

MUNICIPAL LAW

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The Law Department and Juvenile Justice

The New York City Law Department is known in the legal community for representing the City in tort, contract, municipal finance, zoning and other civil matters. Not as well-known is the fact that the Law Department, through its family court division, also plays an important role in protecting our community and advancing the welfare of young people.

Family Court Division

Pursuant to §§254 and 301.2(12) of the Family Court Act (FCA), the office of the corporation counsel serves as the presentment agency in juvenile delinquency cases. Accordingly, the Law Department's family court division investigates and prosecutes offenses committed by youths over seven and under 16 years old.¹ The division handles over 7,500 cases annually and has offices in all five boroughs. The offenses prosecuted range from minor matters such as turnstile jumping and shoplifting to the most serious of offenses such as rape and murder. The division consists of approximately 90 attorneys and 60 support staff and works closely with the New York City Police Department's juvenile crime squads.

The role of attorneys working in the family court division is similar to that of assistant district attorneys in many ways. They investigate cases, determine whether to file charges, draft accusatory instruments, appear at arraignments and examine witnesses at suppression hearings and fact-finding hearings. They are required to know and apply the Penal Law and the rules of evidence.

Yet the role of a family court division attorney differs from that of an assistant district attorney in important respects. In addition to being well-versed in criminal law and procedure, attorneys must also be familiar with the provisions of Article 3 of the Family Court Act, the statute governing juvenile delinquency proceedings in Family Court.² Article 3 focuses largely on rehabilitation and requires the court to "consider the needs and best interests of the [juvenile] as well as the need for protection of the community."³

As a result, terminology and concepts used in the prosecution of juvenile delinquency cases differ substantially from those in the adult criminal justice system. Offenders are called respondents, not defendants. Rather than trials, the division conducts fact-finding hearings and presents cases based on petitions rather than indictments or informations. The speedy trial provisions of the Family Court Act are much more restrictive than those prescribed in the Criminal Procedure Law.⁴

When juveniles are arraigned in Family Court, there is no provision for bail. Instead there are only two options: release or detention.⁵ If the respondent is to be released, the division may request that the court impose conditions, such as adherence to a curfew, atten-



dance at a program or compliance with an order of protection.⁶ The Family Court may only order the detention of a juvenile based on a finding that "there is a substantial probability that he will not appear in court on the return date or there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime."⁷

A significant distinction between the adult and juvenile justice systems exists in the post-fact-finding stage. An adult found to have committed a crime receives a sentence based on such considerations as deterrence, punishment and the need for isolation from society. In the juvenile justice system, the division attorney takes

part in a dispositional hearing. If, at the conclusion of the hearing, the court finds that, even though the respondent committed the act which is the subject of the petition, he is not in need of supervision, treatment or confinement, it dismisses the petition entirely.⁸ If the court finds the respondent in need of supervision, treatment or confinement, it may order appropriate services or placement.⁹ The court must impose the least-restrictive alternative consistent with the needs and best interest of the respondent and the need for the protection of the community.¹⁰

At the dispositional hearing, the Department of Probation presents a report detailing the juvenile's history, family situation, psychological or psychiatric condition, school adjustment and any previous social assistance he has received.¹¹ There may be a diagnostic assessment from a mental health professional that includes "psychological tests and psychiatric interviews to determine [the respondent's] mental capacity and achievement, emotional stability and mental disabilities" as well as an assessment of "the situational factors that may have contributed to the act or acts."¹² The hearing may also include an expert opinion "as to the risk presented by the juvenile to others or himself."¹³

Dispositional Alternatives

The range of available dispositional alternatives includes: ordering a conditional discharge;¹⁴ placing the respondent on probation;¹⁵ placing the respondent in his own home or with a suitable relative, a private agency, the Commissioner of Social Services or the Office for Children and Family Services (OCFS);¹⁶ or placing the respondent in and ordering his temporary transfer to an appropriate mental health facility.¹⁷ A respondent who is placed with OCFS may be placed in a secure, limited secure or nonsecure facility.¹⁸ Under limited circumstances, a "restrictive placement" in a secure facility operated by OCFS can be ordered.¹⁹ This represents the most-restrictive alternative and is only available when the respondent has been found to have committed a "designated felony act"²⁰ and either has inflicted serious physical injury upon a person 62 years of age or older²¹ or where the court makes a special finding concerning the need for a restrictive placement.²²

In recent years, there has been an effort on the part of public and private agencies to provide "alternatives to placement." This is based on concerns that place-

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ments have limited success in stemming recidivism and that disruption caused by respondents' removal from families and communities limits their ability to successfully reintegrate into the community upon release. The division, working with the office of the Criminal Justice Coordinator, the Department of Probation and other public and private agencies, seeks to maximize the use of these programs when consistent with respondents' needs and best interests and public safety.

While the final decision on disposition rests with the court, division attorneys play an important role in seeking an appropriate disposition. They call and cross-examine witnesses, such as probation officers, mental health professionals and program representatives. Prior to taking a position on the appropriateness of a particular dispositional alternative, attorneys review the dispositional reports filed with the court and consult with one of the division's "disposition specialists." These specialists are experienced licensed clinical social workers whose job is to evaluate dispositional alternatives and their appropriateness for particular respondents.

