

SECURE CUSTODY

- I. Who can issue an order and how that affects when an initial hearing must be held
 - A. §7B-1902 – delegated authority
 - B. §7B-1906 – generally, the initial hearing must be within 5 days for secure custody, for nonsecure 7 days. BUT
 1. if it was issued by someone with delegated power, then the hearing must be on the next regularly scheduled district court session (not the next regularly scheduled session of Juvenile court)
 2. This hearing can't be continued and it can't be waived.
 - C. §7B-1808 – first appearance must be held within 10 days of filing of the petition, regardless of whether the child is in custody or not, and may not be continued if the child is in secure or nonsecure custody.
 - D. Remedies if any of the above are not followed:
 1. Due process argument – motion to dismiss pursuant to §15A-954(a)(4) through §7B-2405.
 2. Everybody follows the law argument.
- II. When a child can be taken into custody/kept in custody
 - A. Taken into custody, §7B-1900
 1. When the officer would have authority for arresting an adult
 2. OR if there is reason to believe the child is undisciplined
 3. OR if there is reason to believe that the child has escaped from specific juvenile facilities.
 4. §7B-1901 – can only be kept in custody for 12hours (24 over holiday or weekend) without a petition or motion for review and an order for custody being issued.
 - B. Kept in custody, §7B-1903
 1. Nonsecure custody – runaways WHO AGREE TO NONSECURE CUSTODY, or a juvenile who qualifies for secure custody, but in whose best interests nonsecure custody is a better fit.
 2. Secure custody – reasonable factual basis to believe juvenile committed offense alleged in petition plus one of the following
 - a. charged with felony and has demonstrated a danger to property or persons
 - b. juvenile has demonstrated a danger to persons and is charged with an assault or a charge involving the use, display, or threat to use a firearm or deadly weapon (doesn't include mere possession of a weapon)
 - c. juvenile has willfully failed to appear on a pending charge, or violation of probation
 - must have been properly notified
 - failure must be willfull, consider asking for a show cause on parents instead of pick-up on juvenile
 - d. there is reasonable cause to believe juvenile will not appear in court for a pending delinquency charge
 - e. juvenile is an absconder from a residential facility operated by the department or from a detention facility, or from a comparable facility in another state.
 - f. There is reasonable cause to believe the juvenile needs to be detained for his own protection because he has recently suffered or attempted self-inflicted

physical injury. This can be for no more than 24 hours, and the juvenile must have been refused admission by an appropriate hospital, and must receive continuous supervision while in custody.

- g. The juvenile is alleged to be undisciplined due to being a runaway and has refused nonsecure custody. This cannot be for more than 24 hours unless over a holiday or weekend, and then no more than 72 hours.
 - h. The juvenile is alleged to be undisciplined, and has failed to come to court. This cannot be for more than 24 hours unless over a holiday or weekend, and then no more than 72 hours. The juvenile must be brought to court ASAP.
3. Probation violations – only if the juvenile is alleged to have committed acts that damage property or injure persons.

III. How to get a child out of custody/finding alternative solutions

- A. Bargaining for release: anything you can give the State in exchange for release?
 - 1. waiver of an evidentiary hearing
 - 2. waiver of some time requirement on discovery or on evidentiary hearing
 - 3. anything else you would normally be a stickler for but that does not prejudice your client's interests in the case
- B. NEVER NEVER NEVER agree to waive any hearing without something in return
- C. Build a list of everything wrong with the State's case
 - 1. weaknesses of the case
 - 2. procedural/legal violations
- D. Time the child will be looking at if actually adjudicated
- E. Alternative placements
 - 1. more supervised living alternatives
 - 2. house arrest
 - 3. group homes
- F. Minimize the perceived risks
 - 1. prior history of coming to court
 - 2. school attendance history
 - 3. school disciplinary history
 - 4. involvement of parents/family
 - 5. lack of prior history
 - 6. involvement of other agencies

IV. Pre-disposition detention

- A. What the statutes say
 - 1. §7B-1903 – predisposition detention
 - 2. §7B-2413 – the court SHALL proceed to a disposition hearing upon receipt of a predisposition report, may proceed without one
 - 3. §7B-2406 – continuances. Should only be for good cause and only for a reasonable length of time to receive information necessary.
- B. Set specific deadlines for whatever needs to be done
- C. Demand statutory detention hearings
 - 1. §7B-1906
 - 2. Due process violation to keep child in without hearings & for extended time.
 - 3. Exercise the right to appeal