

ALABAMA OFFICE OF INDIGENT DEFENSE SERVICES

**Performance Guidelines for Appointed Counsel,
Contract Counsel and Public Defenders in
Juvenile Delinquency Proceedings at the Trial Level**

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Preface

The Director of the Office of Indigent Defense Services of Alabama (hereinafter referred to as “OIDS”) is required to develop performance guidelines for appointed counsel, contract counsel and public defenders in all matters in which legal services are provided to those who are indigent. § 41-4-322(c)(5). These guidelines have been developed specifically for the provision of defense services to accused children in delinquency proceedings under the *Alabama Juvenile Justice Act*, § 12-15-101, et seq.

Purpose and Scope of the Guidelines

The Office of Indigent Defense Services hereby adopts these performance guidelines to promote one of the purposes of Act 2011-678—improving legal representation to indigents in Alabama. These Guidelines were developed in order to strengthen and clarify juvenile defense practice. Articulating a set of practice guidelines and clearly defining the role of defense counsel in Juvenile Court raises the level of juvenile defense practice. The guidelines are intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that must be taken in each case to ensure that the client receives the best representation possible. The guidelines are also intended to provide a measure by which performance of individual attorneys and public defender offices may be evaluated, and to assist in training and supervising attorneys. The language of these guidelines is general, implying flexibility of action which is appropriate to the situation. The steps covered in these guidelines are not to be undertaken automatically in every case. Instead, the steps actually taken should be tailored to the requirements of a particular case.

These guidelines aim to elevate the practice of juvenile defense and improve the delivery of legal services to indigent youth in Alabama. These guidelines are not criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of an adjudication. The guidelines may or may not be relevant to such a judicial determination, depending upon all of the circumstances of the individual case.

The *Alabama Juvenile Justice Act* utilizes the term “Child’s Attorney” to designate the lawyer who provides juvenile defense services to an accused child. Throughout these guidelines, alternate terms of “juvenile defender,” “defense attorney” and “defense counsel” may also be used. Those terms shall be deemed to refer to the “Child’s Attorney.”

Principles of the Guidelines

These Guidelines were drafted with the understanding of the following principles:

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and practice skills;
3. Juvenile defense requires zealous advocacy;

4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires legal representation that is individualized;
6. Juvenile defense requires representation that is developmentally appropriate;
7. Juvenile defense is based on the clients' expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal and extralegal processes;
10. Juvenile defense includes ensuring that clients and their families are treated with dignity and respect and that there is decorum in the courtroom.

Alabama Office of Indigent Defense Services

Performance Guidelines For Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level

SECTION 1: GENERAL PROVISIONS

1.1 Statutory Definitions

(a) *Child*: An individual under the age of 18 years, or under 21 years of age and before the Juvenile Court for a delinquency matter arising before that individual's 18th birthday. Where a delinquency petition alleges that an individual, prior to the individual's 18th birthday, has committed an offense for which there is no statute of limitations pursuant to Section 15-3-5, the term child also shall include the individual subject to the petition, regardless of the age of the individual at the time of filing. § 12-15-102(3).

(b) *Delinquent Child*: A child who has been adjudicated for a delinquent act [See § 12-15-102(6)] and is in need of care or rehabilitation. § 12-15-102(7).

(c) *Child's Attorney*: A licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor as is due an adult client. § 12-15-102(5). Throughout these guidelines, alternate terms of "juvenile defender," "defense attorney" and "defense counsel" may be used. Those terms shall be deemed to refer to the "Child's Attorney."

(d) *Expressed Interests*: The child is in charge of all stages of the proceeding and the Child's Attorney is to follow the directions of the child. § 12-15-202(f)(1)c.3. As such, defense counsel is client-directed, just as defense counsel would be in representation of an adult. The Child's Attorney is not to act in a manner that defense counsel considers to be in the child's best interests, if that is contrary to the expressed interests and direction of the child.

(e) *72-Hour Hearing*: The Juvenile Court must conduct a hearing regarding a child who has been detained as a result of a delinquency petition and not released within 72 hours. During that hearing, the Juvenile Court must determine: (1) whether probable cause exists in support of the allegations of the petition; and (2) whether or not continued detention or shelter care is required. § 12-15-207.

SECTION 2: ROLE, QUALIFICATIONS, AND DUTIES OF DEFENSE COUNSEL

2.1 Role of Defense Counsel

(a) The Child's Attorney in a juvenile delinquency proceeding is the child's voice to the court, representing the expressed interests of the child at every stage of the proceedings. Defense counsel owes the same duties to the child under the *Alabama Rules of Professional Conduct*, including the duties of loyalty and confidentiality, as an attorney owes to a client who is an adult criminal defendant.

(b) The Child's Attorney must provide competent, diligent, and zealous advocacy to protect the child's procedural and substantive rights. The Child's Attorney must be: skilled in juvenile defense; knowledgeable about adolescent development and the special status of youth in the legal system; and familiar with relevant statutes, case law, and court rules. The Child's Attorney should: avoid delays in proceedings, especially when the child is held in detention; litigate the child's case vigorously; and challenge the state's ability to prove its case beyond a reasonable doubt. The Child's Attorney must always advocate for protection of the child's due process rights and ensure that any court-ordered services are provided in the least restrictive setting.

(c) The Child's Attorney's primary and fundamental responsibility is to advocate for the child's expressed interests and direction. Additionally, defense counsel has a responsibility to counsel the child, recommend to the child actions consistent with the child's expressed interests, and advise the child as to potential outcomes of various courses of action. Defense counsel may not substitute his or her own view of the child's best interests for those expressed by the client. The Child's Attorney may not substitute a parent's interests or view of the client's best interests for those expressed and directed by the child. Where the Child's Attorney believes that the child's directions will not achieve the best long-term outcome for the client, defense counsel must provide the child with additional information to help the client understand the potential outcomes and offer an opportunity to reconsider. If the child is not persuaded, the Child's Attorney must continue to act in accordance with the client's direction and expressed interests throughout the course of the case.

2.2 Education, Training, and Experience of Child's Attorney

(a) To provide quality representation, the Child's Attorney must be familiar with the *Alabama Juvenile Justice Act*, the *Alabama Rules of Juvenile Procedure*, the *Alabama Rules of Criminal Procedure*, and substantive criminal, constitutional and juvenile law. Defense counsel should also be familiar with any applicable local rules of the judicial district.

(b) The Child's Attorney has an ongoing obligation to stay abreast of changes and developments, and to continue his or her legal education, skills training, and professional development. As a minimum, she or he must comply with the OIDS continuing legal education requirements set out in the *Alabama Administrative Code* 355-9-1-.08.

(c) Before accepting appointment to a juvenile delinquency case, a Child's Attorney should have sufficient experience, knowledge, skill, and training in areas such as communication techniques with children and adolescents, motions practice, detention advocacy, pre-adjudicatory preparation, adjudication, disposition and post-disposition advocacy to provide quality representation.

