

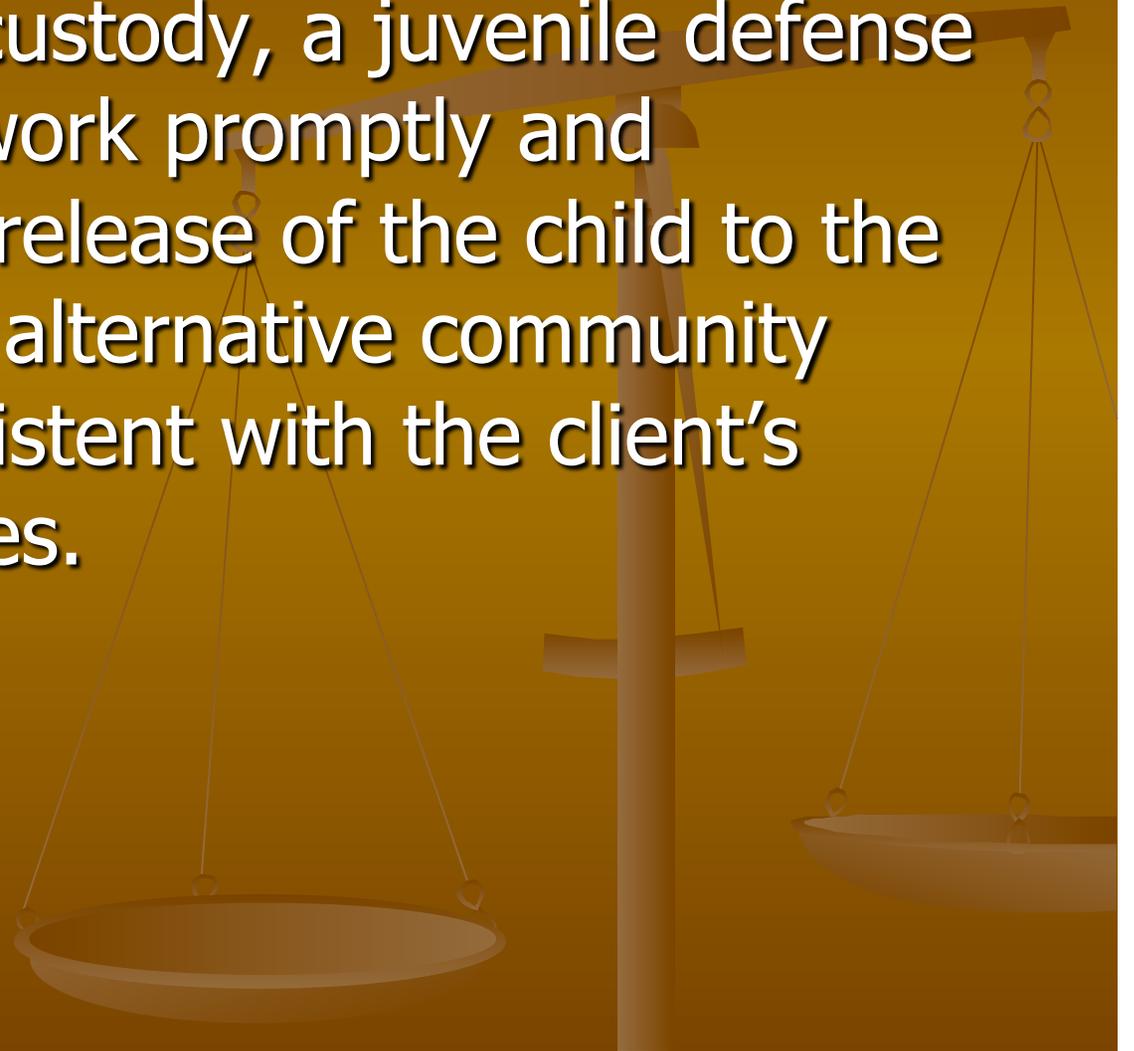


Detention Advocacy

Why you need to fight to get your
client out of custody right away

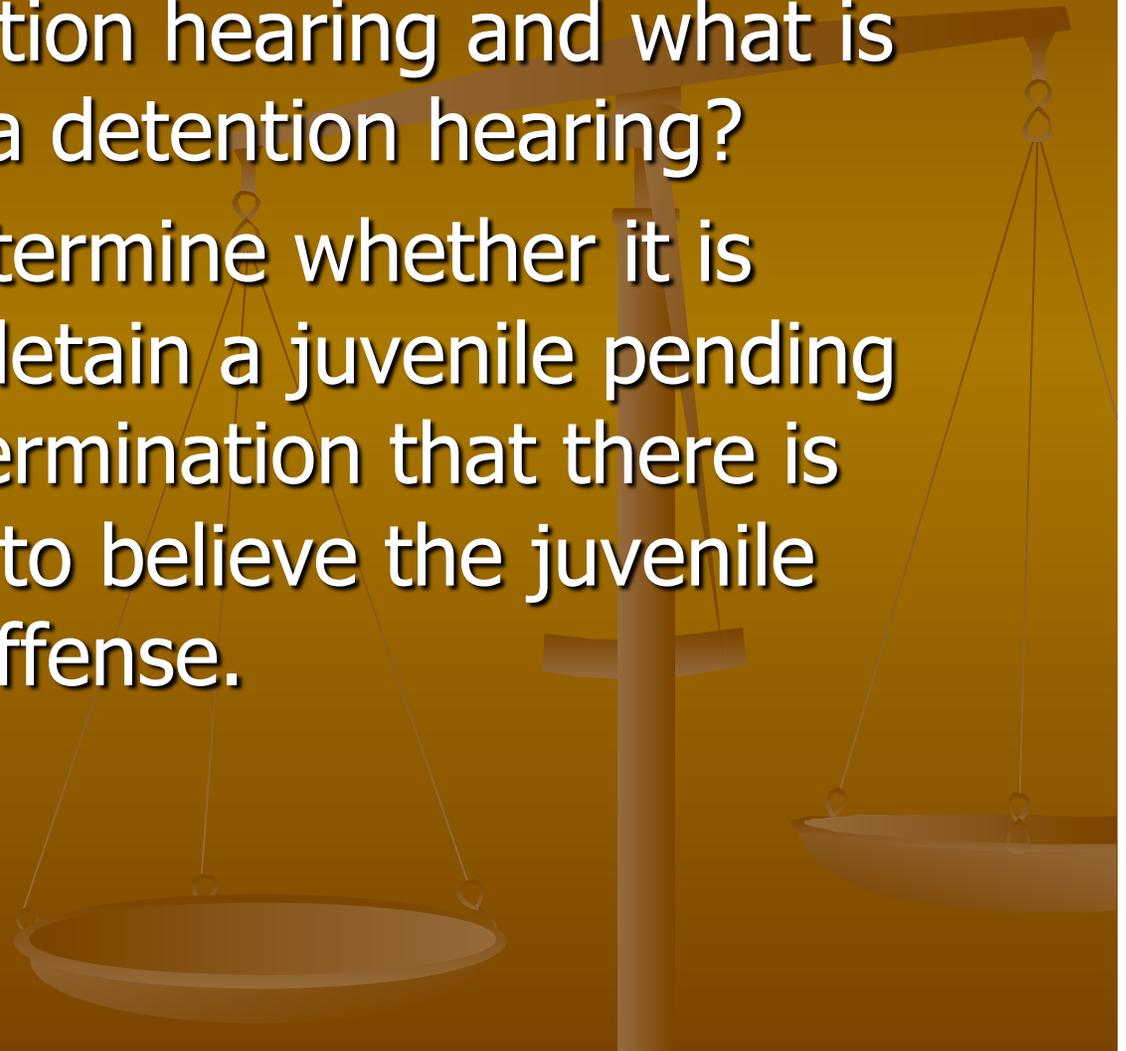
Primary Core Principle

- If a client is in custody, a juvenile defense attorney must work promptly and persistently for release of the child to the least-restrictive alternative community placement consistent with the client's expressed wishes.



