

# YOUTH AND THE LAW

Fourth Edition

by Irving J. Sloan, J.D.

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## FOREWORD

The present edition represents the most thorough revision of our subject, juvenile law, since the publication of the three previous editions of this volume in the Legal Almanac Series. For one thing, unlike the earlier editions which addressed themselves essentially to youthful readers, this edition assumes a broader readership which includes, especially, social workers and law enforcement workers who deal with young people.

The new chapter dealing with child abuse and neglect, for example, is an attempt to assist professionals who work with youths by providing them with a background in the legal aspects of as many youth-related topics as possible in a small book of this kind. The other chapters will, hopefully, enable such professional workers to give useful preliminary advice to young people who may have civil or criminal legal problems. Young readers themselves will continue to find the material here helpful in dealing with any number of legal matters which often enter into their lives.

It should always be understood that this book is no substitute for the legal advice of an attorney. The information here can only provide the reader with enough basic background to enable him or her to know whether further legal advice is appropriate, and if so what questions to ask.

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## Chapter 1

# JUVENILES AND CRIMINAL JUSTICE

### History

In 1899, concerned that children showing antisocial behavior were being imprisoned and otherwise harshly treated or punished under criminal laws essentially geared toward retribution and deterrence rather than rehabilitation, legislators in Cook County, Illinois, established the first juvenile court. The theory behind the idea of creating special juvenile courts was that it was not equitable to hold juveniles completely responsible, therefore punishable, for their misdeeds.

A popular psychological theory in the early part of the twentieth century was that because of children's immaturity and their resulting susceptibility to those corrupting influences in their environment, they cannot be expected always to act as mature and responsible citizens. It was believed that when a child is brought before the court, he or she should be individually evaluated not only in terms of whether he or she committed specified wrongful acts, but also in terms of maturity. This is the only way to measure the child's true degree of "responsibility."

The concept of the juvenile court is a combination of law and psychology. Juvenile courts are not drawn up to apply fixed standards of legal responsibility to a given factual situation. Rather, the juvenile courts prescribe treatment or punishment according to the needs of juveniles and their chances for rehabilitation. The juvenile court, therefore, represents the state in its *parens patriae* role-- the state as guardian of its ward, the child.

### Federal Law

Under Title 18, Section 5031 of the United States Code, a "juvenile" is a person under eighteen years of age, or for the purpose of special federal proceedings against an individual for an alleged act of juvenile delinquency, one who is under twenty-one years of age. "Juvenile delinquency" is a violation of a federal law committed by a person prior to his or her eighteenth

birthday, which would have been a crime if committed by an adult.

Any person charged with acts of juvenile delinquency under federal law must be surrendered to the appropriate state legal authorities for disposition under state juvenile procedures, unless the U.S. Attorney General certifies to a direct court of the United States that the appropriate state court (1) does not have jurisdiction, (2) refuses to assume jurisdiction over the juvenile with respect to the alleged acts of delinquency, or (3) does not have available services and programs adequate for the needs of juveniles. The federal government, therefore, generally attempts to transfer its juvenile cases to the state courts.

If the juvenile is not transferred for state proceedings, a U.S. district court retains jurisdiction and initiates proceedings in which the government must prove all the elements of the charged offense beyond a reasonable doubt, just as in the prosecution of an adult. But in this proceeding, such proof does not result in a conviction or sentence for a crime. It brings about adjudication as a juvenile delinquent. The proceeding may be convened at any time and place within the judicial district, privately in the judge's chambers, or otherwise.

If the juvenile is adjudged delinquent, a special dispositional hearing is subsequently held, and the juvenile may be placed on probation or committed to the custody of the Attorney General for transfer, wherever possible, to a foster home or community-based facility located near the juvenile's home community.

Under no circumstances may a juvenile who has been committed to the custody of the Attorney General be placed in an adult jail or correctional institution.

All records of juvenile proceedings in the federal courts are sealed except to other courts of law, law enforcement agencies, or the director of the treatment center to which the juvenile has been committed.

In those cases where a juvenile, sixteen or older, is charged with the commission of an act which, if committed by an adult, would be punishable by ten years imprisonment or more, or by death, the juvenile may be criminally prosecuted as an adult. To do so would require a motion by the Attorney General and a finding by the court that such an action would be in the interest of justice. If the juvenile is prosecuted as an adult, there is public access to the trial, including the press, as there is in all criminal cases.

