JUVENILE DELINQUENCY PROCEEDINGS

IN MASSACHUSETTS

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INTRODUCTION

What follows is an overview of juvenile delinquency proceedings in Massachusetts. It is intended to be a description of only the most important steps in the process. It should be noted that procedures among police stations and among courts vary widely, and therefore information about your local area is extremely important if you are to have a good understanding of a child's process through the system.

The laws governing delinquency proceedings are found in Chapter 119, sections 52 through 84 of the Massachusetts General Laws. A delinquency proceeding may be brought against any child between the ages of seven and the date of his seventeenth birthday who is alleged to have committed a crime. Children who commit offenses before they turn seventeen, but are not apprehended until they are between seventeen and eighteen are dealt with as juveniles. Children who commit offenses before turning seventeen, but are not apprehended until after they turn eighteen, are given a probable cause hearing to determine whether they should be tried as adults. (See section V below.)

THE PROCEDURE

I. Initiation of Proceedings

A. Summons

Under c.119, §54 of the Massachusetts General Laws, any person may swear out a complaint in a court that a child between seven and seventeen is a delinquent. Rather than charging a child with a particular crime, the complaint will allege that "the child is a delinquent child by reason of having committed" a particular offense.

If the child is under twelve, the court must issue a summons, which is an order directing the child to appear before the court at a particular time. If the child is between the ages of twelve and seventeen, the court must issue a summons unless it has reason to believe that the child will not appear, in which case it may issue a warrant. A warrant is a document stating the substance of the complaint and directing a police officer to arrest the child and bring him before the court.

B. Arrest

Another way in which children may enter the juvenile justice system is by being arrested by a police officer. This can happen either under an arrest warrant, described above, or the child may be arrested without a warrant in the following circumstances: for a felony, if the police officer has probable cause to believe that the child committed a felony; or for a misdemeanor that the child committed in the officer's presence and which constitutes a breach of the peace. The crime of larceny (theft) is considered a breach of the peace.

Since many arrests of juveniles take place in the evening, it is important to describe what happens at the police station at that time. Let us assume that a child is arrested on the street, and taken to a police station. The child will normally be allowed one free phone call. The police are required by c.119, §67 of the General Laws to contact a probation officer and at least one of the child's parents. Between the time the parents are telephoned and when they arrive at the station, the police often talk to the child in an attempt to gather evidence about the crime. It is questionable whether this procedure is legal, but most police do this, and most judges do not suppress any evidence that may be gathered by the police during this time.

The police normally telephone the probation officer, but the officer rarely comes to the station at this time. Instead, he or she will listen to a description of the case and then give a recommendation (see next paragraph) based on his or her knowledge of the child, seriousness of the alleged crime, etc.

The most important decision that will be made at the police station in the evening is whether or not the child will be released pending his court appearance on the next court day. Under c.119, §67, a child under fourteen must be released if (1) his parent or guardian promises in writing to be responsible for the child's court appearance, or (2) the probation officer requests the release of the child to himself. (In practice, this means that the officer will be responsible for the child's presence in court the next day, but the officer will not take physical custody of the child). Children between fourteen and seventeen may be released on one of the above conditions, but they may be held if (1) the arresting officer makes a written request that the child be detained and the court that issued the arrest warrant directed in the warrant that the child should be held pending his court appearance, or (2) the probation officer directs that the child shall be held either at the police station, a town lockup, or a Department of Youth Services (DYS) facility. (In order to be used for the detention of children, a police station or town lockup must have received the written approval of the Commissioner of DYS and there must be separate cells for juveniles).

As can be seen, there is room for the exercise of a fair amount of discretion in the application of the above standards, and police stations vary widely. Some stations have a practice of releasing children to a DYS facility, and others almost always release a child to his parents. In addition, what the police do may be influenced by community workers who, if they have a good relationship with the police, may be able to get children released to them. The probation officer's recommendation as to whether or not the child should be released will also be crucial.

The question of bail sometimes arises at the station, for c.119, §67 provides that "nothing shall prevent the admitting of the child to bail in accordance with law." A person called a bail commissioner, who is an appointed official authorized to set bail on behalf of the county, may set bail at police stations. However, the police themselves usually will not call the commissioner, so it would be helpful for the child to have access

to the telephone number of a bail commissioner. This is where the community worker's involvement could be important. In cases of serious felonies, the police may call an assistant district attorney, who will set bail. (This is the practice in Suffolk County; for other areas, you should check with local participants in the process).

If bail is set and the child or his parents can afford to pay it, he is released pending his court appearance the next day. If he cannot afford to pay the bail, he or his parents may wish to call a bail bondsman, who will take a fee (usually 10% of the bail plus a nominal fee for each complaint charged against the child) and pay the bail that has been set, allowing the child to be released. If the child is unable to pay the bondsman, or unable to locate a bondsman, he will be held overnight at a DYS facility pending his court appearance. Thus, the telephone number of a bail bondsman is also crucial information for the child to have at this time.

