



A Checklist to Assess the Presence of a Constitutional Violation Under 34 U.S.C. § 12601

This checklist can be used to assess the presence of constitutional violations throughout the course of a client's case. Please refer to the [National Youth Defense Systems Standards](#) and their accompanying [User Guide](#) for litigation strategies to challenge potential constitutional violations noted in this checklist.

This checklist does not include a comprehensive list of all constitutional rights that may be implicated in a juvenile court proceeding. The rights outlined in this document are limited in scope based on the constitutional rights covered in the National Youth Defense System Standards, which examined constitutional violations in juvenile legal systems previously investigated by the DOJ under 34 U.S.C. § 12601.

Appointment of Counsel

Constitutional Right:

Right to a specialized youth defender starting sufficiently in advance of the first court appearance pursuant to a youth's right to effective representation under the 6th Amendment and right to due process under the 14th Amendment.

Checklist to Assess the Presence of a Constitutional Violation:

- I was not appointed early enough to adequately represent my client at the detention hearing.
 - I was appointed to represent my client on the same day as the detention hearing.
 - I was appointed to represent my client after the court ordered my client to be detained.
- I was not appointed early enough to adequately represent my client at the transfer hearing.
 - I did not have enough time to review discovery and conduct my own investigation due to the timing of when I was appointed as youth defense counsel.
- I was not appointed early enough to adequately represent my client at the adjudicatory hearing.
 - I did not have enough time to review discovery and conduct my own investigation due to the timing of when I was appointed as youth defense counsel.
- My appointment was delayed because of the court's ability-to-pay determinations related to my client's financial eligibility for a public defender.
 - The ability-to-pay determinations took into account the income of my client's family, rather than presuming my client was eligible based on their status as a child.

Conflict of Interest

Constitutional Right:

Right to fair and reliable proceedings that are free from any conflicts of interest, pursuant to the Due Process Clause of the U.S. Constitution.

Checklist to Assess the Presence of a Constitutional Violation:

- The court oversees defense functions.
 - The court appoints attorneys who may represent youth in delinquency cases.
 - The court controls the list of attorneys who may be appointed on a delinquency case.
 - The court decides which attorney will be appointed on each case.
 - The court controls access to essential defense components, such as social workers, experts, and lab analysis.
 - The court retaliates against attorneys who litigate zealously on behalf of young people by limiting or withholding case appointments.
- The court oversees prosecutorial functions.
 - Prosecutorial functions are handled by an employee of the court, instead of an agency under the Executive Branch.
- The court oversees probationary functions.
 - Probationary functions are handled by an employee of the court, instead of an agency under the Executive Branch.

Probable Cause Hearings

Constitutional Right:

Right to a probable cause hearing within 48 hours of a warrantless arrest pursuant to a youth's 4th Amendment rights.

Checklist to Assess the Presence of a Constitutional Violation:

- The court did not hold an evidentiary probable cause hearing within 48 hours (including weekends and holidays).
 - The court made an *ex parte* finding of probable cause.
- The court did not allow for a meaningful adversarial testing of evidence at the probable cause hearing.
 - The court permitted the prosecution to present unreliable evidence (e.g., double hearsay).
 - The court denied me the opportunity to meaningfully cross examine the prosecution's witness or otherwise challenge the prosecution's evidence.
 - The court denied me the opportunity to meaningfully present independent evidence.
 - The court denied me the opportunity to meaningfully provide a summation challenging probable cause.

- The probable cause hearing did not include the involvement of the following system professionals: youth defender, prosecutor, probation officer, and magistrate or judge.
- The court routinely sends children to detention summarily without an adequate probable cause determination.

Notice

Constitutional Right:

Right to adequate and timely notice that is written with specificity as to the factual allegations against the youth and provided to youth and youth defense counsel sufficiently in advance of a court appearance, pursuant to the Due Process Clause of the U.S. Constitution.

