report from 9.14.04 at 3-4.) In fact, only a felony for burglary was adjudicated and *** admitted to the offense and participated in programs as part of probation. (Id. at 3.) And, that adjudication took place in 1999. ***’s history does not warrant certification because it does not give the indication the ability to deal effectively with the issue in the juvenile system has been lost.

B. The remaining criteria for determining public safety also illustrate that the record rebuts the presumption of certification to adult court.

The remaining factors the court must use to determine if public safety is served by retaining the proceedings in juvenile court clearly indicate that ***’s case should remain in juvenile court. First the culpability of the child in committing the crime. This was not a planned incident. *** was spending time with his aunt and *** when an argument occurred and *** became physical with both *** and ***. As a result, while it could be said that *** was the only person who carried out the act of striking *** the situation was not created or planned by *** and the element of self-defense makes his culpability less easy to illustrate. ***’s programming history indicates that the proceedings should be kept in juvenile court. He had completed each program he has been assigned to and been dismissed from each probation. The only problems that have been illustrated are with school attendance. And, the adequa
cy of the programming available to him would assist him with any problems or issues that the court feels warrant assistance. Both the probation and psychological reports concerning *** noted that he would be able to get into several different residential programs. And, he would have three years and four and a half months in which to be under the supervision of programming. In addition, there are dispositional options available for him in the court's exercise of either delinquency jurisdiction or extended juvenile jurisdiction. As such, he would be amenable to programming, many programs are available to him, he would have almost three and a half years in which to receive supervised programming under the dispositional options available to him.

All the factors indicate that public safety would be served by retaining the proceeding in juvenile court.

CONCLUSION

Charge one of the State's Petition for Certification Motion must be dismissed because it lacks probable cause to show that *** committed the charged offense. The injuries sustained by *** do not rise to the level of "great bodily harm." As such, the charge must be dismissed. It follows, that there is no longer a presumptive certification as the charged offenses no longer meet the requirements for presumptive cert. But, regardless of whether certification is presumptive, the record rebuts such presumption. Therefore, count one of the State's Petition must be dismissed, and the proceeding must be retained in juvenile court.

Respectfully submitted,

By: _______ __________________

Lic.
Organization
Address
Phone

Dated: This ___the day of ________, 200_.
Dear [Supportive Witness],

Thank you for agreeing to write a letter on behalf of [Client's Name].

The issue at this [first/disposition] hearing is [whether she will be released or not pending the outcome of the case/what punishment she will receive for the offense she committed]. The hearing is scheduled for [Date] at juvenile court in Courtroom [Number]. The court is located at [Address]. Your letter of support could be very helpful. If you are not going to be present at the hearing, please deliver the letter to me at my office by [Due Date]. My office is located at [Address].

I have included some suggestions for the kind of information to include in your letter. It would be helpful if you could follow these guidelines as you write your letter. These are just suggestions, and the examples are not related to this case—they are just to help you think of things to write that would be most useful at this hearing. It is best if the letter is type-written, but a hand-written letter is fine, as long as it is easy to read. Call me if you have any questions. My phone number is [Phone Number].

Thank you.

Sincerely,

[Your Name]
What to Include in the Letter of Support

Your letter should be addressed to Judge _________. Example: Start off with "Dear Judge _________."

Begin the letter by explaining who you are, and write one or two sentences about your work or any role you have in the community that gives you credibility. Example: "My name is Sam Smith. I work in the City Licensing Department, and I am also a deacon at the 1st Church on Second Ave."

Describe how you know the youth and how long you have known him. If appropriate, give an example of the kind of contact you have with the youth. Example: "I have known Matthew Hawkins for three years. We know each other from church, and I coach Matt's baseball team. I see him several times a week and he often talks with me about things going on in his life."

Ask that the court release the youth from detention, let him remain in the community as part of his disposition, and give a reason as to why you think this is a good idea. Example for Detention: "I am asking that you release Matthew until this case is resolved. I think it is important that he not miss school and continue with his involvement in positive activities, like baseball." Example for Disposition: "I am asking that you do not remove Matthew from his home. I think it is important that he not miss school and continues to be part of the baseball team."

State positive traits you know about the youth. Example: "Matthew has always been considerate of elderly people in our church. He comes to baseball regularly and works very hard at practice. I know that he wants to please his mother."

State whether you think the youth is dangerous or unlikely to return to court. Example for Detention: "I think Matthew will not cause any trouble if he is released, and I believe he will come to all his court dates." Example for Disposition: "I think Matthew will not risk getting in trouble again if you let him return to his home."

If appropriate, state what your role will be in helping the youth if he is released. Example: "If Matthew is released, I will meet with him on a regular basis to see how he is doing. If he needs a ride to a treatment program, I will take him."

Close the letter with your name and a phone number. Example: "Thank you very much. Please call me with any questions. My phone number is: __________. Sincerely, __________."
SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Family Division -- Juvenile Branch

In the Matter of: Docket J-7676-54
:
:

*****: Social File 654321
:
:

Magistrate Judge Name
:
:

Further Initial: October 11, 2002
:

Respondent:

MOTION TO REDUCE DETENTION

*****, through undersigned counsel, respectfully moves this Court to reduce her detention and allow her to reside with her aunt and uncle, D. and D.M. in Bowie, Maryland. In support of this motion, counsel states the following:

1. ***** was presented at an initial hearing on October 5, 2002 on a preliminary allegation of assault with intent to kill. At that time, the government requested a 5-day hold on petitioning the case, but sought secure detention. The case was continued for further initial hearing on Friday, October 11, 2002.

2. Because of the 5-day hold, the intake probation officer took no official position on detention but provided the Court with the following social factors: ***** is 17 years old; ***** resides with her mother, T.W., and her grandmother, C.W., in the District; ***** attends D.C. Street Academy where she has regular attendance; *****'s drug test results were not available; ***** presents no problems in the home; and ***** attends church regularly with her grandmother. Intake probation officer, Name, advised counsel that had the case been petitioned on October 5, the recommendation would have been for release to mother with intensive supervision.

3. The government sought secure detention in light of the nature and circumstances of the allegation and because there was information that the complainant's boyfriends wanted to hurt *****

4. The Court found probable cause and securely detained ***** at Oak Hill.

5. Since October 5, 2002, undersigned counsel has gathered significant new social information that was not available to the Court at the time of the initial hearing.

6. Most significantly, counsel was provided with a name and phone number for *****'s aunt and uncle who live in Bowie, Maryland. Counsel contacted D. and D.M. who expressed great willingness to allow ***** to live with them in Bowie. Mr. M. indicated that he has actually invited ***** to live with him in the past.

7. Counsel provided the new information to Probation, *****'s intake probation officer. Ms. Probation conducted a home study in Bowie, Maryland on Tuesday, October 8, 2002 and met with the uncle D.M. Ms. Probation advised counsel that the home visit went well with Mr. M. and advised counsel that the M.'s have a nice home. Mr. M. took time off from work to make himself available to Mr. Probation for the home study. Ms. D.M. will take time off from work to make herself available to the Court at the further initial hearing.
8. D. and D.M. reside at Address, Bowie, Maryland 20716. The M.’s have a beautiful home, which they are in the process of purchasing. Their neighborhood is in a very quiet residential location where there is very little activity and where children do not hang out in the streets. Mr. M. is a driver for Company and Mr. M. is a social worker with the District of Columbia Public Schools.

9. Placing ***** in Bowie will alleviate the government’s concerns about *****’s safety. Mr. M. advised counsel that their home is not accessible to the District of Columbia by either bus or metro, therefore ***** can only get to the District if she is driven. Placement with the M.’s will also provide ***** with even greater structure and support than she had in the District, as the M.’s have a two-parent home, stable and professional careers, and will be great role models for *****. All of her family members describe ***** as a good child and know that ***** will abide by any rules or regulations the M.’s impose on her. As stated by Mr. M., ”If I tells ***** to do something, ***** will do it without hesitation or back talk.”

10. Mr. M. reports that he has spent a great deal of time with ***** over the years and that ***** always respects and obeys him. When she has visited the family or spent the night at their house, she helped with chores and followed the rules. Mr. M. describes ***** as a ”good child” who has the love and support of an extended family. The M.’s will also insist that ***** attend church with them just as she attended church with her grandmother.

11. D.M. asked counsel to obtain school records and provided counsel with a list of three possible school options for ***** in the Bowie area. Ms. M. discussed Bowie Senior High, Bladensburg High School and a GED program at Eleanor Roosevelt in Greenbelt, Maryland. By attending school in Maryland, ***** will neither be a risk of danger or a threat of danger to the parties in this case.

12. ***** is also not a threat to anyone else in the District. She is 17 years old with no prior contacts with the court and no history of violence. ***** has a great deal of family support. Prior to her arrest, ***** lived with her mother, T.W., and grandmother, C.W. *****’s grandmother is a nurse. ***** attended church regularly with her grandmother at Church and sang in the choir. ***** has two older sisters and an older brother who care for her a great deal. Although she was not residing with her father, ***** has a great relationship with her father, J.M., who she sees every day. Mr. M. resides at Address and works for the District of Columbia.

13. Although the court found probable cause, there were many mitigating circumstances: 1) the altercation involved four girls (the complainants) ranging from 170-200 lbs and one respondent (*****); 2) ***** received extensive injuries and was treated at Howard University Hospital; 3) the complainants do not live in *****’s neighborhood but were present in *****’s neighborhood at the time of the altercation; and 4) one of the complainants in the present case is currently pending charges for stabbing *****. ***** was treated at Children’s Hospital at that time.

14. Pursuant to DC Code Section 16-2310(a) and Juvenile SCR 106(a), children should only be detained if detention ”is required to protect the person or property of others or of the respondent, or to secure the respondent’s presence at the next court hearing.” Furthermore, pursuant to Juvenile SCR 106(a)(5), even if detention appears to be justified, the person making the detention decision ”may nevertheless consider whether the respondent’s living arrangements and degree of supervision might justify release pending adjudication.”
15. Because counsel has identified alternative living arrangements that will take ***** out of the District of Columbia and away from the conflict; because ***** has no prior contacts with the system; because ***** will be in a highly structured environment; and because the nature and circumstances of the offense alone do not justify detention, ***** should be released to her aunt and uncle.

Wherefore, for the foregoing reasons and any other that may be offered to the Court at the further initial hearing, ***** hereby moves this Court to release her to the custody of Mr. D. and D.M.

Respectfully Submitted,

_________________________________
Attorney, 303030
Counsel for *****
Georgetown Juvenile Justice Clinic
111 F Street, N.W.
Washington, D.C. 20002
(202) 662-9592

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion, was served by hand on Assistant Counsel, Name, in person at 123 Fourth Street, N.W., Fourth Floor, Washington, D.C. 20001 on this 10th day of October, 2002.

_________________________________
Attorney
VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

COMMONWEALTH OF VIRGINIA

v.
JA

MOTION TO RELEASE FROM SECURE DETENTION

Comes now the child, JA, by and through his attorney, EP, and moves this Honorable Court to release him from secure detention. The child states the following grounds in support of this motion:

1. The child is charged with two counts of violating his probation. The two violations allege that the child failed to cooperate with his placement arranged by Albemarle County Department of Social Services. The first petition is dated December 9, 1999. The second violation is dated April 12, 2000.

2. The child was detained pending the first adjudication on December 9, 1999. He was released February 8, 2000 and placed at ***** Psychiatric Center. The child was again detained, April 14, 2000, following the issuance of the second petition for violating his probation. The child has remained in detention since that time.

3. The child was evaluated for competency and was found to be incompetent but restorable on February 8, 2000.

4. Restoration was ordered and the child was provided these services while detained at the ***** Juvenile Detention Home, the services were not provided at the residential placement.

5. At the review hearing on June 13, 2000 the Juvenile Court judge found the child competent and went forward with the two adjudications. A was found guilty of both violations and committed to the Department of Juvenile Justice.

6. The child timely noted his appeal to this court. The case is set for docket call on August 7, 2000.

7. The child has been held continuously in detention since April 14, 2000.

8. The child noted his appeal to this court on June 20, 2000 and has been held continuously in secure detention. He has been in custody for a period of twenty-seven days since noting his appeal.

9. Virginia Code §16.1-277.1A states the following:
"When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained."
10. There has been no showing by the Commonwealth as to why the child should remain in secure
detention and no order from this Court providing the basis upon which the child should remain in
secure detention.

WHEREFORE, the child, JA, reposefully requests that this Honorable Court order he be released from the
****** Detention Home pending adjudication of these two probation violations.

Respectfully Submitted,
******

by: ____________________________
Counsel
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS
BOSTON SESSION

COMMONWEALTH )

THE JUVENILE'S MOTION

TO MODIFY BAIL

V. )

The juvenile, *****, hereby moves this Court to vacate the prior order holding him on $25,000.00 bail in this matter and to enter an order releasing him to the custody of the Department of Social Services with pre-trial conditions, in the nature of pre-trial probation, that require him to abide by the rules of the residential program into which he is to be placed. As grounds therefore, the juvenile states that:

1. He is charged in this indictment with assault and battery on an elderly person causing serious bodily injury. G.L. c. 265 § 13K.

2. The incident underlying the above numbered indictment occurred on or about July 24, 2001. He was arraigned on the indictment on or about February 12, 2002 and has been held on $25,000.00 bail since that date.

3. The court's reasons for bail included the nature and circumstances of the offense charged; the potential penalty; the juvenile's being on probation when he was indicted; and, his "failure" to notify probation when his family was moved to a new homeless shelter.

4. A hearing on the juvenile's competence to stand trial was held in this court on January 22 and February 3, 2003. Following this hearing, a further evaluation of the juvenile was conducted to determine whether he meets the criteria for civil commitment to a mental health facility. A further hearing was held on February 26, 2003, following the receipt of the report on civil commitment.

5. After the conclusion of the hearing on competence and the receipt of the report on civil commitment, the Court, Judge **** found the juvenile to be not competent to stand trial and not to meet the clinical criteria for civil commitment. The Court further found that the juvenile cannot be made competent to stand trial with additional services or treatment.

6. On February 5, 2003, based on evidence introduced at the hearing on competence to stand trial, the Court, Judge **** ordered that a care and protection petition be filed on the juvenile's behalf.

7. Since the care and protection petition was filed, a great deal of work has been done to secure a residential treatment program for the juvenile. As a result of this effort, the juvenile has been accepted by the Easter Seal School in Manchester, N.H. He can be placed at this school today, April 29, 2003.
8. The findings that the juvenile is not competent to stand trial; cannot be made competent to stand trial; and, does not meet the clinical criteria for civil commitment; as well as, the filing of a care and protection petition on behalf of the juvenile and a potential grant custody of the juvenile to the Department of Social Services for placement at the Easter Seal School are all material changes of circumstances that require a reduction of the bail in this case.

9. The juvenile is no longer facing the prospect of adult punishment. Further, a grant of custody to the DSS so that the juvenile may be placed in a residential facility will ensure that he is in the custody of a caretaker who is capable of getting him to all necessary court appearances and keeping the court informed of his whereabouts.

10. Reducing the bail so that custody of the juvenile may be granted to the DSS and he may be placed in a residential program is in the juvenile's and the public's short and long term interests. The juvenile has shown the capacity to make positive behavioral changes when provided with a structured living situation. Evidence adduced at the hearing on competence demonstrated that with appropriate services, the juvenile can learn a trade and the life skills necessary to live as a productive member of society. The juvenile can only get the necessary services if his bail is reduced and the DSS is allowed to place him in an appropriate program.

11. The DYS detention facility where the juvenile has been held since February 12, 2003 cannot meet the juvenile's needs for special educational services, or life skills and job training. Although contained, the juvenile is not receiving meaningful services while in detention.

Wherefore, the juvenile requests that this Court vacate the prior order holding him on $25,000.00 bail and enter an order releasing him to the custody of the Department of Social Services with pre-trial conditions, in the nature of pre-trial probation, that require him to abide by the rules of the residential program into which he is to be placed.

Dated: *****,
By his attorney,

________________________________________
License
Organization
Address
Phone

CERTIFICATE OF SERVICE

I, ****, hereby certify that I did serve one copy of the foregoing on Assistant District Attorney ***** by faxing and mailing the same to him.
COMMONWEALTH OF VIRGINIA

v.

******

MOTION IN LIMINE

Comes now the respondent, ******, by and through his attorney, ******, Assistant Public Defender for the County of Albemarle, and moves this Honorable Court to prohibit the Commonwealth from introducing any evidence relating to or testimony regarding the following: any statements made by the respondent to members of the Albemarle County Police Department following his arrest on October 13, 2003 regarding his contact with ******. The respondent further moves this Court to prohibit the Commonwealth from making reference to such evidence or testimony during voir dire or opening statement or during any stage of these proceedings until the Court rules upon its admissibility. As grounds for this motion, the respondent states the following:

1. The respondent is charged with six counts of aggravated sexual battery in violation of Virginia Code §18.2-67.3(1) and two counts of animate object sexual penetration in violation of Virginia Code §18.2-67.2. The events are alleged to have occurred between August 28, 2000 and August 27, 2001.

2. Detective ***** of the Albemarle County Police Department arrested ***** on October 13, 2003. The respondent was taken to the Albemarle County Police Department where Detective ***** interrogated him.

3. ***** answered Detective *****’s questions freely and voluntarily. ***** acknowledged that he knew ***** and her family. ***** denied any criminal behavior.

4. The Commonwealth seeks to offer as evidence the juvenile’s "self-serving" statement as substantive evidence in their case in chief.

5. These statements are hearsay and the declaration does not fall within any of the recognized exceptions to the hearsay rule.

6. There is no recognized hearsay exception for self-serving declarations because such statements are considered inherently unreliable.

7. *****’s statements to Detective ***** is not a statement against his penal interest and therefore does not meet the criteria to be considered as an exception to the hearsay rule under the declaration against interest exception.
8. *****'s statement does not fall within the hearsay exception of the party admission rule because the statements are not offered as evidence against ***** but rather to corroborate evidence of another commonwealth witness.

9. These statements are not against *****'s interest at the time of trial.

10. The recording of *****'s interrogation shows Detective ***** offering his opinion and thoughts about the case which are irrelevant to the matter now before the court, nor does his opinion and thoughts tend to prove or disprove a material fact. There is no probative value of this testimony or evidence and it is highly prejudicial against the respondent.

WHEREFORE, the respondent, *****, prays this Honorable Court will prohibit the Commonwealth from making any reference to, introducing, or otherwise making use of the above-mentioned evidence or testimony until the Court rules upon its admissibility.

Respectfully Submitted,

*****

__________________________________
Counsel
Organization
Address
Phone
STATE OF MINNESOTA

STATE COURT-JUVENILE DIVISION

In The Matter Of The Welfare Of

***

Respondent

MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS CERTIFICATION
MOTION

Case No. ********

STATEMENT OF FACTS

On __________, 2004, a delinquency petition was filed alleging that *** had committed a domestic assault, in violation of Minn. Stat. 2004 §609.224, subd. 1(2) (misdemeanor). It alleged that there was an argument between *** and her child’s father, ***, which culminated in her using a razor blade to cut the father. The alleged incident occurred on January 13th, 2004. All relevant witnesses to the incident were interviewed on January 13th. In addition, *** was taken into custody on that evening, and gave a post-Miranda statement. During this statement, *** stated that Mr. *** began the physical struggle, and that she picked up a razor blade during this struggle, and further that she may have cut Mr. *** during the struggle.

*** appeared before the court on January 14th, and denied the charges contained in the petition filed against her. No motion to certify *** as an adult was filed in conjunction with the petition filed on January 14th.

On January 28th, 2004, an amended petition was filed with the court, stemming from the alleged incident of January 13th that involved ***. The amended petition charges *** with felony assault, because of the razor blade used by *** to defend herself. In conjunction with this second petition, a motion to certify *** as an adult was also filed. The filing of the amended petition, as well as the motion to certify *** as an adult, was a consequence of ***’s refusal to plead guilty to the charges against her in the original petition against the wishes of the County Attorney.

ARGUMENT

I. THE MOTION TO CERTIFY *** AS AN ADULT IS UNTIMELY AND THEREFORE SHOULD BE DISMISSED

Minn. R. Juv. Pro. § 18.02 subd. 2 states:

Proceedings to certify delinquency matters pursuant to Minnesota Statutes section 260B.125 may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to Rule 5 or 7, or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first.

Minn. R. Juv. Pro. § 31.01 states:

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The
last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which the period runs until the end of the next day which is not a Saturday, a Sunday or legal holiday.

The petition was filed, and *** appeared in court on Jan. 14th of 2004. Not including that day, the tenth and final day that a petition to certify *** as an adult was January 24th. Therefore, any motion for certification filed after that day is barred by the Minnesota Rules of Juvenile Procedure.

II. THE FILING OF AN AMENDED PETITION SHOULD NOT PROVIDE A NEW WINDOW IN WHICH TO FILE AN ADULT CERTIFICATION

The amended petition filed against *** arises from the same set of circumstances as the petition filed on Jan. 14th. All relevant statements, including ***’s statement admitting that she used a razor blade to defend herself, were either in the possession of, or available to, the County Attorney when the original petition was filed. Allowance of the County Attorney to get a second "bite at the apple" in certifying *** would therefore contravene the spirit of Minn. R. Juv. Proc. § 18.02.

The purpose of the short time requirement to file a motion to certify is to avoid disruption of the determination of the charges on their merits after parties have begun preparation for an evidentiary hearing or trial and to remove from the prosecutor the threat of the motion to force a plea... The prosecutor should be required to show that facts now known could not be reasonably known with due diligence during the time when the motion [to certify] could have been filed [in order to restart the 10 day period].


In the unpublished opinion of In the Matter of the Welfare of D.E.B, File No. C6-98-1530 (attached) the Minnesota Court of Appeals was confronted with a similar situation. The first petition against D.E.B. was filed charging the juvenile with felony discharge of a dangerous weapon, which resulted in the death of a hunting companion. Id. at 1. After new information came to light that D.E.B. discharged the weapon intentionally, and then threatened the witness with violence if he didn’t corroborate his story, a new petition was filed charging D.E.B. with second degree murder. Id. at 2. In conjunction with this new petition, a motion to certify D.E.B. as an adult was allowed by the trial court. The Court of Appeals affirmed the certification, stating, “[b]ecause of the new information, the state should be allowed to dismiss the delinquency petition and refile it with a motion to certify if that is appropriate.” Id. at 5 (citing 12 Scott & Sonsteng 289).