II. Arraignment

As soon as possible after a child's arrest, and in any event no later than the next court day, the child must be arraigned (appear for a proceeding known as an arraignment) in the court for the district in which the crime was committed. This will be a juvenile court, for example the Boston Juvenile Court, or the juvenile session of one of the district courts throughout the Commonwealth. The purpose of the arraignment is to inform the child of the charges against him, appoint a lawyer for the child if he does not have one, and set a date for the trial of the case. (The procedure at the arraignment is the same whether the child has been arrested at the start of the case or summoned to court as described above).

Courts vary in the speed with which they conduct arraignments; in some cases there may be a wait of several hours before a child's case is heard. During this time, the probation officer will normally interview the child and obtain biographical information and background history on him. It is in the child's interest to cooperate in this interview, since if he does not, the probation officer will almost certainly recommend to the judge that the child not be released pending trial (see below). If a community worker is involved at this point, it is a very good idea for this person to sit in on this interview.

When the child appears before the court, the charges will be read to him and the probation officer will give his record to the court. The judge will usually inquire whether or not the child has a lawyer. If he does not have a lawyer and cannot afford one, an attorney will be appointed by the court. The Boston Juvenile Court will appoint someone from the Massachusetts Defenders Committee; other courts normally use private attorneys, one of whom is designated "the attorney of the day". If the child knows a particular lawyer, he may ask the court to have that person appointed to represent him. Such an appointment is discretionary with the court and happens only rarely.

Bail may again be considered by the court and set at this time. Courts vary as to whether bail is commonly granted. If the child has a lawyer, he or she could argue for no bail or reduced bail, which would clearly be in the child's interest. (The child has a right to Superior Court review of the bail set, as soon as possible and in no event later than the next court day. An attorney will also be appointed in this proceeding, if the child cannot afford one).

Finally, a date is set for the trial of the case, usually two or three weeks later. The probation officer will make a recommendation as to whether the child should be released pending trial. If the child is released, he will normally go home and be expected to appear on the date for his trial. He will be given the name of the lawyer who has been appointed to represent him and should make arrangements to meet with the lawyer as soon as possible. If the child is not released, he will go to a DYS facility to await trial.

III. Trial

The trial of a juvenile case varies in formality from an office-type setting to a court room. Theoretically, it is conducted like an adult criminal trial. The prosecutors are usually police officers who obtain assistance from the judge in prosecuting their cases. There is little plea bargaining because there is little to gain; the child might as well try for a not guilty finding at the trial, since if he is found guilty he has the right to a new trial ("trial de novo"). However, not all cases go to trial. The child may "admit to sufficient facts" (the rough equivalent of a guilty plea in adult court), and this gives the court authority to sentence the child as if had been found guilty of having committed the crime.

If the case goes to trial, the judge will hear the evidence on both sides. The judge then makes his decision as follows:

(1) He may find the child not delinquent, in which case the child is of course released and is free to leave.

(2) The charges may be dismissed, in which case the child is released.

(3) The judge may "continue the case without a finding", even though there is sufficient evidence to find the child a delinquent. A case would most likely be continued without a finding if the charge is minor, the child has no record, or the child's attorney argues strongly for this disposition. It will be continued for a particular period of time, for example, three to six months. At the end of that time, the case will normally be dismissed. However, the child's attorney will sometimes argue that a finding of not guilty should be made at the end of the time period (assuming that the child does not get into further trouble during this time), because a "not delinquent" finding is a more favorable disposition than a dismissal. Another variation is that the court may decide to continue the case without a finding on the condition that the child pay court costs.

If the case is continued without a finding, c.119, §58 provides that the Court, with the consent of the child and at least one of his parents or guardians, may place the child on probation. The probation may include a requirement, again subject to agreement by the child and one parent, that the child "do work or participate in activities of a type and for a period of time deemed appropriate by the court."

(4) The judge may adjudicate the child to be delinquent if the allegations against the child are proved beyond a reasonable doubt. At this point the judge has a further set of choices with respect to disposition. The probation officer's recommendation to the judge at this stage, based on his interview with the child and the child's prior record, if any, is important. Possible dispositions include:

a. "Filing" the case. The case is placed in the files for a certain period of time (often six months or a year) and no disposition is made. If the child gets into trouble again during the period, the earlier case may be brought forward on the motion of a police or probation officer and a disposition of both cases (the old and the new) may be made.

b. Probation. The child may be placed on probation and assigned a probation officer, with the requirement that the child report periodically to the officer. Under this scheme, the child remains at home.

c. Suspended sentence (suspended commitment). The judge may sentence a child to commitment to DYS but suspend the sentence, which means that the child is not committed. This is often combined with probation. If the child gets into trouble again during the probationary period, the suspension may be revoked and he may then be committed to DYS.

d. Commitment to DYS. This is the most severe of the dispositions that a judge may make.

