



JUVENILE PROCEEDINGS

As District Attorney, I am dedicated to the strong, swift prosecution of juvenile offenders. I am equally dedicated to the prevention of crime. Preventing crime means working with the community. Participating in collaborative efforts that include schools, police and community leaders is an important tool in prevention. It is my hope that this overview of juvenile proceedings within our jurisdiction will be helpful to your having a better understanding of the juvenile criminal justice system.

I look forward to our continued work with the members of this community to keep the Cape and Islands a safe environment for our children.

Sincerely,

Michael O'Keefe
District Attorney

JUVENILE PROCEEDINGS

The Juvenile Court has jurisdiction over delinquency matters, youthful offenders, children in need of services (CHINS), care and protection proceedings, and adult criminal complaints of contributing to the delinquency of minors. With the exception of youthful offender cases, juvenile court proceedings are closed to the general public.

DELINQUENCY MATTERS

A person between the ages of seven and seventeen charged with a criminal offense is considered a juvenile. He or she will be prosecuted in one of the five juvenile courts for the Cape & Islands District (Martha's Vineyard, Falmouth, Barnstable, Orleans and Nantucket). An individual who is seventeen or older is considered an adult. Criminal matters for adults are handled in District Court or Superior Court.

A juvenile may be prosecuted as a Youthful Offender which allows the judge to sentence the individual as a juvenile or as an adult. A person can be considered a Youthful Offender if he or she committed the offense between the ages of fourteen and seventeen. Also the offense must be considered a felony, a crime that would be punishable by imprisonment in state prison if committed by an adult, *and* the juvenile must have:

- (a) been previously committed to the department of youth services, *or*
- (b) committed an offense that involves the infliction or threat of serious bodily harm, *or*

(c) violated certain firearm statutes.

In order for a juvenile case to be prosecuted as a Youthful Offender, the case must be presented to a Grand Jury for indictment. A Grand Jury is a twenty-three person panel that listens to evidence presented by the prosecutor and decides whether there is sufficient evidence to issue the indictment. Once an indictment is returned, the case proceeds in Juvenile Court. Youthful Offender cases are open to the public. The judge has a wider range of sentencing options such as DYS (Department of Youth Services) commitment until the youth's twenty-first birthday or any sentence permitted by law in the adult court.

INITIATING THE CASE

Cases begin in the Juvenile Court with the issuance of a criminal complaint or an arrest by the police. A complaint is a sworn statement by a police officer or a private citizen that states the law which has been violated and the facts that support the allegation. Police complaints and private citizen complaints are issued by a clerk magistrate in the Juvenile Court after he determines that there is probable cause to believe that a crime has been committed and that the juvenile committed the crime.

ARRAIGNMENT/BAIL

A juvenile is either summonsed into court or brought in under arrest by a police department or DYS (Department of Youth Services). An arraignment is the formal proceeding in which the juvenile is charged with a crime.

At the Juvenile Court, the juvenile and his family are met by a probation officer to determine whether the juvenile qualifies for a court-appointed lawyer. The probation department also gathers background information on the juvenile such as criminal history, DSS (Department of Social Services) involvement, and any other family issues which are relevant to the proceeding.

Once the juvenile is arraigned, the District Attorney can request that the juvenile be held on bail. The purpose of bail is to assure the juvenile's appearance on the next court date. If bail is set, the juvenile has a right to a bail review hearing in the Superior Court.

PRE-TRIAL HEARINGS/MOTIONS

An arraignment is followed by one or more pre-trial hearings. The prosecutor and defense counsel meet to exchange information and discuss whether the case will be resolved before trial. The exchange of information is governed by rules of criminal procedure under a process called "discovery." Once discovery is complete, the prosecutor or defense counsel may file motions with the court to address unresolved issues about pieces of evidence or issues of law. Some examples are: motions to suppress evidence or statements by the juvenile and motions to inspect evidence.

It is common for there to be a continuance between each pre-trial hearing and motion date to give the prosecutor and defense counsel an opportunity to prepare for the next stage in the process.

