

MEMO

TO: *To My Valued Clients*

FROM: *Kimberly McCary**

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RE: *The Denton County Juvenile System*

Most of you reading this memo will have had little or no contact with a juvenile court and most likely have many concerns and questions about your child's upcoming case. I hope this memo will help answer some of your questions and alleviate some anxiety.

If you are reading this memo, more than likely your child is in ***juvenile detention*** or you and your child have received a ***summons*** to appear for a ***pretrial*** in Judge Whitten's juvenile court.

Juvenile detention is a secure facility where children are held for certain reasons, such as their likelihood to abscond or commit another offense or the lack of suitable supervision in their current home environment. Detention is not considered jail, and children cannot bond out of detention. After an initial detention hearing, and except in a few cases, they must stay in the facility for ten business days (two weeks) before the law allows them a hearing as to whether they should remain in detention or be released to their families or another home or facility. Upon release, the child will be bound by terms of release similar to probation terms where he must abide by a curfew, attend counseling, undergo a drug or alcohol evaluation, etc., all depending on the circumstances of that child's case. The terms of release remain in effect for 60 days or until a ***petition*** is filed against the child. A petition is a document charging the child with a particular offense. Once a petition is filed, a ***pretrial*** hearing will be set.

A ***pretrial*** hearing provides Judge Whitten the chance to talk to you about the juvenile system and what she expects out of each participant therein. At the pretrial, the Judge will make sure that all parties understand the charge the child is facing (what law the State says the child violated); confirm that the child has an attorney; discover the addresses of absent parents and either subpoena them for upcoming hearings or instruct the parent who is present to inform the absent parent that the child is before the court; and set the case for the next step – which would occur on a different date/dates -- in the juvenile process.

A juvenile case can progress in one of two ways – an *agreed adjudication* or a *contested adjudication*. An agreed adjudication is similar to an adult plea bargain wherein the child will plead *true* to the charge and will be assessed a “punishment” already agreed upon by the child, her attorney, and the state’s attorney. In a contested adjudication, the child will plead *not true* and a jury or judge trial will follow.

A jury trial in juvenile court proceeds as does an adult criminal trial. The juvenile is presumed innocent and the State has to prove every element of your child’s case beyond a reasonable doubt in order to overcome that presumption. The State attempts to prove the case by offering evidence and by calling witnesses to the alleged offense, who we then cross-examine. The State may not call your child to the stand as he has the right to remain silent about his case according to the protections of the United States and Texas Constitutions. We may, in certain circumstances, waive that right and have your child testify, but more than likely we will simply cross-examine the State’s witnesses and call any witnesses on our behalf. ANYTHING YOUR CHILD TELLS YOU ABOUT THE OFFENSE MAY BE USED AGAINST YOUR OWN CHILD. The State can call you as a witness to discover what the child has told you about the offense. Therefore, if we set the case for trial, DO NOT discuss the facts of the case with your child.

Notice that a child either pleads “true” or “not true” in juvenile court. She does not say “guilty” or “not guilty” as in adult criminal court. A juvenile case is similar to a criminal case in some of its law and procedure but has several distinctions. Some are as follows:

1. As you can already see, the terminology is different.
2. The possible punishments are different. In adult court a person is assessed a fine and/or jail time (which may be probated) in the punishment phase of a case. In adult court, either the judge or jury can assess punishment, at the election of the defendant. Juveniles are handed down their “punishments” in the *disposition* phase of their cases. Only the Judge (versus a jury) assesses “punishment” in regular juvenile cases. (If a plea bargain is in place, the Court will – except in rare cases -- assess the punishment already agreed-to). Generally, the possible dispositions for a child in juvenile court are:
 - a. probation, either in the home or with another adult;
 - b. placement in a boot camp, secure detention facility, or treatment facility or the like; or
 - c. placement in the Texas Youth Commission, or TYC, which is basically a prison for juveniles.

Probation may be up until a child’s 18th birthday while a TYC commitment may last until the child turns 19. Probation for your child will entail a curfew, a commitment to follow the law and school rules, random drug testing, community services, attendance at certain probation department

programs, and reporting to a probation officer, among other conditions applicable to your child's case. Probation may entail a *driver's license suspension* which is in the Court's discretion for any case and which is mandatory for certain offenses, such as drug-related violations. For instance, a finding of true on a marijuana case will result in a six-month driver's license suspension for the child.