Victim and Witness Services

Recently, the division has undertaken an important initiative to support and assist the victims of juvenile crime. This initiative seeks to address the fact that more than half of the division's current caseload involves violent crimes such as robberies, assaults and sex offenses. The goal is to enhance the division's responsiveness to victims' needs and to provide them with access to an enhanced array of services. A senior attorney has recently been placed in charge of victim and witness services. That attorney has been working closely with Safe Horizon, a leading nonprofit victim assistance, advocacy and violence-prevention organization, and other service providers to ensure that victims are offered an array of services designed to meet their needs. Safe Horizon has reception centers in all five boroughs and offers services that include counseling, assistance in arranging transportation, emergency food assistance, preparation of New York State Crime Victims Compensation Board applications and intervention with the Department of Education and the New York City Housing Authority to arrange for safety transfers.

As part of its victim services initiative, the division has sought to provide comfortable, safe waiting areas for all victims and witnesses in its proceedings. The division's Brook-

lyn office, for example, will be moving this summer to a brand new courthouse, where it will be located directly next to the Safe Horizon reception center.

The division has also been intensifying its efforts to ensure that victims' experiences and concerns are considered whenever appropriate in fashioning dispositions. In determining the disposition of a case, the court can consider the impact the respondent's actions had on the victim as part of the probation report.²³

In addition, division attorneys can make a statement to the court relevant to disposition²⁴ and can include statements from the victim. It has been the division's experience that putting their thoughts and feelings into words, and having the court consider them, can give victims a sense of restoration and closure. Even if the victim does not appear or testify at the dispositional hearing, it is important that he or she know the outcome of the case. The division recently implemented a notification protocol to ensure that victims are timely apprised of the final disposition of the case and told whom to contact for further information.

For victims with safety concerns, division attorneys can request temporary orders of protection.²⁵ These orders can remain in effect for the pendency of the case and require the respondent to keep away from the home, school or place of business of the victim and to refrain from harassing, intimidating or threatening the victim or members of the victim's family.²⁶ Division attorneys can also request a final order of protection extending for the duration of the dispositional order.²⁷ The division is working to ensure that orders of protection are issued in a timely manner when victims fear the respondent.

Sex Offenses

Some of the most difficult cases the division handles involve sex offenses. Often, the victims are younger children who have been subjected to ongoing abuse. These cases are especially difficult when respondents and victims are part of the same family. Many of these victims experience shame and fear they will be blamed. Parents and other family members also experience similar emotions. To handle these difficult and sensitive cases in the most empathetic and responsive manner, the division has a sex crimes prosecution unit. Its members are more senior attorneys who are specially trained and supervised.

Many of the victims of crimes committed by youth are young children. To help alleviate the stress and pressure resulting from having to testify

in court, the division participates in a "court school" program. The program, held monthly at the Brooklyn Family Court, helps support young victims by teaching them what to expect in the courtroom. Victims are introduced to the court process through the use of skits, puppetry and role-playing, with children cast in roles as judges and questioners. The "court school" program is operated by the Junior League of Brooklyn in partnership with the Safe Horizon's Brooklyn Child Advocacy Center and the division.

Another important function of the division is to prosecute paternity and support actions on behalf of custodial parents who are domiciled outside New York State against noncustodial parents found within the city. Division attorneys who perform this task act pursuant to the Uniform Interstate Family Support Act, a statutory framework for interstate child support enforcement.²⁸ Their work includes seeking orders of paternity, establishing orders of support and enforcing or modifying existing orders. A separate unit in the division files paternity and support petitions on behalf of custodial parents residing in the city against noncustodial parents, to be heard in out-of-state courts.

Conclusion

Attorneys in the family court division experience a deep sense of satisfaction knowing that they serve an important role in the juvenile justice system. Their efforts help to keep the community safe. They also help to ensure that victims get protection and services and that the system is responsive to their needs and concerns. Equally important, division attorneys play a key role in ensuring accountability for respondents while at the same time being attentive to their needs and best interests as they work toward rehabilitation.

1. Family Court Act (FCA) §301.2(1)
2. FCA §115(a)(v)
3. FCA §301.1
4. FCA §340.1
5. FCA §320.5(1)
6. FCA §304.2
7. FCA §320.5(3)
8. FCA §352.1(2)
9. FCA §352.1(1)
10. FCA §352.2(a)
11. FCA §351.1(1)
12. FCA §351.1(1)
13. FCA §351.1(1)
14. FCA §352.2(1)(a), 353.1
15. FCA §352.2(1)(b), 353.2
16. FCA §352.2(1)(c), 353.3(1)
17. FCA §352.2(1)(c), 353.4
18. FCA §353.3
19. FCA §352.2(1)(e), 353.5
20. FCA §353.5, 301.2(8)
21. FCA §353.5(3)
22. FCA §353.5(1), 353.5(2)
23. FCA §351.1(4)
24. FCA §350.4(6)
25. FCA §304.2
26. FCA §352.3
27. FCA §352.3
28. FCA §580-101, et seq.