

## FCA ARTICLE 3: JUVENILE DELINQUENCY.

### PART I

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The overriding concern with Juvenile Delinquents is their "best interests", balanced against the need to "protect the community".

A Juvenile Delinquent is a child over 7 but less than 16 who commits act(s) which would be crime(s) except that such child not be responsible by reason of infancy. Juvenile Delinquents may also be removed from criminal court. The age of the Respondent at the time of commission shall be controlling for jurisdictional purposes.

Detention of Juvenile Delinquents is with Division for Youth, and can either be Secure or Non-Secure. Secure is by virtue of construction and/or hardware. No juvenile shall be detained in an adult facility except upon certification of DFY with statement of relevant facts therefor. No child under 10 shall be in a secure facility, PERIOD. Any facility receiving a youth shall immediately notify parent(s)/PLR.

Disposition of delinquency case requires a finding that child requires "Supervision", "Treatment", or "Confinement".

Designated Felony Act Petition charges youths of specified age groups with certain offenses as outlined in notes for Article 1. Designated Class A felony is defined therein as group I.

Presentment Agency prosecutes JDs; either City Corporation Counsel or County Attorney generally (although in certain cases the D.A.).

Statute of Limitations for a Designated Felony shall be Respondent's 20th birthday, unless expires earlier in accordance with CPL. Non-Designated = 18th b-day.

Venue shall be county where acts occurred; however Court MAY transfer case for "good cause". Presentment Agency must so motion within 30 days of filing; else Respondent within timeframe authorized for pre-trial procedures.

If NOT a Designated Felony: after fact-finding but before disposition, Court can transfer case to county where Respondent resides.

Criminal Procedure Law does **NOT** apply to JDs generally, unless expressly cited. However Court may *consider* judicial determinations regarding similar criminal provisions.

Specifically: Double Jeopardy and authorized defenses do apply.

Court can issue TOP during pendency of delinquency case.

An individual may effectuate a Citizen's Arrest of a delinquent under the same circumstances as would be authorized for an adult. Child must then be brought home, to a police/peace officer, or to a court.

Police/Peace officer can arrest delinquent without warrant if otherwise authorized; must notify parent or at least someone with whom the child resides. Officer can either release the delinquent with an "Appearance Ticket" to come before the court on a specific date; or else bring the child directly to court without going to the precinct (unless to question the youth).

If officer shall arrest youth for a Designated Felony offense, and Family Court not be in session that day, may take such youth to DFY detention facility temporarily; Non-Designated felony = RELEASE, except for "special circumstances".

If the officer shall question the youth, it must be in a place certified appropriate by the Chief Administrator, and youth shall be advised of legal rights (Miranda).

For any Class A or B felony, youth over 11 shall be fingerprinted; else C/D/E only if over 13. Prints are forwarded to DCJS and shall NOT be retained; however police can also take and keep palmprints as well as photographs.

Upon receipt of prints, DCJS shall prepare a record of all adjudications as well as pending matters (except that any case with no disposition after 2 years shall first be updated with current info before being reported/purged). Report is sent to the police, which forwards 2 copies to Court, and 2 to Presentment Agency; P.A. hands over 1 copy to Resp/LG. DCJS shall then keep juvenile fingerprint records separate from adults, and destroy them when mandated.

Appearance Ticket can be issued by officer, Probation, or detention; on Chief Admin's form. Designated felonies shall be returnable within 72 hours (excluding weekends and holidays); else = 14 days. Copy of ticket given within 24 hours to: complainant, delinquent, parent, and probation department.

If delinquent/complainant fails to show, Probation may immediately refer matter to Presentment Agency; or can attempt for up to 7 days to have delinquent come in voluntarily, then MUST refer to Presentment Agency. P.A. may then issue subpoena or file petition.

If a delinquent is detained and NOT released, DFY must apply to Court by earliest next session - up to maximum of 72 hours - for a pre-petition hearing.

