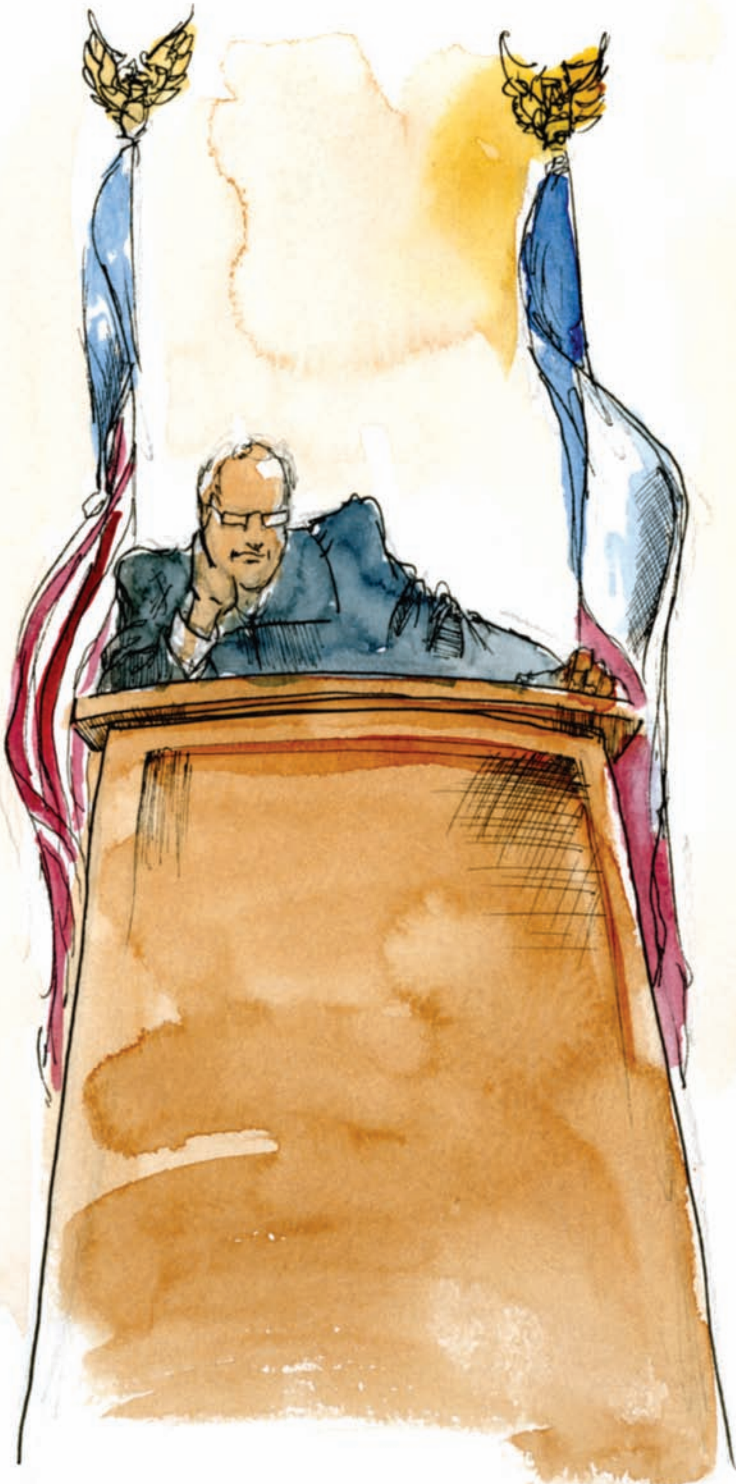
Get My Baby Out of Jail!

A Quick Guide to Juvenile Detention Hearings



By Daniel K. Peugh

Illustration by Gilberto Sauceda

In becoming a lawyer, you become *the* lawyer that people in your life know. Friends, family members, and neighbors will routinely ask you legal questions. Sometimes they need more than just answers — they need your services. One of the most intimidating issues that can come to a new lawyer is the need to get the child of a friend, family member, or neighbor out of a juvenile detention facility. Following is a quick guide to handling a first journey into the unfamiliar waters of juvenile law.

Don't panic. Ordinarily, that might be throwaway advice. However, when your neighbor's "baby" is "locked-up with hardened criminals," there will be plenty of emotion with the case. You will not want to add to it. Allay your client's fears by dispelling some myths about juvenile arrests. First, babies, as such, are not arrested. A child must be 10 years of age to be taken into a juvenile detention center. However, whatever the child's actual age, you will find that he or she is always your client's "baby." Further, juveniles are not placed into county jails with adults. They cannot be by law. Counties that have juvenile detention centers maintain them completely separate from adult jails. This will calm your client, but only a little. No matter the specifics, your client is going to want the child out.

