

for The Defense

■ Training Newsletter of the Maricopa County Public Defender's Office ■

Volume 15, Issue 12

December 2005



Juvenile Matters

By Christina Phillis, Division Manager, Suzanne Sanchez, Juvenile Supervisor - Mesa, and Art Merchant, Juvenile Supervisor - Durango

Juvenile delinquency cases are viewed by some as relatively insignificant. After all, a juvenile adjudication is not a criminal conviction, and the consequence of a juvenile adjudication is little more than a “slap on the wrist” that is quickly forgotten after a client’s eighteenth birthday. Right? Wrong. Juveniles face immediate consequences that often are quite severe. Furthermore, collateral consequences of juvenile proceedings last well into adulthood, often for life.

Juvenile Cases

Contrary to popular belief, children still face a wide array of criminal charges in juvenile court. Even after juvenile law reform that enabled prosecutors to charge some juveniles as adults in some cases, a substantial number of felony cases are still prosecuted in juvenile court. These include sex offenses, homicides and other serious and complex cases that require the same degree of effort and skill to defend in the juvenile system as they do in the adult system. Being found legally responsible for any one of these crimes will significantly influence the direction of a child’s life. Children, the weakest members

of our society, deserve to have competent legal representation since they are the least likely to be able to navigate the system without knowledgeable assistance.

The child’s attorney is the first line of defense. Children need attorneys who can recognize the issues and other personal problems of the juveniles they assist. The attorney must protect the children from the awesome power of the State; otherwise, there is a significant risk that the children will grow up cynical and distrustful of the government. Since children are the future of our society, society must appreciate children’s constitutional rights.

Immediate Consequences

Prison for Misdemeanors

Any child who has been adjudicated delinquent faces incarceration in the Arizona Department of Juvenile Corrections. A delinquent act is any act that would be a crime if committed by an adult. Thus, a child can be sent to prison for a misdemeanor.



*Delivering
America's Promise
of Justice for All*

for The Defense

Editor: Dan Lowrance

*Assistant Editors:
Jeremy Mussman
Keely Farrow*

*Office:
11 West Jefferson, Ste 5
Phoenix, AZ 85003
(602) 506-8200*

Copyright © 2005

Volume 15 Issue 12

Furthermore, child imprisonment can last for any period of time until the child's eighteenth birthday. The court is completely powerless to order a maximum amount of incarceration for any child. Thus, the Arizona Department of Juvenile Corrections, and only the Arizona Department of Juvenile Corrections, decides when to release a child from imprisonment. Therefore, it is lawful for a twelve-year-old to serve six years in prison for a misdemeanor.

Prison for Drug Offenses

Children adjudicated delinquent for very minor drug offenses often are sent to prison. This is true even in cases in which an adult convicted of the very same charge must be granted probation. Thus, a thirteen-year-old adjudicated delinquent for possession of less than one gram of marijuana can lawfully serve five years in prison.

Lengthy Imprisonment

The risk of imprisonment until age eighteen is not merely theoretical. The court has broad discretion with respect to juvenile sentencing. However, the court of appeals very rarely finds an abuse of discretion with respect to child imprisonment, and last did so in an opinion published in April of 2000. At that time, the court was required to consider a section of a Arizona Supreme Court guideline suggesting

that misdemeanants generally should not be sent to prison. Shortly thereafter, that section of the guideline was abolished.

Prison Means Prison

There is no doubt that the facilities of the Arizona Department of Juvenile Corrections are prisons. It is true that children incarcerated at these facilities are supposed to receive rehabilitative treatment. However, children incarcerated in such facilities live behind walls, must adhere to strict regimens, and are policed by guards. Hence, it makes no difference that children's prisons are given euphemistic names. Children incarcerated in these institutions lose just as much freedom as do adults sent to prison.

Dangerous Prison Conditions

It is a widely-realized fact that prison life is dangerous. Unfortunately, juvenile prisons are no exception. The United States Department of Justice conducted an investigation of Arizona Department of Juvenile Corrections facilities from October 1, 2002, to January 13, 2003. The investigation resulted in written findings that incarcerated children were denied constitutional and federal statutory protections. The Department of Justice discovered insufficient suicide-prevention measures, and noted that an unusually large number of incarcerated children committed suicide. The Department of Justice also discovered that incarcerated children were inadequately protected from sexual and physical abuse perpetrated by other children and by adults. The Department of Justice also discovered deficiencies with respect to education, treatment, and dental and medical care.

