

ZEALOUS ADVOCACY CAN PREVENT DETENTION

Counsel must be fully prepared at arraignment to give the court a viable alternative to detention.¹ Know your clients' specific needs and particular strengths. Be aware of what is going on with your client at home and in the community. Detention should not be used for youth to receive services. Knowledge of available community based services can assist in avoiding detention and aid in positive outcomes for your client.

What Courts Need to Know

- **Disruption in Education and Services** - Courts should be aware that detention causes a disruption in social services being provided to youth and denies them access to the educational curriculum received in school.
 - **Detention Can Increase Drop-out Rates** - For youth receiving remedial education services in detention, 43% do not return to school after release, and another 16% drop out within five months.²
- **Alternatives to Detention Can Curb Recidivism** - Studies have shown that recidivism rates are higher for detained youth as oppose to those who are not detained.³ Youth who do not pose a flight risk should not be detained. Detention is counterproductive, especially for children with minor or no records. Keeping kids in their community promotes their healthy development.
- **Youth Are Impressionable** - Children who are detained are likely to interact with others who are detained for more serious issues, which can adversely affect impressionable youth and lead to re-offending.⁴
- **Trauma** - Many aspects of the detention process can be traumatizing; from strip searches, to the loss of privacy and liberty, to being removed from ones home and community. For juveniles with a history of trauma, these experiences can aggravate prior trauma symptoms.
- **Aging Out (“Desistance Rate”)** - Juveniles tend to grow out of delinquent behavior. Incarcerating juveniles may interrupt and/or delay this process, since detainment removes natural socialization engagement with family, school, and employment.⁵

Other Ideas to Consider

- **Is There Probable Cause?** - Review the police reports to assess whether all the elements of the crime and details of your client's role are included. If not, move to dismiss.
 - Review application for complaint. Was there a magistrate's hearing? Did your client get notice? Can you move to dismiss or remand the case for a clerk's hearing?
- **Watch Out for Pre-trial Conditions** - Having too many conditions of release, or conditions your client will have extreme difficulty meeting can easily lead to future detention.⁶ If your client has a history of truancy or behavior problems at home or in school, the chances of him or her succeeding on all related conditions is poor. If conditions of release are imposed, make sure your client understands what is expected of him/her.⁷
- **Bail Reviews** - Consider filing a petition for bail review in superior court whenever your client is detained on bail. Request a bail review hearing immediately and have the proper paper work signed. Be aware of the bail appeal procedures in your court and prepare for a speedy bail appeal.⁸

*Remind the court that the purpose of bail is to assure the juveniles presence in court and there is **a presumption of personal recognizance.**⁹*

Sources:

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1. For the purposes of this mailing, the term "detention" refers to post-arraignment and pre-disposition secure confinement in a DYS facility.
2. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 2006, p. 9, citing: LeBlanc, Linda, *Unlocking Learning; Chapter 1 in Correctional Facilities*, US Department of Education, 1991.
3. Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, Annual Report, 25 (2003). p. 2.
4. Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, p. 5.
5. Justice Policy Institute, *Ibid*, pp. 6, 7, citing: Golub, A., *The Termination Rate of Adult Criminal Careers*, Carnegie Mellon, 1990.
6. Juvenile court judges can set conditions of release pursuant to c. 276 § 87. The juvenile must consent to the conditions and can be held without bail if there is a violation of said conditions Jake J. v. Commonwealth, 433 Mass. 70 (2000).
7. Fully explain to your client the conditions of release. Make sure your client has all your contact information and knows to call you if there are any issues with the conditions of release.
8. Committee for Public Counsel Services, Performance Guidelines, J 2.3 (g), c. 276 § 58, paragraph 4 bail appeal should be heard on the same day the petition is filed, see also Comnesso v. Commonwealth, 369 Mass. 368 (1975).
9. Mass. Gen. Law c. 276 §58, Delaney v. Commonwealth, 415 Mass. 490 (1993). "The preferred result under G. L. c. 276, § 58, is release on personal recognizance." Paquette v. Commonwealth, 440 Mass. 121,125 (2003), and cases cited.

Other Sources:

1. Elizabeth Calvin, *Legal Strategies to Reduce the Unnecessary Detention of Youth*, Fall 2004. National Juvenile Defender Center. http://www.njdc.info/pdf/detention_guide.pdf
2. National Juvenile Defender Center, *Ten Principle for Providing Effective Defense Advocacy at Juvenile Delinquency Detention Hearings*. <http://www.njdc.info/pdf/Detention%20Advocacy%20&%20Assessment%20Instruments.pdf>

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