Judge can continue detention only if it APPEARS that Court has Jurisdiction; Resp committed a crime; and detention is warranted. If further detention is ordered, Court shall enter findings that such is in child's "Best Interests", and also address whether "Reasonable Efforts" had been made to keep the child in the home. If Court shall not then

release Resp: case must be filed and Probable Cause hearing held thereon within 4 days, else Resp MUST be released.

Before filing a petition [NOT CRIMINAL COURT REMOVAL!], Probation can "Adjust" the matter (Designated Felony only on Court's written approval). However Probation cannot compel anyone to do anything (including appear). Efforts can continue up to 2 months, may be extended by Court for another 2. No statements made in conjunction with adjustment shall be disclosed to P.A., nor used in any prosecution. If adjust, and Respondent detained, shall be released. Adjustment shall be reported to the police; as well as DCJS if prints were taken. If NOT adjust: notify P.A. within 48 hours. Despite adjustment efforts, Probation cannot prevent a complainant from having access to request filing of petition.

Only a Presentment Agency can file JD petitions; if not file within 30 days of failed adjustment, shall notify complainant.

PETITION on Chief Admin's form: name of court; title of case = "In the Matter of [Resp]"; designated county; date on or about (or period of time) when incident allegedly occurred; non-evidentiary supporting statement(s); names of any co-respondents (or criminal adults) if known; clause that Resp requires Supervision/Treatment/Confinement. Petitions shall be signed by Presentment Agency and VERIFIED! Petitions are sufficient on their face when non-hearsay allegations support each and every offense, providing reasonable cause to believe that Resp so committed.

Designated Felonies must be indicated "Designated Felony Act Petitions", such designation can be stricken as becomes necessary.

Removal Order from Criminal Court, together with all pleadings, and any transcripts *already prepared* = deemed petition; however ONLY **order** for service purposes. Date order filed deemed date of petition filing. Upon receipt of removal, Family Court CLERK shall so mark and Designated Felony.

There shall be a single fact-finding hearing for co-resps; unless severed on motion.

At any time on Resps motion and with P.A.'s consent - or upon Court's own motion with both parties' consent - petition for "Person In Need of Supervision" can be substituted for JD case. After dispositional hearing: Court may substitute a PINS *finding* instead of JD, only Resp's consent shall be required.

On P.A.'s application with notice to the Resp: Court can allow amendment of petition to cure defects in proof, but NOT failure to charge, misjoinder, or legal insufficiency.

P.A. can only legally join charges/resps when all arise from same transaction, or

have related proofs, OR have similar basis in law.

Court can "consolidate" non-joined petitions within pre-trial procedure time limit; MUST upon Resp's application when charges are joinable by virtue of same act/transaction.

If Court orders service of process on Resp, summons shall be signed by either Judge or Clerk, and must be served at least 24 hours before time of hearing. Service in the first instance is by personal delivery; however where cannot be effectuated after reasonable attempts, Court can allow other method.

Warrant: if Resp can't be served or service would be ineffectual; or Resp has failed to appear on ticket OR failed to obey summons; OR if Resp likely to leave jurisdiction. Upon warrant, Court shall schedule review within 30 days, may direct PLR to appear. If still not brought in, Court shall endorse whether reasonable efforts were made to locate Resp/secure appearance.

Pre-trial motion for dismissal shall NOT be granted where the deficiency is curable; however must otherwise be granted if showing of unconstitutional/invalid statute, or lack of jurisdiction.

Dismissal may also be granted "in Furtherance of Justice" may be granted on Court's own motion, or upon written application of either party with 8 days service on opponent (replies due at least 2 days before hearing). Consider: seriousness of crime; harm to victim; legal misconduct of authorities; Resp's history/character; and Best Interests balanced against community protection.

Prior to FF: Non-Designated case may be ACD'd with Resp's consent up to 6 months. Restore on ex-parte motion, else dismissed "in furtherance of justice" upon expiration of term. If alcohol contributed to crime, condition may be Alcohol Awareness program.

