

NUTS AND BOLTS OF DELINQUENCY

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Judge Yolanda Tanner
Magistrate Kimberly
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PURPOSES OF JUVENILE COURT

CJP §3-8A-02

BALANCE THESE OBJECTIVES:

- **Public safety** and protection of community.
- **Accountability** of the child and parent to the victim and community.
- Competency and character development to **assist child in being responsible and productive.**

WHAT ARE THE PURPOSES OF JUVENILE COURT (2)

- Provide treatment, training and rehabilitation consistent with child's best interests and public safety.
- Hold parents responsible for remedying circumstances requiring Court intervention.
- Conserve and strengthen family ties.

BASIC DEFINITIONS IN §3-8A-01

- Child = an individual under 18 years of age.
- Delinquent act = an act which would be a crime if committed by an adult.
- Delinquent child = a child who has (1) committed a delinquent act; and (2) requires the Court's guidance, treatment, assistance or rehabilitation.

BASIC DEFINITIONS (2)

- CINS = a child who requires the Court's guidance, treatment, or rehabilitation and
 - Is habitually truant;
 - Is habitually disobedient, ungovernable and beyond control of the person having custody of child;
 - Departs himself or herself so as to injure or endanger himself or herself or others; **or**
 - Has committed an offense applicable only to children.

BASIC DEFINITIONS (3)

- CINA = a child who needs Court intervention because:
 - Child has been abused, neglected, has a developmental disability or has a mental disorder; **and**
 - Child's parent, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.
 - (CJP §3-801(f)).

JURISDICTION

§3-8A-03, §3-8A-05

- Exclusive original jurisdiction over delinquency, CINS, and Peace Order cases when it involves a child between 7 and 18 years old.
- Age of child at time of act controls jurisdiction.
- Jurisdiction, once obtained, may continue until child is 21 years old, unless abandoned.
- There is no presumption of incapacity of a child 7 years old or older.

HOWEVER

The Juvenile Court does not have jurisdiction over numerous offenses:

- A child 14 years or older who is accused of a crime punishable by death, or life imprisonment, such as 1st degree murder or 1st degree rape;
- A child 16 years or older who is accused of a non-incarcerable traffic or boating offense.



HOWEVER, NOT OVER

A child 16 years or older accused of various serious offenses:

- Abduction;
- Kidnapping;
- 2nd degree murder;
- Manslaughter, except involuntary manslaughter;
- 2nd degree rape, or 2nd or 3rd degree sexual offenses.

AND ALSO NOT OVER

- Robbery;
- handgun offenses;
- carjacking;
- first degree assault.



REVERSE WAIVER (1)

CP §§4-202-4-202.2

- A child who is charged with an offense not within the jurisdiction of the Juvenile Court may be **transferred** back to the Court if the Court finds by a preponderance of the evidence that a transfer is in the interest of the child or society.

TRANSFER IS PROHIBITED (2)

- If the child has already been **transferred** back to the Juvenile Court before and has been adjudicated delinquent on that charge;
- If the child has already been convicted of an offense as an adult; **or**
- The charge is 1st degree murder and the child was 16 or 17 when the crime was committed.

TRANSFER CRITERION (3)

FACTORS:

- Age of the child.
- Mental and physical condition of child.
- Amenability to treatment in juvenile system.
- Nature of the offense and child's alleged participation in offense.
- Public safety.

TRANSFER (4)

- The Juvenile has the burden of proof in a Transfer hearing.
- The Court does not presume that the juvenile committed the alleged offense at a Transfer hearing.
- Court can order DJS to do a study prior to transfer hearing.
- Juvenile can be held in detention, rather than jail prior to the transfer hearing.
- Court may consider transferring back if child is not convicted of offense outside the jurisdiction of the Juvenile Court.

WAIVER (1)

§3-8A-06, Rule 11-113

- A child properly in the jurisdiction of the Juvenile Court may be waived to the adult Courts if the Court finds that:
 - The child is 15 years or older;
 - The child is less than 15, but charged with a crime punishable by death or life imprisonment; **or**
 - The child is an unfit subject for juvenile rehabilitation.

WAIVER (2)

FACTORS:

- Age of the child.
- Mental and physical condition of child.
- Amenability to treatment in juvenile system.
- Nature of the offense and child's alleged participation in offense.
- Public safety.

WAIVER (3)

- For purposes of the waiver, the Court shall assume the child committed the offense charged.
- The Court may order a study by DJS.

VENUE

§3-8A-08

- Venue is appropriate in CINS where child resides.
- Venue lies in delinquency where delinquent act occurs, subject to transfer.
- Venue lies in juvenile peace order where act occurred, subject to transfer.

TRANSFER

§3-8A-09

- If a case is filed in a county other than where the child is domiciled, the case may be transferred to the county of the child's residence.
 - Normally done after adjudication, but before disposition, or after disposition, but can be done at any point in the proceedings.

