

Office of the State Public Defender  
**FELONY CRIMINAL CASE**  
**CHECKLIST**

12/15/2010

**INITIAL CLIENT CONTACT**

- **Counsel shall make personal contact with an incarcerated client within three working days of being appointed to the case**
- Ascertain whether a conflict or apparent conflict of interest exists which would prevent you from ethically representing the client
- Identify yourself by name and affiliation
- Inform the client of his/her legal rights
- Explain the charges to the client including possible penalties, registration requirements and enhancements
- Determine if the client has a history of any issues which could impair attorney-client communications
  - Language, literacy, chemicals, mental health, medications
- Make an initial determination regarding the client's mental competency
- Determine citizenship and identify relevant federal criminal law or immigration consequences
  - **You must advise your client regarding federal or immigration consequences associated with state criminal law proceedings**
- Right to remain silent
  - Explain the right to remain silent
    - ❖ Warn client regarding recorded calls, correspondence, visitors, jailers, other inmates, etc.
  - Explain the attorney-client privilege
  - Determine if the client has made any written or oral statements to anyone concerning the offense
    - ❖ If the client has made such statements, get details, names, etc.
- Identify witnesses
- Obtain as complete a history from the client as possible, including criminal history
- Explain the bail process and identify how a meaningful bail argument can be made

**PRETRIAL**

- Obtain and carefully review the charging documents
- Develop a theory of the case with your client's input
- Conduct a meaningful investigation
- Identify affirmative defenses and file appropriate notice with the court
- Research all issues that may produce viable motions
- Prepare and file witness lists as soon as you determine that the witness will testify
- **The following decisions belong exclusively to the client:**
  - Decision to plead guilty or not guilty
  - Decision whether or not to testify at any point in the case
  - Decision whether to waive a jury
  - Decision whether to file an appeal if convicted
- All other decisions belong to counsel, although the client should be consulted and fully informed

**FOR CASES RESULTING IN GUILTY PLEA**

- Advocate for dismissal of as many charges as possible
- Advocate for reduction of charges
- Make sure disposition agreement is reduced to writing

- Make sure client is fully informed about all aspects of the plea and any plea agreement, and that the client understands the consequences of pleading guilty
  - Difference between binding vs. nonbinding
  - Role of prosecutor, judge, probation officer, and victim in sentencing process
- Determine whether grounds can be presented to secure release of client pending sentencing hearing

### **FOR CASES RESULTING IN A JUDGE/JURY TRIAL**

- File Motions in Limine in advance of trial (per local court rule or practice)
- Brief and request oral argument for any viable legal motions
- Develop a witness list and keep it up to date
  - Make sure it is filed with court in advance of trial (per local court rules)
- Carefully review all prosecution trial material
  - Make sure you have ALL statements (including written statements and audio-video statements) which your client has provided to law enforcement or anyone else
  - Interview all prosecution witnesses
  - Inspect all physical evidence
  - Visit crime scene, if possible
  - Obtain prosecution expert reports and interview experts in advance of trial
  - Demand discovery update immediately prior to trial
  - Carefully review prosecution's instructions
- Make sure you have provided the prosecution with your expert's report prior to commencement of trial
- Prepare demonstrative exhibits prior to trial
- Voir dire
  - Elicit attitudes of jurors
  - Convey legal principles critical to case
  - Preview damaging information
  - Present client in favorable and appropriate light
  - Establish a positive relationship with jury
- Outline opening and closing statements in advance of trial
- Jury instructions
  - Reply to objectionable prosecution instructions
  - Submit supportive pattern defense instructions
  - Be creative !!
  - Prepare and keep handy a trial notebook
    - ❖ statutes
    - ❖ rules of evidence
    - ❖ case law supporting anticipated trial issues

### **SENTENCING**

- Ensure client is fully informed about likely and possible outcomes
- Prepare and present Witnesses / Letters / Sentencing options
- Ensure court has all other relevant information
- Inform client of the right to speak at sentencing, including effects of testimony on appeal, retrial, etc.
- Inform client of right of appeal
- Inform client of right to sentence review
- Inform client of option to move for a new trial, if relevant

Office of the State Public Defender  
**INVOLUNTARY COMMITMENT  
CHECKLIST**  
12/15/2010

READ (or reread): *In the Matter of the Mental Health of KGF*, 2001 MT 140.

