

Children's Law Section - Juveniles

Juvenile Court in Albuquerque:

The Basics

The police start a juvenile case by 1) arresting a child, or 2) investigating a case and listing the juvenile as a suspect on the police report, or 3) issuing a citation on a case other than a minor driving offense. (Minor driving offenses go to Metro Court.) If the child is arrested, he or she will be taken to the Juvenile Detention Center, commonly known as the D-Home. Most will then be released to a parent or guardian. Children not released will have a detention hearing (D-Hearing) several days after the arrest.

When a child is not in detention, the probation office will receive the referral from the police report or citation which is sent to them by the originating police department. Then the office sends a letter notifying the family of a preliminary inquiry. On all cases, the Juvenile Probation Department conducts a preliminary inquiry with the child and parents. The probation officer discusses the charges, the possible outcomes, the route a case might take through Children's Court, the child's rights, and recommendations to the DA's office about disposition of the case. Confidential communications made during the preliminary inquiry are privileged under Rule 11-509. When a child is in detention, the preliminary inquiry will be held the first working day after arrest, in the D-Home.

Once the preliminary inquiry is held, the probation officer refers some cases to the DA's office for a decision about whether charges will be filed. Certain cases are not referred to the DA's office by the Probation Department. These include all petty misdemeanor offenses which do not involve violence or restitution and where the child has no prior referrals to the juvenile justice system. By agreement between the Bernalillo County D.A.'s office and the Probation Department, only two misdemeanors within two years will be handled by the Probation Department without a referral to the D.A.'s office. Many misdemeanor cases are sent for DA review regardless of the respondent's record. These include DWI, graffiti, misdemeanors involving violence such as battery, and cases involving complex restitution issues. Also, if a child denies the allegations or fails to appear for the preliminary inquiry, the case will be referred.

Cases referred to the DA's Office from the Juvenile Probation Department are first assigned to an attorney and then initially screened by the Division paralegal. The paralegal then turns the cases over to the assigned attorney for review. The attorney decides whether to file charges in a particular case, considering the strength of the evidence, the seriousness of the offense, the child's prior record of contact with the juvenile justice system and any other relevant factors that bear on the case.

When a child is not in detention, the court Clerk will set the case for first appearance. This usually occurs within four to six weeks of the time the petition is filed. At that appearance, the child can either waive arraignment or enter a plea agreement. If arraignment is waived, the case will be set for trial at a later date and may be set for other pretrial settings, depending on the judge. When the child is not in

detention, the case must go to trial within 120 days of the time the petition is filed (30 days if the child is in detention).

If the respondent does not appear for any scheduled court appearance, the Court may issue a bench warrant for failure to appear. This stops time limits from running. Time limits begin anew when the respondent is arrested.

There are four basic dispositions for the case: Time Waiver, Consent Decree, Probation, and Commitment. The court can also impose a fine. A time waiver is an agreement between the child and the DA to waive the time limits and keep the case open for six months. The child does not have to admit to any of the charges. The agreement includes a requirement that the child not have any more referrals to the probation office, and can include any other condition the parties agree on. If the child violates the agreement, the DA will file a notice of noncompliance, which brings the case back before the court for trial or plea.

A consent decree is similar to a deferred sentence. The child admits to a charge and is placed on probation for six months, If he or she completes probation, the case is dismissed. The six-month probation can be extended for six more months by agreement or court order. A child may only be placed on a consent decree once every two years.

Probation is for an indeterminate term not to exceed two years. The conditions of a two-year probation are generally the same as a consent decree. Standard conditions include:

reporting to a probation officer, obeying parents, living with parents, going to school, not using drugs or alcohol, not possessing weapons and not breaking the law. Common other conditions include: not associating with negative peers, keeping a curfew, attending counseling, not driving, making restitution and performing community service. Other special conditions can be added if appropriate, including specialized probation supervision and other conditions designed to steer the child toward making better choices in the future.

A commitment can be for one year or two years to the custody of the Children, Youth and Families Department. Commitments are indeterminate, with release dates determined by the Juvenile Parole Board. There are also two 15-day commitments: an interim one to the Children, Youth and Families Department for diagnosis and recommendations, and one to the D-Home as a final disposition.

Most cases in Children's Court are settled by a plea. If a case goes to trial, a child is entitled to a six-person jury trial if the charge is one that would be a felony for an adult. If the charges would be misdemeanors if the child were an adult or if the case is charged as a probation violation, the adjudicatory hearing is heard by the judge.

A small number of mostly violent offenses (enumerated in 32A-2-3(I)) are Youthful Offender charges, a hybrid between juvenile and adult charges. Basically, they are handled as adult cases after the DA files a Notice to Invoke Adult Sentence. At the time of disposition, the state has the burden of proving the child

is not amenable to treatment as a juvenile in order to have an adult sentence imposed. First Degree Murder committed by a child 15 or older is a Serious Youthful Offense, and is treated like an adult case.

How to Talk Juvenile

Adjudicated = Convicted

Adjudicatory Hearing = Trial

Admit = Plead guilty

Children's Court Attorney = Assistant District Attorney

Commitment = Incarceration

Consent Decree = Deferred Sentence

D-Hearing = Detention Hearing

D-Home = Bernalillo County Juvenile Detention Center

Delinquent Act = Crime

Deny = Plead not guilty

Detained = Arrested

Disposition = Sentence

Dispositional Hearing = Sentencing hearing

FINS = Families in need of supervision

ICJ = Interstate Compact on Juveniles

JPPPO = Juvenile Probation and Parole Officer

Petition = Indictment or complaint

P1 = Preliminary Inquiry

Predisposition report = Presentence report

Respondent = Defendant

Time Waiver = Diversion (PPP)

Ten Tips for Handling Juvenile Cases

1. Don't ignore the preliminary inquiry. If your client doesn't show up, the case will be sent to the DA, even if it could have been handled by the probation office. If you go to the preliminary inquiry, bring a letter with information you want the DA to have. The Probation Officer will add it to the packet of information that goes to the DA.
2. Don't assume the case will stay with the Assistant District Attorney who signed the petition. Call the receptionist at 841-7670 and ask who the case is assigned to.
3. Call the DA before the first court setting. Let the DA know the good things happening in your client's life and the problems. The good things help balance the allegations in the petition and the DA may be able to help you with resources for the problems.
4. Remember that Children's Court is District Court and that its settings take precedence over other court settings. Most judges will agree to move a court setting to accommodate your schedule given sufficient notice. The DA can help with paperwork.
5. Ask your client if they have ANY other cases coming along. It's easier to handle things all at once and to address developing problems early. No one in the system may know about a new arrest or citation besides your client, even though juvenile cases move fast by court standards.
6. If you enter a case after the preliminary inquiry, let the Public Defender's Office know (841-5103). The court automatically appoints the public defender in all delinquency cases unless an entry of appearance has been filed by another lawyer.
7. Since most cases in Children's Court are disposed of with a plea, let the DA know if you expect to be denying the allegations. The short time limits mean that pre-trial interviews and other discovery need to be set up fast.
8. Come to court in time to review paperwork with your client if the case is going to be a plea. There will be from one to 6 forms for you to go over with your client. They are almost all on multi-part NCR forms which are filled out in longhand in the courtroom, so it isn't easy to obtain them ahead of time. The Judge will expect your client to know their rights and be able to describe what they did to break the law or violate their probation.
9. Advise your client to be honest with the Judge about drug use. Most kids will be drug tested on the day of their plea.
10. Because cases are set on a trailing docket, don't expect to be in and out of court. Ask the DA what you can expect and what procedures you need to follow to have your case called