

February 13, 2017: Law Helps Juvenile Defendants

Those of us who have raised teenagers, or spent a lot of time around them, know that they can be very impulsive and sometimes make very bad decisions. At times these impulsive acts may amount to criminal acts. How many times have we read newspaper articles about rioting students, students coming to school drunk, or kids caught shoplifting?

From a legal standpoint, the question is whether a young person who commits a crime should be prosecuted and punished like an adult who commits the same crime? This is a question that legislatures across the country, including Guam, have had to grapple with.

Most jurisdictions have responded by establishing two different criminal justice systems, one for adult offenders and a separate one for youth offenders. On Guam, our legislature established the Family Court, a separate division within the Superior Court tasked with handling a variety of matters involving minors who are under the age of 18.

The Family Court has exclusive jurisdiction over children who are neglected or abused, those who are beyond control of their parents, or who are habitually truant from school. The Family Court also handles custody matters, guardianships, paternity determination, termination of parental rights, adoptions, and marriages for minors.

In addition, the Family Court adjudicates criminal cases involving minors. The approach to these cases is more relaxed and informal than that of a regular adult criminal court. A designated court Referee hears the cases without a jury and has a great deal of flexibility in sentencing minors.

The goal, when possible, is to rehabilitate the youth and to put him or her on the right track. A variety of counseling and rehabilitative services are available. If jail time is deemed appropriate, then the minor will serve the time at the Department of Youth affairs rather than the Department of Corrections.

But, when it came to juvenile criminal cases, there was a catch. Until the 33rd Guam Legislature passed Public Law 33-33 on June 10, 2015, 16 and 17 year-old minors alleged to have committed a first or second-degree felony were automatically charged as adults. Many prosecutors, defense attorneys, and judges were uncomfortable with this situation. They had no discretion over the matter even if they felt there were mitigating circumstances that weighed heavily in favor of pursuing the case in the Family Court.

With Public Law 33-33, the Legislature modified this approach. Now, the prosecutor or defense counsel can file a motion to have such a case transferred to the Family Court. The judge can also order the transfer.

Before doing so, the judge must find by clear and convincing evidence that the minor would benefit from the care, treatment, and training programs available through the Family Court.

Some of the factors the judge must weigh include: the age of the minor; the seriousness of the alleged offense; the minor's prior delinquency record and his or her mental health, physical or educational history; and whether there is a reasonable likelihood that the minor can be rehabilitated, among other considerations.

All parties involved seem more comfortable with this change because it takes the youthfulness of the offender and the possibility of rehabilitation into consideration. Hopefully, these cases will be closely monitored to determine if this approach works.