

Detention

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§ 5-1 The Purpose and Place of Secure Juvenile Detention in Pennsylvania

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 in Pennsylvania delinquency cases is further restricted by Juvenile Court Judges' Commission standards developed to guide detention usage and decision-making throughout the Commonwealth.¹ 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 it actually serves its intended purposes. Fulfilling this responsibility calls

In general, juveniles taken into custody must be released unless they cannot be released.

for the exercise of each of the three basic kinds of authority—bench authority, administrative authority, and community authority—entrusted to juvenile court judges. Whether they are actually 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. And as community leaders, judges can take an active role in promoting solutions to the problems associated with overuse of detention, including expansion of detention alternatives as well as screening and services for juveniles who are currently being detained.

Before examining specific criteria for detention admissions, it is worth noting that 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 clause² 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,³ 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.

Despite these statutory restrictions—as well as a state detention funding scheme (more fully described at § 3-2, above) that is deliberately structured to discourage unnecessary and inappropriate detention usage—overcrowding in juvenile detention facilities has been a historic problem in some parts of Pennsylvania, often leading to unhealthy and dangerous conditions. (In the year 2004, for example, at least 4 of the state’s 23 juvenile detention facilities had average daily populations that exceeded their licensed capacities.)⁴ Litigation arising from these conditions led to the development of more specific, extra-statutory standards to guide decision-making on admissions to detention facilities. Originally embodied in a statewide consent decree that resolved the case of *Coleman v. Stanziani* in 1986,⁵ they eventually became the basis for the JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act.⁶

Although the JCJC detention standards do restrict eligibility for detention, as will be seen in the sections that follow, 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.

While the JCJC detention standards have now outlived the consent decree on which they were based, compliance with them is mandatory if the county is to continue participating in the JCJC’s grant-in-aid program.

§ 5-2 Pre-Hearing Detention in General

Pennsylvania law⁷ 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 charged with certain enumerated offenses or those with certain offense histories.⁸ (See §5-6, “Detention to Protect the Community.”)
- Pennsylvania law and JCJC detention standards permit secure detention only in narrowly defined circumstances.***
- *Detention required to protect the juvenile.* 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.⁹

- *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.¹⁰ (See §5-7, “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.¹¹ (See §5-5, “Alternatives to Secure Detention.”)
- *Other court-ordered detention.* 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, JCJC detention standards indicate that such detention will be justified only by “extraordinary and exceptional circumstances.”¹² (See § 5-8, “Extraordinary and Exceptional Circumstances Justifying Detention.”)

In all of these situations, detention is not allowed unless there has been a formal judicial finding of probable cause or, in the case of a preliminary 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, in all of these situations, juveniles should only be considered *eligible* for secure detention. 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 child or the community shall be given preference.”¹³

§ 5-3 Detention Intake and Informal Hearings

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.¹⁴ If the intake 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 master within 72 hours of admission.¹⁵ (Under the Crime Victims Act, the victim of the alleged delinquent act is entitled to know whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.)¹⁶

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.¹⁷ 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.¹⁸ The court may also grant a rehearing at the request of any party, or on its own motion. Generally, unless the case is assigned to a master, the rehearing must be heard by the judge who presided over the original detention hearing or adopted the findings of the master who presided.

The juvenile must be present at the detention hearing.¹⁹ At the start of the hearing, the judge or master must (1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present, and (2) inform them of the right to remain silent as to the delinquency allegations and the right to counsel (including appointed counsel if the family is indigent).²⁰ 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.²¹ They may also request that the hearing be recorded, in which case it must be recorded "by appropriate means"; otherwise, minutes of the hearing must be kept.²² 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."²³ This includes written reports, although opposing parties must be afforded an opportunity to examine and dispute any reports received in evidence.

Detaining a juvenile calls for a documented judgment that detention is both authorized by law and necessary in fact.

Detention Decision-making Criteria

Whether the detention decision is being made by an intake officer as a preliminary matter, or by a judge or master at a subsequent informal detention hearing, the basic criteria for decision-making are the same. JCJC detention standards require that detention decision-making procedures feature all of the following:

- *Jurisdictional findings.* An intake decision-maker may not authorize detention without finding a "reasonable basis to believe that the child has committed the act for which he is being detained" and "that he is not excluded from the jurisdiction of Juvenile Court by age or any other reason."²⁴ Likewise, a juvenile court judge or master 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.²⁵ 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 master presiding at an 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.
- *Priority consideration for non-secure alternatives.* Even if the juvenile is eligible for secure detention under the standards, the decision-maker must consider and give

preference to available “non-secure alternatives which could reduce the risk of flight or danger to the child or community.”²⁶

- *Documentation of basis for decisions.* Finally, 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 “the reason or reasons why secure detention is required and alternatives are not appropriate.”²⁷

As is more fully explained in Ch. 3, above, 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 master determines that a juvenile must be detained following an informal hearing, the secure detention order should contain formal findings to this effect.²⁸

§ 5-4 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.