DISPOSITIONS/DISMISSALS

Any time prior to trial, defense counsel and the prosecutor may decide to resolve the case. The judge plays a significant role in

this process. There are various ways in which a case is resolved prior to trial:

Dismissal- A case may be dismissed prior to trial for many reasons. A prosecutor may decide to dismiss a case after he or she determines there is not sufficient evidence to present to a jury. For example, the judge may have excluded evidence after a motion to suppress or a witness may be unavailable or uncooperative. Defense counsel may also file a motion to dismiss on legal grounds.

Pre-trial probation- By statute, the Juvenile Court may place a juvenile on probation prior to trial. The juvenile does not have to admit that he or she is delinquent of the offense charged. If the juvenile fulfills the term of her or his probation successfully, the court will dismiss the charges.

Continued Without a Finding- This disposition is a result of an “admission to sufficient facts” by the juvenile. The juvenile admits that there is sufficient evidence to warrant a delinquent finding. The juvenile is then put on probation for a specified period of time. After successful completion of any court-ordered probation terms, the case is dismissed. If the juvenile violates the terms of probation, he or she is brought before the court to be adjudicated a delinquent and sentenced accordingly.

Delinquent- The juvenile is adjudicated a delinquent either by admitting that he or she has committed the crime he or she is accused of or by a jury’s verdict.

Once a juvenile is adjudicated delinquent, he or she can be put on probation or committed to the DYS.

A prosecutor must assess each case before recommending a disposition prior to trial. Some of the factors considered are: the strength of the Commonwealth's evidence, the impact the crime has had on a victim, the effect a trial would have on a victim, and the juvenile's past criminal history.

A juvenile may present the court with a plea known as a "defendant-capped plea." A juvenile either admits to sufficient facts or pleads delinquent to the offense and recommends through defense counsel an appropriate sentence. The court may adopt the juvenile's recommendation over the Commonwealth's objection. The Commonwealth will object where the prosecutor believes a more stringent sentence would be appropriate. If the court does not agree with the juvenile, the defense counsel has a right to withdraw the plea, and the case proceeds to trial.

TRIAL

All juvenile trials are closed to the public unless the juvenile is tried as a Youthful Offender. A trial can be a bench trial or a jury trial. At a bench trial, a judge hears the evidence and determines whether the Commonwealth has proven its case against the juvenile. In a jury trial, a six-person panel hears the evidence and must render a unanimous decision for "delinquent" or "not delinquent." A Youthful Offender case requires a twelve-person jury. If found delinquent, the judge sentences the juvenile. Most jury trials are tried in the Barnstable Juvenile Court.

At trial the Commonwealth is represented by an assistant district attorney and the juvenile is represented by defense counsel.

The Commonwealth has the burden of proving its case beyond a reasonable doubt. This is achieved by presenting evidence through witness testimony, documentation, and physical evidence. The juvenile does not have to present any evidence.

SENTENCING

Once a juvenile tenders a plea or is adjudicated delinquent after trial, both the prosecutor and defense counsel present their arguments for appropriate sentencing to the court. Victims have a right to be heard at this stage of the proceeding. A victim may choose to make an oral statement to the court or submit a written Victim Impact Statement. A judge may sentence a juvenile to probation or DYS commitment.

PROBATION

In most cases a juvenile is sentenced to probation. Once the juvenile is sentenced, he or she is referred to the probation department to be assigned a probation officer. The terms of probation can be specifically set by the judge or left to the probation department to determine what is appropriate given the juvenile's offense, history of drug/alcohol use, school performance, or family issues. Some examples of probation terms are restitution to the victim, drug/alcohol evaluation, counseling, random drug screening, school attendance, and community service.

Probation Revocation- If the juvenile does not comply with the terms of probation or commits a new crime. Probation can be revoked after a hearing in court.

The judge can extend probation to include new terms or terminate probation and commit the juvenile to DYS.

DEPARTMENT OF YOUTH SERVICES

Once a male juvenile is sentenced to a DYS commitment, he is transported to the Old Colony Brockton Facility for an assessment. Females are sent to the Northeast Family Institute at Dorchester (NFI). Both facilities are staff-secured. The assessment usually takes between 30-45 days. A DYS caseworker meets with the family and youth to determine which program would be most appropriate for the youth given the criminal history, drug/alcohol abuse, necessity for a particular type of counseling, or other family issues.

