Interviewing Clients

Juvenile Defense Training Academy

Green Hill School September 14, 2018

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Kimberly Ambrose, Law Lecturer University of Washington
The in-custody client Interview
Today’s Goals

In custody interviews – Practice!
Preparing clients to plead guilty
Feedback from the experts
Things to Consider

Physical space
  ◦ Confidentiality?
  ◦ Where do you sit/

Developmental issues

Note taking

Time
Elements of First Interview

Rapport Building
Role Explanation
Information gathering
Information sharing
Counseling
Rapport Building

Do not skip
Be genuinely interested
Be yourself
Role Explanation

Hello, I am your public defender.
Hello, I am your attorney.
Hello, I am your lawyer.
Confidentiality
Information Gathering

Simple, open ended questions.

- Start big and then ask more targeted questions after the story to get details.

Do not judge.

Try not to lead.

Engage in active listening.

Do not be afraid of silence.
Information sharing

Gauge comprehension
Talk like a real person
Explain legal terms
Assess understanding
Counseling

Step back
Don’t judge
Be respectful
What would you want to be told?
Talking with Youth about Pleading Guilty

By Katie Hurley, King County Department of Public Defense
Youth often do not understand their legal options

Young people are often not fully aware of their legal options and have limited understanding of the plea bargaining process.


In addition, young people are less likely than adults to consider the short- and long-term consequences in their legal decision making. Research shows that youth are more than twice as likely as adults to plead guilty when asked to assume innocence.


In a recent study —

- Innocent youth and innocent college students pled guilty significantly more often than innocent post college-aged adults when there was a sentence-length incentive (i.e., the prosecutor agrees to ask for a lesser penalty following a plea).
- Where there was a conviction-charge incentive (participants would get a misdemeanor by pleading guilty but would get a felony if convicted at trial), youth were not significantly influenced by whether they were guilty or innocent. Follow-up comparisons showed that innocent youth and innocent college-aged adults pled guilty more often than innocent post college-aged adults.

Before this huge decision is made...

It is essential that a youth—

◦ Has enough **time** to make the decision

◦ Is able to talk with **family and other supports**
  ◦ A juvenile attorney needs to be prepared to talk with a youth’s family and other supports about this decision (provided, of course, that the youth gives explicit permission for these conversations to occur).

◦ Has enough **information** to make the decision

◦ It is important to remember that while the attorney makes a recommendation, it is the YOUTH’S DECISION whether to plead guilty or have a trial.
  ◦ It is critical that the youth doesn’t feel pressured by attorney, family or supports.
When talking with client, write down information!!

Many individuals learn best visually

As a result, it is very important to **write down** the important information. For example,

- The plea offer including --
  - Information about how charge severity works (e.g. A felony vs. C felony)
  - Information about standard range and disposition recommendation
- What charges could be added at trial
- What witnesses/evidence would be presented by either side
- What legal motions could be made
- Likelihood of prevailing on motions/at trial-
  - State what you can with certainty and be clear that other potential outcomes are uncertain
- Assessment of judge (likely to convict? Give a worse sentence after trial?)
- Collateral consequences of the plea
  - Firearm, Licensing, DNA, School notification, VPA
- Review each probation rule (school; d/a use and tx; met with JPC; community service and counseling; curfew; no trouble) and how client will need to change behavior and if that is realistic. Discuss modification hearings and detention time.
- Impact of juvenile record including points- in juvenile AND adult court
- Record is OPEN unless sealed and will make it harder to get a job/military service/housing, etc.. Sealing rules– administrative vs. filing a motion
Developmentally appropriate language

Explain, in detail and with age-appropriate language, what rights she will give up if she enters a plea. Make sure your client understands the rights and the implications of waiving them.

Address concerns that are important to your client, even if they seem inconsequential or childish.
Trial Rights per the plea paperwork

I have the right to a **speedy and public trial** in the county where the offense(s) allegedly occurred.

I have the **right to remain silent** before and during trial, and I need not **testify** against myself.

I have the right to hear and question witnesses who might testify against me.

I have the right to testify and to have witnesses testify for me. These witnesses may be required to appear at no cost to me.

I am **presumed innocent** unless the charge is **proven beyond a reasonable doubt** or I enter a plea of guilty.

I have the right to **appeal** a finding of guilt after trial.
More developmentally appropriate language...

You have the right to a trial. At a trial, it is the judge’s job to listen to the evidence and decide whether you are guilty or not guilty. Evidence is information from people – called witnesses- who have information about what the prosecutor says happened. It can also include pictures or video. The prosecutor CANNOT just give the judge the police report.

