CHAPTER SIX – JUVENILE DETENTION

THIS CHAPTER DEALS EXCLUSIVELY WITH THE DENTENTION OF A CHILD IN THE JUVENILE JUSTICE PROCESS.

The Family Code addresses the subject of juvenile detention in several places:

52.01 - provides for the issuance by police of a warning notice in lieu of taking the child into custody

52.02 - authorizes release by police of a child taken into custody on condition the child be brought to the juvenile court by parents or other responsible adults

53.02 – permits administrative release of a detained child by intake or other court workers

54.01 - creates a right to a detention hearing before a juvenile court judge, referee/master or detention magistrate

Juvenile-age persons who are charged in criminal court with a traffic offense or other fineable only offenses may not be detained in the juvenile detention facility.

A. POLICE DETENTION AND RELEASE DECISIONS

RELEASE AND REFERRAL

52.02(a)(1) – authorizes a police officer or other person who has taken a juvenile into custody to "release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court."

52.02 – provides the police with no criteria by which to decide who should be released and who should not, other than those implicit in the requirement that the release be made to a "responsible adult."

FIREARMS OFFENSES (EXCEPTION TO POLICE RELEASE IN 52.02)

53.02(f) (1999) - a child who is "alleged to have engaged in delinquent conduct and to have used, possessed, or exhibited a firearm…in the commission of the offense **SHALL** be detained until the child is released at the direction" of a judge. Police are permitted to contact a judge for authorization to release, which can be done by telephone. Any judicial officer may authorize release of a child taken into custody for an offense involving a firearm.

FIREARMS OFFENSES: WHERE A CHILD MAY BE DETAINED

If a child is taken into custody for a firearms offense and not released by judicial order, the police must transport that child to the county's designated place of juvenile detention.

However, the Legislature did provide for the needs of rural counties that might have difficulties complying with this mandatory detention provision.

51.12(l) – authorizes detention of a child under the mandatory firearms provision in the county jail or other facility until the child is released under **53.02(f)** or until a detention hearing is held as required by **54.01(p),** regardless of whether the facility complies with the requirements of the section, but only in very limited circumstances. The limited circumstances include: there is no juvenile detention facility available in the county or an adjacent county, the facility has been designated by the county juvenile board, the child is separated by sight and sound fro adults being detained, the child does not have any contact with staff who has contact with adults being detained.

WARNING NOTICES

52.019(c) - authorizes a law enforcement officer to "issue a warning notice to the child in lieu of taking him into custody" under certain circumstances. The warning notice is to be used instead of taking the child to the juvenile processing office or juvenile detention facility. A warning notice may be used instead of taking the child into custody only if the situation falls within guidelines promulgated by the law enforcement agency and approved by the juvenile board. It is the legislature's intent that guidelines be issued by the law enforcement agency and approved by the juvenile court only for relatively minor offenses.

RELEASE AND DISPOSITIOIN WITHOUT REFERRAL

INFORMAL DISPOSITIONS AND FIRST OFFENDER PROGRAMS

52.03 – authorizes the police to release a child taken into custody and NOT refer the case to the juvenile court.

52.031 - authorizes a first offender program. Disposition of a case through a first offender program is authorized only if it is permitted by guidelines that have been issued by the juvenile board.

If a case is disposed of under **52.03(b)(1)** or **52.031(e),** there is immediate release from law enforcement custody and there is no referral of the case to the juvenile court unless the child fails to abide by the terms of the disposition.

52.032 – provides the juvenile board of each county, in cooperation with each law enforcement agency in the county, **SHALL** adopt guidelines for the disposition of a child under Section **52.03** or **52.032**. The guidelines adopted under this section shall not be considered mandatory. In other words, the juvenile board must have the guidelines, but they do not have to approve of a first offender program.

B. INTAKE DETENTION AND RELEASE DECISIONS

If a case is referred to juvenile court and the child is not released by the police, the child must be physically taken to the detention facility. Responsibility for releasing or detaining the child falls upon the intake or probation officers of the juvenile court. (Discussed in Chapter 5)

PRESUMPTION IN FAVOR OF RELEASE

53.02(a) – requires the Intake officer to release a child unless detention is required by one of the six circumstances enumerated in **53.02(b)** which are the following:

1) The child is likely to abscond or be removed from the jurisdiction of the court.
2) Suitable supervision, care, or protection for the child is not being provided.
3) There is no parent, guardian or custodian who can return the child to court.
4) The child may be dangerous to himself or others.
5) The child has been previously found to be delinquent.
6) The child is charged with a firearms offense. This is mandatory and Intake must contact a judge for authorization for any release prior to a detention hearing. Judicial authorization to release may be by phone.

Circumstances 1 through 5 are identical to those that control judicial release in detention hearings. Reasonable conditions of release can be attached to the release of a child.

(Fewer than 50% of referred juveniles are detained - Texas Juvenile Probation Commission – 2003.)

INTERROGATION

The Fifth Amendment to the U. S. Constitution and Texas law give the child the right not to answer questions that call for incriminating information. The child can refuse to answer any questions about the offense for which he or she was referred, or about any other offense. If the child is willing to talk about the offense, **51.095** makes any statements made inadmissible in court. Due to a myriad of potential problems, it is advisable that the Intake officer not questions the child about the offense even if the answers are restricted to making the intake detention decision.

INFORMATION AS TO IDENTITY

The child's right to remain silent does not include non-incriminating information such as his name and residence, her parents' names and residences, where the child attends school or may be working and other information that is of an identifying nature.

INFORMATION AS TO AGE

A child's age is a safe area for inquiry by the Intake officer and the officer can safely use the information in the detention/release decision.

C. DETENTION HEARING: SCHEDULING AND NOTICE

TIME LIMITS

54.01 - sets the requirement for detention hearings. If a child is not released administratively, Intake should automatically schedule a hearing.

54.01(a) – provides a detention hearing without a jury shall be held promptly, but not later than the second working day after the child is taken into custody. If a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody. If a detention hearing can be held sooner, it should be, since the law requires in any event, that it be held "promptly".

If the child is detained in a county jail under the firearms statute, then a fast-track detention hearing must be scheduled.

54.01(p) – requires that a detention hearing **MUST** be held not later that 24 hours excluding weekends and holidays of when the child was taken into custody.

NOTICE TO PARENTS (Oral Notice)

54.01(b) – provides that "reasonable notice of the detention hearing, either oral or written, shall be give, stating the time, place and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian or custodian." Oral notice is authorized. It is not necessary that either the child or parents be served with a formal citation of a summons for a detention hearing. Notification should be attempted as soon as the hearing time is known.

