

1977

Law and Tactics in Juvenile Cases

Adrienne E. Volenik

University of Richmond, avolenik@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>

 Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Adrienne E. Volenik et. al., *Law and Tactics in Juvenile Cases* (3d. ed. 1977).

This Book is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Law and Tactics in Juvenile Cases

Third Edition

Paul Piersma

of the Michigan and Missouri Bars

Jeanette Ganousis

of the Missouri Bar

Adrienne E. Volenik

of the Maryland and Missouri Bars

Harry F. Swanger

of the Pennsylvania Bar

Patricia Connell

of the Pennsylvania and Missouri Bars



A Project of the National Juvenile Law Center

AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION
COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION
4025 CHESTNUT STREET • PHILADELPHIA • PENNSYLVANIA 19104

Library of Congress Catalog Number: 77-83016

© 1977 by The American Law Institute. All rights reserved

Printed in the United States of America

The views and conclusions expressed herein are those of the authors and are not necessarily those of the American Law Institute-American Bar Association Committee on Continuing Professional Education or of its sponsors or of any agency of the United States Government.

Foreword

ALI-ABA's criminal law publications have sought to encourage more members of the profession to participate in this phase of the practice of the law. Basic to promoting this objective, as the first Arden House Conference on Continuing Education of the Bar observed,* was the enlargement of post-admission legal education opportunities for enhancing professional qualification in the handling of criminal cases. One result of the Arden House recommendations was ALI-ABA's series of pamphlets on *Problems in Criminal Law and Its Administration*, a series now being updated and reissued with the addition of some new titles. Later there followed the *Trial Manual for the Defense of Criminal Cases*, now in its third edition, which was a joint project of the American College of Trial Lawyers, the National Defender Project of the National Legal Aid and Defender Association, and ALI-ABA.

Accordingly, ALI-ABA was pleased to accept the suggestion of the National Juvenile Law Center to undertake the publication of the third edition of *Law and Tactics in Juvenile Cases*. It views this volume as yet another advance, in a significant area of criminal law and practice, toward the goal set almost twenty years ago by the conferees at Arden House.

PAUL A. WOLKIN
Executive Director,
The American Law Institute-
American Bar Association Committee
on Continuing Professional Education

*CONTINUING LEGAL EDUCATION FOR PROFESSIONAL COMPETENCE AND RESPONSIBILITY, REPORT ON THE ARDEN HOUSE CONFERENCE, December 16-19, 1958. (American Law Institute, Philadelphia, 1959) LP xiii-xvi, 293.

Contents

Foreword vii

Preface ix

Part I Overview

Chapter 1

The Juvenile Justice System	3
1.1 History and Philosophy	3
1.2 Criticisms	7
1.3 Recent Supreme Court Decisions	13
1.4 The Need for Legislative Revision	15
1.5 Selected Bibliography	18

Part II Delinquency Proceedings

Chapter 2

Jurisdiction	21
2.1 Scope of the Chapter	21
2.2 Subject Matter Jurisdiction	21
2.3 Vagueness Challenges to Statutes	24
2.4 Age	28
.4a Maximum Age	28
.4b Age Determination Date	29
.4c Maximum Age for Continuing Jurisdiction	31
.4d Infancy as a Defense	31
2.5 Venue	33
2.6 Interstate Jurisdiction	37
2.7 Selected Bibliography	41

Chapter 3

Role of Counsel	43
3.1 Scope of the Chapter	43
3.2 Right to Counsel	43
3.3 Role of Counsel	46
3.4 Effectiveness of Counsel	51
3.5 Ethical Considerations	57
3.6 Selected Bibliography	59

Chapter 4

Arrests		61
4.1	Scope of the Chapter	61
4.2	Statutory Grounds for Taking the Child into Custody	61
4.3	Applicability of the Fourth Amendment	63
4.4	Duties of Person Taking Child into Custody	66
4.5	Selected Bibliography	68

