

BEST PRACTICES FOR REPRESENTATION IN JUVENILE PROCEEDINGS

I. INTRODUCTION

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III. DEFINITIONS

ADJUDICATION: the process of determining whether or not the allegations contained in a juvenile court petition are proven/not proven beyond a reasonable doubt; similar to a plea hearing or bench trial in adult court.

ADMIT/DENY: a child either admits that the allegations in the petition are true or denies that they are true; similar to a plea of guilty/not guilty in adult court.

CERTIFICATION: when a juvenile court judge makes a finding after a hearing that it is appropriate to transfer a child aged twelve or over who is alleged to have committed what would be a felony in adult court to the jurisdiction of the adult court.

CHILDREN'S DIVISION: the state agency responsible for the care and protection of children in Missouri.

DELINQUENCY OFFENSE: an offense that would be considered a violation of a criminal statute in adult court.

DETENTION HEARING: when a child is taken into custody and a petition is filed, a child may be released but, if not, must be given a hearing within three days excluding weekends and holidays to determine if the child can be

released from custody or must remain in a detention facility until the conclusion of the case.

DISPOSITION: if the allegations in the petition are admitted or found to be true by the judge, evidence is presented as to the appropriate course of treatment for the child and then the judge makes a decision about what will happen to the child; similar to a sentencing hearing in adult court.

DJO: stands for Deputy Juvenile Officer and is the person assigned to investigate the child's background and make recommendations to the court regarding the appropriate treatment plan for the child; they also act as "probation officers" after adjudication if a child is placed on probation. They are the client of the prosecutor, or legal officer.

DUAL JURISDICTION: when a child has been transferred to the jurisdiction of the adult court and there has been a guilty plea or conviction before the child turns 17.5, the judge in adult court, under certain circumstances, may impose a juvenile disposition and simultaneously impose an adult criminal sentence, the execution of which would be suspended until completion of the juvenile disposition.

DYS: stands for the Division of Youth Services which is the state agency responsible for the care and treatment of children who have been committed to their custody after an adjudication in court.

FAMILY COURT COMMISSIONER: a lawyer appointed by a majority of circuit judges in first class counties to hear cases in juvenile court; the findings and

recommendations of a commissioner must be adopted by a judge in order to become final.

GAL: stands for Guardian ad Litem and is a person appointed by the court in some circumstances to represent a child and make recommendations as to what is in the best interests of the child.

INFORMAL ADJUSTMENT: prior to the filing of a petition, juvenile court staff may determine that a child's actions can be dealt with appropriately without a petition being filed by the court.

JUVENILE OFFICER: the person who makes the decision regarding whether or not to bring the allegations against the child before the court; this person may or may not be an attorney and, if not, will be represented by an attorney in court, possibly the local prosecutor.

MANDATORY REPORTER: a person required by statute to report suspected abuse and/or neglect of a child to the Children's Division.

MOTION TO MODIFY: if a child has been adjudicated and is under juvenile court supervision, any additional allegations raised against the child during the time that he/she is on supervision will be filed as a Motion to Modify. This is similar to a probation violation in adult court.

MOTION FOR REHEARING: the child, parents or guardians have the right to file a motion to have the case re-heard by a judge within fifteen days of receiving notice of the findings of a family court commissioner.

PETITION: the document filed with the court containing the allegations being made against a child; similar to the charging documents in adult court.

STATUS OFFENSE: an allegation that can only be made against a child such as truancy, runaway or behavior injurious to himself or others.

XII.1 General Role and Duties of Defender

XII.1-1 Duties of Defender

- a) The Defender's duty is to provide competent, diligent and zealous advocacy to protect the client's procedural and substantive rights.
- b) The Defender must be skilled in juvenile defense issues. The Defender must be knowledgeable about adolescent development and the special status of youth in the legal system. The Defender must be familiar with relevant statutes, case law, court rules, and special collateral consequences for juvenile offenders.
- c) The Defender should avoid unnecessary delays in the proceedings, especially when the client is being held in detention.
- d) The Defender should litigate the client's case vigorously and should hold the juvenile office to its burden. The Defender must always advocate for the protection of the client's due process rights and ensure that any court-ordered services are provided in the least restrictive setting.

XII.1-2 Representation of Client's Interests

- a) The Defender's primary and fundamental responsibility is to advocate for the client's expressed interests.
- b) The Defender may not substitute his or her own view of the client's best interests for those expressed by the client.

c) The Defender may not substitute a parent's interests, opinions or views of the client's best interests for those expressed by the client.

d) Where the Defender believes that the client's directions will not achieve the best long-term outcome for the client, the Defender must provide the client with the information necessary to help the client understand the potential outcomes and offer the client an opportunity to reconsider his or her directions.