FILING PETITION

53.04(a) – requires that the petition be filed "as promptly as practicable", but does not require that a petition be filed before the detention hearing is held.

54.01(p)– gives the prosecutor 15 or 30 working days (depending upon the offense) after the initial detention hearing in which to file a petition when the child is detained. (Chapter 9) (Thirty days if offense is capital murder, first-degree felony or aggravated controlled substance felony; 15 days for all other offenses.)

D. DETENTION HEARING: PROCEDURES

WAIVER OF INITIAL HEARING

54.01(h) – provides that "the initial detention hearing my not be waived but subsequent detention hearings may be waived in accordance with the requirement of **51.09** (waiver provision).

51.09 – provides that "unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title…may be waived…" In 1995, the legislature decided the waiver of the initial detention hearing is the expression of a "contrary intent" that overrides the general power to waive.

RIGHT TO ATTORNEY

The child has a right to an attorney at the detention hearing.
54.01(b) – provides "prior to the commencement of the detention hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent…"

54.01(d) – provides "if no parent or guardian is present at the detention hearing, the court shall appoint counsel or a guardian ad litem for the child."

51.10(c) - provides "if the child was not represented by an attorney at the detention hearing… and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney."

DETENTION HEARINGS WITHOUT COUNSEL

51.10(c) - provides that it is better to hold a prompt hearing without counsel than to postpone the hearing until an attorney can be provided.

54.01(n) – allows an attorney appointed to represent a child following a detention hearings without an attorney, to request on behalf of the child, a de novo detention hearing. This request must be made not later than the 10th working day after the date the attorney was appointed. The new hearing must be held not later than the second working day after the request.

PRIVILEGE AGAINST SELF-INCRIMINATION

54.01(b) – requires the court to inform the parties of the child's right to remain silent with respect to any allegations of delinquent conduct or conduct indicating a need for supervision.

54.01(g) – provides, "No statement made by the child at the detention hearing shall be admissible against the child at any other hearing." The child has the right not to speak, but if he chooses to speak, what is said can be used only for the purposes of the detention hearing.

RECORDING PROCEEDINGS

54.01(b) – provides "All judicial proceedings under this chapter except detention hearing shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. Upon request of any party, a detention hearing shall be recorded." An audio tape recording is sufficient.

ADMISSIBLE EVIDENCE

The Family Code contemplates that the detention hearing will be relatively informal.

54.01(c) - provides that the "court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses." If the report method is used, a copy of the report must be provided to the child's attorney before the hearing begins. The child is permitted, but not required, to testify or make an unsworn statement at the detention hearing. The judge should permit any reliable and relevant non-privileged information to be presented even if it is technically hearsay or would other wise be inadmissible in a jury trial. Parents may testify.

E. DETENTION HEARING; PROBABLE CAUSE

CONSTITUTIONAL REQUIREMENTS

The Fourth Amendment requires probable cause be determined by a neutral judicial officer, rather than a prosecutor. (*Gerstein v. Pugh*, 420 US 103, 95 S.Ct. 854 (1975)- an adult case.) The determination can be based upon any reliable information, such as the representations of the prosecutor or even a police offense report. The determination of probable cause is not required if the person was arrested upon an arrest warrant, since the judge who issued the warrant did so on the basis of a judicial finding of probable cause. A post-custody judicial determination of probable cause is not required when a child is arrested under a directive to apprehend issued by a juvenile court judge under **52.015**.

The US Court of Appeals for the Fifth Circuit held that the *Gerstein* case is applicable to juveniles in *Moss v. Weaver*, 525 F.2d 1258 (5th Cir. 1976).

WHO CAN MAKE THE DECISION

53.01(a) – requires a determination of probable cause to be made by the "intake officer, probation officer, or other person authorized by the court" as part of the preliminary investigation of the case. That is not sufficient to comply with Gerstein and Moss because it is not a judicial determination. A referee/master would qualify because his or her determination of probable cause is really a recommendation to the judge, who has power to accept or reject it.

THE 48-HOUR REQUIREMENT.

Gerstein required a judicial determination of probable cause to be made "promptly" after an arrest without a warrant, but did not define "promptly." *Riverside v. McLaughlin*, 500 US 44, 111S.Ct. 1661, 114 L.Ed. 2d 49 (1991) defined "promptly" to be "48 hours". If a child is not released, a judicial determination of probable cause must be made within 48 hours of the time he or she was taken into custody. The 48 hours **INCLUDES** weekends and holidays. The determination can be based on written or oral presentations of information to the judge or referee and need not be made in a hearing.

METHODS OF DETERMINING PROBABLE CAUSE

There are a number of ways in which the judge can determine probably cause:

1) Witnesses with knowledge of the facts can testify.
2) A witness can testify based upon what others have told him (hearsay).
3) A prosecutor or probation officer can make an unsworn statement or write a report as to the facts he or she has been told or read from an offense report.
4) A judge or referee can examine the police offense report in the case and determine probable cause directly from that report.

No particular formality is required so long as the determination is based upon a reasonably reliable factual basis.

FREQUENCY OF PROBABLE CAUSE DETERMINATIONS

It is not necessary for there to be a new probable cause determination at any of the subsequent detention hearings. It is sufficient that probable cause was found to exist once. The finding of probable cause should be reflected in a written finding that is filed in the papers of the case.

FAMILY CODE PROBABLE CAUSE REQUIREMENT

54.01(o) – codifies the constitutional requirement of a prompt determination of probable cause. It provides that the court or referee shall find whether there is probable cause to believe that a child taken into custody without an arrest warrant or a directive to apprehend has engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court. The court or referee must make the finding within 48 hours, including weekends and holidays, of the time the child was taken into custody. Under this statute, the determination must be made within 48 hours of taking the child into custody, rather than within 48 hours of the child's arrival at the detention facility.

The language of **54.01(o)**, added in 2003, requires a judicial determination of probable cause in cases of children being held for probation violation.

FAILURE TO MAKE A PROBABLE CAUSE DETERMINATION

Gerstein made it clear that failure to find probable cause would not be grounds for setting aside a later conviction or requiring dismissal of charges. An attorney would need to file a writ of habeas corpus contending that the child is being detained in violation of his or her Fourth Amendment rights because of the absence of a probable cause determination. The District Court hearing the writ petition could order the child's release from detention or could permit the State the opportunity at the hearing to show the existence of probable cause and, if it is shown, deny release. If the probable cause determination is not made when required by federal and Texas law, the child's detention becomes illegal.