Chapter 5

Confessions		69
5.1	Scope of the Chapter	69
5.2	Application of the Exclusionary Rule to Juvenile Proceedings	70
5.3	Custodial Interrogation	72
5.4	Waiver of <i>Miranda</i> Rights by Juveniles	75
5.5	Factors Considered in Evaluating Validity of Waiver	79
.5a	Age	79
.5b	Mental Age	80
.5c	Previous Police or Court Experience	81
.5d	Advice or Presence of Parents or Counsel	82
.5e	Physical Condition	85
.5f	Held Incommunicado	85
.5g	Methods of Interrogation	86
5.6	Violations of Statute as Basis for Excluding Confessions	86
5.7	Corroboration of Confessions	90
5.8	Special Problems with Confessions at Intake	92
5.9	Failure To Warn of Possible Transfer to Adult Court	95
5.10	The Use of Otherwise Inadmissible Confessions for Impeachment	97
5.11	Research Data and Implications for Juvenile Waiver of Rights	98
5.12	Selected Bibliography	101

Chapter 6

Search and Seizure		103
6.1	Scope of the Chapter	103
6.2	The Fourth Amendment, the Exclusionary Rule, and Search Warrants	103
6.3	Exceptions to the Warrant Requirement	108
.3a	"Stop and Frisk"	108
.3b	Search Incident to an Arrest	109
.3c	Plain View	110
.3d	Consent	111
.3e	Hot Pursuit	112
.3f	Automobile Searches	112
6.4	Application of the Exclusionary Rule to Juvenile Cases	113

	61	6.5	The Probable Cause Standard in Juvenile Cases	115
	61	6.6	Consent To Search in Juvenile Cases	117
into Custody	61	6.7	School Searches	118
	63	6.8	Premotion Tactics in Suppression Cases	121
ody	66	6.9	Selected Bibliography	123
	68			
			Chapter 7	
			Identification	125
		7.1	Scope of the Chapter	125
		7.2	Eyewitness Identification	126
	69	7.3	Lineups	128
Juvenile	69	7.4	Lineups: Rights of Juveniles	134
	70	7.5	Lineups: Function of Counsel	139
	72	7.6	Lineup Fill-Ins: Rights of Juveniles	141
	75	7.7	One-to-One Identification	145
ty of Waiver	79	7.8	Photographic Identification	151
	79	7.9	Attacking Eyewitness Identification	157
	80	7.10	Fingerprint Identification	161
	81	7.11	Other Forms of Identification	169
el	82	.11a	Blood and Other Samples	169
	85	.11b	Handwriting Exemplars	171
	85	.11c	Voice Identification and Voiceprints	174
	86	.11d	Films and Videotapes	176
ing Confessions	86	7.12	Selected Bibliography	179
	90			
take	92		Chapter 8	
o Adult Court	95		Detention	181
essions for		8.1	Detention, Shelter Care, and Alternatives	181
	97	8.2	Screening Admissions to Detention	182
venile Waiver of		8.3	Right to a Detention Hearing	184
	98	8.4	Right to a Probable Cause Determination	187
	101	8.5	Right to Counsel at Detention Hearing	191
		8.6	Evidentiary Requirements for Decision To Continue Detention	193
	103	8.7	Right to Bail	195
	103	8.8	Release To Participate in Defense	199
ary Rule, and		8.9	Care and Treatment in Detention	200
	103	8.10	Federal Support for Alternatives to Jail and Secure Detention	208
	108	8.11	Selected Bibliography	211
	108			
	109		Chapter 9	
	110		Intake	213
	111	9.1	Scope of the Chapter	213
	112	9.2	Intake Adjustment Possibilities	213
Juvenile Cases	112	9.3	Intake Criteria	215
	113			

9.4	Responsibility for the Intake Decision	218
9.5	Right to Counsel	219
9.6	Tactical Considerations	223
9.7	Selected Bibliography	225

Chapter 10

Prehearing Issues		227
10.1	Scope of the Chapter	227
10.2	Prehearing Motion Practice	227
10.3	Discovery: Statutory Basis	229
10.4	Discovery: Constitutional Arguments	238
10.5	Discovery: Informal Basis	242
10.6	Notice of Charges	248
10.7	Notice: Service on Necessary Parties	254
10.8	Notice: Timeliness	256
10.9	Waiver of the Right to Notice	259
10.10	Prior Jeopardy	261
10.11	Speedy Trial	267
10.12	Selected Bibliography	272

