

**MONTCLAIR**  
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Communicating with youth

Youth decision making and plea bargaining

ATTORNEY RESOURCE GUIDE:

# YOUTH AND PLEA BARGAINING

Special considerations when speaking  
with justice-involved youth

## ATTORNEY RESOURCE GUIDE: YOUTH AND PLEA BARGAINING

The purpose of this guide is to help defense attorneys communicate more effectively with young clients. We offer developmentally informed guidance for how to help youth understand the plea-bargaining process and make informed decisions. This guide is divided into three sections:

### > Communicating with youth

This section focuses on using developmentally appropriate language and other techniques that can help you build rapport with youth clients and get them to open up and talk about their cases. We also provide strategies for explaining legal options and potential consequences with youth.

### > Youth decision making and plea bargaining

In this section, we provide an overview of the ways that the decision making of youth can differ from that of adults, and we discuss developmental vulnerabilities that can put youth at risk for adverse outcomes in the plea context.

### > Special considerations when speaking with justice-involved youth

In this section we discuss the impact of trauma, tools when working with youth with cognitive impairments, and techniques to build rapport with youth who might be coming across as defiant.

<sup>1</sup> <https://www.pdsdc.org/resources/client-resources/second-look-amendment>

<sup>2</sup> By comparison, estimates by the U.S. Census Bureau indicate that 50% of Nebraska residents are female, 87.5% are White, and 33% have earned at least a bachelor's degree (U.S. Census Bureau, 2020). The median age in Nebraska is 36.9 years. Therefore, our sample is fairly representative of the Nebraska population, with a slight over-representation of females.

# COMMUNICATING WITH YOUTH

## The Issue: Navigating the legal process can be daunting for youth.

- Many youth, especially those with learning or intellectual impairments, may not understand the plea process or the rights they waive when they plead guilty.<sup>1</sup>
- Youth may struggle to understand the legal language and complex terminology used in the courtroom, and yet they may not ask for clarification. Likewise, sometimes youth think they understand things that they really do not.<sup>2</sup>
- It is imperative that defense attorneys communicate information to youth in ways that are developmentally appropriate, ask questions of youth in ways that elicit the actual knowledge they possess, and use techniques that can help youth think through the various long- and near-term implications of their decisions.

**Whenever you speak with youth, phrase your questions carefully in order to elicit accurate information. Below are some tips to keep in mind:**



**Build rapport.** Figure out what your client is interested in (e.g. art, music), and spend a few minutes learning about this interest.



**Use open-ended questions.** Use questions to get your client to talk (e.g., “Tell me what happened next?”; “What do you think happens at a trial?”) and avoid relying solely on answers to yes/no questions such as “Do you understand what I just told you about what happens at trial?”



**Gauge understanding and appreciation.** Ask youth to identify the pros and cons of options you present to them. Discuss the potential long-term consequences associated with each option.

- If they don’t mention some potential outcomes, ask them if they can think of anything else or suggest other possible outcomes. Go slowly, give youth time to consider their options and come up with questions.
- Don’t ask youth if they understand; have them show they understand by describing information in their own words.

<sup>1</sup> Kruh, I., & Riggs Romaine, C. (2022). Juvenile Competence to Stand Trial. Routledge. <https://doi.org/10.4324/9780367198459-REPRW190-1>

<sup>2</sup> Sowerbutts, A., Eaton-Rosen, E., Bryan, K., & Beeke, S. (2021). Supporting youth offenders to communicate in the youth justice system: A scoping review. *Speech, Language, and Hearing*, 24, 87-104.



**Use repetition.** The concepts you discuss with your client are likely to be new and complex. It's important to go over things more than once.

- When recapping at the end of meetings, ask the youth to tell you what they remember in their own words first.
- At each new meeting, review what you covered in the last meeting by asking the youth to tell you in their own words what they remember and then filling in the missing pieces.



**Be alert for possible miscommunication.** If a youth's answer seems inconsistent with prior answers or doesn't make sense to you, investigate the possibility that there might have been a problem with the way your question was phrased, the order in which it was presented, or the way it was interpreted or understood by the youth.



**Make sure you understand your client.** Youth are constantly coming up with new slang. If you are unfamiliar with a term they use, ask them to explain it.