Establish familiarity with mental disorders, medical terminology, and psychotropic medications.

**INITIAL CLIENT CONTACT**

- Meet with the client **as soon as possible** following assignment to the case
- Identify yourself by name and affiliation
- Be sure to clarify that you are not part of the hospital staff
- Explain what is happening (involuntary commitment process) and why
- Identify all parties to the commitment process
- Discuss and explain the client's rights in the commitment process
  - Right to treatment
  - Right to refuse treatment
  - Right to an independent evaluation
- Explain the right to obtain voluntary treatment
- Inform client that communications between client and attorney are confidential
- Explain that the respondent has a right to obtain private counsel at respondent's own expense
- Obtain signed releases from client
- Identify all relevant witnesses
- Identify whether there has been any prior medical treatment
- Advise the client regarding all available options
  - Assist the client in obtaining his/her objectives by advising him/her regarding the probabilities of success associated with each option
- Advise the client regarding the pros and cons of voluntary treatment
  - But remember: You may not presume, in the absence of objection from the client, that the client wishes to be involuntary committed
  - And **you must advocate for the client's express wishes** – not the wishes of relatives, friends, or guardian
- Secure assistance from experts if communication impairments arise
  - Language, literacy, chemicals, mental health. medication

**HANDLING THE CASE**

- Seek the most expedient and timely resolution that does not offend the client's express wishes
- Do not agree to a continuance unless it is necessary for effective advocacy
- Ensure that the client may exercise his/her right to a jury trial
  - Explain the benefits and detriments of a jury vs. judge trial
  - Inform the court immediately if the client elects a jury trial
  - If the client elects to waive a jury, ensure that the waiver is knowing and voluntary

- Ensure that the client actively participates in every stage of the proceeding
  - Encourage the client to be present at all hearings
    - ❖ Avoid using your authority to waive the client's presence except where attendance would seriously jeopardize the client's condition
  - Advise the client regarding the law at every stage of the proceedings
  - Make a record of advice regarding the client's elections and waivers
- When a client is under the influence of psychotropic medications, introduce evidence regarding the medication and its effect on the client's demeanor
- Advocate zealously and effectively for the client's express interests at all stages of trial
- Be familiar with court rules and local customs regarding the commitment process
- Seek to bifurcate probable cause and placement proceedings if the client's interests so dictate
- Object to introduction of prior commitment or criminal charge evidence until adjudication issues have been resolved
- Conduct rigorous examination and cross-examination of all witnesses
- Consider filing a Petition for Habeas Corpus relief, if appropriate
- Obtain and review all relevant records prior to initial hearing
- Identify the least restrictive alternative available
- Solicit support of social workers to explore possible community service options
- Appointment of Friend
- Obtain and review diagnoses and opinions of state's expert
- Facilitate client's exercise of right to be examined by a second professional person
  - Explain that client has the right to select second professional person
- Provide continuity of representation for the client throughout the involuntary commitment process:
  - Investigate the case
  - Obtain witness statements
  - Be aware of timelines
  - Make sure the client is fully informed and understands what is going on
  - Secure expert assistance if needed

#### **FOR CASES RESULTING IN COMMITMENT**

- Advocate for an appropriate treatment and discharge plan which is tailored to the client's individual needs
  - Argue for the exclusion of unnecessarily restrictive conditions
- Advocate for least restrictive alternative available
- Review the commitment order to ensure statutory compliance
- Inform client of right to appeal