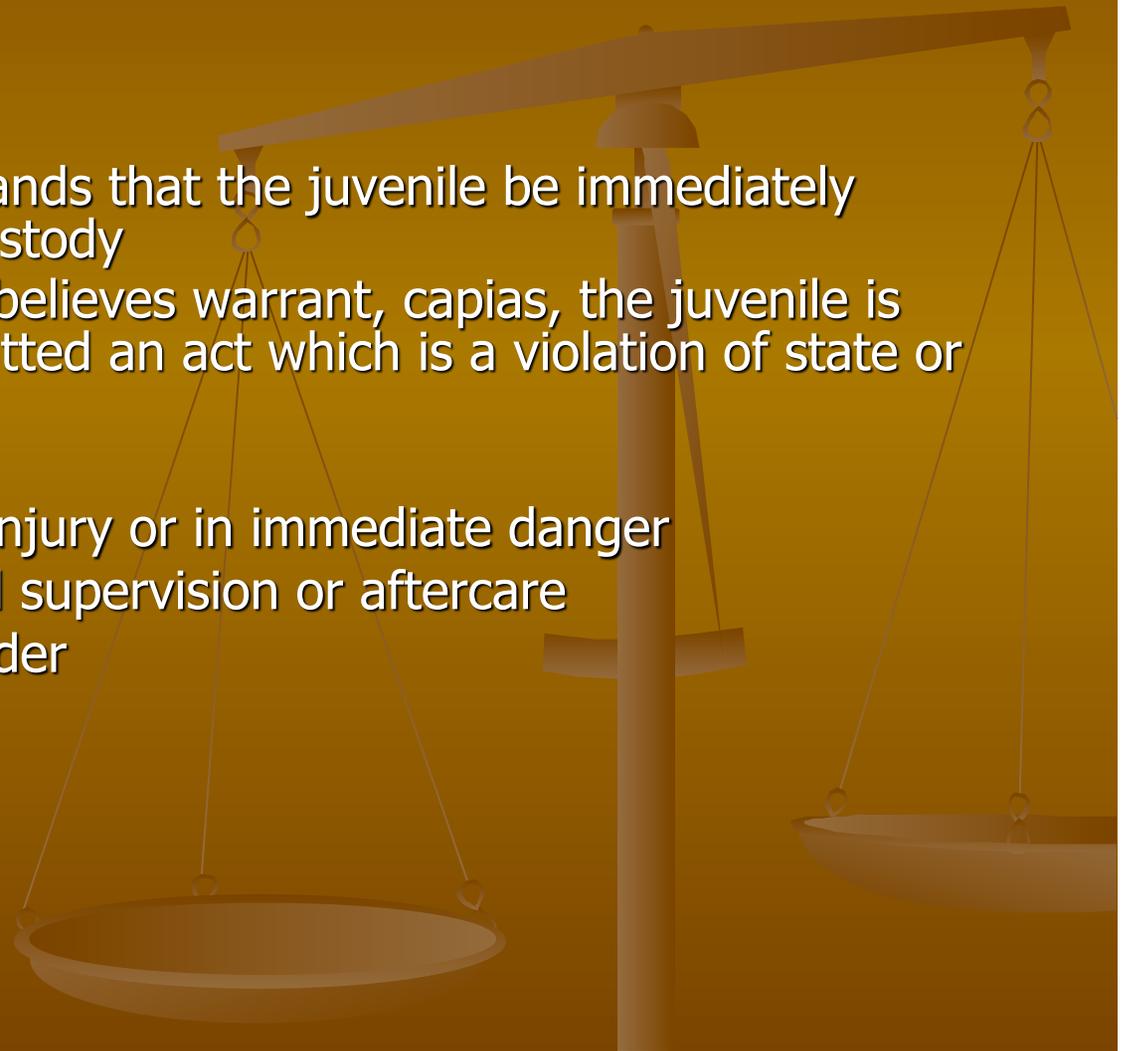
The Detention Hearing

- What is a detention hearing and what is the purpose of a detention hearing?
- A hearing to determine whether it is appropriate to detain a juvenile pending trial after a determination that there is probable cause to believe the juvenile committed an offense.



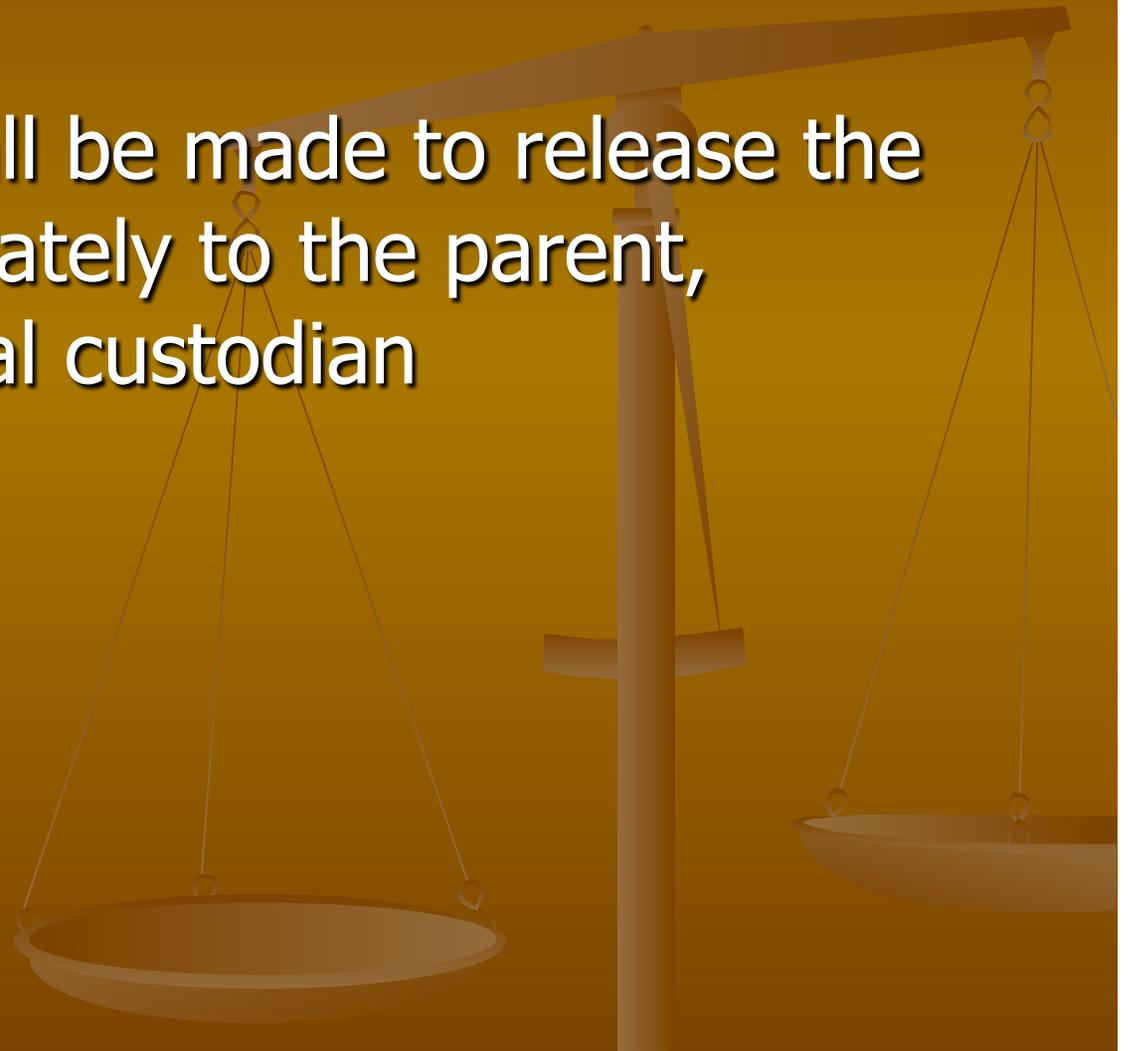
Criteria for holding a juvenile in custody

- 938.19:
- Warrant
- Capias
- Welfare of the child demands that the juvenile be immediately removed from present custody
- Law enforcement officer believes warrant, capias, the juvenile is committing or has committed an act which is a violation of state or federal criminal law
- Runaway
- Suffering from illness or injury or in immediate danger
- Violation of court ordered supervision or aftercare
- Violation of nonsecure order
- Truancy