2.3 General Duties of Child's Attorney

(a) Irrespective of the age of the child, meet with the child prior to Juvenile Court hearings, when apprised of emergencies or significant events impacting the child, and as necessary to prepare for the Juvenile Court proceedings. The Child's Attorney shall explain, in terms understandable to the child, what is expected to happen at each stage of the proceedings, as well as the rights of the child at each stage of the proceedings. §12-15-202(f)(1)c.1

(b) Conduct a prompt, thorough, and independent investigation of the facts, the health, family, social history, and educational background of the child, possible defenses, and applicable law, and seek discovery from prosecution. When necessary, request approval from the Juvenile Court for extraordinary expenses of an investigator. Where appropriate, request approval from the Juvenile Court for extraordinary expenses of an expert to evaluate the child's competency to stand trial, competency at the time of the offense, and competency to waive important constitutional rights, such as his or her *Miranda* rights. §12-15-202(f)(1)c.2

(c) Based upon investigation, advise the child, in terms he or she can understand, regarding the child's options for proceeding in the case and the likely outcomes of the various courses of action. Conduct the defense in accordance with the child's expressed interests regarding whether to seek release from detention, whether to admit or deny the allegations, whether to testify, whether to enter into a negotiated settlement, whether to appeal, whether to accept or oppose a recommended disposition, and the overall goals of the representation. Defense counsel should be mindful that she or he is client directed and must pursue the goals set out by the child, even if, in counsel's opinion, such a strategy or course of action may not be in the child's best interests. §12-15-202(f)(1)c.3

(d) Attend all hearings scheduled by the Juvenile Court and file all necessary pleadings and motions to promote the expressed interests of the child and protect his or her rights. At all stages of the proceeding, defense counsel must preserve potential issues for appeal. §12-15-202(f)(1)c.4

(e) Maintain familiarity with the dispositional resources available through the Juvenile Court in the local community, judicial circuit, and throughout Alabama and recommend appropriate services to the child and the family, as well as the Juvenile Court and Probation Office. Advocate in the dispositional process to protect the rights of the client, meet the goals of the representation, and ensure that the Juvenile Court is aware of any special needs of the child that should be addressed in the dispositional process. §12-15-202(f)(1)c.5

(f) Appear on time for all scheduled court hearings in a child's case.

(g) Never give preference to retained clients over children for whom counsel has been appointed.

(h) Advise the child regarding his or her appellate options that are consistent with the child's expressed interests and direction of the defense of the charges.

(i) Advocate positions that are contrary to local historical customs, patterns and practices, if necessary, in furtherance of the child's expressed interests and direction of the defense of the charges and disposition.

SECTION 3: INTERVIEWING THE CHILD

3.1 Preparation for the Initial Interview

(a) The Child's Attorney should arrange for an initial interview with the child as soon as practicable after being assigned to the case. Absent exceptional circumstances, if the child is in detention, the initial interview should take place not more than 72 hours after the child was initially detained. If defense counsel has inherited the child's defense from prior counsel, the Child's Attorney should meet with a detained child within three business days after she or he received

notice of assignment to the case. A Child's Attorney may arrange for a designee to conduct the initial interview.

(b) Before conducting the initial interview, if possible, the Child's Attorney should:

(1) become familiar with the charges against the child and the elements of and potential dispositions for each charged offense;

(2) obtain copies of all relevant documents that are available, including copies of any petitions and related documents, recommendations and reports; and

(3) if the child is detained:

(i) become familiar with the different types of pre-adjudicatory release conditions the Juvenile Court may set, any written or customary policies of the judicial circuit, and whether any person or agency is available to act as a custodian for the child's release;

(ii) become familiar with any procedures available for reviewing the Juvenile Court's prior determination to continue detention; and

(iii) in cases involving charges of intra-family domestic violence or other charges involving an alleged victim who resides with or in close proximity to the child's home, explore other possible relative or friend resources for placement upon release from detention.

3.2 The Initial Interview

(a) The purposes of the initial interview are to apprise the child of the delinquency allegations; acquire information from the child concerning the facts of the case; obtain family, educational, social and emotional background data; and begin to educate the child regarding the juvenile legal process.

(b) The Child's Attorney should communicate with the child in a manner that will be effective, considering the juvenile's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, counsel should file a motion to have a foreign language or sign language interpreter appointed by the Juvenile Court and present at the initial interview.

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

(d) The Child's Attorney should clearly explain, in developmentally appropriate language, both the role of the client and defense counsel and demonstrate commitment to the child's expressed interests. Defense counsel must elicit the child's point of view and encourage her or his full participation. From the outset, the juvenile defender must support the child's participation in the defense.

(e) Information about the child that the Child's Attorney should attempt to acquire during the initial interview includes, but is not limited to:

- (1) the child's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current and former addresses, as well as the child's supervision when at home;
- (2) the immigration status of the child and his or her family members, if applicable;
- (3) the child's educational history, including current grade level, school attendance, special education, if any, individualized education plan, if any, and any disciplinary history;
- (4) the child's physical and mental health, including any impairing conditions such as history of trauma, mental illness, intellectual deficit, special needs, substance abuse or learning disabilities, and any prescribed medications and other immediate needs;
- (5) the child's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;
- (6) the child's sibling's delinquency history, if any;
- (7) whether there are any other pending charges against the child and the identity of any other appointed or retained counsel;
- (8) whether the child is presently under the terms of a Consent Decree, on probation, or after-care supervision and, if so, the name of his or her Probation Officer and the child's past or present performance under supervision;
- (9) whether the child is related to, lives with or in close proximity to the alleged victim;
- (10) the options available to the child for an acceptable custodian upon release if the child is detained;
- (11) the names of individuals or other sources that the Child's Attorney can contact to verify the information provided by the child, and the permission of the client to contact those sources.

(f) Information about the specific delinquency matter that counsel should attempt to acquire from the child includes, but is not limited to:

- (1) the allegations of the delinquency charge(s);
- (2) any evidence of improper police or other governmental conduct, including interrogation procedures, that may affect the child's rights;
- (3) any possible witnesses and where they may be located;
- (4) any evidence that should be preserved; and
- (5) evidence of the child's capacity to stand trial, mental state at the time of the offense, and ability to waive *Miranda* and other constitutional rights.

(g) When appropriate, the Child's Attorney should be prepared at the initial interview to present the child with a release authorizing counsel to access confidential information, such as school records and medical or mental health records for the child to consider signing.

(h) Information the Child's Attorney should provide to the child during the initial interview includes, but is not limited to:

- (1) an explanation of the procedures that will be followed in setting the conditions of pre-adjudicatory release if the child remains in detention;
- (2) an explanation of the type of information that will be requested in any future interview that may be conducted by a Probation Officer, and an explanation that the child is not required to and should not make statements concerning the offense;
- (3) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting the Child's Attorney;
- (4) the nature of the charges and potential penalties;
- (5) a general procedural overview of the progression of the case, where possible;
- (6) how counsel can be reached and when counsel plans to have contact with the child next;
- (7) the date and time of the next scheduled court proceeding in the case;
- (8) realistic answers, where possible, to the child's questions; and
- (9) what arrangements will be made or attempted for the satisfaction of the child's most pressing needs, such as release from detention, medical or mental health attention, and contact with family members.

SECTION 4: PROCEEDINGS BEFORE THE ADJUDICATORY HEARING

4.1 General Obligations of Counsel Regarding Pre-adjudicatory Release

Unless contrary to the expressed interests of the child, the Child's Attorney has an obligation to attempt to secure the prompt pre-adjudicatory release of the child under the conditions most favorable to the child. In cases where the complainant or State's witnesses will include family members or others with whom the child resides, the juvenile defender should explore a possible option other than a return to the home, so long as that is consistent with the child's expressed interests.