## State Law

The juvenile courts in all the states have jurisdiction over cases involving delinquency, but delinquency may be defined very differently from state to state. In addition to violations of law, it may cover the condition or acts of truancy, engaging in immoral conduct, incorrigibility, ungovernability, habitual disobedience of the reasonable and lawful demands of parents, unruliness, begging, abandonment, neglect, engaging in an occupation dangerous to life or limb or injurious to health or morals, or leading an idle or dissolute, lewd or immoral life.

There is a great deal of variation among the states in regard to the age limit for juvenile court jurisdiction. At common law, a child under seven was presumed conclusively to be incapable of committing a crime. Between the ages of seven and fourteen, a child was presumed to lack such capacity, but the presumption was rebuttable by evidence demonstrating the existence of a mental capacity knowing right from wrong. Above fourteen, all persons were deemed capable of committing crimes and were punishable on the same basis as adults.

The general tendency among states with recently enacted legislation in this area has been to extend the jurisdiction of juvenile courts. It is difficult, however, to even summarize the statutory provisions of the various states on this matter because of variations in the juvenile court jurisdiction, and special provisions for particularly serious cases of delinquent behavior. Furthermore, many states provide for the retention of juvenile court jurisdiction where a particular case has been continued beyond the age limit for acquiring jurisdiction. The reader will find a few examples of state statutes establishing age jurisdiction requirements in Appendix A.

Forty states confer juvenile court jurisdiction over persons under eighteen:

Alabama	Hawaii
Alaska	Idaho
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Maine
Delaware	Maryland
District of Columbia	Minnesota
Florida	Mississippi



Montana	Pennsylvania
Nevada	Rhode Island
New Hampshire	South Dakota
New Jersey	Tennessee
New Mexico	Utah
North Carolina	Vermont
North Dakota	Virginia
Ohio	Washington
Oklahoma	West Virginia
Oregon	Wisconsin

Nebraska defines minors, for purposes of juvenile court jurisdiction, as persons under the age of sixteen. Seven states define a minor as a person under the age of seventeen:

Georgia	Missouri
Louisiana	South Carolina
Massachusetts	Texas
Michigan	

New York and Wyoming entrust the juvenile court with jurisdiction over persons under nineteen years of age; Illinois, under twenty-one years of age.

At least thirteen states have special provisions extending the jurisdiction of the juvenile court beyond these age limits where the actual or alleged incidents of delinquency occurred *before* those age limits:

Colorado	North Dakota
Florida	Ohio
Georgia	Pennsylvania
Hawaii	South Carolina
Louisiana	Texas
Nevada	West Virginia
New Hampshire	

### **Special Provisions for Serious Cases**

In cases involving allegations of criminal violations, states provide that the juvenile court—upon a finding of probable cause that the juvenile has committed an act which, if done by an adult, would constitute a felony or capital crime—may

waive its jurisdiction and order a juvenile tried as an adult under the criminal laws. Ordinarily such a waiver of jurisdiction also requires a finding that the child is not amenable to effective treatment as a juvenile, or that the public welfare and safety require criminal disposition in the particular case.

This procedure, therefore, allows for the imposition of severe sanctions, trial under criminal law and punishment, where appropriate in a particular case. It signifies a recognition that although the concept of *parens patriae* is a salutary approach to juvenile delinquency in most instances, because of the youth of the juvenile and presumed capacity for rehabilitation in a non-punitive treatment program, there are not infrequently cases of heinous juvenile conduct evidencing a mature, but malicious, disposition which justify prosecution.

Three states hold that upon the commission of any felony, specified felonies, or capital crimes, a juvenile may be criminally prosecuted as long as he is over thirteen years old:

Georgia  
Illinois  
Mississippi

Eleven states require that a juvenile may not be bound over for criminal prosecution unless he is over the age of fourteen:

Alabama	Minnesota
Colorado	Missouri
Florida	North Carolina
Indiana	Pennsylvania
Maryland	Utah
Massachusetts	

Eight states set the limit at age fifteen:

District of Columbia	New Mexico
Idaho	Ohio
Louisiana	Texas
Michigan	Virginia

The remaining jurisdictions which provide a procedure for the criminal prosecution of a juvenile, require that the juvenile be anywhere from sixteen to nineteen years old.