There is good news and bad news accompanying the opportunity to get a child released from a juvenile detention center. The good news is that juveniles who have been detained in a detention center are entitled to a hearing on the issue of their detention within 72 hours. The bad news is that you will be working on short notice. A child detained on a Friday will likely have a detention hearing on the following Monday. A child

detained on a Wednesday will likely have a detention hearing on Thursday. This leaves you with little time to prepare.

Note that a juvenile detention is a probable cause hearing. This posture of the hearing means two things for you. Number one, the burden of proof that the State has to meet to continue the child's detention is very low. Number two, the Rules of Evidence do not apply to the hearing. (See Texas Rules of Evidence Number 101, Paragraph D, Subsection (F).) You will not have to concern yourself with the proper predicates for evidence or overcoming hearsay objections. You will be able to present your case more easily.

Two main issues at the hearing are relevant to probable cause. Is there probable cause to believe a juvenile offense has been committed? Is it likely the juvenile to be detained was responsible? To continue the child's detention, the State will have to show one or more of the following from Texas Family Code §54.01(e):

> At the conclusion of the hearing, the court shall order the child released from detention unless it finds that:
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> 1. He is likely to abscond or be removed from the jurisdiction of the court;
> 2. Suitable supervision, care, or protection for him is not being provided by a parent, guardian, custodian, or other person;
> 3. He has no parent, guardian, custodian, or other person able to return him to the court when required;
> 4. He may be dangerous to himself or may threaten the safety of the public if released; or
> 5. He has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released.

This is the battleground on which the possible continued detention of your client will be fought.

Texas law suggests an almost limitless number of strategies for obtaining a child's release from detention. Here is the easiest. At the detention hearing, the State will present evidence of probable cause. If you have a good knowledge of criminal law and you see or hear a weakness in this issue, go ahead and attack the probable cause. A child cannot be detained without a finding of the court that there is probable cause to believe a juvenile offense has been committed and it is likely that the juvenile to be detained is responsible. If you do not have the penal code memorized, that is not a problem. Knowledgeable police officers and juvenile detention officers make the probable cause attack unlikely to succeed in most instances.

Attack the findings that the court is required to make under the Family Code. It is almost certain that whatever the child in your case is accused of doing, it is against the rules set by the child's parents. Therefore, your evidence comes from the child's parents in the form of live testimony. Establish through questioning that the parents take the allegations against the child very seriously. Further establish that, now that the parents are aware of the misbehavior, they can and will provide more direct supervision for the child. The provision of supervision is central to your case for release. You must establish that, if released, the child will be constantly in the line-of-sight of a responsible adult and unable to get into more mischief.

This approach works because the findings required to be made by the court to continue detention are cast in terms of the *likelihood* of absconding and the *possibility* of danger. A child provided with 24-hour-a-day supervision by a responsible adult is not *likely* to be involved in any more trouble. You must advise the child's parents to do whatever they have to do to make sure that type of supervision is provided. Family members, neighbors, and friends can often fill in any gaps between when the child is released from school and when the parents return home from work. Some parents can arrange to have children brought to their workplace after school hours. Some arrangement must be made for supervision; in my experience, it almost always can be done. If it is, you stand a very good chance of obtaining the child's release.

There are two warnings you should have. First, this approach will not sit well with a parent who does not believe his or her child could be guilty of any wrongdoing. In truth, the approach I have outlined almost assumes that the child did whatever he or she is accused of doing. Encourage the parents to keep their eyes on the prize. You do not have to establish the child's absolute innocence to obtain the child's release from detention. In fact, a detention hearing, with its probable cause standard, is a very poor place to vindicate a falsely accused juvenile.

Second, certain juvenile matters are serious and complex enough that they should not be handled by a newcomer. Often, the parents will know why the child has been taken into custody. If the parents tell you that someone involved in the child's case is dead, if there is an allegation that someone suffered serious bodily injury, or if the charge for which the child was arrested begins with the word "aggravated," you would be wise to seek more experienced counsel for your client. If more experienced counsel cannot be obtained before the first detention hearing, the above approach should not prejudice the child's future defense. The most serious allegations often result in an initial period of detention. The child will be entitled to another hearing on the issue of his or her continued detention in 10 working days. That will give you and the child's family two weeks to find more experienced representation.

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