INTAKE

§3-8A-10

- Police forward Complaint to DJS.
- DJS has 25 days to determine whether to send case to State's Attorney (not grounds for dismissal).
- DJS must send all felonies to State's Attorney.
- State's Attorney must file Petition within 30 days of receipt of complaint (grounds for dismissal).

CHILD TAKEN INTO CUST.

§3-8A-14

- Child may be taken into custody by any of the following methods:
 - Pursuant to an order of the Court;
 - Pursuant to law of arrest;
 - If there are reasonable grounds to believe child is in immediate danger;
 - If there are reasonable grounds to believe child is a runaway.



Custody (2)

- Child shall be released to parents unless detention or shelter care is authorized by Court or DJS.

- If detention is authorized, child shall be taken to a detention or shelter care facility.

DETENTION

§3-8A-15

- Child taken into custody may be detained if:
 - Detention is necessary to protect the child and others; **or**
 - Child is likely to leave the jurisdiction of the Court.

DETENTION (2)

§3-8A-15 & Rule 11-112

- If a child is taken into custody without a Body Attachment issued by the Court, and continued detention is sought, a detention petition must be filed immediately. (Immediately is defined by Rule 11-112 as the next day.).
- Courts and Judicial Proceedings at §3-8A-15 provides that a detention hearing (whether or not pursuant to a warrant) must be held no later than the next day Court is in session, unless extended for good cause. It may be extended up to 5 days. (Conflict with the Rules which say 8 days.).
- Parents, guardians and custodians have a right to reasonable notice. (Usually given orally by DJS.).

CONTINUED DETENTION

- A child may be detained if:
 1. Such action is required to protect the child or others;

or

 2. The child is likely to leave the jurisdiction of the Court.

CONTINUED SHELTER CARE (1)

- A child may be continued in Shelter Care if:
 1. It is required to protect the child or the person or property of others; **or**
 2. The child is likely to leave the jurisdiction; **or**
 3. There is no parent, guardian or custodian able to provide supervision and care for child and return the child to Court when required to do so;

AND

CONTINUED SHELTER CARE (2)

1. Continuation of the child in his or her home is contrary to the welfare of the child; **and**
2. Removal of the child was reasonable due to an alleged emergency situation and in order to protect the safety of the child; **or**
3. Reasonable but unsuccessful efforts were made to prevent or eliminate the need for removal and, if appropriate, reasonable efforts are being made to return the child to the home.

DURATION OF DETENTION (1)

- Detention prior to adjudication may be for up to 30 days. An adjudicatory or waiver hearing should be held within that time period.
- May be extended in 14 day increments if necessary to protect the child or the community, but only after a hearing.
- Shelter may be extended for 30 days if consistent with need.

DURATION OF DETENTION (2)

- After adjudication, disposition needs to be held within 14 days if child is detained.
- After disposition, detention needs to be reviewed every 25 days until child is placed.

ORDER FOR CONTINUED DETENTION

- Must make specific findings.
- Unless prohibited, DJS may release the child into Community Detention.

COMMUNITY DETENTION

- Community detention (“CD”) does not mean electronic monitoring. Electronic Monitoring (“EM”) is a kind of CD.
- To require DJS to place child on EM, Court must make that a requirement on the record; otherwise, DJS selects form of CD.
- Violation of CD does not mean immediate detention, unless Court states that on the record.

STUDY OR EXAMINATION

CJP§3-8A-17

- Court may order DJS to conduct a study or evaluation of child, family, or child's environment.
- May order examination by psychologist, or psychiatrist or other qualified person.
- Reports are admissible at waiver or disposition hearings, but not at adjudication.

COMPETENCY (1)

§3-8A-17.1 to §3-8A-17.10

- At any time after petition filed, the Court can stay proceedings and order competency examination if the Court finds:
 1. Probable Cause;
 2. “Reason to believe” a child may be incompetent.

COMPETENCY (2)

- If child is found incompetent, but may be able to become competent in the near future, Court may order service for up to 90 days.
- If child is found incompetent, and cannot obtain competency within 90 days or does not obtain competency within 90 days, Court must dismiss case.

RIGHT TO COUNSEL

§3-8A-20

- Child has right to counsel in all delinquency matters.
- Public Defender's Office must represent child at any stage in proceedings once a petition of any kind is filed.
- No right to counsel at peace orders.
- Parent or guardian cannot waive child's right to counsel.

CLOSED HEARINGS

§3-8A-13

- Court may exclude public from misdemeanor cases.
- Felony cases are open to the public unless good cause can be demonstrated to the Court.
- If closed, victim and those with direct interest may still remain in Court room.
- In a case in which the victim of an alleged delinquent act is a child, upon the petition of the State's Attorney, the Court shall exclude the general public unless the Court finds good cause to receive the testimony in open Court.

