The Courts and Criminal Justice

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The juvenile justice process

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Will I be treated differently in court if I am under age 18?

If you are under the age of 18, you are considered a *juvenile* for the purposes of criminal proceedings. If you are accused of doing something that would be a crime for an adult, you could be be involved in a special court proceeding called a *delinquency* hearing. Juvenile delinquency cases may include the whole range of crimes from shoplifting to murder. A juvenile has many of the same rights as an adult, but the processes for delinquency cases are different than for adult criminal proceedings. This section explains what you can expect at each stage of the juvenile delinquency process and what your rights are during the process. It also gives some tips on what to do and how to act during the process.

What happens in juvenile proceedings?

Like other criminal proceedings, juvenile delinquency proceedings begin with investigation and arrest. Law enforcement officers respond to crimes by trying to find out what happened. The officers may gather evidence and question witnesses and suspects, either before or after they arrest a suspect. Juvenile Probation Officers may also perform some of these tasks.

Why are juvenile proceedings different from adult criminal cases?

In juvenile proceedings, the rules are flexible because the goal is to *rehabilitate*, rather than *punish* the minor who commits a crime. In other words, the primary objective is to guide you back into behaving and living in a way that is socially and legally acceptable. Therefore, the law enforcement and

juvenile justice people involved are allowed to be flexible in the decisions they make. For example, a police officer may decide that an act of delinquency is not serious enough to require arrest and may instead give you a warning. However, the officers and the court must also consider public safety, and must work to prevent criminal behavior.

What will an officer do after arresting me?

An officer who arrests you and finds out that you are a juvenile has several options.

- The police officer could release you with a warning or citation. A warning does not require you to do anything else. A citation may require you to either pay a fine or go to court to contest the fine. Citations are most common for minor violations, such as traffic offenses and littering.

- The police officer could release you, but the Division of Juvenile Justice may later file a *petition for delinquency*. If the court decides that there is enough evidence to support the petition, then you will have to go through formal delinquency proceedings.

- The officer could take you into custody and request that the Division of Juvenile Justice detain you. The Division can later release you without taking you to court. The court must hold a hearing within 48 hours after your arrest to decide whether there is probable cause to keep you in custody.

Do my parents have to know if I am arrested?

If you are arrested or adjudicated as a juvenile delinquent, your parents or guardians have the right to know about it. They have a right to attend all court hearings with you and are expected to be present. In some cases, the court may order your parents or guardians to assist in your disposition, probation, or rehabilitation. This can include financial support.

Why are some juveniles treated as adults in criminal proceedings?

Sometimes, juveniles are tried as adults. State law establishes the rules about when juveniles can be tried as adults.

You **will** be tried as an adult if you are 16 or older **and** you have been accused of one of the following serious crimes:

- any unclassified (the most serious kind) felony;

- a Class A felony against a person;

- a Class B felony against a person that involves a deadly weapon if you have committed this offense before;

- first degree arson;

- misconduct involving a weapon in the first degree.

You **will always** be tried as an adult for the following offenses:

- minor traffic offenses,
- offenses relating to tobacco possession or use,
- fish and game violations, and
- offenses related to parks and recreational facilities.

You may be tried as an adult if you are 16 or older **and** you have been accused of any felony against a person. This usually only happens if you have committed similar offenses before. You **may** be tried as an adult for some less serious offenses related to possessing or consuming alcohol, and for offenses related to city curfew violations.

You **may** be tried as an adult for any crime, if the court finds probable cause to believe that you committed the offense **and** that you are *not amenable to treatment*. Not amenable to treatment means that, in the court's opinion, you probably cannot be rehabilitated by the time you turn 20 years old. The court will consider the seriousness of the charged offense, your history of delinquency, the probable causes of your delinquent behavior, and the facilities and programs available for rehabilitation.

Why would I be treated as a juvenile if I've already turned 18?

If you were less than 18 years old when you committed the offense, you may still go through juvenile delinquency proceedings, even though you have turned 18 since then. However, if you are adjudicated delinquent, you could be put in prison with adults instead of in a juvenile facility. If you are 18, your parents or guardians do not have the right to participate in the proceedings and you do not have the right to their financial support. Parents or guardians can attend hearings and assist you if they want to and you agree.

Informal juvenile proceedings

Why are some juvenile justice proceedings informal?

If you are arrested for a crime when you are under 18, you may be eligible for informal proceedings. If you are arrested or accused of an act of delinquency, you will be referred to the Division of Juvenile Justice (DJJ). If you admit committing the offense, the DJJ may choose to handle your case informally without ever going to court. Another possibility, depending on the offense you are charged with, is that you could go through youth court where other teenagers are the lawyers and judges. See Section 7 of this Guide for more information about Youth Court.

What can happen in informal proceedings?

The DJJ could let you go with a warning, or could choose to divert you from the formal court process. This might include community work service, restitution, referral to treatment, and/or informal probation. On informal probation, you could be subject to a curfew, or could be required to attend classes or participate in drug or alcohol assessments. You could be required to perform community service, or pay *restitution*. Restitution could mean paying for something you stole or vandalized, or for a victim's hospital bills or injuries.