INITIAL APPEARANCE: if detained = earliest next session (no more than 72 hours); else non-detained = as soon as practicable, but within 10 days absent good cause otherwise. If warrant issued, time tolls as long as Resp can't be found/brought in by exercise of "due diligence". If Resp not have own attorney at initial appearance, must assign LG; if none available and Resp detained, can adjourn for next session up to 72 hours maximum; Clerk notifies P.A. and appointed LG of date.

At initial appearance the Court decides whether detention is necessary, and/or whether case should be sent back for adjustment. Court also sets a fact-finding date, as well as a probable cause date if required. Detention only necessary if risk of non-appearance, and/or further offenses. P.A. may show Court print report for basis of decision, but such is NOT part of record and must be returned! If Resp is detained, Court must make determinations regarding Best Interests and Reasonable Efforts. If Resp is released with conditions, must be provided with written terms; Court can later

enlarge/modify.

Adjustment after filing of petition must have consent of Resp and complainant. Even removals can be adjusted herein, but all other pre-filing provisions apply. If adjust: SHALL dismiss case.

Arraignment: admit/deny each count; mute = denial. Resp can make complete admission as of right, else to part of petition or lesser-included offenses in satisfaction of case only with consent of Court and P.A.

Allocution: Court must first advise Respondent of right to FF hearing; Resp must voluntarily waive such, acknowledge awareness of dispositional alternatives, and make statement that he/she actually committed an offense. If Court accepts admission, must schedule dispositional hearing.

Respondent can withdraw denial as of right prior to conclusion of FF. Court MAY allow withdrawal of admission before dispositional finding; shall then restore entire petition.

Incapacity: if reason to believe Respondent incapacitated, examination by 2 examiners; report on Chief Admin's form within 10 days (unless extended for "special circumstances"). If respondent not in custody, exam may be out-patient. Following receipts of reports, hearing on 5 days notice to: P.A., Resp + LG, & OMH Commissioner. If Respondent found to be incapacitated, must hold probable cause hearing.

If it is determined that there is reason to believe Respondent committed a **non-felony** offense: commit for 90 days and dismiss petition. Else non-designated felony = commit for 1 years, with successive annual extensions by application on Chief Admin's form not more than 60 days prior to expiration; not extend in any event beyond Resp's 18th birthday, then dismiss case if Resp still in care.

Designated Felony: place in Residential Facility; 1st review in 45 days, 2nd/subsequent = 90. Commissioner of OMH can then apply for dismissal of action if no fact-finding likely in foreseeable future; must written notice Resp, P.A., and Mental Hygiene Legal Service. Court MUST hold a hearing upon application of Resp/MHLS made within 10 days of receipt. Commissioner may also apply for transfer to non-Residential facility.

Respondent or Commissioner can apply any time before case is dismissed for a determination that Resp is no longer incapacitated; Court must hold hearing within 24 hours. If case then proceeds and Resp is placed, shall be credited for time spent in OMH facility.

PROBABLE CAUSE: if Resp is detained, and no FF will be had within 3 days, must schedule Probable Cause hearing within earlier time of 3 days from initial appearance or 4 days from petition filing. Court may adjourn for good cause no more

than 3 additional days. Resp may waive time; that Resp is not ready for fact-finding shall NOT in and of itself constitute a waiver!

If removed from criminal court (except upon felony complaint with no hearing held thereupon): NO probable cause hearing is held; though Court still must determine whether to detain or release.

Probable Cause Hearing: P.A. **must** present witness(es)/evidence. Resp MAY present witnesses/evidence. Respondent may also testify on own behalf, but statements cannot later be used against him/her EXCEPT to impeach. Evidence shall be non-hearsay; but Court may allow expert witness testimony unless agrees with Resp that such not be reliable in particular instance.

Hearing shall generally be conducted in single session, may in the interests of justice be continued until next court day.

If Court determines "reasonable to believe" Resp committed crime; shall then state which Penal Law section found, and further decide if detention still necessary. No "reason to believe" OR cannot hold probable cause hearing = release Resp and adjourn case.