In the instant case, because no new information has been obtained since the filing of the original petition, the period for filing an adult certification should not be renewed. In addition, even if the County Attorney did not have all the information available on the day the original petition was filed, it was clearly available during the ten day certification window.

This holding would be consistent with the holding of the Minnesota Supreme Court regarding the effect of re-filing a complaint on the right to a speedy trail. In State v. Kasper, the Supreme Court dismissed
a complaint against the defendant because the trial was not initiated within 60 days. *State v. Kasper*, 411 N.W.2d 182 (Minn. 1987). The court stated:

We agree with the recommendation of the ABA Standards for Criminal Justice that if charges are dismissed by the prosecutor and new charges are brought, the time period should not start again from zero with the new complaint. *Id.* at 184.

The court acknowledged that the 60 day period could be extended upon a showing of good cause by the prosecutor, but found no justification for the delay in *Kasper.* *Id.* at 185. *See also In the Matter of the Welfare of G.D.*, 473 N.W.2d 878, 881 (approving a lower court tolling the 60 day speedy trial period upon dismissal of the original complaint, not starting the period anew upon refiling).

Following the logic of these cases, if the County Attorney would have dismissed the petition against *** before the ten day period for filing a certification petition, then any remaining days would be tolled until a new petition was filed. However, the ten day period expired without the dismissal of the petition. With that expiration, went the ability of the County Attorney to attempt to certify *** as an adult.

Allowing the County Attorney to certify *** as an adult in the instant case would render Minn. R. Juv. Proc. § 18.02 completely superfluous. If a Prosecutor is allowed to re-file a petition, arising out of the same circumstances as the original petition, there is no instance where the ten day period under § 18.02 would come into effect. If a County Attorney failed to file a certification within the time period, he could simply file an amended complaint. In this manner, the certification period would never expire.

**CONCLUSION**

All of the allegations of the amended petition against *** were available to the County Attorney when the original petition was filed. Therefore, there is no reason why the ten day period mandated by Minn. R. Juv. Proc. § 18.02 should be extended to allow a motion to certify *** as an adult. *** respectfully requests that the certification motion be dismissed.

Respectfully submitted,

**OFFICE OF THE ________ COUNTY PUBLIC DEFENDER**

By: ____ ______________

Lic.
Assistant Public Defender
Address
Phone

Dated: this 31st day of January, 2005
IN THE MATTER OF: IN THE COURT OF ______________

*****, OF ____________ COUNTY, PENNSYLVANIA

A MINOR: Docket No. *****

MOTION TO WITHDRAW ADMISSION

AND NOW, this ____ day of ________, 200_, comes the above named juvenile, *****, by and through his attorney, *****, Assistant Public Defender, and files the within Motion to Withdraw Admission and in support thereof states as follows:

1. *****, is a juvenile, sixteen years of age, with a date of birth of *****.
2. On *****, a charge of Indecent Assault was filed against the juvenile. 18 Pa.C.S.A. §3126(a)(3).
3. The juvenile, appeared before the Juvenile Court Master on *****, and entered an admission to the allegation charged.
4. To the best of the knowledge of the undersigned, the juvenile has not appeared in court for a dispositional hearing in this matter.
5. The undersigned was advised by the juvenile’s assigned probation officer that he has not had a dispositional hearing. The officer did not believe he could bring the juvenile to disposition given that the juvenile did deny the allegations to the officer despite the confession.
6. Given the foregoing, the undersigned believes and avers that it is in the best interest of the juvenile that he is permitted to withdraw his admission and that an arraignment be scheduled.
7. The Commonwealth has stated that it will examine the record of the matter, and may file written opposition to this Motion.

WHEREFORE, the above-named juvenile, *****, respectfully requests that this Honorable Court grant the relief requested herein and permit him to withdraw his admission to the allegation of indecent assault and direct that an arraignment be scheduled.

Respectfully submitted,

Attorney
Organization
Address
Phone
IN THE MATTER OF:

*****,

A MINOR

IN THE COURT OF __________________
OF __________ COUNTY, PENNSYLVANIA
Docket No. *****

ORDER

AND NOW, to-wit, this ___ day of ______, 200_, it is hereby ORDERED and DECREED that the relief requested in the foregoing Motion be granted. The above-named juvenile, *****, is permitted to withdraw his admission. It is further ORDERED that the Juvenile Probation Department shall schedule an arraignment for the juvenile.

BY THE COURT:

______________________
Judge
SAMPLE OPENING STATEMENT 1

Adjudication by a Judge

All identifying names and details have been changed or redacted; any similarity to an actual case is coincidental.

Your Honor, on [exact date], cocaine and drug paraphernalia were found in a [make and model of car]. Bob Jones was in that car and Bob Jones was even driving that car. But Bob did not put the drugs there and he didn’t know the drugs were there. Your Honor, despite how the evidence may appear at first glance, Bob Jones did not have dominion or control over the car or anything inside that car. On [date of offense], Bob was simply driving Mr. Fred Friendly, in Mr. Friendly’s car because Mr. Friendly did not have his driver’s license.

The evidence in this case will show that back on [earlier date], John Friendly and his girlfriend, Jane Bystander purchased a [make and model of car]. The car was titled in Ms. Bystander’s name and the car was initially registered in Ms. Bystander’s name by way of 30 day temporary registration tags. Because Mr. Friendly could not find his license, he routinely asked others to drive for him. When Ms. Bystander wasn’t around he would ask friends like Bob to drive. When the 30 day tags expired, Mr. Friendly and Ms. Bystander had not paid the full registration fees and needed additional temporary registration. Mr. Friendly asked Bob if he could temporarily register the car in his name.
On [date], Mr. Friendly paid for the temporary registration fee in Bob’s name. Bob did not own the car, Bob never had a key to the car, and Bob never kept or drove the car without Mr. Friendly in the car. The car was registered in Bob’s name for 17 days and he drove it no more than 5 times.

One of those times was [date of offense]. Between 9:45 and 10:00 on that night, Mr. Friendly asked Bob to drive him into downtown Gotham City. Mr. Friendly – without a license – drove the car over to Bob’s apartment. Mr. Friendly got out. Bob got right in and drove off. Bob he didn’t look on the floor of the car; he didn’t look in the back seat; he just got in the car and drove.

At about 10:15 pm. that night, Bob and Mr. Friendly were heading southbound in the 1600 block of Main Street when they were pulled over by a patrol car for a traffic violation. Bob immediately stopped; he showed his license and registration, and he complied with police questioning. When the officers asked for permission to search the car, Bob said yes. Bob consented to that search because he didn’t know there were 46 grams of cocaine sitting in the back seat.

And Your Honor, when you look at where the drugs were found - in the dark - you will know that Bob didn’t see them when he got in that car. The cocaine was found on the passenger’s side back seat. The scale was found in a black, closed duffel bag on
the passenger’s side between the seat and the door. And tiny empty black ziplocks were found on the floorboard between the driver’s door and the seat. Your Honor, Bob Jones did not see the drugs and the paraphernalia anywhere in that car that night. Your Honor, Bob Jones did not own the [make and model of car]. Bob Jones was simply driving Mr. Friendly. He got into the [car] 15 to 20 minutes before the police stopped him and he did not see any drugs. At the end of this trial, I will ask the court to find Bob not guilty.
SAMPLE OPENING STATEMENT 2

Adjudication by a Jury

All identifying names and details have been changed or redacted; any similarity to an actual case is coincidental.

Ladies and gentlemen, the wrong person is on trial today. Mr. Roosevelt did not point a gun at Dorothy Parker, he did not shoot Dorothy Parker and he did not kill Dorothy Parker. Franklin Roosevelt did not kill Dorothy Parker and he is not guilty of the charges in this case. I am [Defender’s Name] and together with [Second Chair Defender], I have the privilege of representing Mr. Roosevelt in this trial. During this trial, the three of us ask you to do several things: keep an open mind and challenge the government’s evidence: sift it, weigh it carefully and don’t take anything at face value.

The evidence will show that things are not always as they first appear. There will not be a single shred of physical evidence to support the charges the government has lodged against Mr. Roosevelt: no fingerprints, no photographs, no DNA, not even a weapon.

As the evidence is presented in trial, you will see that the government’s case is based only on the testimony of witnesses who cannot be believed, who cannot be trusted and whose word cannot be relied upon. Witnesses whose claims will not be supported by scientific evidence - the kind of evidence that doesn’t lie and change to help itself like witnesses do. The kind of evidence that is unbiased, uninterested and uninfluenced.
And ladies and gentlemen, not one single witness the government will call in this trial provided information to the police at the time or even day of the shots. These witnesses did not come forward any time in September, October or November of 1993.

One witness didn’t come forward until December 1993 when he was arrested and other witnesses didn’t come forward until July and September, 1994. Ladies and Gentlemen, these are the witnesses who will provide testimony the government will ask you to rely on. Sift it, weigh it and don’t take anything at face value.

As you consider the testimony of these witnesses, think about WHEN and WHY the witnesses decided to provide their story to the police, think about what reasons each of the witnesses has to lie about August 8, 1993. Consider: What reasons do the witnesses have to point the finger at Franklin Roosevelt? What do the witnesses stand to gain? How do the government witnesses know each other and how do they connect? What kind of criminal involvement do these witnesses have?

Now the government wants you to believe some motive of “Bloods” v. “Crips” and that Dorothy Parker was killed to retaliate for the death of Oscar Wilde. But again, ladies and gentlemen – don’t take that at face value any more than you take the rest of the State’s case at face value. The evidence will show that Mr. Roosevelt was not the one with the motive to kill Dorothy Parker. Look behind the evidence. Listen closely,
challenge what you hear, and keep an open mind. Things aren’t always as they first appear.

[Depending on prosecution’s opening statement, maybe say: Ask yourself, who is in the Bloods – who is in the Crips? Was Ms. Parker really killed because of Oscar Wilde and if so, who were Mr. Wilde’s close friends? Who would be most likely to be killed in retaliation for that death? Is the government making connections that don’t exist? Does Mr. Roosevelt really have the motive they say he has? Would the Bloods really kill Dorothy Parker to get back at the Crips over the death of Oscar Wilde?

And ask: who all was outside in that alley on August 8, 1993? The government’s own evidence will show that there were a lot of people in that alley that night – There were guys playing dice, guys smoking and drinking, and even some guys talking to Dorothy Parker. Ladies and gentlemen, Franklin Roosevelt did not kill Dorothy Parker and the government witnesses cannot and will not be able to prove beyond a reasonable doubt that he did.

As Mr. Roosevelt sits here today, he is presumed innocent. It is the State’s burden to prove beyond a reasonable doubt that Franklin Roosevelt was out there in that alley on August 8, 1993, that Franklin Roosevelt had a gun, and that it was Franklin Roosevelt who fired the shots at Ms. Parker. In deciding whether the government has
met its burden, focus on the quality of the evidence before you - the quality of evidence
that comes from witnesses who have reasons to lie, reasons to fabricate, and whose
testimony you will not be able to credit beyond a reasonable doubt.

At the conclusion of this case, we will have another opportunity to speak with you
and at that time we will ask you to return the only verdicts that the lack of evidence can
support and those are verdicts of not guilty. Thank you.
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. JUVENILE COURT DEPARTMENT

COMMONWEALTH ) )

v. ) )

XXXXXXXXX ) )

A Minor ) )

MOTION FOR DISCLOSURE OF PROMISES, REWARDS OR INDUCEMENTS

The above-named respondent hereby respectfully moves this Honorable Court for an order directing the Commonwealth to furnish the respondent with any and all information known to the Commonwealth or that by the exercise of due diligence can be ascertained by the Commonwealth of statements of promises, inducements or rewards of any kind or nature made to any witness or witnesses whom the Commonwealth intends to call as a witness at the trial matter or any other stage of the prosecution of this matter. Respondent specifically requests disclosure of:

A. Any written agreements for the testimony of any potential witness;
B. Any oral promises made to any potential witness to induce the witness's testimony;
C. Any and all immunity agreements entered into with any potential witness;
D. Written disclosure of all promises, including oral promises of any nature or description, including promises of assistance with release on parole, personal recognizance or bail, made to any potential witness, including but not limited to RG, RR, JB and/or DD.
E. Promises of assistance or actual assistance with the Immigration and Naturalization Service made to any potential witness and the results of any such assistance including but not limited to any such offers or assistance provided to or on behalf of DD;
F. All monetary sums given to and/or the value of tangible items, including airline tickets and assistance in gaining employment given to any potential witness including but not limited to AI, RG, JR.;
G. All offers of assistance in the disposition, including disposition by dismissal, of charges that are or were pending at the time the offer of assistance was made to or accepted by any potential witness, including but not limited to offers made to and/or accepted by AI and/or RG.
As grounds therefore, the respondent states that:

1. The information is required in order that he may have evidence available to him that my impeach the credibility of such witnesses;

2. The information is required in order that he may adequately and thoroughly cross-examine such witnesses.


Dated: XXXXXXXXX

By his attorney,

*************
Organization
Address
Phone
SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS

JUVENILE COURT DEPARTMENT

No.

COMMONWEALTH )

v. )

****** )

A Minor )

RESPONDENT'S MOTION FOR DISCLOSURE OF INFORMATION
REGARDING COMMONWEALTH'S EXPERT WITNESSES

Pursuant to Mass. R. Crim. P. 14(a), the above-named Respondent hereby moves this Honorable Court for an order directing the Commonwealth to produce, for the Respondent's inspection and copying, the following:

1. The names and present addresses of any and all persons whom the Commonwealth will seek to qualify as an expert at the trial of this matter;
2. The background and qualifications of any such witnesses, including any such witness' curriculum vitae, or any other information that the Commonwealth intends to introduce to qualify said witness as an expert;
3. The precise nature of the field in which the Commonwealth contends such witness is an expert;
4. All reports made by such witnesses regarding this case;
5. The subject matter on which the expert is expected to testify;
6. The substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;
7. All notes or reports relied upon by such experts as a basis of the expert's opinion.
8. A list of all court cases in which these individuals have testified as experts;
9. A list of all court cases in which the Commonwealth has attempted, and failed to qualify these individuals as experts.

In support hereof, the Respondent states that:

1. The information requested is necessary so that the Respondent can effectively cross-examine such expert witnesses at the trial of this matter;
2. The requested information is necessary to ensure him a fair trial, as guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights.

Dated: 

*****

By his attorney,

*****
IN THE MATTER OF: IN THE COURT OF COMMON PLEAS

*****: OF **** COUNTY, PENNSYLVANIA

*****: JUVENILE DIVISION

A MINOR: Docket No. *****

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR JUDGMENT OF ACQUITTAL

AND NOW, comes the above-named juvenile, *****, by and through his attorney, ********, Assistant Public Defender, and files the within Memorandum of Law pursuant to the directive of the Master.

BACKGROUND

***** is a 16-year-old juvenile with a date of birth of January 23, 1987. On October 27, 2003, **** was charged with one allegation of terroristic threats for statements allegedly made to a school psychologist on October 10, 2003. On December 3, 2003, the Juvenile court Master convened a hearing on the charge. The Commonwealth presented the testimony of ***** school psychologist.

Ms. ***** testified that she had gone to talk with ***** after an incident occurred at school. She wanted to talk to him about a possible hospitalization based on mental health issues. The conversation upset *****. During the conversation, ***** asked her if she "wanted another Columbine." She stated that **** was "very upset" when he made the statement. She also testified that she specifically asked him two times if he intended the statement to be a threat and both times he said no.

After Ms. ***** testified, the Commonwealth rested. The Defense then moved for judgment of acquittal alleging that the Commonwealth did not meet its burden under the terroristic threats statute in that it did not prove that ***** acted with the intent to terrorize or with reckless disregard of the risk of causing terror in another. The Master then determined to hold the hearing in abeyance pending the filing of memoranda on the issue by both counsel.

ARGUMENT

Pursuant to statute, a person commits the crime of terroristic threats if he directly or indirectly communicates a threat to:

(1) commit any crime of violence with intent to terrorize another;
(2) cause evacuation of a building; place of assembly or facility of public transportation; or
(3) otherwise cause serious public inconvenience, cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

18 Pa.C.S.A. § 2706(a).

The purpose of the statute has been interpreted to impose criminal liability on persons who make threats which seriously impair personal security or public convenience. Commonwealth v. Butcher, 644 A.2d 174, 176 (Pa. Super. 1994). Thus, to obtain a conviction for making a terroristic threat, the Commonwealth must prove, first, that a threat was made to commit a crime of violence, and, second, that the threat was communicated with the intent to terrorize or with reckless disregard for the risk of causing terror. Commonwealth v. Fenton, 750 A.2d 863, 864 (Pa. Super. 2000); In Re B.R., 732 A.2d. 633, 636 (Pa. Super. 1999); Butcher at 176.
Neither the ability to carry out the threat nor a belief by the person threatened that it will be carried out is an essential element of the crime. Rather, the harm sought to be prevented by the statute is the psychological distress that follows from an invasion of another's sense of personal security. *Fenton* at 864; *Commonwealth v. Tizer*, 684 A.2d 597, 599 (Pa. Super.1996). Similarly, the intent to carry out the threat is not required; the intent to terrorize is required. Moreover, it is unnecessary for the defendant to articulate specifically the crime of violence he intends to commit where the type of crime may be inferred from the nature of the statement, and the context and circumstances surrounding the utterance of the statement. Even a single verbal threat might be made in such terms or circumstances as to support the inference that the actor intended to terrorize. *In Re B.R.* at 636.

Yet, the courts have held that the statute is not intended to penalize mere spur-of-the-moment threats, which result from anger, or in the course of a dispute, or from hysteria, that do not trigger foreseeable immediate or future danger. *Butcher* at 176; *Tizer* at 599; *In Re B.R.* at 638. In other words, the statute is not intended to criminalize merely a statement made during a "transitory" moment of anger. However, being angry does not render one incapable of forming the intent to terrorize. Thus, the issue ultimately becomes whether the Commonwealth has presented sufficient evidence to establish the required mens rea - the requisite intent to terrorize or a settled purpose to terrorize. *Commonwealth v. Walker*, 2003 Pa. Super LEXIS 4079, 7-8 (November 17, 2003), citing, *Fenton*, supra, at 865, In *Butcher*, the female victim was getting into her car in a parking lot one evening after work. Suddenly, the car door was yanked open and Butcher was standing there. She screamed and got out of the car. He grabbed her, pushed her up against the car, pressed up against her, and said "Don't make me get physical." On appeal he argued that his statement was too vague to constitute a terroristic threat and that the circumstances surrounding his conduct showed lack of intent to cause terror. 644 A.2d at 175. The court disagreed, finding that Butcher's conduct was proscribed by the statute because, at the least, he showed reckless disregard for terrorizing the victim. His conduct, the court concluded, was precisely the type the statute was intended to criminalize. *Id* at 176-177.

Here, it may be argued that *****'s statement was, in fact, too vague to constitute a threat. However, as other cases have shown, the statement must be judged in the context of the times, and that issue will be addressed, infra. Counsel asserts that **** did not display any of the menacing conduct critical with regard to Butcher.

In *In Re B.R.*, a group of male students was in the hallway waiting to see the principal. B.R. and another student stated that they would bring a gun to school and shoot all the teachers. A teacher who was with the students stated that he was concerned because the statements appeared to be directed at him. B.R. was charged with terroristic threats and conspiracy. 732 A.2d at 635. The court determined that B.R.'s statements were made with the intent to create fear or apprehension and that such intent or reckless disregard could be concluded from the statements themselves. The context in which the statements were made was that it shortly followed several incidents of shootings at school; in particular, the April 1998 shooting that occurred at the school dance in Edinboro. *Id* at 637. The court found that B.R.'s statements were not the product of a heated verbal exchange, but were made in a deliberate matter of fact manner. They were not idle chit-chat as he alleged, but rather, given the school tragedies, they were words with powerful and disturbing ramifications. *Id* at 638. Such a statement by a student, the court concluded, must be regarded as an attempt to create fear of future violence, or at the least, a reckless disregard of the risk of creating such fear. *Id* at 639.
Clearly, the Columbine shooting qualifies as a tragedy that when mentioned, gives rise to powerful and disturbing ramifications. However, we must examine *****’s statement within the totality of the circumstances, just as the court examined B.R.’s statement. First, there is nothing in Ms. *****’s testimony to indicate that the context of the situation indicates a clear intent to terrorize on *****’s part. He made no threats to bring weapons to school, and in fact told Ms. ***** he did not have access to weapons. Second, we contend that, unlike B.R., ***** did make his statement while angry or in the course of a heated exchange regarding whether he should be hospitalized.

However, being angry alone does not take a statement out of the realm of the statutory admonition. In Fenton, the defendant was having problems with his insurance company paying for repairs to his car. The problems had continued for some months. Fenton called his agent and threatened him, said he would kill several named and unnamed individuals, and then kill himself. 750 A.2d at 853. On appeal, Fenton alleged that his statements were not made with the intent to terrorize but were the product of transitory anger. The court disagreed. The fact that Fenton was angry did not mean he could not form the intent to terrorize. Fenton’s problems spanned several months, and he obviously spent time reflecting on his frustrations. His threats were premeditated and deliberate and did not reflect spur-of-the-moment frustration. His threats were made to individuals beyond his insurance agent demonstrating that they were neither transitory nor unthinking. His "festering anger" showed ample desire to terrify with threats of violence. The insurance agent was subjected to precisely the psychological harm the statute seeks to prevent. Id. at 864.

Clearly, ***** and Mr. Fenton were angry when they made their statements. However, Mr. Fenton’s anger, as the court stated, festered until it turned into a cause or basis for his threats of violence. *****’s anger was, on the other hand, transitory, spur-of-the-moment, and clearly the product of the situation that was occurring at the time the statement was made. The spur-of-the-moment nature of the statement also removes it from the realm of reckless disregard. Lacking the intent to terrorize Ms. *****, we contend **** also did not demonstrate a reckless disregard for whether his statement risked terrorizing *****.

The court’s position in Fenton was adopted by the court in Walker. In that case, Walker was picked up on parole violations while celebrating his mother’s birthday. Walker, who was known to be HIV positive, dug his fingernails into the arresting officer’s hands, and told the officer that he had open cuts on his hand, that life was short, and that he was taking the officer with him. 2003 Pa. Super LEXIS 4079, 'I’I’ 2-3. The court noted here also that being angry does not necessarily preclude the ability to form the mens rea to terrorize and found the evidence sufficient to support a conclusion either that Walker acted to terrorize or with reckless disregard for the risk that he would evoke terror. Id. at 12.

