

# Chapter 5

## Detention

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## **§ 5-1 Detention in General**

### ***The Purpose and Place of Secure Juvenile Detention in Pennsylvania***

“Secure Detention” is defined by Department of Human Services (DHS) regulations as “a type of secure care located in a temporary 24-hour living setting, in which one or more delinquent or alleged delinquent children are detained, generally in a pre-adjudication status.”<sup>1</sup> In general, the Juvenile Act authorizes the secure detention of juveniles only in facilities approved for that purpose by the Department of Human Services (DHS).<sup>2</sup>

Pennsylvania law establishes a general rule that juveniles taken into custody must be released unless they cannot be released. This rule can be inferred broadly from the general purpose clause<sup>3</sup> of the Juvenile Act—to “preserve the unity of the family whenever possible,” “separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety”—and from the narrower language of the detention provisions themselves,<sup>4</sup> which are framed as release mandates qualified by limited exceptions (“A child taken into custody shall not be detained...unless....”; “A person

taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall...release the child to his parents...unless...”; “If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless...”). When detention is necessary, the Juvenile Act and the Rules of Juvenile Court Procedure for delinquency matters clearly require that it be as brief as possible, setting up a kind of emergency timetable—a detention hearing within **72 hours**, petition filing within **24 hours** of the detention hearing, an adjudication hearing or a mandatory release within **10 days**—to ensure that end.

Except for very brief periods of temporary detention in police lock-ups for the purpose of identification, investigation or processing, the transfer or release of juveniles just taken into custody is mandatory.<sup>5</sup> A juvenile may not be detained in any facility with adults and never in a jail unless the juvenile has been charged as an adult in a criminal proceeding<sup>6</sup> or has been transferred to criminal proceedings.<sup>7</sup> (See § 6-6, “Consequences of Transfer to Criminal Proceedings.”) In addition, the Juvenile Act specifically prohibits placing a juvenile in any facility where he or she “is apt to be abused by other children.”<sup>8</sup>

### ***Detention Decision-Making Criteria***

Whether the detention decision is being made by a juvenile probation officer as a preliminary matter, or by a judge or juvenile court hearing officer at a subsequent informal detention hearing, the basic criteria for decision-making are the same.

The detention decision-making procedures should include all of the following:

- ***Jurisdictional findings.*** An intake decision-maker may not authorize detention without finding a “reasonable basis to believe that the juvenile has committed the act for which he is being detained” and “that the juvenile is not excluded from the jurisdiction of juvenile court by age or another reason.”<sup>9</sup>
- ***Probable Cause.*** A juvenile court judge or hearing officer presiding at a detention hearing may not order an alleged delinquent detained without a formal finding that the allegations are supported by probable cause and within the juvenile court’s jurisdiction.<sup>10</sup> In some counties, probable cause findings are made on the basis of police reports, while in others the direct testimony of arresting officers is required.
- ***Eligibility findings.*** The detention decision-maker—whether a probation officer making a detention intake decision or a judge or juvenile court hearing officer presiding at a detention hearing—must apply the minimum eligibility criteria in the

JCJC Detention Standards to determine whether the case meets the thresholds for detention specified there. In addition, the PaDRAI should be used by juvenile probation officers in conjunction with the JCJC Detention Standards in all cases involving new allegations of delinquency. Although a juvenile may be eligible to be admitted to secure detention under the JCJC Detention Standards, the results of the PaDRAI may well indicate that detention is not warranted.

- ***Priority consideration for non-secure alternatives.*** Even if the juvenile is eligible for secure detention, the decision-maker must consider and give preference to available “non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>11</sup>
- ***Detention alternatives should include options along the following continuum:***
  - ***Unconditional release to parents/guardians, relatives, neighbors, coaches, teachers.*** This is clearly preferred by the Juvenile Act as a general rule, and should always be considered first.
  - ***Home detention/monitoring/supervision programs.*** This set of alternative programs allows juveniles to live at home and work or attend school while awaiting hearings, but subject to intensive face-to-face supervision, curfews and other restrictions, and sometimes special conditions such as electronic monitoring. Unannounced visits and random telephone calls may be used to check compliance with program conditions. The intensity of supervision and levels of restriction can be adjusted in response to the youth’s record of compliance. Under the JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention, in-home detention pending adjudication may not last longer than 30 days. Unless electronic monitoring is used to ensure compliance, the probation officer in an in-home detention case is required to have daily contact with the juvenile or his custodian, and a minimum of one personal contact with the juvenile every 48 hours until the adjudication hearing.
  - ***Day/evening reporting centers.*** For juveniles who need more oversight than a home detention program can provide, or who

have already failed in home detention, reporting centers can provide safe, structured, staff-supervised activities on a daily basis—typically during high-crime after-school and evening hours. Although this sort of program typically costs more to operate, a bonus is that it is capable of providing services (tutoring, counseling, vocational training, etc.) to juveniles that need them.

- ***Shelter care, foster care, and other licensed facilities.*** In appropriate cases, other alternatives to detention might include placement with relatives or in facilities designed primarily for dependent children. In some areas, specialized foster care in a single-family setting is available for troubled juveniles.
- ***Documentation of basis for decisions.*** All detention decisions must be accompanied by “a contemporaneous written statement of facts and reasons” that covers jurisdictional findings, eligibility for detention, detention alternatives that were considered and rejected, and “[t]he reason or reasons why secure detention is required and alternatives are not appropriate.”<sup>12</sup>
- ***Engaging the families.*** It is important to engage families in order to help them understand decisions relating to their children as well as to elicit their input and cooperation in response to these decisions.
- ***Shared Case Responsibility with DHS/Probation.*** CYF and Probation work collaboratively to meet the multiple service needs of children that are simultaneously delinquent and dependent. This effort to meet the full spectrum of needs of youth and families is designed to facilitate better outcomes in family integrity and durable gains for youth.<sup>13</sup>

As is more fully explained in §3-2, under certain conditions, federal Title IV-E program funds are available to cover costs associated with maintaining delinquent juveniles in qualifying out-of-home placements, so long as—in the *first judicial order sanctioning the juvenile’s removal from the home*—the court formally determined that it would be “contrary to the welfare” of the juvenile to leave him at home, and that the failure to provide services to enable the juvenile to remain at home (as would ordinarily be done in a child abuse or neglect case) “was reasonable due to the emergency nature of the situation, safety considerations, and circumstances of the family.” This is true even though IV-E funds

cannot be used to offset the cost of secure detention itself—the failure to make the required findings in the detention order is a kind of “irreversible error” that cannot be corrected after the fact.