Your parents or guardians are usually responsible for helping you complete informal probation. Informal probation typically requires you to stay out of trouble at school and at home, so actions that may not be illegal (such as getting detention at school or being grounded by your parents) could be considered violations of informal probation. Your parents or guardians should discuss your informal probation requirements with you and with DJJ. You and any parents or guardians involved in the process should be sure you understand what DJJ expects while you are on probation.

Informal probation usually lasts 3-6 months, but it may be longer. If you complete all of your probation requirements and don't get into trouble during your probationary period, your case will be over. DJJ will not file a formal delinquency petition in the court.

If I'm guilty, shouldn't I just confess so I won't have to go to court?

It depends. There are no guarantees that DJJ will give you a warning or informal probation just because you confess. DJJ will consider the seriousness of your offense, your history with the police, your record at school, your age, your attitude, and many other factors. If you admit to committing the offense, you could still go to court, and you may hurt your case by confessing. You should talk to your lawyer and your parents or guardians before you decide what to do. You can find more information about some consequences to think about at www.beforeyouplea.com/ak.

Formal proceedings

What happens if DHSS decides against informal proceedings for me?

If DJJ officials decide not to handle your case informally, they may file a *petition of delinquency*. A petition of delinquency is a formal document filed in court. The petition identifies the offense you are accused of committing, and the evidence that makes police or investigators believe you committed that offense. If the judge agrees that there is *probable cause* to support the petition, then the judge will begin juvenile delinquency proceedings. Probable cause does **not** mean the judge thinks you are guilty, but only that, in the judge's opinion, there is enough evidence to go forward with formal delinquency proceedings. Formal delinquency proceedings have three stages: pre-adjudication, adjudication, and disposition.

At any stage of juvenile delinquency proceedings, the court may issue orders about what you must do or not do. You should read these orders carefully and make sure to ask questions if you do not understand what they require you to do. It is very important to follow court orders because you could be charged with another offense if you violate them. While you are in the community and under these court orders you will be supervised by a juvenile probation officer.

Pre-adjudication

What happens in the pre-adjudication stage of formal delinquency proceedings?

The pre-adjudication phase includes court hearings or other processes that come before the court actually decides if you committed the offense. The pre-adjudication stage includes the arraignment, and can include a detention hearing, and one or more evidentiary or status hearings. You have many decisions to make in this stage.

What is an arraignment?

Your first appearance in court is called an arraignment, an advisement, or an *initial hearing*. At an arraignment, the judge will tell you what you are accused of, and explain your rights in court. The judge will then ask you whether you committed the offense. All you have to say is that you *admit* or you *deny* the charges against you. This is like pleading *guilty* or *not guilty* in adult court. Unless you have decided, with the help of a lawyer and your parents or guardians, to admit the charges, it is best to say "deny." You can change your mind later. If you cannot afford a lawyer, the court will usually appoint one for you at the arraignment. If you can afford a lawyer but don't have one yet, you can ask the court for a reasonable amount of time to find a lawyer before you decide anything.

What is a detention hearing?

If the court keeps you in detention after your arraignment, you will have a detention review every 30 days. These are similar to bail hearings for adults. At a detention hearing the judge will decide if you should stay confined until the next hearing but no longer than 30 days without a review. The judge will consider a number of factors, such as the seriousness of the offense you are accused of, whether keeping you confined is necessary to protect the victim or the public, and how likely it is that you will run away or not show up for your court hearings if you are released.

If the court decides to release you, you may be released to the *custody* of your parents or guardians or to the custody of the Division of Juvenile Justice. The court will also set *conditions of release*. These are extra rules that you have to follow when you are released. If you violate any of your conditions of release, you could be sent back to detention or have the conditions of your release modified. Common conditions of release include requirements to:

- comply with a curfew;
- attend school and stay out of trouble there;
- stay away from drugs or alcohol; and
- be restricted to your house unless you have adult supervision.

What is an evidentiary hearing?

Another common type of court hearing is an *evidentiary hearing*. At this kind of hearing, your lawyer may argue that certain pieces of evidence should not be allowed when the prosecutor tries to prove you committed the offense. For example, if you think the police searched you illegally, there might be a hearing to decide whether evidence found in the search can be used at your adjudication. If you confessed because you think the police threatened you, the hearing might be about suppressing the confession.

Do I have choices in the pre-adjudication stage?

At this stage, you have many decisions to make, including:

- Do you want to admit that you committed the offense you are accused of?
- Do you want to accept a *plea deal* the prosecutor offers to reduce the charges against you to a less serious offense, or to recommend a lesser punishment if you admit that you committed the

offense you are charged with?

- Do you want your case to be decided by a judge or a jury?
- What witnesses do you want to testify for you?
- Do you want to testify yourself? What will you say if you testify?
- Do you want your adjudication to be open to the public?

You should always talk to your lawyer and your parents or guardians to make sure you understand the consequences of each decision. Sometimes there are special court hearings about one or more of these issues.

There are also *status* hearings about routine things, such as whether the lawyers are ready and what date the adjudication will occur. You have a right to attend every court hearing about your case, but you may not have to be there if you don't want to be. You should ask your lawyer what will happen at each hearing and whether you need to be there.