3. The effect of a finding of "true" is much different than an adult conviction for purposes of a child's criminal record. In fact, a finding of true IS NOT a conviction. Therefore, a child will be answering in the negative (assuming he only has juvenile cases) on any job application, application for the military, or college application which asks if the child has ever been convicted of a crime. However, just because a child's record is generally closed for these purposes does not mean she has no lingering consequences for the act. If the child were to get into trouble in either juvenile or adult court, the state would at least attempt to use the child's juvenile record against her to increase her punishment. Further, a felony adjudication resulting in commitment to the Texas Youth Commission will have enhancement implications for a juvenile who later is faced with a criminal charge in adult court. Finally, some employers and the military may have access to a child's juvenile history. Because juvenile records are so sensitive, I would prefer to destroy my files after your child's period for appeal has expired or her case is fully disposed of, whichever is later. This will usually be for a much shorter time than is generally required by the professional rules governing this issue. If you would like me to keep the file for a longer period of time, please let me know. Otherwise, I intend to be personally responsible for overseeing the physical destruction of your child's file after his case, including the period for appeal, is over.
4. The ability to seal a child's juvenile records. *Sealing of juvenile records* is not automatic. One must petition the court to have a child's records sealed. Sealing is generally available to juveniles as follows:
 - a. Prosecutor never files a charge or charge is dismissed: sealing immediately available.
 - b. Child is found "not true": sealing is immediately available.
 - c. Child is adjudicated for a misdemeanor grade offense: child must stay out of trouble for two years after she terminates probation and then would be entitled to sealing. She can ask to have her records sealed upon completion of probation; however, in that event, sealing is discretionary (i.e., the judge may or may not grant the sealing).
 - d. Child is adjudicated for a felony grade offense: child must stay out of trouble until he is 21 years old and then the sealing of records would be discretionary with the court.

A big factor for parents in juvenile cases is the costs involved. As you already

know, your child's alleged actions will cause you to lose time from work and be responsible for unplanned fees as well. The following is a run down on the fees you may expect in juvenile court.

Court costs: \$20 fee upon any plea of "true" or finding of "true" at trial.

Probation fees: \$15 per month.

Restitution: compensation to the victim for actual expenses as a result of your child's actions. If you and the victim do not agree on the amount of damages the victim suffered, a "restitution hearing" will be held in court after which Judge Whitten will determine the amount of damages your child is to repay the victim.

Graffiti Cases. The Court will impose an extra \$5 payment as part of any order adjudicating a child "true" of a graffiti charge.

Attorney's fees: I generally charge a flat fee for most uncontested juvenile services, meaning you will not be billed for any additional paper work, phone calls, meetings we have, or contacts I make with witnesses, probation officers, or the state's attorney. For detention hearings, furlough hearings and plea bargain hearings, I charge a flat fee. When being charged a flat fee, that fee must be paid in full at least two weeks prior to the hearing for which I have been retained. Contested matters are billed on an hourly basis and a retainer will be required. If I have been appointed to represent your child, you will actually repay Denton County for attorney's fees. Judge Whitten does allow parents to pay those fees in monthly increments.

A most common scenario in juvenile court is a child being charged under *the law of parties*. This law vexes parents and children alike. The law of parties basically provides that if your child was involved with one or more offenders during the criminal act, he can be charged with the most serious act done by any offender.

A good example is as follows. Your son agrees to be the get-away driver in a bank robbery. He will wait outside the bank during the robbery and provide the escape after its completion. Ann will actually take money from the vault. His friend John will be the gun-toting player which orders everyone to the ground and keeps the security at bay. John assures your son and Ann that the gun is only for show; however, once in the bank, John gets skittish and accidentally fatally shoots a teller. Your son can be charged with capital murder – murder in the commission of a felony. If he is an adult, your son can face the death penalty without even having laid eyes on the victim who was shot to death.

In applying this law to your child, understand that she can be held criminally responsible for the acts of her co-respondents if she knew or could have foreseen their conduct. I know this is hard to swallow, but it is the law and we must accept that law when we strategize about your child's case.

In any contested proceeding or agreed adjudication, both parents must appear with the child. The Court will not proceed if both parents are not present unless the absent parent lives OUTSIDE OF Denton County or one of Denton's surrounding counties (Dallas, Tarrant, Collin, etc). Even if the absent parent lives outside of Denton or a surrounding county, the Court will instruct the parent who is present to inform the absent parent that the child has come before a juvenile court and explain the charges before that court.