Accordingly, whenever a judge or hearing officer determines that a juvenile must be detained following an informal hearing, the secure detention order should contain formal findings to this effect.

Rule 242 requires the court to determine whether there are special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

### ***Dependent Children***

A child alleged or found *only* to be dependent may be detained only in a DHS licensed foster home or court-approved home, a DHS-licensed child welfare facility or one approved by the court, or any other suitable place approved by the DHS and designated by the Court, and may not be detained in a secure detention facility for delinquents, jail, or other facility with adults.<sup>14</sup> It is important to note that this prohibition applies to youth who are alleged or found to be dependent for “status offenses”, which are non-criminal acts that are considered a violation of the law only because of the youth’s status as a minor. Typical examples of status offenses include truancy, running away from home, violating curfew, and general ungovernability and incorrigibility. Judges should be alert and wary of attempts to pull status offenders into delinquency court. If a youth engages in these types of behaviors, the need for involvement of the county children and youth agency should be explored. Services may be available to assist the family in dealing with problem behaviors exhibited by the youth before dependency court involvement.

### ***“Dually Adjudicated” Youth***

Youth who are alleged to be or have been found to be *both* delinquent and dependent (“dually adjudicated youth”) may be detained in a licensed foster home or court-approved home, a licensed child welfare facility or one approved by the court, or any other suitable place approved by the Department of Human Services and designated by the Court, as well as in a secure detention facility.

In addition to these Pennsylvania statutory restrictions on detention, judges should be aware that the federal Juvenile Justice and Delinquency Prevention Act<sup>15</sup> also imposes secure custody restrictions, which must be observed as a condition of Pennsylvania’s participation in federal formula grant programs. These restrictions include prohibitions on

the practice of holding status offenders in secure detention or correctional facilities and on the use of jails for secure detention.

### ***Secure Detention Facilities***

Every juvenile court judge should be familiar with the detention facility used to house juveniles locally, including its capacity and utilization, its average length of stay, the quality and range of educational, medical, assessment and other services available, and the overall conditions that prevail there.

Typically, juvenile detention centers are operated by a county, although the administration of the facility could be provided by a private residential service provider under contract with the county. However, secure juvenile detention services are also offered by a few private agencies who enter into contracts with one or more counties, usually as one component of a range of residential services provided by the agency. These facilities, which typically have internal locks within the building, exterior locks and secure fencing around the perimeter of the building, are subject to DHS regulations setting minimum standards of care, security, and services.<sup>16</sup>

Judges should demand that detention facilities be safe, that they meet all necessary DHS requirements, and that they be utilized only when necessary. Regardless of how juvenile detention services are provided in a county, frequent visits by judges and juvenile probation officers to these facilities should be encouraged to ensure that the quality of care meets, and if possible exceeds, the minimum standards of care required by DHS regulations.

### ***Reducing Subjectivity in Detention Decision-Making***

Juvenile court judges are responsible for ensuring that the use of detention in their jurisdictions is kept within the limits prescribed by the law and applicable standards, that it is reserved for cases in which it is not only permissible but necessary and appropriate, and that the use of detention serves its intended purposes. Fulfilling this responsibility calls for the exercise of each of the three basic kinds of authority—bench authority, administrative authority, and community authority—entrusted to juvenile court judges.

While the Juvenile Act authorizes the secure pre- and post-adjudication detention of juveniles for brief periods, under narrowly defined circumstances, and for strictly limited purposes, secure detention usage in Pennsylvania delinquency cases has been further restricted for many years by the Juvenile Court Judges' Commission (JCJC) Standards

Governing the Use of Secure Detention under the Juvenile Act developed to guide detention decision-making throughout the Commonwealth.<sup>17</sup>

It is now widely accepted that detention decisions should be based on clearly defined, objective criteria and structured by a validated detention risk assessment instrument to ensure that the decisions are consistent as well as racially and ethnically neutral.

Whether they are presiding over detention hearings in individual cases or overseeing the detention intake process as administrators of their courts, juvenile court judges are in a position to assure that detain-or-release decision-making is fair, consistent, based on pertinent information, structured by appropriately drawn guidelines, and adequately documented.

### ***The JCJC Standards Governing the Use of Secure Detention***

The JCJC Detention Standards were originally developed for inclusion in a statewide consent decree that resolved the case of *Coleman v. Stanziani* in 1986,<sup>18</sup> and are now a condition for participation in JCJC's juvenile probation services grant program.<sup>19</sup>

Although the JCJC Detention Standards do restrict eligibility for detention, their real thrust is not so much to discourage detention in individual cases as to discourage its routine, thoughtless, unnecessary use. What the standards require above all else is that the *thought processes* leading up to the detention decision—the factors weighed, the consideration of alternatives, the grounds upon which an order to detain is ultimately based—be adequately documented.

### ***The Pennsylvania Detention Risk Assessment Instrument (PaDRAI)***

The Pennsylvania Detention Risk Assessment Instrument (PaDRAI)<sup>20</sup> was adopted in 2016 to be used by trained probation officers at the time of a request for secure detention. It measures the risk to reoffend prior to the next court hearing as well as the risk of the child failing to appear at the next hearing. The instrument uses facts about the alleged new offense, the child's current status, prior adjudications within 18 months, history of warrants for failure to appear, and history of escape from custody. These facts are weighted and scored and a decision is made based on the score.