## JUVENILE CASE

### CHECKLIST

12/15/2010

#### INITIAL CLIENT CONTACT

- **Counsel shall ensure that children do not waive counsel**
- Meet with youth “at the earliest possible stage of a youth court proceeding”
- Identify yourself by name and affiliation
- Be sure to clarify that you are not part of the detention staff
- Inform youth that communications between youth and attorney are confidential
  - And that communications between youth and all others – including parents – are not
- Inform youth of right to remain silent – and what that means
- Remind youth that you are not attorney for the youth’s parents or guardians
- Explain the charges and potential dispositions
- Explain the youth court process and identify all parties
- Obtain signed releases from youth and parents/guardians
- Find out if youth made any statements regarding offense and arrest
- Identify all relevant witnesses
- Obtain name of youth probation officer, if known
- Secure assistance from experts if communication impairments arise
  - ❖ Language, literacy, chemicals, mental health
- Prepare youth for interviews with probation office
  - ❖ Accompany youth to such interview

#### PARENTS / GUARDIANS

- Meet with parents / guardians (P/G) as soon as possible
- Explain to P/G that you represent youth, not P/G
- Advise P/G of possible conflict between their interests and those of the youth
- Explain that in event of conflict you are required to serve interest of youth exclusively

#### HANDLING THE CASE

- **Explore the possibility of securing disposition via informal adjustment (§41-5-130, MCA)**
- Was client properly advised of rights by law enforcement / youth probation / court?
- Obtain and review all relevant discovery materials prior to probable cause hearing
- Identify possible pretrial motions and preserve appellate record for said issues
- Laws relating to youth court records
- Detention Issues / Information:
  - Timely hearing? (within 24 hours of time youth was taken into custody)
  - Probable cause
  - Argue for least restrictive placement
  - Did youth probation and/or the court consider alternatives to detention
  - Bail
  - Did youth probation conduct a risk assessment
    - ❖ Have they provided a copy to defense counsel
  - Use detention / probable cause hearing as discovery tool
  - Be alert for hearsay, Crawford issues
  - Make demand on record for full and continuing discovery from prosecution
- If the court orders detention, make appropriate arguments for bail

- Transfer Hearings (§41-5-208) / Extended Jurisdiction (§41-5-1602) and Competency Issues
  - **Read these statutes**
  - Be aware of requisite statutory findings court must make to transfer or extend
  - Get an updated mental health evaluation from an expert proficient in adolescent psychology
  - Be familiar with, and advocate for, client services (AWARE, Youth Dynamics, etc.)
  - Distinguish DOC programs from programs available in community and or for youths
    - ❖ e.g., Pine Hills, group homes, wrap around services, inpatient treatment, Normative Services, etc.
  - Investigate adolescent brain development issues
  - Investigate chemical dependency issues
  - Identify collateral support resources (teachers, family friends, extracurricular activities)
  - Adult record issue as opposed to civil disposition
  - Call witnesses who can support transferring the case back to youth court
  
- At all stages of youth court proceedings:
  - Investigate the case
  - Obtain discovery, police reports and witness statements
  - Be aware of time lines
  - Make sure the youth is fully informed and understands what is going on
  - Be satisfied that answers of “true” or pleas of “guilty” are voluntarily and knowingly entered and that there is a factual basis for the answer or plea
  - Be aware of whether a true answer or guilty plea will compromise the youth’s school status or the family’s public assistance or immigration status
  - Be aware of the prosecutor’s dispositional recommendation
  - Secure expert assistance if needed
  - Be aware of any relevant registration requirements stemming from the proceeding

#### **FOR CASES RESULTING IN ADMISSION**

- Advocate for dismissal of as many charges as possible
- Advocate for reduction of charges
- Make sure disposition agreement is reduced to writing
- Make request for consent decree
- Understand and explain options if youth is to be placed out of home
- Advise youth of role of Youth Probation in social summary & during supervision

#### **FOR CASES RESULTING IN A JUDGE/JURY TRIAL**

- Refer to OPD Criminal Case Checklist

#### **DISPOSITION**

- Ensure youth is informed of possible and likely outcomes
- Prepare and present Witnesses / Letters / Placement options
- Ensure court has all other relevant information (see list under transfers/competency above)
- Inform client of the right to speak at disposition hearing, including effects of admissions on appeal, retrial, etc.
- Inform client of right of appeal
- Inform client of option to move for a new trial, if relevant

Office of the State Public Defender  
DN (PARENT REPRESENTATION)  
CHECKLIST  
12/15/2010

