

**Juvenile Justice Vision 20/20 Training Event**  
**Juvenile Justice Legal Updates**  
**August 9, 2013**  
**Presented by: Michael Dunn, JD and Tonya Krause-Phelan, JD**

Report By: David Hodgkins

Associate Professors Michael Dunn and Tonya Krause-Phelan of Thomas M. Cooley Law School provided an overview of issues observed in the Michigan juvenile justice system. Five specific topics of discussion involved recent significant enactments by the Michigan Legislature affecting juvenile law, which included: Juvenile Competency, Jurisdictional Waivers, Juveniles Sentenced as Adults, the Sex Offender Registry Act, and Expungement.

Dunn and Krause-Phelan began the segment by discussing the change in Michigan laws that establish a juvenile's competency in court proceedings. Competency refers to a child's ability to understand the court process and make reasonable decisions about his or her own case. Until these provisions (which took effect on March 28, 2013), a child was automatically presumed competent at the age of 10. Changes to previous law include the following:

- Establish a presumption of incompetence for any child under age 10, and a process for attorneys to raise competency for kids 10 and older in juvenile court.
- Require that examiners have experience and expertise in child and adolescent forensic evaluations. The examiner is appointed by the court; however, a party may request their own medical examiner at the expense of the party.
- Require the least restrictive environment while awaiting and conducting evaluations.
- Create an avenue for restoration before prosecution proceeds, or (in some cases) mental health services if unable to be restored.

In regard to jurisdictional waivers, Krause-Phelan discussed Michigan's three ways for a juvenile's case to be removed from juvenile court and referred to circuit court (adult court). This process is known as "waiver," and the three different waivers are Traditional, Mandatory, and Automatic. Focusing specifically on automatic waivers, the audience learned that if a prosecuting attorney has reason to believe that a juvenile 14 years of age or older, but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.

In some cases pertaining to a juvenile waived to circuit court, the court retains discretion to sentence the offender as either a juvenile or as an adult. A discretionary designation case or a court designated case occurs when the prosecutor files a petition alleging the juvenile committed an offense other than the specified juvenile violation, and requests the court to designate the case as one in which the juvenile is tried the same as an adult. Sentencing in a designated case is similar to criminal cases, but the judge has the discretion to enter a juvenile disposition, an adult sentence, or by blending a sentence by entering a juvenile disposition while delaying the adult sentence.

Dunn and Krause-Phelan continued the seminar by highlighting a 2011 reform to Michigan's Sex Offender Registry Act (SORA). The changes forced many adult sex offenders who had previously been ordered to register on SORA for 25 years to mandatory lifetime registration. This brings the Michigan Sex Offender Registry in compliance with the Adam Walsh Act, a federal statute requiring Tier 3 sex offenders to register their whereabouts every three months for life. In addition, changes also require registrants to disclose employment and school addresses, car license numbers, and email addresses. The deadline for complying with these requirements was reduced from ten to three days, and failure for doing

so could result in a felony conviction. As of July 1, 2011, however, all registrants who were under 14 at the time of the offense will be removed from SORA, and youth who were 14 or 15 years old will go on the private law enforcement registry for the duration; registrants charged with age-only consensual crimes will no longer have to register. Furthermore, existing age-only consensual registrants will have the opportunity to petition for removal from the registry.

The final topic of discussion was expungement of criminal records. Dunn explained expungement essentially as a lawsuit against the state to set aside a conviction. Setting aside a conviction has the effect of removing it from criminal record; however, this does not mean the conviction never existed. Dunn detailed twelve seemingly rigorous steps to having a record expunged, as well as the way it is handled in terms of adults or juveniles. In many ways, it is handled the same, however, for juveniles: a) The crime(s) cannot be specifically precluded by statute, b) Life imprisonment and traffic offenses are specifically excluded, and c) Any convictions where the juvenile was tried as an adult are excluded.

While the Michigan Legislature has enacted many reforms in an attempt to update the juvenile justice system, there are still many areas in need of improvement. Legislators, both state and federal, rely on the expertise of individuals in the field; it is crucial for experts like Professor Dunn and Professor Krause-Phelan, in addition to organizations such as Juvenile Justice Vision 20/20, to continue advocating for the existing juvenile justice issues in an attempt to proactively shape public policy.