In general, the Juvenile Act authorizes the secure detention of juveniles only in facilities approved for that purpose by the Department of Public Welfare.²⁹ Such facilities—there are currently 22 statewide, almost all county-operated, ranging in size from 8 to 130 beds—are subject to state regulations setting minimum standards of care, security, and services.

Juvenile court judges should be thoroughly familiar with the problems and possibilities of local juvenile detention centers.

In addition, except for very brief periods of temporary detention in police lock-ups for the purpose of identification, investigation, processing, transfer or release of juveniles just taken into custody,³⁰ the Juvenile Act specifically prohibits (1) detaining any juvenile in a jail or other facility with adults, unless he has been charged with or convicted of an offense (other than a summary

offense) that is excluded from juvenile court jurisdiction, or transferred there following a waiver of juvenile court jurisdiction; (2) placing a juvenile in any facility where he “is apt to be abused by other children”; and (3) placing a juvenile who is merely alleged to be dependent in a secure detention facility for delinquents.³¹

Finally, judges should be aware that the federal Juvenile Justice and Delinquency Prevention Act of 1974 imposes certain secure custody restrictions on states, including Pennsylvania, that participate in federal formula grant programs. Among others, these include prohibitions on holding mere status offenders in secure detention or correctional facilities and on detaining juveniles with incarcerated adults.³²

§ 5-5 Alternatives to Secure Detention

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 child to a secure detention facility is being considered by a judge, master, or juvenile probation officer, preference should be given to non-secure alternatives which could reduce the risk of flight or danger to the child or community.”³³

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/or 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.

Detention alternatives should include options along the following continuum:

- *Unconditional release to parents/guardians.* The option of entrusting the juvenile to the care and supervision of his family 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. Juveniles placed on in-home detention status must be notified of their right to counsel and provided with written in-home detention conditions within 24 hours. 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. The standards also provide that in-home detention cases are entitled to scheduling priority over cases in which juveniles have been released pending hearings.

- *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, 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. And staff-secure residential facilities provide 24-hour supervision—and often structured activity and services, as in a reporting center—in a group-home setting that is more wholesome than that of a secure detention center.
- *Alternative sanctioning programs for probation violators.* Crowding in juvenile detention centers is often exacerbated by the presence of large numbers of juveniles who are not awaiting hearings or placements but being sanctioned for probation violations. While the use of detention as a short-term sanction in such cases may not be precluded by law, it is not the best use of limited detention space. Accordingly, some Pennsylvania counties have developed alternative means of sanctioning such youths, reserving detention beds for those who really need them. For instance, one county program houses probation violators in a weekend residential camp, where they are required to perform community service.

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. This may involve taking measures to ensure that the Department of Public Welfare meets its statutory responsibility to develop “in each county” programs to provide shelter care for alleged or adjudicated delinquents taken into custody.³⁴

§ 5-6 Detention to Protect the Community

In cases in which secure detention is being considered “to protect the person or property of others,”³⁵ JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act impose a minimum offense/offense history threshold that must be met.³⁶ 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.

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

Violent 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:³⁷

- Murder, voluntary manslaughter, or involuntary manslaughter
- Rape
- Robbery
- Robbery of a motor vehicle
- Aggravated assault
- Statutory sexual assault
- Involuntary deviate sexual intercourse
- Sexual assault
- 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

Other Offenses

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 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 some time in the preceding 18 months.³⁸

- *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.³⁹
- *Probation violators.* A juvenile who is on probation or other court supervision following a delinquency adjudication based on a felony may be detained if alleged to have committed (1) any delinquent act or (2) two technical violations of the conditions of his probation or other supervision.⁴⁰ (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.”)⁴¹

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 child or community.”⁴²

§ 5-7 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,”⁴³ 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.⁴⁴

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.⁴⁵
- *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.⁴⁶
- *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.⁴⁷
- *Be a fugitive from another jurisdiction.* A verified fugitive may be detained following a request from an official of the jurisdiction seeking his return.⁴⁸

- *Present extraordinary circumstances.* Extraordinary circumstances that could otherwise authorize detention to prevent absconding “may include, but are not limited to, the child’s age, character, mental condition, ties to the community, the nature of the child’s family relationships, drug or alcohol addiction or substance abuse.”⁴⁹

§ 5-8 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.”⁵⁰ The statement of reasons justifying such detention “must include an explanation of why an exception was warranted and why non-secure options were rejected.”