What legal rights do I have in the pre-adjudication phase?

The court should tell you your rights during arraignment. The most important rights you have at this stage of the proceeding are:

- The right to have a lawyer represent you in court;
- The right to have a lawyer appointed for you if you or your parents cannot afford one;
- The right not to incriminate yourself;
- The right to have the charges against you written down and explained. This includes the right to have enough time to prepare your defense to the charges after you know what they are.

What is the right against self-incrimination?

The *right against self-incrimination* is similar to the right to remain silent. It means you do not have to talk about what happened. The exception is that you must answer whether you admit or deny the charges against you. Your lawyer cannot answer that question for you. You may also be required to answer "yes" or "no" when the judge asks you whether you understand your rights.

What if I don't want a lawyer?

You have the right to refuse a lawyer and represent yourself, but the court will consider carefully whether your decision is *voluntary and intelligent*. This means that nobody has forced you to make the decision and that you understand the consequences of not having a lawyer. If you are charged with a felony level offense, you must at least talk with a lawyer before deciding to represent yourself. The right to a lawyer is yours so it is important that the lawyer talk to you, in addition to your parents.

Guardians ad litem

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What is a guardian ad litem?

A *guardian ad litem* (often known as a "GAL") is a person the court may appoint to speak for your best interests during a court case. In juvenile proceedings, the court might decide to appoint a GAL at one of the pre-adjudication hearings. The GAL may be a lawyer, but has a different job than a lawyer hired or appointed to represent you. A lawyer who represents you will argue for you in court and advise you on the law, but will not make big decisions for you (for example, whether to confess or whether to testify). The GAL has the power to make recommendations in regard to what they believe would be in your best interests. A GAL may be appointed for you when the court finds that neither you nor your parents or regular guardians are capable of making decisions in your best interests. The court will consider your age, intelligence, mental health, the capabilities of your parents or guardians, and any other relevant factors. Having a GAL does not mean the court thinks you are unintelligent or immature. It may mean that the court thinks that getting advice from someone who is not your parent or regular guardian would be helpful to you. If you have a GAL, you should discuss any decisions with him or her and try to reach agreement as best you can. Remember that the GAL is doing what he

or she thinks is best for you. For more information about GALs, see Section 5 of this Guide.

Adjudication

What happens in the adjudication phase of formal delinquency proceedings?

Adjudication is similar to a criminal trial for adults. In an adult trial, the judge or jury decides whether the accused is guilty or not guilty. In adjudication, the judge or jury will decide whether you are *delinquent* or *not delinquent*. At the adjudication, a prosecutor, also known as the District Attorney (DA) will try to prove that you committed the offense you are charged with. Any victim of the offense also has a right to testify; that is, to tell their story in court. But you should know that the prosecutor represents the state, not the victims, so the victims do not tell the DA what to do.

Do I get to have a jury decide my case?

You can request a jury, but most adjudication occurs in front of a judge or a *master*. A master is similar to a judge but with limited authority though they carry out many of the same tasks that a judge would do during adjudication. The only difference is that, at the end of adjudication, a judge must approve recommendations of the master before they are final.

What does "presumption of innocence" mean?

During adjudication, the state has the burden of proving *beyond a reasonable doubt* that you committed an act of delinquency. The *presumption of innocence* means that you come into court with a blank slate. The DA must start from the beginning and present evidence that proves you committed the offense. The fact that you are accused of something, or that the police have investigated you does not prove you are guilty. If the DA does not have enough evidence to prove that you committed the crime, you do not have to present any evidence at all. Of course, you also have the right to present evidence that supports your defense. In most cases, you **will** present evidence in your own defense.

What legal rights do I have during adjudication?

In addition to the rights you have in pre-adjudication, you have the right to confront the witnesses against you. This means that everyone who has something to say about you or your case must testify under oath in open court. You have a right to ask those witnesses questions that may show they are mistaken or untruthful in their testimony. This is called cross-examination. If you have a lawyer, your lawyer will cross-examine the witnesses who testify against you.

Do I have to testify?

You also have the right to testify on your own behalf or not to testify. You can tell your story if you choose. Or you can remain silent and not incriminate yourself if you choose. The fact

that you choose not to testify cannot be held against you. In other words, your silence is not evidence that you are guilty. You should talk to your lawyer about what might happen if you testify or don't testify. Your lawyer can give you advice about what you should do, but your lawyer cannot make the decision for you. It is your decision alone.

Is my juvenile delinquency adjudication open to the public? Who can come?

Unless the court orders otherwise, the following people have a right to attend your adjudication hearing: DJJ representatives, your parents or guardians, your *guardian ad litem*, if you have one, and the victims of the alleged offense. The rules on whether the hearing is open to the public are complicated. Generally, juvenile delinquency proceedings are closed to the public, but either you or the DA can ask the court to open the hearing. The judge will decide whether to allow this. If you have any questions about who can attend your hearings, you should ask your lawyer or the judge.

Disposition

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What happens in the disposition phase of formal delinquency proceedings?