Checklist to Assess the Presence of a Constitutional Violation:

- My client and I did not receive adequate and timely notice prior to the detention hearing.
 - We did not receive any notice or information about the charges or factual allegations against my client before the detention hearing.
 - We received notice before the detention hearing, but the notice was inadequate.
 - Notice was not in writing.
 - Notice did not contain information on the specific charges or factual allegations against my client.
 - I did not have sufficient time to prepare for the detention hearing because I did not have enough information about the charges or allegations against my client before the hearing.
 - My client was detained without receiving adequate notice in writing that detailed the charges and factual allegations against them.
- My client and I did not receive adequate notice prior to the adjudication/fact-finding hearing.
 - We did not receive any notice or information about the charges or factual allegations against my client before the adjudication hearing.
 - We received notice before the adjudication hearing, but the notice was inadequate.
 - Notice was not in writing.
 - Notice did not contain information on the specific charges or factual allegations against my client.
 - I did not have sufficient time to prepare for the adjudication hearing because I did not have enough information about the charges or allegations against my client before the hearing.
 - I did not have sufficient time to prepare for the disposition hearing because I did not have enough information about the charges or allegations against my client before the hearing.
- My client and I did not receive timely and adequate notice of changes made to the petition prior to the adjudicatory hearing.
 - We did not receive any notice or information about changes made to the petition before the adjudication hearing.

- We received notice about changes made to the petition before the adjudication hearing, but the notice was inadequate.
 - Notice was not in writing.
 - Notice did not contain information on the specific changes made to the charges or factual allegations against my client.
- I did not have sufficient time to prepare for the adjudication hearing because I did not have enough information about the changes to the petition before the hearing.
- I did not have sufficient time to prepare for the disposition hearing because I did not have enough information about the charges or allegations against my client before the hearing.

Equal Treatment of Youth

Constitutional Right:

Right to equal treatment of all youth, regardless of race, ethnicity, ability, sexual orientation, and gender identity and expression at every point of contact with a state actor, pursuant to the Equal Protection Clause of the 14th Amendment.

Checklist to Assess the Presence of a Constitutional Violation:

- There are factors that the court regularly considers in their decision-making process that serve as proxies of race, ethnicity, ability, sexual orientation, and/or gender identity and expression.¹
 - These factors exist in risk assessment tools that are relied upon by the court.
 - These factors are considered at detention hearings, in support of detaining youth.
 - These factors are considered at transfer hearings, in support of waiving juvenile court jurisdiction.
 - These factors are considered at the disposition hearing, in support of imposing a harsher disposition on youth.
- My client was treated unfairly because of their race or ethnicity.
 - I have observed patterns or practices of disparate treatment by the police, court, probation, and/or other state actors toward young people based on their race or ethnicity.
- My client was treated unfairly because of their different abilities.
 - I have observed patterns or practices of disparate treatment by the police, court, probation, and/or other state actors toward young people based on their different abilities.

¹ An example of a factor that serves as a proxy of race, ethnicity, ability, sexual orientation, and/or gender identity and expression includes consideration of the number of prior arrests or adjudications, given the disproportionate levels of police surveillance in Black, Native/Indigenous, and Latino/a communities and its intersection with increased levels of scrutiny involving LGBTQ+ youth and youth with disabilities. It may also be worth investigating the population group that the risk assessment tool used in your jurisdiction was normed for, and if your client falls outside of that population group, challenge the use of the tool against your client on reliability and relevance grounds.

- My client was treated unfairly because of their sexual orientation and/or gender identity and expression.
 - I have observed patterns or practices of disparate treatment by the police, court, probation, and/or other state actors toward young people based on their sexual orientation, gender identity, and gender expression.

Interrogation and Questioning

Constitutional Right:

Right to counsel when youth face questions about the nature of the allegations against them by police, probation, or other state actors pursuant to their 5th Amendment privilege against self-incrimination.

Checklist to Assess the Presence of a Constitutional Violation:

- My client's waiver of their *Miranda* rights was not knowing, intelligent, and voluntary.
 - The *Miranda* warnings were not administered in developmentally appropriate language.
 - My client did not have access to an attorney to explain their *Miranda* rights before waiver.
- My client was required to make an admission to access diversion.
- After I was appointed to represent my client, probation or police interviewed my client regarding the pending allegations against them in my absence.
 - Probation/police did not inform me of the meeting date and time.
 - Probation/police did not obtain an informed waiver from my client.
 - Probation/police did not allow me to participate in their interview of my client.