Based upon its investigation, the Department of Justice filed a complaint against the Arizona Department of Juvenile Corrections on September 14, 2004. At the same time, the parties entered into a consent decree, which

Continued on p.9

Contents

Juvenile Matters	1
Left Holding the PV (Probation Violation) Bag? ..	3
Keeping Your Clients Employed	6
Civil Rights of Formerly Incarcerated People	8
Jury and Bench Trial Results	12

Continued from Juvenile Matters, p. 2

requires the Arizona Department of Juvenile Corrections to start making improvements. The consent decree gives the Arizona Department of Juvenile Corrections three years to correct the problems identified in the investigation.

No Bargaining for Less Punishment Means More Trials

Short of prevailing at trial, there is little that children can do to avoid the risk of prison. Often, adults enter into plea agreements in order to avoid prison or in order to avoid lengthy prison stays. Children cannot do so. In Maricopa County, the court does not accept plea agreements that contain any stipulations or limitations regarding sentencing. Hence, any child who is adjudicated delinquent faces imprisonment until age eighteen. At least partly for this reason, many more clients in juvenile court go to trial than do clients in criminal court. Thus, the juvenile court practitioner must know the rules of evidence inside out and be able to try cases of all types.

Cases of All Types Proceed to Trial Very Quickly

The juvenile court practitioner must have sufficient experience to work rapidly and efficiently, while remaining effective. Juvenile cases go to trial within 60 days of the initial appearance for out-of-custody clients and within 45 days for in-custody clients. Continuances seldom are requested because children are ineligible for bail and do not get credit for time served.

DUI Advocacy

Many juveniles, including quite a few too young to lawfully drive, face felony and misdemeanor DUI charges. These children face lengthy prison terms in cases in which adults would serve relatively brief jail sentences. Children, even older teens with

jobs and babies of their own to support, are not eligible for work release or work furlough. Moreover, any child adjudicated delinquent for any drinking and driving or impaired driving offense, including driving after taking one sip of beer, loses his or her driver's license for at least two years. This consequence may continue into adulthood. For example, a seventeen year old girl with a job and a baby to support will lose her driver's license until she is nineteen years old if she is adjudicated delinquent for taking one sip of light beer and driving.

Collateral Consequences

Sex Offender Registration

According to respected experts, teenagers accused of sex offenses often are not pedophiles. Children often are placed in intensive pedophilia treatment programs for activity that a generation ago was considered normal experimentation. These children experience surges in hormone levels, combined with impulse control that is even poorer than that of the typical teenager. Yet, if adjudicated delinquent, these children are subject to mandatory DNA testing and discretionary sex-offender registration. Sex-offender registration remains in place until the person reaches age 25. DNA information taken from a child very likely will remain in databases forever.

DNA Testing

The involuntary taking of DNA samples from children is not limited to those adjudicated delinquent for sex offenses. Rather it extends to any charge that could have been filed directly in criminal court, and other charges, including first and second degree burglaries, regardless of the child's age. Hence, an eleven-year-old child who is adjudicated delinquent for entering a neighbor's house without permission and taking a box of crayons must provide a DNA sample that will remain in databases forever.

HIV Testing

Children adjudicated delinquent for sex offenses are ordered to submit to HIV testing if a victim so requests. This often is the case. The results of HIV testing remain on file forever.

Pretrial Incarceration without Bail

Children are not eligible for bail. They often endure pretrial incarceration. This usually lasts for thirty days or more, often for offenses for which adults will not even see one day of jail. The child is oftentimes not incarcerated as punishment for the offense, but because the child's behavior is not appropriate in the home (e.g., coming home late, not listening, parents don't like the child's friends).

Huge Restitution Awards

Many children are ordered to pay enormous amounts of restitution. These debts do not vanish at adulthood. Instead, they become civil debt judgments when the child reaches eighteen. This in turn ruins credit, which can prevent them from doing things like renting housing.

Impact upon Parents

Parents can be ordered to pay as much as \$10,000.00 in restitution for their child's delinquent act. The fact that the parents did not participate in the unlawful act, could not have foreseen the unlawful act, and did not fail to adequately supervise their child is no defense.