XII.1-3 Specialized Training Requirements

a) Specialized and comprehensive training, preparation and education are required to provide effective representation of young people. At a minimum, the Defender should:

1) Be familiar with and utilize state juvenile delinquency statutes, criminal statutes, case law, rules of procedure, rules of evidence, and rules of appellate procedure that impact juvenile practice;

2) Be knowledgeable about the key aspects of developmental science and other research that informs specific legal questions regarding capacities in legal proceedings, amenability to treatment, and culpability and recognize when to consult experts in these fields;

3) Be properly trained in effective adolescent interviewing techniques as well as have specialized skill in communicating with young clients in a developmentally appropriate and effective manner;

4) Seek out training in the specialized area of juvenile law and be up to date regarding possible consequences affecting juvenile clients and changes in juvenile law; and

5) Be proficient with the operations of, and laws regarding, institutions that serve children, including schools, social service agencies and mental health agencies in their jurisdictions.

XII.1-4 Scope of Representation

a) The Defender must consult with the client and provide representation at the earliest stage possible. The Defender should make an effort to work with court and law enforcement personnel to gain access to the client as early as possible.

b) Once a juvenile has been determined to be eligible for MSPD services, the Defender must maintain continuity of representation in all phases of the process, including arraignment, pre-trial detention hearings, discovery, trial, pleas, disposition and informal adjustment if appropriate.

c) The Defender should be familiar with alternatives to court involvement, such as diversion or mediation programs and informal adjustment, and propose alternatives when appropriate.

d) The Defender should represent a client at probation violation (motion to modify) hearings.

e) In all cases, the Defender should advise the client of his or her appellate rights. When appropriate, the Defender should take on the appeal of the client's case or assist the client in identifying and obtaining other appellate counsel.

f) The Defender should find qualified individuals/attorneys to represent the client in ancillary proceedings that coincide with the delinquency charge or locate social workers, educational advocates.

XII.1-5 Case and File Management

The Defender has an obligation to keep and maintain a thorough, organized, and current file on each case. Documentation should be clear, up-to-date, and orderly, permitting a successor attorney to readily locate all information.

XII.1-6 Recognition of Mental Health Issues

a) The Defender shall investigate the client's mental health when it appears that the client may have a legally significant mental disease or defect impacting competency, waiver of rights, responsibility, diminished capacity, or sentencing.

b) The Defender must be able to recognize when a client's ability to participate in his or her own defense may be compromised due to developmental immaturity, mental health disorders, or developmental and intellectual disabilities.

c) The Defender must be versed in the rules, statutes and case law governing the issue of juvenile competence to stand trial.

d) The Defender must consider the impact that a finding of incompetence or lack of responsibility will have on the client and his or her case and consider whether or not there are other ways to resolve the case that would be more acceptable to the client.

XII.2 Role of Defender in the Attorney-Client Relationship

XII.2-1 Role of Defender at Initial Client Contact

a) The Defender must provide a clear explanation, in developmentally appropriate language, of the role of both the client and the Defender, and demonstrate commitment to the client's expressed interests. The Defender must elicit the client's point of view and encourage the client's full participation.

b) The Defender must meet the client in a confidential setting within 7 days of being assigned to the case or prior to the next court hearing, whichever comes first.

c) The initial interview should be in person in a private setting, away from the client's parent(s) or other people, to maintain privilege and assure that the client knows that the communication is confidential. If the client is detained, the Defender must visit the client in detention and ensure that the meeting occurs in a setting that allows for a confidential conversation.

d) The Defender must support the client's participation in the defense by providing information and advice in developmentally appropriate language which will help overcome any barriers and take the time to ensure that the client has fully understood the communication.

XII.2-2 Explain the Role of the Parties

- a) The Defender should explain and reinforce the structure of the attorney-client relationship, particularly with regard to how responsibility is allocated and decisions are made.
- b) The Defender should explain to the client the role of the other parties in the juvenile court system e.g. the judge, family court commissioner, juvenile officer, deputy juvenile officer and guardian ad litem if appropriate.

XII.2-3 Explain Confidentiality Issues

- a) The Defender must explain that the client's private conversations with the Defender are protected from disclosure to anyone, including the client's parent(s), the juvenile officer, the deputy juvenile officer and the court. The Defender must also explain that the attorney-client privilege is deemed waived if anyone else, including a parent, is present during a conversation between the client and the Defender.
- b) The Defender must work with the client to understand what kind of information that the client is comfortable with the Defender sharing with others and make sure that the client understands that the Defender is not a mandatory reporter of abuse and neglect.
- c) Even if the Defender has a signed release of information, the Defender must exercise discretion in revealing the contents of mental health, medical, social and educational reports that bear on the client's history or condition. In general, the Defender should not disclose data or conclusions contained in such reports unless the client provides informed consent and, even then, only if doing so will advance the client's stated objectives.
- d) Even if the Defender has a signed release from a parent, the Defender must obtain informed consent from the client before requesting reports from outside institutions.
- e) If proceedings are scheduled to be public, the Defender should consult with the client regarding making a motion to close the proceedings to the public.

f) The Defender must be aware of statutes and case law regarding when a court may disclose the client's arrest and court records to other agencies.