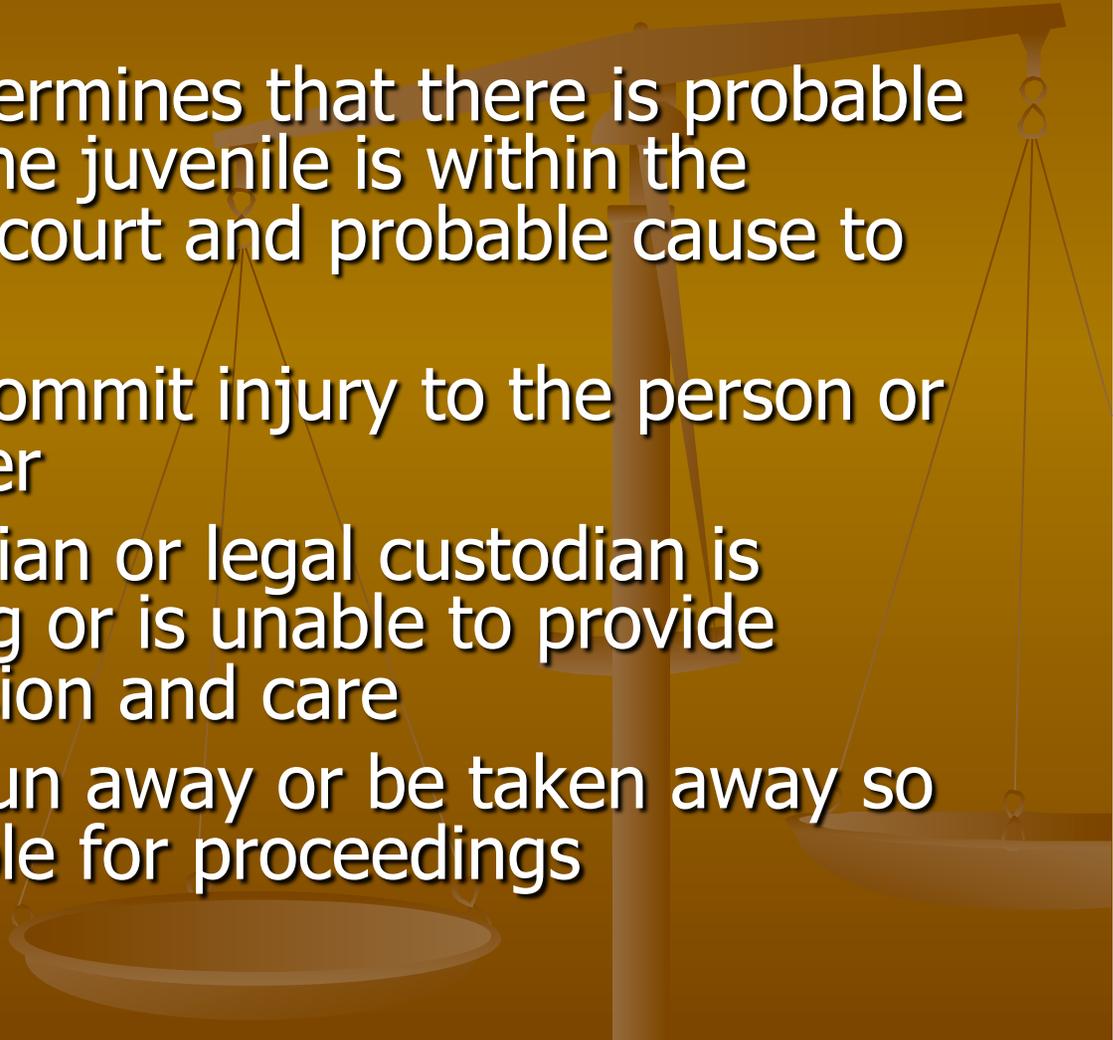


Release or delivery from custody

- 938.20:
- Every effort shall be made to release the juvenile immediately to the parent, guardian or legal custodian



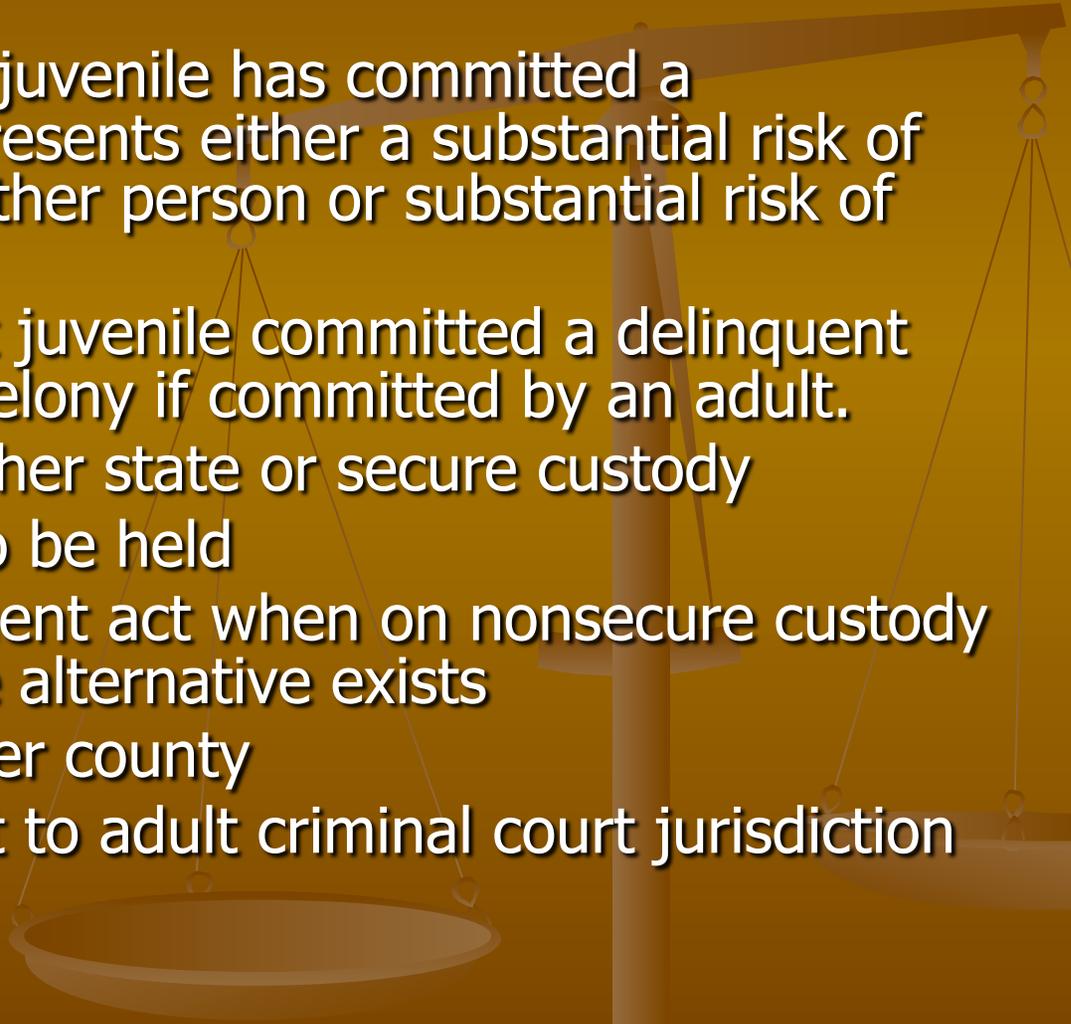
Criteria for holding a juvenile in physical custody

- 938.205:
 - Intake worker determines that there is probable cause to believe the juvenile is within the jurisdiction of the court and probable cause to believe that
 - The juvenile will commit injury to the person or property of another
 - The parent, guardian or legal custodian is neglecting refusing or is unable to provide adequate supervision and care
 - The juvenile will run away or be taken away so as to be unavailable for proceedings
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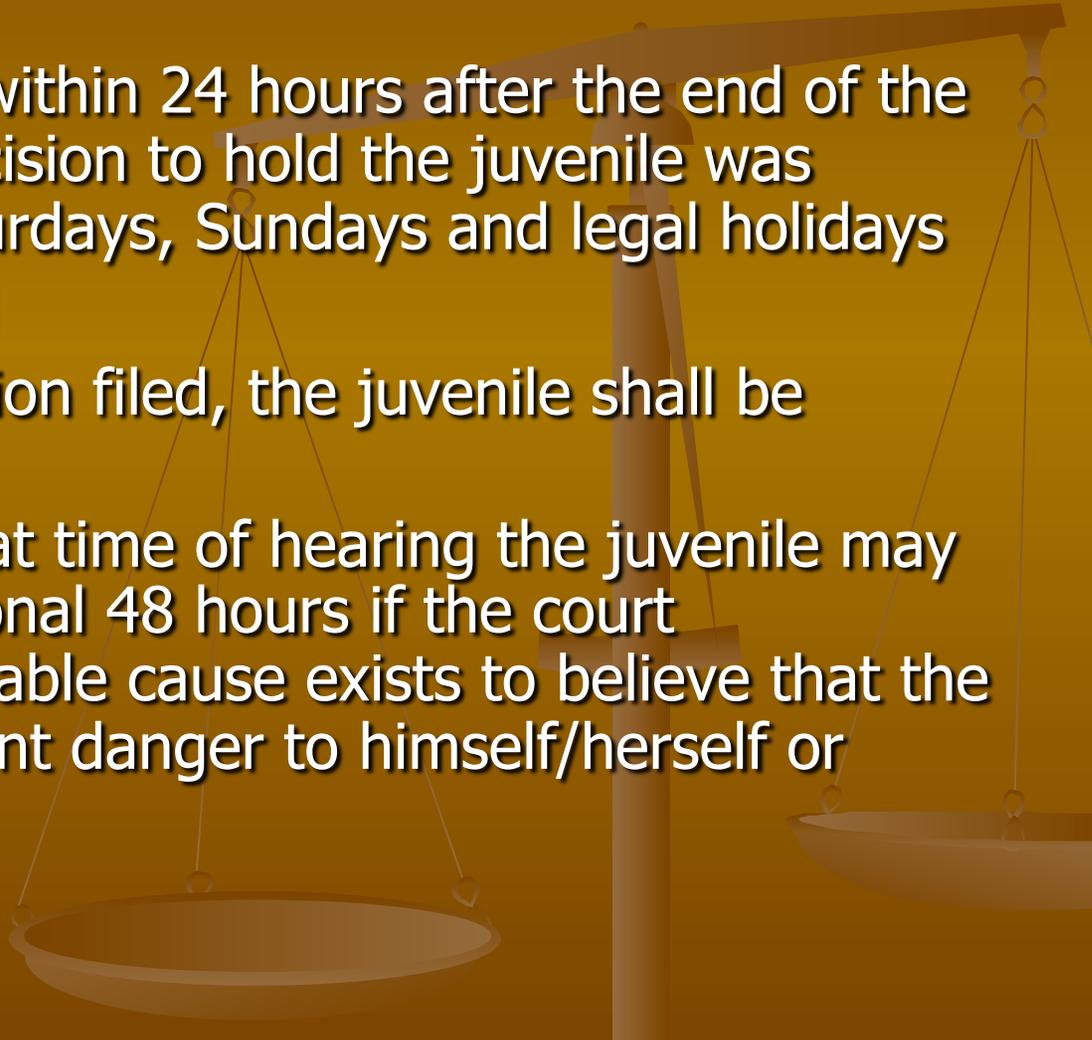
Places where a juvenile may be held in nonsecure custody