Children adjudicated delinquent cannot live in public housing. Thus, many innocent parents and siblings have to leave public housing for this reason. This can cause families to become homeless.

The court often orders parents to contribute financially to the cost of probation,

incarceration, treatment, and counsel for the child.

If a parent does not come to court for a child's hearing, the court may hold the parent in contempt of court.

Often, a divorcing parent will go into debt and endure enormous emotional hardship in order to gain primary custody of a child. However, if the child is adjudicated delinquent, the juvenile court can undo all of that by placing the child with the other parent: the custody order of the juvenile court trumps the custody order of the divorce court.

Negative Impact upon Education

Time spent in pretrial incarceration without bail greatly impacts education. When children miss three to four weeks of schooling at a time, they are not likely to pass the semester. They therefore forfeit credits or are not promoted to the next grade. Children who fall behind their peers in school are far less likely to graduate from high school. People without high school educations are more likely to become involved in the adult criminal system. Thus, an indiscretion as a minor may haunt a child for life.

Loss of Driving Privileges

Children lose their driving privileges for numerous offenses that have absolutely nothing to do with driving. Often, these mandatory suspensions persist into adulthood, precluding youths from activities such as working in order to support their own children, going to community colleges and vocational schools, and participating in religious and other positive activities. Some lucky youths may receive restricted drivers licenses enabling them to work or go to school. The granting of such a restricted driver's license is within the court's discretion. However, administrative requirements prevent children who did not have a driver's license before their offense from obtaining a restricted driver's license.

A child loses his driving privileges until age eighteen if adjudicated delinquent for a graffiti offense. Hence, a child adjudicated delinquent for carving his initials into a tree at the age of twelve will not drive until the age of eighteen. A child adjudicated delinquent for theft or unlawful use of a means of transportation loses her driver's license until age eighteen. A child twice adjudicated delinquent for drinking or possession of alcohol, even if his offenses had nothing to do with driving or riding in a car, may lose his drivers license until age eighteen or for two years. A child also loses her driving privilege until age eighteen for any drug offense, even if the offense has nothing to do with driving. This is true even if the offense occurs when the child is thirteen and she becomes fully rehabilitated before becoming old enough to have a driver's license.

Records are Open and Not Automatically Set Aside

In the past, juvenile proceedings and records were kept private, and delinquency records "disappeared" when a child reached adulthood. Unfortunately, this no longer is the case. Juvenile proceedings are open to the public. Juvenile records and many related documents are subject to public inspection. Moreover, juvenile records never are automatically set aside or destroyed. Rather, destruction and set asides are granted only upon application, only for certain offenses and only if fairly rigorous conditions are met.

Fingerprints

A child adjudicated delinquent for any felony-level offense must provide fingerprints. Apparently, this data remains in databases forever.

Criminal Aggravation

Juvenile delinquency records may be used to aggravate criminal sentences. Juvenile

delinquency records may affect other criminal court matters, such as release and bond.

Loss of Civil Rights

A child adjudicated delinquent loses a variety of civil rights, including eligibility for public assistance. A child adjudicated delinquent loses her civil right to use a firearm, even when hunting under the direct supervision of her parents.

Negative Impact Upon Future Employment

As the job market becomes more competitive, children with juvenile records will be less likely to secure employment. Many children are unable to seal their juvenile records because the crime they committed as a young teen, thirteen or fourteen years of age, involved a weapon (butter knife, school scissors, tee ball bat, etc.), infliction of serious physical injury (broken nose) or indecent exposure (urinating behind a tree with their thirteen year old friend). The child is burdened with his immature decision for the remainder of his life.

Children with delinquency histories may find themselves unable to obtain various licenses. A child may never become a registered nurse or doctor due to being adjudicated delinquent for possession of a small amount of marijuana at thirteen. An adjudication of delinquency also can serve as an obstacle for a youth wishing to go to college, attend a trade school, or join the military. A child not competent to enter a legal contract can doom his entire future with one impulsive action.

Conclusion

Clearly, the consequences of adjudication in juvenile court often are grave and life-long. Hence, children deserve high-quality legal representation. To provide them with less would be to jeopardize their futures. And the future of our children is the future of our community.