Youth may also use words incorrectly or differently from the way you do. Avoid making inferences on the basis of your own experiences.

**Appreciate the impact of demographic and cultural differences.** Economic, racial, and ethnic differences between you and your client are likely to be readily apparent to your client and can affect their relationship with you in myriad ways. They may find it hard to trust you, think you are not on their side, or that you won't understand or believe them. In turn, they might react to you in ways that can be perceived as hostile.

- To avoid responding in a non-productive way, take time to consider that a youth's behavior may stem from fear, lack of understanding or self-protection.
- A youth who senses the attorney's rejection or hostility may withhold information from the attorney, depriving both the attorney and the youth an opportunity to exchange important insights in the case

### Tips on how to simplify language

- Chunk or break complex ideas down into smaller components. This can help youth understand and organize the information you are giving them.
  - Break long sentences/questions into shorter ones that communicate only one main idea.
- Use simple words or expressions over those that are more complex; e.g., "said" instead of "indicated," "show," or "tell me about," instead "depict," or "describe." Repeat names and places often, instead of using strings of pronouns.
- Pay attention to your client's speech patterns and respond appropriately. If the youth uses simple words and short, non-complex sentences, try to do the same.

<sup>3</sup>Michelle Lavigne & Gregory Van Rybroek, "He got in my face so I shot him": How Defendants' Language Impairments Impair Attorney-client Relationships, 17 CUNY L. REV. 69, 71 (2014).

# YOUTH DECISION MAKING AND PLEA BARGAINS

## How kids think

### Compared to adults, youth:

- Think less frequently about the future, and don't think about it in the same way.
- Focus more on immediate and near-term outcomes than on long-term outcomes.
- Tend to be more impulsive than adults and engage in more risk-taking behaviors.
- Are more susceptible to peer influence.
- Are more vulnerable to the effects of stress and their decision making is more likely to be impaired when under stress.
- May be more strongly influenced by sentencing incentives than by the degree or class of charges or by personal values, such as whether they are innocent or whether the process is fair.

**Highly emotional situations make it especially difficult for youth to make decisions that are in their best interest.**

### In pressured situations youth are more likely than adults to:

- Focus on immediate, positive, and social (peer-approved) consequences.
- Make decisions that are short-sighted in nature with little consideration of the impact on the future (e.g., they may want to get the process over with or get out of pretrial detention).
- Give in to pressure from authority figures (e.g., accept a plea offer because they think their attorney wants them to, or a family member or friend advises them to, and not because they want to).<sup>4</sup>

<sup>4</sup>Grisso, T., Steinberg, L., Woolard, J. et al. (2003) Juveniles' competence to stand trial: a comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27(4), 333-363.

**When discussing plea offer with youth clients:**

- Time permitting, use a collaborative approach to the discussion without leaning in on one decision.
- Meet with youth as early in the process as possible, and as often as needed, to explain what a guilty plea is and to discuss the possibility of entering one. Research suggests that youth who spend more time with their attorneys tend to perform better on measures of adjudicative competency.<sup>5</sup>
- Explain the rights the youth will be waiving if they enter into a plea agreement. Research shows that many youth lack clear understanding of rights waived when pleading guilty.<sup>6</sup>
- Explain any collateral consequences they might face in the future before they enter into a plea (e.g., education, employment opportunities, housing access, etc.), and ask the youth to talk through how each of these might affect them later.
- Ask the youth to explain what you have told them at each step in their own words to gauge their understanding and identify gaps in knowledge.
- Give youth time to think about their options, discuss them with parents (if they desire to do so), and come back to you with questions.
- If possible, don't ask them to make decisions in a short window of time. Give them an opportunity to assess their options fully.

**Plea bargain discussion checklist\***

Discussion occurred early in the process.

Youth had sufficient time to discuss options, weigh alternatives, and seek advice from parents and attorneys.

Explained rights waivers, case facts, and potential outcomes including collateral consequences with youth before deciding how to plead.

Discussed reasons for and against taking the plea and going to trial.

Gave youth the opportunity to show their understanding by explaining everything in their own words.

The youth was able to explain and acknowledge the pros and cons of their decision.