- 938.207:
- Home of parent or guardian
- Licensed foster home, group home, nonsecure facility, public shelter care, home of a relative, home of a nonrelative not to exceed 30 days, hospital, approved public treatment facility

Criteria for holding a juvenile in detention

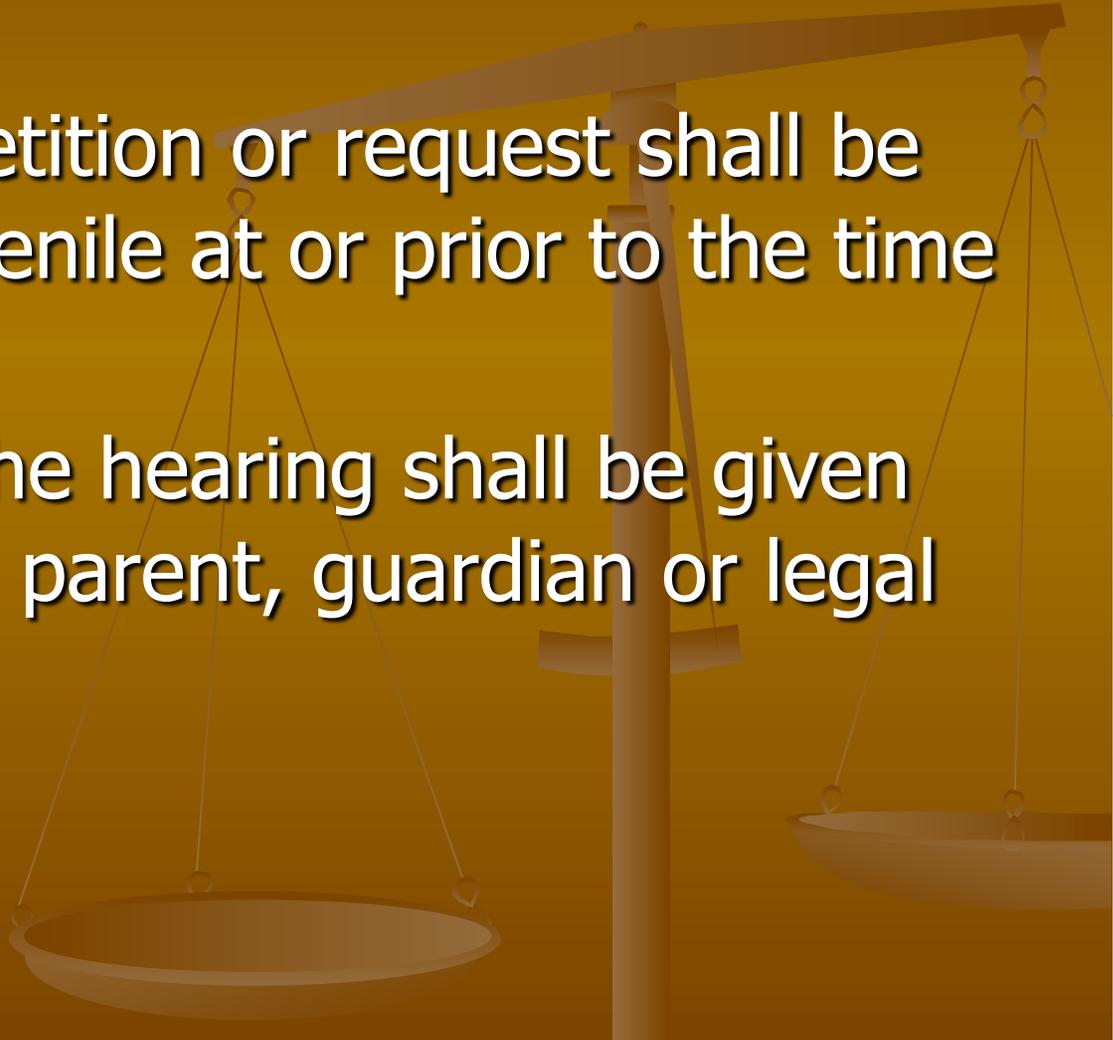
- 938.208
 - Probable cause the juvenile has committed a delinquent act and presents either a substantial risk of physical harm to another person or substantial risk of running away
 - Probable cause that juvenile committed a delinquent act that would be a felony if committed by an adult.
 - Runaway from another state or secure custody
 - Juvenile consents to be held
 - Runaway or delinquent act when on nonsecure custody and no other suitable alternative exists
 - Runaway from another county
 - Under 15 and subject to adult criminal court jurisdiction
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Hearing for a juvenile in custody



- 938.21:
- Shall be conducted within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays and legal holidays
- Petition must be filed
- If no hearing or petition filed, the juvenile shall be released
- Note: If no petition at time of hearing the juvenile may be held for an additional 48 hours if the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself/herself or others