The PaDRAI is used by juvenile probation officers in conjunction with the JCJC Detention Standards to make decisions regarding the use of secure detention and alternatives thereto. It is used primarily to guide detention decision making in cases involving new allegations of delinquency, while the JCJC Detention Standards are applicable at all stages of the juvenile justice process when decisions regarding the use of detention are made. Although a



particular juvenile may be eligible for admission to secure detention under the JCJC Standards, the administration of the PaDRAI may result in a score indicating that detention is not warranted. (See §§ 5-6 through 12)

Judges should strive to reduce subjectivity in detention decision-making by ensuring that the PaDRAI is used, that juvenile probation officers are trained regarding its use, and that local practices conform to JCJC Detention Standards.

## § 5-2 Best Practices

- The judge should ensure that all admissions to secure detention are either authorized by the court at a hearing or, if initially authorized by a juvenile probation officer, result in a hearing.
- The juvenile court judge should be familiar with the detention facility used to house juveniles locally, including its capacity and utilization, its average length of stay, the quality and range of educational, medical, assessment and other services available, and the facility's overall conditions.
- The juvenile court judge and juvenile probation officers should visit the detention facility frequently to ensure the quality of care.
- The juvenile court judge should ensure that probation officers:
  - are trained in the use of the Pennsylvania Detention Risk Assessment Instrument (PaDRAI);
  - complete the PaDRAI for every detention decision involving a new allegation of delinquency; and
  - follow the indicated decision.
- The juvenile court judge should ensure that probation officers look for alternatives to the use of secure detention whenever detention is being considered or recommended and that the results of these efforts are reported to the court.
- If the court determines that a juvenile has special needs (e.g. medications, injuries, allergies, glasses) that must be addressed while a juvenile is in detention, the juvenile probation department should be directed to follow-up with the detention facility to ensure that these needs are addressed.

- The juvenile court judge should lead discussions on a local level to develop sanction and reward policies that ensure consistent decisions by juvenile probation officers, juvenile court hearing officers and judges in responding to violations of probation. In developing these policies, the juvenile court judge should recognize that:
  - Research shows that in general rewards and incentives are more effective than sanctions in motivating offenders to change.
  - Sanctions for juveniles who violate terms of supervision should be administered in accordance with research-informed policy developed to maximize their results.
  - To be effective, sanctions should be certain, swift, and proportionate.

### **§ 5-3 Judges as Community Leaders in Matters Relating to Detention**

Juvenile court judges are uniquely positioned to educate local elected officials, law enforcement, and the community about the role and importance of juvenile detention services within Pennsylvania’s juvenile justice system, and to help ensure that these services and a continuum of alternatives are available to the court. In addition, judges should work to ensure that the detention decision-making process, and specifically the respective roles of the JCJC Detention Standards and the PaDRAI in this process, is understood.

Although juvenile detention services are not under the authority of the court, but rather are operated by the county or, less frequently, by a private service provider under contract with the county, the judge has the responsibility to call attention to any deficiencies in the availability or quality of these essential services. In this regard, juvenile court judges, and juvenile court administrative judges in particular, should review their county’s annual “Needs-Based Plan and Budget Estimate” to ensure that the county has adequately planned for detention services and alternatives. (See §§ 3-2 and 11-2.) In addition, the judge should encourage the active participation of the chief juvenile probation officer in the process leading to the development of this document.

The preamble to the JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act declares that “decisions regarding admissions to secure detention facilities must be based on a commitment to utilize the most appropriate level of care consistent with the circumstances of the individual case. When the admission of a juvenile to a secure detention facility is being considered by a judge, juvenile court hearing officer, or juvenile

probation officer, preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>21</sup>

Available alternatives to secure detention will vary from community to community. Judges and other detention decision-makers should be able to choose from a range of custody and supervision options, each calibrated to a different level of risk, and all designed to safeguard the community and ensure the juvenile’s appearance at subsequent hearings without resort to detention in a locked facility. But jurisdictions with a wide range of detention alternative options should resist the temptation to “widen the net” of social control unnecessarily, so as to catch up juveniles who can safely be released pending hearings.

***Judges should work to expand the range of useful alternatives to detention.***

Between 2006 and 2017, 10 juvenile detention centers ceased operations in Pennsylvania, and currently, only 14 juvenile detention centers are providing secure detention services within Pennsylvania’s juvenile justice system.<sup>22</sup> This reduction in the number Pennsylvania juvenile detention centers is due to a variety of factors, including the development and implementation of the PaDRAI and other evidence-based practices under the JJSES framework. While considered a positive development generally, the lack of secure detention services can be problematic, particularly in smaller jurisdictions that must rely on facilities in other counties when these services are needed.

Regardless of the size of the jurisdiction, the juvenile court judge is responsible for developing policies for the individual county relating to the use of detention beds to ensure that such detention facilities are used only for those youth requiring secure care and custody.

Judges should not passively accept the existing range of alternatives to detention. The JCJC Advisory Standards Governing the Use of Alternatives to Secure Detention require a juvenile court’s administrative judge to “determine whether alternatives to secure detention are available to the county to meet the needs of children referred to the Court.” If such alternatives are lacking or inadequate—in other words, if local youths are being securely detained unnecessarily, solely because less restrictive means are unavailable—juvenile court judges have a responsibility to work with the community to develop programs and services to meet the need. In addition to utilizing the county’s “Needs-Based Plan and Budget Estimate” to address any unmet needs, this may involve working with local elected officials to ensure that the Department of Human Services meets its statutory

responsibility to develop “in each county” programs to provide shelter care for alleged or adjudicated delinquents taken into custody.<sup>23</sup>

## § 5-4 Duration of Detention

Absolute durational limits and strict hearing timetables are imposed by the Juvenile Act, the Rules of Juvenile Court Procedure and JCJC Standards. It is the judge’s responsibility to ensure that local practice is in compliance with these mandates.

### *Pre-Adjudication Detention*

The petition must be filed with the clerk of courts within 24 hours or the next court business day if a juvenile remains detained after the informal detention hearing. The adjudication hearing (or filing of notice of request to transfer to criminal proceedings—see below) must be held within **10 days** of the filing of the petition, or the juvenile must be released.