The placements vary in structure and security. For example, the Forestry Camp located in Brewster is a 27-day Outward Bound program. It is a therapeutic environment that includes education, counseling, and outdoor activities that stress self-esteem. A more secure treatment is the Goss Facility in Taunton, which is similar to an adult jail.

After successful completion of the treatment placement, the juvenile returns to the community, i.e., home, foster-care, or further placement. The DYS caseworker continues to supervise the juvenile until his or her eighteenth birthday. The level of supervision varies from 24-hour electronic monitoring to weekly one-on-one meetings with the caseworker. Terms of “conditional liberty” usually include school attendance or full-time employment, remaining drug and alcohol free, and participating in counseling.

ALTERNATIVE PROGRAMS

DISTRICT ATTORNEY'S JUVENILE DIVERSION PROGRAM

First-time non-violent offenders may qualify to participate in the Cape and Islands District Attorney's Juvenile Diversion Program. This program focuses on holding juveniles accountable for their actions by mandated community service. Participants are referred by local police departments, juvenile probation, clerk magistrates, and school personnel. The juvenile must meet certain criteria to participate, including having no prior criminal record and a willingness to complete all requirements of the program. The juvenile and parent must sign a contract agreeing to perform community service, remain drug and alcohol free, submit to random urine testing, counseling (if appropriate), and payment of restitution. Each juvenile is supervised by a caseworker over a period of six months. If the juvenile successfully completes the requirements of the individualized program, the complaint is dismissed, and there will be no criminal record. If the juvenile does not complete the program, his or her case will proceed to arraignment in the Juvenile Court.

BARNSTABLE COUNTY SHERIFF'S OFFICE YOUTH PROGRAMS

Sheriff's Youth Ranch- The 13-acre town-owned Sheriff's Youth Ranch is home to many programs operated by the Barnstable County Sheriff's Office.

Ropes Course- This adventure-based program focuses on teamwork, communication, problem solving, trust, and self-esteem. The course includes challenging “elements” such as rope climbing at varying heights and physical maneuvers that challenge trust among peers. This course is used by schools, churches, and community-based organizations.

Youth Academy- This is a twelve-week after-school program designed to challenge 12-16 year-old recruits and help them fulfill personal goals using a para-military model (drill and ceremony), physical challenges, and classroom experience.

Cadet Corps- The Youth Cadet Corps is a program for Youth Academy graduates, which includes community service projects, camping, parades, and career awareness opportunities. This program is committed to supporting participants in a successful transition into adulthood.

Alternative to Suspension Program- This is a collaboration between local schools and the Sheriff’s Office. Students who are suspended spend the day at the Youth Ranch. Under the supervision of the Sheriff’s staff, the students have a regimented schedule that includes community service, supervised study time, and prevention-oriented workshops. This productive alternative includes visiting the Salvation Army to serve lunch and supervised assistance to the elderly through Housing Authorities. Participants also benefit from “community guests” who share their life experiences.

Inside- This awareness program is conducted at the Barnstable House of Correction for 12 to 16 students and their parents.

The program includes a prison tour and conversation with prison inmates. Participants learn about the realities of prison life and the life choices the prisoners made that resulted in their ultimate incarceration. Staff and inmates help participants identify and change delinquent behaviors. A juvenile can be referred to the program by the school, police, courts or the District Attorney's Office.

CHOICES AND CONSEQUENCES

This seminar is a prevention and intervention program which is a coordinated effort between Mothers Against Drunk Driving and the probation department. Each 2 ½-hour seminar includes powerful speakers who have experienced first hand the effects of drunk driving. An inmate from the Barnstable House of Correction who is serving time for a drug or alcohol related offense also speaks to the participants.

CONSTITUTIONAL CONSIDERATIONS

SEARCH AND SEIZURE

Authorized school personnel can search a student, his or her possessions, or places under the student's control if there is a "particularized" suspicion--an "articulable" reason to believe the student knowingly possesses some contraband. The school can only search those places where they reasonably believe they will find contraband. Contraband is any item that cannot be legally possessed, such as drugs, alcohol, or weapons.

