

JUVENILE CRIMES

FAMILY COURT

NEW YORK

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JUVENILE DELINQUENCY CASE – CRIME TO DISPOSITION

**CRIME
COMMITTED**



ARREST

(arrest number generated – juvenile processed)



DEPARTMENT OF PROBATION

(case processed by the New York City Department of Probation (Probation))



PRESENTMENT AGENCY

(case processed by Presentment Agency – investigation)



FILE PETITION – ARRAIGNMENT

(charges filed by Presentment Agency – juvenile arraigned)



JUVENILE DELINQUENCY CASE

(docketed case presented by Presentment Agency – motions/fact finding)



DISPOSITION

(juvenile sentenced after finding to any charge which would be a crime if committed by an adult)

JUVENILE REPORT

(no arrest – juvenile released to parent)

ADJUSTMENT PROGRAM

(case held at Probation)

ADJUSTMENT PROGRAM

(case sent back to Probation pre-filing)

ADJUSTMENT PROGRAM

(case sent back to Probation post-filing)

CRIME COMMITTED

- Juvenile Delinquency practice is governed by the Family Court Act (“FCA”)
- FCA § 301.2(1) defines “juvenile delinquent”:
 - “Juvenile delinquent” means a person over seven and less than sixteen years of age, who, having committed an act that would constitute a crime if committed by an adult, (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.
- The Penal Law of the State of New York (“Penal Law”) defines “crime” in § 10.00(6):
 - “Crime” means a misdemeanor or a felony.
- Penal Law §§ 10.00(4) and 10.00(5) respectively define “misdemeanor” and “felony”:
 - “Misdemeanor” means an offense, other than a “traffic infraction,” for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.
 - “Felony” means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.
 - Sentencing for juvenile delinquents is governed by FCA §§ 350 through 355 and is detailed on page 10-13.

If there is sufficient evidence that a crime has been committed, a police officer can make an arrest or issue a juvenile report

ARREST VS. JUVENILE REPORT

ARREST

- Criminal Procedure Law (“CPL”) § 140.10(1)(b) states: “... a police officer may arrest a person for... a crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.”

- Fingerprinting of Juveniles
 - FCA § 306.1
 - 11 years or older and A or B felony
 - 13 years or older and A, B, C, D, or E felony

- Detention v. Release:
 - Family Court Appearance Ticket (“FCAT”) – FCA § 307.1
 - Equivalent of the desk appearance ticket
 - Directs respondent to appear in Family Court
 - Juvenile released to parent or guardian

 - Detention:
 - Juvenile Crime Desk – 646-610-JUVI/5884 – access to multiple databases regarding juvenile’s arrest history, PINS, domestic incident reports, etc...
 - If Family Court is open (before 5 p.m.), juvenile is brought straight to Family Court
 - If Family Court is closed (after 5 p.m.), juvenile is brought to a detention facility (N.Y.C.: Horizons, Bridges) and brought to Family Court the next day
 - N.Y.C. Family Court now processes juveniles on weekends and holidays in lower Manhattan for the entire city – 100 Centre Street, N.Y., N.Y.
 - If the Presentment Agency (Corporation Counsel) is seeking continued remand of a juvenile who is brought from detention, and the Presentment Agency cannot file a petition as defined by FCA § 311.1, a Pre-Petition hearing is held pursuant to FCA § 307.4.

- Pre-Petition hearing:
 - Standard: preliminary determination of whether the court appears to have jurisdiction over the child (FCA § 307.4(1))
 - The juvenile is entitled to have an attorney present (FCA § 307.4(2))
 - The court must find that facts and reasons exist which would support a detention order under FCA § 320.5
 - FCA § 320.5 standards for detention:
 - There is a substantial probability that the juvenile will not appear in court on the return date (FCA § 320.5(3)(a))
 - There is a serious risk that the juvenile will commit an act of juvenile delinquency before the return date (FCA § 320.5(3)(b))
 - FCA § 320.5(7) – if the Respondent is detained, a petition must be filed within four days of the conclusion of the pre-petition hearing

JUVENILE REPORT

- NYPD Patrol Guide, Procedure No. 215-08 – Juvenile Report
 - Purpose: To record and investigate certain complaints concerning juveniles at least seven (7) years of age but less than sixteen (16) years of age
 - Scope: A juvenile report is prepared for
 - An act that would constitute a crime if committed by an adult except for those acts recorded on a complaint report
 - Petty violations by juveniles
 - PINS – persons in need of supervision – as defined in FCA § 712(a)
 - Intoxicated juveniles
 - Juveniles found in a house of prostitution
 - Stranded juvenile
 - Runaway juvenile
 - Juvenile unlawfully present in a licenses premises