F. DETENTION AND RELEASE CRITERIA

53.02(b) – criteria for detention and release by Intake

54.01(e) – criteria for detention or release by a judge or referee

These statutes are identical, except that **53.02(b)** prohibits Intake from releasing a firearms offender. The law creates a presumption that the child should be released. The sections provide that a child should be released unless one or more of five grounds for detention are found to exist:

1) he is likely to abscond or be removed from the jurisdiction of the court;
2) suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;
3) he has no parent, guardian, custodian, or other person able to return him to the court when required;
4) he may be dangerous to himself or may threaten the safety of the public if released; or
5) he has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

DETENTION CRITERIA IN POST-18 YEAR OLD TRANSFER PROCEEDINGS

54.02(p) – authorizes the juvenile court to detain the person in the certified juvenile detention facility or in the county jail where bond can be set.

DETENTION PENDING RELEASE/TRANSFER HEARING

A juvenile court has the authority to detain a child referred to the court by the Texas Youth Commission for a release/transfer hearing under the determinate sentence act. The child may be placed in a certified place of juvenile secure detention or in the county jail without bond while the hearing is pending.

NO RIGHT TO BAIL

The Juvenile Justice Code does not recognize a right to bail, nor does it assert that such a right does not exist. It is silent on the subject.

G. CONDITIONS OF RELEASE

54.01(f) – provides that a release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings, but the conditions of the release must be in writing and a copy furnished to the child. The range of conditions that can be imposed is limited only by the requirement that they be related to likelihood of appearance at trial.

53.02(a) - applies to release by Intake and contains an identical provision.

VIOLATION OF CONDITION OF RELEASE

If a child is released from detention on conditions and violates a condition, the release order may be revoked and the child taken back into custody on the original case.

52.015(a) – provides for law enforcement or a probation officer to make a request of a juvenile court to issue a directive to apprehend a child if the court finds there is probable cause to take the child into custody under the provisions of **54.01**.

ADULT AGREEMENT FOR INTAKE RELEASE

53.02(d) – requires an agreement from an adult to whom Intake has released a child, that the adult will be "subject to the jurisdiction of the juvenile court and to an order of contempt by the court if the adult, after notification, is unable to produce the child at later proceedings."

DETENTION HEARING ORDERS REQUIRING PARENTAL COOPERATION

Under a new chapter in the Family Code on parental rights and responsibilities, the legislature in 2003, authorized a judge, referee, or detention magistrate, upon conditional release of a child from detention, to order "that the child's parent, guardian, or custodian present in court at the detention hearing, engage in acts or omissions specified by the court, referee, or detention magistrate that will assist the child in complying with the conditions of release." **54.01(r)** This order can be enforced by contempt.

RELEASD OF EXPELLED CHILD IN JJAEP COUNTY

53.02(e) and **54.01(f)** – require conditions of release to include referral to a JJAEP. In a county with a populace greater than 125,000, which is required to operate a Juvenile Justice Alternative Education Program, an Intake or judicial release of a child who was expelled, must include the condition that the child immediately attend the JJAEP program.

H. DETENTION ORDERS AND THEIR REVIEW

54.01(h) – provides that a detention order extends to the conclusion of the disposition hearing, if there is one, but in no event for more that 10 WORKING days. Further detention orders may be made following subsequent detention hearings. The initial detention hearing cannot be waived, but subsequent detention hearings may be waived as long as the waiver is in accordance with **51.09**. Initial detention orders in all counties have a maximum life of only 10 working days. In counties that do not have a certified juvenile detention facility, the order shall extend for no more than 15 working days.

WAIVER OF SUBSEQUENT HEARINGS

The first subsequent detention hearing is required on or before the 10th working day after the initial order. All other subsequent hearings are required within 10 or 15 working days. The purpose of this procedure, rather than permitting a waiver of all subsequent detention hearings at once, is to require everyone to confront the need for continued detention on a regular basis and provide a means to get before the judge or referee, new evidence or changed circumstances which may bear on the detention issue.

FAILURE TO HOLD SUBSEQUENT HEARINGS

If there is a failure to hold a subsequent hearing for a detained child, the child must show some prejudice as a result of the illegal detention. There is no remedy for the illegal detention except seeking release on a writ of habeas corpus or filing a civil lawsuit for money damages.

INTERACTIVE VIDEIO RECORDING OF SUBSEQUENT DETENTION HEARINGS

54.012 – authorizes a subsequent, but not initial, detention hearing to be conducted by two-way television. Use of this technique requires consent of the child and his attorney. The parties, including the State, must be given the opportunity to cross-examine witnesses.

54.012(b) – requires the technology to provide for "two-way communication of image and sound among the child, the court and other parties at the hearing."

54.012(c) - requires that the hearing be recorded and that the record be preserved.

I. RESTRICTIONS ON DETENTION OF STATUS OFFENDERS

STATUS OFFENDERS

51.02(15) – defines a status offender as a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult. This section provides a non-exhaustive list of examples of status offenses:

1) truancy under **51.03(b)(2)**
2) running away from home under **51.03(b)(3)**
3) failure to attend school
4) a fineable only offense under **51.03(b)(1)** transferred to the juvenile court
5) a violation of standards of student conduct under **51.03(b)(5)**
6) a violation of juvenile curfew ordinance
7) a violation of provision of the Alcoholic Beverage Code as applied to a minor

Each of these behaviors is prohibited for children, but not for adults.

DETENTION OF STATUS OFFENDER IN ADULT FACILITY

4.011(a) – allows status offenders to be detained in an adult facility. If detained, the status offenders must have a hearing within 24 hours of arrival at the facility, excluding weekends and holidays.

NONOFFENDERS

51.02(8) - defines a nonoffender as a child who is subject to a court's jurisdiction because the child is a victim of abuse, dependency or neglect or is a child who has been taken into custody and is being held solely for deportation out of the United States."

54.011(a) - requires the judicial release of all nonoffenders within 24 hours, excluding weekends and holidays, of their arrival at the detention facility or at the 24-hour detention hearing. However, there is no federal or Texas prohibition on the placement of a nonoffender in a shelter or other non-secure facility.

CHILDREN HELD ON IMMIGRATION VIOLATIONS

53.01(a)(2)(B) – authorizes the temporary detention of a person who "is a nonoffender who has been taken into custody and is being held solely for deportation out of the United States".

54.011(f) – requires all such nonoffenders be released from secure confinement at the 24-hour detention hearing required of all status offenders and nonoffenders. Civil and criminal penalties are provided for detaining a nonoffender in a secure facility beyond the 24-hour hearing.

Prohibited confinement of a nonoffender in a juvenile detention facility applies only to a secure detention facility as defined by **51.02(4)**.

THE 24-HOUR DETENTION HEARING

54.011(a) – requires a hearing for a status offender or a nonoffender to start "before the 24th hour after the time the child arrives at a detention facility, excluding hours of a weekend or a holiday." Arrival is what triggers running the clock which is later than the event of the child being "taken into custody" for an ordinary detention hearing.

