

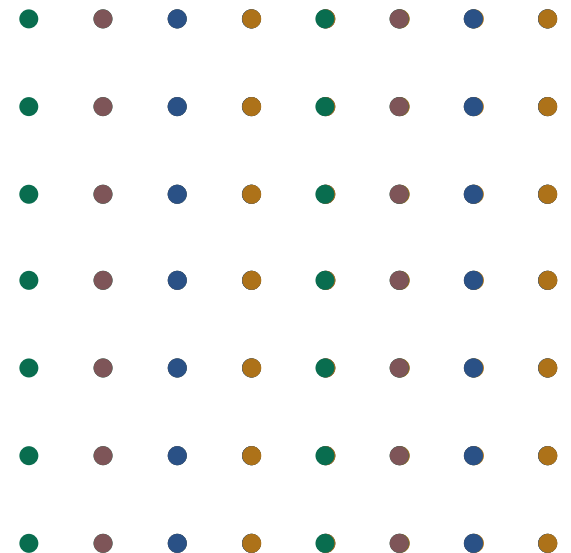
Checklist for Youth Justice Defense Counsel

Contributors:

Amanda Butler
Benjamin C. Goring
Diane Rondini
Eileen Fredericks
Gina Pruski
Jennifer Bias

This document provides the minimum basics to consider when engaging in youth advocacy. Each case has its own unique issues and challenges. It is a guide and not a substitution for your own investigation and research. Every item on the checklist is an important consideration for youth defenders. Items tend to appear in logical progression, however, attorneys need to consider the checklist in a way that aligns best with their practice and the needs of their client. This tool is only intended to provide information, not legal advice. It is the responsibility of the reader to check prevailing statutes, caselaw, local practice, studies and Rules of Professional Conduct as they are constantly changing. This checklist is current as of February 2023.

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Understanding of and Effective Adherence to the Expressed-Interest Role of Counsel

Defender Checklist

- Explain role to youth including expressed interest, limits, and confidentiality.
- Determine client's wishes for parent/guardian involvement.
- Explain role to parent/guardian if parent/guardian not present when explaining role to youth.
- Determine youth's expressed interest.
- Advocate for youth's expressed interest through the entirety of the case.
- Zealously represent youth at all stages of the proceedings.

References, Rules, and Resources

- *In re Gault*, 387 U.S. 1 (1967)
- Wis. Stat. § 938.23 Right to counsel
- SCR 20:1.2: Scope of representation and allocation of authority between lawyer and client
- SCR 20:1.4 Communication
- SCR 20:1.6 Confidentiality
- SCR 20:1.7 Conflicts of interest current clients.
- SCR 20.1.14 Client with diminished capacity
- SCR SCR 20:2.1 Advisor
- SPD Core Principles of Youth Defense Practice Principle #2

Proficiency in State and Local Delinquency Law and Procedure

Defender Checklist

- Review Chapter 938 Juvenile Justice Code.
- Contact SPD Youth Defense Practice Coordinator with any general questions.
- Contact the local SPD office Attorney Manager or juvenile law expert for local questions.
- Review youth defense practice section on SPD website.
- Review local rules and court procedure.

References, Rules, and Resources

- Chapter 938 Juvenile Justice Code
- SCR 20:1.1 Competence
- SCR 20:1.2 Scope of representation and allocation of authority between lawyer and client
- SCR 20:1.6 Confidentiality
- SPD Core Principles of Youth Defense Practice Principle #1

Non-Delinquency Topics Relevant to Representing Youth

Defender Checklist

- Consider youth diversity (race or ethnicity, LGBTQIA+, girls in system, rural/urban, primary language).
- Become familiar with local mental health services, educational services, mentoring services, placement options (both temporary and dispositional) for youth.
- Consider any educational issues that may affect representation.
- Determine if immigration may be an issue in the case.
- Determine if youth has Native American heritage.
- Be aware of potential WIAA/athletic code implications of juvenile court involvement.
- Research or reach out to SPD Immigration Practice Coordinators.