While it is obvious that parents/guardians have a great deal of responsibilities concerning their child's case, they do have rights as well. Under §61.102 of the Texas Family Code, you have a right to be informed about your child's case. The probation department or intake staff might be in a better position to give you this information, especially in light of the earlier admonishment that anything your child tells you about her offense can be used against her in court. Article 61.102 specifically disallows anything you learn from the probation department or intake office from being used against the child in court. If you wish to obtain the "releasable" information from the probation department or intake office, feel free to use the form I have enclosed with this memo.

I am sure that you will have more questions in the future, and I will be happy to answer them to the best of my ability as they arise. Please understand there may be times that I cannot be as forthcoming or helpful as you would like because my sole responsibility is to represent your child (and not his parent or guardian's interests) to the best of my abilities. Best wishes throughout this difficult process.

Notice to Clients: The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint. For more information please call 1-800-932-1900. This is a toll free phone call.

To the Denton County Probation or Intake Department

From: _____

Parent or Guardian of: _____

Date: _____

My child's attorney has informed me of my rights under Section 61.102 of the Texas Family Code, which she has reprinted below. Kindly provide me the information to which I am entitled at your earliest convenience.

A form for your reply to the questions I am posing is provided.

Thank you,

Signature of Parent/Guardian

FAMILY CODE
TITLE 3. JUVENILE JUSTICE CODE
CHAPTER 61. RIGHTS AND RESPONSIBILITIES OF PARENTS AND OTHER
ELIGIBLE PERSONS
SUBCHAPTER C. RIGHTS OF PARENTS

Tex. Fam. Code § **61.102** (2004)

§ **61.102**. Right to be Informed of Proceeding

(a) The parent of a child referred to a juvenile court is entitled as soon as practicable after the referral to be informed by staff designated by the juvenile board, based on the information accompanying the referral to the juvenile court, of:

- (1) the date and time of the offense;
- (2) the date and time the child was taken into custody;
- (3) the name of the offense and its penal category;
- (4) the type of weapon, if any, that was used;
- (5) the type of property taken or damaged and the extent of damage, if any;
- (6) the physical injuries, if any, to the victim of the offense;

(7) whether there is reason to believe that the offense was gang-related;

(8) whether there is reason to believe that the offense was related to consumption of alcohol or use of an illegal controlled substance;

(9) if the child was taken into custody with adults or other juveniles, the names of those persons;

(10) the aspects of the juvenile court process that apply to the child;

(11) if the child is in detention, the visitation policy of the detention facility that applies to the child;

(12) the child's right to be represented by an attorney and the local standards and procedures for determining whether the parent qualifies for appointment of counsel to represent the child; and

(13) the methods by which the parent can assist the child with the legal process.

(b) If the child was released on field release citation, or from the law enforcement station by the police, by intake, or by the judge or associate judge at the initial detention hearing, the information required by Subsection (a) may be communicated to the parent in person, by telephone, or in writing.

(c) If the child is not released before or at the initial detention hearing, the information required by Subsection (a) shall be communicated in person to the parent unless that is not feasible, in which event it may be communicated by telephone or in writing.

(d) Information disclosed to a parent under Subsection (a) is not admissible in a judicial proceeding under this title as substantive evidence or as evidence to impeach the testimony of a witness for the state.

HISTORY: [Stats 2003, 78th Leg. Sess Ch. 283 \(H.B. 2319\), effective Sept. 1, 2003.](#)

REPLIES

- (1) the date and time of the offense: _____
- (2) the date and time the child was taken into custody: _____
- (3) the name of the offense and its penal category: _____

- (4) the type of weapon, if any, that was used: _____
- (5) the type of property taken or damaged and the extent of damage, if any: _____

- (6) the physical injuries, if any, to the victim of the offense: _____

- (7) whether there is reason to believe that the offense was gang-related: (yes/no)

- (8) whether there is reason to believe that the offense was related to the consumption of alcohol or use of an illegal controlled substance: (yes/no) _____
- (9) if the child was taken into custody with adults or other juveniles, the names of those persons: _____

Basic Conditions of Judicial Probation:

SAMPLE TERMS

1. Obey the laws and ordinances of the United States, of any State, County, and City; do not possess a firearm during the term of probation.
2. Submit to random urinalysis for drug screening when visiting with your probation officer or upon arrest. Pay for the cost of these tests within ten (10) days of giving the specimen.
3. Do not sniff paint or glue. Do not drink alcohol. Do not use, possess or sell any illegal drugs, persons known to be associated with gangs, persons involved in sniffing paint or glue, or any minor persons involved in drinking alcoholic beverages.
4. Do not associate in any way with, _____. (usually the victim, victim's family, and any person the parents wish the child NOT to associated with)
5. Wear an electronic monitor upon notice, hearing, and order of the Court. (Note: no monitor initially ordered. Used usually if child violates probation.)
6. Attend every class every day school is in session, unless you have an excused absence according to your school's rules. Obey all published school rules and regulations.
7. On or before _____, 19 _____, return a form to your probation officer signed by you and your parent/guardian stating that you have read the Student Code of Conduct of your school or that your parent/guardian has read the Student Code of Conduct of your school to you.
8. Enroll in a G.E.D. program as directed by the Court.
9. Be at and inside your residence at all times between 5 p.m. and 7 a.m., all days, unless accompanied by your parent or guardian. There shall be no exception to this condition unless permission is obtained in writing from the Court. You must live and reside with: _____ (person child is placed on probation with), whose address is : _____. You must not live elsewhere or leave this residence without the consent of the Court obtained at least seventy-two (72) hours before any change. You must return to this residence after completing any program(s) ordered by the Court or while on furlough from any program(s) ordered by the Court.
10. The child may work after curfew hours provided the child notifies the parent/guardian and the Probation Officer of the name of the business, the business's address and phone number and the child's weekly work schedule within twenty-four (24) hours of receiving the schedule.
11. Do not leave Denton County for more than twenty-four (24) hours, unless given permission by the Court and accompanied by parent, _____ or other adult approved by the court.
12. Contact the Denton County Juvenile Probation Department within thirty (30) days of this order if you have not already been contacted by the assigned Probation Officer.
13. Contact your probation officer to schedule a meeting with your probation officer at least once each week during office hours and meet the officer at the scheduled time.
14. Permit the Probation Officer to visit you at home, school, job, or elsewhere.

15. Inform the Probation Officer of any change in school, employment or marital status before making the change.
16. The child is ordered to attend Parenting classes offered by the child's school district or by _____ beginning within 120 days. (ordered if the child on probation has a child of his/her own)
17. Attend counseling with a counselor under contract with the Denton County Juvenile Probation Department, or with your private counselor, at least once each week throughout the term of probation unless the counselor cancels the meetings.
18. With consent of the victim, participate in victim-defendant mediation as ordered by the Court.
19. Register as a sex offender. ***Only for sex cases.
20. Submit to testing for Sexually Transmitted Diseases, including HIV, within forty-five (45) days or upon order of the Court. This testing can be at a county health facility or at a private doctor and must be paid by the juvenile. The child shall sign a release allowing the results of testing to be reported to the Denton County Juvenile Probation Department. ***Only for sex cases.
21. Complete _____ hours of Community Service Restitution at a community service project or projects for an organization or organizations listed in Appendix C attached to this order, to be completed at a rate of not less than (4) hours per week starting by _____ but not later than ninety (90) days from the date of this order. (usually 2 hours of community service for each month of probation)
22. Return to court for a Probation Review on _____ and/or upon notice by the Court.
23. Seek employment. (if child is of age and parents consent)
24. Participate in probation department programs as directed by your probation officer.
25. The Clerk of the Court is ordered to notify the Texas Department of Public Safety to suspend the child's driver's license or permit or not issue a Texas driver's license or permit for a period of _____. (Usually for drug cases, evading arrest, unauthorized use of a motor vehicle, but judge can do this for any juvenile case.)

CLIENT INFORMATION AND CALL LIST

Juvenile's Information

Full name: _____

Date of birth: _____

Place of birth: _____

SS#: _____ DL#, if any: _____

Biological Mother's Information

Name: _____

Full Address: _____

Home phone: _____

Work phone: _____

Work address: _____

Biological Father's Information

Name: _____

Full Address: _____

Home phone: _____

Work phone: _____

Work address: _____

Other Family/Friends Contacts:

Name: _____	Contact numbers: _____
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_____	_____
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Probation Officer, if any: _____

DA Assigned: _____