RETURN OF RUNAWAY

54.011(e) – allows for the detention of a status offender for a period not to exceed 5 days to arrange for return of a child to her home jurisdiction under the Interstate Compact Agreement.

54.01(i) through (k) - allows placement of a runaway child from anther county, state or country to request shelter in the detention facility for up to 10 days.

J. JUVENILE COURT DESIGNATION OF PLACES OF DETENTION AND POLICE CUSTODY

52.02(a)(3) – requires the juvenile board to designate the place or places of detention within its county. The designated places of detention must be certified as suitable for the detention of children.

52.025 – requires the juvenile board to designate juvenile processing offices, where police may take juveniles in their custody.

COUNTY OF DETENTION

51.12(e) – provides that a designated place off detention may be in another county in a facility that is certified.

54.01(m) – a required detention hearing may be held in the county of the designated place of detention where the child is being held even though that place may be outside the county of residence of the child or the county in which the alleged delinquent conduct may have occurred.

COURT CONDUCTING HEARING

51.04(F) – provides that if the judge of the juvenile court or an alternate judge is not in the county or is otherwise unavailable, any magistrate my conduct the detention hearing required by **54.01**.

TRANSPORTING JUVENILES TO DETENTION FACILITIES

52.026(a) - requires the law enforcement officer who takes a child into custody to transport him to the designated juvenile detention facility.

52.026(b) – requires that if the designated juvenile detention facility is out of county, then the law enforcement officer taking the child into custody must transport the child to the out of county facility.

52.026(c) - includes transportation of the child to and from court as part of the responsibilities of the law enforcement officer taking the child into custody.

Alternatively, if authorized by the commissioners' court, the sheriff may be given this out-of-county transportation responsibility.

K. CERTIFYING PLACES OF DETENTION

51.12(c) - The Family Code fixes responsibility upon the juvenile court and the juvenile board to assure that the place designated as the juvenile detention facility is safe and suitable.

51.12(b) - The Family Code places ultimate responsibility on the juvenile court for controlling the conditions of detention of juveniles.

CONFINEMENT OF YOUTH AGES 17 TO 21

AG Opinion - The Attorney General was asked whether TYC youth between the ages of 18 and 21 could be detained in juvenile detention facilities. The AG concluded that a TYC youth who was arrested for, charged with or convicted of a criminal offense could be detained in a juvenile detention facility but only if not placed in the same compartment with a juvenile and only if not permitted to have regular contact with a juvenile.

If however, a TYC youth is not arrested for, charged with or convicted of a criminal offense, but perhaps is being held on a technical parole violation, then he or she can be detained in a juvenile detention facility the same as any juvenile.

Achieving Excellence in Detention Advocacy:
Guidelines for Juvenile Defenders to Provide Zealous Advocacy at Initial Detention Hearings

Prepared by NJDC for the Annie E. Casey Foundation's
Juvenile Detention Alternatives Initiative

These guidelines are designed to assist defenders in assessing their advocacy at the traditional, three-part initial hearings held in most jurisdictions: arraignment, the probable cause determination, and the detention hearing. In some jurisdictions, these are all collapsed into a single hearing. Because many jurisdictions still allow children to waive their right to counsel and/or plead at the initial hearing, some questions allude to these practices.

This tool is divided into two main sections. The first presents a series of questions about juvenile defense practice. The second section reviews policy and system procedures that may be impacting practice. Taken together, these two sections should provide defenders with the information necessary to identify practice gaps. Please contact NJDC with questions, suggestions, and technical assistance needs to move ahead. We look forward to working with defenders to enhance detention practice.

Consider the three most recent cases in which you represented a child at an initial detention hearing. For each of these cases, consider the following questions. Use these questions to think about which elements of detention advocacy you regularly provide to your child clients. The more of the above elements you can provide in each case, the more effective your advocacy will be. Please circle the response that best reflects how much you agree or disagree with each statement.

I. Practice Issues

Meeting My Client

Establishing the Attorney-Client Relationship

1. I had an opportunity to meet with my client prior to the detention hearing.	Yes	No
Comments:		
• We were able to meet in a private location where our conversations could not be overheard.	Yes	No
Comments:		
• I spoke with my client without parents, guardians or any other people or parties present.	Yes	No
Comments:		

2. I ascertained my client's expressed interests with respect to detention.	Yes	No
Comments:		
• I advocated zealously for my client's expressed interests both in the pre-hearing team meeting and in court before the judge.	Yes	No
Comments:		
3. I had a full initial interview with my client using age-appropriate language.	Yes	No
Comments:		
• I discussed attorney-client confidentiality rules with my client.	Yes	No
Comments:		
• I discussed my ethical duty to zealously advocate for my client's expressed interests, even when my client's expressed interest conflicts with my sound legal advice or with my own personal judgment.	Yes	No
Comments:		
• If my client was detained, I asked how my client was doing in detention.	Yes	No
Comments:		
• If my client was detained, I asked whether there was any evidence of harassment or mistreatment of my client in detention.	Yes	No
Comments:		
• I explained my client's right to remain silent.	Yes	No
Comments:		
• I explained what information is relevant to the detention decision under my state's law.	Yes	No
Comments:		
• I asked my client about his or her prior record.	Yes	No
Comments:		
• I asked my client about his or her school attendance and performance.	Yes	No
Comments:		
• I asked about my client's home life.	Yes	No
Comments:		

• If my jurisdiction requires drug tests, I asked my client the results of his or her drug test.	Yes	No
Comments:		
• We discussed the possible levels of detention (i.e., secure versus non-secure), and my client's opinion on possible alternatives to detention.	Yes	No
Comments:		
• I explored specific reasons that argue against detention, including vulnerability, age, special needs, health concerns, suicidal tendencies, etc.	Yes	No
Comments:		
• I ascertained my client's objectives for my legal representation.	Yes	No
Comments:		
• I told my client what to expect at the upcoming hearing, including an explanation of the purpose of the hearing and of the roles of the judge, the prosecutor, and the probation officer.	Yes	No
Comments:		
• I ascertained my client's choice about whether to admit or deny the charges.	Yes	No
Comments:		
• I asked about my client's version of events to prepare for the probable cause hearing, to get names, contact information, descriptions, or hang-out locations of potential witnesses, and/or to begin investigation planning.	Yes	No
Comments:		
• I discussed attorney-client confidentiality rules with my client.	Yes	No
Comments:		
4. I gave the client my contact information and explained how s/he can reach me.	Yes	No
Comments:		