A legal basis in many states for a waiver of juvenile court

jurisdiction and criminal prosecution of a juvenile is a finding that the child is not amenable to rehabilitation by juvenile treatment facilities. Ten states grant juvenile court judges unrestricted discretion to determine whether a child should be criminally prosecuted:

Arkansas	South Carolina
New Hampshire	South Dakota
Mississippi	Utah
Nevada	Washington
Rhode Island	Wisconsin

Five states allow for a transfer to the jurisdiction of the criminal court upon the child's motion:

Florida	North Dakota
Illinois	Pennsylvania
New Jersey	

Nebraska and Nevada have a provision for waiving into juvenile court from a criminal court of concurrent or original jurisdiction. In some states the matter is not decided by the juvenile court. Either the juvenile court has jurisdiction concurrent with a trial court, or the criminal court is given exclusive and mandatory jurisdiction. In Rhode Island, for example, if a juvenile after the age of sixteen commits two felonies, the criminal courts have mandatory jurisdiction over any subsequent ones. In Mississippi, juvenile courts may retain jurisdiction or certify a case for criminal prosecution where a juvenile is charged with an offense which would be a felony if committed by an adult. However, criminal courts in Mississippi have mandatory jurisdiction over the commission by a juvenile of what would be a capital crime.

### **Public and Press Admission to Hearings**

The laws of most states contain some provision that hearings in juvenile cases be separate from those of adults, and that, in most situations, the general public be excluded from the hearings. Thirty-three states have a statute specifically requiring that, except for persons having a direct interest in a case, the public be excluded from juvenile court proceedings:

Alabama	Mississippi
Alaska,	Missouri
Arizona	Montana
California	Nevada
Connecticut	New Hampshire
Delaware	New Mexico
District of Columbia	North Dakota
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Pennsylvania
Illinois	Rhode Island
Iowa	Utah
Kentucky	Vermont
Louisiana	Virginia
Maine	Wisconsin
Massachusetts	Wyoming
Minnesota	

"Persons having a direct interest in a case" is usually interpreted to mean the juvenile respondents, their parents or guardians and attorneys, witnesses and perhaps officials from the state agencies (probation, law enforcement, and juvenile treatment) which have been, or may be, entrusted with the juvenile's care. Eleven states empower the juvenile court to exclude the public and the press.

Three states specifically require that the press be admitted if it so desires, regardless of whether the general public is excluded (either automatically, by statute, or at the request of the juvenile respondent).

In Colorado, Florida, South Dakota, and Washington, all proceedings are open to the public unless closed by court order.

Delaware, Maine, Montana, New Mexico, and Utah generally hold secret hearings but allow the press to attend where the juvenile is charged with the commission of a felony. However, New Mexico does prohibit publication of the identity of a juvenile defendant. Finally, seven states prohibit any publication regarding juvenile hearings without a court order.

## **Records**

Nearly all states specifically bar the public from access to juvenile court records either by statute or by local court rules. This prohibition is either absolute or can be overcome only by a showing of legitimate need and by a court order authorizing their inspection. Most states do open the legal records to

inspection by the parents or guardians, attorneys, other parties in the proceedings, and any agency to which legal custody of the child has been transferred.

In virtually every state, medical records, police records, and reports of probation officers, social agencies, and clinics are sealed. The legal records (orders, decrees, legal opinions, etc.), however, are a matter of public record in some states. In Iowa, such records are available to the news media without restriction. In Wisconsin, the record of a juvenile court proceeding is specifically available to reporters, but only on condition that the media not disclose the juvenile's identity.

An increasing number of states, in the interest of preventing a stigma of criminality from attaching to a youth once he or she has been deemed delinquent, have enacted statutes allowing courts to expunge a juvenile's records. Ordinarily the procedure involved requires the juvenile to petition the court for an order expunging the records. For such orders to be granted, the court must find that for a stated period (usually two years) since the juvenile's discharge from court, the juvenile (1) has not committed criminal offenses or delinquent acts, and (2) has been rehabilitated.

## **Sentence and Commitment of Minors**

There are five principal methods of disposition in cases involving adjudicated delinquent youth: (1) dismissal or discharge; (2) probation under conditions imposed by the court; (3) placement in a foster home; (4) commitment to a charitable or religious institution, or to a training school for juveniles; and (5) release on suspended sentence, or imposition of sentence and suspension of execution of judgment. In several states, the court is, in addition, specifically authorized to make any lawful disposition deemed in the welfare of the juvenile offender. Restitution of property taken, or reparation for damages caused by the juvenile, may be ordered by the court as a condition of dismissal of the charge or of probation. Because of the penal nature of fines, few states authorize their imposition upon juvenile offenders, and some explicitly prohibit them.

