

XVI. DIRECT FILE

The new Juvenile Act, 42 Pa. C.S., Sec. 6301, effective March 1996, created, in Sec. 6302 (ii) & (iii), two classes of offenses to be excluded from juvenile court jurisdiction.

Those juveniles charged with such offenses are to have their cases "directly filed" in the adult court system and processed as adults.

ii) Pursuant to Pa. C.S. §6302 (2), the term "Delinquent Act" shall not include:

Any of the following prohibited conduct where the child was 15 years of age or older at the time of the alleged conduct, and a deadly weapon as defined in 18 Pa.C.S. §2301 (relating to definitions) was used during the commission of the offense, which, if committed by an adult, would be classified as:

- (A) Rape as defined in 18 Pa.C.S. §3121 (relating to rape).
 - (B) Involuntary sexual deviate intercourse as defined in 18 Pa.C.S. §3123 (relating to involuntary deviate sexual intercourse).
 - (C) Aggravated assault as defined in 18 Pa.C.S. §2702 ~~(a)(1) or (2)~~ (relating to aggravated assault).
 - (D) Robbery as defined in 18 Pa.C.S. §3701(a), (i), (ii), or (iii) (relating to robbery).
 - (E) Robbery of motor vehicle as defined in 18 Pa.C.S. §3702 (relating to robbery of motor vehicle).
 - (F) Aggravated indecent assault as defined in 18 Pa. C.S. §3125 (relating to aggravated indecent assault).
 - (G) Kidnapping as defined in Pa. C.S. §2901 (relating to kidnapping).
 - (H) Voluntary manslaughter.
 - (I) An attempt, conspiracy, or solicitation to commit murder or any of these crimes, as provided in 18 Pa. C.S. §901 (relating to criminal conspiracy).
- (iii) Any of the following prohibited conduct where the child was 15

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years of age or older at the time of the alleged conduct, and has previously been adjudicated delinquent of any of the following prohibited conduct, which, if committed by an adult, would be classified as:

- (A) Rape as defined in 18 Pa.C.S. §3121.
- (B) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. §3123.
- (C) Robbery as defined in 19 Pa.C.S. §3701 (a)(1)(i), (ii) or (iii).
- (D) Robbery of motor vehicle as defined in 18 Pa.C.S. §3702.
- (E) Aggravated indecent assault as defined in 18 Pa.C.S. §3125.
- (F) Kidnapping as defined in 18 Pa.C.S. §2901.
- (G) Voluntary manslaughter.
- (H) An attempt, conspiracy or solicitation to commit murder or any of these crimes as provided in 18 Pa.C.S. §§901, 902 and 903.

Thus, unlike defendants entering the juvenile court system, Direct File Juveniles (DFJ) will get a preliminary arraignment at the Criminal Justice Center (CJC), have bail set, and be scheduled for a preliminary hearing within three to ten days of the arraignment.

Most preliminary hearings for DFJ defendants (and their adult co-defendants) are scheduled on Mondays in Room 506, CJC. (Before Monday holidays, the prelims are scheduled for Room 706, CJC, on the preceding Friday). The exceptions are sex offenses, which go into Room 506, CJC, on Tuesdays and Thursdays, and cases in which the complainant is a minor. Those cases, of course, are put in "B" Court, 1801 Vine Street.

Those male defendants not making bail will be held at the House of Correction, where a special juvenile unit has been set up and separated from the adult male prison population. A structured program including a school component has been established.

Female defendants not making bail will also not be held at the Youth Study Center. They will be held at the new Riverside Detention Facility, theoretically segregated from the adult female population, and without benefit of the programs available to the male defendants.

At the preliminary hearing, in order to have the case held in Adult Court, the Commonwealth must show that the child either committed an enumerated felony with a deadly weapon, or is a recidivist on specific enumerated crimes.

Note that in all instances (except for the charge of Aggravated Indecent Assault), for the case to be held as a DFJ, the Commonwealth must establish a prima facie case on a First Degree Felony (F-1) charge.

If, for any reason, the Commonwealth does not meet its burden, or agrees to reslate the case to Juvenile Court:

1. The Quarter Session file will be marked #prosecution withdrawn."
2. The juvenile must be transported by the Sheriff to Central Detectives (9th Police District--20th & Pennsylvania Avenues) for re-slating.
3. A copy of the police 75-49 or 75-50 must accompany the juvenile to the 9th District.

The new Juvenile Act also contains a provision 42 Pa.C.S. §6322, allowing for the transfer of DFJ cases back to Juvenile Court even after a child is held for court on a DFJ charge. The new Juvenile Act also contains a provision 42 Pa.C.S. 6322, allowing for the transfer of DFJ cases back to Juvenile Court even after a child is held for court on a DFJ charge.

This section shifts the burden of proof to the child to:

Establish by a preponderance of the evidence that the transfer will serve the public interest. In determining whether the child has so established that the transfer will serve the public interest, the court shall consider the facts contained in §6355 (a)(4)(iii) (relating to transfer to criminal proceedings).