If you are found **not** to be delinquent, then you must be released right away, and your case is over. If you **are** found to be delinquent, then the court will schedule a *disposition hearing*. At the disposition hearing, the judge decides the consequences. You do not have the right to ask for a jury during disposition.

When does the disposition happen?

If you are found delinquent for a minor offense when confinement is not being considered, the judge may hold a disposition hearing right after the adjudication. But usually the court will wait for DJJ to prepare a *predisposition report*, which may take several months. DJJ will collect information about you and the community where the offense occurred, and will interview you, your family and friends, your teachers, your doctors, any victims of your offense, and any others who may have knowledge about how best to treat you. Using the research and interviews, DJJ will then recommend a treatment plan for you. The judge will consider this report seriously, but does not have to follow it. You can present evidence against the report if you want to. At the disposition hearing, the judge will consider your evidence, the evidence in the report, and possibly other evidence from the state.

Will I be confined between adjudication and disposition?

During the time between adjudication and disposition, the judge may confine you to a juvenile facility or release you with behavioral conditions and under the supervision of a juvenile probation
officer. The judge will consider many of the same factors considered in a detention hearing before your adjudication. It is more likely that you will be confined at this stage, because you have been found delinquent. You may get credit for any time spent in confinement during this period. For example, if you spent three months in a detention facility before the disposition hearing, and then the court orders one year of detention, you would only have nine months of detention left.

What consequences can be imposed on me if I am found delinquent?

The judge has flexibility to decide what is most likely to rehabilitate you. Some options that a judge may consider at a disposition hearing include the following:

- probation,
- restitution,
- community service,
- incarceration in a juvenile corrections facility,
- juvenile work camp,

- participation in an adventure-based education program,
- attendance at a correctional school,
- drug or alcohol treatment, or
- confiscation of your driver's license.

If the judge decides you should be *committed to custody*, you will be confined in some way. Usually the confinement is in a correctional facility for juvenile delinquents, but it could also be in a treatment center for drug and alcohol abuse or psychiatric problems, or a foster care placement. DHSS may transfer you between facilities whenever they believe it is in your best interests. They are required to notify your parents or guardians, and your lawyer if you have one, whenever they move you. The judge cannot order you confined with adult prisoners.

If you are placed on probation and remain in your parent's custody under the supervision of DJJ you will be allowed to remain with your family as long as you obey the court-ordered conditions imposed by the court. If you fail to do so you may be arrested by your probation officer and returned to court.

How long can my treatment plan last?

The time limit for any treatment plan whether incarceration, custody, or supervision is two years or until you turn 19, whichever happens first. Supervision can be extended by court order for up to two more years, as long as it ends before you turn 19. If it is in your best interests **and** you agree to it, the court can extend the period of supervision up to age 20. Your supervision can also be closed before two years if you complete the requirements of your treatment plan and are following rules.

What happens if I don't follow the plan?

Whatever the court decides, you must follow the treatment plan carefully. If you violate any of the court orders, you could get a more restrictive treatment plan. For example, if the judge releases you on probation with a curfew, and you violate that curfew, you could be confined in an institution. If you are confined in a residential treatment facility, it is important to understand the rules of that facility, because violating the rules means you could be charged with a new act of delinquency. In serious cases of not cooperating with the treatment plan, where a new act of delinquency is charged, the court could decide you are *not amenable to treatment* and try you as an adult, with the result that you might end up in an adult prison for many more years.

Will I have a criminal conviction on my record if I am adjudicated delinquent?

No. A finding of delinquency is not the same as a conviction. For example, a juvenile record does not count as a past conviction for an adult crime that is a felony when the person charged

has a past conviction. If a job or college application asks if you have ever been convicted of a crime, you can answer "no." This is also true for private employer and landlord background checks. However, some government entities, such as law enforcement agencies and the military, **do have access to juvenile records**. Therefore, if you commit a crime as an adult, the court can consider your juvenile record in deciding how long to sentence you to prison. If you have any questions about whether you are required to disclose a juvenile record on a government application or form, you should ask a lawyer for advice.

Will my delinquency record be public?

Juvenile delinquency records are confidential; only people with a *legitimate interest* can view them. This can include court personnel, parents or guardians, potential foster parents, and the victims of the delinquent act. Just before you turn 18, the records are sealed and may only be viewed in extremely limited circumstances. Evidence and testimony from your juvenile delinquency adjudication cannot be used in any other court case. The fact that you have a juvenile record can't be used to impeach your testimony in another court case.

Will my case be reported in the news?

In most delinquency cases, your name and picture and your parents' or guardians' names cannot be published in the newspaper or the internet, or mentioned on the TV or radio. This rule is one of the differences between juvenile proceedings and adult criminal or minor offense proceedings. When you are tried as an adult, the records are open to the public, so traffic offenses or fish and game violations are not confidential or sealed. There are, however, limited circumstances where the DJJ must disclose some information concerning your identity and the offense.

Appeal

Do I have the right to an appeal?