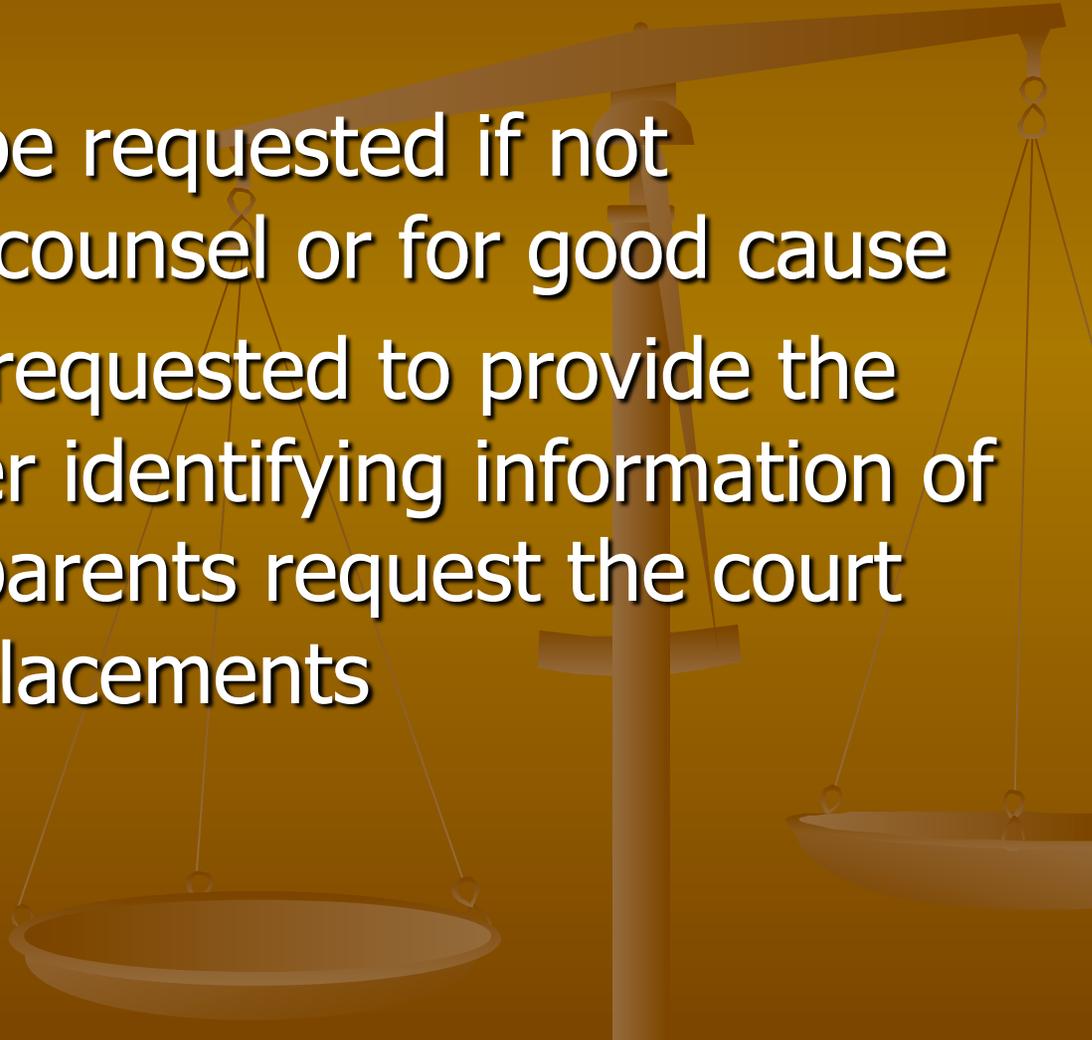
Hearing for a juvenile in custody

- 938.21:
 - A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing
 - Prior notice of the hearing shall be given to the juvenile's parent, guardian or legal custodian
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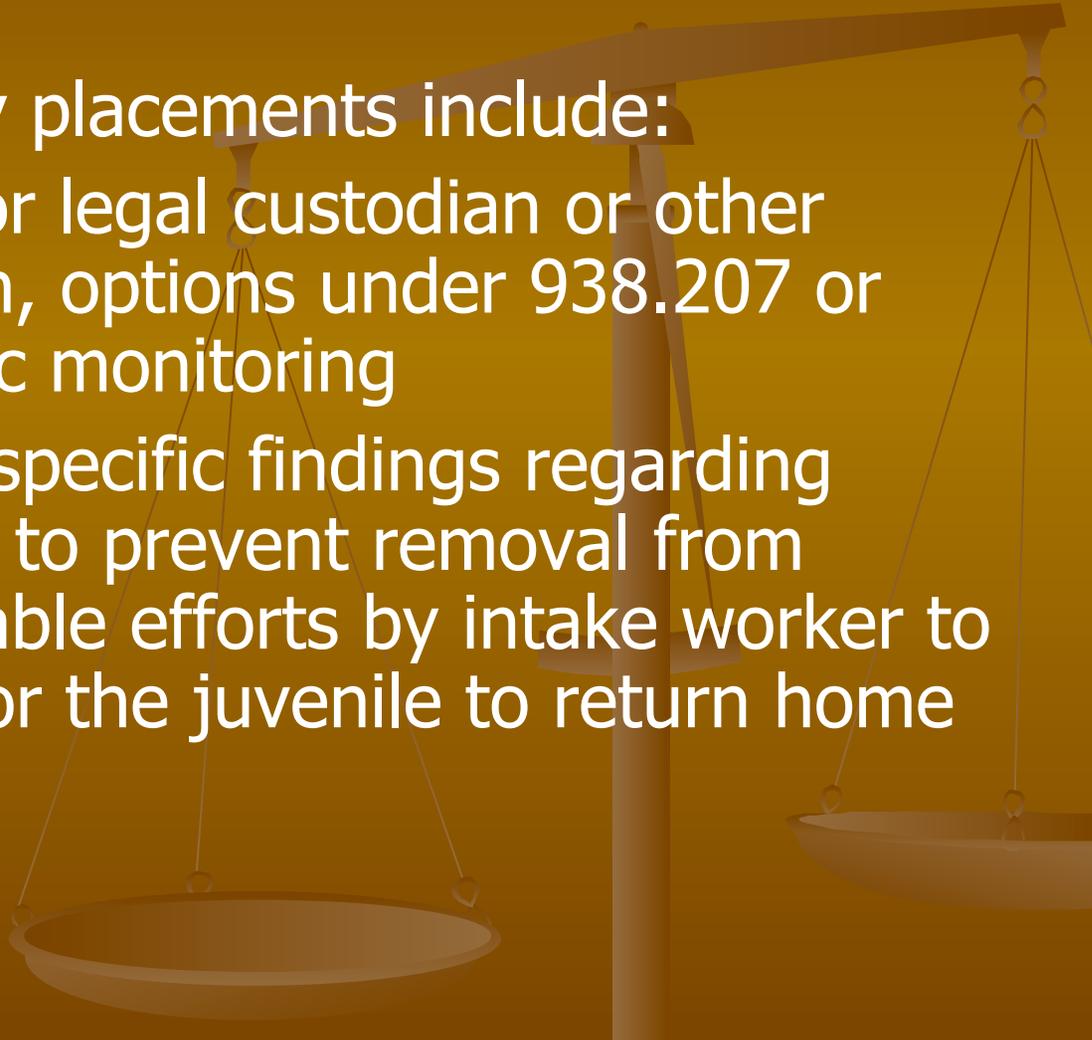
Hearing for a juvenile in custody

- 938.21:
- The court shall inform the juvenile of the allegations that have been made, the nature and the possible consequences of this hearing as compared to possible future hearings, possibility of waiver, the right to counsel, the right to remain silent, the fact the silence may not be adversely considered by the court the right to confront and cross examine witnesses and the right to present witnesses

Hearing for a juvenile in custody

- 938.21:
 - Rehearing can be requested if not represented by counsel or for good cause
 - Parent shall be requested to provide the names and other identifying information of 3 relatives the parents request the court to consider as placements
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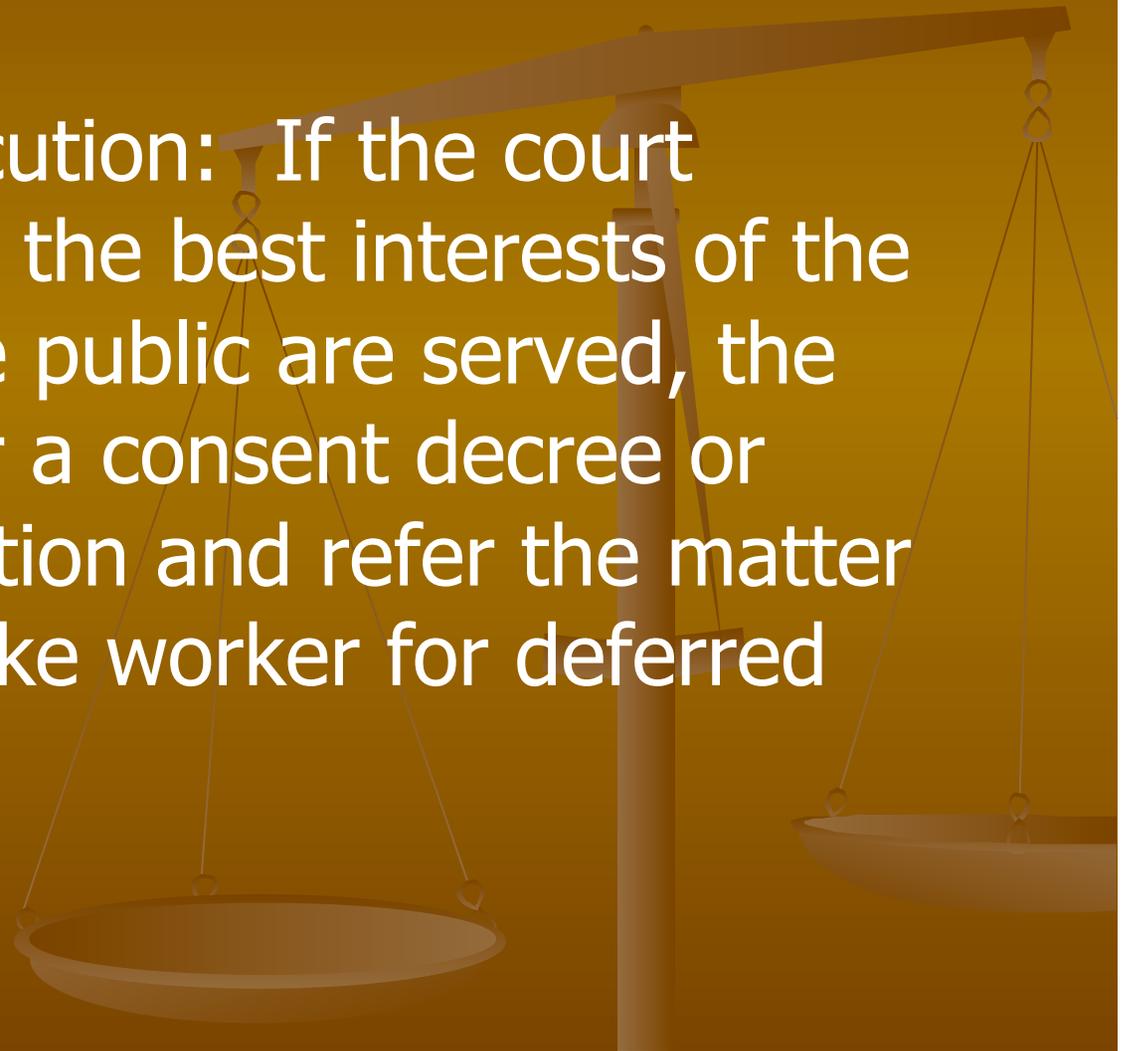
Hearing for a juvenile in custody



