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A GUIDE TO JUVENILE DETENTION REFORM

Embedding Detention Reform in State Statutes, Rules and Regulations

Juvenile Detention Alternatives Initiative
A PROJECT OF THE ANNIE E. CASEY FOUNDATION

This report was created by the Juvenile Law Center for the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

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Introduction

Across the country, the Juvenile Detention Alternatives Initiative (JDAI) has created effective reforms that reduce unnecessary reliance on secure confinement of youth, improve public safety, cut costs and reduce racial and ethnic disparities in the juvenile justice system.

While JDAI sites routinely implement administrative policy changes at the local jurisdiction level to support reform efforts, adopting new state policies can deepen effective detention reform. New state policies — when implemented well — help bring local efforts to scale and sustain successful efforts at detention reform. This manual is designed to guide sites in identifying needed policy change and drafting policies — including statutes, regulations and fiscal policy — that support the core strategies of JDAI.

Each site will determine its own priorities for change based on JDAI experiences, existing policy and the likelihood of support for policy reform. This guide provides policy recommendations for sites to consider based on each of JDAI's eight core strategies:

- **Collaboration**
- **Collecting and Using Data**
- **Controlling the Front Gates**
- **Detention Alternatives**
- **Reducing Unnecessary Delay**
- **Special Detention Cases**
- **Reducing Racial and Ethnic Disparities**
- **Conditions of Confinement in Secure Juvenile Detention Centers**

The guide also provides recommendations on other policy changes that further support the eight core strategies:

- **The Right to Effective Counsel**
- **Amending Purpose Clauses**
- **Financial Incentives**

How to Use This Guide

This guide is *not* designed to be read cover-to-cover. Moreover, different stakeholders will use the guide in different ways.

Following this introduction, you will find an **overview of the findings** contained in each chapter. The overview should provide sufficient detail for initial discussions among stakeholders about goals and priorities for new policies to support and sustain JDAI core strategies.

In Appendix A, you will find a detailed **assessment tool** for analyzing current policies. The assessment tool includes broad **goals** for reform, **benchmarks** toward meeting those goals and **policies to repeal**. The assessment tool is designed for individuals involved in policy analysis and advocacy, who can report back to a broader JDAI collaborative about strengths and weaknesses of existing state policies and suggested opportunities for reform.

Detailed chapters on each subject provide examples of **statutes** and **regulations** from around the country that serve as useful models, or when such models do not exist, **recommendations for items to be included in statute**. These chapters are designed for reference purposes. Individuals conducting an assessment can refer to the detailed chapters to review policies enacted in other jurisdictions. The examples can be used as a model in drafting legislation; as examples to legislators, legislative staff and policy advocates to demonstrate the feasibility of recommendations; and as a point of reference when assessing existing policy in a state. The policies included in this guide are highlighted for the strength of their language, and

WHILE JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) sites routinely implement administrative policy changes at the local jurisdiction level to support reform efforts, adopting new state policies can deepen effective detention reform. New state policies — when implemented well — help bring local efforts to scale and sustain successful efforts at detention reform. This manual is designed to guide sites in identifying needed policy change and drafting policies — including statutes, regulations and fiscal policy — that support the core strategies of JDAI.

have not been assessed for effective implementation. As a result, in some locations highlighted, practice may not yet have fully shifted to reflect the strong policy. Moreover, in most cases, we have pulled short excerpts from broader legislation. The broader legislation may at times have language at odds with JDAI core strategies or broader goals for detention reform. For this reason, we urge stakeholders to focus on the excerpted language provided.

This guide is a living document. Laws and practices are constantly changing. If you are aware of an effective practice or policy not captured in this guide, or if your jurisdiction or state adopts new statutes, rules or regulations, please contact us via the JDAI Helpdesk so that we can continue to update the guide and the field.

Who Should Use This Guide

JDAI state and local collaboratives interested in changing policy as a means to scale up and sustain detention reform can use this guide — particularly the overview of findings and the assessment tool — to stimulate discussion about legislative needs and opportunities.

Legislators, legislative staff and advocates involved in policy reform can refer to relevant sections of the full publication to assist them in developing detailed legislative recommendations.

What to Do with the Information

The scope of reforms needed to scale up and sustain JDAI efforts will vary from state to state. Each site should consider its own legal structure and political reality to determine timing and strategy for proposed policy changes. In some cases, the risk of changing the law may outweigh the possible benefits. In other cases, JDAI collaboratives may select a narrow set of issues for policy change and leave others to practice change or to address at a later date. This publication gives sites flexibility to assess their own needs and determine their own most effective strategies to embed JDAI strategies in state law.

Overview of the Recommendations

The detailed chapters that follow provide guidelines for assessing a jurisdiction's formal policies, with concrete examples from around the country. Following is an overview of the recommendations for each chapter:

Collaboration: While collaboration is vital to JDAI implementation, determinations about whether to mandate collaborations in state-level policy must be determined by each jurisdiction. While collaboration mandated by state policy will inevitably lack the dynamic and flexible nature of ground-up collaborations currently in existence in JDAI sites, state policy can help shore up strong collaborations, or lay the groundwork for new collaborations, and can also sustain collaborations over time. Strong state-level

policies that support collaborations do the following: (1) ensure that policies clearly establish the purpose of such collaborations; (2) clarify that collaborative bodies will rely on data to develop policy and/or practice recommendations; and (3) set forth inclusive membership requirements.

Collecting and Using Data: Collecting, analyzing and responding to data is vital to ensuring that detention is used only to the extent necessary and implemented effectively, and that racial and ethnic disparities within the system are minimized. Statutes requiring data collection and use ensure that a jurisdiction: (1) assesses the use of detention, including an assessment of populations for which detention is over-used; (2) assesses the nature and extent of racial and ethnic disparities in the system; (3) provides transparency on conditions of confinement; and (4) ensures that data is used to influence policy and practice.

Controlling the Front Gates: Secure juvenile detention should be used only when necessary to ensure that a juvenile will return to court without a new arrest pending the disposition of the case. Across the country, state-level policies permit detention for other reasons, thus increasing the chances of over-reliance on secure detention and of racial and ethnic disparities. Strong state admissions policies: (1) explicitly allow for detention only to prevent flight or risk of rearrest before the next hearing and prohibit detention in other cases and for specific categories of offenders; and (2) mandate the use of validated risk assessment instruments to reduce unnecessary detention and decrease racial and ethnic disparities in detention, with appropriate procedural protections.

Detention Alternatives: In the absence of detention alternatives, officials must choose between placing young people in secure detention and sending them home. Detention alternative programs offer the possibility of release with increased supervision to youth who, but for these programs, would have been placed in secure detention. State policies can mandate the use of alternatives, and can ensure that the alternatives are used only when appropriate, and not as "net-wideners" to detain youth who would otherwise have been permitted to remain at home. To do so, state policies can (1) require the establishment and use of detention alternatives; (2) prioritize non-secure alternatives over more restrictive settings; (3) establish reasonable conditions for compliance; and (4) protect the procedural rights of youth who fail to comply with those conditions.

Reducing Unnecessary Delay: Minimizing length of stay for youth can reduce unnecessary detention. Efforts to reduce unnecessary delay should apply to youth in non-secure settings, including community-based detention alternative programs, as well as to youth in secure settings, to minimize rates of failure to appear and to minimize time in restrictive settings. Policies to support this (1) set time limits for: detention hearings, detention review hearings, probable cause hearings, police reporting, filing petitions, adjudicatory hearings, and detention pending disposition, placement, or transfer; (2) establish that youth will be released upon a violation of those time limits; (3) limit continuances; (4) ensure developmentally appropriate notices and processes to ensure that youth appear for hearings; (5) expedite discovery; and (6) expedite hearings by making magistrates or electronic hearings available when necessary, with due process protections for youth.

Special Detention Cases: Even when other policy changes are put in place to reduce the unnecessary and inappropriate placement of children in secure detention, significant numbers of youth can still remain in the system because they are detained on warrants or violate probation or because they are in detention while awaiting disposition or placement. As a result, policies and practices specifically focused on these "special detention" cases are often needed to reduce over-reliance on detention. State policies to address this population can include: (1) explicitly recognizing the goal of reducing special detention cases in juvenile justice purpose clauses; (2) prohibiting secure custody for technical probation violators and other special populations; (3) applying objective risk assessment instruments to probation violators; (4) ensuring due process protections for probation violators; and (5) enumerating factors for consideration in detention determinations for violations of court orders.

Reducing Racial and Ethnic Disparities: Youth of color represent a disproportionate percentage of — and a majority of — youth detained in secure facilities. Research demonstrates that youth of color are treated more harshly by juvenile justice decision makers than their white peers — even when charged with the same category of offense. The policies set forth throughout this guide seek to address this problem. Additionally, states can put in place policies that explicitly recognize and respond to racial and ethnic disparities in their systems. This can include: (1) establishing racial and ethnic justice as one goal of the juvenile justice system; (2) mandating the use of detention risk assessment instruments validated to reduce racial and ethnic disparities; (3) gathering and responding to data on race and ethnicity; requiring racial impact statements for all new legislation; (4) establishing collaborations aimed at addressing racial and ethnic disparities; (5) establishing funding streams to ensure appropriate services for youth of color; and (6) publicly reporting on the existence of racial and ethnic disparities and all efforts to address them.

Conditions of Confinement in Secure Detention: When youth are placed in out-of-home detention (secure or non-secure) state policies can help to ensure that facilities best protect the welfare of youth whose care is entrusted to the juvenile justice system. JDAI publications have underscored the need to ensure adequate conditions on a host of factors in secure detention (classification and separation; health and mental health care; access to counsel, the courts and family; programming, education, exercise and recreation; religion, training and supervision of institutional staff; environment, sanitation, overcrowding and privacy; restraints, isolation, punishment, due process, and grievances; and safety issues for staff and confined children). It is beyond the scope of this publication to set forth examples of policies to codify recommendations for each of these areas. As a result, we focus in this chapter on establishing oversight that will ensure that best practice standards are put in place and followed. These include: (1) putting in place independent monitors and clarifying their roles, responsibilities, and access to information; (2) establishing internal assessment systems and structures for corrective action; and (3) ensuring a right to counsel that includes addressing conditions of confinement.

The Right to Effective Counsel: When youth have effective assistance of counsel, the rights articulated throughout this manual are more likely to be respected and detention less likely to be imposed

unnecessarily. Youth have a guaranteed right to counsel under the United States Constitution. State level policies can help jurisdictions ensure that representation is effective. States policies can also: (1) ensure a right to counsel at all stages of the delinquency proceedings; (2) ensure that youth cannot waive the right to counsel; (3) establish that all youth are presumed indigent, regardless of family income; (4) establish a state system for indigent defense funding and quality control; and (5) ensure timely appointment of counsel.

Amending Purpose Clauses: Because purpose clauses set forth the broad principles upon which all provisions of a state's juvenile code should be read, articulating JDAI goals in a purpose clause can create a useful enduring legal framework. Purpose clauses can do so by: (1) embedding JDAI core strategies; (2) requiring that the juvenile justice system take adolescent development into account; (3) establishing a reduction in racial and ethnic disparities as a key goal of the juvenile justice system; (4) requiring special attention to youth with unique needs based on such issues as sexual orientation, gender identity, trauma history, or disability status; and (5) establishing strong procedural protections for youth.

Financial Incentives: Financial incentives and disincentives play a role in advancing juvenile justice policy, and can be an effective vehicle for embedding principles of JDAI. Even in states with limited financial capacity, thoughtful policies can shift incentives to sustain innovation. State policy can support these approaches by: (1) creating incentives by funding detention alternatives at higher rates than secure care; (2) shifting funding from state secure settings and re-allocating that money to counties for detention alternatives; (3) creating the authority to take all savings from reductions in secure care settings and re-invest in non-secure alternatives; and (4) supporting state/community partnerships to increase detention alternatives.

Collaboration

Collaboration — or the convening of stakeholders from within and outside of the traditional juvenile justice system to share information and create plans and procedures — promotes more sound policy development on the front end, and helps to foster accountability in the review and assessment of detention policies.[1]

However, to what degree these collaborations should be mandated by state-level policy must be determined by each jurisdiction. Where strong collaborations exist, written policies may help to codify the collaboration to ensure that it continues once initial reforms are institutionalized. When strong collaboration has not yet been developed, policies may help to lay the groundwork. However, jurisdictions should keep in mind that collaboration mandated at the state level may lack some of the dynamic and flexible nature of the ground-up collaborations already in existence in all JDAI sites. Furthermore, although the examples in this chapter all relate to state statutes authorizing state-level collaborations, policymakers should be aware that collaboration can take different forms at the state and local levels, and can be supported through informal agreements, more formal memoranda of understanding or interagency agreements, or, as set forth in this chapter, state statute.

STATE POLICIES CAN SUPPORT COLLABORATION BY:

- Providing clarity on the purpose of the collaboration, including:
  - Assessing needs through reliance on data
  - Developing policies or policy recommendations
  - Ensuring detention is only used for appropriate purposes
  - Addressing issues of racial and ethnic disparities
- Ensuring inclusive membership in the collaboration, with a focus on including:
  - Youth and family members
  - Community-based organizations
  - Diversity along lines of race, ethnicity, gender and age

A. PURPOSE AND AUTHORITY OF COLLABORATION: ANALYZING SYSTEM NEEDS, IMPROVING POLICIES AND PRACTICES

Statutes may grant authority to collaborative bodies at the state or local level to assess needs, make policy recommendations based on data assessments and community input, coordinate and implement services, and engage in regular policy and practice review. The examples below provide variations on these basic principles, with a differing scope or focus of work in each collaboration. The strongest policy examples explicitly require the collaborative body to use data-driven assessments and to solicit community input to guide juvenile justice policies. To be embedded in state policy and effectively scale up and sustain JDAI efforts, policies around collaboration should be focused on ensuring a reduction in unnecessary detention and minimizing racial and ethnic disparities.

EXAMPLE

Mississippi — Statute Requiring JDAI Task Force

There is established the Juvenile Detention Alternatives Task Force. The purpose of the task force is to support the expansion of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) throughout the state.

…On or before December 31, 2012, the task force shall issue a report to the Legislature and to every county youth court judge that includes the following:

(a) A plan for supporting the Council of Youth Court Judges' Juvenile Detention Alternative Initiative; and

(b) A plan for reducing the financial burden of providing detention services on the counties, increasing cross-county collaboration, reducing duplication of services and maximizing support from federal, state and private sources.[2]

EXAMPLE

Louisiana — Children and Youth Planning Boards to Formulate Evidence-Based Plans

*[The **Children and Youth Planning Boards** Act authorizes local collaborative bodies to coordinate and implement services to encourage] "positive development, diversion of children and youth from the criminal justice and foster care systems, reduction in the commitments of youth to state institutions, and provision of community responses to the growing rate of juvenile delinquency"*[3]

*[…] (1) The children and youth planning boards shall **actively participate in the formulation of a comprehensive plan** for the development, implementation, and operation of services for children and youth and **make formal recommendations** to the parish governing authority or joint parish governing authorities **at least annually** concerning the comprehensive plan and its implementation during the ensuing year.*

(2) In its formulation of the comprehensive plan, the children and youth planning boards shall do all of the following, but shall not be limited to the following:

[…] (b) ***Assess the needs of children and youth in the local community, incorporating reliable data sources.***

(c) ***Develop and select the appropriate evidence-based strategies or programs*** *to meet those needs identified by soliciting community input and developing a strategic plan to best address the needs of children and youth in the respective community. This strategic plan should have measurable goals and objectives and should be* ***evaluated annually*** *to ensure its effectiveness.*

(d) Collaborate with schools, law enforcement, judicial system, health care providers, and others to ***ensure goals and treatment needs are being met****…*[4]

EXAMPLE

Kentucky — Task Force to Revise Juvenile Code to Address RAIs, Alternatives to Secure Confinement, Savings Reinvestment, and Other Juvenile Justice Issues

The ***Unified Juvenile Code Task Force*** *may,* ***based on prior research and recommendations and its own new research and recommendations, … draft changes to the Unified Juvenile Code*** *and other necessary statutes.*

(2) The draft may, insofar as possible, provide for:

(a) The use of ***validated risk and needs assessments;***

(b) ***Alternatives to incarceration;***

(c) The use of ***community resources, education, and rehabilitation programs*** *for both victims and defendants;*

(d) ***Reinvestment of savings*** *from reduction of the use of facilities for the detention and out-of-home placement of public offenders and status offenders into community-based treatment programs for public offenders and status offenders;*

(e) Establishing means of ***protection and treatment for special needs children;***

(f) The feasibility of establishing an ***age of criminal responsibility;***

(g) ***Whether or not to eliminate status offenses*** *or modify how status offenses are handled and status offenders are treated….*[5]

B. REQUIRING INCLUSIVE MEMBERSHIP IN THE COLLABORATION

Inclusiveness is vital to effective collaborations. Youth and family members, champions of racial and social justice, and community-based organizations, in particular, provide valuable insights into what individual children need, and into how system-level policies are working. Additionally, while higher-level

officials are often essential to moving practice changes, strong collaborations will include frontline detention workers, who can reflect on the day-to-day reality of detention practices. The examples here provide useful elements, although none fully address all relevant issues.[6] To ensure effective collaboration, states should consider including the stakeholders listed in the sidebar on page 18 when drafting legislation on collaboration.

EXAMPLE

Louisiana — Ensuring Diversity in Race, Ethnicity, Gender, and Experience

A. Each planning board shall consist of a minimum of eleven, but not more than twenty-five members. ***Special care should be given in the appointments to ensure that the board is representative of the community in terms of gender, age, ethnicity, and geography, as well as knowledge and expertise.*** *Those appointed shall include the following, if available and willing to serve, but need not be limited to:*

(1) Members of the ***education community*** *that are representative of and knowledgeable about early childhood, elementary, secondary, and special education.*

THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (JJDPA) AND COLLABORATION

The JJDPA requires each state to create an advisory group of between 15 and 33 members appointed by the chief executive officer of the State; the members must have training, experience or knowledge concerning juvenile justice prevention, reduction, or administration.

The advisory group must include stakeholders representing many governmental and non-governmental interests. A majority must not be full-time government employees, and the group must include representation by young people and those currently or formerly under juvenile justice supervision.

This group is responsible for participating in the development and review of the state's plan, including the plan for ensuring equitable treatment on the basis of gender, race, family income, and disability. The group also has authority to review and comment on the administration of federal grant funding for juvenile justice programs and services.

Juvenile Justice and Delinquency Prevention, as amended, Pub. L. No. 93-415, 1974 S 821, available at: http://www.ojjdp.gov/about/jjdpa2002titlev.pdf.

*(2) Members of the **criminal justice community** that are representative of and knowledgeable about law enforcement, prosecution, public defense, and the judiciary. Wherever possible, a member of the judiciary elected to the juvenile court bench should be included.*

*(3) Members of the **health care community** that are:*

(a) Representative of and knowledgeable about physical health, mental health, and early childhood substance abuse prevention and treatment services. …

*(4) Members of the **social services community** that are representative of and knowledgeable about child in need of care services, foster parenting, and child and family support programs.*

*(5) Members of the **faith-based communities**.*

*(6) Members of the **business and labor communities**.*

*(7) Members of **parenting and youth organizations.***[7]

EXAMPLE

Alaska — Culturally Relevant Community Involvement

[A] purpose of this chapter [is] to

*(13) encourage and provide opportunities for **local communities and groups to play an active role in the juvenile justice process** in ways that are **culturally relevant.***[8]

NOTE ON COLLABORATION

Collaborations may involve various stakeholders, such as:

- Families
- Youth
- Police; other law enforcement agencies
- Probation departments
- Juvenile court judges/staff
- Prosecutor's offices
- Defense attorneys
- Schools
- Other public agencies with youth clients (child welfare, health, mental health)
- Elected local/state officials (e.g., city council)
- Community-based youth service agencies
- Private residential care providers
- Children's advocacy groups
- Members of the communities most affected by detention

EXAMPLE

Kentucky — Including Provider of Community-Based Services in Task Force

*The **Unified Juvenile Code Task Force** shall consist of:*

*(1) The **chair of the Senate Judiciary Committee,** who shall be co-chair of the task force; …*

*(2) The **chair of the House of Representatives Judiciary Committee,** who shall be co-chair of the task force…;*

*(3) A **District Court or Family Court Judge** recommended by the Chief Justice;*

*(4) The director of the **Administrative Office of the Courts** or his or her designee;*

*(5) A current or former **county attorney or assistant county attorney** with juvenile court experience recommended by the co-chairs;*

*(6) A current or former **attorney from the Department of Public Advocacy** with juvenile practice experience recommended by the public advocate;*

*(7) The **commissioner of the Department of Juvenile Justice;***

*(8) The **commissioner of the Department for Community Based Services;***

*(9) A **superintendent from a local board of education** recommended by the co-chairs;*

*(10) A current **county judge/executive** recommended by the co-chairs; and*

*(11) **A provider of community based treatment services** for children recommended by the co-chairs.*[9]

EXAMPLE

New Mexico — Including Community Involvement in Delinquency Purpose Clause

The purpose of the Delinquency Act is:

*…D. to foster and encourage collaboration **between government agencies and communities** with regard to juvenile justice policies and procedures…*[10]

EXAMPLE

Mississippi — Including Diverse Stakeholders in Task Force and as Part of Advisory Committee to the Task Force

The task force shall be composed of the following members:

*(a) The **statewide coordinator of the JDAI,** or his designee;*

*(b) The **Director of the Division of Youth Services,** or his designee;*

*(c) A representative from the **Juvenile Facilities Monitoring Unit;***

*(d) Two (2) **youth court judges…***

*(e) A representative from the Mississippi **Sheriffs' Association;***

*(f) A representative from the Mississippi **Prosecutors Association;***

*(g) A representative from the Mississippi **Public Defenders Association;***

*(h) Two (2) representatives from the **Mississippi Coalition for the Prevention of Schoolhouse to Jailhouse;***

*(i) Three (3) representatives from **counties of this state that are engaged in the JDAI,** to be appointed by Mississippi's JDAI coordinator;*

*(j) A representative from the **Mississippi Association of Police Chiefs** appointed by the president of the association;*

*(k) A representative from the **Department of Mental Health** appointed by the executive director of the department;*

*(l) A representative from the **state advisory group** established in subsection (7) of this section, to be appointed by the chairperson of the advisory group;*

*(m) Two (2) representatives from the **Mississippi Juvenile Detention Directors Association** appointed by the president of the association;*

*(n) Two (2) supervisors from the **Mississippi Association of County Supervisors** appointed by the president of the association;*

*(o) The **State Superintendent of Education,** or his designee;*

*(p) A representative from the **State Parents Association.***

[…]

*There is created an **advisory group established for the purpose of providing advice, input and information to the Juvenile Detention Alternatives Task Force.** Advisory group members shall receive notice of task force meetings and shall, at the request of the chairperson of the task force, provide assistance with research and analysis. The advisory group shall be composed of the following members:*

*(a) Two (2) representatives from **children's advocacy nonprofit organizations,** appointed by the Chairperson of the House Juvenile Justice Committee and the Chairperson of the Senate Judiciary B Committee;*

*(b) Two (2) representatives of a **victims' rights organization** appointed by the Attorney General;*

*(c) Two (2) **parents or guardians of a youth involved with the juvenile justice system,** appointed by the Chairperson of the House Juvenile Justice Committee and the Chairperson of the Senate Judiciary B Committee;*

*(d) Two (2) **youth who have experience with juvenile detention,** appointed by the Council of Youth Court Judges; and*

*(e) Three (3) **members appointed by the Chairperson of the Juvenile Detention Alternatives Task Force.**[11]*

II

Collecting and Using Data

Collecting, analyzing and responding to data is critical to ensuring that detention is used only to the extent necessary, that it is implemented effectively, and that racial and ethnic disparities with the system are minimized. JDAI requires data collection and analysis as a key methodology for identifying areas of improvement, informing improvement strategies and tracking outcomes of policy, practice and program change.

This chapter highlights legislation that supports the data collection needed to inform initial policy changes, as well as subsequent data collection to support quality control in a state's juvenile justice system.[12]

Such data can assist jurisdictions in assessing progress and outcomes relating to implementing JDAI core strategies, to diagnose problems with detention systems and to improve operations. It can be particularly helpful in assessing the effect of detention policies on racial and ethnic disparities, and in determining the extent to which detention policies reduce failures to appear and rearrests pending disposition.