Request by Resp for Bill of Particulars shall be within 30 days of initial appearance; unless such adjourned for retention of counsel, then from first counsel appearance. P.A. shall provide Bill - or in the alternative a written refusal - within 15 days of request, or else as soon as practicable. Resp can pre-trial motion to compel Bill, order therefor stays FF until P.A. complies. Court can issue Protective Order in conjunction with Bill; regulating disclosure of material, including solely to Resp's counsel. P.A. can amend Bill without leave prior to FF; during = Court MAY allow upon P.A.'s application with notice to Resp (must then grant Resp's request for adj).

P.A. must independently notice Resp within 15 days of initial appearance (else soonest time practicable) of intent to introduce evidence of recovered property OR Resp's statements to authorities. If Resp in detention: expedited timeframe.

Resp's motion made prior to fact-finding to suppress such evidence stays FF until determined. Denial of suppression motion is appealable; even if Resp makes admission (unless specifically waives right).

If the Court grants Resp's motion to suppress, P.A. **may** elect to appeal it as a dispositional order, upon representation that its case is too weak otherwise. Such appeal bars further proceedings on any charge of that petition unless Appellate Court reverses/vacates order. Respondent is generally released upon taking of appeal, unless specifically ordered to continue in detention; however Appellate Court can stay such order.

Demand to Produce = PROPERTY: physical property, photos, recordings,

statements of Resp or Co-Resps, reports, transcripts of testimony etc... **NOT** Atty "work Product" (e.g. theories of case). Property must be disclosed upon demand, and made "available for inspection". If Resp detained: demand shall be made within 7 days of initial appearance, refusal within 5 days of demand, or production within 7 days of demand but **MUST** be before FF! Else not detained = demand within 15 days, refusal/production within 15.

Court can compel Resp to give non-testimonial evidence, such as: prints (if age appropriate); DNA (if minimally intrusive); or to appear for identification purposes.

At commencement of fact-finding each side shall turn over to the other any prior statements of witnesses intended to be called, as well as such person's criminal history if known or can be ascertained (NOT required to print witness). Party failing to so can be sanctioned by preclusion of that witness' testimony.

P.A.'s motion for discovery shall be within 30 days of initial appearance; 14 if Resp detained. Resp's pre-trial motions for transfer; dismissal, separate proceedings, Bill of Particulars, or suppression shall be within 30 days of initial appearance in all cases.

Resp shall notice P.A. of mental defect defense within 30 days.

P.A. may demand Notice of Resp's intention to prove Alibi; such demand made within 15 days, Resp complies within 10 thereafter. Notice = other place(s) where Resp purportedly was at relevant time; also any witness(es) thereto, as well as their address and employment info. Respondent may demand P.A.'s list of rebuttal witnesses within 10 days (witness placing Resp @ crime scene NOT deemed rebuttal).

FACT-FINDING: if detained & Class A/B/C felony = within 14 days of initial appearance, else 3 days for any other offense. Date specified in Removal order for appearance deemed "initial". No detention = 60 days. Court may adj FF on P.A. or own motion upon good cause for 3 days if Resp detained, 30 if not; HOMICIDE = "reasonable time". Court may adj FF @ Resp's request for up to 30 days in any case. Further adjournments granted only on "special circumstances"! Court can also adjourn up to 6 months on ACD. Issuance of warrant generally tolls time.

Judge which commences FF shall continue (unless mistrial declared) - also preside over disposition - EXCEPT for death/illness/vacation/removal etc... **PROVISION CANNOT BE WAIVED!**

Resp and LG shall be personally present @ FF; although Court can short recess to allow for Atty/PLR to control Resp, may ultimately remove for continued bad conduct after warning. Parent or PLR *should* be present, but Court can proceed in absence. Court may exclude general public!

Parties **MAY** make opening statements, P.A. goes 1st if both so elect. P.A. **MUST** present evidence, Resp **MAY**. P.A. can rebut, Resp can re-rebut; Court **MAY** allow

further such sequences (including evidence more properly presented on direct case). Parties MAY sum up, Resp goes 1st. Court makes determination.