4.2 72-Hour Hearings

(a) During the probable cause phase of the 72-hour hearing, the Child's Attorney should require the State to meet its burden of establishing probable cause that the allegations charged were committed and that there is sufficient evidence that the child committed the offense for the matter to proceed beyond that point. Defense counsel must be familiar with the child's constitutional and statutory rights in the probable cause phase of the 72-hour hearing. The Child's Attorney must also be fully versed in the legal standard for establishing probable cause and rules of evidence applicable to such a hearing. Defense counsel must protect the client's due process rights by challenging any assertion of probable cause and requiring any allegations be supported by evidence. The Juvenile Defender should consider the potential consequences of statements made by the child at any detention hearing and advise the child accordingly. §12-15-207

(b) During the phase of a 72-hour hearing where continued detention is considered by the Juvenile Court, the Child's Attorney should be prepared to present to the court a statement of the factual circumstances and factors supporting release and to propose conditions of release. Defense counsel should present the Juvenile Court with alternatives to detention, if necessary. The Juvenile

Defender should be aware of and able to invoke research on the adverse impacts of detention on youth. Defense counsel should be familiar with and have visited the jurisdiction's detention facilities. Where appropriate, the client's parent(s) or custodian(s) should be consulted. The Child's Attorney has an obligation to raise any factors, such as medical, psychological, or educational needs that may be adversely affected by detention, as long as the client permits their disclosure. §12-15-207 & 208

(c) If the child is released, the Child's Attorney should fully explain the conditions of release to the child and advise her or him of the potential consequences of a violation of those conditions. The same information should be provided to the parent(s) or custodian(s). §12-15-209

(d) If the child remains in detention, the Child's Attorney should alert the detention facility in writing and, if appropriate, the Juvenile Court and Probation Officer, to any special medical, psychiatric, or educational needs of the child that are known to defense counsel.

4.3 Continued Detention

(a) If detention is continued, the Child's Attorney should advise the child when to expect defense counsel to next meet with the child, as well as regarding future procedures involved with the case.

(b) If detention is continued indefinitely, the Child's attorney should file a Request For a Detention Review Hearing to review the child's continued detention when appropriate.

4.4 Transfer Hearings

(a) The Child's Attorney should be aware of the significant negative consequences of children being tried in the adult criminal system, including increased rates of suicide, recidivism, and being the victim of physical or sexual assault. See, e.g., *Suicide and Homicide in State Prisons and Local Jails*. Washington DC: Campaign for Youth Justice; *Jailing Juveniles* (2007, November). Washington, DC: Campaign for Youth Justice; National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/22680.pdf>; and Department of Health and Human Resources Centers for Disease Control, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," November 2007, Vol. 56, No. RR-9.

(b) The Child's Attorney should be aware of all statutory provisions for transfer hearings in cases involving a child who is at least 14 years of age and should make any appropriate objections and motions.

(c) The Child's Attorney should inform the child in developmentally appropriate language of the transfer procedures, as well as the consequences of prosecution in adult court, including the extent of possible sentencing decisions, as well as short-term and long-term collateral consequences. Defense Counsel must advise the child which venue would be most likely to achieve the child's expressed interests.

(d) In preparation for the transfer hearing, the Child's Attorney should be familiar with the procedures of a transfer hearing, with a particular focus on the six factors the court must consider pursuant to § 12-15-203(d).

(e) Prior to the transfer hearing, the Child's Attorney should evaluate whether or not there are issues of the child's competency to stand trial, competency at the time of offense, and, if applicable, competency to waive his/her constitutional rights including *Miranda* and consent to search. Counsel should be aware of the Court's duties and obligations pursuant to Alabama Code Sections 12-15-203(b) and (c) wherein there are grounds for the child's possible commitment to an institution, department or agency for individuals with an intellectual disability or mental illness.

(f) Prior to the transfer hearing, the Child's Attorney should thoroughly review the Probation Officer's pre-hearing report prepared pursuant to § 12-15-203(e) for accuracy. Defense Counsel should be prepared to challenge any factual errors or conclusions included by the Probation Officer that are in favor of the State's Motion to Transfer.

(g) At the transfer hearing, defense counsel should review all information provided to the court by the prosecution and should be prepared to cross-examine any witnesses the prosecution presents.

(h) The Child's Attorney should present any evidence to the court that counsel believes will support a decision not to transfer. Evidence may include, but is not limited to, the child's potential for rehabilitation, the child's record, performance on court supervision, educational history, mental and emotional state, intellectual functioning, developmental issues, history of trauma and family history. Defense counsel should be prepared to present testimony to prevent transfer, including testimony by people who can provide helpful insight into the child's character, such as teachers, counselors, psychologists, community members, probation officers, religious affiliates, family members, friends, employers, or other persons with a positive personal or professional view of the child.

(i) Defense counsel should make reasonable efforts to ensure that the transfer hearing is recorded and, with permission of the court, should consider utilizing a personal recording device in case the court recording device fails, or request that a court reporter be present.

(j) Although a transfer hearing is a non-adjudicatory proceeding, the Child's Attorney should prepare for it to the same degree as for an adjudicatory hearing. Specifically, Defense Counsel should preserve all potential issues for appeal. A transfer order is directly appealable to the Alabama Court of Criminal Appeals before the matter may proceed in adult criminal court. *See* Ala. R. Juv. P. 28(A)(2); *Ex parte S.B.*, 650 So.2d 953 (Ala. 1994). As such, the Child's Attorney should apprise the child of the right to appeal and, if directed by the client, must file a timely appeal of the Transfer Order.

SECTION 5: INCRIMINATING EVIDENCE AND CAPACITY TO PROCEED

5.1 Search Warrants and Interrogations

(a) The Child's Attorney should be familiar with the law governing search warrants under §15-5-1 *et seq.* and applicable case law, including the requirements for a search warrant application, the basis for issuing a warrant, the required form and content of a warrant, the execution and service of a warrant, applicable time deadlines, and the permissible scope of the search.

(b) Defense counsel should be familiar with the law governing a juvenile's protection against self-incrimination, including § 12-15-202 and applicable case law.

5.2 The Child's Competency

(a) The Child's Attorney must be able to recognize when the client may not be competent to stand trial, may not have been legally competent at the time of the alleged delinquent offense, and/or may not have been competent to waive important constitutional rights, such as his or her *Miranda* rights against self-incrimination and take appropriate action.

(1) The Child's Attorney must learn to recognize when a child's ability to participate in his or her own defense may be compromised due to developmental immaturity, mental health disorders, or developmental/intellectual disabilities.

(2) The Child's Attorney must assess whether the child's level of functioning limits her or his ability to communicate effectively with the Defense Counsel, as well as her or his ability to have a factual and rational understanding of the proceedings. When the Child's Attorney has reason to doubt the child's competency to stand trial, competency at the time of the offense, or competency to waive important constitutional rights, such as his or her *Miranda* rights against self-incrimination, counsel must gather such additional information as is available and file a pre-trial motion requesting a hearing for competency determination.

(3) The Child's Attorney must be versed in the rules, statutes, and case law governing juvenile competence to stand trial. Defense Counsel must become familiar with experts qualified to assess competence to stand trial and learn the mechanisms for requesting an evaluation. Defense Counsel must learn the procedures for a competency hearing in the jurisdiction and fully comprehend the ramifications if the client is found incompetent to stand trial.

(4) The Child's Attorney must carefully weigh the consequences of moving forward with the case against the likely consequences of a finding of incompetence, and whether there are other ways to resolve the case, such as dismissal upon obtaining services for the child or referral to other agencies.