STATE POLICIES CAN SUPPORT DATA COLLECTION AND USE BY:

- Carefully identifying the outcomes to be measured, keeping in mind the limited purposes of detention
- Requiring adequate data collection, including:
  - Quantitative data on youth and the efficacy of programs in the system in meeting ongoing needs
  - Data on detention conditions
  - Data on length of stay
  - Data on special populations such as probation violators
  - Data by race, ethnicity and gender and other youth characteristics
- Ensuring that data is used to influence policy and practice

Simply collecting data is not sufficient — data should be the impetus for ongoing system change. This chapter includes examples of data triggering reports and recommendations to policymakers. For further exploration of how collaboratives can use data to drive effective reforms, see Chapter I.

While it is beyond the scope of this publication, the most effective way to ensure that ongoing and comprehensive data collection will take place is to establish a statewide interagency data system.

A. DATA ON USE OF DETENTION

Data can assist states in preventing over-reliance on detention. Strong legislation focuses on ensuring decision-makers' fidelity to the narrow purposes of detention — including preventing over-reliance on detention and reducing racial and ethnic disparities. Data on length of stay; data that disaggregates by race, ethnicity, and gender; and data that assesses the situation of special detention cases such as probation violators, youth wanted on warrants and youth in detention pending placement or disposition may be particularly useful. For more information on special detention cases, see Chapter VI. Data collection should cover secure detention facilities and detention alternatives. Additionally, some particularly

EXAMPLE FROM THE FIELD

While not implemented by way of state statute, the following example from Cook County, Illinois, is instructive of how governments can use data collection to inform better policy:

Once a juvenile justice practice is implemented, routine reports and data on the program's performance need to be shared regularly with judges and other stakeholders. In Cook County, for example, a one-page monthly report…was prepared that captured all the programs in the jurisdiction's detention alternatives continuum.

This easy-to-recognize, easy-to-read description is routinely updated and disseminated system-wide. It reinforces both the availability of the programs and their effectiveness.

See Paul DeMuro, Annie E. Casey Foundation, **Pathways to Juvenile Detention Reform #4: Consider the Alternatives: Planning and Implementing Detention Alternatives**, 42 (2005).

promising legislation requires multiple stakeholders — courts, juvenile justice agencies, juvenile justice facilities and others — to collect data at a variety of points of contact with the juvenile justice system. Strong data collection legislation may also clarify the right to access information for data analysis purposes while still protecting youth confidentiality.

EXAMPLE

New Mexico — Collecting and Analyzing Data on Use of Detention Risk Assessment Instrument

*The department shall develop and implement a detention risk assessment instrument. The department shall **collect and analyze data regarding the application of the detention risk assessment instrument.***[13]

EXAMPLE

Georgia — Collecting and Analyzing Data on the Justice System, Including Detention:

1. Requiring a Council of Juvenile Court Judges to Collect Data

The Council of Juvenile Court Judges:

*… (4) Shall publish in print or electronically an **annual report** of the work of the courts exercising jurisdiction over children, which **shall include statistical and other data on the courts' work and services, research studies the council may make of the problems of children and families dealt with by the courts, and any recommendations for legislation**; and*

(5) Shall be authorized to inspect and copy records of the courts, law enforcement agencies, the department, and DJJ for the purpose of compiling statistical data on children.[14]

2. Requiring Facilities to Maintain Data on Detained Children.

*All facilities **shall maintain data on each child detained** and such data shall be recorded and retained by the facility for three years and shall be made available for inspection during normal business hours by any court exercising juvenile court jurisdiction, by DJJ, by the Governor's Office for Children and Families, and by the Council of Juvenile Court Judges. The required data are each detained child's:*

(1) Name;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Offense or offenses for which such child is being detained;

…

(9) The score on the detention assessment;

(10) The basis for detention if such child's detention assessment score does not in and

of itself mandate detention;

(11) The reason for detention, which may include, but shall not be limited to, preadjudication detention, detention while awaiting a postdisposition placement, or serving a short-term program disposition…[15]

3. Requiring Board of Juvenile Justice to Collect and Analyze Data and Performance Outcomes

The board [of Juvenile Justice] shall:

… Require the department to collect and analyze ***data and performance outcomes, including, but not limited to, data collected and maintained pursuant to subsection (n) of Code Section 49-4A-8 [regarding committed children]…***[16]

4. Requiring the Department to Collect Data on "Treatment Effectiveness," Including Detention

(n)(1) The department shall conduct a ***continuing inquiry*** *into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish in print or electronically annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate and coordinate with courts, juvenile court clerks, the Governor's Office for Children and Families, and public and private agencies* ***in the collection of statistics and information regarding…:***

… (C) Detentions made, the offense for which such detention was authorized, and the reason for each detention[…][17]

EXAMPLE

Maryland — Cooperating with Independent Researchers

The Department shall cooperate with independent, impartial research and evaluation activities conducted by federal contract research centers, private foundations, university-based research centers, academics working as individuals, and private corporations engaged in juvenile justice research. All private data shall be made available to bona fide researchers, subject to […] the protection of the rights of privacy of individuals.[18]

B. DATA ON SPECIAL POPULATIONS

Because special detention cases, including children detained on warrants, or on probation violations, represent a significant portion of the unnecessary detention across the country, data collection on this group can be particularly helpful in detention reform. Such data can support the development of policies

to encourage individualized decision making and reduce unnecessary detention. See David Steinhart, Annie E. Casey Foundation, *Pathways to Juvenile Detention Reform #9: Special Detention Cases: Strategies for Handling Difficult Populations,* (1999). For more information on policies to reduce secure detention in special detention cases, see Chapter VI.

C. DATA ON CONDITIONS OF CONFINEMENT

States should maintain and evaluate information on the conditions of confinement for youth in detention. **Important note:** harsh disciplinary tactics such as restraints and isolation should be eliminated. For more on how to approach conditions of confinement, see Chapter VIII. However, to the extent that states have not yet eliminated these approaches, it is important to track the use of them to identify and respond to trends.

Conditions data on positive interventions, including the use of school, recreation, programming, therapeutic interventions and appropriate de-escalation, should also be tracked. Moreover, data collection on practices or programs that are working well allows states the flexibility to experiment with and assess promising approaches that may not yet be evidence-based. Data can track not only effectiveness, but also cost-benefits. This section provides one example of data collection approaches related to conditions.[19]

EXAMPLE

Texas — Detention Center Condition Statistics

*The facility administrator or chief administrative officer shall **maintain and report** to the Commission electronically, or in the format requested, accurate statistics in the following areas:*

*(1) total number of **grievances;***

*(2) total number of **personal restraint incidents;***

*(3) total number of **mechanical restraint incidents;***

*(4) total number of **chemical restraint incidents;***

*(5) total number of **non-ambulatory restraint incidents;***

*(6) total number of **disciplinary seclusions;** and*

*(7) total number of **detention staff injuries** resulting from interaction with residents.*[20]

D. USING DATA TO INFLUENCE POLICY AND PRACTICE CHANGE

Data collection on its own is not sufficient. Instead, strong legislation links data analysis to policy and practice change, and then tracks outcomes of those changes. Promising policies require that: (1) specified stakeholders make recommendations and assess implementation; (2) juvenile justice policies be informed by data; or (3) data reports be made to the legislature or other bodies with capacity to effect policy change.

EXAMPLE

Louisiana — Children and Youth Planning Boards to Make Formal Recommendations Based on Data

The children and youth planning boards shall actively ***participate in the formulation of a comprehensive plan*** *for the development, implementation, and operation of services for children and youth and* ***make formal recommendations*** *to the parish governing authority or joint parish governing authorities* ***at least annually*** *concerning the comprehensive plan and its implementation during the ensuing year.*

(2) In its formulation of the comprehensive plan, the children and youth planning boards shall […]

…

(b) ***Assess the needs of children and youth in the local community, incorporating reliable data sources.****[…]*[21]

EXAMPLE

California — Results-Oriented Metrics for the Juvenile System

*(d) …****Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives*** *established to improve system performance in a vigorous and ongoing manner […]*[22]

EXAMPLE

Kansas — Outcome Based Policies

This act shall be known and may be cited as the revised Kansas juvenile justice code. The primary goals of the juvenile justice code are to promote public safety, hold juvenile offenders accountable for their behavior and improve their ability to live more productively and responsibly in the community. To accomplish these goals, ***juvenile justice policies developed pursuant to the revised Kansas juvenile justice code shall be designed to: (f) be outcome based, allowing for the effective and accurate assessment of program performance…***[23]

EXAMPLE

New Mexico — Data-Driven Policies and Procedures

The purpose of the Delinquency Act is:

*E. to develop **juvenile justice policies and procedures that are supported by data**…*[24]

EXAMPLE

South Dakota — Semi-Annual Report to Executive and Legislative Branches from the Monitor Regarding Referrals and Investigations

*[The monitor shall] **[p]rovide a semi-annual report to the Governor, the Legislature, the Corrections Commission …, the secretary of the Department of Human Services, and the secretary of the Department of Corrections.** The report shall contain the activities of the monitor for the six-month period immediately prior to the report. Activities shall reflect the number of referrals to the monitor, the number of investigations completed, a brief description of any investigation that resulted in a finding of abuse or neglect, and a summary of other activities performed by the monitor[….]*[25]

A NOTE ON TECHNOLOGY

Examples of how technology can provide support for efforts to improve data collection, analysis and response:

- track caseloads, aggregate data, send alerts to administrators when certain metrics occur (regarding racial and ethnic disparities, for example), and track admissions and releases
- allow for easier access to case files, including the capacity to search and track youth in the system
- collect and compare data across systems or agencies
- track how youth are being treated at various decision points throughout the process, including disaggregating by race
- track public safety
- track trends in the use of risk assessment instruments

EXAMPLE

New Mexico — Reporting to the Legislature

The department ***shall provide the legislature with a written report with respect to its collection and analysis of data regarding the application of the detention risk assessment instrument.*** [26]

EXAMPLE

Georgia — Reporting on Data to Legislative and Executive Branches

[The Board of Juvenile Justice Shall Prepare] ***an annual report*** *regarding [data collected] which shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Judiciary Non-civil and the Senate State Judiciary Committee.*[27]

III

Controlling the Front Gates

This chapter addresses policies and practices that minimize overreliance on secure detention by limiting the categories of youth who are eligible to be placed in secure detention facilities, procedurally ensuring that secure detention is only applied to such categories, and by applying multiple strategies including risk assessment to verify the basis and need for secure detention. "Most experts and virtually all professional standards indicate that secure juvenile detention should be used to accomplish two purposes: (1) to ensure that youth appear in court and (2) to minimize the risk of rearrest while current charges are being adjudicated." Yet each year, hundreds of thousands of youth are detained for minor non-violent offenses, when there is no evident risk that they will fail to appear in court or re-offend before their first court hearing. See Frank Orlando, Annie E. Casey Foundation, *Pathways to Juvenile Detention Reform #3: Controlling the Front Gates: Effective Admission Policies and Practices,* 10 (1999).

By carefully defining the purposes of detention, requiring structured decision making and circumscribing the situations in which detention is permissible, state policies can help ensure appropriate use of detention. Such approaches are widely used across the country, and can assist jurisdictions in addressing public safety goals effectively while still preventing unnecessary reliance on detention.

STATE POLICIES CAN SUPPORT COLLABORATION BY:

- Limiting detention to those cases where detention is necessary to address a high risk of either:
  - rearrest
  - failure to appear at the next court date
- Requiring officials to place children in the least restrictive environment possible that is consistent with public safety and the efficient administration of justice
- Requiring the use of objective risk assessment instruments tailored to these purposes
- Conferring discretion to release
- Requiring a written record of detention decision

States should *avoid* or *repeal* laws that:

- Permit detention for the child's best interest, welfare or mental health. Those issues should be addressed through separate mental health or child welfare laws.

A. CIRCUMSCRIBING THE PERMISSIBLE USES OF DETENTION

I. Requiring Probable Cause Determinations with Adequate Due Process Protections

Detention should be permitted only when there is **probable cause** to believe the juvenile committed the delinquency offense ***and*** he or she poses a flight risk or a risk to public safety. Ensuring strong due process protections in probable cause hearings, including the right to counsel and the right to cross-examination, will ensure that the determinations are effective.

EXAMPLE

Kentucky — Requiring Probable Cause[28]

(1) At the detention hearing…, the court shall make separate findings as follows:

(a) ***If there is probable cause*** *to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The* ***child shall be afforded the right to confront and cross-examine witnesses****. The* ***Commonwealth shall bear the burden of proof****, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case;*

NOTE ON DETENTION AND MENTAL HEALTH ISSUES

Youth should not be detained for the purpose of protecting them or addressing their own mental health risks. If a youth is in immediate risk of self-harm or suicide, courts and police should use mental health laws to address appropriate interventions. Juvenile justice detention is not designed to address a child's mental health issues, but instead to ensure that a youth appears and does not reoffend before the adjudicatory hearing.

2. Clarifying That Detention Can Only Be Used to Prevent Flight or Risk of Rearrest Before the Next Hearing

Pretrial juvenile detention is appropriate to accomplish only two purposes: (1) ensuring a youth's appearance in court; and (2) minimizing the risk of rearrest pending a hearing. Secure confinement of youth should be reserved for those instances in which there is clear and convincing evidence that detention is required for one of these purposes. While many statutes include language narrowing the permissible uses of detention, very few permit detention only in cases where there is a risk that the child will flee or be subject to a new arrest before trial. By embedding such language in state-level policy, states will reduce unnecessary reliance on detention.

EXAMPLE

New Jersey — Detention for Limited Purposes Only

a. Except as otherwise provided in this section, a juvenile charged with an act of delinquency shall be ***released pending the disposition of a case****, if any, to* ***any person or agency*** *provided for in this section* ***upon assurance being received that such person or persons accept responsibility for the juvenile and will bring him before the court as ordered****.*

b. ***No juvenile shall be placed in detention without the permission of a judge or the court intake service.***

c. ***A juvenile*** *charged with delinquency* ***may not be placed or retained in detention*** *under this act* ***prior to disposition,*** *except as otherwise provided by law,* ***unless****:*

(1) ***Detention is necessary to secure the presence of the juvenile at the next hearing*** *as evidenced by a* ***demonstrable record of recent*** *[within 12 months, or between 12 and 24 months with no subsequent record of voluntary compliance with order to appear or remain in placement]* ***willful failure to appear*** *at juvenile court proceedings* ***or to remain where placed*** *by the court or the court intake service or the juvenile is* ***subject to a current warrant*** *for failure to appear at court proceedings which is active at the time of arrest; or*

(2) The ***physical safety of persons or property of the community would be seriously threatened*** *if the juvenile were not detained and the* ***juvenile is charged with an offense*** *which, if committed by an adult, would constitute* ***a crime of the first, second or third degree or one of the following crimes of the fourth degree****: aggravated assault; stalking; criminal sexual contact; bias intimidation; failure to control or report a dangerous fire; possession of a prohibited weapon or device …; or unlawful possession of a weapon …; or*

(3) With respect to a juvenile charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph (2) of this subsection, or a disorderly persons or petty disorderly persons offense, and with respect to a juvenile charged with an offense enumerated in subsection c. ***when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody of the juvenile****. Police and court intake personnel* ***shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior*** *to requesting or approving the juvenile's placement in a shelter or other non-secure placement. If, after the*

initial detention hearing, continued placement is necessary, the juvenile shall be returned to a shelter or other non-secure placement.[29]

3. Prohibiting Inappropriate Uses of Detention

Explicitly rejecting improper detention rationales further promotes appropriate detention decisions. Policies can clarify that detention should not be used for administrative purposes, to support interrogations or investigations, because a less secure alternative is not available, because a parent is attempting to avoid legal responsibilities, for non-delinquent youth, or to satisfy the demands of a victim, law enforcement, or the community. Additionally, detention facilities are not the proper location for treatment, rehabilitation or punishment. For that reason, even a short placement in detention does not serve the best interest of a youth. Prohibitions on inappropriate uses of detention can apply to non-secure as well as secure detention settings.

EXAMPLE

Florida — Prohibited Purposes of Detention

*A child alleged to have committed a delinquent act or violation of law **may not be placed into secure, nonsecure, or home detention care** for any of the following reasons:*

*(a) To allow a **parent to avoid his or her legal responsibility**.*

*(b) To permit more **convenient administrative** access to the child.*

*(c) To facilitate **further interrogation or investigation**.*

*(d) Due to a **lack of more appropriate facilities**.*

*(3) **A child alleged to be dependent**…may not, under any circumstances, be placed into secure detention care.*[30]

EXAMPLE

Georgia — Prohibited Purposes of Detention

An alleged delinquent child shall not be detained:

*(1) **To punish, treat, or rehabilitate him or her;***

*(2) To allow **his or her parent, guardian, or legal custodian to avoid his or her legal responsibilities;***

*(3) To satisfy **demands by a victim, law enforcement, or the community;***

*(4) To permit more **convenient administrative access** to him or her;*

*(5) To facilitate further **interrogation or investigation**; or*

*(6) **Due to a lack of a more appropriate facility.***[31]

4. Protecting Categories of Youth from Detention

Categorically excluding certain classes of youth from detention is a simple, direct way to control the front gates. Statutes may explicitly prohibit detention for younger youth and status offenders, or for those whose circumstances do not otherwise correspond to the purposes of detention. Specific attention should be given to "special populations" of potential detainees, namely youth with warrants and probation violations. (See Chapter VIII.)

EXAMPLE

Alabama Statute — Secure Custody Prohibited for Categories of Youth

*Persons who **shall not be detained or confined in secure custody** include all of the following:*

*(1) **Status offenders**…*

*(2) **Federal wards**…*

*(3) **Nonoffenders**…*

*(4) **Children 10 years of age and younger**…*[32]

B. PLACING YOUTH IN SECURE DETENTION ONLY WHEN NO LESS RESTRICTIVE ALTERNATIVE EXISTS

To further ensure appropriate use of detention, state policies can require that detention be used only when no less restrictive alternative exists to manage the risk of flight or rearrest. Perhaps the strongest example is a statute from Hawaii requiring that detention only be imposed when previous control measures have failed. These requirements bolster the notion that secure detention is used for limited purposes and only when necessary. As always, the sole purpose of detention — even in an alternative setting — is to supervise the young person in order to minimize the risk of rearrest and/or to ensure appearance in court, not to provide services that the court or juvenile probation officer deem necessary.

I. Placing Youth in the Least Restrictive Environment

A number of jurisdictions explicitly require that youth be placed in secure settings only when less secure alternatives have not, or cannot, work.

EXAMPLE

Connecticut — Requiring Youth to be Placed in the Least Restrictive Environment

If detention becomes necessary, such detention shall be in the manner prescribed by this chapter, provided the child shall be placed in the ***least restrictive environment possible*** *in a manner consistent with public safety.*[33]

EXAMPLE

Delaware — Allowing Detention Only When Necessary to Secure Child's Presence

*[Detention only permitted if] "****no means less restrictive of the child's liberty*** *gives reasonable assurance that the child will attend the adjudicatory hearing."* [34]

EXAMPLE

Hawaii — Allowing Detention Only When Previous Control Measures Have Failed

*[Detention is not the least restrictive placement unless] "****previous control measures have failed.****"* [35]

EXAMPLE

New Jersey — Employing Alternatives Before Imposing Detention

The judge or court intake officer prior to making a decision of detention shall consider and, where appropriate, employ *any of the following alternatives:*

(1) ***Release to parents;***

(2) ***Release on juvenile's promise*** *to appear at next hearing;*

(3) ***Release to parents, guardian or custodian upon written assurance*** *to secure the juvenile's presence at the next hearing;*

(4) ***Release into care of a custodian or public or private agency*** *reasonably capable of assisting the juvenile to appear at the next hearing;*

*(5) **Release with imposition of restrictions** on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;*

*(6) **Release with required participation in a home detention program**;*

*(7) **Placement in a shelter care facility**; or*

*(8) **Imposition of any other restrictions** other than detention or shelter care reasonably related to securing the appearance of the juvenile.* [36]

2. Focusing on Family Preservation to Minimize the Use of Out-of-Home Detention

A focus on family preservation can also minimize reliance on secure detention and other out-of-home detention alternatives. Frequently, provisions regarding family preservation appear in juvenile code purpose clauses rather than in detention-specific provisions.

EXAMPLE

Kentucky — Requiring Less Restrictive Alternatives Before Removal

KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes: …

*(c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order **to insure that children are not removed from families except when absolutely necessary**….*[37]

EXAMPLE

Vermont — Focusing on the Importance of the Parent-Child Relationship

(a) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

…

*(5) To achieve the foregoing purposes, **whenever possible, in a family environment**, recognizing the importance of positive parent-child relationships to the well-being and development of children.*[38]

EXAMPLE

Delaware — Focusing on the Family

(a) In the firm belief that compliance with the law by the individual and ***preservation of the family as a unit are fundamental to the maintenance of a stable, democratic society,*** *the General Assembly intends by enactment of this chapter that [one] court shall have original statewide civil and criminal jurisdiction over family and child matters and offenses as set forth herein. The court shall endeavor to provide for each person coming under its jurisdiction such control, care, and treatment as will best serve the interests of the public, the family, and the offender,* ***to the end that the home will, if possible, remain unbroken*** *and the family members will recognize and discharge their legal and moral responsibilities to the public and to one another.*

(b) This chapter shall be liberally construed that these purposes may be realized.[39]

C. REQUIRING A STRUCTURED, OBJECTIVE ADMISSIONS PROCESS TO REDUCE RELIANCE ON DETENTION AND TO REDUCE RACIAL AND ETHNIC DISPARITIES

Jurisdictions can reduce unnecessary detention by using a structured, objective admissions process designed to predict flight or rearrest pending the next court date. Objective risk assessment is a national best practice to reduce reliance on detention, and to reduce racial and ethnic disparities with the juvenile justice system. For more information on risk assessment instruments, see David Steinhart, Annie E. Casey Foundation, *Juvenile Detention Risk Assessment, A Practice Guide to Juvenile Detention Reform* (2006).

For risk assessment instruments to accomplish these goals, ongoing monitoring must ensure that the tools are used properly, achieving the intended outcomes, and reducing rather than exacerbating racial and ethnic disparities. Additionally, juvenile court personnel administering the instrument must be allowed, with supervisory oversight, to depart from the instrument's recommendation of detention to allow for individualized considerations. These practices, which can be embedded in state policy, increase the likelihood that only youth at high risk of failing to appear or committing a serious offense will be placed in secure detention.

I. Mandating the Use of Detention Risk Assessment Instruments

State policies can ensure the use of risk assessment instruments in all detention decisions through straightforward mandates.

EXAMPLE

New Mexico — Prohibiting Detention Unless Detention Risk Instrument Is Completed

A. Unless ordered by the court pursuant to the provisions of the Delinquency Act, a child taken into custody for an alleged delinquent act ***shall not be placed in detention unless a detention risk assessment instrument is completed****…*

[…]

D. *The* ***department shall develop and implement a detention risk assessment instrument.*** *The department shall* ***collect and analyze data*** *regarding the application of the detention risk assessment instrument. On January 1, 2004, the department shall* ***provide the legislature with a written report*** *with respect to its collection and analysis of data regarding the application of the detention risk assessment instrument.*[40]

DETENTION DECISION-MAKER LIABILITY

Officials making detention decisions are responsible for ensuring the safety of the public and the efficient administration of justice. As such, they may be justifiably risk-averse when it comes to deciding "borderline" cases. In general, but especially in jurisdictions transitioning to a continuum of detention alternatives for the first time, it may be helpful to explicitly address the issue of officer liability legislatively, as is done in New Hampshire:

"An officer may release a minor to an alternative to secure detention, with court approval, pending the arrival of the parent, guardian, or custodian. The alternative program may release the minor to the parent, guardian, or custodian upon their arrival. Any court or police or juvenile probation and parole officer, acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of release to an alternative to secure detention."

N.H. Rev. Stat. § 169-B:9-a.
See also Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 4 15-11-67, 68.

2. Ensuring That Risk Assessment Instruments Reduce Racial and Ethnic Disparities

Statutes requiring the use of risk assessment instruments can be extremely effective in combating racial and ethnic disparities. To do so, statutes should require regular data collection and assessment to ensure that the risk assessment instruments meet this goal. For more information on data collection, see Chapter II. For more information on reducing racial and ethnic disparities, see Chapter VII.

3. Explicitly Conferring Discretion to Release in Detention-Eligible Cases

The interests of public safety and justice are often better served by releasing a child to his/her parents or community detention rather than detaining that child in a secure facility — even when the case otherwise meets the criteria for secure detention. In such cases, judges and probation officers should have explicit authority to release the child.