\* Adapted from Emily Haney-Caron ([www.youthlawlab.com](http://www.youthlawlab.com))

<sup>5</sup> Viljoen, J., & Roesch, R., (2005). Competence to waive interrogation rights and adjudicative competence in adolescent defendants: Cognitive development, attorney contact, and psychological symptoms. *Law and Human Behavior*, 29(6), 723-742.

<sup>6</sup> Daftary-Kapur, T., & Zottoli, T. (2014). A first look at the plea deal experiences of juveniles tried in adult court. *International Journal of Forensic Mental Health*, 13(4), 323-336.

# SPECIAL CONSIDERATIONS WHEN SPEAKING WITH JUSTICE-INVOLVED YOUTH

## WORKING WITH YOUTH WHO HAVE TRAUMA HISTORIES

Childhood trauma often can result in severe and persistent negative behavioral, emotional, and psychological outcomes that extend into adulthood.<sup>7</sup> Justice-involved youth are significantly more likely than other youth to have a history of trauma (e.g., abuse, parental incarceration, etc.).<sup>8,9,10</sup>

**Between 75 and 93% of youth entering the juvenile justice system have been exposed to some form of trauma, compared to 25-34% of youth in the general population.<sup>11,12</sup>**

### Potential behavioral responses of youth who have been exposed to trauma

- Youth with my trauma histories may exhibit heightened sensitivity.
- They may isolate themselves socially
- They may appear callous or unemotional due to emotional numbing or social distancing.
- They may experience low self-esteem.

<sup>7</sup> Evans-Chase, M. (2014). Addressing trauma and psychosocial development in juvenile justice involved youth: A synthesis of the developmental neuroscience, juvenile justice, and trauma literature. *Laws*, 3(4), 744-758.

<sup>8</sup> Abram, K. M., Teplin, L. A., Charles, D. R., Longworth, S. L., McClelland, G. M., & Dulcan, M. K. (2004). Posttraumatic stress disorder and trauma in youth in juvenile detention. *Archives of General Psychiatry*, 61(4), 403-410.

<sup>9</sup> Cruise, K.R., & Ford, J.D. (2011). Trauma exposure and PTSD in justice-involved youth. *Child Youth Care Forum*, 40, 337-343.

<sup>10</sup> Ford, J. D., Hartman, J. K., Hawke, J., & Chapman, J. C. (2008). Traumatic victimization posttraumatic stress disorder, suicidal ideation, and substance abuse risk among juvenile justice-involved youths. *Journal of Child and Adolescent Trauma*, 1, 75-92

<sup>11</sup> Adams, E. (2010). Healing invisible wounds: Why investing in trauma-informed care for children makes sense. Justice Policy Institute. [https://justicepolicy.org/wp-content/uploads/2022/02/10-07\\_REP\\_HealingInvisibleWounds\\_JJ-PS.pdf](https://justicepolicy.org/wp-content/uploads/2022/02/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf)

<sup>12</sup> Costello, E. J., Erklani, A., Fairbank, J., & Angold, A. (2003). The prevalence of potentially traumatic events in childhood and adolescence. *Journal of Traumatic Stress*, 15, 99-112.

## Things you can do to communicate effectively with trauma-impacted youth.

- **Use interviewing methods that take account of the cognitive impacts of trauma.**
  - For example, when questioning, be patient and try to allow the youth to direct the conversation as much as possible. Ask questions such as “Where would you like to start?” or “When you’re ready, would you mind telling me what happened?” Questions such as these make it clear that you are willing to listen to their story rather than sounding accusatory (i.e., “Tell me why you...”).
  
- **Provide the youth with a clear overview of the process and progression of events related to their case,** including when they can expect to meet you and how they can contact you. Establishing a routine may help them feel more at ease and also establishes your reliability.
  - If possible, it may be helpful to always meet with the youth at the same place and/or at the same time to avoid any triggers or uncertainty.
  - Let your client know that you might have to reschedule meetings sometimes. When that happens, be sure to communicate the cancellation to the youth in a timely fashion.
  - Allow the youth to take breaks when they need to.
  
- **Allow the youth to actively participate in the process.** This gives them a sense of control and emphasizes their importance in the attorney-client relationship.
  