(5) If the Child's Attorney decides to proceed with a competency hearing, Defense Counsel should consider the necessity of securing a qualified, independent expert to evaluate the child's competence. The Juvenile Defender must then advise the child about the evaluation and proceedings, analyze the results of the evaluation, prepare the expert for testimony, and prepare substantively and procedurally for the hearing. Defense Counsel must advise the child about the content of the hearing and assist the child in navigating the complexities of the process.

(b) Although the child's expressed interests ordinarily control, the Child's Attorney may question the child's competency without the child's assent or over the child's objection, if necessary.

(c) After the Child's Attorney receives and reviews the report from any court-ordered State examiner, counsel should consider whether to file an objection to the report, in whole or in part, as well as to request extraordinary expenses, if necessary, for the cost of an independent expert.

SECTION 6: CASE REVIEW, PREPARATION, AND DISCOVERY

6.1 Charging Language in the Delinquency Petition

(a) The Child's Attorney should review the delinquency petition in all cases and determine whether there are any defects, such as:

- (1) the petition does not list all of the essential elements of the charged offense;
- (2) the petition contains more than one charged offense; and/or
- (3) the petition does not allege a delinquent act for which the child may be charged.

If there are defects, defense counsel should determine whether to move to dismiss the petition after considering all relevant factors, including but not limited to the type of defect, the likelihood of obtaining a favorable ruling, and the likelihood that the charge will be refiled. The Child's Attorney also should be aware of all potential consequences of a motion to dismiss, including alerting the prosecution to defects in the charging language.

(b) Even if the petition adequately charges an offense that would be a crime if committed by an adult, Defense Counsel should be sufficiently familiar with the language of the petition to recognize a fatal variance at trial and move to dismiss the charge if the evidence is insufficient to support the charge as pled.

(c) The Child's Attorney should be aware of all time limits that are applicable to the filing of a delinquency petition and should consider moving to dismiss the petition if the statutory time limits are not followed.

6.2 Case Review, Investigation, and Preparation

(a) The Child's Attorney has a duty to conduct an independent case review and investigation. The child's admissions of responsibility or other statements to his/her attorney do not necessarily obviate the need for independent review and investigation. The review and investigation should be conducted as promptly as possible.

(b) Sources of review and investigative information may include the following:

(1) *Petitions, Statutes, and Case Law.* The Child's Attorney should obtain and examine copies of all petitions in the case to determine the specific charges that have been brought against the child. The relevant statutes and precedents should be examined to identify:

- (A) the elements of the delinquent acts with which the child is charged;
- (B) the defenses, ordinary and affirmative, that may be available, as well as the proper manner for asserting any available defenses; and
- (C) any defects in the petitions, constitutional or otherwise, such as statute of limitations, double jeopardy, or others.

(2) *The Child.* The Child's Attorney should conduct an in-depth interview or interviews of the child as outlined in Section 3, *supra*.

(3) *Potential Witnesses.* The Child's Attorney should consider whether to interview potential witnesses, including any complaining witnesses and others adverse to the child. If Defense Counsel conducts interviews of potential witnesses, he or she should attempt to do so in the presence of a third person who will be available, if necessary, to testify as a defense witness at the adjudicatory hearing. Alternatively, Defense Counsel should have an investigator conduct the interviews, if one is available.

(4) *The Police and Prosecution.* The Child's Attorney should utilize available discovery procedures to secure information in the possession of the prosecution or law enforcement authorities, including police reports, unless sound tactical reasons exist for not doing so. See 6.3, *infra*.

(5) *The Courts.* If possible, the Child's Attorney should request and review tapes or transcripts from any previous hearings in the case. Defense Counsel should also review the juvenile's prior court file(s), both within the same jurisdiction and others.

(6) *Information in the Possession of Third Parties.* When appropriate, the Child's Attorney should seek a release or court order to obtain necessary confidential information about the child, other individual(s) charged, witness(es), or victim(s) that is in the possession of third parties. Defense counsel should be aware of privacy laws and other requirements governing disclosure of the type of confidential information being sought.

(7) *Physical Evidence.* When appropriate, the Child's Attorney should make a prompt request to the prosecution for any physical evidence or expert reports relevant to the alleged delinquent act or disposition. Defense counsel should view the physical evidence consistent with case needs.

(8) *The Scene.* The Child's Attorney should be familiar with the scene of alleged delinquent acts. If not, the Child's Attorney should view the scene of the alleged delinquent act(s). This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (*e.g.*, weather, time of day, lighting conditions, and seasonal changes). Defense counsel should consider taking photographs and creating diagrams or charts of the actual scene of the alleged offense.

(9) *Assistance from Experts, Investigators, and Interpreters.* The Child's Attorney should consider whether expert or investigative assistance, including consultation and testimony, is necessary or appropriate to:

(A) prepare a defense;

(B) adequately understand the prosecution's case;

(C) rebut the prosecution's case;

(D) investigate the child's capacity to proceed, mental state at the time of the offense, and capacity to make a knowing and intelligent waiver of constitutional rights; or

(E) prepare to propose dispositional alternatives.

(c) If the Child's Attorney determines that expert or investigative assistance is necessary and appropriate, counsel should file an *ex parte* motion setting forth the particularized showing of necessity required by *Ake v. Oklahoma*, 470 U.S. 68, 105 S. Ct. 1087 (1985) and its progeny. If appropriate, the Child's Attorney should also file a motion to have a foreign language or sign language interpreter appointed by the court. Defense Counsel should preserve for appeal any denial of expert, investigative, or interpreter funding by making all proper objections and motions on the record.

(d) During case preparation and throughout the adjudicatory hearing, the Child's Attorney should identify potential legal issues and the corresponding objections. He or she should consider

the strategy of making objections, including the proper timing and method. Defense Counsel should also consider how best to respond to objections that could be raised by the prosecution.

6.3 Discovery

(a) The Child's Attorney has a duty to pursue discovery procedures provided under the *Alabama Rules of Juvenile Procedure* and *Alabama Rules of Criminal Procedure* and to pursue such formal discovery methods as may be available to supplement the factual investigation of the case. Additionally, the Child's Attorney should pursue additional informal discovery means.

(b) Unless there are sound tactical reasons for not requesting discovery, the Child's Attorney should seek discovery to the broadest extent permitted under federal and state law, including but not limited to, the following items:

(1) all information to which the child is entitled under the *Alabama Rules of Juvenile Procedure* and *Alabama Rules of Criminal Procedure*;

(2) all potential exculpatory information and evidence to which the defense is entitled under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963) and its progeny, including but not limited to:

(A) impeachment evidence, such as a witness's prior adjudications or convictions, misconduct, or Juvenile Court record; bias of a witness; a witness's capacity to observe, perceive, or recollect; and psychiatric evaluations of a witness;

(B) evidence discrediting police investigation and credibility;

(C) evidence undermining the identification of the child;

(D) evidence tending to show the guilt or responsibility of another;

(E) the identity of favorable witnesses; and

(F) exculpatory physical evidence; and

(3) to the extent not provided under statutory discovery, any other information necessary to the defense of the case, including but not limited to:

(A) the details of the circumstances under which any oral or written statements by the accused child/client or a co-defendant were made;

(B) any evidence of prior bad acts that the prosecution may intend to use against the child;

(C) the data underlying any expert reports; and

(D) any evidence necessary to enable counsel to determine whether to file a motion to suppress evidence.

(c) The Child's Attorney should seek the timely production and preservation of discoverable evidence. If the prosecution fails to disclose or belatedly discloses discoverable evidence, the Child's Attorney should consider requesting sanctions.