However, policies that confer discretion to release or to depart from a risk assessment instrument can have the effect of exacerbating racial and ethnic disparities. To prevent this, all discretionary decisions should be anchored in objective criteria rather than subjective opinions, with a particular focus on preventing disparate treatment. Moreover, keeping and responding to detailed data on departure rates is key to ensuring that discretion does not exacerbate disparities.

Because of the harmful effects of detention on young people, overrides to detain, while permitted given the essential advisory nature of the risk instrument, must be documented, monitored and well-controlled to assure the efficacy and integrity of the risk screening process.

EXAMPLE

Minnesota Statute — Discretion to Release if Less Restrictive Measures Would Be Adequate

Even if a child meets one or more of the factors *[justifying a decision to detain a child], the* ***detaining authority has broad discretion to release*** *that child before the detention hearing if other less restrictive measures would be adequate.*[41]

4. Requiring That Specially Trained Staff Administer the Risk Assessment Instrument

While risk assessment instruments are helpful in ensuring objectivity and consistency in the admissions process, they are best implemented by knowledgeable staff. Statutes requiring training for the individuals administering the instrument ensure that the tool is scored accurately and detention decisions made appropriately.

EXAMPLE

Nebraska Statute — Requiring Training for Juvenile Probation Officers Designated as Intake Officers

The standardized juvenile detention screening instrument shall be used as an assessment tool statewide by probation officers … in order to determine if detention of the juvenile is necessary and, if so, whether secure or nonsecure detention is indicated. Probation officers trained to administer the juvenile detention screening instrument shall act as juvenile intake probation officers. ***Only duly trained probation officers shall be authorized to administer the juvenile detention screening instrument.***[42]

5. Requiring Decision Maker to Make Written Record of Reasons for Detention

Affirmatively requiring courts, probation or other decision makers to state reasons for their decisions helps ensure that the decision to securely detain a young person is deliberate and conforms to the limited purposes of detention. In the case of courts, it will make a better record for review and possible appeals. In the case of probation officers and other administrative staff, maintaining a written record will allow for better supervisory review. Written records also can allow jurisdictions to address racial and ethnic disparities by encouraging decision makers to cultivate awareness around their reasons for ordering secure detention and address any problematic patterns that emerge. Such written records are particularly important in the case of risk assessment screen overrides.

PRACTICE NOTE

It is best practice to ensure that overrides do not exceed 10 to 15 percent of the total number of youth scored. While this level of detail will not necessarily be reflected in statute, data should be gathered on overrides, and this practice should be taken into account when implementing a policy on the use of risk assessment instruments.

EXAMPLE

Delaware — Judge Required to Make Written Record of Reasons

If the Court places a child in secure detention pending adjudication, ***the Court shall state in writing the basis for its detention determination*** *pursuant to subsection (a) of this section* ***and the reasons for not employing any of the secure detention alternatives*** *under subsection (b) of this section. In the event that a risk assessment instrument has been completed for the child for the pending offense, with the resulting presumptive disposition being to release the child, or hold the child in a nonsecure detention facility,* ***the Court shall further state in writing the basis for overriding that presumption.***[43]

Detention Alternatives

IV

In order to reduce over-reliance on secure detention, jurisdictions must ensure the availability of a wide range of community-based alternatives to secure confinement. The purpose of detention alternatives is to increase the level of supervision in the community for youth who would otherwise be placed in secure detention, to ensure that the child returns to court and remains arrest-free pending disposition of the case. In the absence of alternatives, officials are forced to choose between detaining young people pending disposition and sending them home with little or no supervision.

As a result, "detention" should be viewed as a legal status, with varying levels of custody supervision, rather than as a building or a physical place that youth occupy pending their next court date. Detention should include a continuum of options ranging from least restrictive (e.g., non-custodial supervision such as home confinement or day reporting) to most restrictive (e.g., secure custody). *See* Paul DeMuro, Annie E. Casey Foundation, *Pathways to Juvenile Detention Reform #4: Consider the Alternatives: Planning and Implementing Detention Alternatives,* 11 (1999). Positive community-based interventions such as mentoring can be particularly effective. When youth are detained for violation of probation, particular attention should be paid to the availability of graduated sanctions. For more on this issue, see Chapter VI.

STATE POLICY CAN SUPPORT DETENTION ALTERNATIVES BY:

- Requiring the development and use of detention alternatives for youth who would otherwise have been held in secure detention
- Requiring detention decision makers to prioritize non-secure alternatives
- Enumerating reasonable conditions for community-based alternatives to secure detention
- Protecting the procedural rights of youth who fail to comply with detention conditions
- Requiring and incentivizing use of detention alternatives

Detention alternatives should be designed to reduce the number of youth in secure detention (and not to "widen the net" by placing additional youth in detention). Detention alternatives — like all detention decisions — must be used for the narrow purposes of preventing risks to public safety and ensuring that youth appear in court prior to disposition. Finally, efficient case processing is important for youth in detention alternatives just as it is vital for youth in secure detention. For more information on reducing case processing delays, see Chapter V.

This chapter will provide examples of policies that set forth a range of alternatives to secure detention, promote the use of the least restrictive alternative, and prioritize family- and community-based services.

A. REQUIRING DETENTION ALTERNATIVES

Policies can guide officials making detention decisions by promoting reliance on a clear continuum of options, including mandating the ongoing development of such alternatives, mandating the use of such alternatives and enumerating the alternatives in statute or regulations. If a jurisdiction is mandating the use of a risk assessment instrument, it is particularly important to ensure the existence and availability of detention alternatives.[44] Relevant statutes should ensure that detention alternatives are being used only for youth who would otherwise have been held in secure detention, and that such programs do not net-widen by placing restrictions on those who would otherwise have been released pending a hearing. Youth should also have sufficient access to detention alternatives to ensure that they are not placed in secure detention pending the availability of a detention alternative.

NOTE ON TEMPORARY NON-SECURE DETENTION AND DUE PROCESS

Non-secure detention alternatives restrict one's liberty, and a failure to comply with them can result in escalating consequences. As a result, it is important to set a time limit on those conditions, so that the young person is not indefinitely subject to the conditions and their consequences.

Example: Minnesota

Unless the time for the detention hearing is extended by twenty-four (24) hours ..., all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

52 M.S.A., Juvenile Delinquency Procedure Rule 5.04

I. Mandating Creation and Ongoing Development of Detention Alternatives

Legislatures should not only create detention alternatives in the first instance, but should also require juvenile justice agencies to ensure that such alternatives are available, including regular needs assessment and the development of any needed programs.

EXAMPLE

Florida — Requiring Annual Submission to Legislature on Detention Alternatives

*"[The Florida Department of Juvenile Justice] shall **continue to identify alternatives to secure detention** and care and shall **develop such alternatives and annually submit** them to the Legislature for authorization and appropriation."* [45]

EXAMPLE

New York — Requiring Counties to Provide Diversion Services Including Alternatives to Detention

*(a) Each county and any city having a population of one million or more shall offer **diversion services** … to youth who are at risk of being the subject of a person in need of supervision petition. Such services shall be designed to provide an immediate response to families in crisis, to identify and **utilize appropriate alternatives to detention** and to divert youth from being the subject of a petition in family court. Each county and such city shall designate either the local social services district or the probation department as lead agency for the purposes of providing diversion services.*

*(b) **The designated lead agency shall:***

*…(iv) **determine whether alternatives to detention are appropriate to avoid remand of the youth to detention.*** [46]

2. Enumerating Detention Alternatives

State policies that enumerate detention alternatives further encourage courts, or other decision makers, to rely on such programs. Detention alternatives that are community-based, non-residential and provide strength-based interventions and mentoring can be particularly effective.

EXAMPLE

Delaware — Enumerating Detention Alternatives

[…] the Court shall consider and, where appropriate, employ any of the following alternatives:

(1) ***Release on the child's own recognizance;***

(2) ***Release to parents, guardian, custodian or other willing member of the child's family*** *acceptable to the Court;*

…

(4) ***Release with imposition of restrictions on activities,*** *associations, movements and residence reasonably related to securing the appearance of the child at the next hearing;*

(5) ***Release to a nonsecure detention alternative*** *developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive home base services with supervision, foster placement, or a nonsecure residential setting.*[47]

B. PRIORITIZING THE LEAST RESTRICTIVE ALTERNATIVE

When young people are diverted from secure detention, the burden on probation officers and courts is eased and secure detention is more likely to be reserved for the youth who are most at-risk of rearrest and failure to appear. Statutes can require the court to consider non-secure alternatives before placing a child.[48] They may also require law enforcement or other decision makers to do so.

EXAMPLE

California — Requiring Law Enforcement Officer to Prioritize Least Restrictive Alternative

An officer who takes a minor into temporary custody … may do any of the following:

(a) Release the minor.

(b) [Deliver the minor to a diversion services agency.]

(c) [Give the minor a written notice to appear before the probation officer of the county in which the minor was taken into custody at a time and place specified in the notice.]

(d) [Take the minor without unnecessary delay before the probation officer and deliver the custody of the minor to the probation officer.]

In determining which disposition of the minor to make, ***the officer shall prefer the alternative which least restricts the minor's freedom of movement,*** *provided that alternative is compatible with the best interests of the minor and the community.*[49]

EXAMPLE

Delaware — Requiring Court to Consider and Employ Alternatives

Prior to making a decision of secure detention pending adjudication the Court shall consider and, where appropriate, employ … alternatives.[50]

C. ENUMERATING REASONABLE CONDITIONS FOR COMMUNITY-BASED ALTERNATIVES TO SECURE DETENTION

Community-based alternatives to secure detention may involve release conditions that restrict the liberty of the young person, such as curfews, reporting requirements and program participation requirements. These conditions should be calibrated to achieve the purposes of detention — preventing flight and risks to public safety pending disposition — and should not be so onerous that they expose the young person to needless risk of violating.

EXAMPLE

Georgia — Minimal Intrusion in Conditions of Release

Whenever an accused child cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of the child shall be favored over more intrusive alternatives.[51]

NOTE ON SPECIAL POPULATIONS AND DETENTION ALTERNATIVES

Detention alternatives can be particularly useful for special populations, such as youth who violate probation or who are brought in on warrants. Legislation can directly require the use of detention alternatives for such youth.

EXAMPLE

Maine — Enumerating Conditions of Release

Release may be unconditional or conditioned upon the juvenile's promise to appear for subsequent official proceedings or, if a juvenile can not appropriately be released on one of these 2 bases, upon the least onerous of the following conditions, or combination of conditions, necessary to ensure the juvenile's appearance or to ensure the protection of the community or any member of the community, including the juvenile:

*(1) Upon the **written promise of the juvenile's legal custodian** to produce the juvenile for subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the Juvenile Court;*

*(2) Upon the **juvenile's voluntary agreement to placement** in the care of a responsible person or organization, including one providing attendant care;*

*(3) Upon **prescribed conditions, reasonably related to securing the juvenile's presence** at subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the court, restricting the juvenile's activities, associations, residence or travel;*

*(4) Upon **such other prescribed conditions as may be reasonably related to securing the juvenile's presence** at subsequent official proceedings or at any place or time when so ordered by the juvenile community corrections officer or the court; or*

*(5) Upon **prescribed conditions, reasonably related to ensuring the protection of the community or any member of the community, including the juvenile.***[52]

D. PROTECTING THE PROCEDURAL RIGHTS OF YOUTH WHO FAIL TO COMPLY WITH RELEASE CONDITIONS

Even with well-designed detention alternative policies, some youth will fail to comply with their release conditions. Policies should protect the rights of youth to ensure that failure to comply with release provisions does not lead to an over-reliance on secure detention, and that secure detention continues to be used only for youth who demonstrate a clear risk of flight or danger to the public. For guidance on graduated responses to youth who violate, see Chapter VI.

Statutes can address this issue by ensuring: (1) a clear set of criteria for determining failure to comply; (2) that information is conveyed to youth in a developmentally appropriate fashion; and (3) the procedural rights of youth are protected when they face a possible change in conditions.

I. Establishing and Communicating Clear Criteria for Detention

Youth cannot be expected to comply with conditions of release if they are not provided with clear information about their conditions. Although we found no legislative examples, it is vital that the information

be provided in a **developmentally appropriate** fashion that youth can understand — and that conditions be developmentally appropriate in their expectations regarding youth behavior.

EXAMPLE

Maine — Requiring Clear Communication About Conditions and Violations

Upon imposition of any condition of release [necessary to ensure the juvenile's appearance or to ensure the protection of the community], the juvenile community corrections officer shall ***provide the juvenile with a copy of the condition imposed, inform the juvenile of the consequences applicable to violation*** *of the condition and* ***inform the juvenile of the right to have the condition reviewed by the Juvenile Court.***[53]

2. Ensuring Due Process for Changes in Conditions

Youth should be entitled to due process protections when they are alleged to have violated terms or conditions of release. State policies to support this approach may include: providing the right to a hearing and the right to a re-scored risk assessment instrument, and clarifying by statute that only significant changes in behavior warrant a transfer to a secure facility.

PRACTICE NOTE

All notifications, reminders and written communication should be designed and written in ways that account for young people's developmental status and literacy limitations. Washington State's Colloquies Project is developing tools aimed at improving young people's comprehension of pre-adjudication release and probation conditions. These tools are informed by adolescent cognitive science and literacy research. Improving comprehension is expected to increase compliance with court-ordered conditions, thereby reducing detention rates.

See www.teamchild.org/docs/uploads/JIDAN_Colloquies_FINAL.pdf

EXAMPLE

Maine — Requiring Hearings for Change in Conditions

If different or additional conditions of release are imposed [as a result of violation of the original conditions of release], the juvenile may request the Juvenile Court to review the conditions … . The review of additional or different conditions must include a hearing to determine if the preponderance of the evidence indicates that the juvenile intentionally or knowingly violated a condition of release.[54]

EXAMPLE

Florida — Allowing Transfer to Secure Detention Only After a Hearing Showing Significantly Changed Circumstances

(1) If a child is detained under this part, the department may transfer the child from nonsecure or home detention care to secure detention care only if significantly changed circumstances warrant such transfer.

(2) If a child is on release status and not detained under this part, the child may be placed into secure, nonsecure, or home detention care only pursuant to a court hearing in which the original risk assessment instrument, rescored based on newly discovered evidence or changed circumstances with the results recommending detention, is introduced into evidence.[55]

E. ENSURING THAT YOUTH HAVE FULL ACCESS TO DETENTION ALTERNATIVES

State policies can ensure that detention alternatives are available at the first detention decision point, and available at all times of the day and week, so that youth are not sent to secure detention while awaiting access to a detention alternative.

F. ENSURING THAT DETENTION ALTERNATIVES MEET GOALS

Detention alternatives, like secure detention, must be assessed and monitored to ensure that they are meeting the goal of reducing secure detention, and that length of stay is the minimum necessary. This will assist individual youth, but will also ensure that detention alternative slots are available to more youth.

Reducing Unnecessary Delay

V

Reducing unnecessary delay in the juvenile justice system makes the administration of justice more efficient and effective for youth in and out of custody. When cases progress slowly through the juvenile justice system, all youth pay the price: detained youth spend excessive amounts of time in detention, and at the same time, detention programs — secure and non-secure — become overcrowded, and rates of failures to appear in court rise. See D. Alan Henry, Annie E. Casey Foundation, *Pathways to Juvenile Detention Reform #5: Reducing Unnecessary Delay: Innovations in Case Processing,* 11 (1999). As a result, policies should set strict timelines, both for youth in detention and in the community.

Policymakers can limit over-reliance on detention in two ways: (1) controlling admissions and (2) controlling the length of stay of each youth. Length of stay is affected by many factors, most of them outside the control of the detention center itself. Reducing the average length of stay by requiring efficient case processing can therefore help reduce the secure detention population.

STATE POLICIES CAN REDUCE UNNECESSARY DELAY BY:

- Limiting the time period before a detention hearing to 24 hours
- Ensuring that youth do not remain in detention because of delays in legal process
- Requiring timely detention review hearings
- Requiring timely determinations of probable cause
- Requiring speedy police reporting
- Requiring timely filing of petitions
- Requiring timely adjudication hearings
- Requiring developmentally appropriate notice to ensure youth appearances
- Expediting discovery
- Requiring expedited hearings when necessary to prevent detention delays, while ensuring due process protections
- Requiring expedited handling of probation violations for detained youth
- Ensuring that youth are not detained excessively pending evaluation, placement or services
- Limiting continuances

Many of the policies below set time limits for various juvenile court processes. Policymakers and systems administrators should undertake reforms with the goal of ensuring that cases are processed well before the time limits expire. However, policies should also ensure that time limits do not interfere with the capacity of attorneys to provide effective representation. For more information on effective counsel, see Chapter XI.

A. LIMITING TIME BEFORE DETENTION HEARING

In many jurisdictions, the initial detention hearing must be held within a designated time period. Because detention can be so severely disruptive to youth, statutes requiring detention hearings within a very short timeframe are most effective. Limiting the time to 24 hours including weekends and holidays is ideal. Pre-hearing detention of longer than 48 hours should be avoided.

EXAMPLE

New Jersey Statute — Detention Hearing Within 24 Hours

*The **initial detention hearing** shall be held **no later than the morning following the juvenile's placement in detention including weekends and holidays.**[56]*

B. ENSURING THAT YOUTH DO NOT REMAIN IN DETENTION BECAUSE OF DELAYS IN LEGAL PROCESS

Even when a jurisdiction has a quick turn-around time for detention hearings, youth may spend excessive time in detention waiting for various other stages in the legal process to be completed. To avoid this, statutes and rules can explicitly ensure that the failure of otherwise required processes cannot be cause for holding youth in detention.

EXAMPLE

New Jersey Statute — Immediate Release upon State's Failure to File a Timely Complaint

*If a delinquency **complaint has not been filed** by the time the initial detention hearing has been held, the juvenile shall be **released from custody** immediately.*[57]

C. REQUIRING TIMELY DETENTION REVIEW HEARINGS

Once a youth is in detention, including an alternative placement, the need for efficient case processing continues. To help minimize over-reliance on detention, courts should hold prompt and regular detention review hearings to determine whether detention is still necessary. Such hearings should be used in conjunction with, and not instead of, clear time limits on pre-adjudication detention.

EXAMPLE

South Carolina Court Rule — Requiring Judicial Review Every Seven Days

Upon a finding by the judge that detention is necessary for protection of the community or to serve the best interest of a child, and that such detention is likely to be for a period in excess of 48 hours, the judge upon adequate evidence and testimony may by appropriate order, extend such ***detention for a period not to exceed 7 days****. Additional extensions not to exceed 7 days each may be made by subsequent orders of the court.* ***Such order shall be in writing or reduced to writing and shall recite appropriate findings of fact.***[58]

EXAMPLE

Illinois — Judicial Review of Changed Circumstances

(7) ***Any party…may file a motion to modify or vacate a temporary custody order or vacate a detention or shelter care order*** *on any of the following grounds:*

(a) It is ***no longer*** *a matter of* ***immediate and urgent necessity*** *that the minor remain in detention or shelter care; or*

(b) There is a ***material change in the circumstances*** *of the natural family from which the minor was removed; or*

(c) A person, including a parent, relative or legal guardian, is ***capable of assuming temporary custody*** *of the minor; or*

(d) Services provided by the Department of Children and Family Services or a child welfare agency or other service provider have been successful in ***eliminating the need*** *for temporary custody[…].*[59]

D. REQUIRING TIMELY DETERMINATION OF PROBABLE CAUSE

The most efficient way to ensure that a youth is not held unnecessarily in detention is to make a probable cause determination early in the process.

EXAMPLE

Michigan — Preliminary Hearing with 24 Hours

*The **preliminary hearing must commence no later than 24 hours** after the juvenile has been taken into court custody, excluding Sundays and holidays… or the juvenile must be released.*[60]

E. REQUIRING SPEEDY POLICE REPORTING

Prosecutors' decisions not to file petitions on youth also prevent unnecessary detention. However, prosecutors can only make charging decisions after they have full police reports. Legislation requiring prompt and complete police reports can therefore facilitate efficient case processing.

EXAMPLE

Kentucky — Filing Police Complaint Within 3 Hours of Taking Youth into Custody

*The **peace officer** taking the child into custody **shall within three (3) hours** of taking a child into custody **file a complaint with the court**, stating the basis for taking the child into custody and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility.*[61]

F. REQUIRING TIMELY FILING OF PETITIONS

A youth should never be held in detention simply because a petition has not yet been filed. Even for youth not in detention, however, it is important to ensure that petitions are filed promptly. The longer it takes for a petition to be filed, the more chance that a young person will fail to appear for a hearing, and thus end up in detention. Many states require petitions to be filed within a designated time period.

EXAMPLE

Georgia — Time Limits on Filing Petitions for Youth in Both Secure and Non-Secure Detention

*If an alleged delinquent **child is released** from preadjudication custody at the detention hearing or was never taken into custody, the following time frames shall apply:*

*(1) Any petition alleging delinquency **shall be filed within 30 days** of the filing of the complaint **or within 30 days** after such child is released from preadjudication custody […]*

*If an alleged delinquent **child is not released** from preadjudication custody at the detention hearing, the following time frames shall apply:*

*(1) The petition alleging delinquency **shall be filed within 72 hours of the detention hearing** […].*[62]

G. REQUIRING TIMELY ADJUDICATION HEARINGS

Prompt adjudicatory hearings can help reduce the amount of time youth spend in both secure detention and in detention alternatives. Policymakers can prevent extended time in detention pending a hearing by setting a clear time limit for adjudicating the case. Additionally, states should enact speedy trial rules that impose meaningful consequences on prosecutors' offices for failing to complete prosecution in a timely manner. These time limits should apply to youth in non-secure detention alternatives as well as those in secure detention.

EXAMPLE

Iowa — Adjudicatory Hearing Within Seven Days

*If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court … and that full-time detention … is authorized …, it may issue an order authorizing … **detention until the adjudicatory hearing or trial is held or for a period not exceeding seven days, whichever is shorter.***[63]

H. REQUIRING EXPEDITED HANDLING OF PROBATION VIOLATIONS FOR YOUTH IN DETENTION

When youth are in detention for probation violations, expedited handling of the violation may help to reduce unnecessary time in detention.

I. ENSURING THAT YOUTH ARE NOT DETAINED EXCESSIVELY PENDING DISPOSITION, PLACEMENT OR PSYCHOLOGICAL EVALUATIONS

Preventing over-reliance on detention requires that youth move promptly from adjudication to disposition, if the hearings are not simultaneous, and that youth are moved quickly to a post-adjudication placement. One of the populations that gets "stuck" in detention pending placement is youth who "failed to adjust" to their first placement. Such youth often face lengthy stays in detention pending commitment

to a new residential facility, due to delays in finding suitable placements and difficulties with scheduling. Legislation can proactively address this issue by allowing transfers without court approval or placing time limits on detention pending disposition or transfer to a new facility.

EXAMPLE

Maryland — Limiting Time in Detention

1. Limiting Time in Detention Pending Transfer to Another Facility

5. When necessary to appropriately administer the commitment of the child, the Department of Juvenile Services, on approval of the Director of Behavioral Health, ***may transfer a child*** *committed for residential* ***placement from one facility to another*** *facility that is operated, licensed or contracted by the Department.*

6. A facility to which a child is transferred under Paragraph (1) of this subsection shall be:

I. Consistent with the type of facility [previously] designated by the court …; or

II. More secure than the type of facility [previously] designated by the court …

7. Prior to transfer, the Department shall notify

III. The court

IV. The counsel for the child

V. The State's attorney; and

VI. The parent or guardian of the child

8. The court may conduct a hearing at any time for the purpose of reviewing the commitment order and the transfer of a child under this subsection.[64]

2. Limiting Time in Detention Pending Disposition

If a child is detained or placed in community detention after an adjudicatory hearing, ***a disposition hearing shall be held no later than 14 days after the adjudicatory hearing.***[65]

J. EXPEDITING DISCOVERY

State policies can require expedited discovery periods so as to reduce delays leading up to the adjudicatory hearing, as well as to ensure that counsel have access to any information that bears on whether the youth should be detained pending the next hearing.