Evidence at FF must be Competent, Material, and Relevant; quantum of proof shall be "beyond reasonable doubt". No FF is needed however for Removal after conviction; but Court can examine record if order is unclear as to specific charges established.

Infant or mentally ill witness must have capacity and intelligence. Child under 9 not sworn unless determined to understand oath; over 9 MUST swear except where found not to understand oath. Court may take such unsworn testimony in any case, but can NOT enter a finding **solely** thereupon.

No FF may enter solely on uncorroborated accomplice testimony either.

A "vulnerable" child under 14 testifying at a sex abuse hearing may do by closed-circuit TV.

Resp's own statements cannot be used if obtained involuntarily, including if forced; in violation of legal rights; or promises were made which would tend to illicit false statements.

"Rape Shield" covers complainants sexual history, except where such would tend to prove/disprove prior sex with Resp; OR conviction for prostitution within past 3 years; or to rebut P.A.'s evidence of sexual activity primarily with Resp; or where deemed to be relevant in the interests of justice.

Court shall enter Order of FF for each established charge, else dismiss. Court shall state any offense found to be committed as Designated Felony. If not dismiss entire petition: set disposition date upon FF.

Victim of sex offense can request HIV testing of Resp any time before FF, or up to 10 days after (also representative of infant/incapacitated vic). Proceedings held thereby shall be in-camera; and related papers are sealed. Testing shall be within 15 days of Court's order. Disclose results only to applicant; re-disclose to: victim, guardian, immediate family, attorney, Dr., and any past/present partners @ risk.

Dispositional Hearing: detention and not-designated felony = 10 days; all other instances = 50. Can be adj for good cause on P.A. application or Court's own motion up to 10 days; @ Resp's request up to 30. Successive adjournments only if "special circumstances"; NOT calendar congestion!

Removal w/conviction: dated filed = FF; Clerk to calendar within 7 days for Court to set dispo.

Court MUST order Probation Investigation & Report as well as Diagnostics for



all Designated Felony findings. Else for non-designated felony must order I&R, MAY diagnostics. No Resp may be Placed without receipt of I&R; nor any placement with temporary transfer to OMH without diagnostics.

I&R includes victim impact statement; such statement also made available by P.A. to victim before disposition. Local Probation office shall report to State Department regarding # of such statements.

Probation reports are confidential, and shall not be provided to Court prior to FF; except for limited purposes at detention hearing.

All reports are submitted to the Court; Court makes such available to P.A. and Resp for copying, @ least 5 days before dispo; and for purposes of any appeal.

P.A. shall appear @ dispo hearing. Court w/parties' consent can have Probation Officer summarize I&R. Court in own discretion can request of P.O. a statement regarding dispositional options. Court may call witnesses, parties can cross-examine. P.A. & Resp can call own witnesses; Court MAY allow parties to rebut each other. Parties MAY each make a closing statement, Court MUST allow each to rebut the other.

Evidence need only be Material and Relevant (NOT necessarily Competent!); proof quantum = preponderance. Finding of Juvenile Delinquency shall be hat Respondent requires Supervision, Treatment, or Confinement.

The Court shall pick the "least restrictive" dispositional alternative appropriate. If placement, Court shall make findings regarding Best Interests and Reasonable Efforts; as well as provision for Resps over 16 to be afforded Independent Living services to enable transition.

Reasonable Efforts shall not have been required however where parent has subjected Resp to "aggravating circumstances" as defined in Article 10, or where parent convicted of Murder 1,2 or Voluntary Manslaughter 1,2 for Resp's sibling (including out-State; also Attempts, Conspiracy, Solicitation, or Facilitation o such crimes, including against Resp; or Assault 1,2 or aggravated against Resp or sibling, if then under 11 years of age; OR if parents rights were terminated for Resp/sibling (unless reunification still in best interests). Any case where Court makes determination that no Reasonable Efforts are required shall be set down for Permanency Hearing within 30 days; and Commissioner of Social Services may file to terminate parents' rights.