(d) If the Child's Attorney has concerns that evidence that is significant to the case may be destroyed or consumed in testing by the State (e.g., rough notes of law enforcement interviews,

911 tapes, drugs, or blood samples), Defense Counsel should file a motion to preserve the evidence in the event that it is discoverable.

(e) The Child's Attorney should timely comply with all of the requirements in the *Alabama Rules of Juvenile Procedures* and *Alabama Rules of Criminal Procedure*, as well as local Juvenile Court rules, governing disclosure of evidence by the Child's Attorney and notice of defenses and expert witnesses.

6.4 Theory of the Case

During case review, investigation, and preparation for the adjudicatory hearing, the Child's Attorney should develop and continually reassess a theory of the case. A theory of the case is one central theory that organizes the facts, emotions, and legal basis for a finding of not responsible or adjudication of a lesser offense, while also telling the child's story of innocence, reduced culpability, or unfairness. The theory of the case furnishes the basic position from which counsel determines all actions in a case. The theory of the case should be discussed with the child and developed consistent with the child's expressed interests.

SECTION 7: PRE-ADJUDICATORY MOTIONS

7.1 The Decision to File Pre-Adjudicatory Motions

(a) The Child's Attorney should consider filing appropriate pre-adjudicatory motions whenever there exists a good faith reason to believe that the applicable law may entitle the child to relief which the court has authority to grant.

(b) The Child's Attorney should consult the applicable statutes, rules of procedure, and local rules of the judicial circuit to determine whether they establish deadlines for pre-adjudicatory motions and should comply with any such rules.

(c) The decision to file pre-adjudicatory motions should be made after thorough investigation and after considering the applicable law in light of the circumstances of each case, as well as the need to preserve issues for appellate review. Among the issues that the Child's Attorney should consider addressing in pre-adjudicatory motions are:

- (1) the constitutionality of the implicated statute(s);
- (2) the sufficiency of the petition under all applicable statutory and constitutional provisions;
- (3) the dismissal of a charge on double jeopardy grounds;
- (4) the propriety and prejudice of any joinder or severance of charges on the child and other children also charged in connection with the alleged incident(s);
- (5) the statutory and constitutional discovery obligations of the prosecution;
- (6) the suppression of evidence gathered as the result of violations of the Constitution of Alabama of 1901, the United States Constitution, and applicable federal and state statutes, including:
 - (A) the fruits of any illegal searches or seizures;

- (B) any statements or confessions obtained in violation of the child’s right to counsel or privilege against self-incrimination; and
- (C) the fruits of any unconstitutional identification procedures;
- (7) whether there are grounds to prevent discovery or testimony or other evidence based on privilege;
- (8) access to necessary support or investigative resources or experts;
- (9) the need for a change of venue;
- (10) the child’s right to a continuance in order to adequately prepare the defense of the case;
- (11) matters of trial evidence that may be appropriately litigated by means of a pre-adjudicatory motion *in limine*;
- (12) recusal of the trial judge;
- (13) the full recordation of all proceedings;
- (14) matters of courtroom procedure;
- (15) notice of affirmative defenses; and
- (16) whether there the child and the delinquency charges are appropriate for a Multiple-Needs adjudication under § 12-15-501, et. seq.

7.2 Filing and Arguing Pre-adjudicatory Motions

(a) Motions should be filed in a timely manner, comport with the formal requirements of statutory and court rules, and succinctly inform the court of the authority relied upon.

(b) When a hearing on a motion requires the taking of evidence, the Child’s Attorney’s preparation for the evidentiary hearing should include:

- (1) investigation, discovery, and research relevant to the claim(s) advanced;
- (2) subpoenaing of all helpful evidence, and subpoenaing and preparation of all helpful witnesses;
- (3) full understanding of the burdens of proof, evidentiary principles, and procedures applicable to the hearing, including the potential advantages and disadvantages of having the child and other defense witnesses testify;
- (4) obtaining the assistance of an expert witness when appropriate, as well as approval for extraordinary expenses in connection with such expert witness; and
- (5) preparation and submission of a memorandum of law when appropriate.

(c) Unless there are sound tactical reasons for not doing so, the Child’s Attorney should request that the court rule on all previously filed defense motions prior to the adjudicatory hearing.

(d) If a hearing on a pre-adjudicatory motion is held in advance of an adjudicatory hearing, the Child’s Attorney should attempt to obtain the transcript or copy of the audio recording of the hearing for use at the adjudicatory hearing, if appropriate.

7.3 Subsequent Filing and Renewal of Pre-adjudicatory Motions

(a) The Child's Attorney should be prepared to raise during the adjudication proceedings any issue that is appropriately raised pre-adjudicatory, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

(b) The Child's Attorney should be prepared to renew pre-adjudicatory motions or file additional motions at any subsequent stage of the proceedings if new supporting information is later disclosed or made available. Counsel should also renew pre-adjudicatory motions and object to the admission of challenged evidence at the adjudicatory hearing to preserve the motions and objections for appellate review.

(c) If the theory of the case involves a novel or creative defense, the Child's Attorney should consider whether to submit a request that the Juvenile Court Judge or Referee instruct himself or herself as to the legal theories involved in the novel or creative defense.

SECTION 8: SETTLEMENTS VIA ADMISSION

8.1 Advising the Child About Settlements Via Admission

(a) The Child's Attorney should explain to the child that certain decisions concerning a possible settlement via admission ultimately must be made by the child, as well as the advantages and disadvantages inherent in those choices. The decisions that must be made by the child include whether to admit the allegations of the petition and whether to accept a settlement agreement.

(b) After appropriate investigation and case review, the Child's Attorney should explore with the child the possibility and desirability of negotiating a settlement via admission to some or all of the charges rather than proceeding to an adjudicatory hearing. In doing so, the Child's Attorney should fully explain to the child the rights that would be waived by a decision to enter a settlement via admission and not proceed to the adjudicatory hearing, including the fact that an admission of the allegations of one or more charged or lesser included delinquent acts will result in adjudication of delinquency, and the impact of the settlement on the child's right to appeal. The Child's Attorney should fully explain the impact, including registration and notification, if applicable, pursuant to Alabama Code Section 15-20A-1, et. seq., for an adjudication involving a sex offense.

8.2 Preparation for Settlement Negotiations

(a) In preparing for settlement negotiations, the Child's Attorney should attempt to become familiar with any practices and policies of the particular referee, judge, prosecuting attorney and probation officer which may affect the content and likely results of a negotiated settlement agreement.

(b) Defense counsel should be familiar with:

(1) the advantages and disadvantages of each available settlement alternative according to the circumstances of the case; and

(2) the extent to which a proposed settlement agreement is binding or likely to be accepted by the court.

(c) To develop an overall settlement negotiation plan, the Child's Attorney should be fully aware and advise the child of the possible results of an adjudication, including:

- (1) the likely term of confinement for the delinquency adjudication, if any;
- (2) any requirements for registration, such as sex offender registration, and for being fingerprinted and photographed;
- (3) the possibility that a delinquency adjudication could be used for cross-examination or sentence enhancement in the event of future juvenile delinquency or adult criminal cases;
- (4) the availability of appropriate dispositional options; and
- (5) other potential collateral consequences of entering a settlement, such as deportation or other effects on immigration status; effects on motor vehicle or other licensing; educational notifications; the impact upon future military enlistment; distribution of fingerprint and photographic information; and the potential exposure to or impact on any current or future federal charges or other proceedings.