- 938.21:
- Continued custody placements include:
- Parent, guardian or legal custodian or other responsible person, options under 938.207 or 938.208, electronic monitoring
- Court must make specific findings regarding reasonable efforts to prevent removal from home and reasonable efforts by intake worker to make it possible for the juvenile to return home safely

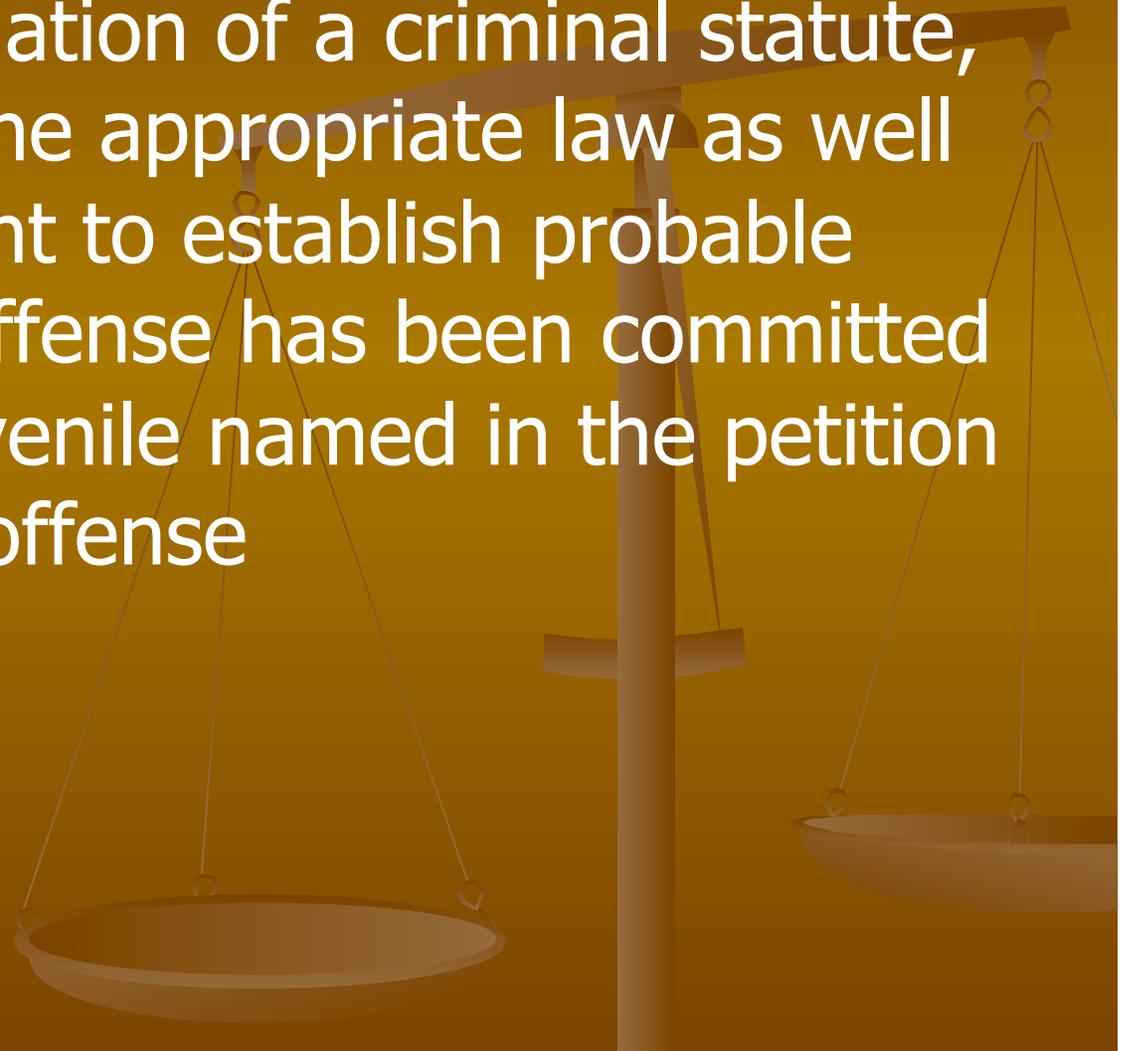
Hearing for a juvenile in custody

- 938.21(7):
- Deferred prosecution: If the court determines that the best interests of the juvenile and the public are served, the court may enter a consent decree or dismiss the petition and refer the matter back to the intake worker for deferred prosecution

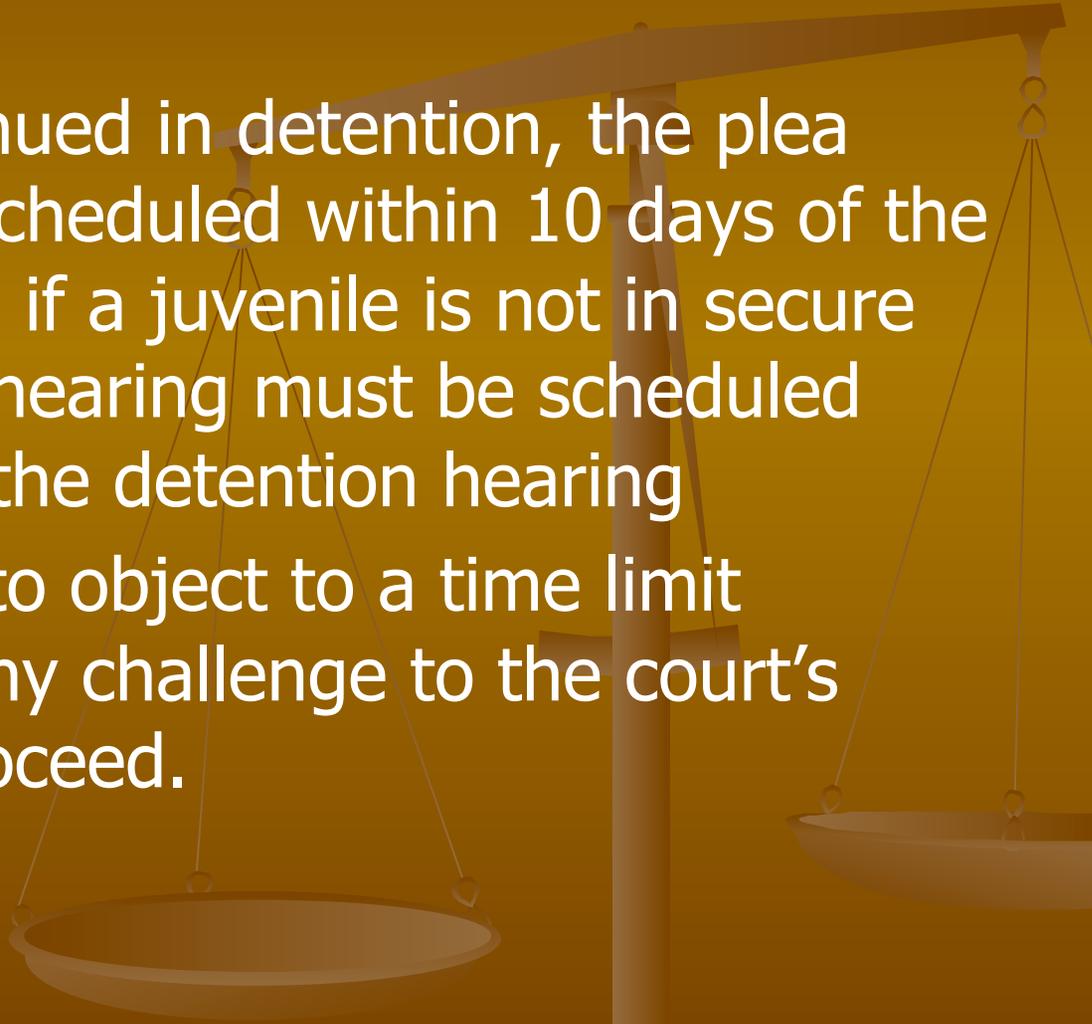


Petition : Form and Content

- 938.255: If violation of a criminal statute, the citation to the appropriate law as well as facts sufficient to establish probable cause that an offense has been committed and that the juvenile named in the petition committed the offense