XII.2-4 Maintain Regular Contact with the Client

a) The Defender must have contact with the client between each court appearance. If the client is in detention, the Defender must visit on a regular basis. If the client is not in detention, the Defender must arrange phone contacts and face-to-face meetings. Regardless of the client's custodial status, the Defender must provide the client with a phone number at which the Defender can be reached.

b) The Defender must promptly respond to telephone calls and other types of communication from the client, ideally within one business day.

c) At every stage of the proceeding, the Defender must work to provide the client with complete information concerning all aspects of the case.

XII.2-5 Parents and Other Interested Third Parties

a) The Defender must inform the client and third parties (e.g. parents, other family members, clinicians, teachers, counselors, service providers and other interested adults) that the Defender is required to treat private communications with the client as confidential. The Defender is required to maintain confidentiality even when third parties are providing services to the client.

b) The Defender must be familiar with case law, statutes, and ethical rules regarding all disclosures to third parties.

c) The Defender should explain to the client the need to share information with third parties and specify the information to be shared, the purpose of sharing it, and the possible consequences. The Defender must obtain permission from the client prior to communicating certain information to third parties. The Defender may not permit a third party, including a parent, to interfere with the Defender's assessment of the case. The Defender may not substitute a third party's wishes for those of the client.

d) When a third party, including a parent, is trying to direct the representation of the client, the Defender should inform that person of the Defender's legal obligation to represent only the expressed interests of the client. In the event of a disagreement, the Defender is required to exclusively abide by the wishes of the client.

XII.2-6 Challenge Disparate Treatment of Vulnerable Clients

a) The Defender must strive to protect clients from individualized or systemic disparate treatment, especially with regard to clients from populations that face a greater likelihood of unequal treatment. The Defender should challenge bias impacting these clients and argue for individualized responses to meet their specialized needs.

b) The Defender must be aware of data demonstrating that certain populations face disproportionate contact with the juvenile system, particularly African-American youth, Latino youth, Indigenous youth, and youth who are categorized by their sexual orientation or gender identity/expression.

c) The Defender must inform his or her advocacy with empirical data and research on vulnerable clients and maintain a conscious awareness of potential biases within their jurisdiction acting against the client.

d) When other system stakeholders manifest any bias toward the client, the Defender should raise these issues in court and make a record of any exhibited bias.

XII.2-7 Challenge Inherent Systemic Conflict

a) The Defender should take steps to challenge the inherent conflict that exists in the juvenile justice system when the judge supervises court personnel who appear before the judge as parties to the case.

XII.2-7 Addressing Custodial Mistreatment

- a) The defender should address and challenge custodial mistreatment on a case-by-case basis.

XII.3 Role of Defender from Arrest to Initial Proceedings

XII.3-1 Representation of Client Prior to Initial Proceedings

- a) When representing a client prior to his or her initial hearing is possible, the Defender must move expeditiously to protect the client's interests by:
 - 1) Protecting the client from making incriminating statements or acting against the client's own interests;
 - 2) Performing a comprehensive initial interview with the client;
 - 3) Negotiating charging alternatives with the juvenile officer; and
 - 4) Advocating for the client's release under conditions most favorable and acceptable to the client.

XII.3-2 Advocacy for Non-Adjudicatory Solutions

- a) In appropriate cases, and when consistent with the client's expressed interest, the Defender should advocate for informal solutions prior to a petition being filed.
- b) The Defender should be aware of the existence, operation and effectiveness of programs in their jurisdiction such as informal adjustment and any other diversion alternatives that could result in the client's case being handled informally or diverted outside of the court system.
- c) The Defender must be aware of the juvenile records that may result from the client's participation in any non-adjudicatory solution and how these records may impact the client's housing, educational, and employment opportunities, as well as the immigration status of the client and family.

d) The Defender must be aware of any entry requirements for informal and treatment alternatives which may elicit an admission of involvement in an alleged incident. The Defender should take steps to protect the client's right to remain silent during the informal adjustment process. The Defender must be conscious of the potential admissibility of such statements in court, especially if a petition could still be filed against the client.

e) The Defender must be able to recommend the best available options to the client and be able to advocate for those options to court personnel.

XII.3-3 Preparation of Client and Parent for Interviews by Court Personnel

a) When the Defender has the opportunity to prepare the client prior to being interviewed by court personnel, the Defender must warn the client, using developmentally appropriate language, that anything that the client says to court personnel may be shared with the court and may be used for several purposes. The Defender should inform the client not to discuss anything about the alleged incident with court personnel, but to present a respectful demeanor and attitude at the interview.

b) When possible, the Defender should prepare the client's parents for interviews by court personnel and warn the parents that anything said to court personnel can be used against the client and shared with the court.