5. I brought and got my client's signature on the appropriate release forms to allow me to subpoena my client's educational, medical, mental health, and other records.	Yes	No
Comments:		
6. Since I am not appointed with enough time to meet with each client individually, I have enlisted the aid of a social worker, law student, or legal intern to interview clients for me I am appearing in court.	Yes	No
Comments:		

Preparing for the Hearing

Knowledge of Applicable Detention Law and Alternatives

1. I am aware of the current case law, statutes, and court rules that explain when a child can be detained in my jurisdiction.	Yes	No
Comments:		
2. I am aware of current research on the harmful effects of detention, both generally, and specifically with respect to the places where my client is likely to be held.	Yes	No
Comments:		
3. I am aware of the current community-based alternatives to detention.	Yes	No
Comments:		

Taking a Comprehensive Client History

1. I have investigated my client's school history.	Yes	No
Comments:		
2. I have investigated my client's extracurricular activities, hobbies, and other strengths.	Yes	No
Comments:		

3. I have asked about my client's special needs, mental health and health issues, including the names and doses of any prescribed medications.	Yes	No
Comments:		
4. I have considered, in consultation with my client, family members to whom my client could be released.	Yes	No
Comments:		
5. I have considered, in consultation with my client, other community-based programs, besides family members, to whom my client could be released.	Yes	No
Comments:		
6. I have considered, in consultation with my client, community-based services that my client believes could help my client stay in the community.	Yes	No
Comments:		
7. I am aware of other family and community contacts willing to participate in the child's release plan in ways besides allowing my client to be released into their custody.	Yes	No
Comments:		
8. I contacted these people and/or programs before the hearing.	Yes	No
Comments:		

Preparing My Client's Family

1. I explained the purpose of the hearing to my client's family.	Yes	No
Comments:		
2. I explained my role as the child's counsel to my client's family.	Yes	No
Comments:		
3. I spoke with my client's family before the hearing to ascertain whether they were willing to have my client released to them.	Yes	No
Comments:		

• If the parent/guardian initially would not allow my client to return home, I explored with the parent/guardian realistic conditions under which the parent/guardian might allow the child back in the home.	Yes	No
Comments:		
• If the parent/guardian would not allow my client to return home, I explored with the parent/guardian other people to whom my client could be released.	Yes	No
Comments:		
• If the parent/guardian would not allow my client to return home, I explained to the parent/guardian the potential effects and consequences of detention.	Yes	No
Comments:		
4. If the parent/guardian did not come to the hearing, I tried to contact the parent/guardian to ascertain why the parent/guardian did not attend the hearing, and whether the parent/guardian would allow my client to return home.	Yes	No
Comments:		
5. If the parent/guardian could not come to the hearing, I explored having the parent/guardian appear by phone.	Yes	No
Comments:		
6. I prepared the parent/guardian for the possibility that the judge would solicit the views of the parent/guardian in open court concerning my client's school behavior, home behavior, and overall social functioning.	Yes	No
Comments:		

Obtaining Discovery

1. I requested, received and reviewed the risk assessment instrument (RAI).	Yes	No
Comments:		
• I discussed the RAI score with the intake probation officer prior to the hearing.	Yes	No
Comments:		
2. I requested, received and reviewed the police report(s) in my client's case.	Yes	No
Comments:		

3. I requested, received and reviewed a copy of any existing prior delinquency, truancy, and/or dependency history of my client.	Yes	No
Comments:		

Representation At The Hearing

Defender Arguments at the Hearing

1. If the detention hearing was not scheduled within the time required by my jurisdiction's statute or rules, I filed a motion to have my client released.	Yes	No
Comments:		
2. If I was not able to speak with my client before the detention hearing, due to untimely appointment to the case or any other reason, I requested that the case be continued for a few hours to allow me to consult with my client.	Yes	No
Comments:		
3. If I did not receive the RAI before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
• If no one except the intake probation officer had access to the RAI before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
4. If I did not receive or was not afforded an opportunity to review my client's prior record before the hearing, I raised this point at the hearing.	Yes	No
Comments:		
5. If I did not receive or was not afforded an opportunity to review the police report(s) in my client's case, I raised this point at the hearing.	Yes	No
Comments:		

Probable Cause Hearing

1. If the government sought to detain my client, I marshaled all available evidence to argue against a finding of probable cause.	Yes	No
Comments:		

• If the jurisdiction has probable cause hearings where testimony is taken, I cross examined the government's witnesses, and used the witnesses' testimony to argue against probable cause.	Yes	No
Comments:		
• If the jurisdiction has probable cause hearings where testimony is taken, and I calculated that there was little to no chance of winning the probable cause hearing, I used the probable cause hearing as a discovery tool.	Yes	No
Comments:		
• If the jurisdiction has probable cause hearings in which the court determines probable cause based on an officer's affidavit, I tried to argue against probable cause based on, *inter alia*, a deficient attestation, a lack of evidence concerning one or more of the elements of the charged offense, or an insufficient nexus between my client and the offense.	Yes	No
Comments:		
• I argued to hold the prosecution to the required burden and standard of proof.	Yes	No
Comments:		

Detention Hearing

1. I argued that detention cannot be imposed unless the relevant statutory criteria, as explicated by current case law, were met.	Yes	No
Comments:		
2. I argued that my client should be placed in the least restrictive environment possible.	Yes	No
Comments:		
3. I argued research on the risks and harmful effects of detention for children.	Yes	No
Comments:		
4. I presented and argued for a detention alternative, tailored and responsive to the judge's concerns about the individual client, complete with specific names and contact information of people willing to be involved in the youth's release conditions, and detailed representations concerning how my client will be monitored.	Yes	No
Comments:		

5. If the jurisdiction allows the presentation of evidence to support arguments in aid of the detention decision, I called witnesses or introduced other evidence to support my arguments against secure detention or in favor of alternatives.	Yes	No
Comments:		
6. I advocated for my client's expressed interests, even when the child's expressed interests conflicted with my reasoned legal advice or with my own personal judgment about what might be in the child's best interests.	Yes	No
Comments:		

Making a Record

1. At the end of the hearing, I requested that the judge prepare and issue written findings and an order.	Yes	No
Comments:		

For jurisdictions in which juveniles can waive counsel or plead guilty at the initial hearing

2. I asked to be assigned to represent the child, at least to put on the record that the child's waiver of counsel and plea were entered without the benefit of counsel.	Yes	No
Comments:		
3. I asked the court to inform the child that, should the child change his or her mind, I or my office would be available to represent him or her.	Yes	No
Comments:		
4. I stated for the record that I had not had a chance to investigate the matter or subpoena relevant documents before my client pled.	Yes	No
Comments:		