*Secure detention of juveniles is a kind of emergency measure that is allowed only for brief periods.*

*There are only two exceptions to this adjudicate-or-release rule:*

- ***Additional detention to procure temporarily unavailable evidence.*** A juvenile may be held in detention beyond the usual deadline if the court finds that material evidence is currently unavailable despite the exercise of due diligence to obtain it, but that there are reasonable grounds to believe the evidence will become available “at a later date.”<sup>24</sup> In such a case, the court may authorize a single period ***NOT TO EXCEED 10 DAYS*** pending the delayed adjudication hearing, but only if it finds by clear and convincing evidence that release would otherwise expose the community to “a specific danger,” endanger the life of the juvenile himself, or result in his absconding or being removed from the court’s jurisdiction.<sup>25</sup>
- ***Additional detention necessitated by juvenile’s own delay.*** A juvenile’s detention may also be continued beyond the usual ten-day limit if a scheduled adjudication hearing is delayed at the request or by the conduct of the juvenile or his attorney.<sup>26</sup> This exception applies if the adjudication hearing (1) is continued at the request of the juvenile or his attorney, (2) must be postponed due to the unavailability of the juvenile or his attorney, or (3) cannot be held because “conduct by or on behalf of” the juvenile has caused a witness to become unavailable.<sup>27</sup> In such a case, the court

must state on the record that the scheduled adjudication hearing is not being held due to the juvenile, and authorize continued detention for an additional period not to exceed ten days; thereafter the detention “may be continued by the court for successive ten-day intervals” for as long as the juvenile continues to delay the adjudication.<sup>28</sup> The judge shall ensure the necessity of the delay and inquire into the reasons offered when a request is made by the juvenile’s attorney to challenge competency or secure an expert, for example. Further evaluation of the circumstances is necessary to limit delay and afford swift resolution of the allegation brought against the juvenile.

### ***Detention in Transfer Cases***

A special rule allows somewhat longer periods of detention in cases involving requests for transfer to criminal proceedings.<sup>29</sup> Because preparing for a transfer hearing can be a complicated undertaking, it was thought that the attorney for the Commonwealth should be given more time to consult with the juvenile probation officer and others regarding the proposed step.<sup>30</sup> Accordingly, the Rules provide that while the juvenile may be detained initially for up to **10** days, the attorney for the Commonwealth has until the tenth day to file a notice of intent to transfer the case. In effect, the filing of this notice “resets” the ten-day clock. After the filing of the notice, the juvenile will ordinarily be entitled to a transfer hearing within the next ten days.

Again, however, a single period of extended detention of up to **10 days** is allowed to procure temporarily unavailable evidence (including a psychological or psychiatric evaluation), meaning that a total of **30 days** of detention may be permissible before the transfer hearing. (In addition, successive **10-day** extensions are allowed when the hearing delay has been caused by the juvenile.)

### ***Detention Pending Disposition***

The Juvenile Act requires that a disposition hearing for a detained juvenile be held no more than **20 days** after the finding that that the juvenile committed the delinquent acts alleged, and specifies that this deadline may only be extended by agreement of the parties; however, it also provides that “failure to comply with the time limitations...shall not be grounds for discharging the child or dismissing the proceeding.”<sup>31</sup> Under the Rules, the dispositional hearing may be continued repeatedly, but each continuance must be for no more than **20 days**.<sup>32</sup> Following a continuance, “the court should review the juvenile’s case every **20 days** until there is a final disposition order.”<sup>33</sup>

## ***Detention Pending Placement***

Neither the Juvenile Act nor the Rules impose explicit limits on the amount of time a juvenile may be held in detention while awaiting a court-ordered placement. However, JCJC Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention require frequent reviews of such pre-placement detention, including court hearings every **30 days** and administrative reviews at **10-day** intervals in between (that is, on the 10th and 20th day following the most recent court proceeding), until the juvenile is finally placed or released.<sup>34</sup> Hearings should “review the status of the case and ... determine the need for continued secure detention.”<sup>35</sup> Administrative reviews of the case of a juvenile in pre-placement detention may be conducted by the court or a designee, without the juvenile in attendance, on the basis of information provided by the chief juvenile probation officer, and are intended “to minimize delays in the release or transfer of a juvenile by helping to ensure that individuals are carrying out their respective responsibilities related to the juvenile’s case.”<sup>36</sup> Reviews should focus broadly on “why the juvenile is being held in secure detention, whether secure detention services or an alternative thereto continue to be required and what must occur to enable the juvenile to be released or transferred to another facility.”<sup>37</sup> Documentation of each review should include an anticipated release or transfer date, the scheduled date of the next hearing or review, and any action that is to be taken in the meantime.

## ***Detention in Connection with Disposition Modification or Probation Revocation***

A juvenile may also be detained in connection with the filing (or anticipated filing within **24 hours**) of a motion for modification of a dispositional order, or the filing of a motion alleging a violation of probation.<sup>38</sup> In such a case, a detention hearing must be held within **72 hours**, and a hearing on the proposed disposition modification or probation revocation must be held within **10 days**, unless one of the standard exceptions applies (i.e. an extension of up to **10 days** to procure temporarily unavailable evidence or additional **10-day** extensions for delays caused by the juvenile).<sup>39</sup>

## **§ 5-5 Pre-Hearing Detention in General**

In all situations where pre-hearing detention is being considered, detention is not allowed unless there has been a formal judicial finding of probable cause or, in the case of an initial detention admission by a juvenile probation officer, a determination that there is

reasonable basis for believing that the juvenile committed the acts alleged and is within the juvenile court's jurisdiction.

More importantly, regardless of whether a juvenile is considered "eligible" for secure detention, the PaDRAI should be administered by a juvenile probation officer to determine whether detention should be authorized. The detention standards provide that "[i]n every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the juvenile or the community shall be given preference."<sup>40</sup>

Non-secure options that could substantially reduce the risk of flight or danger should always be considered. These options could include electronic home monitoring or GPS, home detention, community programs, placing the juvenile with a relative, and requiring the county children and youth agency to investigate and consider requesting an emergency custody order to move the child to shelter care.