#### DISPOSITIONS:

Order of Protection in conjunction with other disposition can be up to the period of such dispositional order, or ACD. Allowable provisions are 1) stay away from victim's home, school, business, place of employment; 2) refrain from harassing, etc... victim and/or victim's household members; 3) don't unjustifiably kill companion animal.

Conditional Discharge = up to 1 year; Probation = maximum of 2 years initially, may then add up to 1 more year for "exceptional circumstances".

Court can modify or enlarge unexpired Probation or CD only if Resp is present; else relax/eliminate condition on written notice within 20 days thereafter.

Terms: attend school; obey parent; abstain from places/people; undergo mental health services; alcohol awareness program (if was part of crime); meet with Probation Officer, allow P.O. to get treatment and/or school records, obtain P.O.'s permission to leave home for over 2 weeks; get a job; spend up to 1 year in Division for Youth non-secure facility (with DFY's prior consent).

Probationer remains under jurisdiction of Court while under supervision. If Court has reason to believe Resp is in violation, may issue order for Probation Officer to search Resp's person, and/or property owned or possessed. Police may assist.

Probation Department shall *file* petition for violation of Probation or Conditional Discharge, but Presentment Agency prosecutes. Such petition shall specify by non-hearsay allegations the conditions(s) violated, as well as reasonably describe time/place/manner thereof. Court can issue summons or warrant in order to secure Resp's appearance. Filing of petition interrupts period of disposition until final determination **OR** when Resp be too old for initial commitment to DFY. If no violation is found, Resp credited with time of interruption.

Violation hearing: At first appearance, Court shall advise Resp of right to counsel; also inform him/her of charges, and furnish copy of petition. Court shall determine whether to release or detain Resp. Resp may make statement, and Court may base decision thereupon. Resp is entitled to hearing if not admit violation; P.A. presents witness(es)/evidence, and Court may cross-examine, Court may also put on own evidence. Evidence must be Competent, Relevance, and Material; but there is NO statutorily-specified quantum of proof!

Following finding of violation, Court may: continue probation/CD and dismiss petition; modify terms; or revoke and make new disposition.

Placement: in own home; with relative; Commissioner of Social Services; Division for Youth. If placed CSS, Court cannot further detain Resp. Court can direct continued detention of Resp pending transfer only for DFY placement, and for a maximum of 30 days; city with population over 1 million = 15.

If placed CSS, Court may direct specific agency or class of agencies; Court then provides that if CSS cannot so place, either apply to Court for permission to make other placement, else must bring Resp back to court.

DFY placement: Court either specifies limited-secure, in which case DFY can transfer the Resp for incident/behavior to secure after a hearing (but not within first 20

days unless "exceptionally dangerous"); Court may allow initial secure placement up to 60 days; or Court directs non-secure, in which case no transfers to secure are allowed. If the Court provides for a specific agency or class thereof, and DFY cannot so place = place either limited-secure or non-secure in own discretion, and notify Court; Presentment Agency; parent; and Law Guardian of the new location/level and reasons therefor.

Non-Designated Felony placement = maximum 18 months (can require up to 6 months minimum residential facility); Misdemeanor = up to 12 months. Credit detention time against placement unless not in child's Best Interests, or for need to protect community. Except where otherwise authorized, Court can NOT reduce or terminate any placement once imposed!

Court shall inquire of parents whether they will allow DFY-placed Resp authority to consent for own routine medical/dental/mental health treatment. If parents refuse, authority deemed granted to DFY by virtue of placement order. Parents objecting to specific procedure can motion on notice to youth, P.A., and DFY at least 7 days before hearing, answers due minimum of 2 days before.

CSS/DFY placement: if will not seek extension = report to Court/LG @ least 30 days before expiration regarding release plan; else if requesting extension = at least 60 days before.

Application for extension shall be made at least 60 days prior to expiration. If it is made later than 60 days - but in any case BEFORE expiration - Court must first determine whether "good cause" exists before proceeding; else must dismiss. Court shall otherwise hold a hearing, may temporarily extend placement on probable cause (that application would be granted) up to 30 days; additional period up to 15 if hearing not then concluded. Aggregate temporary extensions can NOT exceed 45 days; if still no determination, must dismiss.