After The Hearing

Keeping the Client and the Client's Family Informed

1.	If my client was released, I clearly explained the conditions of release to my client and my client's parent/guardian and provided information about how to satisfy the conditions.	Yes	No
	Comments:		
2.	If my client was released, I got contact information for my client, including my client's name, address, phone number, and similar information for my client's relatives and friends.	Yes	No
	Comments:		
3.	If my client was detained, I made sure that my client's family knew where and how to visit my client.	Yes	No
	Comments:		
4.	If my client was detained, I visited my client within 48 hours of the detention decision.	Yes	No
	Comments:		
5.	If the detention center is so far away that I could not travel there within 48 hours, I contacted my client by phone within 48 hours.	Yes	No
	Comments:		
6.	I scheduled my next in-person meeting with my client.	Yes	No
	Comments:		
7.	I discussed with my client, in detail and using age-appropriate language, what happened at the hearing, and answered any questions my client had.	Yes	No
	Comments:		
8.	I explained to my client, in detail and using age-appropriate language, the next steps in the case.	Yes	No
	Comments:		

Challenging the Decision to Detain

1.	If my client was detained, I filed a motion to reopen the probable cause hearing in cases where I subsequently received exculpatory information.	Yes	No
	Comments:		
2.	If my client was detained, I filed a motion to reconsider the detention decision in cases where I subsequently discovered favorable information (e.g., the charge is reduced, or a new placement option emerges).	Yes	No
	Comments:		
3.	If the judge's detention decision was influenced by a lack of community resources, I challenged this as an unlawful basis for the decision.	Yes	No
	Comments:		
4.	If the judge's detention decision appeared to be influenced by the parent's unwillingness to allow the child to return home, I challenged this ground for the decision, and considered, in careful consultation with my client, filing a dependency petition.	Yes	No
	Comments:		
5.	I informed my client of the right to appeal the detention decision.	Yes	No
	Comments:		
6.	If my client wished to appeal, I followed the procedural steps needed to secure the right to an appeal.	Yes	No
	Comments:		
7.	I handled the appeal or transitioned the case to another attorney.	Yes	No
	Comments:		
8.	I considered petitioning for an extraordinary writ (habeas corpus, mandamus, or prohibition) to obtain the release of a client who was wrongfully detained.	Yes	No
	Comments:		

We look forward to hearing from you about how this tool has helped inform or change detention practice in your site. We would also like your suggestions about other areas of detention advocacy, both inside and outside the courtroom, that should be included in this tool, as well as ways to make these *Guidelines* more useful to juvenile defenders.

II. Policy Considerations

This section of the *Guidelines* reviews policy and systemic issues that may impact your detention practice. Think about which elements of detention advocacy you did not or could not provide to your juvenile clients.

1. If you could not provide a service, what were the barriers to your representation?

2. How would you characterize those barriers?

3. Are they systemic (e.g., excessive caseloads, insufficient supervision, insufficient non-legal resources like support staff, inadequate compensation, social workers, and experts), or technical (e.g., lack of training opportunities in juvenile-specific practice), or do they result from tradition (e.g., no one files motions to reconsider because no one ever has)?

4. What are the sources of those barriers – your office, state laws or rules, local habits, your court system, or something else?

Drawing Strength from the Defender Community

5. If you could have provided a service, but did not, what were the reasons?

6. What barriers do you need to overcome, and how will you do so?

7. What resources can help you to serve your clients better?

8. Consider the following avenues. Can you, as defenders:

• Keep and share a regularly-updated list of the current community-based alternatives to detention, with contacts at each facility and phone numbers?	Yes	No
• Regularly update and share model motions to reopen, or to reconsider, or motions arguing the conditions of the local detention center?	Yes	No

• Convene regular case review meetings with defenders in other jurisdictions?	Yes	No

Juvenile Court Policies and Procedures

Are there ways for you, as a defender charged with protecting your clients' due process rights, to improve juvenile court policies and procedures for your clients?

Could you, as a defender:

• In jurisdictions where children are allowed to plead after waiving counsel, coordinate with your colleagues to make sure a defense attorney is present and ready to counsel a child who wishes to plead after waiving counsel before the child pleads?	Yes	No
• In jurisdictions where children are allowed to plead at the initial hearing, begin a practice of stating on the record you have not had a chance to investigate the matter or subpoena relevant documents before the client pled?	Yes	No
• If you were in the courtroom when a child waived the right to counsel, could you, before the waiver colloquy, ask the court for a brief pass to allow you or one of your colleagues to advise the child about the advantages and disadvantages of waiving counsel outside of the presence of the court and of the child's parents?	Yes	No

Detention Process Issues

As a defender, are you meaningfully engaged in the detention hearing?

Could you, as a defender:

• Organize training on the RAI in each of the jurisdictions in which you practice?	Yes	No
• Adopt, with the permission of your division supervisor, a system to review detention cases more rigorously and more frequently than release cases?	Yes	No
• Make sure that defenders are on the RAI subcommittee?	Yes	No

Please adapt this diagnostic tool to the practices of your jurisdiction:

Does your jurisdiction's statute hold that criminal procedure does not apply at detention hearings? If it does, what does that mean for you to advocate zealously at detention hearings?

Does your jurisdiction's statute forbid the introduction of evidence at detention hearings by defenders? If it does, brainstorm how you can get information that is favorable to your client before the court.

NJDC is available to work with defenders to ensure that these guidelines lead to juvenile defenders' being engaged in meaningful reform of detention practice. Please do not hesitate to contact us.

Thank you.

For more information, please contact the National Juvenile Defender Center at 202.452.0010 or at inquiries@njdc.info.

National Juvenile Defender Center

1350 Connecticut Avenue NW, Suite 304
Washington, DC 20036
Phone: 202.452.0010
Fax: 202.452.1205
www.njdc.info

CHAPTER SIX – JUVENILE DETENTION

THIS CHAPTER DEALS EXCLUSIVELY WITH THE DENTENTION OF A CHILD IN THE JUVENILE JUSTICE PROCESS

SECTION 54.01

TEXAS FAMILY CODE

creates a right to a detention hearing

before a juvenile court judge,

referee/master or detention magistrate

INTAKE DETENTION AND RELEASE DECISIONS

If …….

- **case** is **referred** to juvenile court
- **child** is **not released** by the police
- **child** must be physically **taken to the detention facility**
- responsibility for **releasing or detaining** the child becomes a **decision of intake or probation officers**

PRESUMPTION IN FAVOR OF RELEASE

53.02(a) requires…….

the Intake officer to release a child unless detention
is required by one of the six circumstances in **53.02(b)**

53.02(b)…..