You have the right to appeal the adjudication result, the disposition result, or both. This is not mandatory; it is up to you to choose whether to appeal. An appeal is heard by three different judges -- not the one who conducted your adjudication. An appeal is limited to what already happened at your adjudication or disposition hearing. You can argue that errors were made, that the evidence was not sufficient, or that your constitutional rights were violated. Appeals are complicated and can take a long time. You should talk to your lawyer, who can tell you whether or not you are likely to succeed in an appeal. You can find more information about appeals in Section 7 of this Guide.

Review

Do I have the right to a review?

In all juvenile delinquency cases where the treatment plan lasts one year or more, the same judge who handled your adjudication and disposition must review the treatment plan every year. This yearly review is mandatory. At other times, you, your lawyer, or your parents or guardians can request a review for good cause. At a review hearing, the judge will look at how the rehabilitation is going and consider whether the treatment plan should be adjusted or changed. A review can be broad and flexible, and the judge can consider new facts and new evidence. If you are doing really well, the judge may even decide you have been rehabilitated and release you early.

Youth Court

Photo by Alexis Brown on Unsplash

What is Youth Court?

In Youth Court, other teenagers are your judges and lawyers. This means that your peers will determine the consequences of your actions. Youth judges can order you to do a certain number of hours of community service, pay restitution, attend education classes, or write essays or apologies to the victim, your parents, or other youth.

How can I go to Youth Court instead of regular court?

You must agree to go to Youth Court. You can only participate in Youth Court if you admit

to committing the offense that you are charged with. The judges do not decide whether or not you committed the offense, but only what the consequences will be. Youth Court only handles offenses that would be misdemeanors if committed by adults. These typically include petty theft or shoplifting, minor assaults, and marijuana, alcohol, or tobacco offenses. You can only have one offense submitted to Youth Court.

If you are eligible for Youth Court and decide to do it, you will be assigned a youth lawyer who will help you present a case for why the youth judges should be lenient with you. Another youth lawyer will argue why the consequences for you should be more severe. Instead you and your lawyer could agree to a deal with the other lawyer, although the judges must still approve the deal. Your parents have the right to attend Youth Court. An adult lawyer will also be present, but only to make sure your rights are protected. In most cases, the adults will not say or do anything during the proceeding. Youth Court is confidential and no one may attend except for you, the youth judges and lawyers, your parents or guardians, and one adult lawyer.

In Youth Court, the punishment is often a requirement to perform a number of hours of community work service. To determine the number of community work service hours you must do, the judges will start at a benchmark, depending upon the seriousness of your offense. They will then subtract hours for certain *mitigators* (circumstances that partly excuse the crime and reduce the sentence) and add hours for certain *aggravators* (circumstances that make the crime worse and the punishment greater).

Typical mitigators include:

- you are under fifteen years old,
- you have no history of trouble with the authorities,
- you admitted to the crime when confronted by authorities,
- the crime was principally committed by another

person. Typical aggravators include:

- you are over fifteen years old,
- you have a prior criminal record,
- you were older than and influenced another person who was with you at the time you committed the crime.

Another sentence often imposed in Youth Court is a requirement to attend a class on the negative effects of the offense you committed, or on decision-making skills. Your sentence is also likely to include an essay discussing what you learned through the process of being arrested and participating in Youth Court.

Adult criminal proceedings

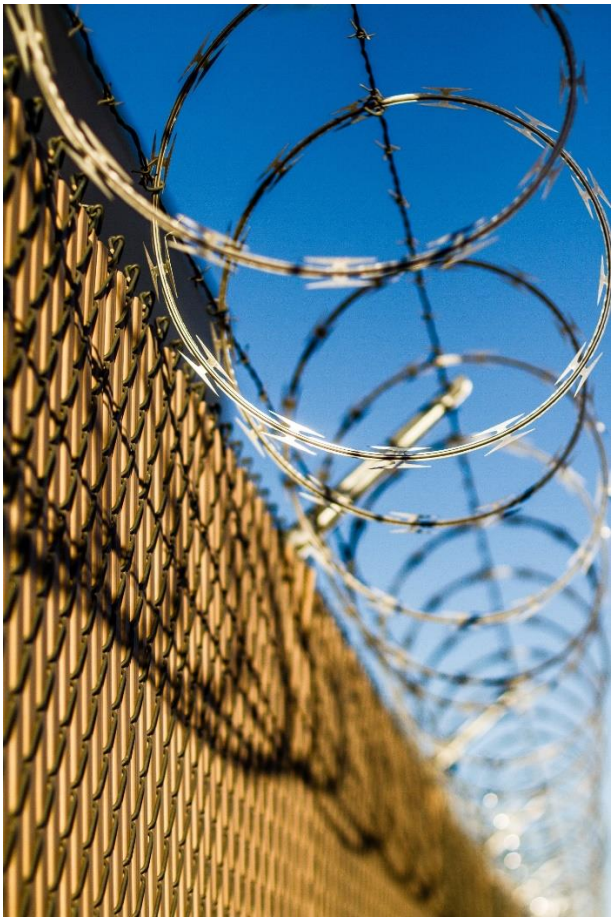

Photo by Robert Hickerson on Unsplash

How are criminal proceedings for adults different from juvenile proceedings?