While the standards do not indicate what these circumstances might be, they do mention two commonly encountered situations that 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.⁵¹
- *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. In such a case, only shelter care or other non-secure temporary placements may be considered.⁵²

§ 5-9 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, JCJC 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,⁵³ or one who has been ordered into placement but is awaiting an opening,⁵⁴ may be detained in the meantime if one of the following applies:

Judges have somewhat more flexibility to detain juveniles who have already been found to have committed the offenses alleged.

- *Offense eligible for public safety detention.* 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.⁵³

- *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.⁵⁶
- *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.⁵⁷

In addition, any juvenile who has already been ordered into a secure residential program may be detained while awaiting placement.⁵⁸

Standards governing detention before and after disposition 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.⁵⁹

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; see the discussion under “Duration of Detention,” § 5-10.

§ 5-10 Duration of Detention

The Juvenile Act, the Rules of Juvenile Court Procedure for Delinquency Matters and the JCJC Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention impose absolute durational limits on pre-adjudication detention of juveniles, as well as strict hearing timetables in all cases involving pre- or post-adjudication detention.

Pre-Adjudication Detention

Under the Juvenile Act, accused delinquents held in detention must either be formally adjudicated or released within a relatively short time.⁶⁰ As has already been described, the filing of a formal petition in the case of a detained juvenile must occur “within 24 hours or the next court business day” following the detention hearing.⁶¹ The adjudication hearing must then be held (or notice of request for transfer submitted—see below) within ten days of the filing of the petition, or else the juvenile must be released from detention.⁶² There are only two exceptions to this adjudicate-or-release rule:

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

- *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.”⁶³ In such a case, the court may authorize “a single period not to exceed ten days” of additional detention 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.⁶⁴
- *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.⁶⁵ 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. 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.

Detention in Transfer Cases

A special rule allows somewhat longer periods of detention in cases involving requests for transfer to criminal proceedings.⁶⁶ 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.⁶⁷ Accordingly, the Rules of Juvenile Court Procedure for Delinquency Matters provide that while the juvenile may be detained initially for up to ten 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 ten 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 ten-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 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.”⁶⁸ Under the Rules of Juvenile Court Procedure for Delinquency Matters, the dispositional hearing may be continued repeatedly, but each continuance must be for no more than 20 days.⁶⁹ Following a continuance, the court should review the juvenile’s case every 20 days until there is a final disposition order.⁷⁰

Detention Pending Placement

Neither the Juvenile Act nor the Rules of Juvenile Court Procedure for Delinquency Matters impose explicit limits on the amount of time a juvenile may be held in detention while awaiting a court-ordered placement. As a matter of fact, many of the beds in a typical secure detention facility are filled by adjudicated juveniles waiting—often for long periods—for placement beds to become available. 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 ten-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.⁷¹ Hearings should “review the status of the case and determine the need for continued secure detention.” 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 child by helping to ensure that individuals are carrying out their respective responsibilities related to the child’s case.”⁷² Reviews should focus broadly on “why the child 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 child to be released or transferred to another facility.”⁷³ 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.⁷⁴ 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 ten days, unless one of the standard exceptions applies (i.e. an extension of up to ten days to procure temporarily unavailable evidence or additional ten-day extensions for delays caused by the juvenile).⁷⁵

ENDNOTES

¹ JCJC Standards Governing the Use of Secure Detention Under the Juvenile Act (37 Pa. Code §§200.1 through 200.9) and Standards Governing Hearings and Administrative Reviews for Children Held in Secure Detention (37 Pa. Code §§200.101 through 200.107) must be met if the county is to participate in the JCJC grant-in-aid program.

² 42 Pa.C.S. §6301(b).

³ 42 Pa.C.S. §§6325—6332.

⁴ Juvenile Court Judges' Commission. *Pennsylvania Juvenile Court Dispositions 2004*. Shippensburg, PA: Juvenile Court Judges' Commission.

⁵ 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.

⁶ 37 Pa. Code Ch. 200, Subchapters A and B.

⁷ 42 Pa.C.S. §6325.

⁸ 37 Pa. Code §200.3.

⁹ 37 Pa. Code §200.3(6).

¹⁰ 37 Pa. Code §200.4.

¹¹ 37 Pa. Code §§200.1(d), 200.5.