**INITIAL CLIENT CONTACT**

- Meet with the client **as soon as possible** following assignment to the case
- Identify yourself by name and affiliation
- Be sure to clarify that you are not associated with DPHHS, law enforcement or the court
- Explain what is happening and why
- Identify all parties to the DN process
- Discuss and explain the client's rights in the DN process
- Explain the court process and timelines
- Advise the parent of all available options, as well as their consequences
- Explain the issues and possible outcomes
- Inform the parent that communications between client and attorney are confidential
- Advise the parent not to make statements to anyone concerning the case without prior consultation with counsel
- Obtain signed releases from client
- Obtain information from the parent concerning facts, statements, witnesses, etc.
- Secure assistance from experts if communication impairments arise
  - Language, literacy, chemicals, mental health. medication

**HANDLING THE CASE (Generally)**

- Remain familiar with applicable court rules and local customs regarding DN proceedings
- Determine if Indian Child Welfare Act applies (if so, see separate standards)
- Seek the most expedient and timely resolution that provides effective representation
- Do not agree to a continuance unless it is necessary for effective advocacy
- Carefully review the petition and all other evidence
- Prepare the parent for the proceeding
- If the child has been removed
  - Determine the basis for the removal
  - Determine if the State considered options to avoid removal
- Interview all witnesses and review all witness statements prior to hearing
- Actively represent the parent at all stages of the proceeding
  - Examine and cross-examine lay and expert witnesses
  - Challenge other non-testimonial evidence
- Ensure that the client actively participates in every stage of the proceeding
  - Encourage the parent to be present at all hearings
  - Advise the parent regarding the law at every stage of the proceedings
  - Make a record of advice regarding the parent's elections and waivers
- Solicit support of social workers who understand the public defender's advocacy role to investigate the various community health and social services available for the parent

**HANDLING THE CASE (Show Cause Hearing -- §41-3-432, MCA)**

- See above – plus:
- Determine whether there are other responsible adults available to care for child
- Confirm accuracy of statements
- Challenge unnecessary supervision and visitation restrictions

### **HANDLING THE CASE (Adjudicatory Hearing -- §41-3-437, MCA)**

- See above – plus:
- Determine what actions parent has taken to ensure safety of child
- Discuss treatment with parent and identify what voluntary services parent will accept
- Determine if agency adequately investigated options for safely reunifying family
- Determine if agency failed to provide services to permit child to remain at home
- Investigate to determine accuracy of facts alleging abuse and neglect
- Consider if evidence exists which would obviate need for a treatment plan
- Challenge conditions in treatment plan which are unjustified or not supported by record
- **Where counsel believes the parent's wishes are not in parent's best interests, counsel may attempt to persuade parent to change parent's position. If parent remains unpersuaded, however, counsel must defend the parent's position vigorously**

### **HANDLING THE CASE (Disposition Hearing -- §41-3-438, MCA)**

- See above – plus:
- Determine what sort of disruption the removal of the child has caused
- Determine whether the agency considered noncustodial parent or family members as caretakers
- Challenge the factual basis of the agency's recommendation for placement outside the home

### **HANDLING THE CASE (Permanency Hearing-- §41-3-445, MCA)**

- See above – plus:
- Maintain contact with parent to determine actions parent has taken to address State's concerns
- Investigate actions taken by agency to explore services aimed at keeping child with parent

### **HANDLING THE CASE (Voluntary Relinquishment -- §42-2-412, MCA)**

- See above – plus:
- Ensure that the parent understands the consequences of voluntary relinquishment
- Make sure parent understands that parent makes ultimate decision regarding voluntary relinquishment
- Investigate and explain prospective strengths and weaknesses of case
- Ensure that relinquishment is voluntary, understood, and factually supported
- Inform parent of effect of admission on other court or related matters

### **HANDLING THE CASE (Termination -- §41-3-607 & -609, MCA)**

- See above – plus:
- Determine whether statutory grounds for termination have been met
- Determine whether termination is in best interest of child
- Determine whether agency made reasonable efforts to avoid termination, e.g.,
  - In-home babysitters
  - Intensive home-based services
  - Other services that address needs of parent and child, including disability support
- Challenge whether treatment plan was appropriate