EXAMPLE

Missouri Court Rule — Making Discovery Available

*a. […Within a set timeframe],[66] the **juvenile officer shall make available to all parties or their counsel the following documents and records**, to the extent relevant to the allegations of the petition or motion to modify:*

*(1) **law enforcement records**, including police reports;*

*(2) written statements and videotapes, audiotapes or similar recordings of **statements of the juvenile** regarding the alleged offense;*

*(3) written statements and videotapes, audiotapes or similar recordings of **statements of the victim** regarding the alleged offense;*

*(4) **reports and affidavits submitted to the juvenile officer** supporting or requesting that the juvenile be taken into judicial custody or that a petition or motion to modify be filed;*

*(5) written statements and videotapes, audiotapes or similar recordings of **statements of witnesses** regarding the alleged offense;*

*(6) written statements and videotapes, audiotapes or similar recordings of **statements of any other person charged** regarding the alleged offense;*

*(7) any reports or **statements of experts**, including the results of physical or mental examinations and of scientific tests, experiments, or comparisons; and*

*(8) **exculpatory evidence** tending to negate the involvement of the juvenile in the alleged offense or mitigate the degree of the juvenile's involvement in the alleged offense.[67]*

K. REQUIRING EXPEDITED HEARINGS

States employ various methods to expedite hearings: using a referee or commissioner to hold the hearing, or holding the hearing by video conference, allows youth to receive a hearing promptly, even on weekends. **Important note:** In-person judicial review should be available whenever another expedited approach has been offered, to ensure that youth are not deprived of due process in the interest of expediency.

EXAMPLE

Texas — Hearing By Referee

The juvenile board may appoint a referee to conduct the detention hearing. The referee shall be an attorney licensed to practice law in this state. ….If a party objects to the referee conducting the detention hearing, an authorized judge shall conduct the hearing within 24 hours. At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge or substitute judge. The juvenile court judge or substitute judge shall adopt, modify, or reject the referee's recommendations not later than the next working day after the day that the judge receives the recommendations. Failure to act within that time results in release of the child by operation of law. A recommendation that the child be released operates to secure the child's immediate release, subject to the power of the juvenile court judge or substitute judge to reject or modify that recommendation. The effect of an order detaining a child shall be computed from the time of the hearing before the referee.[68]

PRACTICE NOTE

While we found no examples of legislation to this effect, as a matter of practice, courts that have instituted telephone reminders for youth before hearings have drastically reduced the problem of failure to appear, and at the same time have addressed problems of racial and ethnic disparities. This approach could be written into statute, regulation or court rules.

See David Steinhart, Annie E. Casey Foundation, **Pathways to Juvenile Detention Reform: Special Detention Cases: Strategies for Handing Difficult Populations**, 18-9 (1999).

L. LIMITING CONTINUANCES

Some otherwise effective rules about the timing of hearings or limitations on confinement in detention are undermined by vague or overbroad provisions regarding continuances. To prevent this, statutes can clearly limit delays caused by the prosecuting agency to a specified length of time and/or limit the number of continuances permitted.

M. REQUIRING EFFECTIVE PROCESSES TO SUPPORT YOUTH APPEARANCES

Youth who fail to appear for court may be detained, even if they otherwise pose low risks to public safety. Effective notification procedures can help to increase the chances that youth will appear in court. Notice should be given to the child, the parents and counsel to improve the chances that the child will appear. Notice also should be given in a format that the child and all parties can understand. Telephone notices have been found to be particularly effective, and could be required by statute.

EXAMPLE

District of Columbia — Prompt Notice Requirement

Prompt notice *of the detention or shelter care hearing shall be given, if delinquency or need of supervision is alleged, to* ***the child, and to his spouse (if any), parent, guardian, or custodian, if he can be found…. Counsel for the child****, and in neglect cases counsel for the parent, guardian, or custodian, shall be entitled to a copy of the petition prior to the hearing.*[69]

EXAMPLE

Iowa — Notice Requirement

A ***notice shall be served*** *upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian* ***not less than twelve hours before the time the hearing is scheduled*** *to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing.*[70]

N. REQUIRING INTERDISCIPLINARY TEAMS TO ADDRESS EXPEDITING PROCESSES

In addition to setting forth clear guidelines, states can require interdisciplinary teams, at the state or county level, to address delays in processing and identify opportunities to expedite cases.

VI

Special Detention Cases

The use of detention for warrants and probation violations often poses an especially difficult challenge for sites undertaking reform. Without focused attention on these groups, detention rates can remain high despite other detention reform efforts. Thus, state policy should be designed to reduce detention for these "special detention cases."

Important note: This chapter provides examples of statutes that explicitly address special detention issues. However, as described in the text box below, many of the policies throughout this publication would have the effect of reducing the use of secure detention in special detention cases. We have not reproduced those provisions here. Jurisdictions should use this text box and the assessment tool to ensure that they are considering the wide array of policy changes needed to address special detention cases.

STATE POLICIES CAN ADDRESS SPECIAL DETENTION CASES BY:

- Establishing the goal of reducing special detention cases in purpose clauses [See Chapter X]
- Prohibiting automatic detention policies for technical probation violators
- Ensuring that graduated responses are available for probation violators
- Requiring that DRAIs apply to probation violators [See Chapter III]
- Ensuring due process protections for probation violators
- Delineating criteria for violation hearings
- Prohibiting excessive detention pending disposition, placement or completion of evaluations

States should **avoid** or **repeal** statutes that automatically require detention for probation violators.

A. ADDRESSING SPECIAL DETENTION ISSUES IN PURPOSE CLAUSES

Explicitly recognizing special detention issues in purpose clauses helps to set the stage for new legislation and judicial interpretations that reduce detention for probation violators, youth on warrants and youth awaiting transfer or placement.

EXAMPLE

New Mexico — Purpose Clause

*The **purpose of the Delinquency Act is … to achieve reductions in the number of warrants issued, the number of probation violations and the number of youth awaiting placements.***[71]

B. PROHIBITING SECURE CUSTODY FOR TECHNICAL PROBATION VIOLATORS AND OTHER SPECIAL POPULATIONS

Excluding technical probation violators (i.e., youth who fail to comply with the terms of probation, as opposed to youth who are rearrested while on probation) from secure detention is a simple, direct way to prevent over-reliance on secure detention. This is particularly vital in the case of young people who become involved in the juvenile justice system because of a status offense, and then violate a valid court order. Detention is particularly ill-suited for such youth. For all special detention cases, state policies can mandate a series of graduated responses to ensure that youth are subjected to the least restrictive alternative to secure detention that will reasonably assure their appearance in court and reduce the risk of rearrest.

EXAMPLE

Connecticut — No Detention for Violation of a Valid Court Order

No child who has been adjudicated as a child from a family with service needs … may be processed or held in a juvenile detention center as a delinquent child, or be convicted as delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication; and (2) no such child who is found to be in violation of any such order may be punished for such violation by placement in any juvenile detention center.[72]

C. APPLYING INDIVIDUALIZED RISK ASSESSMENT DETERMINATIONS FOR YOUTH UNDER PROBATION SUPERVISION

State policies can also reduce unnecessary detention by ensuring that an individualized determination of the youth's risk is made. One approach for doing so is requiring that a risk assessment instrument be conducted, either on probation violators, or on youth picked up on new charges while on probation.

EXAMPLE

Florida — DRAIs and VOPs

All determinations and court orders regarding placement of a child into detention care [including for a child who is under the supervision of the department through probation, home detention, nonsecure detention, conditional release, postcommitment probation, or commitment and who is charged with committing a new offense] shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child. …[73]

D. ENSURING GRADUATED RESPONSES FOR SPECIAL POPULATIONS

State policies can reduce secure detention for special populations by ensuring a range of graduated sanctions. Mid-range responses are needed to expand officials' choices beyond secure detention and returning a youth home with no consequences. Examples include intensive home supervision, personal case trackers/mentors to work one-on-one with youth, day and evening reporting centers, work service programs, non-secure weekend custody and electronic monitoring. To the extent that state policy already provides for a broad array of detention alternatives, statutes can make clear that this array of alternatives should be prioritized for special populations.

Moreover, authorizing probation and/or law enforcement officers to make decisions about handling technical violations without juvenile court intervention helps prevent burdens on the court while at the same time reducing unnecessary detention.

EXAMPLE

Georgia — Graduated Sanctions

In jurisdictions where DJJ is authorized to provide probation supervision or the county juvenile probation office in jurisdictions where probation supervision is provided directly by the county, as applicable, shall be authorized to

establish rules and regulations for graduated sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of a probation management program.

[…]

"Graduated sanctions" means:

(A) Verbal and written warnings;

(B) Increased restrictions and reporting requirements;

(C) Community service or work crews;

(D) Referral to substance abuse or mental health treatment or counseling programs in the community;

(E) Increased substance abuse screening and monitoring;

(F) Electronic monitoring, as such term is defined in Code Section 42-8-151; and

(G) An intensive supervision program.[74]

E. ENSURING DUE PROCESS PROTECTIONS FOR PROBATION VIOLATORS

Youth accused of violating the terms of their probation should be afforded the same procedural protections as youth subject to detention at other stages of the delinquency process.

To ensure that youth receive adequate notice of the terms of their probation, juvenile probation officers should communicate with youth about their probation in ways that are developmentally appropriate and that account for literacy limitations.[75] State statutes can require developmentally appropriate communications and can establish training requirements probation officers need to accomplish these goals.

EXAMPLE

Florida — Detention Hearings for Probation Violators

*(2) **A child taken into custody … for violating the conditions of probation or postcommitment probation … shall be afforded a hearing within 24 hours** after being taken into custody to determine the existence of probable cause that the child violated the conditions of probation or postcommitment probation. …*

*(3) If the child denies violating the conditions of probation or postcommitment probation, **the court shall, upon the child's request, appoint counsel** to represent the child.*

*(4) Upon the child's admission, or if the court finds after a hearing that the child has violated the conditions of probation or postcommitment probation, the court shall enter an order revoking, modifying, or continuing probation or postcommitment probation. **In each such case, the court shall enter a new disposition order** and, in addition*

to the sanctions set forth in this section, may impose any sanction the court could have imposed at the original disposition hearing. …[76]

F. SPECIFYING FACTORS FOR CONSIDERATION IN DETENTION HEARINGS FOR VIOLATIONS OF COURT ORDERS

To ensure that courts have necessary guidance to make sound determinations at hearings regarding violations of court orders, legislation can set forth the specific factors for consideration at this stage.

EXAMPLE

California — Specific Factors Court Must Consider

Regarding [whether to detain on the ground that the child has violated an order of the court], ***the court must consider****:*

(1) The ***specificity of the court order*** *alleged to have been violated;*

(2) The ***nature and circumstances*** *of the alleged violation;*

(3) The ***severity and gravity*** *of the alleged violation;*

(4) Whether the alleged violation ***endangered the child or others****;*

(5) The ***prior history*** *of the child as it relates to any failure to obey orders or directives of the court or probation officer;*

(6) Whether there are ***means to ensure the child's presence*** *at any scheduled court hearing without detaining the child;*

(7) The ***underlying conduct or offense*** *that brought the child before the juvenile court; and*

(8) The ***likelihood that if the petition is sustained, the child will be ordered removed from the custody of the parent or guardian at disposition****.*[77]

Reducing Racial and Ethnic Disparities

VII

Many JDAI sites have struggled to reduce racial and ethnic disparities within the juvenile justice system, and particularly within the context of juvenile detention. Despite youth of color comprising a smaller percentage of the overall population than white youth, they represent the majority of youth detained in secure facilities.[78] The overrepresentation may be measured using various metrics.

While the reasons for disparities in the system are numerous, two common reasons are within the control of system stakeholders: disparate treatment of youth of color and the unnecessary and inappropriate use of detention for youth of color. See Annie E. Casey Foundation, *Pathways to Juvenile Detention Reform #8: Reducing Racial Disparities in Juvenile Detention,* (2002). Research demonstrates that youth of color are treated more harshly by juvenile justice decision makers than their white peers — even when charged with the same category of offense. Problems occur when detention is used not as a least restrictive alternative to protect public safety, but rather because the detention decision maker decides that the youth and/or the community would benefit from the youth being under state supervision (i.e., detention as a conduit to services, or as prematurely and inappropriately imposed punishment).

STATE POLICIES CAN ADDRESS RACIAL AND ETHNIC DISPARITIES BY:

- Setting the goal of eliminating racial and ethnic disparities in the juvenile act's purpose clause
- Addressing disparate impact on youth of color
- Requiring data collection at each point of contact with the juvenile justice system, disaggregated by race and ethnicity, reported annually
- Requiring racial impact statements for policy changes
- Ensuring oversight, including collaborative efforts, to respond to data on racial and ethnic disparities
- Creating funding incentives to promote access to community-based alternatives for youth of color

The policies in this chapter aim to address disparities in the system by ensuring that proper measures are in place to identify the extent of disparities and addressing these problems by establishing clear goals, setting needed funding structures and developing appropriate collaborations. Each of these principles is more fully developed in the other chapters of this publication — this chapter highlights legislation that explicitly recognizes and addresses racial and ethnic disparities.

A. CODIFYING PRINCIPLES THAT PROMOTE RACIAL AND ETHNIC JUSTICE

Although almost all jurisdictions struggle with racial and ethnic disparities within their juvenile justice system, few explicitly address the problem in their juvenile act purpose clause. Policies that set forth broad values statements on racial and ethnic disparities can support advocates in ensuring that all other statutory provisions are read to support these goals.

EXAMPLE

New Mexico — Addressing Racial and Ethnic Disparities

The purpose of the Delinquency Act is […] to ***eliminate or reduce disparities based upon race or gender;***[79]

EXAMPLE

Georgia — Ensuring Detention Decisions Account for Diversity and Equality

Whenever the curtailment of the freedom of an alleged delinquent child is permitted, the exercise of authority ***shall reflect the following values:***

(1) Respect for the privacy, dignity, and individuality of such child and his or her family;

(2) Protection of the psychological and physical health of such child;

(3) ***Tolerance of the diverse values and preferences among different groups and individuals;***

(4) ***Assurance of equality of treatment by race, class, ethnicity, and sex;***

(5) Avoidance of regimentation and depersonalization of such child;

(6) Avoidance of stigmatization of such child; and

(7) Assurance that such child has been informed of his or her right to consult with an attorney and that, if such child is an indigent person, an attorney will be provided.[80]

EXAMPLE

Minnesota — Policy to Reduce Racial and Ethnic Disparities

It is the policy of the state of Minnesota to ***identify and eliminate barriers to racial, ethnic, and gender fairness within the*** *criminal justice,* ***juvenile justice****, corrections, and judicial* ***systems****, in support of the fundamental principle of fair and equitable treatment under law.*[81]

B. ESTABLISHING PLANS TO REDUCE RACIAL AND ETHNIC DISPARITIES

Legislation can also require the development of plans to address racial and ethnic disparities. Such legislation will be particularly strong if the plan must: (1) build upon data collected to identify racial disparities at various decision points (see next section); (2) provide concrete steps for intervention; and (3) clarify the consequences for failing to address disparities adequately.

EXAMPLE

Connecticut — Tracking and Reducing Racial and Ethnic Disparities

Not later than September 30, 2011, and biennially thereafter, the Commissioner of Children and Families, the Commissioner of Emergency Services and Public Protection, the Chief State's Attorney, the Chief Public Defender, the Chief Court Administrator and the Police Officer Standards and Training Council shall ***submit a report****, on behalf of the respective department, division, office or council, to the Secretary of the Office of Policy and Management* ***on the plans established by the department, division, office or council to address disproportionate minority contact in the juvenile justice system and the steps taken to implement those plans*** *during the previous two fiscal years. Any reports submitted by the Commissioner of Children and Families and the Chief Court Administrator, or on behalf of any other such department, division, office or council that has responsibility for providing child welfare services, including services in abuse and neglect cases, shall (1) indicate efforts undertaken in the previous two fiscal years to address disproportionate minority contact in the child welfare system, and (2) include an evaluation of the relationship between the child welfare system and disproportionate minority contact in the juvenile justice system … For the purposes of this section, "disproportionate minority contact" means that a disproportionate number of juvenile members of minority groups come into contact with the juvenile justice system.*[82]

C. USING DATA TO IDENTIFY AND REDUCE RACIAL AND ETHNIC DISPARITIES AT EACH DECISION POINT IN THE SYSTEM

To properly address racial and ethnic disparities, states should establish an ongoing process for gathering, assessing and responding to data. States should evaluate the extent of racial and ethnic disparities at all key decision points in the system from arrest through discharge. Data collected on any issue should be disaggregated by race and ethnicity, to enable stakeholders to target interventions to reduce disparities. Data should then inform policies, including approaches to eliminating racial and ethnic disparities, as well as the need for services such as bilingual staff.

Data and analysis should also be used in advance of practice implementation, for example, to ensure that risk assessment instruments are properly validated to reduce disparate impact based on race or ethnicity.

DEFINING "RACE" AND "ETHNICITY"

Race and ethnicity are complicated social constructs whose meanings vary across time and in different contexts. Accurate recording of youths' race is vital to effectively addressing RED by identifying and addressing:

- Who the system is serving
- How decisions are made
- What services or resources are needed

One strong approach to collecting and recording data on race is set forth by the Illinois Juvenile Justice Commission, which defines race by asking the following three questions:

1. Hispanic/Latino? (Yes, No)
2. Race (5 categories: American Indian or Alaska Native; Asian; Black or African-American; Native Hawaiian or Other Pacific Islander; White)
3. National Origin, Ancestry or Tribal Affiliation (any population group or subgroups not included in the first two questions)

See Illinois Juvenile Justice Commission, **Guidelines for Collecting and Recording the Race and Ethnicity of Youth in Illinois' Juvenile Justice System**. Available at http://ijjc.illinois.gov/publications/guidelines-collecting-and-recording-race-and-ethnicity-youth-illinois-juvenile-justice.

EXAMPLE

Massachusetts Proposed Legislation — Instrument to Record Data on Race/Ethnicity, Age and Gender

[…] The Child Advocate shall create and update as may be appropriate ***an instrument to record statistical data at each point of contact*** *identified in sections 4(a)(i).*[83] ***This instrument shall, at minimum, include age, gender, race/ethnicity category, and type of crime.*** *The child advocate shall give due regard to the census of juveniles when setting forth the race/ethnicity categories in the instrument. The Child Advocate shall consider providing guidance about the manner in which the race/ethnicity information is designated and collected, with consideration of the juveniles' selfreporting of such categories. All Offices and Departments subject to this law shall use this instrument to record contacts.*[84]

EXAMPLE

New York — Assessing Risk Assessment Instruments for Disparate Impact

(a) In a social services district operating an approved juvenile justice services close to home initiative …, the local probation department shall ***develop and submit*** *to the office of children and family services for prior approval a* ***validated pre-dispositional risk assessment instrument and any risk assessment process****. … The office of children and family services shall consult with individuals with professional research experience and expertise in criminal justice; social work; juvenile justice; and applied mathematics, psychometrics and/or statistics to assist the office in determining the methods it will use to: approve the department's validated and revalidated pre-dispositional risk assessment instrument and process; and analyze the effectiveness of the use of such instrument and process in accomplishing their intended goals;* ***and analyze, to the greatest extent possible, any disparate impact on dispositional outcomes for juveniles based on race, sex, national origin, economic status, and any other constitutionally protected class, regarding the use of such instrument****. The office shall consult with such individuals regarding whether it is appropriate to attempt to analyze whether there is any such disparate impact based on sexual orientation and, if so, the best methods to conduct such analysis. The office shall take into consideration any recommendations given by such individuals involving improvements that could be made to such instrument and process.*[85]

D. REQUIRING RACIAL IMPACT STATEMENTS

The requirement of racial impact statements can be a useful tool in preventing legislation that could exacerbate racial and ethnic disparities, and promoting legislation that reduces such disparities. Racial impact statements are intended to help policymakers proactively assess how proposed sentencing laws may affect racial and ethnic disparities in the justice system.[86] "Similar to fiscal or environmental impact statements, racial impact statements provide legislators with a statistical analysis of the projected impact of policy changes prior to legislative deliberation."[87] While existing legislation requires such statements

in the context of the adult criminal justice system, these examples can serve as a model for similar legislation in the juvenile system.

EXAMPLE

Connecticut — Requiring Racial and Ethnic Impact Statements for Bills and Amendments That Could Impact Population of Correctional Facilities

(a) Beginning with the session of the General Assembly commencing on January 7, 2009, ***a racial and ethnic impact statement shall be prepared with respect to certain bills and amendments that could, if passed, increase or decrease the pretrial or sentenced population of the correctional facilities in this state.***

(b) Not later than January 1, 2009, the joint standing committee of the General Assembly on judiciary shall make recommendations for a provision to be included in the joint rules of the House of Representatives and the Senate concerning the procedure for the preparation of such racial and ethnic impact statements, the content of such statements and the types of bills and amendments with respect to which such statements should be prepared.[88]

EXAMPLE

Iowa — Requiring Protocols to Analyze Racial Impact of Legislation

1. ***Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill****, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures.* ***The statement shall include information concerning … the impact of the legislation on minorities*** *…*

5. The legislative services agency, in cooperation with the division of criminal and juvenile justice planning of the department of human rights, ***shall develop a protocol for analyzing the impact of the legislation on minorities.***[89]

E. COLLABORATING TO REDUCE RACIAL AND ETHNIC DISPARITIES

States should establish committees dedicated to overseeing state and local efforts to reduce disparities. Reducing racial and ethnic disparities requires strong leadership with a clear vision, as well as a commitment to involving stakeholders. Ensuring a meaningful role for community members, including those reflecting the population in terms of race and ethnicity, can allow for unique insights and a sense of urgency around the importance of reforms. While some jurisdictions may designate groups to focus on the issue of racial and ethnic disparities, the work should not be limited to these groups alone. Instead, all detention reform collaborations should work to ensure racial and ethnic diversity in their

own membership, and should focus on addressing racial and ethnic disparities as a part of their broader mission.

EXAMPLE

Texas — Interagency Council for Addressing Disproportionality

The Interagency Council for Addressing Disproportionality is established to:

*(1) **examine the level of disproportionate involvement** of children who are members of a racial or ethnic minority group at each stage in the juvenile justice, child welfare, and mental health systems, including:*

*(A) **the points of entry**;*

*(B) **each point at which a treatment decision is made**; and*

*(C) the **outcomes** for the children exiting the systems; …*

*(3) **make recommendations to**:*

*(A) **reduce the involvement of children who are members of a racial or ethnic minority group in the juvenile justice**, child welfare, and mental health **systems**…*[90]

F. FUNDING INCENTIVES TO REDUCE RACIAL AND ETHNIC DISPARITIES

Some states have used grant programs to ensure that youth of color have access to community-based sanctions and services. This approach may help to address disproportionality in secure settings.

EXAMPLE

New Jersey — State/Community Partnership Grant Program to Provide Greater Access to Alternatives for Youth of Color and Girls

A State/Community Partnership Grant Program is established within the Juvenile Justice Commission … to support, through grants allocated to county youth services commissions …, facilities, sanctions and services for juveniles adjudicated or charged as delinquent and programs for prevention of juvenile delinquency. This program is established in order to… [p]rovide greater access to community-based sanctions and services for minority and female offenders.[91]

VIII

Addressing Conditions of Confinement

Many detained youth are held in facilities that fail to meet even minimum constitutional, statutory and professional standards of care. From the quality of programming, to the training staff receives, to the use of restraints and other harmful disciplinary practices, conditions of confinement have a major impact on the ability of detention facilities to ensure the welfare of youth whose care is entrusted to the juvenile justice system. With carefully crafted statutes and regulations, policymakers can have a profound impact on the quality of youths' experiences within detention facilities, and in maintaining safe and humane conditions of confinement.

A. ENSURING THAT STATE REGULATIONS AND POLICIES MEET APPLICABLE LEGAL AND PROFESSIONAL STANDARDS

Juvenile facilities should be able to look to state regulations and policies with the confidence that, if they meet state standards, they will be operating a facility that will protect youth and staff from harm, and reduce the risk of litigation over inadequate conditions. Unfortunately, state regulations and policies do

STATE POLICIES CAN ADDRESS CONDITIONS OF CONFINEMENT BY:

- Embedding JDAI Juvenile Detention Facility Standards in state statutes, regulations or licensing schemes
- Requiring internal evaluation, assessment and monitoring at the facility and state level
- Establishing independent monitors and advocates to identify and address system and individual level problems
- Ensuring that facilities and systems engage in corrective action to remedy problems identified
- Ensuring a right to counsel pre- and post-disposition, with authority and capacity to address conditions issues

not always provide this kind of guidance. In some states, standards reflect a "lowest common denominator" that facilities can easily meet, but that fail to protect youth or staff adequately. In other states, policies are overly broad — they ask only that facilities develop written policies on given topics, without providing guidance on the content. As a result, state regulations and policies may fail to ensure that facilities meet applicable laws and accepted standards of professional practice.

