

# **Juvenile Delinquency & Supervision**

## **What does a Juvenile Proceeding Involve?**

A juvenile delinquency proceeding is started by the state when a child commits an act that would be considered a crime if they were an adult. While a juvenile delinquency proceeding is not a criminal case, it is criminal in nature with a few important differences.

## **THE PETITION**

The State's Attorney starts a juvenile delinquency proceeding by filing a petition. The petition is the formal document that starts a case in juvenile court. The petition outlines information about the child the state is bringing before the court, the parents or guardians of the child, the offense the state believes occurred, and a request that the court require the parents or guardians to bring the child to a hearing to address whether they have committed a crime or not.

The state serves the petition upon the parents or guardians of the child and they are required to bring the child to hearings. A child has a right to an attorney to represent them throughout the delinquency process. If the child or their parents cannot afford an attorney, the judge can appoint them an attorney to represent them. A court appointed attorney is not free. Each county and state sets its own rates and process for what and how a court appointed attorney bills for a case. The court appointed attorney can answer questions related to the billing process. In Pennington County, the attorney does not directly bill the client. At the end of the case, the attorney submits a bill to the Pennington County Auditor's office, who then submits the bill to the parents and the child. Those bills can be liened and can become a civil judgment. The attorney in a juvenile delinquency action does not represent the parents. The attorney represents the child. The matters discussed between the child and the attorney are confidential and protected by attorney-client privilege. Parents can also consult their own attorneys to learn about their rights and obligations.

# **FIRST HEARINGS**

If the child has been arrested and placed into shelter care or a detention center, the first hearing is a detention hearing. This hearing is where the judge decides whether the child will remain in custody or be released. This decision is made based upon many factors: seriousness of the alleged incident, the ability of the family or guardian to take them home, their prior history with the court system, and the danger they may or may not pose to themselves or others.

The first formal hearing is called an advisory. The judge presiding over the case brings all of the parties into the courtroom and goes through the rights that are available to them in answering the petition filed by the state. The state then outlines the offenses that they believe the child committed in violation of the law.

A child can either admit or deny that they committed the offense(s) listed in the petition. If they admit to the petition, they are acknowledging that the offense occurred and waiving their right to have the state prove the facts at issue. When a child admits, the judge confirms that the child understands they are not required to admit and asks the child what happened in order to make sure that the facts of the case actually fall under the offense that has been alleged by the state.

A child or their attorney can request that a status hearing be set if they wish to consider their options before proceeding. A status hearing is a placeholder hearing where the parties come back before the judge and state what they wish to do next. Some reasons for setting a status can include needing time to negotiate with the state or needing time to meet with an attorney to discuss the case.

# **TRIAL**

A child has a right to require the state prove the allegations in the petition. If a child wishes to exercise that right, they deny the petition and the case gets set for an adjudicatory hearing. This is the trial in a delinquency case. Unlike an adult case, a juvenile does not have a right to a jury trial. The trial is in front of the judge and the judge decides whether the state has proven that the child is delinquent beyond a reasonable doubt. At the adjudicatory hearing, the state must provide their evidence related to the crime that has been alleged. A child has a right to question the State's witnesses questions through their attorney by a process called cross-examination. A child can also call their own witnesses to testify and their attorney can issue a

subpoena to order them to be present. Once all of the evidence has been presented, the judge decides whether they believe beyond a reasonable doubt that the state has proven the petition and, if so, adjudicates the child to be delinquent. This is like a guilty verdict in adult court. If the judge decides that the state has *not* proven the facts in the petition beyond a reasonable doubt, then the petition is dismissed. This is like receiving a not guilty verdict in adult court.

## **DISPOSITION**

If the juvenile either admits to the petition or the judge finds that the state has proven the petition, then the court moves to disposition. Disposition is similar to sentencing in adult court. If there is a situation where the case is very complicated or serious, the child has a long history that they want the judge to know, or if there is a potential for the child going into the custody of the Department of Corrections, then a social case study can be created before the judge decides how the case will end. A social case study is a document that is prepared between the adjudication of delinquency and sentencing. The name of the document may vary by county and by state. It is meant to give a broad picture of the child and the family that is in front of the judge to help the judge with their decision.

At disposition, a court services officer may have a recommendation they present to the court. The state's attorney gives their recommendation and can speak regarding what they believe the judge should order. If the child has an attorney, their attorney then speaks about how they believe the judge should rule. The judge then often asks the child and the child's parents or guardian if they have anything they wish to say before disposition. Disposition should fit the facts of the case and may include probation, time in a detention center, or being ordered into the custody of the Department of Corrections. Probationary sentences often contain conditions like remaining in contact with probation, attending school with no absences, and participating in evidence-based programs.

## **OVERARCHING RIGHTS**

Throughout this process and at every hearing, children should bear in mind that they have the right against self-incrimination. If the police, the state, or the judge asks a question where the answer might be incriminating, a juvenile has the right to exercise their Fifth Amendment right against self-incrimination. Things that a

juvenile does say could be used against them at their trial. The state cannot call the juvenile as a witness to testify against themselves at adjudication and, if the juvenile decides not to testify, the judge cannot make any inferences about guilt from that decision.

Finally, if the juvenile feels that a mistake of law or a very serious mistake of facts was made, they would have a right to appeal within thirty days of the final order. They can request that a court appointed attorney represent them on that appeal as well.

## **OTHER TYPES OF JUVENILE PROCEEDINGS**

Lastly, there are some petitions that the state can file to bring a child into juvenile court that involve acts that would not be considered crimes if they were an adult. Instead, these are acts that cause the state to allege that they are a “Child in Need of Supervision” (CINS). If the state believes that a child is beyond the control of their parent or guardian then the state files a CINS Petition. The most common CINS Petitions are filed when a child is frequently absent from school or if they have run away from home; though there are other allegations the state can allege that are outlined in SDCL § 26-8B-2. A child has the same rights in confronting a CINS Petition as they do a juvenile delinquency petition.

There is, however, one major difference between CINS Petitions and Delinquency Petitions: if the child alleged to be in need of supervision is an Indian Child, then the Indian Child Welfare Act applies. The definition of an Indian Child in South Dakota is the same definition outlined by federal law. An Indian Child is a child that is either (1) enrolled in a tribe themselves or (2) is eligible to be enrolled and also has an enrolled parent. In CINS Petitions that involve an Indian Child, the parents have a right to an attorney, the tribe can intervene, and any party may request transfer of the proceedings to tribal court. ICWA can sometimes apply in delinquency proceedings, but only if the state requests that parental rights be terminated during disposition.

## **FINAL NOTE**

Ultimately, juvenile proceedings can be just as complicated as adult criminal proceedings. Having an attorney assist in navigating through the process is an important first step in deciding what options are available in your specific situation.

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