(d) In developing a negotiation strategy, the Child's Attorney should be completely familiar with:

- (1) concessions that the child might offer the prosecution as part of a negotiated agreement, such as:
 - (A) declining to assert the right to proceed to the adjudicatory hearing on the merits of the charge;
 - (B) refraining from asserting or litigating a particular pre-adjudicatory motion;
 - (C) agreeing to fulfill specified restitution conditions or to participate in community service work or rehabilitation programs or other dispositional options;
 - (D) assisting the prosecution in investigating the present case or other alleged delinquent or criminal activity; and
 - (E) waiving a challenge to the validity or proof of a prior adjudication;
- (2) benefits the child might obtain from a negotiated agreement, such as:
 - (A) that the prosecution will not seek transfer;
 - (B) that the child may enter an admission and preserve the right to litigate and contest the denial of a suppression motion;
 - (C) dismissal or reduction of one or more of the charged delinquent acts, either immediately or upon completion of conditions of a deferred adjudication;
 - (D) that the child will not be subject to further investigation or prosecution for uncharged alleged delinquent conduct;
 - (E) that the prosecution will not oppose the child's release pending disposition or appeal;
 - (F) that the child will receive, with the agreement of the Juvenile Court, a specified disposition;
 - (G) that at the dispositional hearing, the prosecution will take, or refrain from taking, a specified position with respect to the sanction to be imposed on the child by the Juvenile Court; and

- (H) that at the dispositional hearing, the prosecution will not present certain information;
- (3) information favorable to the child concerning matters such as the offense, mitigating factors and relative culpability, prior offenses, personal background, familial status, and educational and other relevant social information;
 - (4) information that would support a disposition other than confinement, such as the potential for rehabilitation or the nonviolent nature of the alleged delinquent act; and
 - (5) information concerning the availability of dispositional options, such as treatment programs, community treatment facilities, and community service work opportunities.

8.3 Ongoing Preparation During Settlement Negotiations

(a) Notwithstanding plea negotiations with the prosecution, the Child's Attorney should continue to prepare and investigate the case to the extent necessary to protect the child's rights and interests in the event that settlement negotiations fail.

(b) The Child's Attorney should keep the child fully informed of any settlement discussions and negotiations and convey to the child any offers made by the prosecution for a negotiated settlement agreement.

8.4 The Decision to Enter a Settlement

(a) If the Child's Attorney and the prosecution reach a tentative negotiated settlement agreement, the Child's Attorney should explain to the child the full content of the settlement agreement, including its advantages, disadvantages, and potential consequences. The Child's Attorney should also inform the child that any settlement agreement may be rejected by the Juvenile Court and the consequences of a rejection.

(b) The Child's Attorney may not accept or reject a settlement agreement without the child's express authorization. Although the decision to accept or reject a settlement agreement ultimately rests with the child, if the Child's Attorney believes the child's decisions are not in his or her best legal interests, the Child's Attorney should make every effort to ensure that the child understands all of the potential consequences before the child makes a final decision. This may include delaying proceedings to allow the child additional time to consider his or her options.

8.5 Preparing the Child for Entry of a Settlement by Admission

If the child agrees to a negotiated settlement via admission, prior to the entry of the settlement, the Child's Attorney should:

- (1) fully explain to the child the nature of the settlement via admission hearing and the process involved with entry of an admission;
- (2) fully explain to the child the conditions and limits of the settlement agreement including the punishment, sanctions, and other consequences the child will incur as a result of entering an admission; and

(3) fully explain to the child the settlement via admission hearing process, the role he or she may play in the hearing, including answering questions from the Juvenile Court Judge or Referee, the need to speak clearly and audibly while in court, the importance of making eye contact with the Juvenile Court Judge or Referee, and the need to behave appropriately and respond in a respectful manner to the Juvenile Court Judge or Referee.

8.6 Entry of Settlement by Admission

(a) The Child's Attorney should not allow a child to enter an admission to a delinquency charge based upon conditions that are not disclosed to the court.

(b) When the child enters an admission to a delinquency charge, the Child's Attorney should ensure that the full content and conditions of the settlement agreement between the prosecution and defense are preserved for the record.

(c) Subsequent to the acceptance of a settlement by admission the Juvenile Court Judge or Referee, the Child's Attorney should confirm, review and explain the results of the proceedings to the child and respond to any questions and concerns of the child. With the child's permission, the Child's Attorney should do the same for the child's parent(s) or custodian(s).

SECTION 9: THE ADJUDICATORY HEARING (TRIAL)

9.1 General Adjudicatory Hearing (Trial) Preparation

(a) The Child's Attorney should explain to the child that, although it is the child's decision whether to deny the allegations of the petition and proceed to an adjudicatory hearing (trial on the merits), decisions concerning trial and hearing strategy are ordinarily to be made by the Child's Attorney, after consultation with the child and investigation of the applicable facts and law.

(b) Throughout preparation and adjudication, in furtherance of the child's expressed interests, the Child's Attorney should develop a theory of the defense and ensure that Defense Counsel's decisions and actions are consistent with that theory.

(c) Prior to the adjudicatory hearing or trial, Defense Counsel should take all steps necessary to complete a thorough investigation, discovery, and research. Among the steps counsel should take in preparation are:

- (1) interviewing and subpoenaing all potentially helpful witnesses;
- (2) subpoenaing any potentially helpful physical or documentary evidence;
- (3) filing applicable pre-trial motions, with supporting briefs, memorandum, case law, and other supporting documentation, if appropriate;
- (4) when appropriate, seeking of approval of extraordinary expenses for defense investigators and experts and arranging for defense experts to consult and/or testify on issues that are potentially helpful;
- (5) obtaining and reading records, recordings or transcripts of any prior proceedings in the case or related proceedings; and

(6) obtaining photographs or preparing charts, maps, diagrams, or other visual aids of any scenes, persons, objects, or information that may aid the court in understanding the child's defense.

(d) When appropriate, counsel should have the following relevant information and materials available at the time of the adjudicatory hearing (trial):

- (1) copies of all documents filed in the case;
- (2) documents prepared by investigators;
- (3) reports, records, test results, and other materials disclosed by the prosecution pursuant to the *Alabama Rules of Juvenile Procedure* and the *Alabama Rules of Criminal Procedure*;
- (4) a plan, outline, or draft of an opening statement, if appropriate;
- (5) cross-examination plans for all possible prosecution witnesses, if needed;
- (6) direct-examination plans for all prospective defense witnesses, if needed;
- (7) copies of defense subpoenas;
- (8) any prior statements of all prosecution witnesses (*e.g.*, transcripts and police reports);
- (9) any prior statements of all defense witnesses;
- (10) reports from defense experts;
- (11) a list of all defense exhibits and the witnesses through whom they will be introduced;
- (12) originals and copies of all defense documentary exhibits;
- (13) copies of statutes and cases; and
- (14) a plan, outline, or draft of the closing argument.

(e) The Child's Attorney should be familiar with the rules of evidence that apply in adjudicatory (trial) proceedings, the law relating to all stages of the adjudicatory process, including the guidelines of proof at each step, and the legal and evidentiary issues that reasonably can be anticipated to arise during the adjudicatory hearing (trial).

(f) The Child's Attorney should decide if it is beneficial to obtain an advance ruling on issues likely to arise at the adjudicatory hearing (*e.g.*, use of prior adjudications to impeach the child) and, if appropriate, prepare motions and memoranda for such advance rulings.

(g) The Child's Attorney should arrange with court personnel and/or the sheriff's office for counsel to be able to confer with the child in a confidential setting during the adjudicatory hearing (trial).