References, Rules, and Resources

- Chapter 48 Children's Code
- Wis. Stat. § 48.028 Indian Child Welfare
- Chapter 51 State Alcohol, Drug Abuse, Developmental Disabilities And Mental Health Act
- Chapters 341-351 Traffic Code
- Chapters 939-951 Criminal Code
- Wis. Stat. § 938.028 Indian Juvenile Welfare
- SCR 20:1.1 Competence
- SPD Core Principles of Youth Defense Practice Principal #6

Adolescent Development Principles that Relate to Youth Advocacy

Defender Checklist

- Consider how adolescent development may play a role in case.
- Consider client-specific reasonable child standards including the impact of race and trauma.
- Consider consulting with or hiring an expert.
- File appropriate motions; make appropriate arguments, being mindful in providing interested parties with the science but also solutions based upon the science as it relates to susceptibility to peer influence, risk taking, delaying rewards, and compliance with authority.

References, Rules, and Resources

- SCR 20:1.1 Competence
- *Roper v. Simmons*, 543 US 551 (2005)
- *JDB v. North Carolina* 564 US 261 (2011)
- American Academy of Child and Adolescent Psychiatry, (2016), *Teen Brain: Behavior, Problem Solving, and Decision Making* (https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx)
- Harvard Medical School, (web) *Juvenile Justice and the Adolescent Brain* (<https://clbb.mgh.harvard.edu/juvenilejustice/>)
- SPD Core Principles of Youth Defense Practice Principal #1

Achieving an Effective Attorney-Client Relationship

Defender Checklist

- Maintain updated contact information and communicate with youth on a regular basis.
- Determine the best way to maintain contact (i.e., text, email, cell phone).
- Safeguard client confidentiality.
- Unless extreme circumstances prevent it, meet youth in person.
- Communicate in language the youth will understand (kid-specific language, these are not mini-adults).
- Demonstrate an appreciation and sensitivity to the impact of a client's individual identity (racial, ethnic, gender, sexual orientation, immigration status, disability, etc.) on the case and the client's treatment by the system.
- Reach out to SPD Race and Ethnicity Disparity (RED) Practice Coordinator and SPD Mental Health Practice Coordinator.

References, Rules, and Resources

- SCR 20:1.3 Diligence
- SCR 20:1.4 Communication
- SCR 20:1.6 Confidentiality
- SCR 20:1.7 Conflicts of interest current clients
- SCR 20:2.1 Advisor
- Georgetown Juvenile Justice Clinic and National Juvenile Defender Center (web), Racial Justice for Youth: A Toolkit for Defenders: (<https://www.defendracialjustice.org/about-toolkit/>)
- SPD Core Principles of Youth Defense Practice Principal #3

Youth Competency to Stand Trial

Defender Checklist

- Consider competency in every case, particularly age 13 and under.
- Challenge competency as appropriate.
- With client's permission, ask parents, social workers, and other providers about concerns related to competency.
- Seek out records from schools, treatment providers, prior cases, etc. that relate to competency.
- If contested, submit appropriate records and reports, and prepare witness testimony

References, Rules, and Resources

- Wis. Stat. § 938.13(14) Jurisdiction over juveniles alleged to be in need of protection or services/ Not responsible or not competent
- Wis. Stat. § 938.295 Physical, psychological, mental or developmental examination
- Wis. Stat. § 938.30(5) Not competent or not responsible
- Wis. Stat. § 971.13 Competency
- SCR 20:1.14 Client with Diminished Capacity
- *In the Interest of A.L.*, 2019 WI 20 (2019)
- *State v. Johnson*, 133 Wis.2d 207, 221, 395 N.W.2d 176, 183 (1986)
- Thomas Grisso, (2005) *Juvenile Adjudicative Competency Instrument* (JACI)
- Grisso et al. (2003) *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities Trial Defendants*

Detention/Custody Hearing Advocacy

Defender Checklist

- Interview youth.
- With permission, contact parents and intake worker.
- Review petition/police reports for probable cause.
- Argue probable cause if appropriate.
- Review time limits and make appropriate challenges.
- Consider alternative placement options, make contact, and request attendance at hearing.
- Argue for youth's placement preference.
- Challenge burdensome conditions of release.
- Seek rehearings if youth is held in custody.
- Review conditions of release with youth and consequences of violations.
- Identify cultural and language issues; use of an interpreter (review again/motion and voluntariness).

