Entering Dispositions with Respect to Juveniles Held in a Detention Center

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Issued by: Richard J. Williams
Administrative Director

This directive provides policy guidance to Family judges entering dispositions with respect to juvenile delinquents who are being held in a detention center. The Conference of Family Presiding Judges approved this policy, which will necessitate changes in the current practice in some vicinages.

Up to now, judges in some vicinages have on occasion postponed the entry of a juvenile disposition that includes placement in a residential facility until a bed in an appropriate facility becomes available. As agreed by the Conference of Family Presiding Judges, in situations where no bed is available, instead of postponing the disposition the judge should enter the disposition order immediately. If the juvenile must continue to be held in detention prior to being placed in accordance with the disposition, the judge should direct that the juvenile be returned to detention to await an appropriate placement. We are in the process of modifying the Family Automated Case Tracking System (FACTS) to allow for recording post-dispositional reviews, without requiring the case to be reopened in order to allow for subsequent periodic detention reviews to be tracked. Until the FACTS enhancements have been completed, the court should keep a paper record of these cases.

The policy set forth here prescribes the court's prompt entry of the dispositional order even if a bed is not immediately available, but it does not otherwise change the post-dispositional steps taken by staff to complete the placing of the juvenile with JJC, DYFS or other placement.

The problem that arises under this procedure is that two distinct interpretations of N.J.S.A. 2A:4A-38(l) have arisen among those charged with caring for juvenile delinquents. That statute provides that "when a juvenile has been adjudicated delinquent and is awaiting transfer to a dispositional alternative that does not involve a secure residential or out-of-home placement and continued detention is necessary, the juvenile shall be transferred to a non-secure facility." Some detention facility superintendents have interpreted the statute to imply that if a juvenile is awaiting a placement that is not in a 24-hour lockdown facility, the juvenile may not remain in detention. Under this interpretation, residential and out-of-home placements that have 24-hour supervision but are not 24-hour lockdown facilities would not qualify as "secure" facilities under the law. However, the plain language of N.J.S.A. 2A:4A-38(l) requires the transfer of a juvenile to a shelter facility only if the juvenile is awaiting a placement that is non-secure. As a matter of fact, most out-of-home placement and residential programs have some security component that would qualify them as "secure" placements under the statute.

Based on the legislative history, "secure" residential or out-of-home placement does not exclude a 24-hour supervised facility (e.g., DYFS programs, JJC programs),

which would normally be ordered as a disposition for criminal offenses, not disorderly persons offenses.

As a practical matter, following this interpretation of the statute will improve the juvenile detention system. First, it will not contribute to overcrowding of detention facilities. Those same juveniles would be in detention awaiting disposition under the prior practice of holding the disposition while awaiting a placement bed and then scheduling a "disposition" once the bed is available. Thus, placing juveniles who are already in detention awaiting post-disposition placements back in detention will in fact improve the system by providing a prompt determination to the adjudicated juveniles. Second, it will decrease the overall amount of time served in detention. Mercer County, for example, saw a decrease in overall time served in detention when it stopped its previous practice of postponing dispositions, an outcome attributed to the fact that DYFS is required to make placements faster once an actual order has been issued. Finally, not postponing dispositions will encourage the development of alternatives to detention.

Assignment Judges and Family Presiding Judges should review this procedure with the stakeholders in their county system, particularly the director of the juvenile detention center, to ensure that there is a common understanding of this clarification of practice. The Juvenile Justice Commission (JJC), the agency statutorily responsible for monitoring Juvenile Detention Centers, agrees that this policy is consistent with their regulations and current law. The JJC has stated that this change in practice will ultimately hold placement agencies more accountable for the length of stay while awaiting placement and will enhance the court's ability to seek placement most appropriate for an individual youth.

Please direct any questions concerning this Directive to Harry T. Cassidy, Assistant Director, Family Practice Division at (609) 984-4228.