You don’t have to say anything during the trial if you don’t want to. After the judge hears all the evidence, he/she decide if you are guilty or not guilty.

In a trial, the judge must assume you are innocent- that you didn’t do the crime. It is the prosecutor’s job to prove that you are guilty. The prosecutor must prove you are guilty beyond a reasonable doubt. That means that the judge, after listening to all the evidence, must be VERY SURE that you did [recite elements of the crime] before he/she can find you guilty. If he/she is not sure, they must find you not guilty.

When you decide to give up your right to a trial, it means you are giving up several important rights. For example, it means that you won’t hear what the witnesses against you would say. It means that I won’t get a chance to question those witnesses. And it also means that you won’t get a chance to call your own witnesses to tell your side of what happened.

(This is taken, in part, from NJDC materials- Juvenile Defender Delinquency Notebook).
Also, write a picture of what trial looks like

Trial:

Judge \rightarrow \text{"Beyond a Reasonable Doubt"}

Prove Guilty

State \rightarrow \text{W}

Defense \rightarrow \text{Not Guilty}
How explain criminal History/points??

**Plea Paperwork—**
- COUNTS AS CRIMINAL HISTORY: I understand that my plea of guilty and the judge’s acceptance of my plea will become part of my criminal history. I understand that if I am pleading guilty to two or more offenses that arise out of the same course of conduct, only the most serious offense will count as an offense in my criminal history. I understand that my guilty plea will remain part of my criminal history when I am an adult and may affect my ability to remain in the Juvenile Justice System should I re-offend. I understand that the judge will consider my criminal history when sentencing me for any offense that I commit in the future as an adult or juvenile.

**Developmentally appropriate language**
- Remember: Any time you plead guilty or are found guilty of a crime, it counts as criminal history. So you will receive a punishment right away for the crime AND it will be used to give you a bigger sentence in the future in juvenile court and adult court. That’s because you will have more points after you plead guilty. What are points??

1 juvenile felony = 1 point in juvenile court, generally ½ point in adult court.*** (can count as more points if you’re convicted of certain types of offenses like offenses involving cars, burglaries, or violent offenses—talk to your lawyer about this!)

1 juvenile misdemeanor = ¼ point in juvenile court. 4 juvenile misdemeanors = 1 point

**Questions:**
- How many points do you have right now based on your criminal history? __________
- How many point will you have after this plea?
Then given an example using the disposition grid...

When determining your sentence, the number of points that you have is very important. Here is how points work:

<table>
<thead>
<tr>
<th>CURRENT OFFENSE CATEGORY</th>
<th>PRIOR ADJULICATIONS</th>
<th>A++</th>
<th>A+</th>
<th>A</th>
<th>B++</th>
<th>B+</th>
<th>B</th>
<th>C+</th>
<th>C</th>
<th>D+</th>
<th>D</th>
<th>E</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>129 to 260 weeks for all category A++ offenses</td>
<td>180 weeks to age 21 for all category A+ offenses</td>
<td>103-129 weeks for all category A offenses</td>
<td>30-40 weeks</td>
<td>52-65 weeks</td>
<td>83-100 weeks</td>
<td>103-129 weeks</td>
<td>103-129 weeks</td>
<td>15-36 weeks</td>
<td>15-36 weeks</td>
<td>52-65 weeks</td>
<td>80-100 weeks</td>
<td>103-129 weeks</td>
<td>LS</td>
<td>LS</td>
<td>15-36 weeks</td>
<td>15-36 weeks</td>
<td>52-65 weeks</td>
</tr>
</tbody>
</table>
MUST EXPLAIN SEALING!

Administrative sealing will happen on ____________ IF—
- Completed terms of disposition and
- Paid all restitution or had the amount changed by the judge (doesn’t include insurance companies)
- Not charged with a most serous offense— means any of the following felonies or a **felony attempt** to commit any of the following felonies: A felony or attempt to commit A; sex offenses; Assault 2; Kidnapping; Manslaughter; Promoting Prostitution; Robbery, Vehicular assault/homicide

Traditional sealing (violent offenses including Att Rob 2 and Att A2)
- Crime free for 5 years (class A offenses ) or 2 years (other offenses)
- Paid restitution (or had the amount changed by the court)
- No pending offenses
Explain to client that after sealing...

Client can treat the record as if it never occurred

**Sealing is not destroying a file.** It is simply sealed from public view and... If convicted of a misdemeanor or charged with a **felony** the adjudication will be unsealed AND will be used to increase his standard sentencing range in adult court.
Explaining probation conditions...