In reaching its conclusion, the court compared Walker to the defendant in Commonwealth v. Kidd, 442 A.2d 826 (Pa.Super. 1982). Kidd was arrested for public drunkenness. He was taken to the hospital to treat cuts sustained from falling down. At the hospital, he repeatedly yelled obscenities and threatened to machine-gun the police if he had the chance. The court reversed Kidd’s conviction stating that his conduct did not evidence a settled purpose to terrorize. The record, the court stated, was insufficient to support a conclusion that Kidd intended to place the officers in a state of fear. His statement, the court concluded, exemplified the sort of hyperbole from which a jury could not properly infer, beyond a reasonable doubt, either the intent to terrorize or reckless disregard of the risk of causing terror.
***** contends that his statement was more characteristic of that made by Kidd than that made by Walker.

CONCLUSION

***** submits that the statement he made to the school psychologist was not that type of statement the statute intended to penalize. Even if this court views his statement as a threat to commit a crime of violence, the intent or mens rea element of the crime has not been met.

***** exhibited the transitory spur-of-the-moment type of anger from which the intent to terrorize should not be inferred. Moreover, he stated to Ms. ***** that it was not his intent to terrorize anyone. Thus, there was no evidence submitted of settled purpose to terrorize or, in the alternative, of reckless disregard for the risk of causing terror. The juvenile, ***** therefore, requests that the Master dismiss the terroristic threat allegation.

Respectfully submitted,

**************
Attorney
Organization
Address
Phone

Date:
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. BOSTON JUVENILE COURT
NO. -----

COMMONWEALTH

) THE JUVENILE'S MOTION FOR A VIEW

V.

) 

The juvenile, ******, hereby moves this Court to take a jury view of the **** Barbershop located at ******* Ave., and the area between Avenue and the place of the juvenile's arrest on ***** St. in Boston, including the pathway along the ******* MBTA Line between ***** Avenue and **** Playground and **** Park and the rear of ******* Ave and all adjoining areas (collectively, the "Identified Locations"). As grounds therefore the juvenile states that:

1. He is before this Court on indictments charging armed robbery (five indictments), assault and battery with a dangerous weapon (five indictments), and possession of a firearm (two indictments).

2. The Commonwealth contends that the juvenile is one of two armed, masked men who entered the **** Barbershop at ******* Ave., robbed barbers and patrons, then fled along the ******* Line corridor, through *** Playground, and onto ***** St., where the he was arrested.

3. Observation of the physical characteristics of the barbershop and this neighborhood is relevant to the jury's appraisal of the evidence in this matter and will assist the jury in understanding the witnesses' testimony.

4. A view of the Identified Locations will improve the jury's understanding of the evidence and will forestall any unauthorized, extra-judicial "views" that jurors may otherwise be inclined to take.

5. The Court has discretion to take a jury on a view when the view will assist the jury's understanding of evidence. Commonwealth v. Curry, 368 Mass. 195 (1975); G.L. c. 234 § 35.

Wherefore, the juvenile requests that this Court take a jury view of the of the **** Barbershop located at ******* Ave. in Boston, and the area between ***** Avenue and the place of the juvenile's arrest on ***** St. in Boston, including the pathway along the MBTA Line between **** Avenue and ******* Playground and **** Park and the rear of **** Ave and all adjoining areas.

******
By his attorney,
******
Organization
Address
Phone

DATE:
SAMPLE CLOSING ARGUMENT

Adjudication by a Judge

Your Honor, as I stated at the beginning of this trial, Franklin Roosevelt did not sexually abuse Gerald Ford. Franklin did not touch the Gerald’s behind. Franklin did not touch Gerald’s private parts. Franklin did not threaten Gerald in any way. Franklin is not guilty of any of the charges he faces in this case. The reason we are here today is because Franklin did exactly what a model citizen should do when confronted with THREATS of bodily harm and FALSE accusations - Franklin went to the police for help. On January 1, 2003, Franklin relied on the law to protect him, and instead it failed him. That failure, Your Honor, began a six month long nightmare that needs to end HERE in this courtroom TODAY.

So how exactly do we know that Franklin is not guilty? How do we know that the government has failed to meet ITS burden of proving Franklin guilty beyond a reasonable doubt?

Because the government relies solely on the accusations of an incredible complainant. There are numerous reasons why the complainant is not credible, Your Honor. I will talk about three sets of reasons: first, the complainant's highly inconsistent and contradictory stories; second, the suggestive manner in which the complainant was interviewed; and third, the manner in which the complainant acted after the alleged touching occurred.

First, the complainant is not credible because every time he tells his story, the story changes.

Your Honor heard the complainant testify on direct that Franklin touched his private parts. But Your Honor heard that the complainant stated multiple times to multiple people that Franklin never touched him anywhere besides his butt. The complainant told his mother, the police officer, the detective, the Child Advocacy Center worker, and me, that Franklin never touched his private parts.

Now let's break this down and look at where this is found in the evidence adduced at trial.

- Gerald's mother testified yesterday that when she confronted Gerald about the alleged incident, Gerald told his mother that Franklin had never touched him.
- Police Officer - Gerald admitted to the CAC worker that he told the police officer that Franklin had not touched him anywhere else besides his butt. For your reference, Your Honor, this admission is located at 1:30:58 on the video tape we viewed yesterday.
- Detective - Gerald also admitted to the CAC worker that he told the detective that Franklin had not touched him anywhere else besides his butt. For your reference, Your Honor, this admission is at 1:31:14 on the video tape we viewed yesterday.
- Your Honor also saw on the CAC tape yesterday that Gerald told the CAC interviewer THREE separate times that Franklin never touched his private parts. Gerald’s statements to the CAC interviewer that Franklin never touched his private parts are located on the CAC tape at 1:26:10, 1:39:47, and 1:49:17.
- Your Honor, CAC asked a fourth time -- not if Franklin touched Gerald but if Gerald told his mother that Franklin touched him. EVEN NOW Gerald only states that Franklin touched his private parts once, not twice like the petition alleges. Reference: 1:50:00.
You also heard the complainant testify that Franklin touched the complainant's behind. Again, though, the complainant told multiple stories to multiple people. Detective Snoopy testified that Gerald told him that Franklin touched his butt twice. But the complainant told the CAC worker that Franklin touched his butt once, that Franklin touched his butt every day, and then changed his mind back to only once. Furthermore, Your Honor, Gerald is inconsistent as to where these alleged incidents occurred. On cross examination, Gerald told this court that Franklin touched him while they were playing tag. But Detective Snoopy, the government's own witness, testified that Gerald told him that the alleged incidents happened while playing other sports.

Your Honor heard the complainant testify on direct that Franklin threatened the complainant. But Your Honor heard the complainant admit that he did not tell the police or the detective about the threats. Furthermore, Detective Snoopy testified that he had no recollection of Gerald telling him about the alleged threats and that there was no mention of the alleged threats in his report of the incident. The complainant told the Child Advocacy Center Worker that Franklin said nothing at all during the alleged incident. (Reference: 1:26:37) Your Honor also heard that the complainant admitted to me that Franklin did not threaten him.

(PAUSE AND POINT TO EASELS BEHIND ME)

Your Honor, this is not a case where the defense is trying to make mountains out of molehills. These are not minor inconsistencies. These are glaring contradictions in the complainant's story that give us SERIOUS REASON TO DOUBT that anything happened.

Second, there is serious reason to doubt the credibility and the reliability of the complainant's testimony because the complainant was questioned using suggestive tactics.

Now Your Honor, we recognize that there is no smoking gun on suggestiveness. We are not alleging the people who interviewed Gerald told him what to say or deliberately used suggestive tactics so that Gerald would accuse Franklin of these crimes.

You heard the complainant's mother state that, with tears in her eyes, she confronted the complainant and asked him, not if anyone had ever touched him, but if FRANKLIN had touched him.

You also heard the complainant state on the CAC tape that the police officer and the detective used leading questions when questioning him and that the detective threatened to repeat the same question over and over again until the complainant got tired. The police officer spoke with the mother therefore with preconceived notions. Detective Snoopy spoke with police officer therefore with preconceived notions.

Your Honor heard, though, that the worst use of suggestive tactics occurred at the Child Advocacy Center. Let's really look at this interview.

The interview was arranged by Detective Snoopy who had spoken previously with the complainant. Detective Snoopy was present at the CAC on the day of the interview and observed the interview through an observation glass. So already, the interview starts with preconceived notions.
Then the CAC worker interviews Gerald, about what Gerald alleges Franklin did to him, in the presence of his mother and without recording it on video.

Throughout the interview, the interviewer uses repeated, suggestive, and leading questions.

- Four questions about touching private parts
- Three questions on threats
- Multiple questions focused on areas where they did not get the answer they expected

Your Honor, the complainant was suggested into believing that something happened. Then the complainant had to fill in the holes on his own to support this suggested belief. Having to make up these supporting facts, Your Honor, explains why the complainant has told so many inconsistent and contradictory stories.

If something had really happened, the complainant's story would not change so dramatically. Your Honor, the Truth does not change over time. The Truth does not change from month to month; the Truth does not change from day to day; the Truth does not change that often, that significantly, that many times.

Third, Your Honor, the manner in which the complainant has acted since the alleged incident occurred gives us even more reason to doubt the credibility of his testimony.

The complainant did not tell anyone about what happened despite the fact that his mother told him to tell her and despite the fact that he states that he would tell her if someone touched him. Furthermore, after the alleged incident in November, the complainant willingly continued playing with Franklin. Since the alleged incident in December, the complainant has tried to play with Franklin again. Your Honor, the complainant's own mother stated that Gerald was confused, that Gerald's behavior around the house has not changed since the alleged incident, and that Gerald does not give her reason to believe that Franklin touched him. Your Honor, there are cases where an accuser latches on to his abuser. This case is not one of those cases, though. This is not a case where there is a long standing relationship, familial or otherwise, between the accuser and his abuser. There is no reason for Gerald to love, need, or otherwise latch onto Franklin. Gerald continued to play with Franklin and has repeatedly tried to play with Franklin since the alleged incident because Gerald is not afraid of Franklin. And Gerald is not afraid of Franklin because nothing happened.

Your Honor, there are no witnesses that say they saw Franklin touch the complainant. There is no physical evidence to support the allegations. There are no bruises, no marks, no signs that the complainant was ever touched by anyone. The evidence offered by the Government is the inconsistent and contradictory story of a complaining witness who has claimed that Franklin touched him. The complainant simply is not credible enough to carry the entire burden of proof beyond a reasonable doubt for the government.

However, that is not the only reason the government has failed to meet its burden. In addition to the lack of credibility of the defendant, the government has also failed to meet its burden because the government has failed to prove beyond a reasonable doubt the necessary specific intent.

As Your Honor well knows, the government must prove that when Franklin touched the complainant, he did so with the specific intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of
any person. However, the government fails to provide any evidence of Franklin's specific intent but instead asks that you infer the intent from the act. Even assuming for purposes of argument that the government's story is true, because the alleged incidents supposedly occurred while playing, it can just as equally be inferred that Franklin did not have the specific intent necessary. Any touching that occurred could have been by accident, could have been incidental touching from playing, or it could have been that Franklin was emulating what he has seen professional athletes do to their teammates.

Your Honor, during the competency motion, the Court was working under a preponderance standard. During the motion for judgment of acquittal, this court was required to give the government the benefit of all reasonable inferences. We are now at a much higher standard - the standard of proof beyond a reasonable doubt. Your Honor, there is certainly reasonable doubt as to whether Franklin touched the complainant's private parts. There is reasonable doubt as to whether Franklin threatened the complainant. Your Honor, the government, has not met its burden for any of the counts.

(PAUSE)

Your Honor, those are the fatal failures in the government's case. Those are the reasons that the government has not met its burden. We could stop here and the only verdict consistent with the evidence in front of you would be a verdict of not guilty on all counts. But there is still more reason to doubt. How else do we know that Franklin is not guilty?

Your Honor, we also know that Franklin is not guilty because Franklin's actions are those of an innocent boy with no consciousness of guilt. When Ms. Ford confronted Franklin about touching the complainant, he did not run away from her. He stood fast and maintained his innocence trying to convince her of the truth. But when Ms. Ford threatened to hurt Franklin, Franklin went to the police for help. Franklin went to the police station that day never even thinking that he would be the one who would end up getting in trouble because he knew that he had not done anything wrong. A guilty boy accused of sexually abusing a younger boy does not go to the police, Your Honor. An innocent boy does.

(STAND BEHIND FRANKLIN)

Your Honor, this is a very serious case with very serious consequences. I know there is a natural inclination to want to believe that no one would make up these charges and that there is a natural inclination to use the complainant's age to gloss over all the glaring contradictions in his story. But the nature of the charges, Your Honor, does not lower the standard of proof beyond a reasonable doubt. The age of the complaining witness does not lower the standard of proof beyond a reasonable doubt. And, most importantly, Your Honor, what can AT BEST be described as confused, conflicting, and contradictory testimony by the complaining witness does not provide proof beyond a reasonable doubt.

At the beginning of this closing argument, I told you that Franklin had been trapped in a nightmare since that day that he went to the police station looking for help. Your Honor, on January 1, 2003, Franklin went to the law for protection and the law failed him. DO NOT let the law FAIL Franklin again. Find him NOT GUILTY ON ALL COUNTS.
Appendix A

DOCUMENT A47: MOTION TO SEVER AND CONTINUE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION -- JUVENILE SECTION

In the Matter of

: 

: Case No. J-5555-55

: Social File: 555555

: Judge Name

: Trial: January 7, 2002

Respondent.


MOTION TO SEVER AND CONTINUE AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Respondent *****, by and through undersigned counsel, respectfully moves this Honorable Court, pursuant to Superior Court Juvenile Rule 14, to sever his trial from that of his co-respondents, C.R. and C.S. A hearing is requested on this motion.

In support of this motion, counsel states the following:


2. The joinder of the respondents stems from the arrest of *****, C.R. and A.W. on December 4, 2001 and subsequent arrest of C.S. According to police reports, on December 4, 2001, ***** was shot by an off-duty police officer outside Address. Co-respondents C.R. and A.W. were present at the scene of the alleged burglary and left the scene together in a car that has been seized in connection with this case. They reportedly gave statements to the police inculpating themselves as well as ***** of some of the afore-mentioned charges. In addition, C.S. apparently was one of two male suspects who were seen inside the house alleged to have been burglarized. He has reportedly provided a videotaped statement inculpating himself as well as *****

3. Although A.W. was arrested, the Government decided not to file a petition against him on December 12, 2001 at the initial hearing.

4. A respondent may move at any time for severance to avoid undue prejudice, and the trial judge has a continuing duty at all stages of the trial to grant a severance if such
undue prejudice arises. In this case, ***** will be severely prejudiced if a severance and continuance are not granted, because he and his co-respondents will present inherently irreconcilable defenses if they are forced to try their cases together.

5. Based on information learned through the independent investigation and discovery of the case thus far\(^1\), undersigned counsel expects that the co-respondents are attempting to exculpate themselves by claiming that ***** planned the burglary and stole the vehicle that A.W. and C.R. were seen in when leaving Address.

6. These allegations by the co-respondents present both an irreconcilable conflict between the respondents' defenses and a "second prosecutor problem" that will substantially prejudice *****'s position at trial. For these reasons, the Court should sever his trial from that of the co-respondents pursuant to Rule 14 of the Superior Court Rules of Juvenile Procedure.

7. ***** will also be unduly prejudiced by the co-respondents' statements that may be admitted in trial and that may inculpate him. ***** will not be able to exercise his rights under the Confrontation Clause if the government seeks to admit such a statement by a non-testifying co-respondent.

8. Many practitioners believe that the doctrine of Bruton v. United States does not apply to juvenile proceedings. This is an incorrect statement of law. The basic Bruton doctrine does apply in juvenile cases; that is, the statement of a non-testifying co-respondent may not be used against the respondent. However, in "bench" trials, the Bruton problem does not automatically require severance of co-respondents because the judge can perform the "mental gymnastics" necessary to separate evidence admissible against one respondent, but not the other. The issue of severance is left to the discretion of the courts.

9. In this case, the court's ability to exercise "mental gymnastics" and separate the evidence against each co-respondent will not adequately rectify the appearance of impropriety and extreme prejudice that a joint trial will create. Thus, severance is required in this case.

10. Ironically, the very same co-respondents who intend - albeit falsely - to blame ***** for the events alleged above, are the witnesses who will also likely have information that is exculpatory to *****. In particular, those co-respondents have information about the sequence of events leading up to the shooting of ***** by an officer in the Metropolitan Police Department.

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\(^1\) The Government will make the co-respondents' videotaped statements available after December 27, 2001, the filing date of this motion. There is some information about the content of the videotaped statements in the P.D. 379 completed by the police.
11. If the respondents are tried together in this case and the co-respondents choose not to testify, counsel will not be able to call co-respondents to obtain exculpatory testimony because the co-respondents have a Fifth Amendment privilege against self-incrimination while they are pending trial in this matter. ***** will not be able to exercise his right to present exculpatory testimony unless the cases are severed.

12. Once the co-respondents are tried they will no longer have a Fifth Amendment privilege. Once they no longer have a Fifth Amendment privilege, ***** will be able to subpoena them to testify at his trial, and they will be subject to this compulsory process.

13. Severance of the co-respondents and a continuance of *****’s trial until after the co-respondents have been tried would allow ***** to exercise his constitutional right to present exculpatory evidence - namely, the co-respondents’ testimony. *****’s right to present their testimony at trial far outweighs any interest in judicial efficiency served by proceeding with a joint trial.

WHEREFORE, for the reasons cited herein and any others that may appear to the Court, ***** asks this Court to sever his trial from that of his co-respondents, C.R. and C.S., and to continue his trial until after their trial and, if necessary, disposition.

Respectfully submitted,

____________________________
Attorney, #9999
Counsel for *****
Organization
Address
Phone
I. The Respondent May Move for Severance at Any Time to Avoid Undue Prejudice, and the Trial Judge Has a Continuing Obligation to Grant a Severance Motion If Such Prejudice Arises During Trial.


Severance of respondents is necessary when "it appears that a respondent or the government is prejudiced by [the] joinder." Super. Ct. Juv. R. 14. The joinder alone presents a presumption of prejudice to the defendant. \textit{See Davis v. United States}, 367 A.2d 1254, 1260 (D.C. 1976) \textit{cert. denied}, 434 U.S. 847 (1977). Additional prejudice exists in other situations, many of which present themselves in the instant case. First, prejudice exists when it is apparent that the co-respondents will present inherently irreconcilable defenses. Second, **** will be unfairly prejudiced when he is exposed to a "multiple attack" from both the government and his co-respondents, commonly known as the "second prosecutor problem." Third, arising out of the same problem, **** will be prejudiced if statements of a non-testifying co-respondent are admitted in his trial - even if not admitted as direct evidence against ****. Fourth, **** will be prejudiced if he is prevented from presenting exculpating testimony from his co-respondents at his trial because of his co-respondents' Fifth Amendment privilege against self-incrimination. Finally, **** will be prejudiced if the evidence against one co-respondent is far more damaging than the evidence against the respondent, raising the specter of guilt by association.

II. The Trial of ***** Must be Severed From the Trial of C.R. and C.S. Because They Will Present Both Inherently Irreconcilable Defenses and Multiple Attack from both the Government and His Co-Respondents.

Rule 14 allows the Court to sever properly-joined respondents in order to avoid prejudice to one respondent's position at trial. The presentation of "mutually antagonistic" or "irreconcilable" defenses by co-defendants often creates enough of this type of prejudice to mandate the severance of the defendants at trial. Zafiro v. United States, 506 U.S. 534, 538 (1993). For several reasons, the likely presentation of mutually antagonistic defenses in this case warrants severance of *****'s case from that of the co-respondents.

A. The Likely Presence of a "Second Prosecutor" Mandates Severance.

Situations in which one respondent attempts to escape criminal liability by placing blame for the entire criminal act on his co-respondent provide the most extreme examples of the prejudice created when respondents present mutually antagonistic defenses. In these circumstances, counsel for one respondent essentially becomes the "second prosecutor" of the other, and the latter respondent must counter the evidence and theories advanced not only by the government, but also by the co-respondent. The presence of the "second prosecutor" so prejudices such a respondent as to virtually eliminate his opportunity for a fair trial unless severance occurs. See United States v. Crawford, 581 F.2d 489 (5th Cir. 1978) (trial court erred in not severing trials where each co-defendant's defense theory centered on a contention that the other was solely responsible for the crime). See also United States v. Romanello, 726 F.2d 173, 177 (5th Cir. 1984) (cited in Mitchell v. United States, 569 A.2d 177, 182 n.4 (D.C. 1990)).

Based on the discovery and undersigned counsel's investigation thus far, counsel believes that a "second prosecutor" scenario will develop should the Court try ***** in a joint trial with the co-respondents. The information available to undersigned counsel indicates that the co-respondents will attempt to exonerate themselves by pointing an accusing finger at *****. Because the co-respondents will attempt to portray ***** as the person who planned and/or committed the alleged offenses, a substantial danger exists that the evidence and arguments presented by the co-respondents will provide the basis of the Court's finding that ***** is involved. See Mitchell, 569 A.2d at 182; Ready, 445 A.2d 982, 987 (D.C. 1982).

***** will thus have to counter not only the circumstantial evidence introduced by the government, but the significantly more compelling arguments and evidence presented by counsel for his co-respondents. In order to protect *****'s right to a fair trial, the Court should sever his trial from that of the co-respondents charged in this case.

B. The Inference of Guilt Created by the Presentation of Irreconcilable Defenses Mandates Severance.

Joinder of co-respondents who present "mutually antagonistic" or "irreconcilable" defenses also creates "a danger that the [fact-finder] will unjustifiably infer that this conflict [in the defenses presented] alone demonstrates that both [co-respondents] are guilty . . ." Rhone v. United States, 365 F.2d 980, 981 (D.C. Cir. 1966). The danger that the fact-finder will draw from the mere presentation of such
irreconcilable defenses the conclusion that at least one -- and perhaps both -- respondents are lying
arises not only when the respondents provide conflicting testimony, but also when their attorneys
present conflicting legal theories. Ready, 445 A.2d at 986. This risk compels a court to sever the trials of
the respondents unless it finds "with substantial certainty, that the conflict in the defenses alone [will]
not sway the [fact-finder] to find [the respondent] guilty." Id. at 987.