In a few states juvenile courts are empowered to commit offenders to penal institutions. In general, such commitments are limited to delinquents over a certain age who have committed serious offenses.

Unlike the sentence imposed by a criminal court after

conviction, which may not ordinarily be set aside, a juvenile court order with respect to treatment may usually be vacated, modified, or set aside by the court, as the case may require, in the interest of the child's welfare, and in the exercise of the court's power of continued jurisdiction.

*Continuance of a case under the court's jurisdiction* for a definite or indefinite period is a typical disposition employed by the juvenile courts to avoid formal adjudication of delinquency. If at a later date, the court finds it necessary to enter a finding of delinquency, retention of its jurisdiction during such continuance enables the child to be brought into court again without a new petition.



## Chapter II

### YOUTH IN CIVIL PROCEEDINGS: TORTS

Although a minor generally is not responsible for his contracts, he is almost always liable for his torts, or wrongful acts. A tort is a wrong, or violation of a person's personal or property rights.

An infant may not be liable for a tort which includes some element of intention or malice, such as libel, slander, malicious prosecution and deceit. The age and mental capacity of an infant is considered to determine whether the infant or minor is responsible.

Injured parties sometimes do not bring an action if the alleged wrongdoer is an infant, because the parent is not responsible, and the infant has no funds. However, a judgment is valid in most jurisdictions for as many as ten years, and may be renewed for another ten. Consequently, even if a minor does not have funds when sued, during such twenty year period he may acquire some. The injured party who has a judgment against the minor will then be able to recover damages plus interest.

#### **Rights to Recover Damages for Torts Inflicted Upon Infants**

When a minor is injured during his minority, rights of action arise immediately in his favor and in favor of his father (or mother, if the father is deceased), for the amount necessarily expended or to be expended for the minor's care and treatment, convalescence and lost earnings.

A minor may bring an action and recover not only against the person directly responsible for his injury (such as the driver of an automobile) but also against any person who may have contributed in any way to his injury (such as the owner of the automobile who permitted the driver to use it). Likewise, if a *minor is injured in a building*, he may recover against the landlord if he had actual notice of a defective condition and failed to repair it, and against the tenant if it was also the tenant's responsibility to repair the premises and keep them safe for persons lawfully entering them.

The infant is always entitled to recover for his pain and suffering. The amount varies from case to case, and from state



to state. In the more populous states, verdicts and settlements usually are larger than in the less densely inhabited areas. Recovery for pain and suffering varies, and will, to a large extent, be determined by the minor's doctor's reports. It is, therefore, important that when the minor is injured he be provided with immediate and constant medical advice and supervision. This is necessary, not only for the minor's recovery and well-being, but also for his ability to recoup his losses from the party or parties responsible for his injury. Both the person responsible, his lawyer, and his insurance carrier will rely heavily on the doctor's report, even though they will ask, with perfect propriety, that the minor be examined by their doctor. If their own doctor's report coincides with the report of the doctor who has cared for the injured minor, a substantial step towards the settlement of the claim has been made even if there is some question of liability or responsibility for the wrong.

Ordinarily, the father is responsible for a minor's medical care and treatment. In addition to the minor's own action for pain and suffering, disfigurement or permanent disability, his father will have a cause of action to recover for past and prospective medical expenses. For example, if the minor receives an injury which will require massage for a period of years, the court may not only award his father an amount for monies spent to date, but may include damages for a period of years for future treatment or rehabilitation. The same applies if successive operations will be necessary to restore the infant to the physical condition which he enjoyed prior to the accident.

Theoretically, until the minor attains his majority his earnings belong to his father, but if he can show a course of conduct whereby his own earnings had been placed in the bank, the minor himself may be entitled to recover for them. In most states, the minor will be entitled to recover for the period of his disability, or if he had an insurance policy which covered lost earnings. In a few states, however, the minor may recover or recoup only for what he actually lost, and if the minor's employer paid his salary, or if the minor had an insurance policy covering wages lost during the time of his injury or disability, he will not be permitted to recover from the person inflicting the wrong.

In many states there are causes of action which exist in favor of an infant which would not exist had such infant attained majority. For example, if an adult enters places of amusement and takes part in hazardous amusement, such adult is held to have assumed the risk of injury, but an infant, in many