XII.3-4 Role of Counsel at Detention Hearings

a) The Defender should make every effort to have meaningful contact with the client prior to the detention hearing.

b) The Defender must be versed in state statutes, case law, detention risk assessment tools, and court practice regarding the use of detention for young people. The Defender should be aware of and able to invoke research on the adverse impacts of detention on youth. The Defender should independently investigate the alternatives to secure detention and review these with the client. The Defender should be familiar with and have visited the jurisdiction's detention facilities.

- c) Preparation for a detention hearing requires consultation with the client and when appropriate, the client's parent(s) or guardian. The Defender should conduct as much investigation as possible before the hearing to obtain materials that can be used to support a request for release.
- d) The Defender should review any detention risk assessment findings, checking for inaccuracies or mitigating factors that may affect the accuracy of risk scores assigned to the client.
- e) The Defender should zealously argue for pre-trial release of the client if doing so is consistent with the client's wishes and should present the court with alternatives to detention and a pre-trial release plan. The Defender has an obligation to raise any factors, such as medical, psychological, or educational needs, that may be adversely affected by detention as long as the client permits their disclosure.
- f) The Defender should challenge the juvenile officer's information regarding the alleged offense or the client's background. If the Defender believes that probable cause does not exist to detain the client, the Defender should object to the probable cause finding made by the court and request a hearing on the issue.
- g) The Defender should advocate for the removal of all physical restraints from the client.
- h) The Defender should request that the detention proceedings be recorded if they are not being recorded.
- i) The Defender should ensure that all courtroom proceedings are being conducted in age appropriate language so that the client is able to understand what is happening in court.

XII.3-5 Rehearing of Detention Decision

- a) The Defender should be aware of the court rule that requires the court to review an order of detention every 30 days. The Defender should advise the client of the rule.

- b) If the circumstances surrounding the necessity of the client's detention change, the Defender should advise the court that the circumstances have changed and request that the client be released from detention if that is consistent with the wishes of the client.
- c) The Defender should consider the merits of appealing the detention order if it appears that the client will be detained for an extended period of time.

XII.4 Role of Counsel Pre-Trial

XII.4-1 Trial Preparation

a) The Defender should conduct the same type of trial preparation in juvenile cases as is required in adult cases. The Defender should investigate the case, file the appropriate pre-trial motions, negotiate for a better outcome, request a continuance if necessary, advise the client of collateral consequences and preserve the record for appeal including requesting written findings from the court.

XII.4-2 Client's Social History

- a) With the client's consent, the Defender should investigate the client's social history in a timely manner. This includes acquiring documentation and interviewing persons with information relevant to the client's background and/or character.
- b) The Defender must be familiar with the rules and procedures for obtaining and using information about the client during all stages of the proceedings, including the use of release forms and subpoenas.
- c) The Defender should seek records concerning the client's mental health, involvement with the child welfare system, educational background and/or intellectual abilities, as well as documents detailing school achievement and discipline, positive community or extracurricular activities, employment, and prior police and court involvement.
- d) The Defender should seek to incorporate principles of developmental science into the client's social history.

XII.5 Role of the Defender at Adjudicatory Hearings

XII.5-1 Preparation of Client for Adjudicatory Hearing

a) Prior to the adjudicatory hearing, which includes both trial and pleas of guilt, the Defender should communicate with the client in developmentally appropriate language regarding what the client should expect to happen before, during and after the hearing. The Defender should discuss with the client how and when the client may communicate with the Defender and the court during a hearing. The Defender should provide the client with clear instructions regarding appropriate courtroom attire and conduct.

XII.5-2 Role of the Judge

a) Juvenile court trials are bench trials with the judge playing the dual role as the finder of fact and the interpreter of the law. The Defender should always be aware of the points at which the judge is acting or should be acting as either the finder of fact or the arbiter of the law and adjust strategy accordingly.

b) The Defender must always be conscious that all information in pre-trial hearings and pleadings may influence the judge. The Defender should make every effort to shield the judge from information detrimental to the client prior to the fact-finding hearing, including requesting that pre-trial reports be placed under seal if appropriate.

c) When pre-trial information has potentially biased a judge's view of the client's culpability sufficient to interfere with the client's due process rights, the Defender should consider moving for the recusal of the judge.

d) The Defender should consider submitting the appropriate instructions from MAI-CR4d to the court to help guide the judge during deliberations.

XII.5-3 Guilty Pleas

a) The Defender should take steps to ensure that any communication between the court and the client for purposes of a guilty plea is done in developmentally appropriate language and conducted to ensure that the client understands the proceedings.

XII.6 Role of Defender Regarding Disposition

XII.6-1 Role of the Defender

a) The Defender must work with the client to develop an individualized disposition plan that is the least restrictive and that best meets the client's expressed needs. The Defender should strive to have a written plan whenever possible. The Defender must present this disposition plan in court and zealously advocate on the client's behalf for such an outcome.

b) The Defender should be familiar with court rules, statutes and case law regarding the client's right to an evidentiary hearing at the disposition phase of the proceedings, including the ability to call experts or other witnesses whose testimony could have bearing on the appropriateness of the disposition options.

c) The Defender must ensure that the facts the court considers in reaching its decision on disposition are made part of the record, as well as any objections to the disposition plan and any disputed findings of fact that serve as the basis of the court's decision.

d) The Defender must ensure that the client's obligations under the disposition plan are spelled out as specifically as possible in the disposition order.