This chapter provides recommendations for policies that ensure that appropriate standards for conditions of confinement are put in place at the facility and state levels. It also provides recommendations for policies requiring both internal and independent monitors to ensure that these standards are met.

This chapter does not provide specific recommendations as to the substantive standards needed to ensure appropriate conditions of confinement. Instead, we recommend that states look to the comprehensive *JDAI Juvenile Detention Facility Assessment Standards* as guides in creating state policy.

The *Detention Facility Assessment Standards* incorporate the requirements of case law, statutes and professional standards. They incorporate, for example, requirements imposed by the Juvenile Justice and Delinquency Prevention Act, the Individuals with Disabilities Education Act, the Americans with Disabilities Act, the Religious Land Use and Institutionalized Persons Act, and the Prison Rape Elimination Act. They incorporate significant case law holdings in areas that could create liability for detention facilities. They look to professional standards developed by groups such as the National Commission of Correctional Health Care, the American Bar Association, the National Advisory Committee on Juvenile Justice, the Council of Juvenile Correctional Administrators and the American Correctional Association. In addition, as they were developed, the standards were scrutinized by longtime juvenile justice professionals, with input from dozens of subject matter experts and detention practitioners. Moreover, they have been relied upon by courts in conditions cases, by the Department of Justice in civil rights investigations and by state agencies and task forces developing or revising their regulations and policies.

The standards focus on conditions in eight areas, outlined by the mnemonic C.H.A.P.T.E.R.S. (see text box on page 72): classification and separation issues; health and mental health care; access to counsel, the courts and family; programming, education, exercise and recreation; training and supervision of institutional staff; environment, sanitation, overcrowding and privacy; restraints, isolation, discipline and due process; safety issues for staff and confined children.

Because of the widespread recognition of the *Standards,* their comprehensive nature and the fact that they address difficult issues often avoided in other standards, states should use the *Standards* as a source to guide revisions in state regulations and policies. Policymakers should ensure that there are detailed rigorous policies in place governing all conditions in C.H.A.P.T.E.R.S. to ensure that detained youth are subject to conditions that maximize their health, safety and emotional and educational well-being, while minimizing the risk of harm.

C.H.A.P.T.E.R.S.

Classification and separation issues

Health and mental health care

Access to counsel, the courts and family

Programming, education, exercise and recreation

Training and supervision of institutional staff

Environment, sanitation, overcrowding and privacy

Restraints, isolation, discipline and due process

Safety issues for staff and confined children

B. ESTABLISHING STANDARDS FOR CONDITIONS

As described above, states should look to *JDAI Juvenile Detention Facility Assessment Standards*, and codify those recommendations into statute. States may also include detention standards as part of their court rules.[92]

To further ensure that standards are being followed, states can incorporate these conditions standards into their licensing scheme. Once standards are incorporated, the licensing process itself can create a needed check on implementation — as described in the next section, the licensing body can require ongoing monitoring and evaluation, and can refuse to license facilities that do not meet the standards.

EXAMPLE

Louisiana — Licensing Goals, Process and Standards

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of this state who are placed in juvenile detention facilities. ***Toward this end, it is the purpose of this Part to provide for the establishment of statewide standards for juvenile detention facilities, to ensure maintenance of these standards, and to regulate conditions in these facilities through a licensing program.*** *It shall be the policy of this state that all juvenile detention facilities provide temporary, safe, and secure custody of juveniles during the pendency of juvenile proceedings, when detention is the least restrictive alternative available to secure the appearance of the juvenile in court or to protect the safety of the child or the public.*

B. On or before July 1, 2011, the Louisiana Juvenile Detention Association shall ***develop and recommend uniform standards for local juvenile detention facilities that comport with nationally recognized and accepted best practice standards for juvenile detention facilities****. In developing these standards, the Louisiana Juvenile Detention Association* ***shall seek input and guidance from the Task Force on Juvenile Detention Standards and Licensing*** *provided for in Subsection D of this Section.*

C. On or before January 1, 2012, the ***Department of Children and Family Services shall develop and promulgate,*** *in accordance with the provisions of the Administrative Procedure Act,* ***rules governing the licensing of juvenile detention facilities consistent with the standards recommended*** *by the Louisiana Juvenile Detention Association. In developing these rules, the department* ***shall seek input and guidance from the Task Force*** *on Juvenile Detention Standards and Licensing provided for in Subsection D of this Section.*

D. ***The Task Force on Juvenile Detention Standards and Licensing shall include representation*** *of the following organizations:*

(1) A representative of each of the existing juvenile detention facilities in this state.

(2) The Louisiana Juvenile ***Detention Association****.*

(3) The Louisiana ***District Attorneys Association****.*

(4) The Louisiana ***Public Defenders Board****.*

(5) The Louisiana ***Sheriffs' Association****.*

(6) The ***Juvenile Justice Project of Louisiana****.*

(7) The Department of ***Public Safety and Corrections****, office of juvenile justice.*

(8) The Louisiana ***Council of Juvenile and Family Court Judges****.*

(9) The Department of ***Education****.*

(10) The Department of ***Children and Family Services****.*

(11) The Department of ***Health and Hospitals****.*

(12) The Louisiana Chapter of the ***American Academy of Pediatrics****.*

*(13) The Louisiana **Municipal Association**.*

*(14) The **Police Jury Association** of Louisiana.*

*(15) The Louisiana Commission on **Law Enforcement and Administration of Criminal Justice**.*

*(16) Representatives from the **juvenile drug court community**.*

*E. On or before July 1, 2013, **all juvenile detention facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or public agency, shall be licensed** in accordance with rules promulgated pursuant to the provisions of Subsection C of this Section.*[93]

EXAMPLE

Mississippi Proposed Legislation — Licensing Goals, Process and Standards

*By July 1, 2016, **no juvenile detention center shall house youth unless it obtains a license**. Each juvenile detention center shall be licensed on a yearly basis. Licensing requirements shall be **established by the Juvenile Detention Alternatives Task Force**. The task force shall be responsible for determining which state agency shall be responsible for licensing juvenile detention centers and for promulgating the licensing standards as regulations pursuant to the Administrative Procedures Act. Licensing **requirements shall be based on national best practices and shall incorporate… minimum standards** [on staff expectations, prevention of abuse and harassment, rights to mail, telephone and visitation; sanitation and environmental standards; nutrition standards; protection of religious freedom; access to medical and mental health care; access to counseling; collaboration with school districts and provision of adequate education; adequate recreation; adequate transition planning]*[94]

C. MONITORING CONDITIONS OF CONFINEMENT

Once statutes and regulations are in place, it is equally important to ensure that they are implemented, and that corrective action is taken when facilities fall short. The remainder of this chapter highlights policies that establish the oversight and enforcement mechanisms to ensure that conditions issues are monitored and addressed. Providing for such oversight encourages facilities to work effectively with youth. It also assists facilities in avoiding costly litigation by providing the system with the capacity to address problems early and efficiently.

I. Internal Monitoring

Systems and facilities should have in place data-driven systems to assess their own conditions. Facility licensing and operations can be run contingent on participating in and passing such assessments.

In addition, quality improvement can be accomplished at the facility level. For example, all JDAI sites work on assessing and improving conditions of confinement in their local detention centers as one of the core strategies of the initiative. Jurisdictions gather teams of medical, mental health and education professionals, along with concerned citizens and system stakeholders to conduct assessments of the conditions in their detention centers. They receive training in conducting assessments using *JDAI Juvenile Detention Facility Assessment Standards* and issue reports and corrective action plans following completion of the assessments. Applying Performance-based Standards (PbS) is another model for engaging in an internal review and quality improvement process. PbS is a program for juvenile justice agencies, facilities and residential care providers to identify, monitor and improve conditions and services, which was launched by the US Department of Justice in 1995. State policymakers could mandate that facilities and agencies engage in such structured approaches to monitoring and improving juvenile justice conditions.

EXAMPLE

Florida — Quarterly Inspections and Enforcement Mechanisms for County Facilities

(9) A county or municipal government ***may establish and operate a juvenile detention facility*** *in compliance with this section,* ***if such facility is certified*** *by the department.*

(a) ***The department shall evaluate the county or municipal government detention facility to determine whether the facility complies with the department's rules*** *prescribing the standards and requirements for the operation of*

PRACTICE NOTE

While state policy can establish structured approaches to monitoring, facility administration should also engage in day-to-day management, assessment and responses by touring facilities, and ensuring open channels of communication with youth and staff.

a juvenile detention facility. The rules for certification of secure juvenile detention facilities operated by county or municipal governments must be consistent with the rules for certification of secure juvenile detention facilities operated by the department.

(b) ***The department is required to conduct quarterly inspections and evaluations of each county or municipal government juvenile detention facility to determine whether the facility complies with the department's rules for continued operation.*** *The department shall charge, and the county or municipal government shall pay, a monitoring fee equal to 0.5 percent of the direct operating costs of the program. The operation of a facility which fails to pass the department's quarterly inspection and evaluation, if the deficiency causing the failure is material, must be terminated if such deficiency is not corrected by the next quarterly inspection.*[95]

EXAMPLE

Florida — Detention Center Self-Assessment & Corrective Action Planning

(a) ***The department may institute injunctive proceedings in a court of competent jurisdiction against a county or municipality to:***

1. ***Enforce the provisions of this chapter or a minimum standard, rule, regulation, or order*** *issued or entered pursuant thereto; or*

2. ***Terminate the operation of a facility*** *operated pursuant to this section.*

(b) ***The department may institute proceedings against a county or municipality to terminate the operation of a facility when any of the following conditions exist:***

1. The ***facility fails to take preventive or corrective measures*** *in accordance with any order of the department.*

2. The ***facility fails to abide by any final order*** *of the department once it has become effective and binding.*

3. The ***facility commits any violation of this section constituting an emergency*** *requiring immediate action as provided in this chapter.*

4. The ***facility has willfully and knowingly refused to comply with the screening requirement for personnel*** *[…] or has refused to dismiss personnel found to be in noncompliance with the requirements for good moral character.*

(c) Injunctive relief may include temporary and permanent injunctions.[96]

EXAMPLE

Delaware — Review Conditions by Human Rights Committee

A licensee shall establish a Human Rights Committee of at least five adult individuals of known reputation, two of whom shall be professionally knowledgeable or experienced in the theory and ethical application of various treatment techniques used to address behavioral problems. The Human Rights Committee shall include members from

the licensee and external to the licensee or its parent organization. […]The Committee shall meet at least on a quarterly basis [and]

be responsible for:

Determining that children in care are receiving humane and proper treatment;

Reviewing and making recommendations regarding the licensee's policies and procedures governing the use of restrictive procedures;

Reviewing the restrictive procedures records and advising the Chief Administrator accordingly;

[…]

Making inquiries into any allegations of abusive techniques or the misuse of restrictive procedures. A report of the inquiry shall be provided by the Committee to the Chief Administrator and sent to the Division;

Monitoring the qualifications and training of employees who have been given responsibility for administering restrictive procedures and to make recommendations to the Chief Administrator the application of some form of restrictive procedures.

An emergency application of a restrictive procedure may occur for a specific child without the prior review of the Human Rights Committee, but only when the situation is deemed to be an emergency.[97]

2. Statewide Independent Monitors

Independent monitoring systems are critical aids in identifying problems facing individual youth in facilities, and in assessing systemic problems. While internal grievance mechanisms and other self-monitoring processes are essential to ensure that facility staff and administrators understand and meet youths' needs promptly, youth are often wary of retaliation when relying on internal mechanisms for redress. Also, self-monitoring systems often miss systemic problems because people working in the system are unable to see them. As a result, independent monitors are vital to ensuring positive conditions in juvenile facilities. The following sections outline policy recommendations that support the various components of an effective independent monitoring system.

a. Clearly Setting Forth Monitor's Purpose

The most effective legislation on independent monitoring spells out the monitor's purpose, clarifies that monitors will address youth in secure and non-secure settings, and specifies that monitors will investigate and respond to system-level problems and individual complaints. Such legislation may also set forth the scope of the monitor's evaluation in detail. Strong legislation requires the monitor to ensure that facilities are operating in accordance with state and national requirements and best practice standards.

EXAMPLE

Maryland — Protecting Rights and Addressing Abuse

(b) The function of the Unit is to ***investigate and determine whether the needs of*** *children under the jurisdiction of the Department of Juvenile Services are being met in compliance with State law, that their rights are being upheld, and that they are not being abused.*[98]

The Unit shall:

(1) ***evaluate at each*** *facility:*

(i) the child advocacy ***grievance process;***

(ii) the Department's ***monitoring process;***

(iii) the ***treatment of and services to youth;***

(iv) the ***physical conditions*** *of the facility; and*

(v) the ***adequacy of staffing***

EXAMPLE

Texas — Securing Rights of All Children Committed to the Department

The office of independent ombudsman is a state agency established for the purpose of ***investigating, evaluating, and securing the rights of the children committed*** *to the department,* ***including a child released under supervision*** *before final discharge.*[99]

EXAMPLE

South Dakota — Designated Facilities Monitor

The Governor shall designate a person or entity to serve as the monitor and ***whose primary responsibility is to protect the rights of individuals in the custody or care of juvenile corrections facilities.***[100]

EXAMPLE

Mississippi — Juvenile Detention Monitoring Facilities Monitoring Unit

The unit shall be responsible for ***investigating, evaluating and securing the rights of children held in juvenile justice facilities,*** *including detention centers, training schools and group homes throughout the state* ***to ensure that the facilities operate in compliance with national best practices and state and federal law.***[101]

b. Clearly Establishing Monitor's Independence

For monitors to be effective, they should be fully independent of the department responsible for juvenile justice services and from any facilities providing care. Legislation can ensure this by employing legislative language establishing independence as a goal, by administratively separating the monitors from the detention facilities and by setting forth independent funding streams to support monitors.

EXAMPLE

Texas — Independence from the Department, Including Separate Funding

(a) The independent ombudsman in the performance of its duties and powers under this chapter ***acts independently*** *of the [Texas Juvenile Justice Department].*

(b) ***Funding*** *for the independent ombudsman is* ***appropriated separately*** *from funding for the department. […]* [102]

EXAMPLE

South Dakota — Independence from the Department of Corrections

[The monitor] ***shall be independent of the Department of Corrections*** *and shall be administered by the Department of Human Services, office of the secretary.*[103]

EXAMPLE

Connecticut — Segregated Accounts and Financial Independence

The Child Advocate may apply for and accept grants, gifts and bequests of funds from other states, federal and interstate agencies and independent authorities and private firms, individuals and foundations, for the purpose of carrying out his responsibilities. ***There is established within the general fund a child advocate account which shall be a separate nonlapsing account.*** *Any funds received under this subsection shall, upon deposit in the general fund, be credited to said account and may be used by the Child Advocate in the performance of his duties.*[104]

c. Giving Monitor Authority to Investigate and Evaluate

To perform their jobs, monitors must have significant access to information about the facility and about individual youth. This access to information can support both system-level evaluation and investigations of individual complaints. The strongest policies allow monitors access to agency and facility records (including both private and public entities), the authority to contact and interview stakeholders, the

authority to engage in unannounced site visits, the power to hire experts to support their work and the power to compel production of documents and testimony. To ensure that problems are identified and addressed early, policies can establish regular intervals for monitoring.

i. Ensuring Monitor's Access to Records

Statutes that grant monitors broad access to facility records set the stage for effective monitoring.

EXAMPLE

Texas — Access to Juvenile Justice, Law Enforcement, and Private Entity Records

(a) The independent ombudsman ***has access to the [Texas Juvenile Justice Department's] records*** *relating to the children committed to the department.*

(b) The Department of Public Safety shall allow the independent ombudsman access to the ***juvenile justice information system*** *…*

(c) A local ***law enforcement*** *agency shall allow the independent ombudsman access to its* ***records relating to any child in the care or custody of the department.***[105]

The independent ombudsman shall have ***access to the records of a private entity*** *that relate to a child committed to the department.*[106]

EXAMPLE

Connecticut — Access to any Necessary Records

(a) Notwithstanding any provision of the General Statutes concerning the confidentiality of records and information, ***the Child Advocate shall have access to, including the right to inspect and copy, any records necessary*** *to carry out the responsibilities of the Child Advocate […].*[107]

EXAMPLE

Mississippi — Access to Confidential Records

[T]he monitor ***may review court documents and other confidential records as necessary*** *to fulfill these duties.*[108]

ii. Ensuring Monitor Reviews Complaints, Grievances and Investigations

To ensure that monitors have the information they need to inform them of individual issues in need of redress and problematic patterns in the facility, policies can ensure that monitors have access to records of completed or ongoing investigations, grievances and complaints. Additionally, the monitor's contact information should be made widely available for youth or families who wish to report directly to the monitor about a facility condition.[109] When facilities gather such information as part of their ongoing data collection, they will also be able to identify trends relating to juvenile conditions, and address problems as they emerge.

EXAMPLE

South Dakota — Investigating Incidents of Abuse and Neglect

__The monitor […] shall […] [p]rovide reasonable notification__ of the existence and role of the monitor to all individuals in the custody or care of a juvenile corrections facility and the custodial parent or guardian […].[110]

The monitor[…] shall […] __Investigate incidents of abuse or neglect of such individuals within the juvenile corrections facilities__, if the incidents are reported to the monitor or if there is reasonable suspicion to believe that the incidents occurred […].[111]

__Any allegation of abuse and neglect__ of individuals within the juvenile corrections facilities received by the Office of the Governor, the Department of Corrections, or other agencies of the executive branch __shall be promptly reported in writing to the monitor__.[112]

EXAMPLE

Maryland — Reviewing Incident Reports, Grievance Dispositions, Disciplinary Actions and Child Protective Findings

__The Unit Shall […]__

(2) __review all reports of disciplinary actions, grievances, and grievance dispositions__ received from each facility __and alterations in the status or placement of a child__ that result in more security, additional obligations, or less personal freedom;

(5) __receive and review all incident reports__ submitted to the Department from facilities;

(6) __receive reports of the findings of child protective services__ investigations of allegations of abuse or neglect of a child in a facility […].[113]

__The Unit may:__

(3) __review investigative reports__ produced by the Department relating to youth in facilities; and[114]

*(4) **participate**, within the context of the local department of social services' multidisciplinary team process, **in a child protective services investigation** conducted under Title 5, Subtitle 7 of the Family Law Article concerning any allegation of abuse or neglect within any assigned facility.*[115]

EXAMPLE

Texas — Reviewing Complaints, Grievances and Investigations

(a) The independent ombudsman shall:

*[…] (2) **review complaints** filed with the independent ombudsman concerning the actions of the department and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;*

*(3) **conduct investigations** of complaints, other than complaints alleging criminal behavior, if the office determines that […] a **child committed to the department or the child's family may be in need of assistance** from the office or **a systemic issue in the department's provision of services is raised** by a complaint*

*[…] (10) **review reports received by the department relating to complaints** regarding juvenile probation programs, services, or facilities and **analyze the data contained in the reports** to identify trends in complaints […].*[116]

iii. Granting Authority to Conduct Interviews

For monitors to develop a full understanding of issues arising in juvenile justice facilities, they must be given the authority to — or required to — conduct private interviews with youth, juvenile justice facility staff members, families and others. Some states have explicitly established this authority through statutes.

EXAMPLE

South Dakota — Access to Youth and Employees

*The monitor […] shall: […]**[a]ccess any individual in the custody or care of juvenile corrections facilities** and any employee in the employ of the State of South Dakota or any of its political subdivisions[….]* [117]

EXAMPLE

Connecticut — Confidential Communications with Youth

*In the performance of his responsibilities […] the Child Advocate **may communicate privately with any child or person** who has received, is receiving or should have received services from the state. Such communications shall be confidential […].* [118]

EXAMPLE

Maryland — Access to Youth and Employees

*The Unit may…on request, **conduct interviews with staff, youth, and others;*** [119]

EXAMPLE

Texas — Access to Youth, Staff, Experts, Interested Individuals

*To assess if a child's rights have been violated, the independent ombudsman may, in any matter that does not involve alleged criminal behavior, **contact or consult with an administrator, employee, child, parent, expert, or any other individual** in the course of its investigation or to secure information.*[120]

EXAMPLE

Mississippi — Access to Administrators, Employees, Parents, Children, Experts, or Others

*(a) To carry out the duties in this subsection […] a monitor **may consult with an administrator, employee, child, parent, expert or other individual** in the course of monitoring or investigating.*[121]

(b) The monitor shall have access to an entire facility and shall conduct confidential interviews with youth and facility staff […] [122]

iv. Granting Authority to Conduct Site Visits

For monitors to get an accurate understanding of how a facility is operating, the monitor should have the authority to conduct site visits. This will be most effective if the monitor is required to visit facilities unannounced, and required to visit at regular intervals.

EXAMPLE

Maryland — Unannounced Site Visits

*The Unit Shall […]**perform unannounced site visits** and on-site inspections of facilities[…]* [123]

EXAMPLE

Mississippi — Quarterly Visits to Facilities

[The monitoring unit's duty to investigate encompasses the responsibility] to conduct quarterly monitoring visits of all detention centers, training schools and group homes.[124]

v. Granting Authority to Review Policies, Procedures and Service Delivery

To ensure that the content of facility policies and procedures should meet applicable legal and professional standards, and be consistent with the JDAI juvenile detention facility assessment standards, states can require monitors to review policies, procedures and service delivery to determine whether they conform with those standards. This allows monitors to identify problems early and consequently allows systems or facilities to intervene early in remedying any problems.

EXAMPLE

South Dakota — Reviewing Policies

The monitor […] shall:

(6) ***Review Department of Corrections' policies*** *dealing with juvenile's rights to ensure compliance with federal and state laws, rules, and policy;*[125]

EXAMPLE

Connecticut — Reviewing Procedures and Evaluating Service Delivery

The Child Advocate shall:

(1) ***Evaluate the delivery of services to children by state agencies*** *and those entities that provide services to children through funds provided by the state;*

(2) ***Review periodically the procedures established by any state agency*** *providing services to children … with a view toward the rights of the children and recommend revisions to such procedures;*

[…]

(5) ***Periodically review the facilities and procedures of any and all institutions or residences, public or private, where a juvenile has been placed*** *by any agency or department […]* [126]

vi. Granting Authority to Compel Production of Documents or Testimony

Granting a monitor the authority to issue subpoenas to compel testimony of witnesses and review documents ensures that the monitor has the information needed to thoroughly investigate any problems brought to their attention. Systems should recognize that this creates broad authority in an administrative agency, and that the agency may wish to put in place protocols to ensure that information gathered is used only to address the violations, and not for any other purposes such as criminal investigations.