Extensions are for period up to 1 year; but not past 18th birthday without Resp's consent, and in no event past 21st. Court must address reasonable efforts made to return child home; necessary independent living services for child over 16; and if placed out-state, whether such be necessary.

If Resp is mentally ill and poses a risk of harm to self/others: can still be placed CSS/DFY, but is then temporarily *transferred* to Office of Mental Health or Office of Mental Retardation and Developmental Disabilities. However such dispositional hearing cannot be completed without first notifying OMH/OMRDD Commissioner, and allowing such to participate. Temporary transfer period is up to 1 year, then must be sent back to placement authority. Commissioner of OMH/OMRDD can transfer Resp under care from hospital to Residential Treatment Facility if appropriate. CSS/DFY shall apply to Court within 30 days of return for further disposition, Resp credited with time institutionalized.

Designate Felony: Order of Disposition within 20 days of hearing conclusion

specifies whether Restrictive Placement is necessary, upon preponderance of evidence; must include written findings of: child's best interests, background, nature of crime and injury resultant, need to protect community, age & physical condition of victim. If restrictive placement not necessary, Court can make any other disposition. Serious physical injury resulting to victim over 62 MUST require restrictive placement!

Class A Designated Felony ***OR*** Any Designated Felony with prior adjudication for Designated Felony (including a crime which would have been designated but for Resp's age at the time): IF restrictive placement = DFY for 5 years; Court specifies initial secure placement period between 12 to 18 months (DFY can extend in own discretion).

If prior Designated Felony adjudication, initial secure placement MUST be 18 months! [ \*\*\* NOTE: statute mis-cites subdivision 5, should be sub. 6 \*\*\*]

After initial period of secure placement = Residential facility for 12 months (DFY can extend in own discretion); then can release only on written authorization of DFY Director or Deputy, Resp still under intensive supervision; no discharge except on new order of Court upon motion (can only be made after 3 years from dispo).

NOT Class A: DFY placement = 3 years; secure = 6-12 months; residential facility = 6-12 months. NO DISCHARGE!

Resp MUST be credited with detention time during period dispositional hearing continued for "special circumstances"!

Unless Court otherwise specifies, DFY shall report to Court @ least every 6 months. DFY - or any party - can apply to extend placement; such extension if granted is for a period of 12 months, can NOT exceed Resp's 21st birthday.

Except for motions to vacate finding as provided for in CPL; no motion for new hearing may be made within first 12 months of Class A restrictive placement, or 6 months from designated felony restrictive placement.

IF restrictively placed Resp is mentally ill: transfer within 30 days at Court's direction to OMH/OMRDD. Commissioner MUST retain Resp for 1 year, unless makes successful application to Court that treatment no longer required. Else Court holds hearing 30 days before expiration as to whether another 1 year period is warrant; else continue on restrictive placement generally.

Restitution: as condition of Probation/CD or Placement. NOT if Resp under 10! Covers victim's lost property and/or ***un***-reimbursed medical expenses, up to \$1,500 maximum; either lump sum or periodic payments as Court directs. Court may also order Public Service instead of - or in addition to - restitution, only if Resp not placed.

Placement with restitution: CSS rules (or DFY if so placed) shall require that any work meet Labor Law standards, have Workers' Compensation coverage, and not replace

any paid employees. Agency shall report to Court every 6 months.

Probation/CD with restitution: separate agency to monitor, report to Court every 6 months. After receiving report: Court/P.A./Agency/Prob can motion for new dispositional hearing.

Upon felony adjudication: Family Court shall forward such adjudication to DCJS to include with fingerprint record (11 year old ONLY for Class A,B). If case disposed of without felony adjudication: CLERK notifies DCJS and police to destroy prints without delay. If Presentment Agency never filed petition in first lace, must so certify; else arresting officer if never referred matter to Probation or P.A.