XII.6-2 Familiarity with Disposition Alternatives

a) The Defender should be aware of all available disposition options around the state and be able to advise the client about the various options.

- b) The Defender must be familiar with disposition sentencing guidelines and cognizant of the operation of determinate sentences, indeterminate sentences, and the short/long- term consequences of dispositions, including consequences for clients under the care of the Children's Division.
- c) The Defender should identify the least restrictive options available that can be provided in conjunction with probation, restitution, community service, or suspended dispositions.
- d) The Defender should be aware of potential out-of-home placement options, including group homes, foster care, residential programs, and treatment facilities.
- e) The Defender should visit programs and facilities when possible to acquire knowledge from which to draw upon when counseling or advocating for a client.

XII.6-3 Client Interaction Regarding Disposition

- a) The Defender must actively engage the client in discussions of available dispositions and should not recommend a disposition to the court without the client's consent.
- b) The Defender must prepare the client in developmentally appropriate language for interviews with probation officers or others who are developing a social history report, as well as for psychological or other evaluative testing ordered by the court or requested by the Defender. The Defender should strategically consider whether or not to attend any interviews.
- c) The Defender must advise the client about standard disposition conditions the court is likely to impose and be prepared to challenge their imposition if they are unrelated to the offense or the client's needs.
- d) The Defender must inform the client of his or her right to speak at the disposition hearing, the potential benefits and detriments of doing so, and the proper decorum and behavior for such hearings.
- e) The Defender should confer, when appropriate, with the client's parents or the parent's attorney if represented to explain the disposition process and

inquire about the parents' willingness to support the client's proposed disposition. The Defender must ensure that the parents understand their role in this process.

XII.6-4 Administration of Assessments and Evaluations

- a) The Defender must be aware of the different assessment tools and other evaluative instruments used to determine appropriate dispositions. The Defender must be prepared to challenge the validity and reliability of risk assessment tools, both facially and as applied to the client, where appropriate.
- b) The Defender must understand the mechanics of such instruments and keep abreast of challenges to their application to the client.
- c) The Defender should consider involving expert witnesses to challenge the use of, validity of and conclusions drawn from risk assessments and/or other evaluative instruments for disposition decisions.
- d) The Defender should strategically consider whether or not to attend any testing sessions.

XII.6.5 The Disposition Report (Social Investigation)

- a) In jurisdictions where a juvenile officer or deputy juvenile officer provides a written report to the court prior to disposition, the Defender must discuss the importance of the report with the client, request a copy of the report prior to the hearing, and involve the client in the review of the report.
- b) The Defender should be aware of statutory and case law regarding the timing of disclosure of the report, as well as the procedures for obtaining the report prior to the hearing.
- c) The Defender should request a copy of any records regarding the client that are in the possession of the person charged with preparing the report.
- d) The Defender should strategically consider whether or not to provide records and/or information about the client to the person charged with

preparing the report. Records and/or information should only be provided with the client's permission.

e) The Defender should promptly investigate all sources of information used in the report whenever possible in order to be able to challenge the information at the disposition hearing.

f) When the Defender and the client disagree with the report and its recommendations, the Defender should move to preclude the admission of the report on evidentiary and/or substantive grounds.

XII.6-6 Independent Disposition Plan

a) When practicable, the Defender should consider preparing a written disposition plan that the defender and the client agree will best achieve the goals of the client. The plan should address any anticipated concerns that the judge may have and point out to the court how the plan will contribute to the client's rehabilitation. The Defender should be prepared to offer evidence in support of the proposed plan.

XII.6-7 Final Disposition Plan and Review

a) The Defender must advise the client and, if the client consents, inform the parents when appropriate of the nature, conditions, obligations, duration and collateral consequences of the disposition.

b) The Defender must notify the client of the right to move to reconsider the disposition order.

c) The Defender should obtain a written disposition order and review it to make sure that it accurately reflects the court's verbal order.

d) The Defender must advise the client regarding when a court may disclose the client's arrest and court records to other agencies as well as the timing and procedure for sealing or expungement of the client's records.

e) The Defender should advise the client regarding what agencies will have access to his or her records and how that access may affect the client's ability to receive education and services.

f) The Defender should advise the client of his or her rights in the event that the client is arrested again, is accused of violating the conditions of the disposition order or has issues regarding restitution.

XII.6-8 Obligations to Client Awaiting Placement

a) The Defender has continuing obligations to a client who is awaiting placement pursuant to a disposition order. The Defender should pursue efforts to keep the client in the least restrictive environment prior to placement.

b) The Defender must help to ensure that the client is receiving the interim educational, physical, mental health or other services that he or she needs while awaiting placement.

c) The Defender must help to ensure that the client's placement is not unnecessarily delayed.