The main differences are that juvenile proceedings are more flexible, involve your parents and other people, don't occur in public, and are aimed primarily at rehabilitation or treatment. In adult court, criminal proceedings include pre-trial proceedings, the trial, and sentencing. Everything is public, your parents do not have a right to be involved, and the goals of sentencing include punishment and protection of the public as well as rehabilitation.

When am I subject to adult court proceedings instead of juvenile proceedings?

The general rule is that you become an adult for purposes of any criminal proceedings when you turn
18. Even before you turn 18, you can be charged in adult court for certain serious crimes, or crimes connected with certain "adult" activities, such as driving offenses, fish and game offenses, and alcohol- related offenses.

What happens at an arraignment or initial appearance?

At your first court appearance several things may happen.

If the officer who arrested you did not have an arrest warrant at the time of the arrest, the judge must first determine if there was probable cause to arrest. The arresting officer must make a record of the reasons for the arrest either in a written complaint or in an oral statement under oath. The judge will examine the stated reasons to be sure your arrest was justified.

Next the judge will explain the charges against you as well as your right to remain silent and to be represented by an attorney. If you don't already have an attorney and you believe you cannot afford one, the judge will ask you to answer financial questions. If the judge decides you cannot afford to pay an attorney, the judge will appoint a public defender to represent you.

You may also be required to enter a *plea* at your initial appearance. This is more likely to happen if you are charged with a misdemeanor. If you have been charged with a felony but the prosecutors have not yet obtained an indictment against you, the judge will not make you enter a plea at your initial appearance. Instead, the judge will explain your right to a preliminary hearing, and will give you a chance to talk with your attorney. You will enter a plea at a later hearing.

What does "enter a plea" mean?

When the judge asks how you plead, you may say "not guilty," "guilty," or "no contest." If you plead "not guilty," the judge will set a trial date. If you plead "guilty" or "no contest," the judge will make sure you understand that you are waiving your right to a jury trial and your right to confront the witnesses against you. The judge will ask you questions to make sure that you do understand what your plea means, and that you are freely choosing to enter that plea. If you plead "guilty" or "no contest," the court may sentence you immediately, or may schedule your sentencing at a later date.

Can I be released from jail until the trial?

At your first hearing, the court may determine if you can be released from custody until the trial. For a less serious crime, the judge might simply release you from custody with directions to appear in court for all scheduled hearings, obey all laws, and maintain contact with your lawyer. The judge can also release you subject to conditions such as home confinement during certain hours, or a third-party custodian who is obligated to watch over you while you are waiting for trial. The judge may also require you to *post bail* or a *bond*. This means you must give or promise to give money or property to the court to guarantee that you will show up at your scheduled court hearings.

What is a preliminary hearing?

If prosecutors have not obtained an indictment against you within 10 days if you are in

custody, or 20 days if you are released subject to conditions until trial, then they must schedule a preliminary hearing. An indictment is a grand jury's determination that there is probably cause, or enough evidence against you for the case to continue. When there is no indictment, a judge determines at a preliminary hearing whether there is enough reason to keep you in custody or continue the conditions of your release until trial. You have a right to have your attorney at a preliminary hearing.

If the prosecutors show probable cause to believe that you committed the crime you are charged with, the judge will allow the case against you to go forward. If the prosecutors fail to establish probable cause, then you must be released from custody or from any bail requirements or other conditions of release. But even if you are released after a preliminary hearing, the prosecutors could still obtain an indictment against you and arrest you again.

What is a plea agreement?

Your attorney can learn what evidence the prosecutors have against you through a process called *discovery*. After you and your attorney review the evidence against you, you may decide to enter into a formal agreement called a *plea agreement* or a *plea bargain* with the prosecutors. A plea agreement will require you to change your plea to "guilty." In a plea agreement, the prosecutor may reduce the charge against you to a lesser charge, and agree to recommend a shorter sentence, or other lesser punishment than you might receive if convicted after a trial. The judge has the final word on whether or not to accept the agreement.

How do I prepare for trial?

Your attorney may file pretrial motions that challenge the indictment or ask to suppress certain evidence that may have been obtained illegally.

What happens during trial?

When it is time for trial, the prosecutor and your lawyer will select a jury. In jury selection, both the prosecutor and your lawyer will have an opportunity to challenge some prospective jurors, who seem likely to have biases or unfavorable opinions. After the jury is selected, the lawyers will begin the

Trial by summarizing their cases. Then the prosecutors will present their evidence against you by calling witnesses and offering exhibits like photos, documents and objects. You or your lawyer can cross-examine the witnesses against you. After the prosecutors finish presenting the case against you, you can present evidence in your defense. You have the right to testify during your trial, but you do not have to do so. After the jury hears all the witnesses and evidence, the lawyers give closing arguments. Then the jury will deliberate and issue its verdict. If the jury finds you not guilty, you are free to go. If the jury finds you guilty, the judge will schedule a sentencing hearing at a later date. At the sentencing hearing, the judge will decide your sentence based on specific sentencing laws.

What penalties can be imposed for committing a crime?

In addition to or instead of imposing jail time, the judge can order you to do one or more of the following: pay a fine, perform community work service, participate in programs like alcohol counseling, anger management counseling, or batterers' accountability programs. The judge can also order payment of restitution, jail costs, and surcharges.