Chapter 11

Transfer		273
11.1	Scope of the Chapter	273
11.2	Overview of the Transfer Process	273
11.3	The Decision To Transfer	276
11.4	The <i>Kent</i> Case	277
11.5	Statutory Criteria: Age and Offense	281
11.6	Other Statutory Requirements	282
11.7	Constitutional Challenges to Transfer Statutes	290
11.8	Double Jeopardy: Application of <i>Breed v. Jones</i>	292
11.9	Transfer Hearing	294
.9a	Right to a Hearing	294
.9b	Notice	295
.9c	Evidence	297
.9d	Proof	298
11.10	Right to Counsel	298
11.11	Transfer Order	299
11.12	Selected Bibliography	301

Chapter 12

Hearing on the Petition		303
12.1	Scope of the Chapter	303
12.2	Right to an Impartial Judge	304
12.3	Right to an Attorney Judge	309
12.4	Right to Counsel	311
.4a	Waiver of the Right to Counsel	312

218
219
223
225

227
227
227
229
238
242
248
254
256
259
261
267
272

273
273
273
276
277
281
282
290
292
294
294
295
297
298
298
299
301

303
303
304
309
311
312

statutes
Jones

.4b	The Right to the Effective Assistance of Counsel	314
12.5	Pleading to a Petition	317
12.6	Burden of Proof	322
12.7	Standard of Proof	323
12.8	Rules of Evidence	325
.8a	Hearing	325
.8b	Privileged Communications	326
.8c	Competency of Witnesses	327
12.9	Privilege Against Self-Incrimination	328
12.10	Confrontation and Cross-Examination of Witnesses	330
12.11	Jury Trial	331
12.12	Public Hearing	334
12.13	Separate Hearings	337
.13a	Severance of Codefendants	337
.13b	Severance of Charges	339
12.14	Insanity as a Defense	340
12.15	Selected Bibliography	343

Chapter 13

Disposition		345
13.1	Scope of the Chapter	345
13.2	Determination of the Child's Best Interests	345
13.3	Right to a Hearing	347
13.4	Right to Counsel	351
13.5	Access to Predisposition Reports	353
13.6	Cross-Examination at Disposition	354
13.7	Commitment to an Adult Institution	355
13.8	Probation	358
13.9	Financial Penalties	360
13.10	Restrictions on Freedom of Movement	364
13.11	Restrictions on Freedom of Expression	366
13.12	Compulsory Treatment	367
13.13	Indefinite Terms of Probation	368
13.14	Other Limitations on Conditions of Probation	369
13.15	Grounds for Revocation of Probation and Parole	373
13.16	Right to a Hearing at Probation Revocation	374
.16a	Standard of Proof	377
.16b	Evidence	378
13.17	Right to Counsel at Probation Revocation Hearing	379
13.18	Modification of Disposition	383
13.19	Challenges to Inappropriate Disposition	385
13.20	Selected Bibliography	391

Chapter 14

Appeal and Collateral Attack		393
14.1	Scope of the Chapter	393
14.2	Right of Appeal	393

14.3	Appealable Orders and Judgments	397
14.4	Procedure on Appeal	403
.4a	Supersedeas	403
.4b	Transcript	405
.4c	Indigency	406
.4d	Counsel	407
14.5	Scope of Review	408
14.6	Collateral Attack	410
14.7	<i>Habeas Corpus</i>	412
14.8	Mootness	419
14.9	Selected Bibliography	422

Chapter 15

Records 423

15.1	Scope of the Chapter	423
15.2	Disabilities	423
15.3	Access to Juvenile Records	426
15.4	Expungement, Sealing, and Destruction	427
15.5	Expungement Without Statutory Authority	429

Part III The Parent-Child Relationship

Chapter 16

The Child Protection System 433

16.1	Scope of the Chapter	433
16.2	Nature and Status of Parental Rights	434
16.3	The State: <i>Parens Patriae</i>	436
16.4	Emerging Rights of the Child	439
16.5	The Best Interests of the Child	441
16.6	Role of Counsel	444
16.7	Selected Bibliography	446