XII.7 Role of the Defender After Disposition

XII.7-1 Right to Appeal

a) Once the client has been adjudicated and a final order has been entered, the Defender must advise the client of the right to appeal the order. In jurisdictions where commissioners are used to hear cases, the Defender must advise the client of the right to a rehearing before a circuit judge.

b) The Defender must inform the client of the steps necessary to preserve the right to appeal or rehearing, the process involved, and the potential consequences of an appeal or rehearing.

XII.7-2 Defender's Obligations Regarding Appeals

- a) When the client chooses to appeal, the Defender must file a notice of appeal and preserve the client's right to an appeal. If an MSPD attorney will be representing the client on appeal, the Defender must then notify the appellate attorney that the notice of appeal has been filed.
- b) If the client decides not to appeal, the Defender must explain to the client the consequences of the decision not to appeal.
- c) If the client is unable to decide whether to appeal, the Defender should err on the side of preserving the client's right to appeal.

XII.8 Motions to Modify

XII.8-1 Violation of Disposition Order

- a) Upon notice from the court and a finding of indigency, the Defender should represent a client at any hearing on a Motion to Modify to determine if the client has violated the disposition order of the court. The Defender should provide zealous representation at the hearing.
- b) The Defender should be aware of the standard of proof for determining if the client has violated the court's order.
- c) The Defender should investigate the client's alleged failure to abide by the court's order, including whether the deputy juvenile officer and designated social services providers have met their obligations to the client, and advocate accordingly.
- d) The Defender should offer mitigating circumstances if they exist to explain the client's failure to abide by the court's order.
- e) The Defender should consider proposing appropriate changes to the court's disposition order.

f) When the basis of the violation is an alleged new offense, the Defender should consider requesting that the court delay the hearing pending the outcome of the new offense.

XII.9 Certification and Adult Prosecution

XII.9-1 Role of the Defender

a) The Defender must be familiar with relevant statutes and case law regarding the interplay between juvenile and adult prosecution, including presumptions in favor of or against keeping youth in juvenile court and the burden of proof necessary to overcome such a presumption. The Defender must be aware of the timing and process of certification hearings and required findings for transfer of jurisdiction to adult court. In jurisdictions where the Defender handling the certification hearing will also represent the client in adult court, the Defender must also be aware of adult criminal court rules, sentencing guidelines, and rules of evidence.

b) The Defender must be aware that a client can only be certified on an offense that would be a felony if committed by an adult and that Section 211.071 RSMo requires that the court hold a certification hearing on specific offenses enumerated under the statute. The Defender should be aware that actual certification of a client to adult court is never mandatory under Missouri law.

c) The Defender must be aware that Section 211.071 RSMo sets out the following criteria to be considered when determining if a client should be certified to adult court:

1) The seriousness of the offense alleged and whether the protection of the community requires transfer to the court of general jurisdiction;

2) Whether the offense alleged involved viciousness, force and violence;

3) Whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;

4) Whether the offense alleged is a part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code;

- 5) The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions and other placements;
- 6) The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition and pattern of living;
- 7) The age of the child;
- 8) The program and facilities available to the juvenile court in considering disposition;
- 9) Whether or not the child can benefit from the treatment or rehabilitative programs available to the juvenile court; and
- 10) Racial disparity in certification.

The Defender should also attempt to challenge probable cause and the strength of the juvenile officer's case at the certification hearing. The Defender should be aware that *State v. Nathan*, 404 S.W.3d 253(2013) does not support a probable cause challenge, but the Defender should be prepared to argue that the inability to challenge probable cause at a certification hearing violates the due process rights of the client.

d) The Defender must be aware of the extent to which adult facilities provide juveniles with legally mandated safety protections, medical and mental health care, rehabilitative treatment and mandatory education services to which they are entitled.

e) The Defender must pursue specialized training, including in the areas of child and adolescent development, to ensure the requisite level of knowledge and skill to represent a client at a certification hearing or in adult court, and be familiar with developmental issues that may affect competence to stand trial.

f) When the client will be tried in adult court, the Defender has the responsibility of educating the adult court stakeholders, including new defense counsel if applicable, of the special developmental considerations of youth. The Defender must use child development research and case law supporting the lessened culpability of adolescent offenders in arguing intent, capacity, and the appropriateness of rehabilitative sentencing options.

