

JUVENILE DIVERSION ALTERNATIVES

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Juvenile Diversion Alternatives

Why Bother with Alternatives? It's Only Juvenile Court Right?

- I. Juvenile Records are Not as Confidential as You Might Think.
 - A. Clerk's records (7B-3000)
 1. Accessible to:
 - a. Juvenile
 - b. Parent, guardian or custodian
 - c. court counselor
 - d. prosecutor
 2. Law Enforcement may view records through prosecutor, but may not photocopy.
 3. Attorney may not view records without court order
 - B. Court Counselor's Records (7B-3001(b))
 1. Accessible to:
 - a. Juvenile
 - b. Parent, guardian, or custodian
 - c. Court Counselors
 - d. Professionals in agency who are involved in case.
 2. Not accessible to:
 - a. prosecutors
 - b. law enforcement
 3. Not part of court file.
 - C. Law Enforcement Records (7B-3001(b))
 1. Accessible to:
 - a. Juvenile
 - b. Parent, guardian or custodian
 - c. Prosecutors
 - d. Court Counselors
 - e. North Carolina Law Enforcement
 2. Attorney may have access with court order.
 - D. Expunction of Juvenile Records (7B-3200)
 1. age 18.
 2. 18 months after release from juvenile jurisdiction
 3. but not for A through E felonies
 - E. Juvenile Records and Impeachment of Juveniles. (State v. Miller 281 N.C. 70 (1972).
 - F. Juvenile Records in adult felony cases (7B-3000(f))

1. A through E felony convictions may be used as an aggravating factor in adult cases upon court order if:
 - a. court has conducted in camera hearing; and
 - b. prosecutor has made motion
 2. All other felonies may be used by law enforcement, the magistrate and the prosecutor for pretrial release and plea negotiating decisions. (7B-3000(e))
- G. Registration of juvenile sex offenders. (7B-2509)
1. juvenile must be 11 at time offense committed.
 2. court must find juvenile to be danger to community
 3. juvenile must have committed one of following offenses
 - a. 1st degree rape
 - b. 2nd degree rape
 - c. 1st degree sexual offense
 - d. 2nd degree sexual offense
 - e. attempted rape or sexual offense
- H. All juvenile proceedings are open unless ordered closed. (7B-2402)

II. Juvenile's Liberty is Still at Stake.

III. Juvenile Conviction May be Used as Evidence in Transfer Hearing.

Okay, so you got my attention, but the kid's in juvenile court for a good reason, right? What am I supposed to do about it?

- I. Operate from a Position of Strength
 - A. Know the facts.
 1. Use Discovery
 2. Use a Private Investigator
 - B. Know the law.
 - C. Know Your D.A.
 - D. Know Your Judge

II. Use Smoke and Mirrors. Take the Focus Away from your Client.

- A. Parents can be subject of order (7B-2700 through 7B-2706)
 - 1. Appearance in court
 - 2. Parental responsibility classes
 - 3. Medical, surgical, psychiatric, or psychological evaluation or treatment of juvenile or parent
 - 4. Compliance with orders of court
 - 5. Payment of support or other expenses assignment of insurance coverage
 - 6. Contempt
- B. Is there a pending DSS case?
- C. Should there be a pending DSS case?
- D. Does fixing the parent fix the problem?
- E. Is a Guardian Ad Litem appropriate?
 - 1. Parent has implicit role of advisor to child.
 - 2. Child is presumed to be competent
 - 3. Parental Conflict of Interest
 - a. Parent is codefendant
 - b. Parent is victim
 - c. Parent has relationship to victim
 - 4. Parent not competent
 - a. Pending neglect/abuse/dependency case
 - b. Court has authority to open DHS case
 - 5. Child not competent
 - a. mental limitation
 - b. age

III. Is there a quick fix?

- A. Restitution.
- B. Counseling.
- C. Substance Abuse.
- D. Very localized conflict-e.g. fight with another juvenile at school and both juveniles are now in different schools.
- E. Is family already taking care of problem?

IV. Is there a reason juvenile court is not appropriate?

- A. Pending adult charges.
- B. Child moving.

- C. Juvenile Conviction will interfere with child's future.
 - i. school athletics
 - ii. college application
 - iii. parental custody

V. Be creative. Think outside the box.

Okay, so I think there is a quick fix, but I can't convince the D.A. and /or the victim. Mediation.

I. How Does Mediation Work?

- A. Parties must agree to mediate.
- B. Only parties participate. No attorneys. No parents. No court counselors.
- C. Case must be appropriate for mediation.
- D. Confidentiality.
- E. Parties Must be Competent.
- F. Case will be Dismissed if agreement is followed.

II. Contact your local mediation group. Make sure they are available.

III. Discuss mediation with your client.

How do I get a Mediation Program Started?

I. Politics.

II. Politics.

III. Contact the mediation group in an adjoining district. They may be willing to expand into your district or maybe just offer advice.

IV. Remember that some mediation groups are not doing their jobs. Talk to attorneys in the adjoining districts and make sure mediation group is competent.

V. Contact your local legislator. State funding is available.

VI. Convince the D.A.

VII. Convince the Chief District Court Judge.

VIII. Convince the local bar.

ATTACHMENTS

- I. Mediation-When Relationships Matter.
- II. District Criminal Court Mediation
- III. Partial List of Mediation Centers.
- IV. N.C.G.S. 7A-38.5,7A-38.6,7A-38.7
- V. Mediator Checklist
- VI. Agreement to Mediate
- VII. Resolution of Dispute
- VIII. Letters to D.A.
- IX. Letter to Clerk