(h) Throughout preparation and adjudication, the Child's Attorney should consider the potential effects that particular actions may have upon disposition in the event of an adjudication of delinquency.

(i) The Child's Attorney should invoke the rule excluding witnesses and potential witnesses from sitting in the courtroom during the adjudicatory hearing, other than during their testimony.

9.2 Child's Dress and Demeanor at the Adjudicatory Hearing (Trial)

(a) The Child's Attorney should advise the child and the child's parent(s) or custodian(s) concerning suitable courtroom dress and demeanor.

(b) If the child is detained, the Child's Attorney should try to ensure, prior to the court hearing, that the child does not appear before the trial court in shackles, handcuffs, or other visible restraints. If a detained juvenile is brought before the judge in shackles, handcuffs, or other visible restraints, the Child's Attorney should object and seek appropriate relief from the trial court.

9.3 Preserving the Record on Appeal

Throughout the adjudicatory process, the Child's Attorney should establish a proper record, preserving issues for appellate review, including making reasonable efforts to ensure that all stages of the adjudicatory process are recorded. If a relevant and important non-verbal event occurs during the adjudicatory hearing (trial), Defense Counsel should ask to have the record reflect what happened.

9.4 Opening Statement

(a) Though an opening statement is not always presented in a non-jury trial, the Child's Attorney should consider the potential benefits of making an opening statement.

(b) The Child's Attorney should be familiar with Alabama law and the individual trial judge's or referee's practices regarding the permissible content of an opening statement. If appropriate, Defense Counsel should ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

(c) The Child's Attorney should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement.

(d) The Child's Attorney should have a clear understanding of his or her objectives in making an opening statement. Appropriate objectives include:

- (1) introducing the theory of the defense case;
- (2) providing an overview of the defense's theory of the case;
- (3) identifying the weaknesses of the prosecution's case;
- (4) emphasizing the prosecution's burden of proof; and
- (5) preparing the court for the child's testimony or decision not to testify.

(e) If the prosecutor oversteps the bounds of a proper opening statement, the Child's Attorney should consider objecting, requesting a mistrial or sanctions, or seeking cautionary instructions, unless sound tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:

- (1) the significance of the prosecutor's error; and
- (2) the possibility that an objection might enhance the significance of the information in the court's mind, or otherwise negatively affect the court.

9.5 Preparing for and Confronting the Prosecution's Case

(a) The Child's Attorney should anticipate weaknesses in the prosecution's proof, and research and prepare to argue appropriate motions for judgment of acquittal or dismissal.

(b) The Child's Attorney should consider the advantages and disadvantages of entering into stipulations concerning items of evidence or matters that are not in dispute.

(c) Unless sound tactical reasons exist for not doing so, the Child's Attorney should make timely objections and motions to strike improper prosecution evidence and assert all possible statutory and constitutional grounds for exclusion of the evidence. If evidence offered by the prosecution is admissible only for a limited purpose, the Child's Attorney generally should request that the court limit consideration to the proper purpose.

(d) In preparing for cross-examination, counsel should:

(1) be familiar with Alabama law and procedures concerning cross-examination and impeachment of witnesses;

(2) be prepared to question witnesses as to the existence and content of prior statements;

(3) consider the need to integrate cross-examination, the theory of the defense, and closing argument;

(4) determine what Defense Counsel expects to accomplish by cross-examination of each witness and avoid asking questions that are unnecessary or might elicit responses harmful to the child's defense;

(5) anticipate witnesses the prosecution might call in its case-in-chief or in rebuttal, and consider a cross-examination plan for each of the anticipated witnesses;

(6) be alert to inconsistencies, variations, and contradictions within each witness's testimony;

(7) be alert to inconsistencies, variations, and contradictions between different witnesses' testimony;

(8) review any prior statements and prior relevant testimony of the prospective witnesses;

(9) when appropriate, review relevant statutes and law enforcement regulations, protocols and procedures for possible use in cross-examining police witnesses; and

(10) be alert to issues relating to witness' credibility, including bias and motive for testifying.

(e) The Child's Attorney should consider conducting a *voir dire* examination during the course of the prosecution's direct examination of prosecution witnesses who may not be competent to give particular testimony, including expert witnesses and younger witnesses. The Child's Attorney should be aware of the law concerning competency of witnesses, necessary evidentiary predicates, and admission of expert testimony, to be able to raise appropriate objections.

(f) At the close of the prosecution's case, counsel should move for a judgment of acquittal or dismissal with respect to each delinquency petition before the court. Where appropriate, counsel should be prepared with supporting case law.

9.6 Presenting the Defense Case

(a) In consultation with the child, the Child's Attorney should develop an overall defense theory of the case and defense strategy. In deciding on defense strategy, Defense Counsel should consider whether the child's interests are best served by not presenting defense evidence and relying instead on the evidence and inferences, or weaknesses in the prosecution's case.

(b) The Child's Attorney should discuss with the child all of the considerations relevant to the child's decision whether to testify, *vel non*, including the likelihood of cross-examination and impeachment concerning prior adjudications and prior bad acts that affect credibility as well as the child's youthful inexperience.

(c) The Child's Attorney should be aware of the elements of any affirmative defense(s) and know whether the defense bears a burden of persuasion or production.

(d) In preparing for presentation of the defense case, the Child's Attorney should, where appropriate:

(1) develop a plan for direct examination of each potential defense witness;

(2) determine the effect that the order of witnesses may have on the defense case;

(3) consider the possible use of character witnesses and any negative consequences that may flow from such testimony;

(4) consider the need for expert witnesses;

(5) consider the use of demonstrative evidence and the most effective order of exhibits; and

(6) be fully familiar with Alabama statutory and case law regarding objections, motions to strike, offers of proof, and preserving the record on appeal.

(e) In developing and presenting the defense case, the Child's Attorney should consider the implications it may have for rebuttal by the prosecution.

(f) The Child's Attorney should prepare all defense witnesses for direct examination and expected cross-examination. When appropriate, Defense Counsel should also advise witnesses of suitable courtroom dress and demeanor.

(g) If a prosecution objection to a proper question is sustained or defense evidence is improperly excluded, the Child's Attorney should rephrase the question or make an offer of proof in order to properly preserve the issue for appeal.

(h) The Child's Attorney should conduct redirect examination as appropriate.

(i) At the close of all of the evidence, the Child's Attorney should renew the motion for judgment of acquittal or dismissal regarding each delinquency petition.

9.7 Closing Argument

(a) The Child's Attorney should always present a closing argument on the child's behalf. In developing a closing argument, the Child's Attorney should review the proceedings to determine what aspects can be used in support of defense summation and should:

(1) highlight weaknesses in the prosecution's case;

(2) emphasize favorable inferences to be drawn from the evidence;

- (3) incorporate into the argument:
 - (A) the theory of the defense case;
 - (B) helpful testimony from direct and cross-examinations;
 - (C) responses to anticipated prosecution arguments; and
 - (D) any relevant visual aids and exhibits; and
- (4) consider the effects of the defense argument on the prosecution's rebuttal argument.
- (5) in the event of a novel or creative theory of defense, consider submitting a written request asking the trial court to instruct itself as to the particulars of the theory.

(b) Whenever the prosecutor exceeds the scope of permissible argument, the Child's Attorney should object or request a mistrial unless sound tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

- (1) the significance of the prosecution's error;
- (2) the possibility that an objection might enhance the significance of the information in the court's mind;
- (3) whether, with respect to a motion for mistrial, Defense Counsel believes that the case will result in a favorable decision for the child; and
- (4) the need to preserve the objection for appellate review.