XII.9-2 Client Interaction Regarding Certification

a) The Defender must use developmentally appropriate language to fully advise the client of the procedures that may lead to adult prosecution and the various ways that the state could proceed.

b) The Defender should discuss with the client, at a minimum:

1) The factors the court uses to determine whether or not to certify the client to adult court;

2) The use of physical or character evidence aimed at substantiating or mitigating the need for certification;

3) The pros and cons of participating in diagnostic and treatment programs prior to certification that may inform the court's decision as to whether juvenile or adult court is more appropriate;

4) The overwhelming disadvantages along with the limited advantages of proceeding in adult court;

5) The potential to negotiate a plea that would allow the client to remain in juvenile court or receive a more lenient sentence in adult court; and

6) The potential, where it exists, of a change of counsel should the client be certified to adult court.

c) The Defender must explain to the client that, if certification to adult court occurs, the client will be considered an adult for prosecution of any subsequent offenses if the client pleads guilty, gets convicted or the case is dismissed after arraignment at the circuit court level. The Defender should explain to the client that, if the client is certified and no charge is issued in adult court or the client is acquitted or the charge is dismissed prior to arraignment at the circuit court level, the client will be considered to be a juvenile for the purposes of any subsequent offenses.

XII.9-3 Investigation for Certification

a) The Defender must conduct timely and thorough investigation of the circumstances of the allegations and the client's background in any case where the client may be certified.

b) The Defender must understand what factors weigh for and against certification and must investigate the case accordingly.

c) The Defender must quickly compile all evidence and information bearing on the certification decision, including police reports and other discovery related to the alleged offense, case law and research regarding adolescent development, and social history of the client, and develop cogent arguments that support the client's expressed interests. The Defender should be aware that *State v. Nathan*, 404 S.W.3d 253(2013) does not support the right to have discovery regarding the offense, but the Defender should be prepared to argue that lack of discovery regarding the offense violates the due process rights of the client.

d) After explaining the pros and cons of jurisdiction in juvenile court versus adult court to the client in developmentally appropriate language, the Defender must advocate for the client's expressed interests regarding jurisdiction with court personnel and other stakeholders in advance of a certification hearing.

XII.9-4 Advocating Against Certification

a) When the client has expressed an interest in remaining under juvenile court jurisdiction, the Defender must work to prevent certification to adult court.

b) The Defender's pleadings during the stages that determine the court of jurisdiction must specify with particularity the grounds for opposing adult prosecution, including, but not limited to, the sufficiency of the offense to warrant adult prosecution, the juvenile officer's failure to establish probable cause, the client's amenability to rehabilitation in the juvenile system, the client's incompetence to proceed in adult court, and any other appropriate criteria. The Defender should be aware that *State v. Nathan*, 404 S.W.3d 253(2013) the ability to challenge sufficiency or probable cause, but the Defender should be prepared to argue that the inability to challenge sufficiency and probable cause at a certification hearing violates the client's rights to due process.

c) The Defender must seek to obtain and review any report developed by the Deputy Juvenile Officer prior to the hearing.

d) At the hearing, the Defender must:

1) Challenge any defect in the charges that would deprive the adult court of jurisdiction;

2) Challenge the inherent conflict that exists in the juvenile system when the judge supervises the court personnel;

3) Attempt to challenge probable cause and the sufficiency of the evidence;

4) Raise any state or federal constitutional challenges to adult prosecution;

5) Present all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court, including the client's amenability to treatment and the availability of appropriate treatment options in juvenile court; and

6) Consider the use of expert witnesses to raise the client's capacity to proceed in adult court, amenability to rehabilitation in juvenile court, and related developmental issues.

e) To preserve the client's right to appeal, the Defender must ensure that any jurisdiction-related hearing is on the record and, if the client is certified, the Defender should request written findings of fact specifying the reason(s) that the court found it necessary to certify the client.

f) If the client is certified, the Defender should try to present all facts and mitigating evidence to the prosecutor in adult court to try to convince the prosecutor that charges should not be filed.

XII.9-5 Appeal of a Certification Decision

a) The Defender should review the certification order issued by the court to determine if there are defects in the order that should be challenged. If appropriate, the Defender should notify the client in a timely manner and using developmentally appropriate language of the client's right to appeal the order. If the client wishes to proceed, the Defender should strongly consider steps to file a writ of prohibition in the appropriate court. The

Defender should take steps to keep the client from being placed in an adult institution during the pendency of the appeal.

XII.9-6 Obligations After Certification

a) The Defender should take steps after certification to protect the Fifth and Sixth Amendment rights of the client such as filing a Reverse-Miranda form with the appropriate authorities.

b) If the Defender will not be representing the client in adult court, the Defender should take the steps necessary to obtain counsel for the client as soon as possible. The Defender should work with new counsel to ensure a smooth transition for the client.

c) The Defender should be aware of Section 115.14 of the Prison Rape Elimination Act as well as the 2018 Reauthorization of the Juvenile Justice Delinquency and Prevention Act which requires that juveniles be kept separated from adult inmates in adult institutions, requires stakeholders to keep certified youth in juvenile detention centers unless findings are made by the court and take the necessary steps to make sure that the client is housed appropriately.

d) The Defender must be familiar with the laws regarding dual jurisdiction and pursue this avenue when appropriate.

e) The Defender should preserve any issues arising from the certification proceedings that could be included in any direct appeal from a conviction in adult court. The Defender who is representing the client in adult court should file a motion to dismiss the indictment/information to preserve the client's right to appeal the certification decision.