Upon later of Resp turning 21 or 3 years after discharge from placement: if no further crimes = DCJS destroys prints and notifies police to purge records; else is new crime conviction = JD adjudication becomes part of permanent adult record.

Upon disposition: LG must advise Resp of right to appeal, and file if client so wishes. If Resp was allowed to waive counsel, it is the Clerk's responsibility.

Court/Resp/Parent (or CSS/DFY if general placement) can motion for a new hearing on "substantial change in circumstances". Such motion must be written, request specific relief, and have any facts sworn to; service pursuant to CPLR on all other parties. Upon oral arguments - or factual hearing if necessary - Court may order new FF or dispo, or stay/vacate order. New order expiration date can NOT be greater than original! If Court denies motion, no renewal until 90 days after (unless Court allows).

PERMANENCY: when Resp placed generally with CSS or Office of Children and Family Services, either foster care or non-secure [non-secure = Social Services Agency or OCFS facility with maximum of 25 beds]: CSS/OFCS must file for permanency hearing. Resp "enters" foster care 60 days after actual removal from home. First permanency hearing must be within 12 months from "entering" foster care, successive hearings within 12 months of first such; agency shall file application at least 60 days prior to end of month within in which hearing need be held [if hearing must be held by June 15, shall file by April 30th].

Permanency hearing petition must be served on any foster parent, pre-adoptive resource, or relative with whom youth resides. Such persons may participate in proceedings, but are NOT parties; no show = waiver, Court shall not delay hearing or later vacate order thereby.

Permanency hearing: determine reasonable efforts either to return home or to effectuate another plan which the Court may have set; independent living skills necessary for youth over 16; and whether out-state placement appropriate. Court also determines future permanency plan: return to parent; adoption; referral for legal guardianship; permanent placement with fit and willing relative; or - if compelling reasons why none of those be appropriate - an Alternate Permanent Planned Living Arrangement.

APPEALS: Resp can appeal any dispo as of right, also any other order with permission of Appellate Division; P.A. can only appeal dismissals *prior* to fact-finding, and only legally invalid dispositions. Notice of Appeal is file in duplicate with Clerk; Clerk indorses date and forward 1 to Appellate Division. Resp must serve P.A.; else P.A. must serve Resp & last appearing counsel.

Securing witnesses and testimony is pursuant to Criminal Procedure Law.

SEALING: upon termination of case in Resp's favor: Clerk notifies LG/P.A./Prob/Police; agencies shall seal any records (also duplicates and copies) not destroyed, including judgments and orders but NOT records or briefs for appeals. P.A. or Court may make written motion on at least 8 days' notice to Resp to unseal in interests of justice. Sealed records are thereafter only available to Resp or designated agent; however Probation department may utilize record of previously adjusted cases when considering whether new offense can also be adjusted.

If NOT terminated in resp's favor: Resp after turning 16 may motion in writing on at least 8 days' notice to P.A. (replies due @ least 2 days before hearing) to seal records.

Court has power to EXPUNGE records in any case.

Juvenile Delinquency adjudication is NOT a conviction, and JD is not a criminal! No forfeitures are authorized thereby, nor bar to public office, license, etc... JD proceedings are not admissible as *evidence* in any other court, but may be considered at criminal sentencing (except when sealed). Police records for juveniles shall be kept separate and not open to public.

There is no requirement to divulge a JD adjudication; except that Clerk shall notify education official of school where Resp enrolled as student of general placement with OCFS for purposes of crafting an educational plan, such record is kept separate from student's permanent record and destroyed after Resp's enrollment terminates.

Placement facility gets dispositional order, and all evaluative records possessed by Court and Probation.

Family Court of adjudicating county may on motion for good cause and by written order open records to Resp/parent, OR to judge of court where Resp stands convicted.

Chief Administrator shall report to Legislature/Governor a précis of JD proceedings by county. It is the duty of Director of State Probation to so report on cases adjusted prior to filing.

In a city with more than 1 million people; Probation shall have central consolidated index of cases available to local probation offices and Courts. Probation

Director determines the specific information to contain therein, after consulting with the State Administrative Judge.