As noted above, ***** and the co-respondents will likely be presenting fundamentally irreconcilable defenses at trial. The fact-finder will be placed in precisely the situation posited in Rhone and
Ready, as the conflicting defense theories will increase the probability that both respondents will be
found involved. In order to eliminate the inference of guilt that will arise out of this conflict in trial
theories, the Court should sever the trial of ***** from that of the co-respondents.

III. *****’s Case Should Be Severed So That He Can Exercise His Rights Under the Confrontation
Clause in the Event that Statements by His Non-Testifying Co-Respondents Implicating Him
Are Admitted.

In the event that the co-respondents’ statements implicating ***** are admitted at trial and the
correspondents elect not to testify, ***** will be deprived of his right to cross-examine them about their
statements. See Bruton v. United States, 391 U.S. 123 (1968); see also In Re Gault, 387 U.S. 1 (1967) (estab-
lishing that juveniles are accorded all due process and constitutional rights provided to adult criminal
defendants, except the right to a jury).

Many practitioners believe that the doctrine of Bruton v. United States does not apply to juvenile
proceedings. This is an incorrect statement of law. The basic Bruton doctrine does apply in juvenile
cases; that is, the statement of a non-testifying co-respondent may not be used against the respondent.
However, in "bench" trials, the Bruton problem does not automatically require severance of co-respon-
dents because the judge can perform the "mental gymnastics" necessary to separate or compartmental-
ize evidence admissible against one respondent, but not the other. See In re L.J.W., 370 A.2d 1333, 1336-
37 (D.C. 1977) (establishing presumption that factfinder can compartmentalize evidence against each
defendant). The issue of severance is left to the discretion of the courts. Although severance on
Bruton grounds in bench trials are discretionary, severance should be granted in this case because there
is a greater risk that the evidence against each co-respondent in this case cannot be compartmentalized.
In contrast to L.J.W., there are reportedly three co-respondents' statements implicating *****, which will
be difficult to compartmentalize.

But even if the Court can compartmentalize the evidence in *****’s case, severance is still neces-
sary in this case to prevent an extraordinary appearance of impropriety. In this case, there are two co-
respondents who clearly intend to join in the government in the prosecution of ***** whether they tes-
tify or not. If they do not testify, the government's introduction of videotaped statements by the co-
respondents who seek to incriminate ***** is extremely prejudicial and reeks of the appearance of

3 Certainly L.J.W. cannot be read to suggest that prospective, pretrial severance of co-respondents in juvenile matters is never appro-
priate. Indeed, Superior Court (Juvenile) Rule 14 would be superfluous.
impropriety even if the statements are not offered as direct evidence against *****. Even the most talented of judges will have difficulty not being influenced by those statements.

While it is true that "appellate courts tend to attribute to trial judges remarkable powers of objectivity and detachment . . . these courts have recognized the problems inherent in these situations and have urged trial judges to avoid them." In re Dwayne W., 109 W.L.R. 1901, 1907 (Schwelb, J.). In discussing the difficulty a trial judge might have in objectively presiding over a non-jury trial after being exposed to inadmissible information, the D.C. Circuit Court of Appeals ruled that "[t]he disciplined judicial mind should not be subjected to any unnecessary strain; even the most austere intellect has a subconscious." United States v. Walker, 154 U.S. App. D.C. 6, 8, 473 F.2d 136, 138 (1972).

As Judge Schwelb of the District of Columbia Court of Appeals noted when he was a trial judge presiding over juvenile matters in this Court:

[Because] respondents are juveniles who have no right to a jury trial, [t]he government is . . . relieved of the burden of proving guilt beyond a reasonable doubt to twelve impartial arbiters of fact, and must satisfy only one. Under these circumstances, the responsibility of the trial judge, as the sole trier of fact, to decide the case solely on the basis of admissible evidence becomes critical, for there are no fellow jurors with whom he can deliberate to reach a consensus. Accordingly, when prejudicial and inadmissible evidence is brought to its attention, the Court must be especially careful to ensure that such extraneous material does not affect its disposition of the case.


Judge Schwelb further observed that "[a] Respondent's right to be tried solely on the basis of admissible evidence ranks high among the values protected by our legal system." Id. at 1909. Consequently, in the context of the Code of Judicial Conduct Canon 3(E)(1) as it pertains to juvenile proceedings, the Court of Appeals has recognized that "[e]rror in failing to [recuse and certify] is compounded when the judge sits as the trier-of-fact." Butler, 414 A.2d at 852.

Furthermore, "$[i]n order not to undermine the public confidence in the judiciary, the requirement of impartiality pertains not only to actual impartiality, but also to the appearance of impartiality." In re J.A., 601 A.2d 69, 75 (D.C. 1991). The appearance of judicial impartiality is central to our justice system. See Scott v. United States, 559 A.2d 745, 756 n.21 (D.C. 1989). This issue of the appearance of impropriety is most frequently visited in the context of requests for recusal when a judge has heard prejudicial and inadmissible evidence before a bench trial begins. The courts have applied an objective standard, requiring "that a judge must recuse from any case in which there is 'an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question [the] judge's impartiality.'" Id. at 745 (citing United States v. Heldt, 215 U.S. App. D.C. 206, 239, 668 F.2d 1238, 1271 (1981). See also Turman v. United States, 555 A.2d 1037 (D.C. 1989) (recusal mandated in bench trial where judge relied
Appendix A: Sample Documents

IV. Because There Is a Disparity Between The Evidence of *****'s Guilt and the Evidence of C.R.'s and C.S.'s Guilt, the Cases Must Be Severed to Avoid Prejudice Against *****.

A respondent is entitled to severance on the basis of a disparity of evidence when "the evidence of a [respondent]'s complicity in the overall criminal nature is de minimis when compared to the evidence against his co-[respondents]." Hawthorne v. United States, 504 A.2d 580, 585 (D.C. 1986). When the disparity of evidence is great, the possibility that the evidence of the co-defendant's guilt will improperly 'rub off' on the defendant looms large. United States v. Mardian, 546 F.2d 973, 977 (D.C. Cir. 1976) citing United States v. Kelly, 349 F.2d 720, 756-759 (2d. Cir. 1965), cert. denied. Severance is the safeguard against the possibility of prejudice resulting from a disparity of evidence. Severance is required when the evidence against the co-defendant is more damaging than the evidence against the defendant. United States v. Bolden, 514 F.2d 1301, 1310 (1975).

In the instant case, the evidence against the co-respondents is more damaging than the evidence against *****. According to the P.D. 379, the sole evidence against ***** consists of a police officer's allegation that **** was seen outside the house that is alleged to have been burglarized, and self-serving allegations by co-respondent C.R. and former co-respondent A.W., whose case was no-papercd, that **** stole a vehicle and planned a burglary. In contrast, the P.D. 379 indicates that A.W. and co-respondent C.R. drove away in the car that is alleged to have been stolen and that two male suspects, none of whom were ***** and one of whom may have been co-respondent C.S., were seen inside the house. In addition, all of the co-respondents - except ***** - have apparently confessed their guilt in at least some of the charges against them. In summary, the evidence implicating ***** is de minimis when compared to the evidence against the co-respondents.

The disparity in evidence will create prejudice against *****. If the cases remain joined, the fact finder will be presented with much more evidence of the co-respondents' guilt than of *****'s. As a result, ****, in addition to rebutting evidence implicating himself, will be saddled with the responsibi...
ity of separating himself from the evidence against the co-respondents. In light of the strong evidence against the co-respondents, the fact finder will necessarily be prejudiced against ****. This prejudice is compelling enough to outweigh any interests in joinder and requires a severance of ****'s trial from the co-respondents' trial.

V. The Respondents Must Be Severed and ****'s Trial Must Be Continued Until After the Co-Respondents' Trial Because the Co-Respondents Have a Fifth Amendment Right Not to Testify at Their Joint Trial, and **** Wishes to Present the Co-Respondents' Testimony in His Defense.

In this case, **** will be severely prejudiced if a severance and continuance are not granted because he will be effectively prevented from presenting exculpatory evidence at trial. Ironically, the very same co-respondents who intend - albeit falsely - to blame **** for the events alleged above, are the witnesses who will also likely have information that is exculpatory to ****. In particular, those co-respondents have information about the sequence of events leading up to the shooting of **** by an officer in the Metropolitan Police Department.

A. The Co-Respondents Cannot be Compelled to Testify at Their Own Joint Trial.

**** and co-respondents C.R. and C.S. are currently scheduled to stand trial together. C.R. and C.S. have a Fifth Amendment right not to incriminate themselves, and therefore, they cannot be involuntarily called as witnesses in their own criminal prosecution. U.S. CONST. AMEND. V; see Lefkowitz v. Turley, 414 U.S. 70, 77 (1973). For that reason, neither of them can be compelled to testify at their joint trial with ****.

B. The Respondents Must Be Severed and ****'s Trial Must Be Continued Until the Co-Respondents are Tried So That the Co-Respondents No Longer Enjoy a Fifth Amendment Privilege, Making Them Subject to Compulsory Process.

A defendant's due process right to call witnesses to testify on his behalf at his trial is fundamental to our system of justice. See Martin v. United States, 606 A.2d 120, 127 (D.C. 1991). "In the absence of the most compelling considerations, a [respondent] should not be required to go to trial without being able to present the testimony of a witness who might exculpate him." Id.

In deciding whether a defendant who wishes to present the testimony of a co-defendant is entitled to severance, the D.C. Court of Appeals has held that the trial judge should consider the following four factors: (1) the exculpatory nature of the desired testimony; (2) the desire of the movant to present this testimony; (3) the willingness of the co-defendant to testify; and (4) the demands of effective judicial administration. Id. at 127 (citing Jackson v. United States, 329 A.2d 782, 788 (D.C. 1974), cert. denied, 423 U.S. 851 (1975)).

In the instant case, consideration of these four factors weighs heavily in favor of severing the respondents and continuing ****'s trial until the co-respondents have been tried and, if necessary, sentenced.
1. The Testimony of the Co-Respondent is Exculpatory.

The Court of Appeals has held that for purposes of severance, the defendant does not have to demonstrate that a co-defendant's testimony will conclusively exonerate the defendant. *Id.* at 128 (citation omitted). Instead, it is sufficient that the proposed testimony could reasonably show that a fact in dispute is slightly more probable given the testimony than without it. *Id.* at 128-29 (citation omitted). Moreover, because the question of the co-defendant's credibility is a question for the fact-finder, the trial judge may not speculate as to the co-defendant's credibility in determining whether a defendant who wishes to present the testimony of a co-defendant is entitled to severance. *Id.* at 129.

In the instant case, counsel has been unable to speak with C.R. and C.S., as they are represented by counsel. However, counsel has a good faith belief that their testimonies would be exculpatory as they have information about the sequence of events leading up to the officer's shooting of *****.

2. ***** Wishes to Exercise His Right to Present the Co-Respondents' Testimony.

***** is moving pre-trial to sever his trial from that of C.R. and C.S. and postpone his trial until their trials are completed because he wishes to present their testimony in his own defense. ***** is willing to postpone his trial and abide by any conditions of pre-trial release imposed by the Court.

3. Once the Co-Respondents are Tried and No Longer Enjoy a Fifth Amendment Privilege, the Co-Respondents Will Be Subject to Compulsory Process.

To demonstrate that the co-respondents are "willing" to testify at *****s trial for purposes of severance analysis, ***** does not have to establish that C.R. or C.S. will voluntarily testify on his behalf at a later, separate trial, or provide an affidavit from them to that effect. *Id.* at 131. Instead, it is sufficient that the co-respondents will be subject to compulsory subpoena process once the co-respondents have been tried and, thus, no longer have a Fifth Amendment Privilege. *Id.*

In the instant case, if the Court grants *****s motion to sever and continue his trial, *****s counsel will promptly speak with the co-respondents and, if their testimony is helpful, place either one of them or both under subpoena to testify at *****s own trial upon the resolution of their case and disposition.

4. Any Interest in Judicial Efficiency is Outweighed by *****s Due Process Right to Present Exculpatory Evidence in His Defense.

Although concerns for judicial efficiency generally mitigate against severance of trials whenever possible, such concerns are far outweighed by the defendant's right to present testimony that might exonerate him at trial. *Id.* at 131 (citation omitted). In *Martin*, the defendant moved for a mistrial after his co-defendant entered a guilty plea, on the ground that the co-defendant made statements upon entering his plea that could exculpate the defendant. *Id.* at 125-26, 128-31. At that the point, the prosecution had already concluded the presentation of its case against both defendants. *Id.* at 125. Nevertheless, the Court of Appeals held that it was an abuse of discretion for the trial judge not to grant the mistrial. *Id.* at 132.
By contrast, in the instant case, ***** is moving for severance and continuance pre-trial. *****'s constitutional right to submit testimonial evidence will be severely prejudiced if the Court does not grant his motion for severance and continuance and requires ***** to proceed to trial jointly with his co-respondents.

VI. Conclusion

Because joinder prejudices ***** under Superior Court Rule of Juvenile Procedure 14, the co-respondents must be severed and *****'s trial continued until the completion of his co-respondents' trial. If *****'s trial is not severed and continued, he will be prejudiced under Rule 14 in several ways. First, he will be prejudiced because he and his co-respondents will present inherently irreconcilable defenses if they are forced to be tried together. Second, ***** will be prejudiced because he will be prevented from presenting exculpating testimony from his co-respondents because of his co-respondents' Fifth Amendment privilege against self-incrimination. Third, he will be exposed to a "multiple attack" from both the government and his co-respondents, commonly known as the "second prosecutor problem." Fourth, he will be prejudiced by the evidence against his co-respondents which is more damaging than the evidence against him, raising the specter of guilt by association. Finally, ***** will be prejudiced if statements of a non-testifying co-respondent are admitted in his trial - even if not admitted as direct evidence against *****

WHEREFORE, for the foregoing reasons, and any other reasons that may appear to the Court at a hearing, Respondent ***** asks this Court to grant his Motion to Sever and Continue.

Respectfully submitted,

_______________________________
Attorney, #9999
Counsel for *****
Organization
Address
Phone
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION -- JUVENILE SECTION

In the Matter of:

Case No. J-5555-55
Social File: 555555
Judge Name
Trial: January 7, 2002

ORDER

Upon consideration of Respondent's Motion to Sever and Continue and the Memorandum of
Points and Authorities in Support Thereof, it is hereby

ORDERED that Respondent's Motion is GRANTED, and it is
FURTHER ORDERED that Respondent ***** is severed from Co-Respondents C.R. and C.S.,
and it is
FURTHER ORDERED that Respondent *****'s trial is continued until , 2001.

Judge Name

Notice To:

Attorney
Organization
Address
Phone

Name
Counsel for C.R.
fax: **************

Name
Counsel for C.S.
fax: **************
The Respondent *****, through undersigned counsel, respectfully moves this Court to allow a one-day release from secure detention for the sole purpose of visiting Youth For Tomorrow, a residential program that has already accepted *****'s application, and possibly the Barry Robinson Center, a residential program that is considering *****'s application. *****'s family and undersigned counsel will escort ***** to the residential programs all located in Virginia and after the visit, bring him immediately back to the Oak Hill detention center. We also respectfully request a brief one-week continuance of the disposition to allow ***** and his family to further explore both residential programs.

In support of this motion, counsel states:


2. Since February 9, 2002, ***** has been detained at Oak Hill Youth Detention Center pending disposition.

3. ***** and his family have decided that residential placement will offer the most appropriate type of rehabilitative services that ***** needs to prevent future involvement in delinquent behavior. With strong supervision by positive role models, effective therapy, and a highly structured program, ***** could meet his potential to be a productive and law-abiding citizen.

4. The appropriate level of rehabilitative services in not available in the District of Columbia or Maryland and ***** has been unable to resist the negative peer influences in his environment. Outpatient therapy and counseling while residing in the community have not been successful because of the distractions that ***** faces in D.C. and Maryland. With his latest arrest, ***** also expressed his desire to "get away" and start anew in an environment that could help him attain his academic goals while teaching him how to deal effectively with peer pressure and desire to engage in risky behavior.

5. Oak Hill cannot provide the appropriate level of rehabilitative services for *****. The academic and recreational components are inadequate and Oak Hill does not have the type of therapy, appropriate staff-child ratio, and resources that are available at residential placement programs. ***** has endured his detention at Oak Hill but has no confidence that he can be rehabilitated there. Instead, he feels that he needs a residential program to help him change his behavior and to succeed
Appendix A: Sample Documents

Academically and socially. Even the Oak Hill Social Services staff have asked when residential placement will be available for ***** because they feel it is imperative that he be placed very soon in a more appropriate setting that can meet his service needs.

6. On May 14, 2002, the Residential Review Committee (RRC) at St. Elizabeth’s Hospital designated ***** in need of residential care.

7. Undersigned counsel, *****’s probation officer Ms. V.M., *****’s family and, most recently, the RRC have been exploring residential placement programs for *****.

8. Youth for Tomorrow (often referred to as "Joe Gibbs’ program") in Bristow, Virginia, is currently a likely placement option for *****. It emphasizes behavior modification along with a strong academic component and individual and group therapy. Unlike most programs that focus on behavior modification through counseling and rigorous academics, Youth for Tomorrow is one of the few such residential programs that will accept children on psychotropic medication. Because ***** is still a young child and placing him in a residential program is a significant change in his life, he would like to be placed close to home where his family will not have much difficulty contacting and visiting him yet far enough away so that he will not contact or be contacted by friends. Youth for Tomorrow is close enough that his family will be able to visit him without any financial constraints. It is also very important to ***** to be placed at a residential program that focuses on academics, such as Youth for Tomorrow.

9. Youth for Tomorrow has conditionally accepted ***** (admitted once appropriate documentation is submitted). The admissions staff and counselors are eager to help ***** and believe strongly that the program can provide the rehabilitative services that he needs. The counselors who interviewed ***** indicated that they are "very excited" about *****’s ability to benefit from the program.

10. *****’s mother, Ms. B.S., and undersigned counsel (Attorney) visited Youth for Tomorrow on May 20, 2002. The admissions director, Ms. S.H., and counselors who admitted ***** met with the parties and a child currently at the program gave a tour of the facilities.

11. Based on our visit and other information about the program obtained through newspaper articles and Youth for Tomorrow literature, Youth for Tomorrow appears to be an appropriate residential placement for ***** at this time. It is also a program that ***** expresses strong interest in at this time. However, ***** would like to visit Youth for Tomorrow to ensure that it is the program where he will most likely succeed.

12. In addition, the Residential Review Committee (RRC) has submitted an application to the Barry Robinson Center in Norfolk, Virginia and is scheduled to interview ***** on May 29, 2002. The RRC feels the Barry Robinson Center, a contracted provider, is an appropriate program for *****. Undersigned counsel and *****’s family just recently learned about this potential placement option and would like more opportunity to explore this program with *****. If and when this program accepts ***** for placement, *****’s family and undersigned counsel would also like to visit the Barry Robinson Center to ensure that it is an appropriate placement for ***** and compare this option to Youth for Tomorrow. Ms. S. is able to visit both Barry Robinson and Youth for Tomorrow on June 3. She can transport ***** to those visits.
13. Allowing ***** a one-day release to visit the program also does not present any risk of abscondence. Unlike most children in the system, ***** actually wants to receive services at a residential program until he feels confident that he can live with his family in the community without risk of further delinquent behavior. Thus, ***** does not want to jeopardize his prospects for residential placement at Youth for Tomorrow or any other program. ***** has also stabilized with his psychotropic medication and spent substantial time at Oak Hill reflecting on his past behavior and future goals.

14. If the Court grants this motion, ***** will visit both residential programs on the same day.

Wherefore, for the foregoing reasons and any others that may appear to this Court, ***** respectfully moves this Court to authorize a one-day release from Oak Hill to permit ***** to visit Youth for Tomorrow and possibly, Barry Robinson Center, and for a brief continuance of the disposition.

Respectfully submitted,

_______________________________
Attorney, #4321
Counsel for *****

_______________________________
Supervising Attorney, #765432
Organization
Address
Phone

Certificate of Service

I hereby certify that a copy of the Respondent's Motion for One-Day Release to Facilitate Disposition Planning was faxed to the Office of _________, 123 4th Street, NW, Washington, DC 20001, Attn: Name, Esq., on this the 24th day of May 2002.

_______________________________
Attorney
IN THE MATTER OF : IN THE COURT OF COMMON PLEAS

*****,
: OF ***** COUNTY, PENNSYLVANIA

A MINOR : JUVENILE DIVISION

DOCKET NO. *****

EXCEPTIONS TO THE RECOMMENDATION OF THE MASTER

AND NOW, comes the above-mentioned juvenile, ***** by and through her attorney, ***** Assistant Public Defender, and files the within Exceptions to the Recommendation of the Master, and in support thereof states as follows:

1. The above-named juvenile, ***** is ** years of age, with a date of birth of ***** 19**.

2. On ******, 200*, a hearing was held before the Juvenile Court Master on allegations of criminal attempt at theft by unlawful taking, aggravated assault and disorderly conduct.

3. The Master recommended that the allegations of criminal attempt and disorderly conduct be sustained and that the allegation of aggravated assault be dismissed.

4. The undersigned believes and avers that the Master's Findings of Fact and Conclusions of Law were against the weight of the evidence such that the juvenile is entitled to a hearing de novo, or in the alternative, is entitled to have the evidence presented reviewed by this court.

5. A "weight" determination, in contrast to an "evidence sufficiency" determination, is addressed to the discretion of the trier of fact and that decision will not be disturbed absent an abuse of discretion. However, a post-trial 'weight of the evidence ruling' should be reversed if the defense shows that the decision was so contrary to the evidence as to shock one's sense of justice, and as to make the award of a new trial imperative in order that right may be given another opportunity to prevail. Commonwealth v. Small, 741 A.2d 666, 673 (Pa. 1999); Commonwealth v. Ragan, 653 A.2d 1286, 1287 (Pa. Super. 1995).

6. The conscience may be shocked sufficiently, in the legal sense, by the overlooking of a sufficient portion of the evidence by the trier of fact. Commonwealth v. Walker, 656 A.2d 90, 97 (Pa. 1995).

7. Small verifies that inconsistencies and inaccuracies in Commonwealth witnesses' testimony can be so major that a new trial must be awarded despite the critically important credibility-assessment function of the trier of fact. Id.