References, Rules, and Resources

- Wis. Stat. § 938.19 Taking a juvenile into custody
- Wis. Stat. § 938.20 Release or delivery from custody
- Wis. Stat. § 938.205 Criteria for holding a juvenile in physical custody
- Wis. Stat. § 938.207 Places where a juvenile may be held in nonsecure custody

Detention/Custody Hearing Advocacy continued...

References, Rules, and Resources

- Wis. Stat. § 938.208 Criteria for holding a juvenile in detention facility
- Wis. Stat. § 938.209 Criteria for holding a juvenile in a county jail or a municipal lock up facility
- Wis. Stat. § 938.21 Hearing for a juvenile in custody
- Wis. Stat. § 938.217 Change in placement; juvenile held in custody
- National Juvenile Defender Center, (2014) *Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings* (<https://njdc.info/wp-content/uploads/2014/07/Ten-Principles-for-Providing-Effective-Defense-Advocacy-at-Juvenile-Detention-Hearings.pdf>)
- SPD Core Principles of Youth Defense Practice Principle #4

Investigation, Discovery, and Pretrial Case Planning

Defender Checklist

- File a discovery demand.
- Assess the completeness of the discovery provided and, if necessary, litigate the client's right to complete discovery.
- Review discovery with youth.
- Follow SPD procedures to secure investigator and/or client services specialist.
- Conduct independent defense investigation.
- Conduct witness interviews.
- Develop a theory of defense that drives pretrial decisions.
- If appropriate, pursue plea negotiation with the prosecutor.
- Secure parental release to obtain school, medical, mental health, and placement records.
- Determine if an immigration advisal is needed.
- Consider requesting an expert.

References, Rules, and Resources

- Wis. Stat. § 938.293 Discovery
- Wis. Stat. § 938.295 Physical, psychological, mental or developmental exams
- Wis. Stat. § 938.315 Delays, continuances and extensions
- SCR 20:1.3 Diligence
- SPD Core Principles of Youth Defense Practice Principal #6

Motion Preparation and Advocacy

Defender Checklist

- Consider and file suppression motions, evidentiary motions, custody reviews, motions to compel discovery, motions to refer back for deferred prosecution agreement.
- Decide if an expert should be retained.
- Engage in appropriate motion hearing advocacy and hearing preparation.

References, Rules, and Resources

- Wis. Stat. § 938.195 Recorded Statements
- Wis. Stat. § 938.21(7) Refer back for deferred prosecution
- Wis. Stat. § 938.24, 938.25, and 938.30 Time limits
- Wis. Stat. § 938.297 Motions before trial
- Wis. Stat. § 938.299 Procedure at hearings
- Wis. Stat. § 938.31(3) Fact finding hearing
- Wis. Stat. § 971.23 Discovery and inspection
- SCR 20:1.1 Competence
- *JDB v. North Carolina* 564 US 261 (2011)
- *State v. Linsdey A.F.*, 2003 WI 63
- *State v. Jerrell C.J.*, 2005 WI 105
- *State v. Angela D.B.*, 211 Wis.2d 140 (1997)
- SPD Core Principles of Youth Defense Practice Principle #6

Plea Negotiations and Client Advising

Defender Checklist

- Get a clear understanding of the youth's goals for resolution of the case.
- Consider a not responsible by reason of mental disease or defect (NGI) plea when appropriate.
- Inform youth of all plea offers.
- Explain and discuss the pros and cons of any offer to allow the client to make an informed decision about the plea.
- Seek alternatives to an adjudication - deferred prosecution, consent decrees.
- Present counteroffer to the prosecutor to further client's goals in resolving the case.
- Consider and explain collateral consequences.
- Review and explain plea questionnaire/waiver of rights form; review and explain elements of offense.

References, Rules, and Resources

- Wis. Stat. § 938.21(7) Deferred prosecution
- Wis. Stat. § 938.32 Consent decree
- Wis. Stat. § 938.34 Disposition of juvenile adjudged delinquent
- SCR 20:1.2 Scope of Representation and allocation of authority between lawyer and client
- SCR 20:1.4 Communication
- SPD Core Principles of Youth Defense Practice Principles # 7, 9, 10
- Collateral Consequences Guide (<https://www.wispsd.gov/juvenile-collateral-consequences>)

Trial Preparation and Advocacy

Defender Checklist

- Know and understand the facts of the case, and develop a theory of defense.
- Subpoena appropriate witnesses (adhering to local rules and statute on exchange of witness list).
- Prepare witness testimony.
- Get results or analysis of physical evidence.
- Discuss whether youth will testify.
- Preserve record for appeal.