1) The child is likely to abscond or be removed from the jurisdiction of the court.
2) Suitable supervision, care, or protection for the child is not being provided.
3) There is no parent, guardian or custodian who can return the child to court.
4) The child may be dangerous to himself or others.
5) The child has been previously found to be delinquent.
6) The child is charged with a firearms offense - MANDATORY

FIREARMS OFFENSES

EXCEPTION TO…….

POLICE RELEASE IN 52.02 and INTAKE RELEASE IN IN 53.02

53.02(f) (1999)

- a child who is alleged to have engaged in delinquent conduct
- and to have used, possessed, or exhibited a firearm
- in the commission of the offense
- **SHALL** be detained
- until the child is released at the direction of a judge

Police and Intake officers are permitted to contact a judge for authorization to release, which can be done by telephone. Any judicial officer may authorize release of a child taken into custody for an offense involving a firearm.

DETENTION HEARINGS: SCHEDULING AND NOTICE

If child not released
Intake should automatically schedule a hearing

TIME LIMITS

54.01 requirements for detention hearings

54.01(a) provides:

- a detention hearing without a jury shall be held **promptly**
- not later than the second ***working*** day after the child is ***taken into custody***
- if a child is detained on a Friday or Saturday,
  then the first ***working*** day after the child is ***taken into custody***

- If a detention hearing can be held sooner, it should be.

FIREARMS OFFENDER
IN THE COUNTY JAIL

If the child is detained in a county jail
under the firearms statute,
then a fast-track detention hearing must be scheduled

54.01(p) requires:

- a detention hearing **MUST** be held
- not later than 24 hours ***excluding*** weekends and holidays
- of when the child was ***taken into custody***

NOTICE TO PARENTS

ORAL NOTICE IS AUTHORIZED

54.01(b) provides:

- *reasonable* notice of the detention hearing should be given
- *oral* or *written*
- stating the *time, place and purpose of the hearing*
- to the *child* and,
- to *parents, guardian or custodian, if they can be found*
- oral notice is authorized
- no formal citation of summons required

Notification should be attempted as soon as the hearing time is known

FILING THE PETITION

53.04(a) requires:

- petition be filed *"as promptly as practicable"*
- does not require a petition be filed before the INITIAL detention hearing

54.01(p) allows:

The prosecutor has 15 or 30 working days (depending upon the offense) ***after*** the initial detention hearing in which to file a petition

- *30* days if offense is *capital murder, first-degree felony or aggravated controlled substance felony*
- *15* days for *all other offenses*

DETENTION HEARING PROCEDURES

WAIVER OF INITIAL HEARING

54.01(h) provides:

- ***initial*** detention hearing ***may not*** be waived
- ***subsequent*** detention hearings ***may*** be waived in accordance with the requirement of **51.09** (waiver provision).

51.09 provides:

> unless a *contrary intent* clearly appears elsewhere in this title, any right granted to a child by this title…may be waived

In 1995, the legislature decided the waiver of the initial detention hearing is the expression of a "contrary intent" that overrides the general power to waive.

RIGHT TO ATTORNEY

The child has a right to an attorney at the detention hearing

54.01(b) provides

"prior to the commencement of the detention hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent

54.01(d) provides

"if no parent or guardian is present at the detention hearing, the court shall appoint counsel or a guardian ad litem for the child"

51.10(c) provides

"if the child was not represented by an attorney at the detention hearing… and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney"

DETENTION HEARINGS WITHOUT COUNSEL

51.10(c) provides:

- better to hold a prompt hearing without counsel than to postpone the hearing until an attorney can be provided

54.01(n) allows:

- an attorney appointed to represent a child following a detention hearing without an attorney may request on behalf of the child, a ***de novo detention hearing***

- request must be made not later than the ***10th working day after the date the attorney*** was appointed

- the new hearing must be held not later than the second working day after the request

PRIVILEGE AGAINST SELF-INCRIMINATION

54.01(b) requires:

court inform the parties of the child's
right to remain silent
with respect to any allegations
of delinquent conduct
or conduct indicating a need for supervision

54.01(g) provides:

no statement made by the child at the detention hearing
shall be admissible against the child at any other hearing
the child has the right not to speak,
but if he chooses to speak,
what is said can be used only
for the purposes of the detention hearing

HEARING BEFORE JUVENILE DISTRICT COURT JUDGE

The juvenile has the right to have the detention hearing before the juvenile district court judge. **51.014(g), 54.01 (l), 54.011(a), 54.01(a)**

- Parties must waive the designated juvenile court judge.

  54.01(l), 54.10(b)

- If waived, hearing must be conducted within 24 hours.

  54.01(l)

RECORDING PROCEEDINGS

54.01(b) provides:

All judicial proceedings under this chapter
except detention hearings
shall be recorded by stenographic notes or
by electronic, mechanical, or other appropriate means.

Upon request of any party,
a detention hearing ***shall*** be recorded.

An audio tape recording is sufficient.

ADMISSIBLE EVIDENCE

A detention hearing will be relatively informal.

54.01(c) provides:

The court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses.

If the report method is used, a copy of the report must be provided to the child's attorney before the hearing begins.

The child is permitted, but not required, to testify or make an unsworn statement at the detention hearing.

Reliable and relevant non-privileged information, even if it is technically hearsay or would otherwise be inadmissible in a jury trial, should be permitted.

Parents may testify.

DETENTION HEARING
PROBABLE CAUSE

CONSTITUTIONAL REQUIREMENTS

PROBABLE CAUSE

- Required by the Fourth Amendment
- Determined by a neutral judicial officer, rather than a prosecutor (*Gerstein v. Pugh*, 420 US 103, 95 S.Ct. 854 (1975)
- Based upon any reliable information such as representations of the prosecutor or even a police offense report

PROBABLE CAUSE NOT REQUIRED

- If the person was arrested upon an *arrest warrant* based on a judicial finding of probable cause
- If child is arrested under a *directive to apprehend* issued by a juvenile court judge under **52.015**

FAMILY CODE REQUIREMENT

WHO CAN MAKE THE DECISION ?

53.01(a) requires:

Determination of probable cause

Must be made by the “intake officer, probation officer,
or other person authorized by the court”
as part of the preliminary investigation of the case.

Not sufficient to comply with *Gerstein* and *Moss*
because it is not a judicial determination

A decision by a referee/master would qualify
because his or her determination of probable cause
is a recommendation to the judge, who has power to accept or reject it.