- Juvenile apparently under the influence of a dangerous drug (heroin, cocaine, morphine, opium, marijuana, amphetamines, barbiturates, hallucinogens)
 - Missing persons
 - Traffic infractions (bicycles)
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- Juvenile report is completed and given to the Precinct Youth Officer who makes entry into the Juvenile Report Record Book
 - Entry in the Juvenile Report Record Book includes the date issued, the precinct serial number, the name and address of the juvenile, and the resident precinct
 - Copy of juvenile report is forwarded to precinct where the subject juvenile resides and a copy is forwarded to the Management Information Systems Division
 - Information is entered into the Juvenile Database
 - Once a year, all files of juvenile reports are purged for any juvenile who has reached their 17th birthday
 - NO ARREST MADE – NO ARREST NUMBER GENERATED
 - JUVENILES ARE NOT FINGERPRINTED WHEN JUVENILE REPORT GIVEN

If an arresting officer decides to make an arrest, the case is then referred to the Department of Probation. The Department of Probation then either passes the case along to the Presentment Agency/Corporation Counsel or keeps that matter open for adjustment with the Department of Probation Adjustment Program.

DEPARTMENT OF PROBATIONS ADJUSTMENT PROGRAM
PRIOR TO CASE BEING REFERRED TO THE PRESENTMENT
AGENCY

- FCA § 308.1 states:
 - Rules of court shall authorize and determine the circumstances under which the probation service may confer with any person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed

- The Department of Probation interviews the Respondent, his parent/guardian, and the complainant
 - FCA § 308.1(6) – the probation service shall not transmit or otherwise communicate to the presentment agency any statement made by the child to the probation officer

 - FCA § 308.1(7) – no statement made to the probation service prior to the filing of a petition may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to criminal court, at any time prior to a conviction

 - FCA § 308.1(5) – the fact that the Respondent is detained on the date of intake does not preclude the probation service from opening a case for adjustment

- If the case is suitable for adjustment services, and all of the above individuals agree to comply with adjustment services, the matter will be held open at Probation for adjustment
 - FCA § 308.1(8) – if the complainant does not agree to adjustment, the case must be referred to the Presentment Agency

 - Probation shall not adjust a case where a child has allegedly committed a designated felony act unless is has received written permission of the court (FCA § 308.1(3))

 - Probation shall not adjust a case where the child has allegedly committed the following acts which if committed by adults would constitute crimes where the child has previously had one or more adjustments of a case in which such child allegedly committed an act which would be a crime specified below unless is has received written approval from the court and the appropriate presentment agency:
 - Penal Law § 120.25 – reckless endangerment in the first degree
 - Penal Law § 125.15 – manslaughter in the second degree
 - Penal Law § 130.25 – rape in the third degree

- Penal Law § 130.40 – criminal sexual act in the third degree
 - Penal Law § 130.65 – sexual abuse in the first degree
 - Penal Law § 135.65 – coercion in the first degree
 - Penal Law § 140.20 – burglary in the third degree
 - Penal Law § 150.10 – arson in the third degree
 - Penal Law § 160.05 – robbery in the third degree
 - Penal Law § 265.02 – criminal possession of a weapon in the third degree
 - Penal Law § 265.03 – criminal possession of a weapon in the second degree
 - Penal Law § 265.04 – criminal possession of a dangerous weapon in the first degree
- FCA § 308.1(9) – efforts at adjustment may not extend for a period of more than two months without leave of the court, which may extend the period for an additional two months
 - Adjustment services can include: school monitoring, appointments with a probation officer, community service, restitution, essay/letter of apology, etc...
 - FCA § 308.1(2) – the inability of a respondent or his family to make restitution shall not be a factor in a decision to adjust a case; nothing in this section shall prohibit the probation service or the court from directing a respondent to obtain employment and to make restitution from the earnings from such employment
 - If the Respondent fails adjustment, the matter will be referred to the Presentment Agency for investigation and possibly filing of a petition
 - If the Respondent succeeds with the adjustment program, the matter will be deemed adjusted, and the record sealed.

DEPARTMENT OF PROBATIONS ADJUSTMENT PROGRAM
AFTER THE CASE HAS BEEN REFERRED TO THE
PRESENTMENT AGENCY

- The Presentment Agency can send the matter back for adjustment services prior to the filing of a petition by contacting the Department of Probation
 - The Presentment Agency must have the consent of the complainant in order to refer the matter back for adjustment prior to the filing of a petition
- FCA § 320.6 – allows the court to send the matter back for adjustment at the arraignment or initial appearance

- The court must have the consent of the complainant and the respondent in order to refer the matter back for adjustment under FCA § 320.6
- If the matter is adjusted successfully, the petition is dismissed
- If the court refers a matter back for adjustment, all of the provisions of FCA § 308.1 apply – adjustment services are the same

PRESENTMENT AGENCY

ORIGINATING A JUVENILE DELINQUENCY PROCEEDING

- FCA § 310.1 – the Presentment Agency can originate a juvenile delinquency petition
- FCA § 311.1 – the petition is the written accusation by an authorized presentment agency
- Equivalent of the criminal complaint