References, Rules, and Resources

- Wis. Stat. § 938.31 Fact-finding hearing
- Wis. Stat. § 971.23 Discovery and inspection
- SCR 20:1.2 Scope or Representation and allocation of authority between lawyer and client
- SPD Core Principles of Youth Defense Practice Principal #6

Disposition Preparation and Advocacy

Defender Checklist

- Prepare client for plea colloquy.
- Develop an independent disposition plan in consultation with the client and in accordance with their expressed interests.
- Gather necessary records including school, health, and counseling.
- Review reports or documents prepared by social workers/probation given to the court in advance of the disposition hearing.
- Gain an understanding of the other parties' position prior to disposition and prepare arguments to counter them, when appropriate.
- Secure and review court report with youth.
- Learn about all community-based conditions or services that could be used to advocate against out-of-home placement.
- Prepare the client for dispositional statement.

References, Rules, and Resources

- Wis. Stat. § 938.299(4)(b) Evidentiary Rules at Hearings
- Wis. Stat. § 938.32 Consent decree
- Wis. Stat. § 938.335 Dispositional hearings
- Wis. Stat. § 938.34 Disposition of juvenile adjudged delinquent
- Wis. Stat. § 938.34(5)(c) Restitution
- Wis. Stat. § 938.34(5g)(d) Supervised work program or other community service work

Disposition Preparation and Advocacy continued...

References, Rules, and Resources

- Wis. Stat. § 938.34(8d) Delinquency victim and witness assistance surcharge
- Wis. Stat. § 938.34(13t) Graffiti violation
- Wis. Stat. § 938.34(15m) Sex offender reporting requirements
- Wis. Stat. § 938.34(16) Stay of order
- Wis. Stat. § 938.341 Delinquency adjudication; restriction on firearm possession
- Wis. Stat. § 938.35 Effect of judgment and disposition
- Wis. Stat. § 938.355 Dispositional orders
- *State v. Cesar G.*, 2004 WI 61
- SPD Core Principles of Youth Defense Practice Principal #9

Post-Disposition Preparation and Advocacy

Defender Checklist

- Discuss the right to appeal.
- Review dispositional order.
- File notice of appeal.
- Advise client of their ability to seek expungement and reinstatement of firearm rights.
- Explain the opportunity for changes of placement, and revisions, and possibility of extension of the order.
- Explain the possible sanctions for violation of the order.

References, Rules, and Resources

- Wis. Stat. § 938.355(4m) Expungement of record
- Wis. Stat. § 938.355(6) Sanctions for violation of order
- Wis. Stat. § 938.357 Change of placement; juvenile subject to dispositional order
- Wis. Stat. § 938.38 Permanency planning
- Wis. Stat. § 938.363 Revision of dispositional orders
- Wis. Stat. §. 938.365 Extension of orders
- Wis. Stat. §. 938.366 Extended out-of-home care.
- Wis. Stat. § 941.29(1m)(bm) and 941.29(8) Possession of a firearm
- SPD Core Principles of Youth Defense Practice Principles #11, 12

Professionalism, Caseload Management, and Organization Skills

Defender Checklist

- Stay current on youth justice law.
- Maintain organized files.
- Maintain updated contact information.
- Adhere to rules of professional responsibility.
- Monitor for conflicts of interest.
- Zealously represent youth as you would an adult criminal defendant.