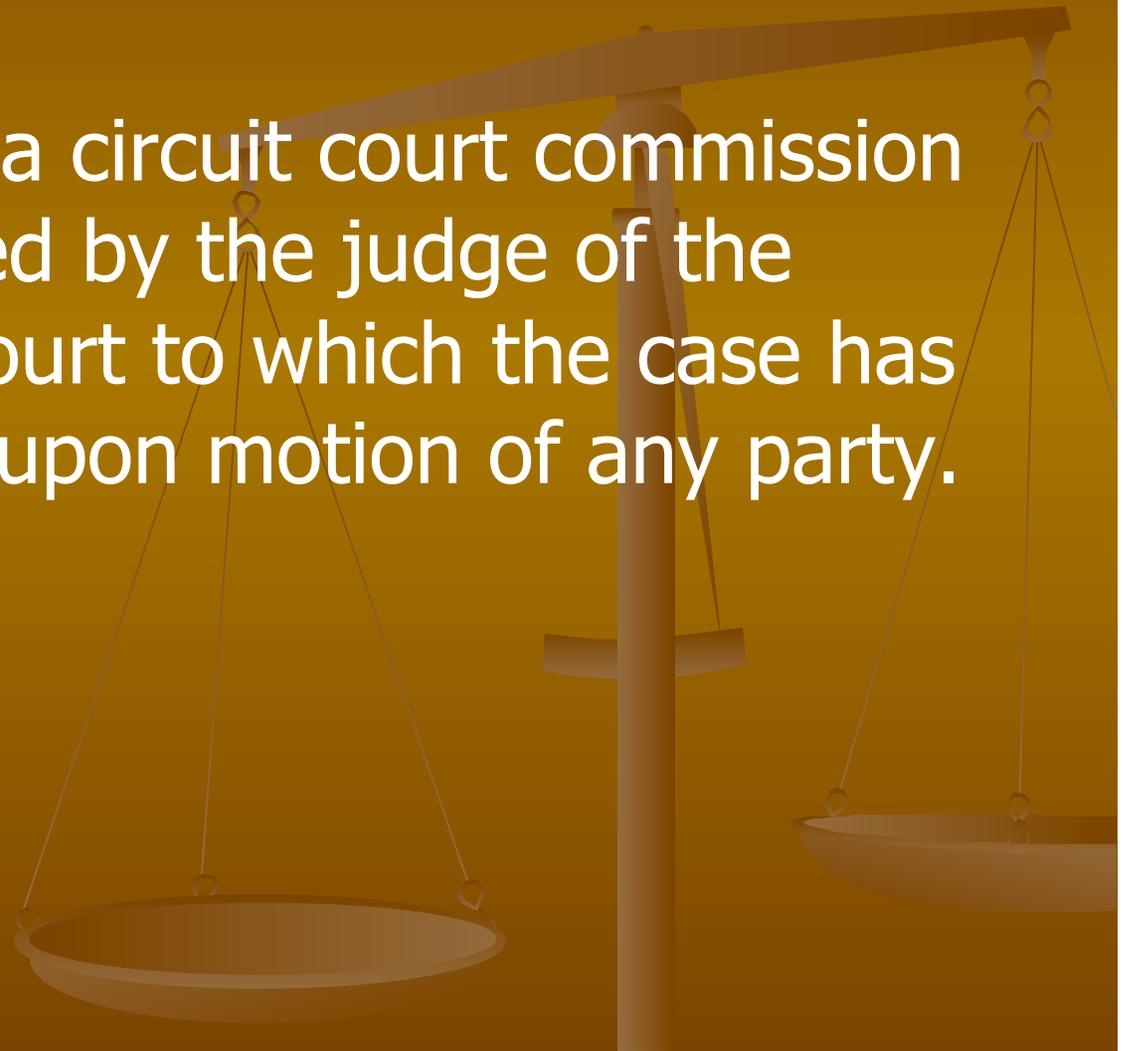


Time Limits

- 938.30:
 - If a juvenile continued in detention, the plea hearing must be scheduled within 10 days of the detention hearing, if a juvenile is not in secure custody, the plea hearing must be scheduled within 30 days of the detention hearing
 - 938.315: Failure to object to a time limit violation waives any challenge to the court's competency to proceed.
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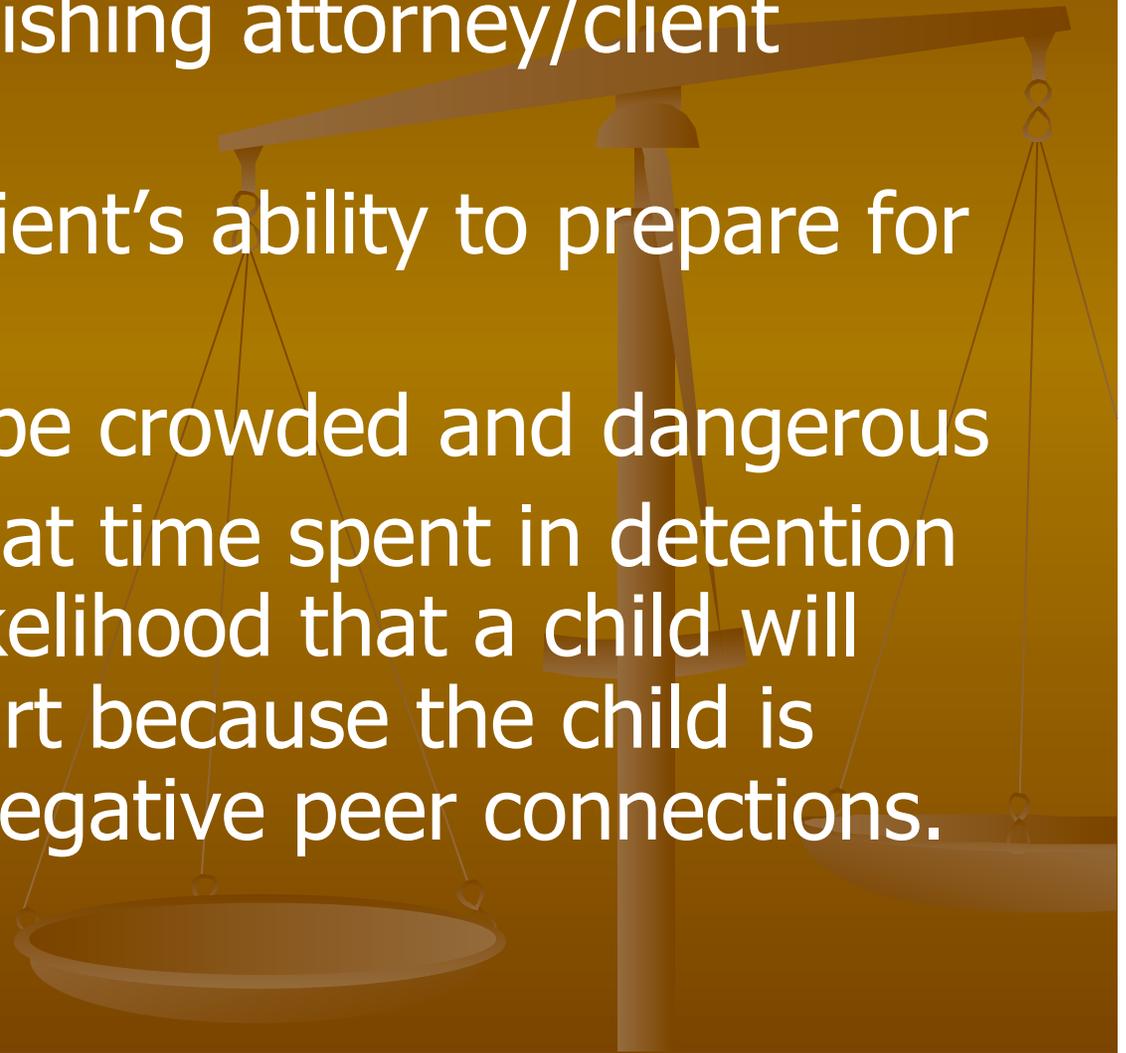
De Novo hearing

- 757.69:
- Any decision of a circuit court commission shall be reviewed by the judge of the branch of the court to which the case has been assigned, upon motion of any party.