EFFECTIVE INDEPENDENT MONITORING SYSTEMS ARE:

- Fully autonomous from agency control in order to ensure the independence necessary to conduct effective investigations and take appropriate next steps
- Supported by clear statutory authority to conduct investigations, subpoena relevant information and individuals, and recommend meaningful changes
- Given unrestricted access to facilities, records and individuals
- Adequately funded so that the program has sufficient staff and resources to carry out its investigatory, monitoring and reporting responsibilities and
- Staffed with qualified individuals who have expertise in coordinating and conducting investigations, understanding the legal rights of youth and enforcement mechanisms, and assessing the adequacy of programs and policies within facilities

This list was adapted by the Center for Children's Law and Policy from the following OJJDP publications:

Judith Jones & Alvin W. Cohn, **State Ombudsman Programs**, OJJDP Bulletin, Feb. 2005, available at www.ncjrs.gov/pdffiles1/ojjdp/204607.pdf

And

Patricia Puritz & Mary Ann Scali, **Beyond the Walls: Improving Conditions of Confinement for Youth in Custody** (1998), available at www.ncjrs.gov/pdffiles/164727.pdf

See also Center for Children's Law and Policy, Fact Sheet, **Independent Monitoring Systems for Juvenile Facilities**, available at www.cclp.org/conditions_resources.php

EXAMPLE

Connecticut — Authority to Subpoena Witnesses and Documents

*The Child Advocate **may issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers and other documents and to administer oaths to witnesses in any matter under his investigation**. If any person to whom such subpoena is issued fails to appear or, having appeared, refuses to give testimony or fails to produce the evidence required, the Child Advocate may apply to the Superior Court for the Judicial District of Hartford which shall have jurisdiction to order such person to appear and give testimony or to produce such evidence, as the case may be.*[127]

3. Requiring Monitor to Maintain Confidentiality of Information

Policies should protect the identity of people who lodge complaints against detention service providers. Ensuring confidentiality will reduce barriers to reporting by youth, family members and provider agency staff members who are concerned about stepping forward and possibly incurring negative treatment from the object of the complaint. States can protect whistleblowers even more thoroughly by preventing retaliation for reports regarding institutional conditions or abuse.[128]

EXAMPLE

Connecticut — Protecting Whistleblowers and Maintaining Confidentiality

*(a) **The name, address and other personally identifiable information of a person who makes a complaint to the Child Advocate …, all information obtained or generated by the office in the course of an investigation and all confidential** records obtained by the Child Advocate or a designee shall be confidential and shall not be subject to disclosure under the Freedom of Information Act or otherwise, except that such information and records, other than confidential information concerning a pending law enforcement investigation or a pending prosecution, **may be disclosed if the Child Advocate determines that disclosure is (1) in the general public interest or (2) necessary to enable the Child Advocate to perform his responsibilities**. … If the Child Advocate determines that disclosure of confidential information is not in the public interest but is necessary to enable the Child Advocate to perform responsibilities …, or to identify, prevent or treat the abuse or neglect of a child, the Child Advocate may disclose such information to the appropriate agency responsible for the welfare of such child.*

*(b) **No state or municipal agency shall discharge, or in any manner discriminate or retaliate against, any employee who in good faith makes a complaint to the Child Advocate** or cooperates with the Office of the Child Advocate in an investigation.*[129]

EXAMPLE

South Dakota — No Requirement to Disclose Reporters' Identities

For purposes of any audit, report, evaluation, or public testimony that may be permitted or required […] ***no disclosure of the identity of, or any other personally identifiable information related to, any juvenile or any individual requesting assistance […] shall be required[….]***

The identity of the person making a report to the monitor shall be kept confidential.[130]

EXAMPLE

Mississippi — The Identity of Reporters, All Records and Communications Kept Confidential and Privileged

(a) The records of a monitor shall be confidential. Any child, staff member, parent or other interested individual may communicate to a monitor in person, by mail, by phone, or any other means. All communications shall be kept confidential and privileged, except that the youth court and the facility shall have access to such records, but the identity of reporters shall remain confidential.[131]

4. Using Information Gathered to Effect Change

Monitoring systems are not fully effective unless the information gathered is used to address individual or system problems. State policies can require monitors to report conditions and make recommendations to heads of agencies running facilities and to policymakers. State policies can also grant monitors direct enforcement authority to respond to individual complaints.

a. Granting Enforcement Authority

Having authority to trigger corrective action positions monitors to improve conditions, and can allow the system or facility an opportunity to recognize and address problems internally.

EXAMPLE

California — Juvenile Court Judge Inspections and Corrective Action Planning

[After inspection at least annually], the judge shall promptly notify the operator of the jail, juvenile hall, or special purpose juvenile hall of any observed noncompliance with minimum standards for juvenile facilities [….]. Based on the facility's subsequent compliance […] the judge shall thereafter make a finding whether the facility is a suitable place for the confinement of minors and shall note the finding in the minutes of the court.

*[After biennial inspection], **the board shall promptly notify the operator of any jail, juvenile hall, lockup, or special purpose juvenile hall of any noncompliance found**, upon inspection, with any of the minimum standards for juvenile facilities […].*

***If either a judge of the juvenile court or the board, after inspection of a jail, juvenile hall, special purpose juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors**, the juvenile court or the board shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and **commencing 60 days thereafter the facility shall not be used for confinement of minors** until the time the judge or board, as the case may be, finds, after reinspection of the facility that the conditions that rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.*

*(d) […]a juvenile hall, special purpose juvenile hall, law enforcement facility, or jail **shall be unsuitable for the confinement of minors if it is not in compliance with one or more of the minimum standards for juvenile facilities** […], and if, within 60 days of having received notice of noncompliance from the board or the judge of the juvenile court, the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail has failed to file an approved corrective action plan with the Board of Corrections to correct the condition or conditions of noncompliance of which it has been notified. **The corrective action plan shall outline how the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail plans to correct the issue of noncompliance and give a reasonable timeframe, not to exceed 90 days, for resolution, that the board shall either approve or deny.** In the event the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail fails to meet its commitment to resolve noncompliance issues outlined in its corrective action plan, the board shall make a determination of suitability at its next scheduled meeting.*[132]

EXAMPLE

Maryland — Monitors Enforcing Regulations & Shaping Policy

The [Juvenile Justice Monitoring] Unit shall:

*[…](7) **ensure that each facility is in compliance with the regulations** applicable to residential facilities;*

*(8) **collaborate** with the Department, the Department of Human Resources, the Department of Health and Mental Hygiene, and the Governor's Office for Children **in all matters related to the licensing and monitoring of children's residential facilities**; and*

*(9) **have a representative available to attend meetings of the advisory boards** [that handle matters related to the effective operation and improvement of state facilities].*[133]

b. Providing Reports and Recommendations to Policymakers, Agency Leaders

Monitors are well-positioned to inform policymakers about the need for statute, regulation or guidance to ensure that standards are met and that policies protect the institution from liability, and protect both youth and staff from harm.

EXAMPLE

Connecticut — Requiring Monitors to Recommend Changes in State Policies

[The Child Advocate shall] ***recommend changes in state policies*** *concerning children including changes in the system of providing juvenile justice, child care, foster care and treatment …*[134]

EXAMPLE

South Dakota — Reporting to State Executives

It shall be the responsibility of the monitor to ***report immediately, in writing, any findings of abuse or neglect in a juvenile corrections facility to the secretary of the Department of Corrections, the Government Operations and Audit Committee …, and the Governor****, and to state in the report the facts found by the monitor and the names of any individuals who perpetrated the abuse or neglect.*[135]

[The monitor shall p]rovide a semi-annual report to the Governor, the Legislature, the Corrections Commission …, the secretary of the Department of Human Services, and the secretary of the Department of Corrections. *The report shall contain the activities of the monitor for the six-month period immediately prior to the report. Activities shall reflect the number of referrals to the monitor, the number of investigations completed, a brief description of any investigation that resulted in a finding of abuse or neglect, and a summary of other activities performed by the monitor;*

[…](8) ***Submit a confidential addendum*** *to each semiannual report* ***to the Government Operations and Audit committee …, the Governor, the secretary of the Department of Human Services, and the secretary of the Department of Corrections.*** *This addendum shall contain a* ***description of each case investigated, the specific findings and recommendations of the juvenile corrections monitor, and the Department of Corrections' response to the recommendations.***[136]

EXAMPLE

Texas — Reporting Standards Violations to State Agency

The independent ombudsman shall… ***report a possible standards violation*** *by a local juvenile probation department to the appropriate division of the department.*[137]

EXAMPLE

Mississippi — Reporting to Governor, Lieutenant Governor, Legislature, and Board of Supervisors

[The monitoring unit is to] make available on a quarterly basis to the Governor, Lieutenant Governor and each member of the Legislature and each member of a county board of supervisors, a report that describes:

(i) The work of the monitoring unit;

(ii) The results of any review or investigation undertaken by the monitoring unit;

(iii) Any allegations of abuse or injury of a child; and

(iv) Any problems concerning the administration of a detention center.

The reports described in this subsection shall keep the names of all children, parents and employees confidential.[138]

c. Engaging in Advocacy on Behalf of Individual Youth

While some conditions issues will be identified and dealt with through state or local monitoring systems, others will surface through complaints of individual youth. States should provide a mechanism for receiving, investigating and resolving individual conditions complaints. This can be done through an ombudsman or other designated advocate. Once such an advocate identifies violations of an individual youth's rights, the advocate should have authority to address and correct the rights violation through direct advocacy. A strong policy will require such advocacy, and clarify how agencies and facilities must respond to the advocate upon a finding of a rights violation.

EXAMPLE

Connecticut — Addressing Individual Complaints

[The Child Advocate, appointed by the Governor to serve within the Office of Government Accountability to evaluate and review services to children and provide input into relevant policies shall also … pursuant to an investigation] ***provide assistance to a child or family*** *who the Child Advocate determines is in need of such assistance including, but not limited to, advocating with an agency, provider or others on behalf of the best interests of the child.*[139]

EXAMPLE

California — Addressing Individual Complaints

The [Office of the Ombudspersons] shall…

(2) [i]nvestigate and attempt to resolve complaints made by or on behalf of youth in the custody of the Division of Juvenile Services, related to their care, placement or services, or in the alternative, refer appropriate complaints to another agency for investigation.[140]

d. Ensuring Right to Counsel Post-Disposition

Although independent monitors will be able to glean important information about facilities, attorneys for juveniles are likely to gather information that such monitors may miss. For this reason, state policies can explicitly clarify that counsel will address conditions of confinement. Without such guidance, attorneys may focus their work more narrowly on a juvenile's release dates and parole conditions.

EXAMPLE

Kentucky — Juvenile Post-Disposition Unit Within Public Defender

A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement *involving violations of federal or state statutory rights or constitutional rights*[141]*…*

The Department of Juvenile Justice shall, in cooperation with the Department for Public Advocacy, develop a program of legal services for juveniles committed *to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility,* ***who have legal claims related to the conditions of their confinement*** *involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact.* ***The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection.***

(a) Facility access;

(b) Scheduling; and

(c) Access to residents' records.[142]

IX

The Right to Effective Counsel

Due process protections can help ensure that the rights articulated throughout this manual are protected. As described in other chapters, ensuring a meaningful probable cause hearing, and providing youth with adequate notice of charges against them, can play a significant role in reducing unnecessary reliance on detention.[143] For more information, see Chapter III and Chapter V.

This chapter focuses on a key due process protection — the right to the effective assistance of counsel. Youth have a guaranteed right to counsel under the United States Constitution.[144] However, while it is arguable that the right attaches at detention and post-disposition, many courts have yet to recognize this, and many jurisdictions do not provide for a right to counsel at all stages. Indeed, it is all too common for youth to appear unrepresented at detention hearings or post-adjudication proceedings. State policies can play a vital role in ensuring that the right to counsel attaches at all proceedings.

STATE POLICIES CAN SUPPORT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY:

- Ensuring a right to counsel at all stages of delinquency proceedings
- Establishing that the right to counsel is unwaivable
- Requiring a presumption of indigence for juvenile defendants
- Requiring state funding and oversight for indigent juvenile defense
- Ensuring timely appointment of counsel

States should **avoid** or **repeal** statutory language that does any of the following:

- Allows a parent to serve as a legal representative in lieu of counsel
- Allows a juvenile to be interviewed without counsel present
- Allows inquiry into the financial condition of an accused juvenile's parent(s) or guardian(s), or denies counsel to the child because of the family's resources

Often, state systems fail to provide adequate funding or oversight for juvenile defense. As a result, defense attorneys may appear in court despite a lack of sufficient training or supports, or may be over-burdened by high case loads. State policies can also address these issues, ensuring the resources and oversight for more effective representation of youth in the juvenile justice system.

This chapter will present a variety of policy approaches for ensuring that youth have access to effective representation, with a focus on the issues most pertinent to youth facing detention or placed in detention.

A. ENSURING RIGHT TO COUNSEL AT ALL STAGES

Detention issues are best addressed when counsel represent youth at all stages of the delinquency proceedings. Counsel can not only ensure that youth are not detained unnecessarily when they first come into custody, but also that youth do not linger in detention while awaiting adjudication or placement. Counsel can also protect a youth's procedural and substantive rights at all hearings.

EXAMPLE

Washington, D.C. — Right to Counsel at All Proceedings

(a) Right to Counsel.

(1) Assigned Counsel. In delinquency…cases, ***the respondent shall be represented by counsel at all judicial hearings including, but not limited to, the detention or shelter care hearing or the initial appearance, hearings on contested motions, any transfer hearing, the pretrial conference, the factfinding hearing, the disposition hearing, and hearings for the review of a dispositional order.*** *If counsel is not retained for the respondent, or if it does not appear that counsel will be retained, counsel shall be appointed…for the respondent. In appropriate cases where a respondent is alleged to be in need of supervision, the Family Court may appoint separate counsel to represent the parent, guardian or custodian.*[145]

EXAMPLE

Pennsylvania — Right to Counsel at All Proceedings

Except as provided under this section and in section 6311 (relating to guardian ad litem for child in court proceedings), ***a party is entitled to representation by legal counsel at all stages of any proceedings under this chapter and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him.***[146]

NOTE ON ENSURING EFFECTIVE REPRESENTATION

This chapter focuses on the broad policy issues most essential to ensuring counsel at detention hearings. However, to most effectively represent youth, counsel should be trained in the unique needs of juvenile clients, and have the resources to zealously advocate for their clients. States can embed the National Juvenile Defense Standards in statute and court rule to further support effective advocacy.* The guiding principles of those standards are:

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and skills;
3. Juvenile defense requires zealous advocacy;
4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires legal representation that is individualized;
6. Juvenile defense requires representation that is developmentally appropriate;
7. Juvenile defense is based on the clients' expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal and extralegal processes;
10. Juvenile defense includes ensuring that clients and their families are treated with dignity and respect and that there is decorum in the courtroom;
11. Systemic barriers and deficiencies impair juvenile defenders' abilities to provide high-quality representation; and
12. Systemic barriers and deficiencies lead to disproportionate representation of vulnerable, underserved populations at every contact with and stage of the juvenile delinquency court process.

* National Juvenile Defender Center, *National Juvenile Defense Standards,* 2012, available at www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf

B. MANDATING UNWAIVABLE RIGHT TO COUNSEL

The right to counsel for youth cannot properly be ensured unless that right is unwaivable. As a result of their immaturity, unrepresented youth may feel pressured to waive counsel in the first instance, and without counsel, to admit guilt, even when they are innocent of the charges.[147] Often, youth do not fully understand the immediate consequences of appearing without counsel, or the long-term collateral consequences. Youth may be further pressured by family members, prosecutors or judges.[148] Thus, the American Bar Association Standards prohibit waiver of counsel for juveniles.[149]

Although youth should not be permitted to waive counsel and represent themselves in court, it is worth noting that they generally **are** competent to stand trial, which includes consulting with and directing their attorneys. Indeed, the Supreme Court has recognized that the standards for competency to stand trial are distinct from the standards for the ability to represent oneself precisely because representing oneself [150] calls for different skills, knowledge and capacity than consulting with an attorney.

While this publication recommends a complete ban on waiver of counsel by juveniles, states that allow for such waivers should place significant procedural protections to ensure that such waivers are as knowing and voluntary as possible.

EXAMPLE

Pennsylvania — Prohibiting Waiver of Counsel in Almost Every Proceeding

(1) In delinquency cases, all children shall be presumed indigent. If a child appears at any hearing without counsel, ***the court shall appoint counsel for the child*** *prior to the commencement of the hearing… .*

(2) Although a child alleged to be delinquent may appear with counsel at the intake conference conducted by a juvenile probation officer following the submission of a written allegation, counsel shall not be mandatory at the proceeding.

(3) Notwithstanding paragraph (1), a child who ***is 14 years of age or older may waive the right to counsel*** *if the* ***court has determined that the waiver is knowingly, intelligently and voluntarily made after having conducted a colloquy with the child on the record****, in accordance with the Pennsylvania Rules of Juvenile Court Procedure,* ***and the hearing for which waiver is sought is not one of the following:***

(i) An informal ***detention or shelter hearing*** *….*

(ii) A hearing to consider ***transfer to criminal proceedings*** *….*

(iii) A hearing to consider ***evidence on the petition or accept an admission*** *to an alleged delinquent act under section 6341 (relating to adjudication).*

(iv) A hearing to consider evidence as to ***whether the child is in need of treatment, supervision or rehabilitation*** *….*

*(v) A **disposition** hearing ….*

*(vi) A hearing to **modify or revoke probation or other disposition** ….*

*(4) **The court may assign stand-by counsel if the child waives counsel.**[151]*

EXAMPLE

Georgia — Prohibiting Waiver Whenever Liberty is in Jeopardy

*(b) The court may accept an admission at arraignment and may proceed immediately to disposition if a child is represented by counsel at arraignment or if a child's liberty is not in jeopardy, he or she may waive the right to counsel at arraignment. A child represented by counsel or whose liberty is not in jeopardy may make a preliminary statement indicating whether he or she plans to admit or deny the allegations of the complaint at the adjudication hearing, but **the court shall not accept an admission from a child whose liberty is in jeopardy and who is unrepresented by counsel.***

*(c) **The court shall appoint an attorney to represent an alleged delinquent child whose liberty is in jeopardy and who is an indigent person.**[152]*

C. MANDATING PRESUMPTION OF INDIGENCE FOR JUVENILE DEFENDANTS

The strongest legislation or court rules on right to counsel requires courts to presume that juveniles are indigent for the purpose of appointment of counsel. Such a practice recognizes that forcing parents of any socioeconomic status to retain counsel for their children in a delinquency matter creates a conflict in the representation. Financial pressures may, for example, lead parents to encourage their children to ignore their right to counsel in an effort to seek a low-cost resolution. In cases of conflict of interest for the public defender, a court-appointed attorney from a panel list should be provided. Children's access to counsel should never be restricted because of the resources of the child's family.

EXAMPLE

Pennsylvania — Presumption of Indigence for Children in Delinquency Proceedings

(b) Children in delinquency proceedings.

*(1) **In delinquency cases, all children shall be presumed indigent.** If a child appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing. The presumption that a child is indigent may be rebutted if the court ascertains that the child has the financial resources to retain counsel of his choice at his own expense. **The court may not consider the financial resources of the child's parent, guardian***

or custodian when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.[153]

EXAMPLE

Wisconsin — Providing Counsel Regardless of Indigency

"If a child has a right to be represented by counsel…the court shall refer the child to the state public defender and ***counsel shall be appointed by the state public defender…without a determination of indigency.***[154]

D. ENSURING TIMELY APPOINTMENT OF COUNSEL AND EFFECTIVE REPRESENTATION

To provide adequate representation, counsel should be appointed with sufficient time to prepare for all hearings, including the detention hearing. Appointment of counsel at, or even immediately before the commencement of the hearing, deprives a child of the right to effective assistance of counsel afforded by the Sixth Amendment. State statutes can address both preparation and timelines for appointment of counsel. In doing so, states should take into account the need for efficient case processing, see Chapter V.

EXAMPLE

Arkansas — Right to Counsel at All Stages, Adequate Preparation

(a)(1) In delinquency and family in need of services cases, a juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the circuit court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

… (e) ***Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.***[155]

E. PROTECTING THE ATTORNEY-CLIENT RELATIONSHIP

The duty of an attorney representing a youth in a juvenile delinquency proceeding is to advocate diligently for the child's expressed interests; counsel should not substitute his or her own views for those of the client.[156] Moreover, a client's communications with an attorney are privileged and confidential. Having such conversations in the presence of other family members, including a client's parents, however, may

waive the privilege. For this reason, attorneys must be strategic in the decision about whether and how to involve a child's family, including his or her parents, in the defense. While it can be important to involve the family in a child's defense, counsel should do so only to the extent that the involvement does not conflict with the attorney's duties to the client or the attorney's ability to serve the client's legal interests.[157]

If, after counseling with the client, the attorney believes the child is not capable of exercising reasoned judgment on his or her own behalf, counsel should consider moving for a *guardian ad litem* (GAL) to be appointed to represent the child's best interest.[158] The GAL advocates for his or her view of what is best for the child, not for the child's expressed or articulated interest. Because the child should always have a voice for his or her articulated interest, the GAL should be someone other than counsel.[159]

Before turning to state examples, this section provides the relevant section of professional standards of practice.

I. Rules and Professional Standards

EXAMPLE

Model Rules of Professional Conduct — Models for the Ethical Standards in All States Except California[160]

Client-Lawyer Relationship. Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer … [A] ***lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued****…*

Client-Lawyer Relationship. Rule 1.14 Client with Diminished Capacity (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, ***maintain a normal client-lawyer relationship****.*

Confidentiality. Rule 1.6 (a) ***A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent****, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b) [e.g. to prevent reasonably certain death, serious bodily injury, legal advice on the rules].*

Conflicts of Interest. Rule 1.7 ***…[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest.*** *A concurrent conflict of interest exists if…or (2) there is a significant risk that the representation of one or more clients will be materially limited by… a personal interest of the lawyer.[161]*

EXAMPLE

IJA/ABA Standards Relating to Counsel for Private Parties

Rule 3.1(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*

Rule 3.1 (b)(1) Determination of client's interests. 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.***[162]

EXAMPLE

Oregon Office of the Public Defender

Attorneys for youth in juvenile delinquency proceedings are bound to advocate for the expressed wishes of the youth. *While the attorney has a responsibility to advise the youth of legal options that the attorney believes to be in the youth's best interest and to identify potential outcomes of various options, the attorney must represent the expressed wishes of the juvenile at every stage of the proceedings. The attorney owes the same duties to a juvenile under the Rules of Professional Conduct as an attorney owes to an adult criminal defendant.*[163]

EXAMPLE

Ohio Office of the Public Defender

The principal duty of an attorney representing a youth in a juvenile delinquency proceeding is to diligently advocate for the child's expressed interests; *counsel must not substitute his or her own judgment for that of the client.*[164]

2. State Statutes on Role of Counsel

In juvenile court, as in adult court, a lawyer owes a duty of zealous representation to the client. The nature of juvenile court, including the possibility of family involvement, means that without careful attention, this role may sometimes be blurred. For this reason, it is helpful to have statutes or court rules that underscore the attorney's ethical duty to a juvenile client.

EXAMPLE

Alabama — Role of Juvenile Counsel

A licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and ***owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client****…[T]o ensure that the child's independent voice is heard, the child's attorney must advocate the child's articulated position.*[165]

EXAMPLE

Wisconsin — Role of Juvenile Counsel v. Role of Guardian Ad Litem

In this section, "counsel" means an attorney acting as adversary counsel… ***Counsel shall advance and protect the legal rights of the party represented. Counsel may not act as guardian ad litem for any party in the same proceeding****… A juvenile alleged to be delinquent … or held in a juvenile detention facility shall be represented by counsel at all stages of the proceedings.*[166]

The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed …The guardian ad litem shall be an attorney admitted to practice in this state. ***No person who is an interested party in a proceeding, who appears as counsel in a proceeding on behalf of any party or who is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding****…The guardian ad litem shall be an advocate for the best interests of the person for whom the appointment is made.*[167]

F. STATE INVOLVEMENT IN ENSURING QUALITY COUNSEL

I. State-Based Quality Control on the Provision of Indigent Juvenile Defense

To represent youth effectively, counsel must be adequately trained. State legislation can ensure that counsel representing indigent youth in delinquency proceedings are adequately trained in juvenile-specific law and adolescent development to provide effective advocacy on behalf of their clients. Creating quality-control measures at the state level is the only means to ensure that all children across each state are afforded adequate representation.

EXAMPLE

Louisiana — Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings

The attorney shall meet with a detained child within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall ***take*** *other* ***prompt action necessary to provide quality representation****, including:… making* ***a motion for the release*** *of the child where no determination of probable cause has been made by a judicial officer within 48 hours of arrest; and…* ***invoking the protections*** *of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child, and* ***revoking any waivers of these protections purportedly given*** *by the child, as soon as practicable via a notice of appearance or other pleading filed with the state and court.*[168]

2. State-Based Funding Stream for Juvenile Indigent Defense

For the most effective representation of youth, states should fund public defenders or other counsel to represent indigent youth in delinquency proceedings. State statutory funding sources vary across the country, with some paying 100 percent of the cost of counsel, while others employ a variety of other formulas. Fully funding indigent juvenile defense on the state level ensures a more equitable process for each child.

EXAMPLE

Iowa — Appropriations for Indigent Defense

Costs incurred for legal representation by a court-appointed attorney …on behalf of an indigent ***shall be paid from moneys appropriated by the general assembly*** *to the office of the state public defender in the department of inspections and appeals and deposited in an account to be known as the indigent defense fund. Costs incurred … representing an indigent juvenile in a juvenile court proceeding, are also payable from the fund.*[169]

X

Amending Purpose Clauses

Juvenile Act Purpose Clauses set forth the broad principles upon which all provisions of the Juvenile Act should be read. If a principle is codified in the purpose clause, other provisions will be interpreted to effectuate the goal. In addition, any new laws passed should promote the goals established in the purpose clause. For that reason, embedding the core strategies of JDAI in a state purpose clause can be uniquely effective at creating a positive legal framework that will endure over time.

A. EMBEDDING JDAI CORE STRATEGIES IN PURPOSE CLAUSES

Throughout the rest of this section, we pull out individual purpose clause provisions that warrant replication. However, we also include here New Mexico's purpose clause, as an example of a statute that codifies numerous JDAI core strategies. By including more specific provisions relating to JDAI principles directly in the purpose clause, New Mexico has established a framework that will influence any subsequent changes to particular statutes within the juvenile code and any interpretation of current statutes. Likewise, Texas has embedded within its chapter on General Provisions a "goals" section, which promotes alternatives to secure detention, home-based services and rehabilitation. This is an effective way to create enduring change.