Searches by school personnel are permissible without a warrant if they are acting without police direction and they have a reasonable suspicion that they will find contraband in the place to be searched. Reasonable suspicion means the authorized school personnel must have more than a hunch or a whim to believe a student has contraband. The Supreme Court wrote in New Jersey v. T.L.O. , “reasonable suspicion” is “a common sense conclusion about human behavior upon which practical people...are entitled to rely.” An eyewitness to drug use or possession may provide the school with reasonable grounds to search. Anonymous tips, standing alone, usually do not provide reasonable suspicion.

If a school official is relying on information from another student or teacher to establish reasonable suspicion, *before* the search is conducted, the person who wishes to conduct the search should know:

- (1) how the person who provided the information knows there is contraband (did he or she see it personally?)
and
- (2) whether the person who gives the information is reliable (why do you believe the person?)

“Protective sweeps” are searches that are conducted without “particularized suspicion.” Lockers or areas of the school can be searched on a routine basis if the search is based on a written policy. Student handbooks should include the policy that lockers are not the exclusive possession of students and are subject to random searches. Protective sweeps should not be used to target an individual student unless there is a particularized suspicion.

QUESTIONING STUDENTS

Schools may question students about violations of school rules and criminal laws without advising them of their Constitutional Rights. This questioning cannot be conducted on behalf of the police or with the aid of the police. The court will scrutinize any statements to make sure they were given voluntarily and without coercion.

JUVENILE COURT'S OTHER FUNCTIONS

CHINS

Children in Need of Services

A child in need of services (CHINS) is a child under the age of seventeen who persistently runs away from home or who persistently refuses to obey the lawful and reasonable commands of a parent or guardian. A parent or legal guardian of a child or a police officer may apply for a petition in Juvenile Court. The petition states the specific details of the child's behavior.

Each school should have a duly-appointed supervisor of attendance. This designee may petition the court if a child between the ages of six and sixteen is persistently and willfully absent from school or persistently violates the lawful and reasonable regulations of the school.

Once a petition is filed, the child is given notice to appear before the judge in the Juvenile Court. The child has a right to have an attorney represent him or her. If the court determines the child

is in need of services after hearing, the judge can impose conditions. The conditions may include: allowing the child to remain at home subject to conditions (counseling etc.); placing the child outside the home, at a child-care agency or private organization; or commit the child to DSS (Department of Social Services) custody.

The order of the court stays in effect for six months but is subject to review when appropriate. Orders expire on the child's eighteenth birthday, or in the case of truants, at age sixteen.

CHINS Diversion

An alternative to a formal court CHINS proceeding is an informal CHINS review, also known as CHINS Diversion. Once a parent, guardian, or school official applies for a petition, the Assistant Chief Probation Officer (ACPO) reviews the case and determines if the case is appropriate for diversion. The goal of CHINS Diversion is to address the needs of the child without formal court involvement that could result in temporary or permanent custody to DSS.

If the ACPO accepts the case, the probation department meets with the child and parent to agree on services such as counseling or specific educational programs. These cases are reviewed by the probation department on a 30-day basis. If an Informal Agreement cannot be reached, the case is referred to the court.

CARE AND PROTECTIONS

The Juvenile Court also has jurisdiction over cases involving abuse or neglect of a child under eighteen years old. Care and Protection proceedings start with a report of abuse or neglect. Mandated Reporters, such as teachers, doctors, guidance

counselors, social workers, and police officers* who are acting in their professional capacity *must* report cases of child abuse and neglect to the Department of Social Services (DSS).

Other people with knowledge may report this information to DSS, although they are not mandated by law to do so.

If the case is screened in by DSS, a caseworker will conduct a 10-day investigation of the allegation. If DSS supports the allegation, a caseworker will work with the family to address the problems or they may proceed in Juvenile Court for temporary custody. If it is determined it is an emergency situation, DSS can petition the Juvenile Court to receive immediate custody, thus removing the child from the home. This hearing must occur within seventy-two hours of the removal. All parties, including the child, both parents, and DSS are represented by counsel. The Juvenile Court also presides over a final determination hearing, deciding whether the DSS will gain permanent custody.

*These are only a few examples of mandated reporters. See Mass. Gen Laws Ch. 119, Sec 51A or contact DSS.

GLOSSARY

Acquittal: a formal determination that there is insufficient evidence to prove a person who is charged with an offense committed the crime charged.