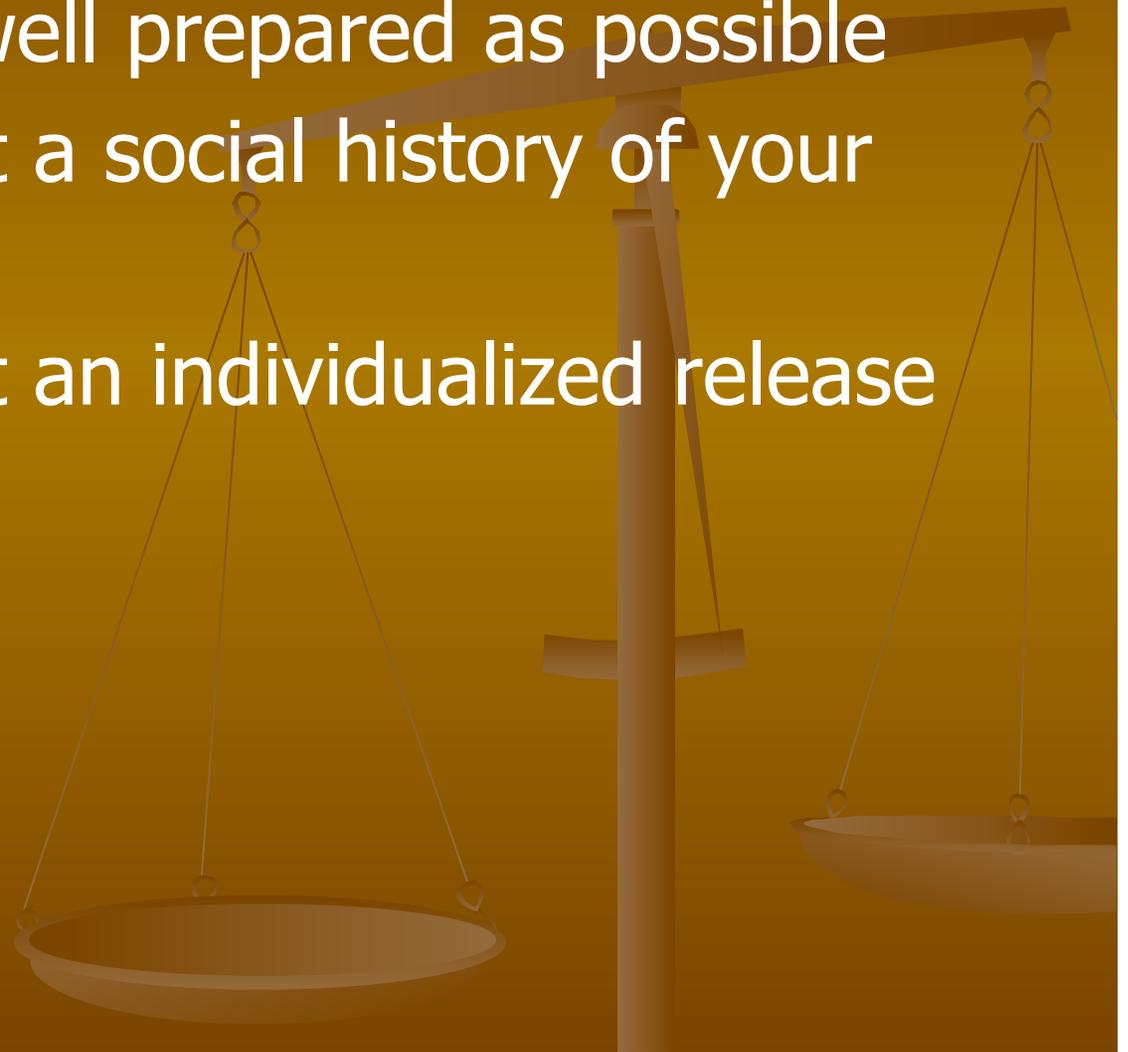
Why is release from secure custody important

- Critical in establishing attorney/client relationship
- Critical to the client's ability to prepare for trial
- Detention may be crowded and dangerous
- Studies show that time spent in detention increases the likelihood that a child will recidivate, in part because the child is likely to make negative peer connections.



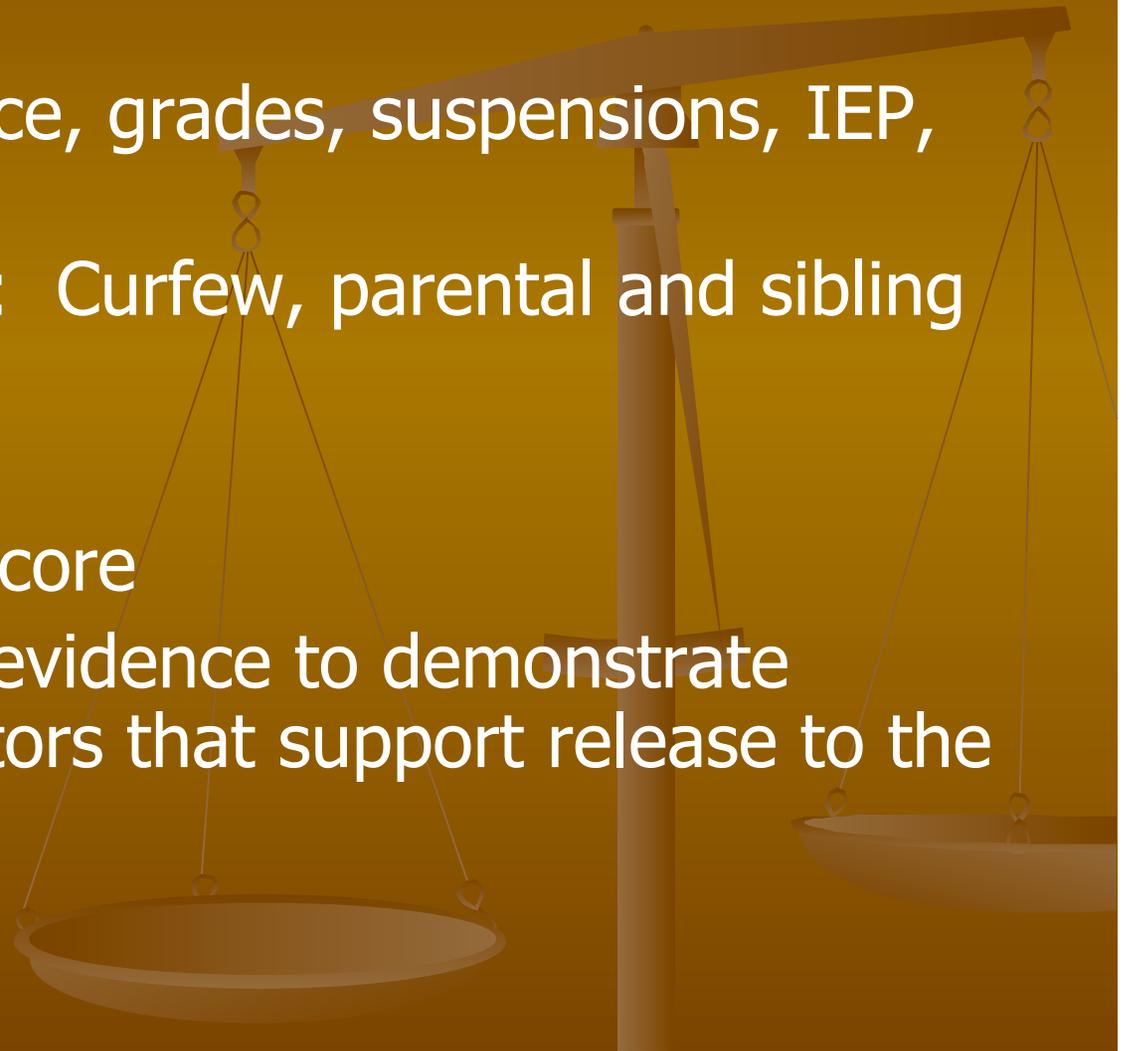
Detention Hearings

- Need to be as well prepared as possible
- Need to present a social history of your client
- Need to present an individualized release plan



Factors to consider

- Prior record
- School: Attendance, grades, suspensions, IEP, sports, clubs
- Behavior at home: Curfew, parental and sibling relationships
- Drug use
- Risk assessment score
- Other affirmative evidence to demonstrate positive social factors that support release to the community



Wonder how your doing?

- NJDC:
 - Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings
 - Achieving Excellence in Detention Advocacy: A checklist to evaluate defense representation at detention hearings
 - Achieving Excellence in Detention Advocacy: Guidelines for Juvenile Defenders to provide zealous advocacy at initial detention hearings.
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