Pennsylvania law<sup>41</sup> provides that—except for very brief periods of police detention for purposes of investigation, processing, transfer, or release—no juvenile may be securely detained prior to an adjudication of delinquency unless one of the following conditions applies:

- ***Detention required to protect persons/property.*** A juvenile in custody may be detained pending a hearing on a delinquency petition if such detention "is required to protect the person or property of others...." However, JCJC Detention Standards require that such preventive detention be restricted to juveniles who are charged with certain enumerated offenses or who have certain offense histories.<sup>42</sup> (See §5-7, "Detention to Protect the Community.")
- ***Juvenile requests Detention.*** Detention may also be permitted if "required to protect the person or property...of the child." Such detention is permissible under JCJC standards only at the written request of the juvenile or his attorney.<sup>43</sup>
- ***Detention required to ensure attendance at hearing.*** The law authorizes detention when it is "required...because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required...." In general, if detention is asserted to be necessary to assure attendance at a subsequent hearing, JCJC Detention Standards require a showing of actual past instances of absconding or failing to appear at hearings on the juvenile's part.<sup>44</sup> (See §5-6, "Detention to Ensure Attendance at Hearings.") However, the

standards make it clear that, if a juvenile cannot be released solely because there is no parent or other responsible adult to ensure his appearance at a subsequent hearing, then shelter care may be authorized, but not secure detention.<sup>45</sup> Moreover, the guidelines governing the administration of the PaDRAI make it clear that the various components of the PaDRAI are not to be considered separately or independently so, even though a particular juvenile would be eligible for detention “because the juvenile may abscond or be removed from the jurisdiction of the court” under the JCJC Standards, the administration of the PaDRAI may well lead to a recommendation for an alternative to detention or release.

- ***Detention in “extraordinary and exceptional circumstances.”*** A juvenile may also be detained if “an order for his detention...has been made by the court...” While this language holds out the possibility that pre-hearing detention may be permissible even when it is not necessary to safeguard the community or the juvenile or ensure the juvenile’s appearance at subsequent hearings, the JCJC Detention Standards make clear that such detention will be justified only by “extraordinary and exceptional circumstances.”<sup>46</sup> As is discussed more fully at §5-9, detention justified by a finding of extraordinary and exceptional circumstances must be accompanied by a “statement of reasons” that includes “an explanation of why an exception was warranted and why non-secure options were rejected.” Such detention “may not be authorized routinely or because non-secure alternatives do not exist in adequate numbers,” and may not be justified “solely because there is no parent, guardian or custodian able to assume responsibility [for] or adequately supervise the juvenile.”.

## § 5-6 Detention Intake and Informal Hearings

### ***Detention Authorization***

When a juvenile in custody is brought before juvenile court or detention intake, the Juvenile Act provides that “the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required” under the law governing the pre-hearing detention of children.<sup>47</sup>



## ***Informal Detention Hearing***

If the intake officer or other juvenile probation officer makes a preliminary decision to place the juvenile in detention or shelter care, an informal detention hearing must be held before a judge or a hearing officer within **72 hours** of admission.<sup>48</sup>

### ***Prior to the hearing:***

**Notice to juvenile, parents/guardians and attorney**—Notice of the detention hearing, including its date, time, place and purpose, must be provided to the juvenile and the juvenile’s parents/guardians and attorney, although in view of the tight timelines the notice may be oral.<sup>49</sup> If the juvenile’s parent, guardian or other custodian is not notified and does not appear or waive appearance at the hearing, and thereafter files an affidavit swearing to these facts, the matter must be reheard within **72 hours** of the filing of the affidavit.<sup>50</sup>

**Victim notice**—Rule 241 requires that notice of the detention hearing must also be provided to the victim by the attorney for the Commonwealth or designee.

**Subpoenas**—Although the proceeding is designated an “informal hearing,” to be held on short notice and focused on the narrow issue of the need for detention, the parties may apply for subpoenas to compel the attendance of witness or the production of papers.<sup>51</sup>

### ***At the hearing:***

**Juvenile must be present and represented**—The juvenile must be present at the detention hearing.<sup>52</sup> All juveniles are presumed indigent and shall be provided counsel.

**District attorney must be present**—The Attorney for the Commonwealth must be in attendance and present such evidence as the Commonwealth deems necessary to support the need for detention.<sup>53</sup>

#### ***Ensure that:***

- ✓ ***the written allegation has been provided to the juvenile and the juvenile’s guardian, if present;***
- ✓ ***the juvenile is represented by counsel; and***
- ✓ ***the juvenile is informed of the right to remain silent.***

**Advanced communication technology (ACT)**—Rule 242 provides that ACT may now be used for a juvenile or witness at a detention hearing unless good cause is shown otherwise.<sup>54</sup> In person attendance is preferred; however, the juvenile may be present by video or phone conference if the circumstances warrant.

**All helpful evidence is admissible**—Evidentiary standards in detention hearings are similar to those applicable in disposition hearings: any evidence that is “helpful in determining the questions presented” may be admitted and relied upon “to the extent of its probative value”.<sup>55</sup> This includes written reports, although opposing parties must be afforded an opportunity to examine and dispute any reports received in evidence.

**Record**—The juvenile or the Commonwealth may request that the hearing be recorded, in which case it must be recorded “by appropriate means”; otherwise, full minutes of the hearing must be kept.<sup>56</sup>

**Findings**—The court must determine whether (1) there is probable cause that a delinquent act was committed by the juvenile; (2) detention of the juvenile is warranted; and (3) there are any special needs of the juvenile that have been identified and that the court deems necessary to address while the juvenile is in detention.