Adjudication: a final decision made by the court such as a conviction or a finding that a juvenile is delinquent.

Admission of Sufficient Facts: a formal acknowledgment by a defendant that there is sufficient evidence to warrant a guilty finding or, in the case of a juvenile, a delinquent finding.

Appeal: a formal process by which either the prosecution or defense counsel can request a higher court to review decisions made by the District Court or Juvenile Court Judge.

Arraignment: the initial court appearance where formal notice of charges is given to the defendant, the defendant enters a plea, and bail or other conditions of release are set by the judge.

Bail: an amount of money the defendant must post to insure he will appear on the next court date. The judge can set conditions of release in lieu of bail (i.e., remain drug free)

Bench Trial: a trial at which the judge hears witness testimony and decides the facts of the case (compare jury trial).

Continued Without a Finding (CWOFF): a procedure where a juvenile admits there are sufficient facts for a finding of delinquent. Instead of entering a delinquent finding on the record, the case is continued for a specified period of time. During that time, the juvenile is on probation. Upon successful completion of probation, the case is dismissed. If the juvenile does not successfully complete probation, after a hearing the court can enter a delinquent finding and sentence accordingly.

Conviction: a final determination by the court that the defendant is guilty of the offense charged. This can be the result of a plea or trial. Once there is a conviction the judge will sentence the defendant.

CORI: Criminal Offender Record Information.

Department of Youth Services (DYS): a government agency responsible for the holding facilities for committed juveniles.

Delinquent: a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offense against a law of the Commonwealth.

District Attorney: an elected official who is responsible for enforcing the criminal laws by representing the citizens of the Commonwealth in court. Each District Attorney has a team of prosecutors (Assistant District Attorneys) who handle the cases in Juvenile, District, Superior Courts and Appeals Court.

District Court: a court that has jurisdiction over cases involving adults charged with misdemeanors or felonies that are punishable by incarceration in the House of Correction for up to two and one-half years.

Grand Jury: a group of twenty-three citizens who review evidence presented by the District Attorney's office in order to determine if there is enough evidence --probable cause-- to indict an individual. If there is sufficient evidence, the defendant is charged in Superior Court.

Indictment: the formal process by which the Commonwealth charges a person with a crime once the Grand Jury determines there is sufficient evidence to do so.

Jurisdiction: rules that outline which court will hear a specific case based on where the crime was committed and the type of case presented. For example, cases involving juveniles are heard in a specialized Juvenile Court.

Misdemeanor: a criminal offense which is punishable by incarceration in the House of Correction or a fine if the individual is an adult.

Mistrial: a trial which is terminated prior to its completion because of a problem that arises during the trial which would make it unfair to continue or where there is a hung jury (a jury that cannot come to a unanimous decision).

Nolle Prosequi: a formal decision by the prosecutor not to prosecute a case.

Personal Recognizance: pre-trial release of a defendant on the promise to appear on the next court date.

Plea Agreement: an admission of guilt by the defendant to pending charges based on an agreement with the prosecution to a specific sentence or terms of probation. This agreement must be approved by the judge in order to become final.

Probable Cause: a set of facts sufficient for a reasonable person to believe that a crime was committed by a particular person.

Probable Cause Hearing: 1) a proceeding in District Court in which the prosecution presents evidence of a crime. The judge determines if there is sufficient evidence to transfer the case to

Superior Court for a hearing before the Grand Jury; or 2) a proceeding held by a judge or clerk magistrate to determine if there is sufficient evidence to charge an individual who was arrested without a warrant.

Probation: a court-ordered sentence during which time the defendant must not commit any new offenses and must follow orders of the court for a specified period of time (i.e., counseling, drug screens, restitution). Failure to comply may result in incarceration.

Restitution: an amount of money the court orders a defendant to pay a victim for out-of-pocket expenses.

Subpoena: a court order to appear in court to give testimony.

Superior Court: a court that has jurisdiction over all criminal matters but usually only exercises jurisdiction on the more serious cases. The Superior Court has the power to sentence an individual to State Prison as well as the House of Correction.

Warrant: an order by the court empowering the police to arrest an individual or search a particular place.

Youthful Offender: a juvenile between the ages of fourteen and seventeen who is charged with a felony *and*

- 1)has been previously committed to DYS *or*
- 2)has committed an offense involving the infliction or threat of serious bodily harm *or*
- 3)has violated a firearm law.

