The Return of Youthful Sex Offenders to Juvenile Court

By Chris Phillis, Attorney Manager

On May 1, 2007, Governor Napolitano signed Senate Bill 1628 into law, thus allowing the wave of juveniles forced into the criminal system through direct files the possibility of having their cases returned to the juvenile system. The new law, A.R.S. 13-501.01, allows non-violent juvenile sex offenders the hope of escaping the punitive criminal system for the rehabilitative juvenile system. The burden is upon the child to show by clear and convincing evidence that public safety and rehabilitation of the juvenile would best be served by transferring prosecution to juvenile court.

To ensure quality representation of our clients in this challenging and rapidly-developing area, the Maricopa County Public Defender's Office will assign two attorneys to each case - an attorney in the Adult Trial Division who specializes in these cases, and an attorney in the Juvenile Division. All juvenile sex offender files will be color coded blue. Once trial group counsel has received a blue file the manager of the juvenile division should be contacted to assign an attorney in the juvenile division to assist with the preparation and presentation of the transfer hearing. In consultation, the attorneys will determine, taking into consideration the time remaining before the child's eighteenth birthday, if the child is eligible to have the case transferred to the juvenile system.

Request for a transfer hearing may be initiated by the juvenile or upon the court's own motion. In cases where the charges were filed more than twelve months after the alleged act, the court must hold a transfer hearing. This automatic right to a transfer hearing resulted from legislative concern about delay in filing charges until a child is old enough for criminal prosecution.

According to the interim rules, the motion requesting a transfer hearing must be filed within forty days of the date of the arraignment and contain the sexual offenses that are subject to transfer. Time is of the essence: every week that passes makes it more likely that the child will remain in the criminal system. Once the criminal bench receives a request from the juvenile, or upon its own motion, the transfer hearing must be held within forty-five days. During those forty-five days the defense team will amass information regarding the juvenile's history, education, criminal background, prior therapeutic services, psychological or mental disorders, amenability to treatment, plans for the future and family history to assist the judge in determining whether the child's case should be transferred to the juvenile system. The gathering of the information will require the expertise of a mitigation specialist.

The mitigation specialist has the expertise to gather the relevant information from various sources and condense it into a compelling report to the court. The goal of the investigation is to determine whether information can be found to show that the juvenile is a teenager who had a lapse of judgment based on immaturity rather than, as the charges may suggest, a sexual deviant lurking in the bushes waiting to prey on pre-schoolers. The mitigation specialist will illustrate to the court the vast array of residential and out-patient programs available to the client in juvenile court, as well as the lack of programs in the criminal system.

Also, the mitigation specialist will be able to provide the child's history to the psychologist, who has been hired by the defense, to form an opinion regarding amenability to treatment. Without the assistance of a mitigation specialist, the psychologist will very likely receive a very limited history from the all too often confused and frightened juvenile. A psychologist's recommendation that the child is amenable to services in the juvenile system is essential to meeting the clear and convincing standard for transfer of the case to juvenile court.

The reports prepared by the psychologist and the mitigation specialist will allow the court a glimpse into the child's history, setting the stage for the transfer proceedings. At the transfer proceeding the mitigation specialist will be an essential witness for the client. After gathering the child's history, reviewing the psychological evaluation and speaking with family members, the mitigation specialist can educate the court on the particular services available in juvenile court that will rehabilitate the juvenile and protect the community. It is not likely that the county attorney will be able to produce a contrary expert who possesses the equivalent degree of expertise and knowledge about the client.

The testimony from the psychologist and mitigation specialist will lay the foundation upon which the juvenile will structure a case to have his charges transferred to juvenile court, where needed services are available should he be adjudicated. Children fortunate enough to escape the perils of criminal court will have their future vastly altered from lifetime probation scrutiny to rehabilitative services until eighteen, a future worth fighting for.

Writers' Corner

Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including A Dictionary of Modern Legal Usage, The Winning Brief, A Dictionary of Modern American Usage, and Legal Writing in Plain English. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at www.us.oup.com/us/apps/totd/usage. Garner's Modern American Usage can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

Hobson's Choice

This ever-growing cliché has loosened its etymological tether. Tradition has it that Thomas Hobson (1549-1631), a hostler in Cambridge, England, always gave his customers only one choice among his horses: whichever one was closest to the door. Hence, in literary usage, a "Hobson's choice" came to denote no choice at all -- either taking what is offered or taking nothing.

Though purists resist the change, the prevailing sense in American English is not that of having no choice, but of having two bad choices -- e.g.: "Meanwhile, the women -- if we can believe them -- had a Hobson's choice: Either lie and ruin men's careers and lives; or tell it like it was and learn to live with hell in this man's Army." Deborah Mathis, "Race Becomes Issue in Aberdeen Rape Cases," Fla. Today, 15 Mar. 1997, at A11.

In a sense, this usage isn't much of a slipshod extension. After all, the choice of either taking what is offered or taking nothing must often be two poor options.

Traditionally -- and still in British English -- the phrase takes no article; that is, you are faced not with "a Hobson's choice" but with "Hobson's choice." In American English, though, the phrase usually takes either "a" or "the."

Amazingly, some writers have confused the obscure Thomas Hobson with his famous contemporary, the philosopher Thomas Hobbes (1588-1679). The resulting malapropism, while increasingly common, is still beautifully grotesque – e.g.: "If you have to shoot yourself in the foot, should it be the right or the left? Italian Prime Minister Silvio Berlusconi faced that Hobbesian choice [read 'Hobson's choice'] last week." Malcolm Beith, "Decisions," Newsweek, 24 Dec. 2001, at 8.