VICTIM'S RIGHTS

§3-8A-06, §3-8A-34, CP 11-1002

- Victim is entitled to notice of all proceedings, including waiver.
- Permitted to submit victim impact statement before waiver or disposition hearing.
- Entitled to seek restitution.

ADJUDICATION

§3-8A-18 & 11-114

- Must be held within 60 days of service of petition, or within 30 days if child detained, or within 30 days of date of denial of waiver.
- Just like an adult trial, rules of evidence apply. Allegations must be proven beyond a reasonable doubt.
- At this point, the Court only finds whether or not allegations are proven.

DISPOSITION (1)

§3-8A-19 & 11-115

1. Separate hearing unless notice is waived by parties.
2. Must be held within 30 days unless child detained, then must be held within 14 days.
3. Rules of Evidence do not apply.
4. Disposition Court determines whether the child is need of the Court's guidance, treatment or rehabilitation.

DISPOSTION (2)

- Remember this is a three part process:
 - Part one is the determination that the child committed a delinquent act.
 - Part two decides whether the child needs the Court's guidance, treatment, assistance, or rehabilitation.
 - Part three decides what specific assistance and treatment the child requires.

POSSIBLE DISPOSITIONS (1)

- Child can be diverted to a specialty Court where available. In most jurisdictions this is post adjudication, but predisposition. If child completes program, the child may be found Not Delinquent. An example of a diversionary specialty Court is Drug Court.
- Supervised probation with special conditions.
- Placement in the custody of DJS.
- DJS is required to implement the disposition within 25 days and to notify the Court that disposition has or has not been implemented. If not implemented, the Court shall convene another disposition review hearing within 30 days, as required by Courts and Judicial Proceedings at §3-8A-20.1.
- The disposition provisions of the statute are found in the Courts and Judicial Proceedings Article at §3-8A-19.
- Provisions governing the registration of sex offenders are found in the Criminal Procedure Article at §§ 11-704 and 11-723.

POSSIBLE DISPOSTIONS (2)

- If child is placed in custody of DJS, Court may set type of placement, and may instruct or limit the type of placement, but may not dictate actual placement.
- Statute does not define “types” of placements and Courts across State do not use uniform terms when committing juvenile Respondents to the custody of DJS for placement.
- Examples of types of placement:
 1. Community Residential Care
 2. Non-Community Residential Care/Special Programs
 3. Secure Confinement
 4. RTC
 5. Institutional Placement
 6. Long Term Inpatient Substance Abuse Treatment

TITLE IV-E REQUIREMENTS FOR REIMBURSEMENT(1)

- Maryland Juvenile Delinquency statutes, rules and regulations do not require the Juvenile Court to convene Title IV-E permanency plan hearings or to make findings.
- Court can convene permanency plan hearings and make required findings under Court's discretion to convene review hearings and in order to further the purposes of the statute.
- DJS requests permanency plan hearings and IV-E findings in order to seek federal reimbursement for cost of placements.
- The federal law requires IV-E findings for agency reimbursement in two ways. Within sixty days of first removal, usually at detention, the Court must determine:
 - Whether DJS made reasonable efforts to prevent removal; or
 - An emergent situation made reasonable efforts impossible; and
 - Whether return of the child is contrary to the welfare of the Respondent or the safety of the community

TITLE IV-E REQUIREMENTS FOR REIMBURSEMENT(2)

- The second instance where the Court may be asked to make IV-E findings occurs following placement when the Court, at DJS' request, convenes a Permanency Planning Review Hearing.
- The Court must determine the permanency plan, whether DJS made reasonable efforts to finalize the permanency plan and whether return to home continues to be contrary to the welfare of the child or to the safety of the community.

ORDER CONTROLLING CONDUCT

§3-8A-26

- Court may enter OCC for any person properly before the Court based upon a finding that conduct may be harmful to the child, or
- Will tend to defeat the execution of the order, or
- Will assist in rehabilitation or is necessary for welfare of the child.

RESTITUTION HEARING

§3-8A-28, CP §§11-603 & 11-604

- May be ordered against parent, child or both, but not against guardian.
- Does not require a finding the parent did anything wrong or contributed to damage.
- Limited to \$10,000 for any single incident.
- Can be for damage to property and out of pocket medical expenses,
- Can include lost earnings.

PEACE ORDERS(1)

§§3-8A-19.1 – 3-8A-19.5

- Request made by victim or parent or guardian.
- DJS takes complaint and forwards to Court.
- Incident must have occurred within last 30 days.
- Must demonstrate serious bodily harm or fear thereof, assault, rape or sexual offense, false imprisonment, harassment, stalking, trespass or malicious destruction of property.

PEACE ORDER (2)

- Must be established by clear and convincing evidence.
- Can proceed by consent or by trial. If consent, no finding made.

PEACE ORDER (3)

- Court may order no contact, stay away from school, residence, and place of employment.
- Court may order counseling.
- Order lasts up to 6 months.
- Violation is a delinquent act. Police may arrest for violation.