The Commonwealth proceeds by indictment. Once the juvenile is adjudicated a Youthful Offender by a plea or trial, the sentencing judge has the power to sentence the individual as an adult.

DIRECTORY

Police Departments

Aquinnah Police Department

State Road
Chilmark, MA 02535
508-645-2313

Barnstable Police Department

1200 Phinney's Lane
Hyannis, MA 02601
508-775-0387

Bourne Police Department

175 Main Street
Buzzards Bay, MA 02532
508-759-4420

Brewster Police Department

1657 Main Street
Brewster, MA 02631
508-896-7011

Chatham Police Department

127 Depot Road
Chatham, MA 02633
508-945-1213

Chilmark Police Department

Cross Road
Chilmark, MA 02535
508-645-3310

Dennis Police Department

685 Route 134
South Dennis, MA 02660
508-394-1313

Edgartown Police Department

Church Street
Edgartown, MA 02539
508-627-4343

Falmouth Police Department

750 Main Street
Falmouth, MA 02540
508-457-2527

Harwich Police Department

183 Sisson Road
Harwich, MA 02645
508-430-7541

Mashpee Police Department

Route 151
Mashpee, MA 02649

Massachusetts State Police

Nantucket Barracks
Nantucket, MA 02554
508-228-0706

Massachusetts State Police

Oak Bluffs Barracks
Temahigan Avenue
Oak Bluffs, MA 02557
508-693-0545

Massachusetts State Police

South Yarmouth Barracks
Route 28
South Yarmouth, MA 02664
508-398-2323

Massachusetts State Police

Bourne Barracks
Bourne Rotary
Bourne, MA 02532
508-759-4488

Nantucket Police Department

20 Southwater Street
Nantucket, MA 02554
508-228-1212

Oak Bluffs Police Department

Oak Bluffs Avenue
Oak Bluffs, MA 02557
508-693-0750

Orleans Police Department

South Orleans Road
Orleans, MA 02563
508-255-0117

Provincetown Police Department

14 Shankpainter Road
Provincetown, MA 02657
508- 487-1213

Sandwich Police Department

Route 6A
Sandwich, MA 02563
508-888-3343

Tisbury Police Department

Off Main Street
Vineyard Haven, MA 02568
508-696-4240

Truro Police Department

Town Hall Road
Truro, MA 02666
508-487-8730

Wellfleet Police Department

P.O. Box 832
Wellfleet, MA 02667
508-349-3702

West Tisbury Police Department

P.O. Box 520
West Tisbury, MA 02575
508-693-0020

Yarmouth Police Department

424 Route 28
West Yarmouth, MA 02673
508-775-0445

Agencies**Sheriff's Youth Ranch**

Sheriff James Cummings
1445 Osterville West Barnstable Road
West Barnstable, MA 02668
508-375-6120

MADD

23 H2 Whites Path
South Yarmouth, MA 02644
508-394-1003

Department of Youth Services

20 E Willow Avenue
Hyannis, MA 02601
508-790-9324

Department of Social Services

32 Commercial Street
South Yarmouth, MA 02664
508-760-0200

Independence House

Agency for Battered Women
And Sexual Assault Survivors
Hyannis, MA 02601
1-800-439-6507

Cape & Islands District Attorney's Office

District Attorney Philip A. Rollins
Assistant District Attorneys
Lisa Edmonds, Susan Wenzel, Roger Jackson
3231 Main Street
Barnstable, MA 02630
508-362-8110

Juvenile Diversion Program

Program Coordinator
Kathy Quatromoni
3231 Main Street
Barnstable, MA 02630
508-362-8113

Probation**Barnstable County**

Barnstable Court House
P.O. Box 427
Barnstable, MA 02630
508-362-8606

Falmouth Court House

161 Jones Road
Falmouth, MA 02540
508-495-1693

Martha's Vineyard Island

12 Mariner's Way Unit 4

Edgartown, MA 02539
508-627-8983

Nantucket Island

16 Broad Street
Nantucket, MA 02554
508-325-4265

Orleans Court House

237 Rock Harbor Road
Orleans, MA 02563
508-255-4700