STATE PURPOSE CLAUSES CAN SUPPORT JDAI GOALS BY:

- Embedding JDAI core strategies directly into purpose clauses
- Ensuring that the juvenile justice system takes adolescent development into account
- Establishing the goal of meeting youths' unique needs, including youth of different ages, educational background, mental and physical condition, and background
- Establishing the goal of eliminating racial and ethnic disparities
- Ensuring procedural protections for youth

EXAMPLE

New Mexico — Embedding JDAI Core Strategies in Juvenile Justice Purpose Clause

The purpose of the Delinquency Act is:

A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;

B. to provide effective deterrents to acts of juvenile delinquency, including an ***emphasis on community-based alternatives****;*

C. to ***strengthen families*** *and to successfully reintegrate children into homes and communities;*

D. to foster and encourage ***collaboration between government agencies and communities*** *with regard to juvenile justice policies and procedures;*

E. to develop juvenile justice ***policies and procedures*** *that are* ***supported by data****;*

F. to develop ***objective risk assessment instruments*** *to be used for admission to juvenile detention centers;*

G. to encourage ***efficient processing of cases****;*

H. to develop ***community-based alternatives to detention****;*

I. to ***eliminate or reduce disparities based upon race or gender****;*

J. to ***improve conditions*** *of confinement in juvenile detention centers; and*

K. to ***achieve reductions in the number of warrants issued, the number of probation violations and the number of youth awaiting placements.***[170]

EXAMPLE

Texas — Establishing Collaboration and Reliance on Alternatives to Placement in Purpose Clause

The goals of the department and all programs, facilities, and services that are operated, regulated, or funded by the department are to:

(1) support the development of a consistent county-based ***continuum of effective interventions****, supports, and services for youth and families that reduce the need for out-of-home placement;*

(2) ***increase reliance on alternatives to placement*** *and commitment to secure state facilities, consistent with adequately addressing a youthful offender's treatment needs and protection of the public;*

(3) locate the facilities as geographically close as possible to necessary workforce and other services while supporting the youths' connection to their families;

(4) ***encourage regional cooperation that enhances county collaboration;***

(5) enhance the continuity of care throughout the juvenile justice system; and

(6) use secure facilities of a size that supports effective youth rehabilitation and public safety.[171]

NOTE ON EMBEDDING JDAI CORE STRATEGIES IN PURPOSE CLAUSES

Across the country, juvenile code purpose clauses include explicit requirements related to JDAI core strategies. The text of the provisions are included in other chapters, but should be codified in the purpose clause as well as in other parts of a juvenile code. These provisions include:

- Requiring youth to be placed in the least restrictive setting [See Chapter III]
- Requiring a continuum of services, and particularly community-based alternatives [See Chapter IV]
- Requiring the use of risk assessment instruments [See Chapter III]
- Requiring efficient case processing [See Chapter V]
- Reducing the number of warrants and the number of youth on probation [See Chapter VI]
- Requiring that the juvenile justice system review and evaluate regularly and independently the effectiveness of programs and services and ensure ongoing system improvement [See Chapter II]
- Requiring opportunities for collaboration with youth, families and community members to address individual youth needs and system change issues [See Chapters I and VII]

B. ENSURING THAT JUVENILE JUSTICE SYSTEM TAKES ADOLESCENT DEVELOPMENT INTO ACCOUNT

Addressing adolescent development in the purpose clause helps to ensure that, in all areas of juvenile justice, youth are not held to expectations beyond their capacity, so that normative adolescent development does not result in unnecessary detention and juvenile system involvement.

EXAMPLE

Minnesota — Recognizing Unique Characteristics and Needs of Youth

The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that ***recognize the unique characteristics and needs of children****, and that give children access to opportunities for personal and social growth.*

… ***The laws relating to juvenile courts shall be liberally construed to carry out [this] purpose.***[172]

EXAMPLE

Alabama — Recognizing Unique Characteristics and Conditions of Youth

(7) To hold a child found to be delinquent ***accountable*** *for his or her actions to* ***the extent of the age, education, mental and physical condition, and background of the child****, and all other relevant factors and to provide a program of supervision, care, and rehabilitation, including restitution by the child to the victim of his or her delinquent acts.*[173]

C. ADDRESSING RACIAL AND ETHNIC DISPARITIES

Although almost all jurisdictions struggle with racial and ethnic disparities (RED) with their juvenile justice system, few explicitly address the problem in their Juvenile Act Purpose Clause. By including this issue in the purpose clause, New Mexico has set the stage to proactively address issues of RED.

EXAMPLE

New Mexico — Addressing Racial and Ethnic Disparities and Probation Violators

The purpose of the Delinquency Act is:

…to eliminate or reduce disparities based upon race or gender;[174]

D. ADDRESSING YOUTH WITH UNIQUE NEEDS

Youth enter the juvenile justice system with a host of unique needs based on their age, sex, sexual orientation, gender identity, trauma histories, race, ethnicity and disability status. Strong purpose clauses contain provisions that acknowledge the diversity of youth in the system and promote efforts to recognize and respond to these differences in ways that promote treatment and rehabilitation.

NOTE ON MEETING THE UNIQUE NEEDS OF YOUTH

Purpose clauses should clarify that the juvenile justice system should ensure that:

- A youth's needs based on race, ethnicity, sex, gender identity, sexual orientation and trauma history are met; and
- A youth's race, ethnicity, sex, gender identity, sexual orientation and trauma history do not push the child deeper into the system, including into detention because of
  - bias of courts, probation, or attorneys or
  - a lack of resources to address these unique needs.

E. ENSURING PROCEDURAL PROTECTIONS

Setting forth clear procedural protections for youth in the purpose clause also can assist in preventing youth from entering detention unnecessarily.

EXAMPLE

Illinois — Applying Criminal Procedural Protections to Minors

*In all procedures under this Act, […] the **procedural rights assured to the minor shall be the rights of adults unless specifically precluded** by laws which enhance the protection of such minors.*[175]

EXAMPLE

Kentucky — Preventing Waiver of Rights by Other Parties

*It shall further be the policy of this Commonwealth to provide **judicial procedures in which rights and interests of all parties, including the parents and victims, are recognized and all parties are assured prompt and fair hearings.** Unless otherwise provided, such protections belong to the child individually and **may not be waived by any other party.***[176]

XI

Financial Incentives

Financial incentives and disincentives play a role in advancing juvenile justice policy,[177] and can be a vehicle for embedding principles of JDAI.

This chapter suggests ways that state funding legislation can encourage more limited, and more appropriate, policies around secure detention. Because of much of the work in this area to date has taken place in the context of secure placements, some of the examples in this chapter look to deep-end financial incentives as a model that could also be applied to detention.

States often incentivize community-based alternatives as a way of more effectively using resources. Secure detention is expensive, often dangerous for youth, and frequently unnecessary to protect public safety. Community-based alternatives are often less expensive, and support both youth and community safety.[178]

While the chapter separates out various financial incentives, the most effective strategy will generally be to apply a combination of funding incentives. For example, Montana has legislation establishing

STATE POLICIES CAN INCENTIVIZE JDAI APPROACHES THROUGH FINANCING BY:

- Incentivizing detention alternatives and detention reform approaches through varied reimbursement rates or grant amounts
- Restricting reliance on state secure facilities, and encourage reliance on local, community-based facilities
- Reinvesting money saved on keeping youth out of secure facilities in providing high-quality community-based alternatives
- Increasing detention alternatives through state/community partnerships

that funds saved from reducing reliance on secure placement can be made available for a wide array of services, including community prevention and intervention. Montana statute also provides grant funding at higher rates for alternatives to secure detention than for secure detention itself. These provisions combined create a more effective set of incentives to reduce reliance on secure detention than either provision alone.

Even in states with limited financial capacity, thoughtful policies can shift incentives to sustain innovation. This chapter provides examples of state policies that overcome financial obstacles while discouraging confinement as the primary response to court-involved youth.

A. INCENTIVIZING DETENTION ALTERNATIVES THROUGH VARIED REIMBURSEMENT RATES OR GRANT AMOUNTS

Some states give counties incentives to seek alternatives to detention by providing higher percentages of state reimbursement for costs incurred by diverting pre-adjudicated youth into community-based programs rather than placing those youth in more restrictive settings. Thus, the financial cost of the most restrictive placement is the most onerous for the county because the per diem is high and the state share is low. Similarly, states may provide grants at higher rates for counties providing alternatives than those providing secure care.

EXAMPLE

New York State — Higher Reimbursement Rates for Services to Divert Youth from Detention

(a) Notwithstanding any provision of law to the contrary, ***eligible expenditures*** *by an eligible municipality* ***for services to divert youth*** *at risk of, alleged to be, or adjudicated as juvenile delinquents or persons alleged or adjudicated to be in need of supervision, or youth alleged to be or convicted as juvenile offenders* ***from placement in detention or in residential care shall be subject to state reimbursement*** *under the supervision and treatment services for juveniles program* ***for up to sixty-two percent*** *of the municipality's expenditures, subject to available appropriations and exclusive of any federal funds made available for such purpose …*

(b) … ***eligible expenditures*** *by a municipality during a particular program year for the care, maintenance and supervision in foster care programs certified by the office of children and family services, certified or approved family boarding homes, and non-secure detention facilities certified by the office for those youth alleged to be persons in need of supervision or adjudicated persons in need of supervision held pending transfer to a facility upon placement; and in* ***secure and non-secure detention facilities*** *certified by the office in accordance with section five hundred*

three of this article for those youth alleged to be juvenile delinquents; adjudicated juvenile delinquents held pending transfer to a facility upon placement, and juvenile delinquents held at the request of the office of children and family services pending extension of placement hearings or release revocation hearings or while awaiting disposition of such hearings; and youth alleged to be or convicted as juvenile offenders ***shall be subject to state reimbursement for up to fifty percent*** *of the municipality's expenditures, exclusive of any federal funds made available for such purposes …*[179]

EXAMPLE

Pennsylvania — Higher Reimbursement Rates for Less Restrictive Settings

(a) The Department reimburses counties at a rate that is dependent on the type of service provided and the setting in which the service is provided.

…(e) …. ***Department reimburses the following services at an 80% rate:***

(1) ***Community residential service and group home service.*** *Twenty-four-hour per day placement of a child in a* ***nonsecure facility which serves no more than 25 children****. Basic services of the community, including the public school system, recreation and employment, shall be used as a part of the facility's program.*

(2) ***Foster family service.*** *Twenty-four-hour per day residential care and supervision of a child in a foster family home, including a foster family home operated by a court or county juvenile probation service ….*

(3) ***Supervised independent living service.*** *The provision or arrangement of living quarters and social services designed to support and supervise children who are living on their own. The child may be in the custody of the child's parents, the county agency, or another agency or individual.*

(4) ***Alternative treatment programs.*** *Activities or services which are* ***alternatives for*** *residential service,* ***juvenile detention service*** *or secure residential service and do not already receive 75%, 80% or 90% reimbursement. Children and youth programs shall be approved by the Department to receive reimbursement as an alternative treatment program. Department approval for 80% funding is granted to a* ***program if it****:*

(i) ***Is provided in a nonsecure setting.***

(ii) Is designed to return the child to the child's home or another legally assured permanent home.

(iii) Minimizes the duration of out-of-home placement.

[…]

(h)(2)(i) ***The Department reimburses juvenile detention service at a 50% rate.*** *Juvenile detention service consists of 24-hour per day secure, temporary care; maintenance; and supervision in a licensed or approved detention facility for alleged or adjudicated delinquents who would present a danger to themselves or others or who would abscond if they remained in their homes or were placed in emergency shelter care.*[180]

EXAMPLE

Montana — Grants at Higher Rates for Alternatives to Secure Detention

(2) The board shall award grants to eligible counties:

(a) in a block grant in an ***amount not to exceed 50% of the approved, estimated cost of secure detention****; or*

(b) on a matching basis in an amount not to exceed:

(i) ***75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention****, except for shelter care. Shelter care costs must be paid as provided by law.… .*[181]

B. INCENTIVIZING INNOVATIVE STRATEGIES THROUGH VARIED REIMBURSEMENT RATES OR GRANT AMOUNTS

Funding incentives can be used not only to prioritize detention alternatives and community-based solutions, but also to promote other detention reform strategies. For example, states could create funding incentives for counties that use a validated risk assessment tool. Similarly, they could decrease state reimbursement for counties that use secure facilities to detain youth for probation violations or who are younger than 12. While a straightforward mandate might achieve these goals more uniformly across the state, in states where such mandates are not a political reality, funding incentives may create opportunities for local experimentation that can then set the stage for further reform at a later date.

C. PROMOTING DETENTION REFORM THROUGH REALIGNMENT

"Realignment" shifts authority and resources from states to counties. States give local governments more authority and flexibility and provide incentives to promote, for example, alternatives to out-of-state placement, or alternatives to secure settings.

Most realignment has occurred with regard to youth at disposition. These post-adjudication lessons are instructive, since they also suggest ways that states can "realign" to give counties greater authority and funding for detention alternatives. And, to the extent that there is overlap between the pre- and post-adjudication services, funding that bolsters post-adjudication community-based services has the potential to support community-based resources that will serve as alternatives to detention.

EXAMPLE

California — Prohibiting State Commitments for Certain Youth and Enhancing Local Capacity to Provide a Continuum of Responses

1. Prohibiting Commitments to State Facilities

A ward of the juvenile court who meets any condition described below shall not be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities:

(a) The ward is ***under 11 years of age****.*

…(c) The ward has been or is adjudged a ward of the court pursuant to [the delinquency provision], and the ***most recent offense*** *alleged in any petition and admitted or found to be true by the court* ***is not [a violent offense]*** *described in [certain statutory subsections].*[182]

2. Enhancing Local Capacity

The purpose of this chapter is ***to enhance the capacity of local communities to implement an effective continuum of response to juvenile crime and delinquency.***[183]

(a) There is hereby established the ***Youthful Offender Block Grant Fund****.*

(b) ***Allocations from the Youthful Offender Block Grant Fund shall be used to enhance the capacity of county probation, mental health, drug and alcohol, and other county departments to provide appropriate rehabilitative and supervision services to youthful offenders*** *subject to [certain statutory subsections]. Counties, in expending the Youthful Offender Block Grant allocation, shall provide all necessary services related to the custody and parole of the offenders.*

(c) ***The county of commitment is relieved of obligation for any payment to the state… for each offender who is not committed to the custody of the state*** *solely pursuant to subdivision (c) [above],* ***and for each offender who is supervised by the county of commitment*** *pursuant to [provisions governing juvenile parole].*[184]

EXAMPLE

Ohio — Providing Grants to Community Corrections Programs that Reduce Reliance on State Secure Care

(A) In accordance with this section and the rules adopted under it and from funds appropriated to the department of youth services for the purposes of this section, the department shall make grants that provide financial resources to operate community corrections facilities for felony delinquents.

(B)(1) Each community corrections facility that intends to seek a grant under this section shall file an application with the department of youth …. In addition to other items required to be included in the application, a plan that satisfies both of the following shall be included:

(a) It ***reduces the number of felony delinquents committed to the department from the county or counties associated with the community corrections facility****.*

(b) It ensures ***equal access for minority felony delinquents to the programs and services*** *for which a potential grant would be used.*

(2) The department of youth services shall review each application submitted …to determine whether the plan described in that division, the community corrections facility, and the application comply with this section and the rules adopted under it.

*(C) T****o be eligible*** *for a grant under this section and for continued receipt of moneys comprising a grant under this section, a community corrections facility shall*

[…]

(4)…demonstrate that ***felony delinquents served by the facility have been or will be diverted from a commitment to the department.***[185]

EXAMPLE

Illinois — Reallocating Funds from State Correctional Confinement to Local Alternatives

(a) The purpose of this Section is to encourage the ***deinstitutionalization of juvenile offenders*** *by establishing projects in counties or groups of counties that* ***reallocate State funds from juvenile correctional confinement to local jurisdictions, which will establish a continuum of local, community-based sanctions and treatment alternatives*** *for juvenile offenders who would be incarcerated if those local services and sanctions did not exist. It is also intended to offer alternatives, when appropriate, to avoid commitment to the Department of Juvenile Justice, to direct child welfare services for minors charged with a criminal offense or adjudicated delinquent under Section 5 of the Children and Family Services Act. The allotment of funds will be based on a formula that rewards local jurisdictions for the establishment or expansion of local alternatives to incarceration, and requires them to pay for utilization of incarceration as a sanction.*

…(3)(c) A county or group of counties shall agree to ***limit their commitments to 75% of the level of commitments from the average number of juvenile commitments for the past 3 years, and will receive the savings to redeploy for local programming for juveniles who would otherwise be held in confinement.*** *For any county or group of counties with a decrease of juvenile commitments of at least 25%, based on the average reductions of the prior 3 years, which are chosen to participate or continue as sites, the Redeploy Illinois Oversight Board has the authority to reduce the required percentage of future commitments to achieve the purpose of this Section.*[186]

D. REINVESTING SAVINGS TO SUPPORT PREVENTION AND COMMUNITY-BASED SERVICES

Statutory schemes can also take savings from reducing the use of secure detention and directly reallocate or reinvest those funds into preventive services and non-secure alternatives.

EXAMPLE

Montana — Youth Court Intervention and Prevention Account

There is a youth court intervention and prevention account in the state special revenue fund. The office of court administrator shall deposit in the account the following funds transferred by the department:

(a) funds transferred [from the appropriated juvenile placement funds] for evaluations of out-of-home placements, programs, and services;

(b) unexpended funds from the judicial districts' annual allocations […]; and

(c) unexpended funds from the cost containment pool […].[187]

[…]

Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under [the preceding subsection] for one or more of the following purposes:

EFFECTIVENESS OF REINVESTMENT STRATEGIES

As a pilot program, Redeploy Illinois invested in eight sites serving 28 Illinois counties, offering rewards for reliance on community-based alternatives and sanctions for reliance on incarceration. Those sites reduced their out-of-home commitments in 2010 by 53 percent from their baseline levels. The results were so impressive that in 2009, the Illinois General Assembly passed a law to convert Redeploy Illinois from a pilot program to a permanent initiative that will be accessible to roughly 70 additional counties.

*(a) to **establish or expand community prevention and intervention** programs and services for youth;*

(b) to provide an alternative method for funding out-of-home placements; and

(c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.[188]

E. INCREASING DETENTION ALTERNATIVES THROUGH STATE/COMMUNITY PARTNERSHIPS

States may also encourage communities to form partnerships with the state to increase alternatives to detention and to enhance access to community-based sanctions and services.

EXAMPLE

New Jersey — State/Community Partnership Grant Program to Support Development of Detention Alternatives

*a. A **State/Community Partnership Grant Program is established within the Juvenile Justice Commission** … to support, through grants allocated to county youth services commissions …, facilities, sanctions and services for juveniles adjudicated or charged as delinquent and programs for prevention of juvenile delinquency. This program is established in order to:*

*… (2) **Increase the range of sanctions for juveniles adjudicated delinquent;***

*… (5) **Provide greater access to community-based sanctions and services for minority and female offenders;***

*(6) **Expand programs designed to prevent juvenile delinquency.**...*[189]

F. CREATING STATE FUNDS FOR DETENTION REFORM

Many counties lack the one-time start-up funds for capital components of a detention alternative system. To address this problem, states should consider using legislation to create a permanent fund that can be used for detention reform efforts (for example, to provide initial costs for evening reporting centers and other detention alternative programs). Initial costs to acquiring properties, or redesigning current properties, can be covered by such a fund, and subsequent operating costs can then be covered by state-county cost-sharing agreements.

A

Potential Elements of State Policy

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
COLLABORATION					
1. Clearly establish the purpose of collaborations	☐	☐	☐	☐	
2. Set forth inclusive membership requirements, ensuring diversity of race, ethnicity, gender, age and experience, and engaging youth, families, community-based organizations and all stakeholders working with this youth population	☐	☐	☐	☐	
3. Require collaborative bodies to rely on data	☐	☐	☐	☐	
4. Empower collaborations to:					
a. Oversee the development and implementation of policy including policies about risk assessment instruments, alternatives to secure detention and efforts to combat racial and ethnic disparities	☐	☐	☐	☐	
b. Assess systemic problems and be involved in devising solutions	☐	☐	☐	☐	
c. Provide input into funding formulas	☐	☐	☐	☐	
COLLECTING AND USING DATA					
1. Require data on:					
a. The use of detention to ensure it is used only to prevent flight risk or risk of rearrest on serious offense prior to adjudicatory hearing	☐	☐	☐	☐	
b. The nature and extent of disparities based on race, ethnicity, gender, disability status (disaggregating data at each point of justice system involvement)	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
c. Conditions of confinement including restraints, isolation and discipline	☐	☐	☐	☐	
d. Length of stay	☐	☐	☐	☐	
e. Effectiveness of detention programming in secure detention and in alternatives	☐	☐	☐	☐	
f. Special populations, to prevent unnecessary detention	☐	☐	☐	☐	
2. Establish an oversight body to review and analyze data	☐	☐	☐	☐	
3. Ensure that data is used to influence policy and practice, including: a. Requiring reports and recommendations to policymakers and administrators	☐	☐	☐	☐	
b. Requiring that policies be data-driven with a focus on key goals of detention reform	☐	☐	☐	☐	
CONTROLLING THE FRONT GATES					
I. Allow for detention only to prevent flight or risk of rearrest before the next hearing	☐	☐	☐	☐	
2. Prohibit detention for inappropriate reasons, including: a. To allow a parent to avoid legal responsibility	☐	☐	☐	☐	
b. To permit more convenient administrative access to the child	☐	☐	☐	☐	
c. To facilitate further interrogation or investigation	☐	☐	☐	☐	
d. Due to a lack of more appropriate facilities or services	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
e. To protect the child from him- or herself, or address possible dependency or mental health issues	☐	☐	☐	☐	
3. Categorically exclude certain classes of youth from detention, including: a. Status offenders	☐	☐	☐	☐	
b. Children under age 12	☐	☐	☐	☐	
c. Non-offenders	☐	☐	☐	☐	
4. Mandate the use of validated detention risk assessment instrument (DRAI) that: a. Is tailored to narrow detention purposes	☐	☐	☐	☐	
b. Minimizes racial and ethnic disparities	☐	☐	☐	☐	
c. Is used effectively by court and probation personnel who i. Are trained in its use,	☐	☐	☐	☐	
ii. Have clearly defined roles,	☐	☐	☐	☐	
iii. Are required to make detailed written record of reasons to detain, and	☐	☐	☐	☐	
iv. Have authority to release a child regardless of DRAI score	☐	☐	☐	☐	
5. Require that youth be placed in least restrictive alternative possible, and remain in their homes when possible	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
DETENTION ALTERNATIVES					
1. Require the establishment and use of detention alternatives, and enumerate the alternatives	☐	☐	☐	☐	
2. Prioritize non-secure alternatives over more restrictive settings, including requiring decision makers to state reason for not employing detention alternatives	☐	☐	☐	☐	
3. Establish reasonable, developmentally appropriate, conditions for youth in alternative setting	☐	☐	☐	☐	
4. Ensure access to detention alternatives at all times of day, each day of the week	☐	☐	☐	☐	
5. Protect the procedural rights of youth who fail to comply with conditions by: a. Establishing clear criteria for compliance	☐	☐	☐	☐	
b. Requiring developmentally appropriate communication about criteria for compliance	☐	☐	☐	☐	
c. Ensuring due process before ordering changes in conditions	☐	☐	☐	☐	
REDUCING UNNECESSARY DELAY					
1. Set time limits. Suggested time limits: a. Detention hearing (ideally within 24 hours)	☐	☐	☐	☐	
b. Filing petition (ideally within 48 hours)	☐	☐	☐	☐	
c. Detention review (ideally within 7 days)	☐	☐	☐	☐	
d. Probable cause determination (ideally within 24 hours)	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
e. Police reporting (ideally within 3 hours of detention)	☐	☐	☐	☐	
f. Adjudication (ideally within 7 days for youth in detention)	☐	☐	☐	☐	
g. Post-adjudication placement (ideally within 7 days for youth in secure detention)	☐	☐	☐	☐	
2. Establish that youth will be released upon a violation of those time limits	☐	☐	☐	☐	
3. Limit continuances	☐	☐	☐	☐	
4. Ensure developmentally appropriate notices and processes to ensure court appearances	☐	☐	☐	☐	
5. Require expedited discovery	☐	☐	☐	☐	
6. Require the option for expedited hearings by making magistrates or electronic hearings available at the youth's choice, with due process protections	☐	☐	☐	☐	
SPECIAL DETENTION CASES					
I. Prohibit secure custody for technical probation violators and other special populations	☐	☐	☐	☐	
2. Apply objective risk assessment instruments to probation violators	☐	☐	☐	☐	
3. Ensure due process protections for probation violators	☐	☐	☐	☐	
4. Enumerate factors for detention determinations for violations of court orders	☐	☐	☐	☐	
5. Ensure graduated responses for special populations	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
REDUCING RACIAL AND ETHNIC DISPARITIES					
I. Establish racial and ethnic justice as one goal of the juvenile justice system	☐	☐	☐	☐	
2. Mandate the use of detention risk assessment instruments validated to reduce racial and ethnic disparities	☐	☐	☐	☐	
3. Require systems to gather and respond to data on race and ethnicity	☐	☐	☐	☐	
4. Require racial impact statements for all new legislation	☐	☐	☐	☐	
5. Establish collaborations aimed at addressing racial and ethnic disparities	☐	☐	☐	☐	
6. Establish funding incentives to reduce racial and ethnic disparities, and use funding streams to ensure appropriate, culturally responsive services for all youth	☐	☐	☐	☐	
7. Require public reports on the existence of racial and ethnic disparities and all efforts to address them	☐	☐	☐	☐	
CONDITIONS OF CONFINEMENT IN SECURE DETENTION					
I. Codify JDAI Facility Assessment Standards	☐	☐	☐	☐	
2. Establish internal assessment systems and structures for corrective action	☐	☐	☐	☐	
3. Put in place independent monitors charged with assessing policies, procedures and service delivery and ensuring that facilities comply with state and national standards	☐	☐	☐	☐	
a. Ensure that independent monitor is empowered to investigate, including: i. Has access to records	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
ii. Is charged with reviewing complaints, grievances and internal investigations	☐	☐	☐	☐	
iii. Has authority to conduct interviews and on-site visits	☐	☐	☐	☐	
iv. Confidentiality of information given to monitors is protected	☐	☐	☐	☐	
v. Protections are in place for whistleblowers or those lodging complaints against agencies, facilities or staff members	☐	☐	☐	☐	
b. Ensure that independent monitor is empowered to take action including: i. Ordering corrective action	☐	☐	☐	☐	
ii. Reporting findings and recommending changes to policymakers and system administrators	☐	☐	☐	☐	
iii. Intervening and advocating on behalf of individual youth	☐	☐	☐	☐	
4. Ensure access to counsel to address conditions of confinement	☐	☐	☐	☐	
THE RIGHT TO EFFECTIVE COUNSEL					
I. Ensure a right to counsel at all stages of delinquency proceedings	☐	☐	☐	☐	
2. Ensure that the right to counsel is unwaivable	☐	☐	☐	☐	
3. Ensure timely appointment of counsel and allow for adequate preparation	☐	☐	☐	☐	
4. Require zealous, client-directed advocacy	☐	☐	☐	☐	