XII.10 Supervisory Responsibilities

XII.10-1 Role of the Supervisor

a) Supervisors must provide leadership and ensure that the Defender is able to effectively offer the most competent, diligent, and zealous representation

possible to protect the client's procedural and substantive rights. The supervisor's obligations include making sure that:

- 1) The Defender has regular and ongoing opportunities to receive relevant and specialized training and leadership development;
- 2) The Defender's skills and abilities are a proper match with the number and complexity of cases assigned;
- 3) The Defender receives interactive and timely feedback in the form of leadership, coaching, training, mentoring and other support;
- 4) The Defender has access to investigative and other resources; and
- 5) The Defender has back-up and support when systemic barriers interfere or conflict with the Defender's duties to clients.

b) Supervisors should support both formal and informal training opportunities and resource development on issues relevant to juvenile defense, including but not limited to:

- 1) Changes in case law, procedure, court rules, and rules of evidence affecting clients;
- 2) Vital and basic lawyering skills, such as counseling, trial advocacy, research and writing;
- 3) Advancements in the developmental sciences and other related fields affecting the law-related capacities and disposition needs of adolescents;
- 4) Changes in client demographics, disproportionate minority contact issues, sexual orientation and gender identity/expression, offending patterns, substance abuse, disposition alternatives, and institutional factors affecting clients; and
- 5) Effective rehabilitative and community-based services and how to access them.

XII.10-2 Supervisor's Obligation to Support Improved Attorney Performance

a) Supervisors should assist in attorney development by:

- 1) Creating mechanisms that allow and encourage the Defender to request assistance;

- 2) Responding to requests for assistance from the Defender in a timely manner;
- 3) Observing practice and providing timely and constructive feedback; and
- 4) Referring the Defender to employee assistance services, including mental health professionals, when necessary and appropriate.

XII.10-3 Supervisor's Obligation to Enforce Performance Expectations

a) Supervisors must promulgate, adopt and implement performance guidelines based on best practices. The Defender should be evaluated and held to the directives set forth in the guidelines. The evaluation system must clearly articulate performance expectations and afford the Defender feedback regarding performance.

XII.10-4 Supervisor's Obligation to Monitor Caseloads and Provide Resources

a) Supervisors are responsible for ensuring that high caseloads do not impede the quality of representation.

b) Supervisors should consider the Defender's knowledge, skill and experience when assigning caseloads to ensure that the Defender can provide competent, diligent and zealous representation.

c) When caseloads exceed the ability of the Defender and put quality representation at risk, breach the Defender's obligations, or interfere with the speedy disposition of charges, it is the obligation of the supervisor to intervene and address the matter with the appropriate authorities.

d) Supervisors are required to make every effort to ensure that the Defender has adequate resources to provide effective assistance of counsel.

XII.10-5 Supervisor's Obligation to Address Systemic Barriers

a) Supervisors bear some responsibility for addressing institutional barriers that impede the Defender's duty to provide zealous representation.

Supervisors should ensure that stakeholders are aware that the supervisor will challenge systemic obstacles that undermine the due process and constitutional rights of clients.

b) Supervisors, with the assistance of local Defenders, should participate in ongoing policy and reform efforts that will have an impact on the rights of juveniles or juvenile court processes.

c) Supervisors, with the assistance of local Defenders, should participate in efforts to draw attention to and change court rules, laws and processes that cause discrimination or disparate treatment of juveniles.

XII.10-6 Resources

a) Supervisors must advocate for more resources to ensure provision of high-quality juvenile defense services throughout the duration of juvenile court proceedings.

b) Supervisors and local Defenders must be aware of all resources necessary to provide effective, high-quality representation, including legal, investigative and other useful resources.

c) Supervisors and local Defenders should participate in data collection efforts on the impact of scarce resources on the ability to adequately represent clients.

d) Supervisors should participate in efforts to educate lawmakers about the unconstitutional impact of scarce resources on representation and its detrimental impact on clients.

XII.10-7 Excessive Caseloads

a) Supervisors should advocate for caseloads that do not jeopardize effective assistance of counsel and devise strategies to address the systemic problem of excessive caseloads.

- b) Supervisors should inform community members and judicial, legislative, and executive stakeholders of the breadth and scope of the problem.
- c) Supervisors should consider various strategies such as litigation to reduce or eliminate excessive caseloads.

XII.11 Collateral Consequences

XII.11-1 Inform Client of Collateral Consequences

- a) The Defender must inform the client and, when appropriate, inform the client's parent(s) or guardian, of the Collateral Consequences associated with a juvenile adjudication, including but not limited to
 - 1. Adjudications involving sex offenses
 - 2. Open records for felony offenses
 - 3. Safe School Act notification
 - 4. DNA/fingerprint records
 - 5. Certain offenses impacting housing/immigration/secondary education
 - 6. Juvenile record impacting a person's ability to join the military.
 - 7. Loss of Driving Privileges
 - 8. Impact of juvenile adjudications on credibility of future court testimony