**Court order**—At the conclusion of the hearing, the court must enter a written order, setting forth its findings.

Following an informal detention hearing, the court may also grant a rehearing at the request of any party, or on its own motion.<sup>57</sup> Generally, unless the case is assigned to a juvenile court hearing officer, the rehearing must be heard by the judge who presided over the original detention hearing or adopted the findings of the hearing officer who presided.<sup>58</sup>

## § 5-7 Detention to Protect the Community

In cases in which secure detention is being considered “to protect the person or property of others”,<sup>59</sup> JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act impose a minimum offense/offense history threshold that must be met.<sup>60</sup> In other words, in

order to reach the issue of whether detention is necessary to protect persons or property, the decision-maker must first determine that the alleged offense—or the offense in combination with the juvenile’s past history—qualifies the case for public safety detention consideration. The purpose of setting an eligibility threshold for detention is not to make detention automatic for cases that meet the threshold, but to eliminate the possibility of secure detention—at least on community safety grounds—for cases that do not.

### ***Serious Alleged Offenses***

Detention to protect the persons or property of others may be authorized, first, in cases in which the juvenile is alleged to have committed any one of a long list of serious offenses:<sup>61</sup>

***JCJC standards set a strict eligibility threshold for detention sought on public safety grounds.***

- Murder, voluntary manslaughter, or involuntary manslaughter
- Rape
- Robbery
- Robbery of a motor vehicle
- Aggravated assault
- Involuntary deviate sexual intercourse
- Aggravated indecent assault
- Kidnapping
- Arson
- Burglary of a structure that is actually occupied or adapted for overnight accommodation
- Terroristic threats
- Stalking
- Causing or risking catastrophe
- Riot
- Drug felonies
- Felonious intimidation of or retaliation against victims or witnesses
- Any offense involving the use or possession of a firearm, explosive, or other deadly weapon

Generally, any of the preceding alleged offenses would result in a PaDRAI score that would trigger a “Detain” recommendation.

## ***Other Offenses and Violations***

Public safety detention may also be authorized in cases involving juveniles charged with less serious offenses, if they have certain kinds of court involvement histories:

- ***Repeat offenders.*** A juvenile who is alleged to have committed a felony that is not enumerated above may nevertheless be eligible to be detained if he (1) is currently on probation, being supervised under a consent decree, or is otherwise under court supervision following a delinquency adjudication or (2) has been adjudicated delinquent sometime in the preceding 18 months.<sup>62</sup> However, as previously explained, the administration of the PaDRAI may well result in a score leading to a determination that secure detention is not warranted.
- ***Violators of alternative conditions.*** A juvenile who is in violation of conditions imposed as an alternative to secure detention (including house arrest, in-home detention, electronic monitoring, or a shelter care placement) may be detained regardless of the nature of the offense charged.<sup>63</sup>
- ***Probation violators.*** A juvenile who is on probation or other court supervision following a delinquency adjudication based on a felony is eligible for detention under the JCJC Detention Standards if alleged to have committed (1) any delinquent act or (2) two technical violations of the conditions of his probation or other supervision.<sup>64</sup> However, it should be noted that, as the detention standards make clear elsewhere, “preadjudication detention may never be imposed as a means of punishment or to apply sanctions.”<sup>65</sup> (See §5-11 “Detention for Probation Violators.”)

Again, the above criteria merely indicate which cases are eligible for detention. JCJC detention standards provide that non-secure alternatives to detention must still be considered in detention-eligible cases, and wherever possible “preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the juvenile or community.”<sup>66</sup>

### **§ 5-8 Detention to Ensure Attendance at Hearings**

In a case in which secure detention is being considered on the ground that “the child may abscond or be removed from the jurisdiction of the court”,<sup>67</sup> JCJC detention standards require a showing that the juvenile actually is an absconder or fugitive, has a documented

history of absconding or failing to appear for hearings, or else presents extraordinary circumstances that make absconding likely.<sup>68</sup>

***A juvenile detained to ensure attendance at hearings must generally have a documented history of absconding.***

Specifically, in order to qualify for secure detention to ensure attendance at hearings, a juvenile must:

- ***Willfully fail to appear for adjudication.*** Willful failure to respond to a summons or court order to appear at the adjudication hearing in the current case will authorize detention.<sup>69</sup>
- ***Have a record of failing to appear at previous juvenile court hearings.*** A “recent demonstrable record” of willful failure to appear at hearings in other cases will also authorize detention.<sup>70</sup>
- ***Be an absconder or have absconded previously.*** A juvenile may be detained if he is currently an absconder from a placement to which he was committed following an adjudication of delinquency, or if he has in the past absconded from secure detention or a non-secure alternative to detention while awaiting a hearing or placement.<sup>71</sup>
- ***Be a fugitive from another jurisdiction.*** A verified fugitive may be detained following a request from an official of the jurisdiction seeking his return.<sup>72</sup>
- ***Present extraordinary circumstances.*** Extraordinary circumstances that could otherwise authorize detention to prevent absconding “may include, but are not limited to, the juvenile’s age, character, mental condition, ties to the community, the nature of the juvenile’s family relationships, drug or alcohol addiction or substance abuse.”<sup>73</sup>

However, as previously explained, the guidelines governing the administration of the PaDRAI make it clear that the various components of the PaDRAI are not to be considered separately or independently so, even though a particular juvenile would be eligible for detention “because the juvenile may abscond or be removed from the jurisdiction of the court” under the JCJC Standards, the administration of the PaDRAI may well lead to a recommendation for an alternative to detention or release.

## § 5-9 Extraordinary and Exceptional Circumstances Justifying Detention

JCJC Detention standards allow for the possibility that secure detention that is not otherwise specifically authorized may be justified under “extraordinary and exceptional circumstances.”<sup>74</sup> The statement of reasons justifying such detention “must include an explanation of why an exception was warranted and why non-secure options were rejected.”<sup>75</sup>

While the standards do not indicate what these circumstances might be, it is clear that two commonly encountered situations **do not qualify** as extraordinary and exceptional circumstances authorizing detention:

***Secure detention that is not otherwise authorized by JCJC detention standards is permissible only in exceptional cases.***

- ***Lack of non-secure alternatives***—The status quo cannot be considered “extraordinary and exceptional.” A jurisdiction that simply lacks an adequate continuum of alternatives to secure detention cannot detain juveniles routinely under this exception.<sup>76</sup>
- ***No parent or other responsible guardian***—Likewise, the detention standards make it clear that secure detention cannot be authorized solely on the ground that there is no parent or other adult guardian to take responsibility for the juvenile.<sup>77</sup> In such a case, only shelter care or other non-secure temporary placements may be considered.<sup>78</sup>

Importantly, the juveniles in these situations should only be considered “eligible” for secure detention, and the administration of the PaDRAI by a juvenile probation officer would likely result in a determination that secure detention is not warranted. The Detention Standards provide that “in every situation in which secure detention is to be considered, forms of control short of secure detention which could substantially reduce the risk of flight or danger to the juvenile or the community shall be given preference.” The bottom line is that the authorization of secure detention on the basis of “extraordinary and exceptional circumstances” should be a rare occurrence in any jurisdiction.