THE 48-HOUR REQUIREMENT FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE

Gerstein required:

- judicial determination of probable cause
- made *promptly* after an arrest without a warrant
- but did not define *promptly*

PROMPTLY = 48 HOURS

Riverside v. McLaughlin

If a child is not released, a judicial determination of probable cause:

- must be made within 48 hours
- of the time he or she was *taken into custody*
- **INCLUDES** weekends and holidays
- based on written or oral presentations of information to the judge or referee
- no formal hearing required

METHODS OF DETERMINING PROBABLE CAUSE

A judge or referee can determine probable cause:

1) Witnesses with knowledge of the facts
2) Witness can testify based upon what others have told him (hearsay)
3) Prosecutor or probation officer can make an unsworn statement
4) Prosecutor or probation officer can write a report as to the facts he has been told or read from an offense report
5) Judge or referee can examine the police offense report

No particular formality is required so long as the determination is based upon a reasonably reliable factual basis.

FREQUENCY
OF
PROBABLE CAUSE DETERMINATIONS

ONE DETERMINATION OF PROBABLE CAUSE IS SUFFICIENT

NOT NECESSARY FOR A NEW DETERMINATION AT SUBSEQUENT HEARINGS

The finding of probable cause should be reflected
in a written finding that is filed in the papers of the case

FAMILY CODE REQUIREMENT
PROBABLE CAUSE

54.01(o) codifies the constitutional requirement
of a prompt determination of probable cause

Probable cause…..
Is there a reasonable suspicion to believe
that a child, taken into custody
without an arrest warrant or a directive to apprehend,
has engaged in delinquent conduct,
conduct indicating a need for supervision,
or conduct that violates an order of probation
imposed by a juvenile court?

The court or referee must make the finding within 48 hours,
including weekends and holidays,
of the time the child was taken into custody

FAILURE TO MAKE A PROBABLE CAUSE DETERMINATION

Failure to find probable cause:

- not grounds for setting aside a later conviction
- not grounds for requiring dismissal of charges

Remedy :

- File a writ of habeas corpus contending that the child is being detained in violation of his or her Fourth Amendment rights due to absence of a probable cause determination.

- District Court hearing the writ petition could order the child's release or could permit the State the opportunity show the existence of probable cause and if it is shown, deny release.

If the probable cause determination is not made
when required by federal and Texas law,
the child's detention becomes illegal.

DETENTION AND RELEASE CRITERIA

53.02(b) – criteria for detention and release by Intake
54.01(e) – criteria for detention or release by a judge or referee

IDENTICAL STATUTES EXCEPT:
53.02(b) prohibits Intake from releasing a firearms offender

PRESUMPTION:
The law creates a presumption
that the child should be released

UNLESS ONE OR MORE OF FIVE GROUNDS
FOR DETENTION EXIST

DETENTION AND RELEASE CRITERIA

54.01(e) provides detention and release criteria:

1) child is likely to abscond or be removed from the jurisdiction of the court;

2) suitable supervision, care, or protection for him
is not being provided by a parent, guardian, custodian, or other person;

3) child has no parent, guardian, custodian, or other person
able to return him to the court when required;

4) child may be dangerous to himself or
may threaten the safety of the public if released; or

5) child has previously been found to be a delinquent child
or has previously been convicted of a penal offense
punishable by a term in jail or prison
and is likely to commit an offense if released.

NO RIGHT TO BAIL

The Juvenile Justice Code does not recognize
a right to bail,
nor does it assert that such a right does not exist.
It is silent on the subject.

CONDITIONS OF RELEASE

54.01(f) provides:

Release may be conditioned on requirements reasonably necessary to insure the child's appearance at later proceedings

Conditions of the release:

1) must be in writing
2) copy furnished to the child

The range of conditions that can be imposed
is limited only by the requirement
that they be related to likelihood of appearance at trial

DETENTION HEARING ORDERS
REQUIRING PARENTAL COOPERATION

CHAPTER 61 TEXAS FAMILY CODE
PARENTAL RIGHTS AND RESPONSIBILITIES

AUTHORIZES….

a judge, referee, or detention magistrate,
upon conditional release of a child from detention,
to order "that the child's parent, guardian, or custodian
present in court at the detention hearing,
engage in acts or omissions
specified by the court, referee, or detention magistrate
that will assist the child in complying with the conditions of release."

This order can be enforced by contempt.

RELEASD OF EXPELLED CHILD IN JJAEP COUNTY

53.02(e) and 54.01(f):

require conditions of release to include referral to a JJAEP

In a county with a populace greater than 125,000,
which is required to operate a
Juvenile Justice Alternative Education Program,
an Intake or judicial release of a child who was expelled,
must include the condition
that the child immediately attend the JJAEP program.

DETENTION ORDERS AND THEIR REVIEW

54.01(h) provides:

- the initial detention order
- extends to the conclusion of the disposition hearing, if there is one,
- but no longer than 10 WORKING days
- further detention orders may be made at subsequent detention hearings

INITIAL DETENTION HEARINGS
CAN NOT BE WAIVED

SEBSEQUENT DETENTION HEARINGS
MAY BE WAIVED
AS LONG AS THE WAIVER IS IN ACCORDANCE WITH ***51.09****.*

Initial detention orders in all counties have a maximum life of only 10 working days.
In counties that do not have a certified juvenile detention facility, the order shall extend for no more than 15 working days.

WAIVER OF SUBSEQUENT HEARINGS

The first subsequent detention hearing :

on or before the 10th working day after the initial order

. All other subsequent hearings:

within 10 or 15 working days

. Purpose of this procedure….

requires confrontation of the need
for continued detention on a regular basis
and provides a means to get before the judge or referee,
new evidence or changed circumstances
which may bear on the detention issue

FAILURE TO HOLD SUBSEQUENT HEARINGS

If there is a failure to hold a subsequent hearing…

child must show some prejudice
as a result of the illegal detention

Remedy for the illegal detention…

writ of habeas corpus or a civil lawsuit for money damages

INTERACTIVE VIDEO RECORDING OF SUBSEQUENT DETENTION HEARINGS

54.012 authorizes:

- a subsequent, but not initial, detention hearing to be conducted by two-way television
- requires consent of the child and his attorney
- parties must be given the opportunity to cross-examine witnesses

54.012(b) requires:

- technology to provide for two-way communication of image and sound among the child, the court and other parties at the hearing

54.012(c) requires:

- recording of the hearing
- recording be preserved

THE 24-HOUR DETENTION HEARING

A WHAT IS IT:

…REQUIRED BY LAW FOR CERTAIN DETAINED JUVENILES
(non-offenders and status offenders)
…TIME BEGINS UPON ARRIVAL AT THE DETENTION FACILITY
…THE 24 HOURS EXLUDES WEEKENDS AND HOLIDAYS

N WHO IS AFFECTED: 54.011(a) and 54.011(f)

…Status offenders
…Status offenders who are detained in an adult facility
…Non-offenders

NON OFFENDERS MUST BE RELEASED AT THE 24-HOUR HEARING