8. Where the evidence offered to support a guilty verdict is so unreliable and/or contradictory as to make any verdict based thereon pure conjecture, a jury may not be permitted to return such a finding. However, this principle only applies where a verdict based on the evidence is unreasonable. That is, a new trial may be appropriate where the testimony at trial was "hopelessly contradictory." Commonwealth v. Beckham, 349 Pa. Super. 430, 435-36 (1986).
9. The testimony of the police officer and the two lay witnesses was inconsistent and, the undersigned argues, hopelessly contradictory throughout. Sergeant ***** testified that when Mr. S yelled that someone was trying to take his gun, he was standing at the open driver's side door of his car with his right side, the side on which he carries his gun, turned to the inside of the car. He further testified that he did not feel anyone pulling at his gun, nor did he sense anyone coming up on him. However, the lay witnesses, JS and SJ, both testified that Mr. M was pulling on the gun with some force. SJ even testified that Mr. M had unsnapped the strap that held the gun in the holster. JS testified that the officer was standing with his front turned to the inside of the police car and his back turned completely to the street. SJ testified that the officer was down on the ground with his face toward the ground as Mr. M stood over him, straddled him, and yanked repeatedly on his gun.

10. The undersigned believes and avers that the Master overlooked the contradictory statements of the Commonwealth's witnesses. Having overlooked this quantum of evidence, the Master's decision should be deemed to shock the conscience, as there was insufficient evidence to support his findings and conclusions.

11. The undersigned believes and avers that such hopeless inconsistencies cannot be resolved based on failed memory. Moreover, the testimonies are so inconsistent that it is impossible to discern who has lied. On that basis the undersigned believers and avers that the Commonwealth has failed to prove its case beyond a reasonable doubt.

12. Based on the foregoing, the undersigned believes and avers that a hearing or review de novo should be granted.

WHEREFORE, the above-named juvenile, ******, respectfully requests that this Honorable Court review the transcript of the Master's hearing and direct that the allegations against the juvenile be dismissed. In the alternative, the juvenile requests that this Honorable Court issue and order setting this matter for rehearing before a Judge of the Juvenile Court Division.

Respectfully submitted,

__________________________________
Organization
Address

Dated: Phone
IN THE MATTER OF: IN THE COURT OF COMMON PLEAS
******, OF ***** COUNTY, PENNSYLVANIA
A MINOR: JUVENILE DIVISION
DOCKET NO. *****

RULE TO SHOW CAUSE

AND NOW, this ___ day of ______, it is hereby ORDERED that a Rule be issued against the Commonwealth to Show Cause why the relief requested in the foregoing Exceptions should not be granted. Said Rule returnable the ___ day of ________, at ____ in Courtroom ______.

BY THE COURT:

_____________
Judge
IN THE MATTER OF: IN THE COURT OF COMMON PLEAS
***** ,:
OF ***** COUNTY, PENNSYLVANIA:
JUVENILE DIVISION
A MINOR :
DOCKET NO. *****

ORDER

AND NOW, to wit, this ___ day of ________, it is hereby ORDERED, ADJUDGED and DECREED
that the relief requested in the foregoing Exceptions is granted. The Master's Recommendation is rejected
and the allegations against the juvenile are dismissed.

BY THE COURT:

________________
Judge
IN THE MATTER OF:  

*****:

A MINOR 

IN THE COURT OF COMMON PLEAS  
OF ***** COUNTY, PENNSYLVANIA  

JUVENILE DIVISION  

DOCKET NO. ******

ORDER

AND NOW, to wit, this day of 2004, it is hereby ORDERED, ADJUDGED and DECREED that the relief requested in the foregoing Exceptions is granted. A rehearing on the allegations of criminal attempt at theft by unlawful taking and disorderly conduct will be held on _____ at ___ in Courtroom ___.

BY THE COURT:

________________________
Judge
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
JUVENILE DIVISION

IN RE: )
 )
***** ) No.: *****

NOTICE OF APPEAL

An appeal is taken from the order of judgment described below.

(1) Court to which appeal is taken: ________________________________

(2) Name of appellant and address to which notices shall be sent.

Name: _____________________________
Address: ___________________________

(3) Name and address of appellant’s attorney on appeal.

Name: _____________________________
Address: ___________________________

If appellant is indigent and has no attorney, does he want one appointed? ______

(4) Date of judgment on order. ________________________________

(5) Offense of which convicted: ________________________________

(6) Sentence: ________________________________________________
________________________________________________
________________________________________________

(6) If appeal is not from a conviction, nature of order of appealed from: ______

Signed: __________________________
Attorney for Appellant

The notice of appeal may be amended as provided in Rule 303(b)(4).
IN RE: ) Appeal From Cook County Circuit Court,
CK ) Juvenile Justice Division
) Judge ******, presiding
) No. ******
Minor, Respondent -Appellant ) Date of Notice of Appeal ******
) Juvenile / Felony (EJJ)
) in Custody

DOCKETING STATEMENT
(Juvenile / EJJ)

Counsel on Appeal

For Appellant: *********
Trial Counsel: *********
For Appellee: *********

Court Reporter(s): See attached.

Approximate duration of trial court proceedings to be transcribed: 17 days (42 days have already been transcribed).

Nature of Case:
( ) Appeal from conviction after trial
( ) Jury trial

General Statement of Issues Proposed to be Raised:

1) Whether the Extended Juvenile Jurisdiction provision of the Juvenile Court Act is unconstitutional on its face.

2) Whether the Extended Juvenile Jurisdiction provision of the Juvenile Court Act is unconstitutional as applied in this case.

3) Whether designation of the Minor-Respondent's case as an Extended Juvenile Jurisdiction case was improper.

4) The Extended Juvenile Jurisdiction provision of the Juvenile Court Act as applied is inconsistent with the stated rehabilitative goals of the Juvenile Court Act.
5) Whether the admission of Minor-Respondent's confession at trial violated his rights under the United States and Illinois Constitutions.

6) Whether the Minor-Respondent’s sentence constitutes cruel and unusual punishment

I, attorney for the Appellant, certify that on January 31, 2002, I asked the Clerk of the Circuit Court to prepare the record and on December 28, 2001, trial counsel ******* made a written request to the court reporter's office to prepare the remaining transcripts of the proceedings that had not yet been prepared.

Dated: January 31, 2002

_____________________________________

Minor-Respondent - Appellant's Attorney

I hereby acknowledge receipt of an order for the preparation of a report of proceedings.

____________________________________  ________________________________

Date  (Court Reporter/Supervisor)
STATE OF MINNESOTA
COUNTY OF __________

DISTRICT COURT - JUVENILE DIVISION

In the Matter of the Welfare of

****,

Petitioner.

TCIS Case No
TCIS Family ID No.
TCIS Youth ID No.

TO: THE HONORABLE ***, JUDGE OF JUVENILE COURT; ***, COUNTY ATTORNEY; and ***, ASSISTANT COUNTY ATTORNEY:

NOTICE OF MOTION

PLEASE TAKE NOTICE, that on November , 2004, at , or as soon thereafter as counsel may be heard, before the Honorable ***, Judge of Juvenile Court, Petitioner will move the Court for an Order granting relief as set forth in the attached Motion.

MOTION

Petitioner hereby moves the Court for an Order granting the following relief:

(a) an Order notifying the BCA that delinquency petition was filed and dismissed

(b) an Order that all records of the Juvenile Justice Center, Juvenile Probation Department, Juvenile Court, Hennepin County Attorney’s Office, and Hennepin County Sheriff concerning the investigation, prosecution, and disposition of this case be sealed;

(c) an Order requiring the Probation Department to ensure the retrieval or sealing of all the information it disseminated concerning this case;

(d) an Order directing the Minnesota Department of Public Safety, the Minnesota Department of Corrections, the Brooklyn Park Police Department, and the Brooklyn Center Police Department to seal all records concerning the investigation and prosecution of this case;

(e) an Order directing the Osseo Area Schools (I.S.D. No. 279), including but not limited to Brooklyn Junior High, the Brooklyn Center Schools (I.S.D. No. 286), including but not limited to Brooklyn Center Junior-Senior High, and the Robbinsdale Area Schools (I.S.D. No. 281), including but not limited to Robbinsdale Cooper High School to return to Petitioner all records concerning this case;

(f) an Order directing CHOICES Psychotherapy, Woodland Hills, Treehouse Youth Outreach Program, African American Family Services, Operation DeNovo, and Chisholm House to destroy all records concerning this case;
(g) an Order directing the Hennepin County District Court Psychological Services to return to Petitioner all records concerning her court-ordered psychological evaluation, directing it to destroy its entire file on Petitioner and to remove her name from its records;

(h) an Order that the Bureau of Criminal Apprehension return to Petitioner the DNA sample which she provided pursuant to court order, along with all information maintained by it, and that the BCA remove from its records all references to Petitioner;

(i) any further Orders necessary to make Petitioner whole and to return her to the position in which she was prior to the Court's adjudication of delinquency.

The grounds for this motion are as follows:

1) On May 2, 2003, the Court, after hearing testimony, found Petitioner guilty of two counts of assault in the second degree.

2) On May 22, 2003, Petitioner appeared for disposition, at which time the Court adjudicated her delinquent, placed her on probation, and imposed certain conditions of probation. The Court also ordered that Petitioner comply with other statutory requirements, including providing a DNA sample.

3) Petitioner thereafter timely filed an appeal with the Court of Appeals.

4) On March 16, 2004, the Court of Appeals filed its decision reversing Petitioner's delinquency adjudication, holding that the evidence was insufficient to support the guilty findings on both charged counts.

5) The State did not seek further review of this decision, and on April 26, 2004, the Court terminated Juvenile Court jurisdiction and probation.

6) But for Petitioner's delinquency adjudication, Juvenile Court jurisdiction would have been dismissed, and Petitioner would never have been ordered to complete the conditions of probation or provide a blood sample for DNA analysis.

7) The information generated and disseminated pursuant to Petitioner's erroneous delinquency adjudication should not have created in the first place; consequently, there is no justification for its retention.

8) Because neither the BCA nor the Probation department should have disseminated the information regarding Petitioner's delinquency adjudication, this Court must exercise its statutory and inherent authority to restore her to the position in which she would have been had the Court not found her guilty.

9) Forcing Petitioner to provide a sample of her blood violates her constitutional rights under the United States and Minnesota Constitutions to be free from unreasonable searches and seizure, to privacy, and to the presumption of innocence.
Because the Bureau of Criminal Apprehension should not have received a blood sample for analysis, and neither the BCA nor the Probation department should have disseminated the information regarding Petitioner's delinquency adjudication, this Court must exercise its statutory and inherent authority to restore her to the position in which she would have been had the Court not found her guilty.

Thus, the Court should grant the requested relief.

This Motion is based on all the files, records and proceedings in the above matter, on the arguments of counsel, on any written or oral testimony or evidence, or memoranda of law, which the Court will either permit or require, and is based on the following grounds, without limitation:

Respectfully submitted,

OFFICE OF THE ______ COUNTY PUBLIC DEFENDER

__________, CHIEF PUBLIC DEFENDER

By_____________________

Assistant Public Defender

Attorney License

Address

Phone

DATED: This day of November, 2004.
STATE OF MINNESOTA
COUNTY OF __________

In the Matter of the Welfare of

****,

Petitioner.

MEMORANDUM IN SUPPORT OF
MOTION TO
EXPUNGE JUVENILE RECORDS

TCIS Case No.
TCIS Family ID No.
TCIS Youth ID No.

FACTS

Petitioner was initially adjudicated delinquent on two felony counts of second-degree assault. The court's initial adjudication of delinquency triggered the creation and dissemination of tremendous amounts of information. This data included:

• a pre-disposition report and probation records from the Juvenile Probation Department
• a psychological evaluation performed as part of the pre-disposition process
• information forwarded by the Court to BCA, under Minn. Stat. § 260B.171, subd. 2
• information forwarded to Petitioner's schools, under Minn. Stat. § 260B.171, subd. 3
• a biological specimen for DNA analysis, under Minn. Stat. § 609.117, subd. 3(iii)

Petitioner's conviction was subsequently overturned by the Court of Appeals, based on the sufficiency of the evidence. Welfare of K.M.M.N., Matter of, A03-759, 2004 WL 503779 (March 16, 2004). The State chose not to seek review, and shortly thereafter, on April 26, 2004, Juvenile Court jurisdiction and probation were dismissed.

ARGUMENT

I. THE COURT HAS BROAD AUTHORITY TO EXPUNGE JUVENILE RECORDS

Courts have both statutory and inherent powers to grant expungement relief. State v. Ambaye, 616 N.W.2d 256, 257 (Minn. 2000); State v. C.A., 304 N.W.2d 353, 357 (Minn. 1981). The statutory authority for the expungement of juvenile records proceeds from Minn. Stat. § 260B.198, subd. 6, while expungement of adult criminal records is contained in Minn. Stat. § 299C.11 and ch. 609A.

A. Adult criminal law presumes expungement following resolution of proceedings in petitioner's favor.

Pursuant to Minn. Stat. §§ 299C.11 and 609A.02, all records relating to an adult's arrest, indictment, trial or verdict may be sealed if the proceedings were resolved in favor of the petitioner. The statute specifically states that, if the proceedings were resolved “in favor of the petitioner,” she is presumptively entitled to
expungement "unless the agency or jurisdiction whose records would be affected establishes by clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the petitioner of not sealing the record." Minn. Stat. §§ 609A.02, subd. 3; 609A.03, subd. 5(b). Additionally, adults may obtain the return of fingerprints, photographs, and other identification data, if all pending actions are resolved in their favor, provided that they have not been convicted of a felony or gross misdemeanor in the previous ten years, or if no charges were ever filed or if they were dismissed prior to a finding of probable cause. Minn. Stat. § 299C.11(b), (c).

The trial court has inherent authority to expunge adult criminal records "where the petitioner's constitutional rights may be seriously infringed by retention of [her] records," or where "expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record." Ambaye, 616 N.W.2d at 257-58 (internal citations omitted).

B. As an adult, Petitioner would be presumptively entitled to the relief sought.

Because the proceedings were resolved in Petitioner's favor, were Petitioner an adult, she would be able to have all of the records relating to her arrest, charging, trial and verdict sealed pursuant to Minn. Stat. § 609A.02, subd. 5(b). C.A., 304 N.W.2d at 355 (reversal of a conviction on appeal constitutes resolution in the petitioner's favor). This includes Petitioner's arrest records, fingerprints, and photographs under In re: R.L.F., 256 N.W.2d 803, 805 (Minn. 1977), which is still good law. State v. Bragg, 577 N.W.2d 516, 519 (Minn. Ct. App. 1998). The requirement that other criminal justice agencies must seal their records following resolution in the petitioner's favor proceeds from statute, and so transcends the limitations on a court's inherent equity power. Ambaye, 616 N.W.2d at 257-58. Moreover, were Petitioner currently an adult, this Court would still have the inherent authority to seal all the records of the Court, Probation Department, Hennepin County Sheriff, and Hennepin County Attorney. C.A., 304 N.W.2d at 358, 360; See also Minn. Stat. §.

C. Juvenile Law Contemplates Broader Expungement Authority than Criminal Law

Minn. Stat. § 260B.198, subd. 6, permits the court to expunge adjudications of delinquency at any time "that it deems advisable." Thus, the juvenile expungement statute is much broader than chapter 609A. That being the case, it is clear that the legislature intended the authority of juvenile court judges to exceed that of their adult district court counterparts in protecting the rights of juveniles. Moreover, the legislature in Minn. Stat. § 299C.095, subd. 2(c) specifically provided for the destruction of juvenile data maintained by corrections and the BCA upon dismissal of a delinquency petition. That grant of statutory authority clearly permits the court to order similar actions here.

Obviously, sound public policies account for the juvenile court's much greater latitude in granting expungement. First and foremost is the fact that juvenile adjudications should not generally be considered convictions. Juvenile courts also serve a rehabilitative mission, Minn. Stat. § 260B.001, subd.2, and consequently juveniles’ records are usually unavailable to the public and destroyed after the juvenile reaches the age of 28. Minn. Stat. § 260B.171, subd. 1; State v. Schilling, 270 N.W.2d 769, 772 (Minn. 1987). For these reasons, Legislature has indicated that the interests of the public and public safety in having access to such records - which must be proved by clear and convincing evidence to overcome the presumption favoring adult expungement - outweigh neither the aims of the juvenile justice system nor the disadvantages to a juvenile petitioner which follow from not sealing her records. This is especially true where, as here, the juvenile was vindicated by the court system.
II. PETITIONER IS ENTITLED TO BE MADE WHOLE

A. Petitioner is entitled to be restored, as closely as possible, to her previous position.

The expungement statutes seek to "wipe [the] slate clean," especially for an individual who was not convicted of a crime. In re: R.L.F., 256 N.W.2d at 805-06. Since Petitioner should not have been adjudicated delinquent, she should be restored, as nearly as possible, to her prior status. This goal is particularly appropriate in view of the juvenile justice system's effort maintain participants' confidentiality. Schilling, 270 N.W.2d at 772; Petition for Certain Records of McLeod County Juvenile Court, Matter of, 352 NW2d 24, 28 (Minn. App. 1984).

B. The Court can order the return or destruction of documents as part of this process.

Expungement means to "erase all evidence of the event as if it never occurred," which can be accomplished either by destroying the evidence, sealing it, or returning it. State v. C.A., 304 N.W.2d 353, 357 (Minn. 1981); State v. M.B.M., 518 N.W.2d 880, 882 (Minn. Ct. App. 1994). While most juvenile records are currently not considered public information, their protected status is a result of legislative policy, and could always change. See Welfare of Z.P.B., Matter of, 474 N.W.2d 651, 654 (Minn. App. 1991). Moreover, as the Court knows, even private records find their way into the wrong hands. To avoid these unintended consequences and the possibility of future lawsuits, Petitioner urges the Court to order the destruction or return of certain documents, as deemed appropriate.

C. In addition to sealing its own records, and the records of its agents, including the Hennepin County Sheriff, and the Hennepin County Attorney, the Court should grant additional relief as follows.

1. The Court should notify the Bureau of Criminal Apprehension ("BCA") of updated information and verify the destruction of juvenile history data.

Minn. Stat. § 260B.171, subd. 2, requires the juvenile court to transmit information to the BCA concerning juveniles charged and convicted of offenses in juvenile court. Petitioner assumes that the court forwarded this information after she was found guilty and adjudicated delinquent. However, when the facts alleged in the petition have not been proved, Minn. Stat. § 260B.193, subd. 1 requires the court to dismiss the petition. Additionally, Minn. Stat. § 299C.095, subd. 2(c), requires that "[j]uvenile history data on a child against whom a delinquency petition was filed and subsequently dismissed must be destroyed [by the BCA] upon receiving notice from the court that the petition was dismissed." In order to make her whole, Petitioner requests this court to order that this agency be informed that the conviction and adjudication were erroneous, that the adjudication has been stricken, and that all evidence of the adjudication should be removed from their records, a result required by Minnesota law. Additionally, to ensure Petitioner's restoration to her previous position, she asks that the Court Administrator verify the BCA's compliance with the Court's order.

2. Petitioner is entitled to the return of information sent to and generated by her schools following her placement on probation.

Minn. Stat. § 260B.171, subd. 3(a)(1) directs juvenile probation officers to send certain materials to Petitioner's schools. Minnesota already limits a school district's interest in retaining such materials. Minn.
Stat. § 121A.75, subd. 2(e). In light of these restrictions, Petitioner contends that the schools' interest in these documents cannot outweigh her interest in being made whole.

More importantly, restoring Petitioner to her previous position requires that the schools be ordered to return to her any material received from the probation department and any subsequent records generated as a result of this material. Had Petitioner not been placed on probation, nothing would have been sent to any school concerning her delinquency adjudication. Since these records would not otherwise have been generated, there can be no good reason for retaining them.

3. Petitioner is entitled to the return of her treatment records.

As a condition of probation, Petitioner was ordered to complete therapy through CHOICES Psychotherapy and anger management training through African American Family Services. Additionally, Petitioner was committed to the Chisholm House 120 day program. Although the court stayed Petitioner's out-of-home placement, Chisholm House may possess records of this assignment. Had Petitioner not been erroneously convicted and placed on probation, she would not have been required to complete this programming. Therefore, she is clearly entitled to the return of all material generated by these programs, the destruction of all files pertaining to her, and the removal of her name from their records. Although such information is generally unavailable to the public, this information should never have been generated. No good reason for its retention exists.


After the court's finding of guilt, it ordered Petitioner to undergo a psychological evaluation and pre-disposition report by the probation department, as authorized by Minn. Stat. § 260B.193, subd. 2. Had Petitioner not been convicted, however, the court would not have ordered such evaluations and no reports would have been created. Although the findings may be valid and potentially useful, the evaluations should never have been ordered. As a result, the material should be returned to Petitioner, her file destroyed, and her name be removed from the records of the court and probation department.

5. Petitioner Is Entitled to the Return of the Probation Department's Records.

For similar reasons, Petitioner is entitled to have the juvenile probation file destroyed, her name removed from its records, and all the material therein returned to her. Had she not been erroneously found guilty of the charges in the petition, no pre-disposition report would have been ordered, and probation would never have established a file on her. No justification permits the probation department to retain this information when its gathering was not justified by a legal finding of guilt.
CONCLUSION

For the above reasons, Petitioner is entitled to the relief requested in her motion. Much of the relief is necessary to restore the Petitioner to her position before the erroneous finding of delinquency and the subsequent conditions of probation. The relief requested is appropriate in light of the Court's broad authority to expunge juvenile records.

Respectfully submitted,

OFFICE OF THE ________ COUNTY PUBLIC DEFENDER
__________, CHIEF PUBLIC DEFENDER

By_____________________
Assistant Public Defender
Attorney License
Address
Phone

DATED: This    day of November, 2004.
Ten Principles

What follows is a document adopted by the American Council of Chief Defenders and the National Juvenile Defender Center in December 2004 to assist in efforts to reform and improve juvenile indigent defense systems across the country.

TEN CORE PRINCIPLES
FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION
THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS

Preamble

A. Goal of These Principles

The Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems are developed to provide criteria by which an indigent defense system may fully implement the holding of In Re: Gaul.5 Counsel’s paramount responsibilities to children charged with delinquency offenses are to zealously defend them from the charges leveled against them and to protect their due process rights. The Principles also serve to offer greater guidance to the leadership of indigent defense that solicited is as to the role of public defenders, contract attorneys or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children in delinquency proceedings as well as those prosecuted in adult court.7

While the goal of the juvenile court has shifted in the past decade toward a more punitive model of client accountability and public safety, juvenile defender organizations should reaffirm the fundamental purposes of juvenile court: (1) to provide a fair and reliable forum for adjudication; and (2) to provide appropriate support, resources, opportunities and treatment to assure the rehabilitation and development of competencies of children found delinquent. Delinquency cases are complex, and their consequences have significant implications for children and their families. Therefore, it is of paramount importance that children have ready access to highly qualified, well-resourced defense counsel.