The factors set forth in 42 Pa.C.S. 6355 (a) (4) are:

- (iii) that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution. In determining whether the public interest can be served, the court shall consider the following factor:
 - (A) the impact of the offense on the victim or victims;
 - (B) the impact of the offense on the community;the threat to the safety of the public or any individual posed by the child;
- the nature and circumstances of the offense allegedly committed by the child;

the degree of the child's culpability;

the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and

whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:

- age;
- mental capacity;
- maturity;
- the degree of criminal sophistication exhibited by the child;
- previous records, if any;
- the nature and extent of any prior delinquent history, including the success or failure or any previous attempts by the juvenile court to rehabilitate the child;
- whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
- probation or institutional reports, if any;
- any other relevant factors;

and

that there are reasonable grounds to believe that the child is not committable to an institution for the mentally retarded or mentally ill.

In preparing for a decertification hearing, counsel should take note of the following:

All matters concerning DFJ cases, which have been held for court, are scheduled for a pre-trial conference three weeks after the Common Pleas Arraignment before the Honorable Benjamin Lerner in Room 1108 of the Criminal Justice Center. All pre-trial motions, including Motions to Decertify, Motions to Quash and Motions to Reduce Bail should be taken to Room 1108 for the judge's signature, and then filed. In appropriate cases, Judge Lerner may entertain Bail Reduction Motions before C.P. Arraignment, or even before the Preliminary Hearing is held.

After the initial pre-trial conference, if your intention is to seek transfer, your case will have a status hearing at two or three week intervals until the actual decertification hearing is held.

Counsel must retain an expert forensic psychologist to administer certain age appropriate tests in order to evaluate the client, and render an opinion as to the child's treatment needs, and whether those needs can be successfully treated in the juvenile system.

In order to help the doctor with his assessment, you should get the judge to sign an order allowing you to go to 1801 Vine Street, inspect and copy your client's Juvenile (or "J") file if any, and forward same to your expert. You should also send your doctor all relevant school reports, as well as copies of your discovery and preliminary hearing notes, if available.

In the case of court appointed counsel, the Court will provide funds for retention of an expert, and the Crier in 1108 will provide counsel with a list of psychologists experienced in this area of forensic assessment. Private counsel needs to request funds from their client to retain an expert. Thus, in determining a fee for taking a DFJ case, counsel should be aware that an expert will most likely have to be retained.

Ordinarily if you use an expert with whom The Court is familiar, you will not need him/her at the decertification hearing, since the judge does not require live testimony and the Commonwealth will usually stipulate to their reports.

Counsel should also obtain any statements from teachers, employers, church or community leaders, etc., as well as probation and institutional reports, which contain positive information about their clients.

Once the expert's report is received and the client's treatment needs identified, counsel should identify appropriate juvenile programs and facilities, and contact the institutional representatives so that acceptances may be secured before the decertification hearing. (A listing of representative residential juvenile facilities and their contact persons appears in the appendix).

After completing all the preparatory steps outlined above, counsel should then be ready to proceed with the decertification hearing. About one week prior to the scheduled decertification hearing, counsel should send to Judge Lerner and to the assigned assistant district attorney, a package containing all materials sought to be introduced at the decertification hearing, with a cover letter summarizing same. These items will usually include the report of your expert witness, acceptance letters from any juvenile programs, support letters on your client's behalf, favorable institutional or probation reports, and any other relevant materials.

After the Commonwealth has evaluated your submitted materials, your client may be offered the opportunity to have his/her case remanded to Juvenile Court, usually with an admission to some or all of the charges in return for placement in the juvenile program you have identified.

If no agreement is reached, you will then proceed to a decertification hearing before the judge. At the hearing, counsel must be prepared to deal with the following:

1. Presentation of report of expert witness;
2. Presentation of appropriate juvenile program;
3. Testimony of lay witnesses, if any, on client's behalf;
4. Be thoroughly familiar with client's Juvenile File, as the district attorney, in lieu of calling their own expert, will use it to point out any negative information about your client appearing therein.
5. Expect the district attorney to introduce a victim-impact statement.

If, after the hearing, your Motion to Decertify is granted, the case will be remanded to Juvenile Court and your client will be turned over to county detectives for reprocessing as a juvenile. If the motion is denied, the case will remain in adult court for trial and will be spun out for a pre-trial conference in the appropriate forum either in the Major Case or Felony Waiver Program.

Any DFJ who is tried and convicted in adult criminal court and receives a county prison sentence will serve his/her time just as any other county inmate. But male juveniles sentenced to a state prison will go to SCI-Camp Hill, not SCI-Graterford, for classification, a process taking from 30 to 90 days. From there, if they have not reached the age of 19 by the time classification is completed, they will be placed in the Young Adult Offender Program (YAO) at SCI-Pine Grove, the new 600 bed state prison in Indiana County.

All female DFJ offenders receiving state sentences will go, after classification at SCI-Muncy, to SCI-Cambridge Springs.. We have not been notified by the Department of Corrections of any special programs they have created to deal with Youthful Female Offenders or to keep them segregated from the adult population.