References, Rules, and Resources

- SCR 20:1.2 Scope or Representation and allocation of authority between lawyer and client
- SCR 20:1.3 Diligence
- SCR 10:1.4 Communication
- SCR 20:1.6 Confidentiality
- SPD Core Principles of Youth Defense Practice Principles #1, 3, 4

SPD Youth Defense Practice Webpage Resources

- **SPD Youth Defense Practice Webpage:**
(<https://www.wisspd.gov/youth-defense>)
- **Youth Defense Practice Per County:**
(<https://www.wisspd.gov/youth-defense-practice-county-by-county>)
- **Development Framework Chart:**
(https://www.wisspd.gov/files/ugd/a08528_fcefbe4dd9d64666a3fa911ade2cf028.pdf)
- **Sample Client Info Sheet:**
(https://www.wisspd.gov/files/ugd/a08528_09d985a4e92c474396a80b4ea0e76a1b.pdf)
- **SPD Client Interviewing Resource:**
(https://www.wisspd.gov/files/ugd/a08528_aa4cd7d444814063bd967598ea3338d5.pdf)
- **SPD Outline for Detention Hearings:**
(https://www.wisspd.gov/files/ugd/a08528_9d0e1f9c47504aa0bf01e5eabafcb14d.pdf)
- **Collateral Consequences of Juvenile Delinquency Proceedings Guide for Juvenile Court Professionals:**
(<https://www.wisspd.gov/juvenile-collateral-consequences>)

Additional Resources

- **State Bar Juvenile Law Handbook:**
(<https://marketplace.wisbar.org/store/products/books/ak0062-wisconsin-juvenile-law-handbook/c-25/c-80/p-16576>)
- **Juvenile (Chapter 938) Circuit Court Forms:**
([https://www.wicourts.gov/forms/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=23&SubCat=Juvenile%20\(Chapter%20938\)\)](https://www.wicourts.gov/forms/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=23&SubCat=Juvenile%20(Chapter%20938))))
- **Local Court Rules:**
(<https://www.wisbar.org/Directoriest/CourtRules/Pages/Circuit-Court-Rules.aspx>)
- **The Gault Center:**
(<https://www.defendyouthrights.org/>)
- **National Juvenile Defense Standards:**
(<https://www.ojp.gov/ncjrs/virtual-library/abstracts/national-juvenile-defense-standards>)
- **Hertz, Guggenheim, Amsterdam, (2022) Trial Manual For Juvenile Defense:**
(https://www.wisspd.gov/files/ugd/a08528_7650a7a011c645ef92e2e0b3ce2a29a1.pdf)
- **Racial Justice for Youth: A Toolkit for Defenders:**
(<https://www.defendracialjustice.org/about-toolkit/>)

SPD Core Principles of Youth Defense Practice

1. Youth defense is a specialized practice area that requires proficiency in criminal defense and a working knowledge of the Wisconsin Juvenile Justice Code, principles of adolescent development, relevant case law, and local resources and rules.
2. The child is the client, and a youth defender is obligated to represent the client's expressed interest. A youth defender never acts as a *guardian ad litem*.
3. A youth defender is expected to promptly interview clients in person and to identify client goals and objectives of the representation, to counsel clients about options, and to keep clients informed during the course of the representation. Interviewing children requires age-appropriate communication methods and skills.
4. If a client is in custody, a youth defender must work promptly and persistently for release of the child to the least-restrictive community placement consistent with the client's expressed interest.
5. A youth defender must consider the legal competency of all youth clients to proceed by reviewing all relevant records and obtaining an evaluation of the client when appropriate.
6. A youth defender cannot skip the basic duties of effective criminal defense practice, which include the following: Interviewing all prospective witnesses, investigating legal and factual defenses, litigating legal motions and other pretrial issues that are consistent with the theory of defense, and preparing for contested trials and dispositional hearings.

SPD Core Principles of Youth Defense Practice

7. A youth defender must consider all possible alternatives to a delinquency adjudication.
8. A youth defender must recognize the seriousness of waiver to adult court and take reasonable steps to keep clients within the jurisdiction of the youth court. Youth defenders must know the legal standards and procedure governing waiver as well as the legal circumstances that subject a client to original adult court jurisdiction.
9. A youth defender must be familiar with all dispositional options under the law and with the resources available in the jurisdiction handling the case. Youth defenders should seek the least-restrictive option available for each client, consistent with the client's expressed interest.
10. A youth defender must understand the collateral consequences of delinquency adjudications, particularly for felonies and sex offenses. Youth defenders must advise clients of the potential consequences throughout the representation and should review those consequences before the client enters an admission.
11. A youth defender must be prepared to represent clients in post-disposition proceedings for changes of placement, revisions, extensions, and sanctions.
12. A youth defender must advise youth clients about post-disposition relief, and should discuss appeal of any unfavorable outcome.