Transfer/Certification

Constitutional Right:

Right to a full evidentiary hearing to determine whether a youth should face adult prosecution pursuant to the Due Process Clause of the U.S. Constitution.

Checklist to Assess the Presence of a Constitutional Violation:

- The court did not hold an evidentiary hearing to determine whether my client should face adult prosecution before transferring jurisdiction to adult court.
 - There was no adversarial testing of probable cause before jurisdiction was transferred to adult court.
 - The court did not subject the prosecuting agency to its burden of proof to demonstrate the need to transfer jurisdiction to adult court.
 - The prosecuting agency did not present evidence to support their petition for transfer.
 - I did not have an opportunity to meaningfully cross examine and test the prosecuting agency's evidence.

- I was denied the opportunity to meaningfully introduce independent evidence on my client's behalf.
- I was unable to provide zealous representation at the transfer proceeding due to structural barriers.
 - I was not provided discovery before the transfer proceeding.
 - I was not provided with a list of witnesses sufficiently in advance of the hearing to allow effective preparation.
 - I was not provided with the probation department's report and recommendation sufficiently in advance of the hearing to allow effective preparation.
 - I did not have sufficient time to review discovery and conduct my own investigation before the transfer proceeding.
 - I did not have sufficient time to hire an expert or explore other mitigating witnesses before the transfer proceeding.
- My client's statements were used against them during the transfer proceeding.
 - My client was forced to testify during the transfer proceeding.
 - My client's prior statements made to probation were used against them.
 - My client's prior statements made to the police were used against them.

Terms of Probation & Probation Revocation

Constitutional Right:

Right to be free from the arbitrary and discriminatory enforcement of probation conditions, followed by a fair and reliable revocation hearing, pursuant to a young person's substantive and procedural due process rights.

Checklist to Assess the Presence of a Constitutional Violation:

- The court ordered probation conditions that are subject to arbitrary and discriminatory enforcement by probation officers.
 - The probation conditions were not written in youth-friendly language (i.e., my client is unable to fully understand what is written in the probation order).
 - The probation conditions were overly broad.
 - The probation order did not explain my client's right to a hearing to defend themselves against allegations of a probation violation.
- The court did not hold an evidentiary hearing prior to the revocation of my client's probation.
 - I did not receive written notice about the allegations against my client before the revocation hearing.
 - I did not receive discovery before the revocation hearing.
 - I did not have sufficient time to review discovery and conduct my own investigation before the revocation hearing.

- I was denied the opportunity to meaningfully cross-examine the prosecution's witness or otherwise challenge the prosecution's evidence.
- I was denied the opportunity to meaningfully present independent evidence.
- The court did not provide a written decision outlining the court's reasoning for revocation.
- The revocation hearing did not include the involvement of the following system professionals: youth defender, prosecutor, probation officer, and magistrate or judge.
- The court routinely incarcerates youth for violations of probation.

Post-Disposition Representation

Constitutional Right:

Right to continued representation by youth defense counsel at all critical stages of a juvenile court proceeding pursuant to a youth's right to counsel under the 6th Amendment and right to due process under the 14th Amendment.

Checklist to Assess the Presence of a Constitutional Violation:

- My appointment as youth defense counsel terminated as soon as the disposition order was entered.
- The court did not permit post-disposition review of my client's case.
- My client did not have access to post-disposition representation while incarcerated.
 - My client did not have access to an attorney who could file an appeal on their case.
 - My client did not have access to an attorney who could monitor their conditions of incarceration and pursue necessary legal avenues to safeguard their state, federal, and constitutional rights while confined.
 - My client did not have access to an attorney who could petition for early release from incarceration.
- My client did not have access to post-disposition representation while under community supervision.
 - My client did not have access to an attorney who could monitor probation, court, or state supervision over their community release and pursue necessary legal avenues to safeguard their state, federal, and constitutional rights while under supervision.
 - My client did not have access to an attorney who could petition for early termination of supervision.
 - My client did not have access to an attorney who could represent them on probation revocation or violation hearings.
- My client did not have access to an attorney who could petition for sealing or expungement of their juvenile record.