How does the judge decide what the sentence will be?

The judge must base your sentence on a number of sentencing factors that are spelled out in Alaska Statutes. Put in simple language, these factors include
the seriousness of the offense;

- your criminal history;
- how likely it is you can be rehabilitated;
- the circumstances of the offense;
- the harm the victim suffered;
- the danger to public safety or order;
- what punishment should be imposed to deter you and others from committing like offenses;
- what punishment should be imposed to express the community's condemnation of the criminal act; and
- what punishment should be imposed to restore the victim and the community.

You can read the precise language of the sentencing factors in Alaska Statutes at AS 12.55.005.

Reentry: getting help after a prison sentence

Photo by Brendan Church on Unsplash

If I serve time in prison, is there any help available when I get out?

The Alaska Department of Corrections (DOC) has a number of programs and services to help you get back on your feet and live successfully in the community after release from prison. Some of the programs and services designed to help you succeed after a prison term begin while you are still behind bars. Some programs are available after your release.

What assistance programs are available before I am released from prison?

Before you are released from one of the DOC prisons, you will be tested to determine your risks and needs, and a plan will be prepared for you. Your plan may include referrals to services that deal with mental health, substance abuse, anger management, education, criminal thinking, and job goals.

Can you give me an example?

One specific program is the Alaska Reentry Course developed by the DOC to improve a prisoner's readiness for release. If you are ready for release, this course helps you with four main goals:

- Finding safe and appropriate housing;
- Finding a job;
- Building healthy relationships with family and acquaintances; and
- Getting help to prevent drug and alcohol

abuse. This course also includes helping

eligible prisoners

- get identification cards, birth certificates, social security cards and other important documents;
- learn how to find housing and understand lease agreements;
- understand and develop personal budgets, and pay bills;
- learn how to search for a job, fill out job applications, write resumes, and prepare for job interviews.

The DOC also works to develop an *Individualized Reentry Plan (IRP)* for all high-risk felony offenders. The IRP includes a summary of program and service needs that include appropriate referrals in the key areas of housing, employment, education, and medical and social support.

Is any help available for me after release?

Specialized services the DOC provides to people being released from prison include:

- IDP: a program that works directly with felony prisoners with a psychotic disorder who are being released;
- APIC: a program that links individuals to community mental health treatment services, including medication, to which they are entitled;
- Substance abuse treatment and aftercare.

The DOC has also developed partnerships with several community organizations to focus on services after release. Services include:

- Mentoring;
- Probation violation and re-offense prevention;
- Mental health and substance abuse treatment;
- Housing;
- Employment;
- Transportation;
- Guidance counseling.

These community partners are listed below:

- Akeela
- Alaska Mental Health Trust Authority
- Alaska Native Justice Center
- Cook Inlet Tribal Counsel's Chanlyut
- New Life Development, Inc.
- Nine Star

Lawsuits and Non-Criminal Court Procedures

What is a lawsuit?

A lawsuit is a claim or dispute brought to the court system by a person or group, called the *plaintiff*, against another person or group, called the *defendant*. The plaintiff asks the court to order the defendant to do something like pay damages, or to stop doing something that causes harm to the plaintiff. For example, the plaintiff could ask the court to order the defendant to

pay for injuries caused in an automobile accident. The plaintiff could also ask the court to order the defendant to move out of a rental unit if the defendant has not paid the rent when due.

Except for criminal cases, in which the government accuses a defendant of committing a crime, lawsuits are called civil cases. See section 1 of this guide for more information about criminal cases. Civil cases include divorces, landlord/tenant disputes, contract disputes, personal injuries and other injuries that are physical or financial. Civil lawsuits are most often disputes between two individuals or groups of individuals, and do not involve the government.

Who is involved in civil lawsuits?

Generally, a civil lawsuit has one or more plaintiffs, defendants, lawyers, and a judge. Often the plaintiff brings a lawsuit, or *sues* the defendant because the plaintiff thinks the defendant has injured him or her. The plaintiff and the defendant are called the *parties* to the lawsuit. The plaintiff and the defendant can each have a lawyer. Lawyers are trained in the law and the court procedures for lawsuits, and how to argue for their clients. The judge oversees the whole lawsuit process.

What happens in a lawsuit?

To bring a lawsuit, the plaintiff files a document called a *complaint* with the court. The complaint explains what the dispute is about and states what *relief* the plaintiff is asking for. The defendant then has a chance to file a document called an *answer*. The defendant can argue that he or she is not to blame, that the plaintiff was not injured, or that the law does not hold him or her to blame.

The parties may *conduct discovery*, which means collect information from each other and other persons as permitted by a set of court rules. The parties may also file motions, which are requests to the court to decide a variety of questions about the law and how the lawsuit will proceed. Often the plaintiff and defendant can reach an agreement and drop the lawsuit. This is called *settling the case*. If the parties don't settle, the lawsuit will eventually go to trial. At trial, either a judge or a jury will hear the evidence and arguments presented by the plaintiff and the defendant, and will decide who wins the case. After the judge or the jury makes a final decision on the dispute, a plaintiff or defendant who is not satisfied with the decision may then appeal the case to a higher court.