Defender organizations should further reject attempts by courts or by state legislatures to criminalize juvenile behavior in order to obtain necessary services for children. Indigent defense counsel should play a strong role in determining this and other juvenile justice related policies.

In 1995, the American Bar Association’s Juvenile Justice Center published A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings, a national study that revealed major failings in juvenile defense across the nation. The report spurred the creation of the National Juvenile Defender Center and nine regional defender centers around the country. The National Juvenile Defender Center conducts state and county assessments of juvenile indigent defense systems that focus on access to counsel and measure the quality of representation.4

B. The Representation of Children and Adolescents is a Specialty

The Indigent Defense Delivery System must recognize that children and adolescents are at a crucial stage of development and that skilled juvenile delinquency defense advocacy will positively impact the course of clients’ lives through holistic and zealous representation.

The Indigent Defense Delivery System must provide training regarding the stages of child and adolescent development and the advances in brain research that confirm that children and young adults do not possess the same cognitive, emotional, decision-making or behavioral capacities as adults. Expectations, at any stage of the court process, of children accused of crimes must be individually defined according to scientific, evidence-based practice.

The Indigent Defense Delivery System must emphasize that it is the obligation of juvenile defense counsel to maximize each client’s participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client. The client’s minority status does not negate counsel’s obligation to appropriately litigate factual and legal issues that require judicial determination and to obtain the necessary trial skills to present these issues in the courtroom.

C. Indigent Defense Delivery Systems Must Pay Particular Attention to the Most Vulnerable and Over-Represented Groups of Children in the Delinquency System

Nationally, children of color are severely over-represented at every stage of the juvenile justice process. Research has demonstrated that involvement in the juvenile court system increases the likelihood that a child will subsequently be convicted and incarcerated as an adult. Defenders must work to increase awareness of issues such as disparities in race and class, and they must zealously advocate for the elimination of the disproportionate representation of minority youth in juvenile courts and detention facilities.

Children with mental health and developmental disabilities are also over-represented in the juvenile justice system. Defenders must recognize mental illness and developmental impairments, legally address these needs and secure appropriate assistance for these clients as an essential component of quality legal representation.

Drug- and alcohol-dependent juveniles and those dually diagnosed with addiction and mental health disorders are more likely to become involved with the juvenile justice system. Defenders must recognize, understand and advocate for appropriate treatment services for these clients.

Research shows that the population of girls in the delinquency system is increasing, and juvenile justice system personnel are now beginning to acknowledge that girls’ issues are distinct from boys’. Gender-based interventions and the programmatic needs of girls, who have frequently suffered from abuse and neglect, must be assessed and appropriate gender-based services developed and funded.

In addition, awareness and unique advocacy are needed for the special issues presented by lesbian, gay, bisexual and transgender youth.
Ten Principles

1. The Indigent Defense Delivery System Upholds Juveniles’ Right to Counsel Throughout the Delinquency Process and Recognizes the Need for Zealous Representation to Protect Children

A. The indigent defense delivery system should ensure that children do not waive appointment of counsel. The indigent defense delivery system should ensure that defense counsel are assigned at the earliest possible stage of the delinquency proceedings.

B. The indigent defense delivery system recognizes that the delinquency process is adversarial and should provide children with continuous legal representation throughout the delinquency process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement and sealing of records.

C. The indigent defense delivery system should include the active participation of the private bar or conflict office whenever a conflict of interest arises for the primary defender service provider.

2. The Indigent Defense Delivery System Recognizes that Legal Representation of Children is a Specialized Area of the Law

A. The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.

B. The indigent defense delivery system leadership demonstrates that it respects its juvenile defense team members and that it values the provision of quality, zealous and comprehensive delinquency representation services.

C. The indigent defense delivery system leadership recognizes that delinquency representation is not a training assignment for new attorneys or future adult court advocates, and it encourages experienced attorneys to provide delinquency representation.


A. The indigent defense delivery system encourages juvenile representation specialization without limiting attorney and support staff’s access to promotional progression, financial advancement or personnel benefits.

B. The indigent defense delivery system provides a professional work environment and adequate operational resources such as office space, furnishings, technology, confidential client interview areas and current legal research tools. The system includes juvenile representation resources in budgetary planning to ensure parity in the allocation of equipment and resources.

4. The Indigent Defense Delivery System Utilizes Expert and Ancillary Services to Provide Quality Juvenile Defense Services

A. The indigent defense delivery system supports requests for essential expert services throughout the delinquency process and whenever individual juvenile case representation requires these services for effective and quality representation. These services include, but are not limited to, evaluation by and testimony of mental health professionals, education specialists, forensic evidence examiners, DNA experts, ballistics analysis and accident reconstruction experts.

B. The indigent defense delivery system ensures the provision of all litigation support services necessary for the delivery of quality services, including, but not limited to, interpreters, court reporters, social workers, investigators, paralegals and other support staff.

5. The Indigent Defense Delivery System Supervises Attorneys and Staff and Monitors Work and Caseloads

A. The leadership of the indigent defense delivery system monitors defense counsel’s caseload to permit the rendering of quality representation. The workload of indigent defenders, including appointed and other work, should never be so large as to interfere with the rendering of zealous advocacy or continuing client contact nor should it lead to the breach of ethical obligations. The concept of workload may be adjusted by factors such as case complexity and available support services.

B. Whenever it is deemed appropriate, the leadership of the indigent defense delivery system, in consultation with staff, may adjust attorney case assignments and resources to guarantee the continued delivery of quality juvenile defense services.

6. The Indigent Defense Delivery System Supervises and Systematically Reviews Juvenile Defense Team Staff for Quality According to National, State and/or Local Performance Guidelines or Standards

A. The indigent defense delivery system provides supervision and management direction for attorneys and all team members who provide defense representation services to children.

B. The leadership of the indigent defense delivery system adopts guidelines and clearly defines the organization’s vision as well as expectations for the delivery of quality legal representation. These guidelines should be consistent with national, state and/or local performance standards, measures or rules.

C. The indigent defense delivery system provides administrative monitoring, coaching and systematic reviews for all attorneys and staff representing juveniles, whether contract defenders, assigned counsel or employees of defender offices.

7. The Indigent Defense System Provides and Supports Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children

A. The indigent defense delivery system supports and encourages juvenile defense team members through internal and external comprehensive training on topics including, but not limited to, detention advocacy, litigation and trial skills, dispositional planning, post-dispositional practice, educational rights, appellate advocacy and administrative hearing representation.

B. The indigent defense delivery system recognizes juvenile delinquency defense as a specialty that requires continuous training in unique areas of the law. In addition to understanding the juvenile court process and systems, juvenile team members should be competent in juvenile law, the collateral consequences of adjudication and conviction, and other disciplines that uniquely impact juvenile cases, such as, but not limited to:

1. Administrative appeals
2. Child welfare and entitlements
3. Child and adolescent development
4. Communicating and building attorney-client relationships with children and adolescents
5. Community-based treatment resources and programs
6. Competency and capacity
7. Counsel’s role in treatment and problem solving courts
8. Dependency court/abuse and neglect court process
9. Diversionary programs
10. Drug addiction and substance abuse
11. Ethical issues and considerations
12. Gender-specific programming
13. Immigration
14. Mental health, physical health and treatment
15. Racial, ethnic and cultural understanding
16. Role of parents/guardians
17. Sexual orientation and gender identity awareness
18. Special education
19. Transfer to adult court and waiver hearings
20. Zero tolerance, school suspension and expulsion policies

8 The Indigent Defense Delivery System Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court

A. Indigent defense delivery system counsel have an obligation to consult with clients and, independent from court or probation staff, to actively seek out and advocate for treatment and placement alternatives that best serve the unique needs and dispositional requests of each child.

B. The leadership and staff of the indigent defense delivery system work in partnership with other juvenile justice agencies and community leaders to minimize custodial detention and the incarceration of children and to support the creation of a continuum of community-based, culturally sensitive and gender-specific treatment alternatives.

C. The indigent defense delivery system provides independent post-conviction monitoring of each child’s treatment, placement or program to ensure that rehabilitative needs are met. If clients’ expressed needs are not effectively addressed, attorneys are responsible for intervention and advocacy before the appropriate authority.

9 The Indigent Defense Delivery System Advocates for the Educational Needs of Clients

A. The indigent defense delivery system recognizes that access to education and to an appropriate educational curriculum is of paramount importance to juveniles facing delinquency adjudication and disposition.

B. The indigent defense delivery system advocates, either through direct representation or through collaborations with community-based partners, for the appropriate provision of the individualized educational needs of clients.

C. The leadership and staff of the indigent defense delivery system work with community leaders and relevant agencies to advocate for and support an educational system that recognizes the behavioral manifestations and unique needs of special education students.

D. The leadership and staff of the indigent defense delivery system work with juvenile court personnel, school officials and others to find alternatives to prosecutions based on zero tolerance or school-related incidents.

10 The Indigent Defense Delivery System Must Promote Fairness and Equity For Children

A. The indigent defense delivery system should demonstrate strong support for the right to counsel and due process in delinquency courts to safeguard a juvenile justice system that is fair, non-discriminatory and rehabilitative.

B. The leadership of the indigent defense delivery system should advocate for positive change through legal advocacy, legislative improvements and systems reform on behalf of the children whom they serve.

C. The leadership and staff of the indigent defense delivery system are active participants in the community to improve school, mental health and other treatment services and opportunities available to children and families involved in the juvenile justice system.

Notes
1 These principles were developed over a one-year period through a joint collaboration between the National Juvenile Defender Center and the American Council of Chief Defenders, a section of the National Legal Aid and Defender Association (NLADA), which officially adopted them on December 4, 2004.
2 387 U.S. 1 (1967). According to the ABA/Aba Juvenile Justice Standard Relating to Counsel for Private Parties 3.1 (1996), “the lawyer’s principal duty is the representation of the client’s legitimate interests” as distinct and different from the best interest standard applied in neglect and abuse cases. The Commentary goes on to state that “counsel’s principal responsibility lies in full and conscientious representation” and that “no lesser obligation exists when youthful clients or juvenile court proceedings are involved.”
3 For purposes of these Principles, the term “delinquency proceeding” denotes all proceedings in juvenile court as well as any proceeding lodged against an alleged status offender, such as for truancy, running away, incorrigibility, etc.
4 Common findings among these assessments include, among other barriers to adequate representation, a lack of access to competent counsel, inadequate time and resources for defenders to prepare for hearings or trials, a juvenile court culture that encourages plea to move cases quickly, a lack of pretrial and dispositional advocacy and an over-reliance on probation. For more information, see Selling Justice Short: Juvenile Indigent Defense in Texas (2000). The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana (2001); Georgia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2001); Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceeding (2001); North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2001); Maryland: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2001); Minnesota: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2001); Pennsylvania: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2001); Washington: An Assessment of Access to Counsel and Quality of Representation in Juvenile Offender Matters (2003).
6 A conflict of interest includes both co-defendants and intra-family conflicts, among other potential conflicts that may arise. See also American Bar Association Ten Principles of a Public Defense Delivery System (2002), Principle 2.
7 For purposes of this Principle, the term “transfer/weaver proceeding” refers to any proceedings related to prosecuting youth in adult court, including those known in some jurisdictions as certification, bind-over, decline, remand, direct-file, or youthful offenders.
The Institute of Judicial Administration and the American Bar Association have put forth a 23-volume set of Juvenile Justice Standards. What follows is the sixth volume of that series, Standards Relating to Counsel for Private Parties.

This chapter is not intended to substitute the Rules of Professional Responsibility in your jurisdiction. Because many jurisdictions do not have specific rules regarding the special ethical issues surrounding the representation of children in delinquency proceedings, we have reproduced the black-letter text of the Institute of Judicial Administration-American Bar Association Juvenile Justice Standards Relating to Counsel of Private Parties to supplement your own professional rules. Please note that the entire text (black letter standards with accompanying commentary) for all 23 volumes of IJA-ABA Juvenile Justice Standards can be found on Westlaw (in the ABA-JJS library).
IJA-ABA Juvenile Justice Standards
Relating to Counsel for Private Parties

PART I. GENERAL STANDARDS


The participation of counsel on behalf of all parties subject to juvenile and family court proceedings is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of those proceedings.


(a) As a member of the bar, a lawyer involved in juvenile court matters is bound to know and is subject to standards of professional conduct set forth in statutes, rules, decisions of courts, and codes, canons or other standards of professional conduct. Counsel has no duty to exercise any directive of the client that is inconsistent with law or these standards. Counsel may, however, challenge standards that he or she believes limit unconstitutionally or otherwise improperly representation of clients subject to juvenile court proceedings.

(b) As used in these standards, the term “unprofessional conduct” denotes conduct which is now or should be subject to disciplinary sanction. Where other terms are used, the standard is intended as a guide to honorable and competent professional conduct or as a model for institutional organization.

Standard 1.3. Misrepresentation of Factual Propositions or Legal Authority.

It is unprofessional conduct for counsel intentionally to misrepresent factual propositions or legal authority to the court or to opposing counsel and probation personnel in the course of discussions concerning entrance of a plea, early disposition or any other matter related to the juvenile court proceeding. Entrance of a plea concerning the client’s responsibility in law for alleged misconduct or concerning the existence in law of an alleged status offense is a statement of the party’s posture with respect to the proceeding and is not a representation of fact or of legal authority.


A lawyer engaged in juvenile court practice typically deals with social work and probation department personnel throughout the course of handling a case. In general, the lawyer should cooperate with these agencies and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client’s legitimate interests in the proceeding or of any other rights of the client under the law.

Standard 1.5. Punctuality.

A lawyer should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and other papers, and in dealings with clients and other interested persons. It is unprofessional conduct for counsel intentionally to use procedural devices for which there is no legitimate basis, to misrepresent facts to the court or to accept conflicting responsibilities for the purpose of delaying court proceedings. The lawyer should also emphasize the importance of punctuality in attendance in court to the client and to witnesses to be called, and, to the extent feasible, facilitate their prompt attendance.
Standard 1.6. Public Statements.

(a) The lawyer representing a client before the juvenile court should avoid personal publicity connected with the case, both during trial and thereafter.

(b) Counsel should comply with statutory and court rules governing dissemination of information concerning juvenile and family court matters and, to the extent consistent with those rules, with the ABA Standards Relating to Fair Trial and Free Press.

Standard 1.7. Improvement in The Juvenile Justice System.

In each jurisdiction, lawyers practicing before the juvenile court should actively seek improvement in the administration of juvenile justice and the provision of resources for the treatment of persons subject to the jurisdiction of the juvenile court.

PART II. PROVISIONS AND ORGANIZATION OF LEGAL SERVICES


(a) Responsibility for provision of legal services.

Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners and educational institutions to ensure that competent counsel and adequate supporting services are available for representation of all persons with business before juvenile and family courts.

(i) Lawyers active in practice should be encouraged to qualify themselves for participation in juvenile and family court cases through formal training, association with experienced juvenile counsel or by other means. To this end, law firms should encourage members to represent parties involved in such matters.

(ii) Suitable undergraduate and postgraduate educational curricula concerning legal and nonlegal subjects relevant to representation in juvenile and family courts should regularly be available.

(iii) Careful and candid evaluation of representation in cases involving children should be undertaken by judicial and professional groups, including the organized bar, particularly but not solely where assigned counsel—whether public or private—appears.

(b) Compensation for services.

(i) Lawyers participating in juvenile court matters, whether retained or appointed, are entitled to reasonable compensation for time and services performed according to prevailing professional standards. In determining fees for their services, lawyers should take into account the time and labor actually required, the skill required to perform the legal service properly, the likelihood that acceptance of the case will preclude other employment for the lawyer, the fee customarily charged in the locality for similar legal services, the possible consequences of the proceedings, and the experience, reputation and ability of the lawyer or lawyers performing the services. In setting fees lawyers should also consider the performance of services incident to full representation in cases involving juveniles, including counseling and activities related to locating or evaluating appropriate community services for a client or a client’s family.
(ii) Lawyers should also take into account in determining fees the capacity of a client to pay the fee. The resources of parents who agree to pay for representation of their children in juvenile court proceedings may be considered if there is no adversity of interest as defined in Standard 3.2, infra, and if the parents understand that a lawyer’s entire loyalty is to the child and that the parents have no control over the case. Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child’s resources alone.

(iii) As in all other cases of representation, it is unprofessional conduct for a lawyer to overreach the client or the client’s parents in setting a fee, to imply that compensation is for anything other than professional services rendered by the lawyer or by others for him or her, to divide the fee with a layman, or to undertake representation in cases where no financial award may result on the understanding that payment of the fee is contingent in any way on the outcome of the case.

(iv) Lawyers employed in a legal aid or public defender office should be compensated on a basis equivalent to that paid other government attorneys of similar qualification, experience and responsibility.

c) Supporting services.
Competent representation cannot be assured unless adequate supporting services are available. Representation in cases involving juveniles typically requires investigatory, expert and other nonlegal services. These should be available to lawyers and to their clients at all stages of juvenile and family court proceedings.

(i) Where lawyers are assigned, they should have regular access to all reasonably necessary supporting services.

(ii) Where a defender system is involved, adequate supporting services should be available within the organization itself.

d) Independence.
Any plan for providing counsel to private parties in juvenile court proceedings must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship.

Standard 2.2. Organization of Services.

(a) In general.
Counsel should be provided in a systematic manner and in accordance with a widely publicized plan. Where possible, a coordinated plan for representation which combines defender and assigned counsel systems should be adopted.

(b) Defender systems.

(i) Application of general defender standards.
A defender system responsible for representation in some or all juvenile court proceedings generally should apply to staff and offices engaged in juvenile court matters its usual standards for selection, supervision, assignment and tenure of lawyers, restrictions on private practice, provision of facilities and other organizational procedures.

(ii) Facilities.
If local circumstances require, the defender system should maintain a separate office for juvenile court legal and supporting staff, located in a place convenient to the courts and equipped with adequate library, interviewing and other facilities. A supervising attorney experienced in juvenile court representation should be assigned to and responsible for the operation of that office.

(iii) Specialization.
While rotation of defender staff from one duty to another is an appropriate training device, there should be opportunity for staff to specialize in juvenile court representation to the extent local circumstances permit.
(iv) Caseload.
It is the responsibility of every defender office to ensure that its personnel can offer prompt, full and effective counseling and representation to each client. A defender office should not accept more assignments than its staff can adequately discharge.

(c) Assigned counsel systems.

(i) An assigned counsel plan should have available to it an adequate pool of competent attorneys experienced in juvenile court matters and an adequate plan for all necessary legal and supporting services.

(ii) Appointments through an assigned counsel system should be made, as nearly as possible, according to some rational and systematic sequence. Where the nature of the action or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

**Standard 2.3. Types of Proceedings.**

(a) Delinquency and in need of supervision proceedings.

(i) Counsel should be provided for any juvenile subject to delinquency or in need of supervision proceedings.

(ii) Legal representation should also be provided the juvenile in all proceedings arising from or related to a delinquency or in need of supervision action, including mental competency, transfer, postdisposition, probation revocation, and classification, institutional transfer, disciplinary or other administrative proceedings related to the treatment process which may substantially affect the juvenile’s custody, status or course of treatment. The nature of the forum and the formal classification of the proceeding is irrelevant for this purpose.

(b) Child protective, custody and adoption proceedings.

Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

**Standard 2.4. Stages of Proceedings.**

(a) Initial provision of counsel.

(i) When a juvenile is taken into custody, placed in detention or made subject to an intake process, the authorities taking such action have the responsibility promptly to notify the juvenile’s lawyer, if there is one, or advise the juvenile with respect to the availability of legal counsel.

(ii) In administrative or judicial postdispositional proceedings which may affect the juvenile’s custody, status or course of treatment, counsel should be available at the earliest stage of the decisional process, whether the respondent is present or not. Notification of counsel and, where necessary, provision of counsel in such proceedings is the responsibility of the judicial or administrative agency.

(b) Duration of representation and withdrawal of counsel.

(i) Lawyers initially retained or appointed should continue their representation through all stages of the proceeding, unless geographical or other compelling factors make continued participation impracticable.
Once appointed or retained, counsel should not request leave to withdraw unless compelled by serious illness or other incapacity, or unless contemporaneous or announced future conduct of the client is such as seriously to compromise the lawyer’s professional integrity. Counsel should not seek to withdraw on the belief that the contentions of the client lack merit, but should present for consideration such points as the client desires to be raised provided counsel can do so without violating standards of professional ethics.

If leave to withdraw is granted, or if the client justifiably asks that counsel be replaced, successor counsel should be available.

PART III. THE LAWYER-CLIENT RELATIONSHIP


(a) Client’s interests paramount.
   However engaged, the lawyer’s principal duty is the representation of the client’s legitimate interests. Considerations of personal and professional advantage or convenience should not influence counsel’s advice or performance.

(b) Determination of client’s interests.
   (i) Generally.
      In general, determination of the client’s interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney.

   (ii) Counsel for the juvenile.
      [a] Counsel for the respondent in a delinquency or in need of supervision proceeding should ordinarily be bound by the client’s definition of his or her interests with respect to admission or denial of the facts or conditions alleged. It is appropriate and desirable for counsel to advise the client concerning the probable success and consequences of adopting any posture with respect to those proceedings.

      [b] Where counsel is appointed to represent a juvenile subject to child protective proceedings, and the juvenile is capable of considered judgment on his or her own behalf, determination of the client’s interest in the proceeding should ultimately remain the client’s responsibility, after full consultation with counsel.

      [c] In delinquency and in need of supervision proceedings, where it is locally permissible to so adjudicate very young persons, and in child protective proceedings, the respondent may be incapable of considered judgment in his or her own behalf.

         [1] Where a guardian ad litem has been appointed, primary responsibility for determination of the posture of the case rests with the guardian and the juvenile.

         [2] Where a guardian ad litem has not been appointed, the attorney should ask that one be appointed.

         [3] Where a guardian ad litem has not been appointed and, for some reason, it appears that independent advice to the juvenile will not otherwise be available, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile’s position should consider in determining the juvenile’s interests with respect to the proceeding. After consultation with the juvenile, the parents (where their interests do not appear to conflict with the juvenile’s), and any other family members or interested persons, the attorney may remain neutral.
Concerning the proceeding, limiting participation to presentation and examination of material evidence or, if necessary, the attorney may adopt the position requiring the least intrusive intervention justified by the juvenile’s circumstances.