ARRAIGNMENT/HEARINGS

- Governed by FCA §§ 320.1 through 325.3
- FCA § 320.1 – “initial appearance” means the proceedings on the date when the respondent first appears before the court after a petition has been filed
- FCA § 320.2(2) – the court must appoint a law guardian
 - Legal Aid Society
 - 18-B panel attorney
 - Private retained attorney
- FCA § 320.4 – Initial Appearance Procedures
 - Court must inform the respondent of charges against him
 - Court shall determine:
 - Whether detention is necessary pursuant to FCA § 320.5

FCA § 320.5 standard:

- Substantial probability that the respondent will not appear in court on the return date
- Serious risk that the respondent will committed an act which if committed by an adult would constitute a crime
- Whether the case should be referred to the probation service pursuant to FCA § 320.6
- If the child is detained, the date of the Probable Cause hearing pursuant to FCA § 325.1

Probable Cause Hearing – must be held within three days of arraignment

Standard – FCA § 325.3(1)(a-b): Whether it is reasonable to believe a crime was committed and whether it is reasonable to believe the respondent committed such crime

- The date of the fact finding hearing

If the Respondent is released, the fact finding hearing must commence within sixty days of the initial appearance (FCA § 340.1(2))

If the Respondent is detained:

- And the Respondent is charged with an A, B or C felony, the fact finding must commence within fourteen days of the initial appearance (FCA § 340.1(1))
- And the Respondent is charged with anything less than a C felony, the fact finding must commence within three days of the initial appearance (FCA § 340.1(1))

DISPOSITION

- Governed by FCA §§ 350.1 through 355.5
- FCA § 350.3 – evidence that is material and relevant may be admitted during a dispositional hearing

- FCA § 351.1(2) – the court will order the Department of Probation to prepare and Investigation and Report (“I&R”) and Mental Health Services to prepare a Mental Health Study (“MHS”)
- FCA § 352.1 – if the court finds that the Respondent requires supervision, treatment or confinement, the court enters a finding that the Respondent is a juvenile delinquent and orders the appropriate disposition pursuant to FCA section 352.2
- FCA § 352.2 – standard: the court must determine what is the least restrictive alternative that best meets the needs of the respondent as well as the protection of the community

- Conditional Discharge – FCA § 353.1

- The court may conditionally discharge the respondent if the court, having regard for the nature and circumstances of the crime and for the history, character and condition of the respondent, is of the opinion that neither the public interest nor the ends of justice would be served by a placement and that probation supervision is not appropriate (FCA § 353.1(1))
- The maximum period of a conditional discharge is twelve months (FCA § 353.1(3))
- A finding that the respondent committed an additional crime after a conditional discharge has been ordered and prior to the expiration and termination of the period of such order constitutes grounds for revocation of such order (FCA § 353.1(5))
- The court may order any of the specified conditions that are used with a probation period (see below) (FCA § 353.1(2))

- Probation – FCA § 353.2

- The court may order a period of probation if the court, having regard for the nature and circumstances of the crime and the history, character, and condition of the respondent, is of the opinion that placement of the respondent is not or may not be necessary and the respondent is in need of guidance, training or other assistance which can be effectively administered through probation (FCA §§ 353.2(1)(a-b))

- The maximum period of probation is twenty four months (FCA § 353.2(6))
- A finding that the respondent committed an additional crime after probation supervision has been ordered and prior to expiration or termination of the period of such order constitutes grounds for revocation of such order (FCA § 353.2(4))
- Conditions of probation can include (list not exhaustive):
 - Attend school regularly and obey all rules and regulations of school
 - Obey all reasonable commands of the parent or other person legally responsible for the respondent's care
 - Abstain from visiting designated places or associating with named individuals
 - Avoid injurious or vicious activities
 - Co-operate with a mental health, social services or other appropriate community facility or agency to which the respondent is referred
 - Make restitution or perform services for the public good provided the respondent is over ten years old
 - Meet with a probation officer when directed to do so and permit that probation officer to visit the respondent at home or elsewhere
 - Permit the probation officer to obtain information from any person or agency from whom the respondent is receiving or was directed to receive diagnosis, treatment or counseling
 - Permit the probation officer to obtain information from the respondent's school
 - Co-operate with the probation officer in seeking to obtain and in accepting employment and supply records and reports of earnings to the officer when requested to do so
 - Obtain permission from the probation officer for any absence from respondent's residence in excess of two weeks

○ Placement – FCA § 353.3

- The court may order placement with the Office of Children and Family Services (“OCFS”) (division for youth) (FCA § 353.3(3))

- OCFS contracts with private placement facilities that have the discretion to accept a respondent after reviewing relevant documents and in some cases, interviewing the respondent (Lincoln Hall, Graham Windham, Children's Village, Hawthorne Cedar Knolls, St. Mary's, St. John's Residence for Boys, etc...)
- If the finding is to a felony, the respondent can be placed for an initial period not to exceed 18 months (FCA § 353.3(5))

The court may also order that a respondent be confined in a residential facility for a minimum period set by the order, not to exceed six month if the finding is a felony (referred to as a 6 Month Minimum) (FCA § 353.3(9))

- If the finding is to a misdemeanor, the respondent can be placed for an initial period not to exceed 12 months (FCA § 353.3(5))