- **Provide clear options and choices.** Let them know that they can decide. Be prepared to consult with mental health professionals or other important figures in the youth’s life if additional help is needed.



## YOUTH WITH INTELLECTUAL DISABILITIES

Youth with developmental and intellectual disabilities are overrepresented in correctional facilities.<sup>13,14</sup> These youth may struggle more than other youth to understand their rights, recall details about their case and the incident that led to their arrest, provide chronological histories, answer complex questions, and communicate with their attorneys.

### Several techniques can facilitate communication with clients who present with these difficulties.<sup>15</sup>

- Ask your client to repeat what you told them in their own words. Do this periodically throughout the conversation, rather than waiting until the end.
- Allow the youth to express themselves in whatever ways they feel comfortable. For example, youth that may have difficulty with expressive language and may find it helpful to incorporate other forms of communication as well, such as writing or drawing.
- Youth with mild impairment are often still capable of making important decisions. However, if you suspect that your client suffers from severe cognitive impairment that may impact their ability to make legal decisions which protect their best interests, then it is important to seek an evaluation from a professional.

<sup>13</sup>Lansing, A. E., Washburn, J. J., Abram, K. M., Thomas, U. C., Welty, L. J., & Teplin, L. A. (2014). Cognitive and academic functioning of juvenile detainees: Implications for correctional populations and public health. *Journal of Correctional Health Care: The Official Journal of the National Commission on Correctional Health Care*, 20(1), 18–30.

<sup>14</sup>Thompson, K. C. & Morris, R. J. (2016). Juvenile delinquency and disability. In: *Juvenile Delinquency and Disability. Advancing Responsible Adolescent Development*. Springer, Cham.

<sup>15</sup>see American Bar Association, n.d., & the report by Partners in Justice, n.d. for more detailed guides

## DEALING WITH DEFIANCE

Defiance can manifest in a variety of ways, including a refusal to cooperate with you, disrespectful behavior directed towards you, the judge or the prosecutor, as well as acting out in the courtroom. In some cases, defiance may arise as an adaptive form of coping with abuse, trauma, or other adverse life experiences. In other cases, cultural differences may contribute to a lack of trust on the part of the youth, manifesting in an uncooperative or dismissive attitude. Defiant behavior may also stem from poor emotion regulation and problem-solving skills.

**The following tips and strategies can help:**



**Validate emotions before providing correction or instruction.** For example, if a youth yells, “You don’t know what it’s like to be me,” acknowledge the statement: “You’re right. But I do want to help you. Maybe you can tell me more about what life has been like for you.”



**Educate your client on your role and their autonomy in their legal decisions.** If youth become frustrated, acknowledge and validate their emotions (e.g., “I can understand why you are frustrated, you feel like you are being treated unfairly.”), but avoid normalizing the way in which they expressed it.



**If the youth is ignoring you, try using an incentive to get them to cooperate.** For example, you might say, “I know this stuff can be boring, but if you give me your full attention now, I can make this move faster.”



**Validate their feelings and give them positive feedback.** You can say something like, “This must be frustrating. A lot of the youth I work with feel the same way. I appreciate your patience.”



**Some youth may shut down or behave insolently when they feel ashamed.**

- If parents or legal guardians are present, the youth might not want to talk in front of them. Ask them to leave and then explain to the youth that what they say to you will not go back to their parents without permission.
- Tell the youth that you are not there to judge their actions and that your sole responsibility is to be their advocate.



**If youth have had prior negative experiences with an attorney, they may be cynical.** Reiterate that you will fight for their rights and advocate for them.

<sup>1</sup> Kruh, I., & Riggs Romaine, C. (2022). Juvenile Competence to Stand Trial. Routledge. <https://doi.org/10.4324/9780367198459-REPRW190-1>

<sup>2</sup> Sowerbutts, A., Eaton-Rosen, E., Bryan, K., & Beeke, S. (2021). Supporting youth offenders to communicate in the youth justice system: A scoping review. *Speech, Language, and Hearing, 24*, 87-104.

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**This brief was produced with funding to Dr. Daftary-Kapur and Dr. Zottoli from the American Bar Endowment.**