Should I sue someone who has hurt me or my property?

Lawsuits are time consuming, stressful, and expensive. It can end up costing more money to sue someone than the amount in dispute. So it really makes sense to first try to resolve the problem without a lawsuit. However, if that doesn't work, laws exist to help people who are harmed by other people's actions. A lawyer can help you decide whether to sue someone. If you don't have a lawyer, you can look at the court system website for the forms you need to file with the court to bring a lawsuit.

Do I have to hire a lawyer?

No, you don't have to, but maybe you really should. Some lawsuits are simple and some are very complicated. For example, "small claims" cases are disputes over small amounts of money (less than $10,000). The court procedures for small claims are relatively easy to understand because they are intended to be used by people who do not have lawyers. The court has forms and instructions for bringing a small claims case or defending yourself if you are sued in a small claims case. View forms to use and more information about small claims on the Alaska Court website.

Other lawsuits are much more complicated. The case may have more than one plaintiff or defendant, and involve large sums of money and complicated laws. You should consider how complicated your case is and how important the issue is in deciding whether to hire a lawyer. Lawyers can be expensive but can also be worth the cost depending on your case. Depending on your situation, you may be able to get cheap or free legal services from the government or nonprofits.

What do I do if someone sues me?

A lawyer can help you defend yourself in court. You should very seriously consider hiring one if you have a lot at stake in the case. If you don't have a lawyer, the court system will give you the forms you need to file in your defense. It is scary to be sued – but it does not automatically mean that you are at fault.

The Right to Appeal

What is an appeal?

If you lose all or part of a civil lawsuit in which you sue someone or are sued, you have a right to *appeal* the decision to a higher court. If you are convicted in a criminal case, you have a right to appeal the conviction or the sentence imposed by the judge. An appeal is a request by the losing party asking a higher court to overturn an order or decision of the judge who decided the case or made rulings at a civil or criminal trial. An appeal is basically a way of saying that you believe that the lower court made a mistake in applying the law in your case, and you are asking the higher court to correct that mistake. The right to appeal is important because it helps to assure that you are protected from a mistake by the court. In Alaska, an appeal is usually taken from a final decision of a Superior Court judge to the Alaska Supreme Court.

Do I need an attorney to help me appeal?

Although having a lawyer is not required, you should seriously consider hiring one if you want to an appeal the outcome of a civil or criminal case. If you choose to appeal without a lawyer, you must study and follow the applicable Alaska Rules of Appellate Procedure. If you fail to follow the appellate rules, which include procedures and deadlines for submitting your arguments to the court, your appeal can be dismissed. The procedures and other requirements for an appeal are not simple, and it is difficult for a person without legal training to follow them accurately. Lawyers can help clients decide whether to appeal. Lawyers are trained to follow the court requirements, and to make the arguments that give you the best chance of succeeding in an appeal.

When can I appeal?

If you want to appeal a court decision, it is very important to follow the timing rules. An appeal is not automatic. You must take action to appeal your case. Generally, you must wait until the lower court issues a written final decision, and must file various appeal papers required by the court system within 30 days after the date of that decision. The required appeal papers include a "Notice of Appeal," and "Points on Appeal," which means a list of the reasons why you think the lower court's decision was incorrect. There may be additional court forms and you may be required to pay a filing fee and post a bond. This guide can only give you general suggestions. If you choose to appeal without the help of a lawyer, you must read and follow the Rules of Appellate Procedure precisely.

I want to appeal the final decision in my case. What do I do next?

In Alaska, you are entitled to one appeal as a matter of right. This means that if you go to court, the court or jury rules against you, and you request an appeal, the higher court must hear your case. You do not have this right if you plead guilty in a criminal case. Your appeal must be based on one of the following grounds:

- the original hearing was not conducted according to required procedures,
- your constitutional rights were violated, or
- the outcome was unfair or based on insufficient evidence.

If the court rules against you in your first appeal, you may be able to appeal that decision too. But the reviewing court does not have to hear your second appeal. It may do so but does not have to.

One important thing to remember is that if you are in detention (jail) at the time of appeal, you will likely have to stay there through the appeals process.

What happens in an appeal?

Once the required appeal papers are filed, a timeline begins to run. Your attorney will have a certain number of days to submit a brief to the court. A brief is a document stating the facts,

the points of law, and the arguments in your case. If the parties ask for oral argument, the court will set a date for it. At oral argument, the attorneys for both sides will have a limited time to explain or argue their cases for the judges. The judges can ask as many questions as they like during this time. After oral argument, the court will consider the arguments and issue a decision.

I've appealed. What could happen?

In an appeal, the higher court can affirm, or agree with, the lower court's judgment. If you brought the appeal, this mean you lose the case. The court could also reverse the lower court's
decision. Sometimes, when an appeal court reverses a lower court decision, it will send the case back to the lower court, and tell the lower court to correct the mistake by conducting a new trial. The higher court could also reverse and issue a new final decision that reaches a different conclusion. Finally, the court could dismiss the case entirely if it decides it does not have jurisdiction (that is, authority) to hear it.