¹² 37 Pa. Code §200.9.

¹³ 37 Pa. Code §200.1(b).

¹⁴ 42 Pa.C.S. §6331. See also Rule 240, Pa.R.J.C.P.

¹⁵ 42 Pa.C.S. §6332. See also Rule 242, Pa.R.J.C.P.

¹⁶ 18 P.S. § 11.201.

¹⁷ Rule 241, Pa.R.J.C.P.

¹⁸ Rule 243, Pa.R.J.C.P.

¹⁹ Rule 242(B)(4), Pa.R.J.C.P.

²⁰ See 42 Pa.C.S. §6333 and Rule 242, Pa.R.J.C.P.

²¹ 42 Pa.C.S. §6333.

²² Rule 242, Pa.R.J.C.P.

²³ Rule 242(B)(3), Pa.R.J.C.P.

²⁴ 37 Pa. Code §200.2.

²⁵ 42 Pa.C.S. §6332.

²⁶ 37 Pa. Code §200.1.

²⁷ 37 Pa. Code §200.2.

²⁸ See JCJC Model Secure Detention Order: Alleged/Adjudicated Delinquent Child, JCJC/ASFA-Del-2 (2/02). Available online at http://sites.state.pa.us/PA_Exec/JCJC/.

²⁹ 42 Pa.C.S. §6327.

³⁰ 42 Pa.C.S. §6326 and Rule 221, Pa.R.J.C.P.

³¹ 42 Pa.C.S. §6327(c)—(e).

³² Snyder, H., and Sickmund, M. (2006) *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

³³ 37 Pa. Code Ch. 200, Subchapter A, Preamble.

³⁴ 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.

³⁵ 42 Pa.C.S. §6325.

³⁶ 37 Pa. Code §200.3.

³⁷ 37 Pa. Code §200.3(1)—(2).

³⁸ 37 Pa. Code §200.3(3).

³⁹ 37 Pa. Code §200.3(4).

⁴⁰ 37 Pa. Code §200.3(5).

⁴¹ 37 Pa. Code §200.1(c).

- ⁴² 37 Pa. Code Ch. 200, Subchapter A, Preamble.
- ⁴³ 42 Pa.C.S. §6325.
- ⁴⁴ 37 Pa. Code §200.4.
- ⁴⁵ 37 Pa. Code §200.4(2).
- ⁴⁶ 37 Pa. Code §200.4(3).
- ⁴⁷ 37 Pa. Code §200.4(1) and (5).
- ⁴⁸ 37 Pa. Code §200.4(4).
- ⁴⁹ 37 Pa. Code §200.4(6).
- ⁵⁰ 37 Pa. Code §200.9.
- ⁵¹ 37 Pa. Code §200.9(b).
- ⁵² 37 Pa. Code §200.9(c).
- ⁵³ 37 Pa. Code §200.6.
- ⁵⁴ 37 Pa. Code §200.7.
- ⁵⁵ 37 Pa. Code §§200.6(1) and 200.7(1).
- ⁵⁶ 37 Pa. Code §§200.6(2) and 200.7(2).
- ⁵⁷ 37 Pa. Code §§200.6(3) and 200.7(4).
- ⁵⁸ 37 Pa. Code §200.7(3).
- ⁵⁹ 37 Pa. Code §200.8.
- ⁶⁰ 42 Pa.C.S. §6335.
- ⁶¹ Rule 242, Pa.R.J.C.P.
- ⁶² 42 Pa.C.S. §6335(a) and Rule 240(D), Pa.R.J.C.P.
- ⁶³ 42 Pa.C.S. §6335(a)(1).
- ⁶⁴ 42 Pa.C.S. §6335(a)(2).
- ⁶⁵ 42 Pa.C.S. §6335(f).
- ⁶⁶ Rule 391, Pa.R.J.C.P.
- ⁶⁷ *Explanatory Report*, Rule 391, Pa.R.J.C.P.
- ⁶⁸ 42 Pa.C.S. §6341(b). See also Rules 409(B)(1) and 510(A), Pa.R.J.C.P.
- ⁶⁹ Rule 510(B), Pa.R.J.C.P.
- ⁷⁰ *Comment*, Rule 510, Pa.R.J.C.P.
- ⁷¹ 37 Pa. Code §200.103.
- ⁷² 37 Pa. Code §200.107.
- ⁷³ 37 Pa. Code §200.107(b).
- ⁷⁴ Rule 605, Pa.R.J.C.P.
- ⁷⁵ Rules 605(B), 610(B), and 612(B), Pa.R.J.C.P.