

REPRESENTING KIDS IN ADULT COURT

2010 SPRING PUBLIC DEFENDER ATTORNEY AND INVESTIGATOR CONFERENCE

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Suggested Reading on Topics Covered in Session

- I) **Developmental and Cognitive Issues as they Relate to Young People Charged with Crimes: Competency and Culpability**
- a. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Adolescent Legal Competence in Court*, Issue Brief #1, available at http://www.adjj.org/downloads/9805issue_brief_1.pdf (detailing findings from first comprehensive assessment of juvenile capacities to participate in criminal proceedings using measures of both trial-related abilities and developmental maturity).
 - b. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Less Guilty by Reason of Adolescence*, Issue Brief #3, available at http://www.adjj.org/downloads/6093issue_brief_3.pdf (citing results from study and arguing that developmental immaturity should be mitigating).
 - c. Melissa S. Caulum, *Post Adolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WISC. L. REV. 729 (2007) (discussing behavioral and cognitive development of young people and suggests ways for legislatures to account for diminished culpability in sentencing).
 - d. Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. & FAM. STUD. 11 (2007) (arguing that *Roper v. Simmons*'s rationale precludes sentencing juveniles to Life Without Parole (LWOP) and proposing "youth discount" to recognize youthfulness as a mitigating factor).
 - e. Marty Beyer, *Developmentally Sound Practice in Juvenile Court*, 6 NEV. L.J. 1215 (2006) (psychologist explains how trauma, disabilities, and immaturity affect children and their families in cases; makes suggestions for lawyers).
- II) **Issues with Parents and Guardians**
- a. Kristin Henning, *It Takes a Lawyer to Raise a Child?: Allocating Responsibilities Among Parents, Children and Lawyers in Delinquency Cases*, 6 NEV. L.J. 836 (2006) (considers ways in which young people look to parents for guidance in court matters, drawing from adolescent development, rules of professional ethics, and principles of constitutional law and justice; focused on juvenile court but with relevant information for criminal court).
 - b. North Carolina Commission on Indigent Defense Services, *Juvenile Delinquency Performance Guidelines*
 - (a) An attorney in a juvenile delinquency proceeding is the juvenile's voice to the court, representing the expressed interests of the juvenile at every stage of the proceedings.

2.3 (d) Counsel should maintain a relationship with the juvenile client's parent or guardian, but should not allow that relationship to interfere with counsel's duties to the juvenile or the expressed interests of the juvenile.

III) **Confidentiality**

a. **Session Law 2009-372/Senate Bill 920, Probation Reform (from Office of the Juvenile Defender)**

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S920v7.pdf>

Summary of Bill:

- 1) Amends N.C.G.S. § 7B-3000 to provide that:
 - a. For the purpose of assessing risk related to supervision, probation officers in the Department of Corrections Division of Community Corrections assigned to supervise a person may examine juvenile records of a delinquency adjudication and obtain copies of written parts of the record without a court order for an offense committed while under 25 years of age that would be a felony if committed by an adult;
 - b. Judicial district managers are required to designate staff in each county to obtain records from the clerk as requested by the probation officer assigned to the person; The judicial district manager is required to inform the clerk in writing of the designated staff person, and the staff person must provide records to the probation officer;
 - c. All copied records must be withheld from public inspection, and must not become part of the public record in any criminal proceeding; and
 - d. Records must be destroyed within 30 days of termination of the person's probation supervision.
- 2) Amends N.C.G.S. § 7B-3001 to add a new subsection authorizing the Department to notify the Division of Community Corrections that there is a juvenile record of delinquency adjudication for an offense that would be a felony if committed by an adult and to provide the county where adjudication occurred.
- 3) Amends N.C.G.S. § 7B-3001(a) to include the Division of Community Corrections of the Department of Correction as an agency authorized to share information concerning juveniles.
- 4) Amends N.C.G.S. § 15A-1341 to indicate that probation officers are authorized to examine and obtain copies of juvenile records as authorized by law.

b. **Session Law 2009-545, Senate Bill 984, Access to Juvenile Records/Violent Offenders**

<http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S984v3.pdf>

Summary of Bill:

- 1) Amends N.C.G.S. § 7B-3000 to provide that:

- a. A juvenile or his or her attorney may examine his or her juvenile records and obtain copies of written parts of the records without a court order;
 - b. The prosecutor may share information from the juvenile's record with the magistrate, but may not provide copies of any part of the record; and
 - c. Information regarding the juvenile's delinquency adjudication record for an offense that would be a Class A1 misdemeanor or a felony if committed by an adult, may be utilized by law enforcement, the magistrate, the courts, and the prosecutor for (1) pretrial release, (2) plea negotiating decisions, and (3) plea acceptance decisions:
 - i. if the defendant was younger than 21 at the time of an offense involving a Class A1 misdemeanor or a felony, and
 - ii. the adjudication occurred 18 months or less before the defendant turned 16 or the adjudication occurred after the defendant turned 16.
- 2) Amends N.C.G.S. § 7B-3001 to provide that a juvenile or his or her attorney may examine his or her juvenile records and obtain copies of written parts of the records without a court order.
 - 3) Amends N.C.G.S. § 7B-2411 to provide that if allegations in the petition are approved pursuant to N.C.G.S. § 7B-2409, the court must state that allegations have been approved in a written order of adjudication that must include the date of offense, the misdemeanor or felony classification, and the date of adjudication.

IV. Detention/Incarceration and Mental Health

a. Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute (2006) (argues that pretrial detention may contribute to recidivism).