When you are placed on probation, you will have a probation counselor who will check up on you. You will also have a set of conditions that you must obey.

- For example, you may have a curfew—that is a time each night when you must be at home.
- Another condition will be that you have to go to school every day and not get in trouble when you are in school. The probation officer may come to your house or your school to check up on you.

If you do not do what you have agreed to do when on probation, you can be brought into court on a probation violation, and you may face more serious consequences.

- One of the more serious consequences a child can face is up to 30 days in detention. Probation can also be extended.
After explain everything, make sure you client understands what is happening.

Your client should be able to answer a number of questions related to her case with your help. Here is the hypo—

- Joe is charged with a Robbery in the Second Degree. He has 1 prior felony and 3 prior misdemeanors in his criminal history. The prosecutor has said that she will reduce the charge to Theft in the First Degree and Assault in the Fourth Degree if Joe pleads guilty but will increase the charge to Robbery in the First Degree if Joe sets the case for trial.
Under Current charges

What is Joe currently charged with? ______ (Answer: Robbery in the Second Degree)

How many points does Joe currently have? ______ (Answer: 1.75 which equals 1 point because points are always rounded down.)

What level of offense is Robbery in the Second Degree _____ (Answer: B+ offense)

So, what is Joe’s standard sentencing range (look at the Sentencing Grid that is attached)? ________ (Answer: 15-36 weeks).
If Joe accepts the plea bargain:

What would the prosecutor amend (lower) the charge to if Joe took the plea bargain? ________________(Answer: Theft in the First Degree and Assault in the Fourth Degree)

What level of offenses are Theft in the First Degree and Assault in the Fourth Degree? ___________(Answer: Class B Felony and Gross Misdemeanor).

What is Joe’s standard range under the plea bargain? ______(Answer: Local sanctions)

Will Joe lose his right to possess a firearm if he is convicted? _____ (Answer: Yes. Theft in the First Degree is a felony offense)

Will Joe’s school be notified? _____(Answer: Yes. If someone is convicted of Assault in the Fourth Degree, that person’s school is notified).

How many points will Joe have in the future in juvenile court if he takes the plea bargain? _____ (Answer: 3 points—Joe had 1.75 points before the current charges and will get 1.25 points in the plea bargain).

How many points will Joe have in adult court if he takes the plea bargain? ____ (Answer: At least 1 point)

If Joe took the plea bargain and was then charged with Robbery in the Second Degree in the future, what would his standard range in juvenile court be if found guilty? _______ (Answer: 80-100 weeks—Joe’s standard range would increase in the future from 15-36 weeks to 80-100 weeks solely due to the increase in his criminal history (points))!

How can Joe become eligible to seal his adjudications for Theft in the First Degree and Assault in the Fourth Degree in the future? ______ (Answer: He is eligible for administrative sealing at age 18/when done with probation if the restitution is paid or if crime free for 2 years, pay all restitutions, have no pending charges).

Once Joe seals his adjudication, can it ever be unsealed? ____ (Answer: Yes, if Joe is convicted of a misdemeanor or charged with a felony the adjudication will be unsealed AND will be used to increase his standard sentencing range in adult court).
If Joe goes to trial:

What is the prosecutor saying that Joe will be charged with at trial? _____ (Answer: Robbery in the First Degree).

What level of offense is Robbery in the First Degree? ____ (Answer: A)

If Joe is found guilty at trial, what would Joe’s standard sentencing range be? ____ (Answer: 103-129 wks)

Could Joe ask for a lower or alternative sentence? _____________(Answer: Joe could ask for a “manifest injustice” sentence but Joe would have to show that special circumstances exist to give Joe a lower sentence than most kids who are convicted of the same crime).

What would Joe have to do in order to become eligible to seal his adjudication for Robbery in the first Degree? ________________ (Answer: be crime free for 5 years from the date he is released from JRA, pay all restitution and fines, have no pending charges).

Will Joe’s adjudication be automatically sealed when he turns 18? ____ (Answer: No!!)

How can Joe actually seal his adjudication? _____ (Answer: come into court, file paperwork, go before the judge, serve the sealing order on police agencies, etc.).
A couple of comments about preparing client for plea hearing

Explain that the prosecutor or judge will review the paperwork in court.

◦ Answer “yes” rather than “yea” or with a nod.

The judge may quiz the client on what certain terms mean—“testify”; “appeal.”

Also, discuss allocution with client and practice with client.

◦ This is a much larger topic than we have time for today!
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