(iii) Counsel for the parent.
It is appropriate and desirable for an attorney to consider all circumstances, including the apparent interests of the juvenile, when counseling and advising a parent who is charged in a child protective proceeding or who is seeking representation during a delinquency or in need of supervision proceeding. The posture to be adopted with respect to the facts and conditions alleged in the proceeding, however, remains ultimately the responsibility of the client.

Standard 3.2 Adversity of Interests.

(a) Adversity of interests defined.
For purposes of these standards, adversity of interests exists when a lawyer or lawyers associated in practice:

(i) Formally represent more than one client in a proceeding and have a duty to contend in behalf of one client that which their duty to another requires them to oppose.

(ii) Formally represent more than one client and it is their duty to contend in behalf of one client that which may prejudice the other client’s interests at any point in the proceeding.

(iii) Formally represent one client but are required by some third person or institution, including their employer, to accommodate their representation of that client to factors unrelated to the client’s legitimate interests.

(b) Resolution of adversity.
At the earliest feasible opportunity, counsel should disclose to the client any interest in or connection with the case or any other matter that might be relevant to the client’s selection of a lawyer. Counsel should at the same time seek to determine whether adversity of interests potentially exists and, if so, should immediately seek to withdraw from representation of the client who will be least prejudiced by such withdrawal.

Standard 3.3. Confidentiality.

(a) Establishment of confidential relationship.
Counsel should seek from the outset to establish a relationship of trust and confidence with the client. The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for effective representation, and at the same time explain that the lawyer’s obligation of confidentiality makes privileged the client’s disclosures relating to the case.

(b) Preservation of client’s confidences and secrets.

(i) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal a confidence or secret of a client to another, including the parent of a juvenile client.

(ii) Except as permitted by 3.3(d), below, an attorney should not knowingly use a confidence or secret of a client to the disadvantage of the client or, unless the attorney has secured the consent of the client after full disclosure, for the attorney’s own advantage or that of a third person.

(c) Preservation of secrets of a juvenile client’s parent or guardian.
The attorney should not reveal information gained from or concerning the parent or guardian of a juvenile client in the course of representation with respect to a delinquency or in need of supervision proceeding against the client, where (1) the parent or guardian has requested the information be held inviolate, or (2) disclosure of the information would likely be embarrassing or detrimental to the parent or guardian and (3) preservation would not conflict with the attorney’s primary responsibility to the interests of the client.
(i) The attorney should not encourage secret communications when it is apparent that the parent or guardian believes those communications to be confidential or privileged and disclosure may become necessary to full and effective representation of the client.

(ii) Except as permitted by 3.3(d), below, an attorney should not knowingly reveal the parent’s secret communication to others or use a secret communication to the parent’s disadvantage or to the advantage of the attorney or of a third person, unless (1) the parent competently consents to such revelation or use after full disclosure or (2) such disclosure or use is necessary to the discharge of the attorney’s primary responsibility to the client.

(d) Disclosure of confidential communications.

In addition to circumstances specifically mentioned above, a lawyer may reveal:

(i) Confidences or secrets with the informed and competent consent of the client or clients affected, but only after full disclosure of all relevant circumstances to them. If the client is a juvenile incapable of considered judgment with respect to disclosure of a secret or confidence, a lawyer may reveal such communications if such disclosure (1) will not disadvantage the juvenile and (2) will further rendition of counseling, advice or other service to the client.

(ii) Confidences or secrets when permitted under disciplinary rules of the ABA Code of Professional Responsibility or as required by law or court order.

(iii) The intention of a client to commit a crime or an act which if done by an adult would constitute a crime, or acts that constitute neglect or abuse of a child, together with any information necessary to prevent such conduct. A lawyer must reveal such intention if the conduct would seriously endanger the life or safety of any person or corrupt the processes of the courts and the lawyer believes disclosure is necessary to prevent the harm. If feasible, the lawyer should first inform the client of the duty to make such revelation and seek to persuade the client to abandon the plan.

(iv) Confidences or secrets material to an action to collect a fee or to defend himself or herself or any employees or associates against an accusation of wrongful conduct.

Standard 3.4. Advice and Service with Respect to Anticipated Unlawful Conduct.

It is unprofessional conduct for a lawyer to assist a client to engage in conduct the lawyer believes to be illegal or fraudulent, except as part of a bona fide effort to determine the validity, scope, meaning or application of a law.

Standard 3.5. Duty to Keep Client Informed.

The lawyer has a duty to keep the client informed of the developments in the case, and of the lawyer’s efforts and progress with respect to all phases of representation. This duty may extend, in the case of a juvenile client, to a parent or guardian whose interests are not adverse to the juvenile’s, subject to the requirements of confidentiality set forth in 3.3, above.

PART IV. INITIAL STAGES OF REPRESENTATION

Standard 4.1. Prompt Action to Protect the Client.

Many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protection of their clients’ interests.
Standard 4.2. Interviewing the Client.

(a) The lawyer should confer with a client without delay and as often as necessary to ascertain all relevant facts and matters of defense known to the client.

(b) In interviewing a client, it is proper for the lawyer to question the credibility of the client’s statements or those of any other witness. The lawyer may not, however, suggest expressly or by implication that the client or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor may the lawyer intimate that the client should be less than candid in revealing material facts to the attorney.

Standard 4.3. Investigation and Preparation.

(a) It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives. The investigation should always include efforts to secure information in the possession of prosecution, law enforcement, education, probation and social welfare authorities. The duty to investigate exists regardless of the client’s admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.

(b) Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client’s family. The lawyer’s responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.

(c) It is unprofessional conduct for a lawyer to use illegal means to obtain evidence or information or to employ, instruct or encourage others to do so.

Standard 4.4. Relations with Prospective Witnesses.

The ethical and legal rules concerning counsel’s relations with lay and expert witnesses generally govern lawyers engaged in juvenile court representation.

PART V. ADVISING AND COUNSELING THE CLIENT

Standard 5.1. Advising the Client Concerning the Case.

(a) After counsel is fully informed on the facts and the law, he or she should with complete candor advise the client involved in juvenile court proceedings concerning all aspects of the case, including counsel’s frank estimate of the probable outcome. It is unprofessional conduct for a lawyer intentionally to understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the client’s determination of his or her posture in the matter.

(b) The lawyer should caution the client to avoid communication about the case with witnesses where such communication would constitute, apparently or in reality, improper activity. Where the right to jury trial exists and has been exercised, the lawyer should further caution the client with regard to communication with prospective or selected jurors.
Standard 5.2. Control and Direction of the Case.

(a) Certain decisions relating to the conduct of the case are in most cases ultimately for the client and others are ultimately for the lawyer. The client, after full consultation with counsel, is ordinarily responsible for determining:

(i) the plea to be entered at adjudication;
(ii) whether to cooperate in consent judgment or early disposition plans;
(iii) whether to be tried as a juvenile or an adult, where the client has that choice;
(iv) whether to waive jury trial;
(v) whether to testify on his or her own behalf.

(b) Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what jurors to accept and strike, what trial motions should be made, and any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client, are the exclusive province of the lawyer after full consultation with the client.

(c) If a disagreement on significant matters of tactics or strategy arises between the lawyer and the client, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

Standard 5.3. Counseling.

A lawyer engaged in juvenile court representation often has occasion to counsel the client and, in some cases, the client’s family with respect to nonlegal matters. This responsibility is generally appropriate to the lawyer’s role and should be discharged, as any other, to the best of the lawyer’s training and ability.

PART VI. INTAKE, EARLY DISPOSITION AND DETENTION

Standard 6.1. Intake and Early Disposition Generally.

Whenever the nature and circumstances of the case permit, counsel should explore the possibility of early diversion from the formal juvenile court process through subjudicial agencies and other community resources. Participation in pre- or nonjudicial stages of the juvenile court process may be critical to such diversion, as well as to protection of the client’s rights.

Standard 6.2. Intake Hearings.

(a) In jurisdictions where intake hearings are held prior to reference of a juvenile court matter for judicial proceedings, the lawyer should be familiar with and explain to the client and, if the client is a minor, to the client’s parents, the nature of the hearing, the procedures to be followed, the several dispositions available and their probable consequences. The lawyer should further advise the client of his or her rights at the intake hearing, including the privilege against self-incrimination where appropriate, and of the use that may be made of the client’s statements.

(b) The lawyer should be prepared to make to the intake hearing officer arguments concerning the jurisdictional sufficiency of the allegations made and to present facts and circumstances relating to the occurrence of and the client’s responsibility for the acts or conditions charged or to the necessity for official treatment of the matter.
Standard 6.3. Early Disposition.

(a) When the client admits the acts or conditions alleged in the juvenile court proceeding and, after investigation, the lawyer is satisfied that the admission is factually supported and that the court would have jurisdiction to act, the lawyer should, with the client’s consent, consider developing or cooperating in the development of a plan for informal or voluntary adjustment of the case.

(b) A lawyer should not participate in an admission of responsibility by the client for purposes of securing informal or early disposition when the client denies responsibility for the acts or conditions alleged.

Standard 6.4. Detention.

(a) If the client is detained or the client’s child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child’s release from custody.

(b) Where the intake department has initial responsibility for custodial decisions, the lawyer should promptly seek to discover the grounds for removal from the home and may present facts and arguments for release at the intake hearing or earlier. If a judicial detention hearing will be held, the attorney should be prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the allegations, the appropriateness of the place of and criteria used for detention, and any noncompliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile.

(c) The lawyer should not personally guarantee the attendance or behavior of the client or any other person, whether as surety on a bail bond or otherwise.

PART VII. ADJUDICATION

Standard 7.1. Adjudication without Trial.

(a) Counsel may conclude, after full investigation and preparation, that under the evidence and the law the charges involving the client will probably be sustained. Counsel should so advise the client and, if negotiated pleas are allowed under prevailing law, may seek the client’s consent to engage in plea discussions with the prosecuting agency. Where the client denies guilt, the lawyer cannot properly participate in submitting a plea of involvement when the prevailing law requires that such a plea be supported by an admission of responsibility in fact.

(b) The lawyer should keep the client advised of all developments during plea discussions with the prosecuting agency and should communicate to the client all proposals made by the prosecuting agency. Where it appears that the client’s participation in a psychiatric, medical, social or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and, when circumstances warrant, seek the client’s consent to participation in such a program.

Standard 7.2. Formality, In General.

While the traditional formality and procedure of criminal trials may not in every respect be necessary to the proper conduct of juvenile court proceedings, it is the lawyer’s duty to make all motions, objections or requests necessary to protection of the client’s rights in such form and at such time as will best serve the client’s legitimate interests at trial or on appeal.
Standard 7.3. Discovery and Motion Practice.

(a) Discovery.

(i) Counsel should promptly seek disclosure of any documents, exhibits or other information potentially material to representation of clients in juvenile court proceedings. If such disclosure is not readily available through informal processes, counsel should diligently pursue formal methods of discovery including, where appropriate, the filing of motions for bills of particulars, for discovery and inspection of exhibits, documents and photographs, for production of statements by and evidence favorable to the respondent, for production of a list of witnesses, and for the taking of depositions.

(ii) In seeking discovery, the lawyer may find that rules specifically applicable to juvenile court proceedings do not exist in a particular jurisdiction or that they improperly or unconstitutionally limit disclosure. In order to make possible adequate representation of the client, counsel should in such cases investigate the appropriateness and feasibility of employing discovery techniques available in criminal or civil proceedings in the jurisdiction.

(b) Other motions.
Where the circumstances warrant, counsel should promptly make any motions material to the protection and vindication of the client’s rights, such as motions to dismiss the petition, to suppress evidence, for mental examination, or appointment of an investigator or expert witness, for severance, or to disqualify a judge. Such motions should ordinarily be made in writing when that would be required for similar motions in civil or criminal proceedings in the jurisdiction. If a hearing on the motion is required, it should be scheduled at some time prior to the adjudication hearing if there is any likelihood that consolidation will work to the client’s disadvantage.

Standard 7.4. Compliance with Orders.

(a) Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct which counsel considers prejudicial to the client’s legitimate interests.

(b) The lawyer should be prepared to object to the introduction of any evidence damaging to the client’s interest if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

Standard 7.5. Relations with Court and Participants.

(a) The lawyer should at all times support the authority of the court by preserving professional decorum and by manifesting an attitude of professional respect toward the judge, opposing counsel, witnesses and jurors.

(i) When court is in session, the lawyer should address the court and not the prosecutor directly on any matter relating to the case unless the person acting as prosecutor is giving evidence in the proceeding.

(ii) It is unprofessional conduct for a lawyer to engage in behavior or tactics purposely calculated to irritate or annoy the court, the prosecutor or probation department personnel.

(b) When in the company of clients or clients’ parents, the attorney should maintain a professional demeanor in all associations with opposing counsel and with court or probation personnel.

Standard 7.7. Presentation of Evidence.

It is unprofessional conduct for a lawyer knowingly to offer false evidence or to bring inadmissible evidence to the attention of the trier of fact, to ask questions or display demonstrative evidence known to be improper or inadmissible, or intentionally to make impermissible comments or arguments in the presence of the trier of fact. When a jury is empaneled, if the lawyer has substantial doubt concerning the admissibility of evidence, he or she should tender it by an offer of proof and obtain a ruling on its admissibility prior to presentation.
Standard 7.8. Examination of Witnesses.

(a) The lawyer in juvenile court proceedings should be prepared to examine fully any witness whose testimony is damaging to the client’s interests. It is unprofessional conduct for counsel knowingly to forego or limit examination of a witness when it is obvious that failure to examine fully will prejudice the client’s legitimate interests.

(b) The lawyer’s knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances, but may affect the method and scope of cross-examination. Counsel should not misuse the power of cross-examination or impeachment by employing it to discredit the honesty or general character of a witness known to be testifying truthfully.

(c) The examination of all witnesses should be conducted fairly and with due regard for the dignity and, to the extent allowed by the circumstances of the case, the privacy of the witness. In general, and particularly when a youthful witness is testifying, the lawyer should avoid unnecessary intimidation or humiliation of the witness.

(d) A lawyer should not knowingly call as a witness one who will claim a valid privilege not to testify for the sole purpose of impressing that claim on the fact-finder. In some instances, as defined in the ABA Code of Professional Responsibility, doing so will constitute unprofessional conduct.

(e) It is unprofessional conduct to ask a question that implies the existence of a factual predicate which the examiner knows cannot be supported by evidence.


(a) It is the lawyer’s duty to protect the client’s privilege against self-incrimination in juvenile court proceedings. When the client has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

(b) If the respondent has admitted to counsel facts which establish his or her responsibility for the acts or conditions alleged and if the lawyer, after independent investigation, is satisfied that those admissions are true, and the respondent insists on exercising the right to testify at the adjudication hearing, the lawyer must advise the client against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury.

(i) If, before adjudication, the respondent insists on taking the stand to testify falsely, the lawyer must withdraw from the case if that is feasible and should seek the leave of the court to do so if necessary.

(ii) If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, it is unprofessional conduct for the lawyer to lend aid to perjury or to use the perjured testimony. Before the respondent takes the stand in these circumstances the lawyer should, if possible, make a record of the fact that respondent is taking the stand against the advice of counsel without revealing that fact to the court. Counsel’s examination should be confined to identifying the witness as the respondent and permitting the witness to make his or her statement to the trier of fact. Counsel may not engage in direct examination of the respondent in the conventional manner and may not recite or rely on the false testimony in argument.

Standard 7.10. Argument.

The lawyer in juvenile court representation should comply with the rules generally governing argument in civil and criminal proceedings.
PART VIII. TRANSFER PROCEEDINGS

Standard 8.1. In General.

A proceeding to transfer a respondent from the jurisdiction of the juvenile court to a criminal court is a critical stage in both juvenile and criminal justice processes. Competent representation by counsel is essential to the protection of the juvenile’s rights in such a proceeding.

Standard 8.2. Investigation and Preparation.

(a) In any case where transfer is likely, counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

(b) The lawyer should promptly investigate all circumstances of the case bearing on the appropriateness of transfer and should seek disclosure of any reports or other evidence that will be submitted to or may be considered by the court in the course of transfer proceedings. Where circumstances warrant, counsel should promptly move for appointment of an investigator or expert witness to aid in the preparation of the defense and for any other order necessary to protection of the client’s rights.

Standard 8.3. Advising and Counseling the Client Concerning Transfer.

Upon learning that transfer will be sought or may be elected, counsel should fully explain the nature of the proceeding and the consequences of transfer to the client and the client’s parents. In so doing, counsel may further advise the client concerning participation in diagnostic and treatment programs which may provide information material to the transfer decision.

Standard 8.4. Transfer Hearings.

If a transfer hearing is held, the rules set forth in Part VII of these standards shall generally apply to counsel’s conduct of that hearing.


If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

PART IX. DISPOSITION

Standard 9.1. In General.

The active participation of counsel at disposition is often essential to protection of clients’ rights and to furtherance of their legitimate interests. In many cases the lawyer’s most valuable service to clients will be rendered at this stage of the proceeding.

Standard 9.2. Investigation and Preparation.

(a) Counsel should be familiar with the dispositional alternatives available to the court, with its procedures and practices at the disposition stage, and with community services that might be useful in the formation of a dispositional plan appropriate to the client’s circumstances.
(b) The lawyer should promptly investigate all sources of evidence including any reports or other information that will be brought to the court’s attention and interview all witnesses material to the disposition decision.

(i) If access to social investigation, psychological, psychiatric or other reports or information is not provided voluntarily or promptly, counsel should be prepared to seek their disclosure and time to study them through formal measures.

(ii) Whether or not social and other reports are readily available, the lawyer has a duty independently to investigate the client’s circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition.

(c) The lawyer should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel needed for purposes of evaluation, consultation or testimony with respect to formation of a dispositional plan.

Standard 9.3. Counseling Prior to Disposition.

(a) The lawyer should explain to the client the nature of the disposition hearing, the issues involved and the alternatives open to the court. The lawyer should also explain fully and candidly the nature, obligations and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the client’s responsibilities under the proposed dispositional plan. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client’s consent.

(b) When psychological or psychiatric evaluations are ordered by the court or arranged by counsel prior to disposition, the lawyer should explain the nature of the procedure to the client and encourage the client’s cooperation with the person or persons administering the diagnostic procedure.

(c) The lawyer must exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the client’s history or condition or, if the client is a juvenile, the history or condition of the client’s parents. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer’s judgment based on knowledge of the client and the client’s family, revelation would be likely to affect adversely the client’s well-being or relationships within the family and disclosure is not necessary to protect the client’s interests in the proceeding.


(a) It is the lawyer’s duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.

(i) Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the client’s interests.

(ii) The lawyer at disposition should be free to examine fully and to impeach any witness whose evidence is damaging to the client’s interests and to challenge the accuracy, credibility and weight of any reports, written statements or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the client’s interests. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

(b) The lawyer may, during disposition, ask that the client be excused during presentation of evidence when, in counsel’s judgment, exposure to a particular item of evidence would adversely affect the well-being of the client or the client’s relationship with his or her family, and the client’s presence is not necessary to protecting his or her interests in the proceeding.
Standard 9.5. Counseling After Disposition.

When a dispositional decision has been reached, it is the lawyer’s duty to explain the nature, obligations and consequences of the disposition to the client and his or her family and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court’s decision during the interim.

PART X. REPRESENTATION AFTER DISPOSITION

Standard 10.1. Relations with the Client After Disposition.

(a) The lawyer’s responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the client in matters arising from the original proceeding.

(i) If the client has been found to be within the juvenile court’s jurisdiction, the lawyer should maintain contact with both the client and the agency or institution involved in the disposition plan in order to ensure that the client’s rights are respected and, where necessary, to counsel the client and the client’s family concerning the dispositional plan.

(ii) Whether or not the charges against the client have been dismissed, where the lawyer is aware that the client or the client’s family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she should render all possible assistance in arranging for such services.

(b) The decision to pursue an available claim for postdispositional relief from judicial and correctional or other administrative determinations related to juvenile court proceedings, including appeal, habeas corpus or an action to protect the client’s right to treatment, is ordinarily the client’s responsibility after full consultation with counsel.

Standard 10.2. Post-Dispositional Hearings Before the Juvenile Court.

(a) The lawyer who represents a client during initial juvenile court proceedings should ordinarily be prepared to represent the client with respect to proceedings to review or modify adjudicative or dispositional orders made during earlier hearings or to pursue any affirmative remedies that may be available to the client under local juvenile court law.

(b) The lawyer should advise the client of the pendency or availability of a postdispositional hearing or proceeding and of its nature, issues and potential consequences. Counsel should urge and, if necessary, seek to facilitate the prompt attendance at any such hearing of the client and of any material witnesses who may be called.

Standard 10.3. Counsel on Appeal.

(a) Trial counsel, whether retained or appointed by the court, should conduct the appeal unless new counsel is substituted by the client or by the appropriate court. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the client’s interests, new counsel may be appointed in place of trial counsel.

(b) Whether or not trial counsel expects to conduct the appeal, he or she should promptly inform the client, and where the client is a minor and the parents’ interests are not adverse, the client’s parents of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the client decides not to exercise this privilege.
(c) Counsel on appeal, after reviewing the record below and undertaking any other appropriate investigation, should candidly inform the client as to whether there are meritorious grounds for appeal and the probable results of any such appeal, and should further explain the potential advantages and disadvantages associated with appeal. However, appellate counsel should not seek to withdraw from a case solely because his or her own analysis indicates that the appeal lacks merit.


The rules generally governing conduct of appeals in criminal and civil cases govern conduct of appeals in juvenile court matters.

Standard 10.5. Post-Dispositional Remedies: Protection of the Client’s Right to Treatment.

(a) A lawyer who has represented a client through trial and/or appellate proceedings should be prepared to continue representation when post-dispositional action, whether affirmative or defensive, is sought, unless new counsel is appointed at the request of the client or continued representation would, because of geographical considerations or other factors, work unreasonable hardship.

(b) Counsel representing a client in post-dispositional matters should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the client and, if their interests are not adverse, the client’s parents of the nature, consequences, probable outcome and advantages or disadvantages associated with such proceedings.

(c) The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters.

Standard 10.6. Probation Revocation; Parole Revocation.

(a) Trial counsel should be prepared to continue representation if revocation of the client’s probation or parole is sought, unless new counsel is appointed or continued representation would, because of geographical or other factors, work unreasonable hardship.

(b) Where proceedings to revoke conditional liberty are conducted in substantially the same manner as original petitions alleging delinquency or need for supervision, the standards governing representation in juvenile court generally apply. Where special procedures are used in such matters, counsel should advise the client concerning those procedures and be prepared to participate in the revocation proceedings at the earliest stage.