## § 5-10 Post-Adjudication Detention

Once a juvenile has been found to have in fact committed delinquent acts, and is awaiting disposition, placement, or post-disposition review, JJC detention standards give juvenile court judges somewhat more flexibility to detain, as long as secure detention is actually necessary rather than merely convenient.

A juvenile who has been adjudicated but is still awaiting disposition,<sup>79</sup> or one who has been ordered into placement but is awaiting an opening,<sup>80</sup> may be detained in the meantime if one of the following applies:

- **Detention for an eligible offense**—If the offense substantiated at the adjudication hearing was one that would have met the threshold for pre-hearing detention on public safety grounds—even if the juvenile was not in fact detained—post-hearing detention is authorized.<sup>81</sup>
- **Risk of flight**—If the juvenile was or could have been detained to ensure attendance prior to adjudication, or would have been considered eligible in light of more recent information, post-hearing detention is authorized if the court determines it is necessary.<sup>82</sup>
- **Other factors**—If placement outside the home has already been ordered or will likely be a part of the disposition, detention may be authorized if the court finds it necessary after considering factors bearing on the strength of the juvenile’s ties to the community and the likelihood that he will flee the jurisdiction, including but not limited to:
  - The nature of the offense substantiated
  - Job/school status
  - Family relationships
  - Past and present residences
  - Age, character, mental condition, previous record, and drug or alcohol addiction or abuse
  - Whether the juvenile has previously appeared for court proceedings as required.<sup>83</sup>

In addition, any juvenile who has already been ordered into a secure residential program may be detained while awaiting placement.<sup>84</sup>

## ***Detention and Dispositional Review Hearings***

Standards governing detention before and after dispositional review hearings prohibit detention except where the juvenile:

- Is already in, or awaiting transfer to, a secure residential placement;
- Has been returned from placement for failure to adjust; or
- Otherwise qualifies for detention on the basis of a consideration of the above enumerated factors bearing on his ties to the community and flight risk.<sup>85</sup>

When a juvenile has been newly placed in detention following a probation violation or a failure to adjust in a non-secure placement, an informal detention hearing is required within 72 hours.<sup>86</sup>

### **§ 5-11 Detention for Probation Violators<sup>87</sup>**

As has been discussed elsewhere, every juvenile court should develop a sanction and reward policy that ensures consistent decisions by juvenile probation officers, juvenile hearing officers and judges in responding to violations of probation. Before determining that detention is warranted as a sanction for a violation of probation, a court should give careful consideration to what the research shows regarding effective motivation of young offenders.

### ***Promoting Pro-social Behaviors***

Pro-social behaviors are promoted through recognition, acknowledgement and affirmation of identified pro-social behaviors. Research shows that greater use of rewards and incentives as opposed to sanctions is more likely to improve offender motivation to change. Effective rewards include written notes, public praise and acknowledgement as well as lessened control including fewer drug tests or early discharge from supervision.

### ***Sanctions***

Sanctions for juveniles who violate terms of supervision should be administered in accordance with research-informed policy developed to maximize their results. Research shows that overly harsh responses to

#### ***To be effective, sanctions should be***

- ✓ ***Certain***
- ✓ ***Swift***
- ✓ ***Proportionate***



unacceptable behavior can actually be counterproductive to the desired result. An effective graduated sanction policy is one that clearly defines desired behaviors and consequences of behaviors. Delineated sanctions should be administered equitably for greater effect. A structured sanctioning response to behavior also aids in promoting consistency among staff.

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<sup>1</sup> 55 Pa. Code §3800.5

<sup>2</sup> 42 Pa.C.S. §6327.

<sup>3</sup> 42 Pa.C.S. §6301(b).

<sup>4</sup> 42 Pa.C.S. §§6325—6332.

<sup>5</sup> 42 Pa.C.S. §6326 and Rule 221, Pa.R.J.C.P.

<sup>6</sup> 42 Pa.C.S. §6302 exclusions from the definition of “Delinquent Act” (2)(i)-(iii)

<sup>7</sup> 42 Pa.C.S. §6327(d).

<sup>8</sup> 42 Pa.C.S. §6327(a).

<sup>9</sup> 37 Pa. Code §200.2.

<sup>10</sup> 42 Pa.C.S. §6332.

<sup>11</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.

<sup>12</sup> 37 Pa. Code §200.2.

<sup>13</sup> See DPW/CYF Bulletin of October 1, 2010 Shared Case Responsibility Policy and Procedures.

<sup>14</sup> 42 Pa.C.S. §6327(e).

<sup>15</sup> 42 U.S.C. 5601et seq. <https://www.ojjdp.gov/about/jidpa2002titlev.pdf>

<sup>16</sup> <https://www.pacode.com/secure/data/055/chapter3800/chap3800toc.html>

<sup>17</sup> JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act (37 Pa. Code §§200.1 through 200.9) <https://www.pacode.com/secure/data/037/chapter200/subchapAtoc.html> and Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention (37 Pa. Code §§200.101 through 200.107) <https://www.pacode.com/secure/data/037/chapter200/subchapBtoc.html> must be met if the county is to participate in the JCJC grant-in-aid program.

<sup>18</sup> Civ. A. No. 81-2215 (E.D. Pa. 1985). The consent decree in this case had the force of law through most of the Commonwealth (Philadelphia being affected by separate litigation) from 1986 through 1996.