If a judge seems inclined to commit a child to DYS, the child's lawyer may argue for a continuance (postponement) of the case so as to arrange for an evaluation of the child and an appropriate program. In this event, there will be a later hearing to consider disposition of the case, at which time the lawyer will usually argue for an alternative that is less severe than a commitment to DYS.

It is important to note that under c.119, §58, judges are not allowed to order DYS to place a child in a particular program; the judge's only authority is to commit a child to the custody of DYS. However, judges sometimes get around this prohibition by threatening to hold a transfer hearing (to be discussed below) unless the judge receives a guarantee from DYS that the child will be placed in a program that the judge likes (for example, a secure residential facility). The legality of this practice is highly questionable, but it does take place in some courts.

IV. Appeal

If the child wishes to appeal his case, he must do so at the time of disposition. Cases that are appealed from any of the juvenile sessions in Boston courts, including the Boston Juvenile Court, go to the Appellate Division of the Boston Juvenile Court; all others go to the appropriate Superior Court. The appeal is in the form of an entirely new trial ("trial de novo"), in which the child has a right to a jury if he so chooses. A highly questionable practice which occurs in some courts is that judges may penalize a child for taking an appeal by giving him a stiffer disposition if he indicates his desire to appeal.

V. Transfer or Bindover

C.119, §61 contains authority to transfer the cases of certain children for trial as adults in Superior Court. This process is known as "transfer" (sometimes referred to as "bindover"), and can happen only in specific cases. The child in question must have committed the alleged offense between his fourteenth and seventeenth birthdays, and he is eligible for transfer in one of the following two situations:

(1) he had previously been committed to DYS as a delinquent child and has committed an offense that would be punishable by imprisonment in state prison if he were an adult, or

(2) he has committed an offense involving the infliction or threat of serious bodily harm.

In addition to one of the above conditions, the court must make a written finding based on clear and convincing evidence that the child presents a significant danger to the public as demonstrated by the nature of the offense charged and by his past record of delinquent behavior, if any, and that he is not amenable to rehabilitation as a juvenile.

The judge on his own motion may order a hearing known as a "transfer hearing", or the Commonwealth may move for such a hearing.

The transfer hearing has two parts. The first is a probable cause hearing in which the Commonwealth presents its case and the judge must determine whether there is probable cause to believe that the child has committed the offense charged. If the judge does find probable cause, the hearing moves to the second part which involves a social service evaluation. Theoretically, at this point the burden is on the Commonwealth to show why the child is not amenable to treatment as a juvenile. However, in practice, the burden is on the child's lawyer to come up with an appropriate juvenile treatment program for the child. What often happens is that the judge continues to veto programs until one is suggested that the judge feels the child needs, for example a secure residential program. In other words, the judge can use the threat of transferring a child for trial as an adult until a program is suggested that the judge agrees with. This is another example of judges' ability to impose their own ideas of what treatment is best for the child, rather than leaving the decision up to DYS.

No more than twenty-five percent of those children who have transfer hearings are actually transferred for trial in the Superior Court. For those who are transferred, the juvenile complaint against them is dismissed and they are tried in Superior Court as adults. Under c.119, §83, such a transferred child may, however, be adjudicated delinquent in Superior Court and sentenced as a juvenile, only if he has not yet attained his eighteenth birthday by the time the Superior Court makes its disposition.

VI. DYS Commitments

This section will briefly describe what happens to children who have been committed to the Department of Youth Services by a juvenile court. First, it should be noted that a child is committed up to his eighteenth birthday; in other words, he is never uncommitted to DYS while he remains a minor. No person may be committed to DYS after his eighteenth birthday.

At the time of his initial commitment, the child is given an evaluation at a DYS facility, which takes about two or three weeks. The child is then sent home or to another DYS program. In some cases, a child may be held for a long time awaiting an appropriate placement; for example, the evaluation may have concluded that a non-secure residential program is appropriate, but DYS may hold the child in secure detention for months until the designated type of program becomes available.

The child is assigned an individual DYS caseworker, but the frequency with which the caseworker sees the child varies greatly from region to region. For example, in Boston, DYS caseworkers rarely see the children that have been assigned to them.

Two other DYS practices are worthy of mention:

(1) Detainer. This occurs when a child who has been committed to DYS is living at home with no court case pending. DYS may on its own initiative decide to remove the child from his home and place him in a detention facility. At present, there are no legal standards to guide DYS in this action, although they are in the process of being developed, along with an appeal procedure.

(2) Hold. A hold is similar to a detainer, but it occurs, for example, when a child committed to DYS, but living at home, has been picked up on another charge, bail has been set, and the child has paid the bail. Despite payment of bail, DYS may decide on its own initiative that the child should be held, and it may place the child in a facility.

CONCLUSION

This pamphlet has described only the most important steps and procedures in juvenile delinquency proceedings. Because of the wide local variations, it is important to talk with participants in the process in your area, particularly about such matters as bail and pretrial release procedures. Community juvenile workers, police, and probation officers at the court would be useful sources of information.

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