Standard 10.7. Challenges to the Effectiveness of Counsel.

(a) A lawyer appointed or retained to represent a client previously represented by other counsel has a good faith duty to examine prior counsel’s actions and strategy. If, after investigation, the new attorney is satisfied that prior counsel did not provide effective assistance, the client should be so advised and any appropriate relief for the client on that ground should be vigorously pursued.

(b) A lawyer whose conduct of a juvenile court case is drawn into question may testify in judicial, administrative or investigatory proceedings concerning the matters charged, even though in so doing the lawyer must reveal information which was given by the client in confidence.
Contacts & Resources

As you take on juvenile clients, you will encounter complex cases, learn of systemic problems in your jurisdiction, and find that you have questions this guide does not answer. The community of juvenile defenders, other advocates for youth, and academics and experts who conduct research on relevant topics will prove invaluable to you. We suggest the following organizations and materials simply as a starting point for further information.
GENERAL RESOURCES

The National Juvenile Defender Center (NJDC) is committed to excellence in juvenile defense. To that end, we provide defenders with training, technical support, research, and advocacy to enhance indigent defense systems nationwide. The NJDC works closely with nine regional juvenile defender centers to provide information and assistance in every state and administers several listservs that facilitate communication between defenders throughout the United States. To subscribe to our mailing list and/or listservs, and to access our research and resources, please contact us.

National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, D.C. 20036
Phone: (202) 452-0010
Fax: (202) 452-1205
Email: inquiries@njdc.info
Web: http://www.njdc.info

Regional Juvenile Defender Centers

New England Juvenile Defender Center
Connecticut, Maine, Massachusetts, Rhode Island, New Hampshire and Vermont
Bob Sheil
Juvenile Defender’s Office
14-16 Baldwin Street
Montpelier, VT 05620
Phone: (802) 828-3190
Fax: (802) 828-3163
Email: bsheil@defgen.state.vt.us

Northeast Juvenile Defender Center
Delaware, New Jersey, New York and Pennsylvania
Sandra Simkins
The Defender Association of Philadelphia, Juvenile Unit
1441 Sansom Street
Philadelphia, PA 19102
Phone: (215) 568-3190
Fax: (267) 765-6994
Email: ssimkins@philadefender.org

Laura Cohen
Clinical Law Professor, Rutgers Law School
123 Washington Street
Newark, NJ 07102
Phone: (973) 353-3187
Fax: (973) 353-3397
Email: lcohen@kinoy.rutgers.edu
Southern Juvenile Defender Center  
*Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina*

Danielle Lipow  
Southern Poverty Law Center  
PO Box 2087  
Montgomery, AL 36104  
Phone: (334) 956-8200  
Fax: (334) 956-8481  
Email: dlipow@splcenter.org  
Web: http://www.juveniledefender.org

Marion Chartoff  
Southern Poverty Law Center  
PO Box 2087  
Montgomery, AL 36104  
Phone: (334) 956-8200  
Fax: (334) 956-8481  
Email: marion.chartoff@splcenter.org  
Web: http://www.juveniledefender.org

Midwest Juvenile Defender Center  
*Illinois, Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin*

Betsy Clarke  
Illinois Juvenile Justice Initiative  
PO Box 1833  
Evanston, IL 60204  
Phone: (847) 864-1567  
Fax: (847) 570-0749  
Email: bcjuv@aol.com

Central Juvenile Defender Center  
*Arkansas, Indiana, Kansas, Kentucky, Missouri, Ohio and Tennessee*

Kim Brooks Tandy  
Children's Law Center  
104 East Seventh Street, 2nd Floor  
Covington, KY 41011  
Phone: (859) 431-3313  
Fax: (859) 655-7553  
Email: kimbrooks@fuse.net

Western Juvenile Defender Center  
*Alaska, Idaho, Montana, Nevada, Oregon, Washington and Wyoming*

Elizabeth Calvin  
2108 Federal Avenue  
Los Angeles, CA 90025  
Phone: (310) 477-5677  
Email: e.calvin@verizon.net  
Web: http://www.wjdc.info
Southwest Juvenile Defender Center
*Arizona, Colorado, New Mexico, Oklahoma, Texas and Utah*
Ellen Marrus
University of Houston Law Center
100 Law Center
56 Teaching Unit 2 Building
Houston, Texas 77204-6049
Phone: (713) 743-0894
Fax: (713) 743-2238
Email: emarrus@uh.edu
Web: http://www.lawlib.uh.edu/juveniledefender/

Mid-Atlantic Juvenile Defender Center
*District of Columbia, Maryland, Puerto Rico, Virginia, and West Virginia*
Melissa Goemann
Children’s Law Center
University of Richmond School of Law
28 West Hampton Way
Richmond, VA 23173
Phone: (804) 287-6468
Fax: (804) 287-6489
Email: mgoemann@richmond.edu
Web: http://law.richmond.edu/majdc/

Pacific Juvenile Defender Center
*California & Hawaii*
Patricia Lee
San Francisco Public Defender's Office
Juvenile Division
374 Woodside Avenue
Room 118
San Francisco, CA 94127
Phone: (415) 753-7610
Fax: (415) 566-3030
Email: patricia_lee@ci.sf.ca.us
CONFINEMENT

Organizations

American Civil Liberties Union (ACLU)
125 Broad Street
18th Floor
New York, NY 10004
Web: http://www.aclu.org

Center for Children’s Law and Policy
417 Montgomery Street, Suite 900
San Francisco, CA 94104
Phone: (415) 543-3379
Fax: (415) 956-9022

Council of Juvenile Correctional Administrators
170 Forbes Road, Suite 106
Braintree, MA 02184
Phone: (781) 843-2663
Fax: (781) 843-1688
Web: http://www.cjca.net

Legal Services for Children, provides free legal work and social work to children
1254 Market Street, Third Floor
San Francisco, CA 94102
Phone: (415) 863-3762
Fax: (415) 863-7708
Web: http://www.lsc-sf.org

Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Blvd.
New Orleans, LA 70113
Phone: (544) 522-5437
Fax: (544) 522-5430
Web: http://www.jjpl.org

National Juvenile Detention Association, advocates for higher standards for juvenile detention services
Eastern Kentucky University
301 Perkins Building
521 Lancaster Avenue
Richmond, KY 40475
Phone: (859) 622-6259
Fax: (859) 622-2333
Web: http://www.njda.com
Southern Center for Human Rights, challenges cruel and degrading prison conditions and advocates for adequate counsel for children and adults accused of crimes
83 Poplar Street, NW
Atlanta, GA 30303
Phone: (404) 688-1202
Fax: (404) 688-9440
Web: http://www.schr.org

Youth Law Center, investigates systemic problems in juvenile institutions and systems
417 Montgomery Street, Suite 900
San Francisco, CA 94104
Phone: (415) 543-3379
Fax: (415) 956-9022
Web: http://www.ylc.org

Other Resources

Website for Performance-based Standards (PbS), a self-improvement and accountability system used to improve quality of life for juveniles in state custody in 26 states and the District of Columbia
Web: http://www.performancebasedstandards.org

Human Rights Watch
Web: http://www.hrw.org

IJA-ABA Juvenile Justice Standards
Web: http://www.abanet.org/crimjust/standards/home.html

COURT DATA AND STATE JUVENILE CODE STATUTES ANALYSES

Organizations

National Center for Juvenile Justice
710 Fifth Avenue
Pittsburgh, PA 15219-3000
Phone: (412) 227-6950
Web: http://www.ncjj.org

National Conference of State Legislatures
444 North Capitol Street NW, Suite 515
Washington, D.C. 20001
Phone: (202) 624-5400
Fax: (202) 737-1069
Web: http://www.ncsl.org/
National Juvenile Court Data Archive
National Center for Juvenile Justice
Anne Stahl, Manager of Data Collection
3700 South Water Street, Suite 200
Pittsburgh, PA 15203
Phone: (412) 227-6950
Fax: (412) 227-6955
Web: http://ojjdp.ncjrs.org/ojstatbb/njcda/

The Office of Juvenile Justice and Delinquency Prevention (OJJDP)
810 Seventh Street NW
Washington, D.C. 20531
Phone: (202) 307-5929
Web: http://www.ojjdp.ncjrs.org

CRIME AND ARREST DATA

Organizations

National Center for Juvenile Justice, includes analyses of state juvenile justice systems
3700 South Water St., Suite 200
Pittsburgh, PA 15203
Phone: (412) 227-6950
Fax: (412) 227-6955
Web: http://www.ncjj.org

Federal Bureau of Investigation
Criminal Justice Information Services Division
Clarksburg, WV
Phone: (304) 625-4995
Web: http://www.fbi.gov

Other Resources

Compendium of National Juvenile Justice Data Sets
Web: http://www.ojjdp.ncjrs.org/ojstatbb/index.html

Bureau of Justice Statistics
Web: http://www.ojp.usdoj.gov/bjs/

Juvenile Justice Clearinghouse
Phone: (800) 638-8736 or (301) 519-5500
National Criminal Justice Reference Services (NCJRS)
P.O. Box 6000
Rockville, MD 20849-6000
Web: http://www.ncjrs.org

Office of National Drug Control Policy (ONDCP)
P.O. Box 6000
Rockville, MD 20849-6000
Phone: (800) 666–3332
Fax: (301) 519–5212
Web: http://www.whitehousedrugpolicy.gov/

DUAL JURISDICTION YOUTH

Juvenile Law Center
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Phone: (215) 625-0551
Fax: (215) 625-2808
Web: http://www.jlc.org

EDUCATION AND SCHOOL DISCIPLINE

Organizations

Advancement Project
1730 M Street, NW #910
Washington, D.C. 20036
Phone: (202) 728-9557
Fax: (202) 728-9558
Web: http://www.advancementproject.org/learn_program.html

Council for Exceptional Children
1110 North Glebe Road
Suite 300
Arlington, VA 22201-5704
Local: 703/620-3660
Fax: 703/264-9494
Web: http://www.ideapRACTICES.org/
Appendix D: Resources

Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Phone: (215) 625-0551
Fax: (215) 625-2808
Email: info@jlc.org
Web: http://www.jlc.org

National Center on Education, Disability, and Juvenile Justice
University of Maryland
1224 Benjamin Building
College Park, MD 20742
Phone: (301) 405-6462
Fax (301) 314-5757
Web: http://www.edjj.org

Other Resources

End Zero Tolerance In Our Public Schools
Web: http://endzerotolerance.com/legal_resources.htm

GAY, LESBIAN, BISEXUAL, AND TRANSGENDER YOUTH

Organizations

The Equity Project, a collaborative effort between Legal Services for Children, the National Center for Lesbian Rights, and the National Juvenile Defender Center

Legal Services for Children
1254 Market Street, 3rd Floor
San Francisco, CA 94102
Phone: (415) 863-3762
Fax: (415) 863-7708
Web: http://www.lsc-sf.org

National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Phone: (415) 392-6257
Fax: (415) 392-8442
Web: http://www.nclrights.org
National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
Phone: (202) 452-0010
Fax: (202) 452-1205
Web: http://www.njdc.info

Lambda Legal Defense and Education Fund, provides education and tools for LGBT advocates
Web: http://www.lamdalegal.org/cgi-bin/iowa/index.html

National Center for Lesbian Rights, includes report on lesbian, gay, bisexual, transgender, or questioning youth in the juvenile justice system
870 Market Street, Suite 370
San Francisco, CA 94102
Phone: (415) 392-6257
Fax: (415) 392-8442
Email: info@nclrights.org
Web: http://www.nclrights.org/publications/lgbtqjuvenilejustice.htm

Other Resources
Juvenile defender training manual which includes sections on LGBTQ youth
Web: http://juveniledenfender.org/pdfs/wholechild.pdf

GIRLS ISSUES

Organizations

Girls Justice Initiative at the National Juvenile Defender Center
1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
Phone: (202) 452-0010
Fax: (202) 452-1205
Web: http://www.njdc.info

Website for the Girls Study Group, which provides information about defending female offenders
Web: http://girlsstudygroup.rti.org/
Center for Gender and Justice, which strives to create strategies for assisting girls and women in the justice system
7946 Ivanhoe Avenue, Suite 201B
La Jolla, CA 92037
Phone: (858) 454-8528
Fax: (858) 454-8598
Web: http://www.centerforgenderandjustice.org/

Other Resources

National Criminal Justice Reference Service report on female offenders
Web: http://www.ncjrs.gov

HOMELESS/RUNAWAY YOUTH

National Clearinghouse on Families and Youth
P.O. Box 13505
Silver Spring, MD 20911-3505
Phone: (301) 608-8098
Web: http://www.ncfy.com

HUMAN RIGHTS

Organizations

Amnesty International
5 Penn Plaza, 14th floor
New York, NY 10001
Phone: (212) 807-8400
Fax1: (212) 463-9193
Fax2: (212) 627-1451
Web: http://www.amnestyusa.org

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118
Phone: (212) 290-4700
Fax: (212) 736-1300
Web: www.hrw.org
**IMMIGRATION**

Organizations

*American Immigration Lawyers Association*
918 F Street NW  
Washington, DC 20004  
Phone: (202) 216-2400  
Fax: (202) 783-7853  
Web: http://www.aila.org

*Immigrant Legal Resource Center*
1663 Mission Street, Suite 602  
San Francisco, CA 94103  
Phone: (415) 255-9499  
Fax: (415) 255-9792  
Web: http://www.ilrc.org

*National Immigration Forum*
50 F Street NW, Suite 300  
Washington, DC 20001  
Phone: (202) 347-0040  
Fax: (202) 347-0058  
Web: http://www.immigrationforum.org

**INTERNATIONAL LAW**

Organizations

*Inter-American Commission on Human Rights*
1889 F Street, N.W.  
Washington, D.C., 20006  
Web: http://www.cidh.org

*International Justice Project*
6 Allerton Court  
Stanhope  
Bishop Auckland  
County Durham, DL13 2FB  
England  
Phone: +1 (0) 1388-527-403  
Fax: +1 (0) 1388-528-647  
Web: http://www.internationaljusticeproject.org
INTERVIEWING CHILDREN

Organizations

**ABA Center on Children and the Law**, which includes information about culturally sensitive interviewing techniques
740 15th Street NW
Washington D.C. 20005
Phone: (202) 662-1720
Fax: (202) 662-1755
Web: http://www.abanet.org/child/home.html

Other Resources


LAW SCHOOL CLINICS AND CENTERS

University of Arizona, James E. Rogers College of Law
Phone: (520) 626-5232
Web: http://www.law.arizona.edu/Depts/Clinics/CAC/default.htm

Columbia Law School Child Advocacy Clinic
Phone: (212) 854-4291
Web: http://www.law.columbia.edu/focusareas/clinics/childadvocacy

Georgetown Law Juvenile Justice Clinic
Phone: (202) 662-9100
Email: clinics@law.georgetown.edu
Web: http://www.law.georgetown.edu/clinics/jjc/jjc.html

Harvard Law School Child Advocacy Program
Phone: (617) 496-1684
Fax: (617) 496-4947
Email: cap@law.harvard.edu
Web: http://www.law.harvard.edu/academics/cap/
Hofstra University School of Law Child Advocacy Clinic
Phone: (516) 463-5934
Web: http://www.hofstra.edu/Academics/Law/index_law.cfm

Loyola Law School Center for Juvenile Law and Policy
Phone: (213) 736-1000
Fax: (213) 380-3769
Web: http://www.lls.edu/juvenilelaw/

Loyola University School of Law, Chicago, CIVITAS ChildLaw Center
Phone: (312) 915-7120
Web: http://www.luc.edu/law/academics/special/center/child_family.shtml

New York University School of Law Juvenile/Criminal Defense Clinic
Phone: (212) 998-6477
Web: http://www.law.nyu.edu/clinics/year/juvenile/

North Carolina Central School of Law
Phone: (919) 530-6333
Web: http://www.nccu.edu/law/clinical/clinical0402.html#clinic6

Northwestern University Law School Children and Family Justice Center
Phone: (312) 503-0396
Fax: (312) 503-0953
Web: http://www.law.northwestern.edu/cfjc/

Seton Hall Law School Juvenile Justice Clinic
Phone: (888) 415-7271
Web: http://law.shu.edu/csj/juvenile_justice_clinic.html

Suffolk University Law School Juvenile Justice Center
Phone: (617) 305-3200
Fax: (617) 451-2641
Email: juvenile@suffolk.edu
Web: http://www.law.suffolk.edu/academic/clinical/jjc/index.cfm

Tulane University Law School Juvenile Litigation Clinic
Phone: (504) 865-5939
Fax: (504) 865-6748
Web: http://www.law.tulane.edu/prog/index.cfm?d=skills&main=clinjuvlit.htm

University of Connecticut School of Law, KidsCounsel Center for Child Advocacy
65 Elizabeth Street
Hartford, CT 06105
Phone: (860) 570-5327
Fax: (860) 570-5256
Web: http://www.kidscounsel.org/
University of the District of Columbia, David A. Clarke School of Law, Juvenile and Special Education Law Clinic
Phone: (202) 274-5073
Fax: (202) 274-5569
Web: http://www.law.udc.edu/programs/juvenile/index.html

University of Florida Gator TeamChild Juvenile Advocacy Clinic
Phone: (352) 392-0412
Fax: (352) 392-0414
Web: http://www.law.ufl.edu/centers/juveniele/

University of Maryland Juvenile Law, Children's Issues, and Legislative Advocacy Clinic
Phone: (410) 706-3295
Fax: (410) 706-5856
Web: http://www.law.umd.edu/course_info.asp?coursenum=550D

University of Miami School of Law, Children and Youth Law Clinic
1311 Miller Drive, Suite F305
Coral Gables, FL 33146
Phone: (305) 284-3123
Fax: (305) 284-4384
http://www.law.miami.edu/cylc/clinic/index.html

University of Minnesota Law School Child Advocacy Clinic
Phone: (612) 625-1000
Fax: (612) 625-2011
Web: http://www.law.umn.edu/clinics/child_advocacy.html

University of Nevada-Las Vegas Juvenile Justice Clinic
Phone: (702) 895-2080
Fax: (702) 895-2081
Web: http://www.law.unlv.edu/clinic_juvenileJustice.html

University of Richmond School of Law Delinquency Clinic
Phone: (804) 289-8921
Web: http://law.richmond.edu/clinical/delinquency_clinic.htm

University of South Carolina School of Law Children's Law Office
Phone: (803) 777-1646
Fax: (803) 777-8686
Web: http://childlaw.sc.edu/

Washburn University School of Law Juvenile Practice Clinic
Phone: (785) 231-1191
Web: http://www.washburnlaw.edu/clinic/juveniele/index.php
MENTAL HEALTH

Organizations

MacArthur Network for Adolescent Development and Juvenile Justice
The John D. and Catherine T. MacArthur Foundation
140 S. Dearborn Street
Chicago, IL 60603

National Center for Mental Health and Juvenile Justice
Policy Research Associates
345 Delaware Avenue
Delmar, NY 12054
Phone: (866) 9NCMHJJ
Fax: (518) 439-7612
Email: ncmhjj@prainc.com
Web: http://www.ncmhjj.com

National Mental Health Association
2001 N. Beauregard Street, 12th Floor
Alexandria, VA 22311
Phone: (703) 684-7722
Fax: (703) 684-5968
Web: http://www.nmha.org/

Juvenile Justice Evaluation Center Classification Tools, for use in evaluating and assessing juvenile justice systems
Web: http://www.jrsa.org/jjec/resources/classification-tools.html

Other Resources

Manual for Special Education Advocacy under the Individuals with Disabilities Education Act
RACIAL AND ETHNIC MINORITY ISSUES

Organizations

Advancement Project
1730 M Street, NW #910
Washington, D.C. 20036
Phone: (202) 728-9557
Fax: (202) 728-9558
Web: http://www.advancementproject.org/learn_program.html

The W. Haywood Burns Institute
180 Howard Street, Suite 320
San Francisco, CA 94105
Phone: (415) 321-4100
Fax: (415) 321-4140
Email: info@burnsinstitute.org
Web: http://www.burnsinstitute.org

Center for Children’s Law and Policy
417 Montgomery Street, Suite 900
San Francisco, CA 94104
Phone: (415) 543-3379
Fax: (415) 956-9022

Asian/Pacific Islander Youth Violence Prevention Center
Hawaii office:
Department of Psychiatry, Univ. of Hawaii at Manoa
1441 Kapiolani Blvd., Suite 1802
Honolulu, HI 96814
Phone: (808) 945-1517
California office:
1970 Broadway, Suite 500
Oakland, CA 94612
Phone: (510) 208-0500
Web: http://www.api-center.org

Juvenile Justice Evaluation Center: Disproportionate Minority Contact
777 N. Capitol St. NE, Suite 801
Washington, DC 20002
Phone: (202) 842-9330
Fax: (202) 842-9329
Email: jjec@jrsa.org
Web: http://www.jrsa.org/jjec/programs/dmc/
Other Resources

Information about legislation pertaining to disproportionate minority contact
Web: http://ojjdp.ncjrs.org/dmc/index.html

SEX OFFENDERS

Organizations

Association for the Treatment of Sexual Abusers
4900 S.W. Griffith Drive, Suite 274
Beaverton, Oregon U.S.A. 97005
Phone: (503) 643-1023
Fax: (503) 643-5084
E-mail: atsa@atsa.com
Web: http://www.atsa.com

Center for Sex Offender Management, includes a section on assessment and management of juvenile offenders
Center for Sex Offender Management
c/o Center for Effective Public Policy
8403 Colesville Road, Suite 720
Silver Spring, MD 20910
Phone: (301) 589-9383
Fax: (301) 589-3505
Web: http://www.csom.org

Other Resources

Juvenile Sex Offender Research Bibliography
Web: http://ojjdp.ncjrs.org/juvsexoff/sexbibtopic.html
The following organizations publish trial advocacy instructional materials and conduct continuing legal education trial advocacy seminars.

**National Juvenile Defender Center**  
1350 Connecticut Avenue NW, Apt. 317  
Washington, DC 20036  
Phone: (202) 452-0010  
Fax: (202) 452-1205  
Web: http://www.njdc.info

**American Bar Association Section of Litigation**  
Phone: (312) 988-5662  
Fax: (312) 988-6234  
Web: http://www.abanet.org/litigation/home.html

**American Law Institute-American Bar Association Committee on Continuing Professional Education**  
Web: http://www.ali-aba.org

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