SECTION 10: THE DISPOSITIONAL HEARING

10.1 Dispositional Procedures

The Child's Attorney should be familiar with applicable dispositional procedures, including:

- (1) the effect that settlement negotiations may have on the dispositional discretion of the court;
- (2) the procedural operation of disposition;
- (3) the usual practices of the Probation Office regarding recommended dispositions in similar cases;
- (4) the defense dispositional presentation and/or memorandum;
- (5) the opportunity to challenge information presented to the court;
- (6) the availability of an evidentiary hearing to challenge information, and the applicable rules of evidence and burden of proof at such a hearing; and
- (7) the participation that victims and prosecution or defense witnesses may have in the dispositional hearing.

10.2 Advising the Child About Disposition

(a) If the child enters an admission or is found delinquent after an adjudicatory hearing (trial), the Child's Attorney should be familiar with and advise the child of the dispositional requirements, options, and alternatives applicable to the offense, including:

- (1) the applicable laws, rules and regulations, including the risk of commitment to a Department of Youth Services facility;
- (2) disposition continued;
- (3) probation or suspension of confinement and likely and possible conditions of probation;
- (4) any mandatory requirements for registration, such as sex offender registration, or for fingerprinting and photographing; and
- (5) the possibility of sealing and expungement of records at some point in the future. § 12-15-136 & 137.

(b) The Child's Attorney should be familiar with and advise the child of the direct and collateral consequences of the adjudication and disposition including, as appropriate:

- (1) the likelihood that the adjudication could be used for sentence enhancement in the event of future juvenile delinquency adjudications or adult criminal cases; and
- (2) if applicable, other potential collateral consequences of the adjudication and disposition, such as deportation or other effects on immigration status; effects on motor vehicle or other licensing; and the potential exposure to or impact on any federal charges, educational notification, and distribution of fingerprint and photographic information.

10.3 Preparation for Disposition

In preparing for disposition, the Child's Attorney should:

- (1) be aware and inform the child of the court's practices and procedures, if possible;
- (2) maintain regular contact with the child prior to the dispositional hearing, and inform the child of the steps being taken in preparation for disposition;
- (3) obtain from the child relevant information concerning such subjects as his or her background and personal history, prior record, educational history, mental health history and condition, history of trauma and treatment, if any, employment history, if any, and obtain from the child sources through which the information provided can be corroborated;
- (4) utilize dispositional experts, including mental health, developmental, or educational professionals, if applicable;
- (5) inform the child of his or her right to speak at the dispositional proceeding, and assist the child in preparing the statement, if any, to be made to the court, after considering the possible consequences that any admission or other statement may have on an appeal, subsequent adjudicatory hearing, adjudication on other offenses, or other judicial proceedings, such as collateral or restitution proceedings;
- (6) inform the child if the Child's Attorney will ask the court to consider a particular disposition;
- (7) collect and present documents and affidavits to support the defense position and, when relevant, prepare and present witnesses to testify at the dispositional hearing;
- (8) prepare any expert or other witnesses to address the court;
- (9) consider consulting with any child and family treatment team; and

(10) unless there are sound tactical reasons for not doing so, attempt to determine whether the prosecution and/or Probation Officer will advocate that a particular type of confinement be imposed.

10.4 The Defense Dispositional Plan

The Child's Attorney should prepare a defense dispositional plan and, where appropriate, a dispositional memorandum. Among the topics the Juvenile Defender may wish to include in the dispositional presentation or memorandum are:

- (1) information favorable to the child concerning such matters as the offense, mitigating factors and relative culpability, prior adjudications, personal background, history of trauma, educational history, employment record and opportunities, and familial and financial status;
- (2) information that would support a disposition other than confinement, such as the potential for rehabilitation or the nonviolent nature of the crime;
- (3) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;
- (4) challenges to incorrect or incomplete information and inappropriate inferences and characterizations that are before the court; and
- (5) a defense limited confinement proposal, if confinement is inevitable under the circumstances.

10.5 The Dispositional Hearing

(a) At the dispositional hearing, the Child's Attorney should take the steps necessary to advocate fully for the requested disposition and to protect the child's legal rights and interests.

(b) If appropriate, the Child's Attorney should present supporting evidence, including testimony of the child and witnesses, affidavits, letters, and public records to establish the facts favorable to the child. Defense Counsel should also try to ensure that the child is not harmed by inaccurate information or information that is not properly before the court in determining the disposition to be imposed.

(c) To the extent that the court has the authority to do so, the Child's Attorney should request specific orders or recommendations from the court concerning the place of confinement and any psychiatric treatment or drug rehabilitation, and against deportation or exclusion of the child, if applicable.

(d) The Child's Attorney should identify and preserve potential issues for appeal, including making reasonable efforts to ensure that the dispositional hearing is recorded.

SECTION 11: POST-DISPOSITION OBLIGATIONS AND APPEALS

11.1 Explaining the Disposition to the Child

After the dispositional hearing is complete, the Child's Attorney should fully explain to the child the terms of the disposition, including any conditions of probation and implications of violating

probation. Where appropriate, the same information should be provided to the child's parent(s) or custodian(s).

11.2 Motion to Alter, Amend or Vacate and for New Trial

The Child's Attorney should be familiar with the procedures available under the *Alabama Rules of Juvenile Procedure* and the *Alabama Rules of Criminal Procedure* to seek relief from the adjudicatory and dispositional orders and should utilize those procedures when appropriate.

11.3 Right to Appeal

(a) The Child's Attorney should inform the child of his or her right to appeal the adjudication of delinquency and the dispositional order of the Juvenile Court to the Alabama Court of Criminal Appeals, including a description of what must be done to perfect an appeal, and the deadline to do so.

(b) If the child wants to appeal, the Child's Attorney should file a Notice of Appeal in accordance with the procedures and timelines set forth in the *Alabama Rules of Appellate Procedure*, together with the other required documents.

(c) If an appeal is filed, if the Child's Attorney does not intend to remain as appellate counsel, she or he should cooperate in providing information to the child's appellate counsel concerning the proceedings in the trial court and should timely respond to reasonable requests from appellate counsel for additional information about the case.

11.4 Disposition Pending Appeal

(a) If a detained child indicates a desire to appeal the adjudication or disposition of the Juvenile Court, Defense Counsel should immediately file a motion to stay the imposition of the disposition and to release the child from custody, pending the appeal.

(b) If an appeal is taken and new appellate counsel is appointed, trial counsel should cooperate with appellate counsel in providing information if appellate counsel pursues a request for release pending the outcome of the appeal.

11.5 Post-Disposition Obligations

(a) Even after the Child's Attorney's representation in a case is complete, he or she should comply with a child's reasonable requests for information and materials that are part of the Child Attorney's file regarding the child's case(s). The Child's Attorney should also take reasonable steps to correct clerical or other errors in court documents.

(b) If the child is placed on probation, and the Probation Officer files a petition alleging a Violation of Probation, and the Child's Attorney is appointed to again represent the child, the Child's Attorney should comply with these guidelines in the same manner as if the petition alleged a new delinquent act.

(c) If the child is committed to the Department of Youth Services and is subsequently released subject to the terms and conditions of an Aftercare Order, the Probation Officer files a petition alleging a Violation of the Aftercare Order, and the Child's Attorney is appointed to again

represent the child, the Child's Attorney should comply with these guidelines in the same manner as if the petition alleged a new delinquent act.