<sup>19</sup> 37 Pa. Code Ch. 200, Subchapter A.

<sup>20</sup> [https://www.pachiefprobationofficers.org/docs/PaDRAI\\_Handbook\\_0318.pdf](https://www.pachiefprobationofficers.org/docs/PaDRAI_Handbook_0318.pdf)

<sup>21</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.

<sup>22</sup> 2017 Pennsylvania Juvenile Justice and Delinquency Prevention Plan, pp. 76-77.

<sup>23</sup> 42 Pa.C.S. §6327(f). For more information on detention reform and alternatives to detention, see the Pathways to Juvenile Detention Reform series, produced in 1999 by the Juvenile Detention Alternatives Initiative. All 13 monographs in the series are available free from the Annie E. Casey Foundation, 701 Paul Street, Baltimore, MD 21202, (410) 547-6600, [www.aecf.org](http://www.aecf.org).

<sup>24</sup> 42 Pa.C.S. §6335(a)(1).

<sup>25</sup> 42 Pa.C.S. §6335(a)(2).

<sup>26</sup> 42 Pa.C.S. §6335(f).

<sup>27</sup> 42 Pa.C.S. §6335(f).

<sup>28</sup> 42 Pa.C.S. §6335.

<sup>29</sup> Rule 391, Pa.R.J.C.P.

<sup>30</sup> Explanatory Report, Rule 391, Pa.R.J.C.P.

<sup>31</sup> 42 Pa.C.S. §6341(b). See also Rules 409(B)(1) and 510(A), Pa.R.J.C.P.

<sup>32</sup> Rule 510(B), Pa.R.J.C.P.

<sup>33</sup> Comment, Rule 510, Pa.R.J.C.P.

<sup>34</sup> 37 Pa. Code §200.103.

<sup>35</sup> 37 Pa. Code §200.103(b).

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- <sup>36</sup> 37 Pa. Code §200.107(c).  
<sup>37</sup> 37 Pa. Code §200.107(b).  
<sup>38</sup> Rule 605, Pa.R.J.C.P.  
<sup>39</sup> Rules 605(B), 610(B), and 612(B), Pa.R.J.C.P.  
<sup>40</sup> 37 Pa. Code §200.1(b).  
<sup>41</sup> 42 Pa.C.S. §6325.  
<sup>42</sup> 37 Pa. Code §200.3.  
<sup>43</sup> 37 Pa. Code §200.3(6).  
<sup>44</sup> 37 Pa. Code §200.4.  
<sup>45</sup> 37 Pa. Code §§200.1(d), 200.5.  
<sup>46</sup> 37 Pa. Code §200.9.  
<sup>47</sup> 42 Pa.C.S. §6331. See also Rule 240, Pa.R.J.C.P.  
<sup>48</sup> 42 Pa.C.S. §6332. See also Rule 242, Pa.R.J.C.P.  
<sup>49</sup> Rule 241, Pa.R.J.C.P.  
<sup>50</sup> Rule 243(A), Pa.R.J.C.P.  
<sup>51</sup> 42 Pa.C.S. §6333.  
<sup>52</sup> Rule 242(B)(4), Pa.R.J.C.P.  
<sup>53</sup> Rule 242(B)(1), Pa.R.J.C.P.  
<sup>54</sup> Rule 242(B)(5), Pa.R.J.C.P.  
<sup>55</sup> Rule 242(B)(3), Pa.R.J.C.P.  
<sup>56</sup> Rule 242(B)(2), Pa.R.J.C.P.  
<sup>57</sup> Rule 243(B), Pa.R.J.C.P.  
<sup>58</sup> Rule 243(C), Pa.R.J.C.P.  
<sup>59</sup> 42 Pa.C.S. §6325.  
<sup>60</sup> 37 Pa. Code §200.3.  
<sup>61</sup> 37 Pa. Code §200.3(1) and (2).  
<sup>62</sup> 37 Pa. Code §200.3(3).  
<sup>63</sup> 37 Pa. Code §200.3(4).  
<sup>64</sup> 37 Pa. Code §200.3(5).  
<sup>65</sup> 37 Pa. Code §200.1(c).  
<sup>66</sup> 37 Pa. Code Ch. 200, Subchapter A, Preamble.  
<sup>67</sup> 42 Pa.C.S. §6325.  
<sup>68</sup> 37 Pa. Code §200.4.  
<sup>69</sup> 37 Pa. Code §200.4(2).  
<sup>70</sup> 37 Pa. Code §200.4(3).  
<sup>71</sup> 37 Pa. Code §200.4(1) and (5).  
<sup>72</sup> 37 Pa. Code §200.4(4).  
<sup>73</sup> 37 Pa. Code §200.4(6).  
<sup>74</sup> 37 Pa. Code §200.9.  
<sup>75</sup> 37 Pa. Code §200.9(a)(2). <https://www.pacode.com/secure/data/037/chapter200/s200.9.html>  
<sup>76</sup> 37 Pa. Code §200.9(b).  
<sup>77</sup> 37 Pa. Code §200.9(c).  
<sup>78</sup> 37 Pa. Code §200.1(d).  
<sup>79</sup> 37 Pa. Code §200.6.  
<sup>80</sup> 37 Pa. Code §200.7.  
<sup>81</sup> 37 Pa. Code §§200.6(1) and 200.7(1).  
<sup>82</sup> 37 Pa. Code §§200.6(2) and 200.7(2).  
<sup>83</sup> 37 Pa. Code §§200.6(3) and 200.7(4).  
<sup>84</sup> 37 Pa. Code §200.7(3).  
<sup>85</sup> 37 Pa. Code §200.8.  
<sup>86</sup> See section relating to Probation Violations, above and “Duration of Detention,” § 5-11, below.  
<sup>87</sup> *Pennsylvania’s Juvenile Justice System Enhancement Strategy-Achieving Our Balanced and Restorative Justice Mission Through Evidence-based Policy and Practice* (Juvenile Court Judges’ Commission and Pennsylvania Council of Chief Juvenile Probation Officers, April 2012) p. 29.