	POLICY EXISTS Yes	POLICY EXISTS No	POLICY NEEDS REVISION Yes	POLICY NEEDS REVISION No	POLICY CITATION
5. Establish that all youth are presumed indigent, regardless of family income	☐	☐	☐	☐	
6. Establish a state system for indigent defense funding and quality control	☐	☐	☐	☐	
AMENDING PURPOSE CLAUSES					
I. Embed JDAI core strategies	☐	☐	☐	☐	
2. Require that the juvenile justice system take adolescent development into account	☐	☐	☐	☐	
3. Establish a reduction in racial and ethnic disparities as a key goal of the juvenile justice system	☐	☐	☐	☐	
4. Require special attention to youth with unique needs based on such issues as sexual orientation, gender identity, trauma history or disability status	☐	☐	☐	☐	
5. Require strong procedural protections for youth	☐	☐	☐	☐	
FINANCIAL INCENTIVES					
I. Create incentives by funding detention alternatives at higher rates than secure care	☐	☐	☐	☐	
2. Shift funding from state secure settings and reallocate that money to counties for detention alternatives	☐	☐	☐	☐	
3. Create the authority to take all savings from reductions in secure care settings and reinvest in non-secure alternatives	☐	☐	☐	☐	
4. Incentivize state/community partnerships to increase detention alternatives	☐	☐	☐	☐	
5. Create state funds for detention reform	☐	☐	☐	☐	

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ENDNOTES

1. While JDAI state teams have already developed collaborations as a part of the JDAI process, the collaborations mandated in statute will operate differently. JDAI collaborations are convened for the purpose of critically diagnosing the entire juvenile justice system in a data driven way, in order to make policy and practice changes that better align a jurisdiction's system to juvenile justice best practice embodied by the JDAI core strategies. The collaborations mandated by the policies highlighted in this chapter, by contrast, are intended to establish permanent collaborative bodies that will shape policy and practice and respond to data in an ongoing fashion.
2. 2012 Miss. S.B. 2598.
3. La. Rev. Stat. Ann. § 46:1941.2(B).
4. La. Rev. Stat. Ann. § 46:1941.8(C).
5. H. Con. Res. 129, 2012 Leg., Reg. Sess. (Ky. 2012).
6. Louisiana's statute authorizing Children and Youth Planning Boards specifically addresses diversity concerns, although it does not directly consider the issue of line staff and supervisory or administrative staff. The New Mexico statute emphasizes the importance of collaboration with community members, but fails to provide detail. Kentucky's Task Force requires participation by a provider agency but otherwise lacks significant community input.
7. La. Rev. Stat. Ann. § 46:1941.8(A).
8. Alaska Stat. Ann. § 47.12.010.
9. H. Con. Res. 129, 2012 Leg., Reg. Sess. (Ky. 2012).
10. N.M. Stat. Ann. § 32A-2-2.
11. Mississippi House Bill 1187.
12. The policies highlighted in this chapter identify laws specific to data collection and reporting related to juvenile justice and juvenile detention. In many states, "sunshine laws" or open records laws also improve public access to key information that can help keep juvenile justice agency actions transparent.
13. N.M. Stat. Ann. § 32A-2-11(C).
14. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 1 § 15-11-58(b)(5).
15. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 1 § 15-11-504(f)(11).
16. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 3 § 49-4A-2(b)(5).
17. Ga. Code Ann. § 49-4A-8.
18. The Maryland Juvenile Justice Department, *Maryland Standards for Juvenile Detention Facilities* (2000), *available at* http://cdm266901.cdmhost.com/cdm/ref/collection/p266901coll7/id/1598.
19. For more information on this issue, see Lowenstein Center for the Public Interest, *Data Collection and Transparency in Juvenile Justice Systems*, *available at* http://www.lowensteinprobono.com/files/Uploads/Documents/Data%20collection%20and%20transparency%20memo.pdf. Note that for the purposes of this publication we have focused on the regulations addressing the gathering and use of aggregate data, but this reference discusses all forms of record keeping and reporting requirements.
20. 37 Tex. Admin. Code § 343.214.
21. La. Rev. Stat. Ann. § 46:1941.2.
22. Cal. Welf. & Inst. Code § 202(d).
23. Kan. Stat. Ann. § 38-2301.
24. N.M. Stat. Ann., § 32A-2-2(E).
25. *See* S.D. Codified Laws § 26-11A-27.
26. N.M. Stat. Ann., § 32A-2-11(C).
27. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 3 § 49-4A-2(b)(5).
28. KRS § 610.280. See also Ga. Code Ann. § 15-11-46.1. and I.C.A. § 232.22 for other examples of states requiring probable cause determinations before detention can be imposed.

29. N.J. Stat. § 2A:4A-20.

30. Fla. Stat. Ann. § 985.24(2).

31. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 3 § 15-11-503.

32. Ala. Code § 12-15-208. Note youth under 12 should not be held in detention. While Alabama provides a good model, shifting the age limit to 12 would be more protective of youth and more developmentally appropriate than setting the age limit at 10.

33. Conn. Gen. Stat. Ann. § 46b-133(b). For additional examples of such statutes, see Ark. Code Ann. § 9-27-326(c).

34. Del. Code Ann. tit. 10, § 1005(b)(3). See also Conn. Gen. Stat. Ann. § 46b-133(b). For additional examples of such statutes, see Ark. Code Ann. § 9-27-326(d)(2). Note that California court rule contains the same requirements. Cal. Rules of Court, rule 5.760(c)-(k).

35. Haw. Rev. Stat. § 571-31.1(a)(2)(B).

36. N.J. Stat. § 2A:4A-20.

37. Ky. Rev. Stat. Ann. § 600.010. See also Wyo. Stat. Ann. § 14-6-201(c)(v).

38. Vt. Stat. Ann. tit. 33, § 5101.

39. Del. Code Ann. tit. 10, § 902.

40. N.M. Stat. Ann., § 32A-2-11.

41. Minn. Stat. Ann., Juvenile Delinquency Procedure Rule 5.03, subdiv. 3.

42. Neb. Rev. Stat. § 43-260.

43. Del. Code Ann. tit. 10, § 1007(c).

44. Indeed, while this chapter focuses on detention alternatives only, a number of jurisdictions have statutory schemes that require detention alternatives, and also mandate the use of risk assessment instruments, as well as placement in the least restrictive alternative. See, for example, N.Y. Fam. Ct. Act § 735. Creating a statutory scheme that includes all of these components sets the stage for effective statewide detention reform.

45. Fla. Stat. Ann. § 985.24(4).

46. N.Y. Fam. Ct. Act § 735.

47. Del. Code Ann. tit. 10, § 1007(b). It is worth noting that this statute could be strengthened even further by explicit mention of positive non-residential interventions such as mentoring. Note also that the full statute includes release on bail as an appropriate detention alternative. We did not reproduce that element here because bail for juveniles conditions their own release on their parents' financial resources rather than a youth-centered consideration.

48. Del. Code Ann. tit. 10, § 1007(b)(5).

49. Cal. Welf. & Inst. Code § 626.

50. Del. Code Ann. tit. 10, § 1007(b).

51. Ga. Code Ann., § 15-11-46.1.

52. Me. Rev. Stat. Ann. tit. 15, § 3203-A(B).

53. 15 Me. Rev. Stat. tit. 15 § 3203-A(4)(B). Note that any communication to the young person of their rights and responsibilities should be done in accordance with developmentally- and literacy-appropriate best practices. See Practice Note sidebar in Chapter IV.

54. 15 Me. Rev. Stat. tit. 15 § 3203-A(9).

55. Fla. Stat. Ann. § 985.265.

56. N.J. Stat. Ann. § 2A:4A-38(e). New Jersey Court Rule further confirms this approach: N.J. R. Ct. 5:21-3. "If the juvenile has not been released…, an initial hearing to determine whether pretrial detention is required… shall be held no later than the morning following the juvenile's placement in custody, including holidays and weekends." *See also* Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 3, § 15-11-506(a)-(c).

57. N.J. Stat. Ann. 2A:4A-38(f).

58. S.C. R. Family Ct. 31.

59. 705 Ill. Comp. Stat. Ann. 405/5-501(7).

60. Mich. Ct. R. 3.935(A)(1). See also N.J. R. Ct. 5:21-3 (If the juvenile is detained following the initial detention hearing, the court shall conduct a probable cause hearing within two court days after the initial hearing).

61. Ky. Rev. Stat. Ann. § 630.040(7).

62. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 1 § 15-11-472(c)-(d). See also Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 6, § 15-11-521.

63. Iowa Code Ann. § 232.44(6).

64. S.B. 245, 2012 Reg. Sess. (Md. 2012).

65. Md. Code Ann., Cts & Jud. Proc. § 3-8A-15(d)(6)(ii).

66. Missouri code requires the juvenile officer to make discovery available within 10 days of the detention hearing or, in the absence of a detention hearing, within 10 days of the filing of the petition. While the specificity of Missouri's discovery provision is helpful, 10 days is too long. The better practice would be to keep case processing, including all discovery, to 5 days.

67. Mo. Sup. Ct. R. 127.11(a). See also Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 8, § 15-11-541(d) (requiring compliance with request for discovery promptly and not later than 48 hours prior to the adjudication hearing).

68. Tex. Fam. Code Ann. § 54.01(l).

69. D.C. Code § 16-2312(b).

70. Iowa Code Ann. § 232.44(3).

71. N.M. Stat. Ann. § 32A-2-2.

72. CT R SUPER CT JUV § 30-2A.

73. Fla. Stat. Ann. § 985.245(1).

74. Ga. Code Ann. § 42-1-1 (West); Ga. Code Ann. § 15-11-605 (West).

75. Me. Rev. Stat. Ann. tit. 15, § 3203-A(4)(B), (9). Note that any communication to the young person of their rights and responsibilities should be done in accordance with developmentally- and literacy-appropriate best practices. See Practice Note sidebar in Chapter IV.

76. Fla. Stat. Ann. § 985.439(2)-(4). *Cf.* 37 PA. CODE § 200.105(a), requiring an "informal" detention hearing within 72 hours after admission to secure detention.

77. Cal. Rules of Court, Rule 5.760(g).

78. Population — Puzzanchera, C., Sladky, A., and Kang, W. (2013), Easy Access to Juvenile Populations: 1990–2012. *Available at* http://ojjdp.gov/ojstatbb/ezapop/; Detention — Sickmund, M., Sladky, T. J., Kang, W., and Puzzanchera, C. (2013), Easy Access to the Census of Juveniles in Residential Placement: 1997–2011. Available at http://www.ojjdp.gov/ojstatbb/ezacjrp/.

79. N.M. Stat. Ann. § 32A-2-2.

80. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 3 § 15-11-503.

81. Minn. Stat. Ann. § 260B.002.

82. Conn. Gen. Stat. Ann. § 4-68y.

83. The statute mandates collection of this data at 46 different points of contact with the juvenile justice system, from referral to pretrial detention to revocations of parole. It also specifies the system actors responsible for collecting the necessary information to complete the instrument at each point of contact.

84. Ma. S.B. 940, introduced 2009.

85. N.Y. Fam. Ct. Act § 351.1(2-a)-(2-b).

86. *See* Mauer, Marc, *Racial Impact Statements, Changing Policies to Address Disparities*, Criminal Justice, Volume 23, Number 4, Winter 2009, American Bar Association, available at http://www.sentencingproject.org/doc/rd_abaarticle.pdf.

87. The Sentencing Project, *Fact Sheet: Racial Impact Statements*, available at http://sentencingproject.org/doc/Racial%20Impact%20Statement%20Factsheet.pdf.

88. Conn. Gen. Stat. Ann. § 2-24b.

89. I.C.A. § 2.56. See also Exec. Order #251 (WI, 2008) (creating Racial Disparities Oversight Committee and directing state criminal justice agencies to decrease racial disparities in the criminal system), available at http://docs.legis.wisconsin.gov/code/executive_orders/2003_jim_doyle/2008-251.pdf.

90. Tex. Hum. Res. Code Ann. § 2.001 et seq. (Lists required representatives and duties of council. Council is required to have one person who is a former foster care youth but no youth formerly involved in the juvenile justice system. Model statutes would include youth representation from both systems.). *See also* Alaska Stat. Ann. § 47.12.010, excerpted in Chapter I: Collaboration.

91. N.J. Stat. Ann. § 52:17B-179.

92. The Supreme Court of Missouri, for example, includes Appendix A, entitled "Standards for Operation of a Juvenile Detention Facility" as part of the Rules of Practice and Procedure in Juvenile and Family Court Divisions of the Circuit Court.

93. La. Rev. Stat. Ann. § 15:1110.

94. 2012 Miss. S.B. 2598.

95. Fla. Stat. Ann. § 985.688.

96. Fla. Stat. Ann. § 985.688.

97. 9 Del. Admin. Code 105-5.0.

98. Md. Code Ann., State Gov't § 6-402.

99. Tex. Hum. Res. Code Ann. § 261.002.

100. S.D. Codified Laws § 26-11A-25.

101. Miss. Code Ann. § 43-21-323.

102. Tex. Hum. Res. Code Ann. § 261.003.

103. S.D. Codified Laws § 26-11A-25.

104. Conn. Gen. Stat. Ann. § 46a-13m(d).

105. Tex. Hum. Res. Code Ann. § 261.151.

106. Tex. Hum. Res. Code Ann. § 261.152.

107. Conn. Gen. Stat. Ann. § 46a-13m(a).

108. Miss. Code Ann. § 43-21-323.

109. Access to investigatory information can be provided through other stakeholders, for example the monitor receives reports of investigations from an ombudsman. However, monitors may also be granted authority to conduct such investigations directly.

110. S.D. Codified Laws § 26-11A-27(7).

111. S.D. Codified Laws § 26-11A-27(1).

112. S.D. Codified Laws § 26-11A-26.

113. Md. Code Ann., State Gov't § 6-404.

114. Md. Code Ann., State Gov't § 6-405.

115. Md. Code Ann., State Gov't § 6-405.

116. Tex. Hum. Res. Code Ann. § 261.101(a).

117. S.D. Codified Laws § 26-11A-27.

118. Conn. Gen. Stat. Ann. § 46a-13m(b).

119. Md. Code Ann., State Gov't § 6-405.

120. Tex. Hum. Res. Code Ann. § 261.101(c).

121. Miss. Code Ann. § 43-21-323.

122. Miss. Code Ann. § 43-21-323.

123. Md. Code Ann., State Gov't § 6-404.

124. Miss. Code Ann. § 43-21-323

125. S.D. Codified Laws § 26-11A-27(6).

126. Conn. Gen. Stat. Ann. § 46a-13l(a).

127. Conn. Gen. Stat. Ann. § 46a-13m.

128. Federal law sets forth just such a provision. The Civil Rights of Institutionalized Persons Act requires that "No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting." 42 U.S.C.A. § 1997d.

129. Conn. Gen. Stat. Ann. § 46a-13n.

130. S.D. Codified Laws § 26-11A-30.

131. Miss. Code Ann. § 43-21-323.

132. Cal.Welf. & Inst. Code § 209.

133. Md. Code Ann., State Gov't § 6-404.

134. Conn. Gen. Stat. Ann. § 46a-13l(a)(6).

135. S.D. Codified Laws § 26-11A-28.

136. S.D. Codified Laws § 26-11A-27.

137. Tex. Hum. Res. Code Ann. § 261.101.

138. Miss. Code Ann. § 43-21-323.

139. Conn. Gen. Stat. Ann. § 46a-13l.

140. Cal.Welf. & Inst. Code § 224.74(a)(2).

141. Ky. Rev. Stat. Ann. § 31.110(4).

142. Ky. Rev. Stat. Ann. § 15A.065.

143. Ensuring protections against self-incrimination for youth prior to and in detention, is also crucial to protecting their due process rights.

144. *In re Gault*, 387 U.S. 1 (1967).

145. D.C. Juv. Rule 44(a). This example could be strengthened even further by establishing that counsel should be appointed with sufficient time to prepare for these hearings.

146. 42 Pa. Cons. Stat. § 6337. See also PA. R.J.C.P. No. 151.

147. *See, e.g.*, Joshua A. Tepfer, Laura H. Nirider, & Lynda M. Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L Rev. 887, 893-894 (2010) (observing that "the notion that youth are particularly likely to react to pressure-filled interrogation by falsely confessing is fast gaining traction, even among law enforcement").

148. *Id.* at 22, 35-36. Without a presumption of indigence for all youth triggering the right to appointed counsel (see Subsection B), youth are further vulnerable to pressure to waive the right to an attorney by parents who do not have the ability or willingness to pay for representation by a private attorney.

149. IJA-ABA Standards 1.2, 6.1.A (1996).

150. *Indiana v. Edwards*, 554 U.S. 164 (2008).

151. Pa. Cons. Stat. § 6337.1. *See also* PA. R.J.C.P. No. 152.

152. Act of May 2, 2013, 2013 Ga. Laws, H.B. 242, art. 6, pt. 4 15-11-511(b), (c).

153. 42 Pa. Cons. Stat. Ann. § 6337.1(b)(1).

154. Wis. Stat. § 48.23(4).

155. Ark. Code Ann. § 9-27-316.

156. Model Rules of Prof'l Conduct R. 1.2, 1.6, 1.7, and 1.14 (2002); Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards: Standards Relating to Counsel for Private Parties*, 3.1(b)(i) (1979)[hereinafter *IJA/ABA JJ Standards*] ("[T]he lawyer's principal duty is the representation of the client's legitimate interests."); See also Emily Buss, *"You're my What?" The Problems of Children's Misperceptions of their Lawyers' Roles*, 64 Fordham L. Rev. 1699, 1700-01 n.3 (1996); Alberto Bernabe, *The Right to Counsel Denied: Confusing the Roles of Lawyers and Guardians*, 43 Loy. U. Chic. L.J. 833, 849-52); Barbara Fedders, *Defining the Role of Counsel*, 32 Child. Legal Rts. J. 39 (2012).

157. Model Rules of Prof'l Conduct R.1.2, 1.6, 1.7; IJA/ ABA JJ Standards 3.1(b)(ii)(a); Fedders, 32 Child. Legal Rts. J. 39 (2012) at 30.

158. Model Rules of Prof'l Conduct R. 1.14 (2002).

159. Am. Bar Ass'n, American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases, Definitions 1A(1) (1996), *available at* http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf [hereinafter ABA Standards for Abuse and Neglect Cases]; *See also State v. Joanna V.*, 94 P.3d 783-87 (N.M. 2004); *People v. Austin M.* No.111194, 2012 WL 3757021.

160. *Chronological List of States Adopting Model Rules*, A.B.A. Center for Prof. Resp., *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/chrono_list_state_adopting_model_rules.html.

161. Model Rules of Prof'l Conduct R. 1.2, 1.6, 1.7, and 1.14 (2002).

162. IJA/ABA JJ Standards.

163. State of Oregon, Office of Public Defense Services, Role of Counsel for Children and Youth, *available at* http://courts.oregon.gov/OPDS/CBS/pages/roleofcounsel.aspx.

164. Ohio Office of the Public Defender, Standards of Representation of Clients, available at http://www.lakecountyohio.gov/juveniledw/pdf/downloads/StandardsofRepresentationDel.pdf.

165. Ala.Code Ann. § 12-15-102. See Am. Bar Ass'n, Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases at note 162.

166. Wis. Stat. Ann. § 938.23.

167. Wis. Stat. Ann. § 938.235.

168. La. Admin. Code tit. 22:XV, § 1329(A).

169. Iowa Code Ann. § 815.11..

170. N.M. Stat. Ann. § 32A-2-2.

171. Tex. Hum. Res. Code Ann. § 201.003.

172. Minn. Stat. Ann. § 260B.001(3). See also Okla. Stat. Ann. tit. 10A, § 2-1-102 ("It is the intent of the Legislature that Article 2 of this title shall be liberally construed, to the end that its purpose may be carried out. The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency. This purpose should be pursued through means that are fair and just, that … [r]ecognize the unique characteristics and needs of juveniles.").

173. Ala. Code § 12-15-101(b)(7).

174. N.M. Stat. Ann. § 32A-2-2(I).

175. 705 Ill. Comp. Stat. Ann. 405/1-2(3)(a).

176. Ky. Rev. Stat. Ann. § 600.010(2)(g).

177. For example, Title IV-E of the Social Security Act, which reimburses states for the cost of out-of-home care for eligible foster children, is not available for youth placed in public, secure delinquency facilities. Similarly, Title XIX of the Social Security Act (Medicaid) does not pay states for the cost of medical care for youth in public, secure delinquency facilities. The reimbursement schemes of those federal laws were intentionally designed to reduce the use of public, secure programs.

178. National Association of Counties, *Juvenile Detention Reform: A Guide for County Officials* (2d Ed. 2011).

179. N.Y. Exec. Law § 529-b(1)(a)-(b).

180. 55 Pa. Code § 3140.22.

181. Mont. Code Ann. § 41-5-1904(2).

182. Cal. Welf. & Inst. Code § 733.

183. Cal. Welf. & Inst. Code § 1950.

184. California's statute only permits youth convicted of sexual, violent or serious offenses to be detained in state facilities. Cal. Welf. & Inst. Code § 733, 707(b). This law establishes a Youth Offender Block Grant to support community-based programs that serve youth rerouted from state confinement. Cal. Welf. & Inst. Code § 1951.

185. Ohio Rev. Code Ann. § 5139.36.

186. 730 Ill. Comp. Stat. Ann. 110/16.1.

187. Mont. Code Ann. § 41-5-2011(1).

188. Mont. Code Ann. § 41-5-2012(2).

189. N.J. Stat. Ann. § 52:17B-179(a).

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