Chapter 17

Jurisdiction 447

17.1	Scope of the Chapter	447
17.2	Definitions: Abuse, Neglect, Termination	447
17.3	Jurisdiction	449
17.4	Child Battering	452
17.5	Failure To Provide Medical Care	456
17.6	Failure To Provide Necessary Education	458
17.7	Failure To Provide Necessary Food, Shelter, or Clothing	460
17.8	Dependency	461
17.9	Abandonment	463
17.10	Mental Illness of Parent	465

397
403
403
405
406
407
408
410
412
419
422

423
423
423
426
427
429

433
433
434
436
439
441
444
446

447
447
447
449
452
456
458

460
461
463
465

17.11	Nonconformity to Cultural Patterns	468
17.12	Parental Immorality	470
17.13	Emotional Neglect	473
17.14	Vagueness Challenges	474
Chapter 18		
Taking into Custody		481
18.1	Scope of the Chapter	481
18.2	Applicability of the Fourth Amendment	481
18.3	Necessity for a Hearing To Detain Children	483
18.4	Other Prehearing Issues	486
Chapter 19		
Prehearing Adjustment Possibilities		489
19.1	Scope of the Chapter	489
19.2	Shelter Care	490
19.3	Right to Supportive Services	491
19.4	Temporary Custody Agreements with Social Agencies	492
Chapter 20		
Adjudicatory Hearing		495
20.1	Scope of the Chapter	495
20.2	Notice and Service of Process	495
20.3	Right to Counsel for Parents	498
20.4	Right to Counsel for Children	502
20.5	The Privilege Against Self-Incrimination	504
20.6	Access to Social Investigation Reports	506
20.7	Failure To Provide Supportive Services	508
20.8	Current Finding of Neglect	508
20.9	Waiver of Hearing on Neglect Because of Voluntary Agreement	512
Chapter 21		
Dispositional Hearing		515
21.1	Scope of the Chapter	515
21.2	Procedural Aspects in Disposition Hearings	515
21.3	The Right to Supportive Services in the Home	516
21.4	Resisting Institutional Placement	521
Chapter 22		
Appeal		525
22.1	Scope of the Chapter	525
22.2	Right to Appeal	525
22.3	Procedural Rights	527

Part IV Treatment**Chapter 23**

Right to Treatment		533
23.1	Scope of the Chapter	533
23.2	Judicial Recognition of a Right to Treatment	533
23.3	Right to Treatment: Statutory Sources	536
23.4	Right to Treatment: Due Process Arguments	537
23.5	Right to Treatment: Equal Protection Arguments	541
23.6	Right to Treatment: Cruel and Unusual Punishment Arguments	543
23.7	Right to Treatment: The Least Restrictive Alternative	546
23.8	The Right Not To Be Treated	547
23.9	Selected Bibliography	549

Chapter 24

Delivery of Services		551
24.1	Scope of the Chapter	551
24.2	Delinquency Prevention	551
.2a	Equalizing Opportunities	552
.2b	Community Organization	552
.2c	Institutional Change	553
.2d	Effectiveness of Delinquency Prevention	554
.2e	Federal Support for Prevention Activities	554
24.3	Deinstitutionalization	556
.3a	Federal Grants to the States	557
.3b	Federal Discretionary Grants	559
.3c	New Shelter Care Programs	559
.3d	New Uses for Detention and Correctional Facilities	560
.3e	Monitoring and Enforcement	560
24.4	Diversion	561
.4a	Youth Service Bureaus	561
.4b	Federal Support for Diversion Programs	562
.4c	Discretionary Grants	562
.4d	Runaway Youth Act	564
24.5	Preservation of Family Integrity	565
24.6	Selected Bibliography	567

Chapter 25

Treatment Methodologies		569
25.1	Scope of the Chapter	569
25.2	Social Casework	569
.2a	Theory	570
.2b	Method	571
.2c	Criticism	576
25.3	Groupwork	576

533
 533
 533
 536
 537
 541
 543
 546
 547
 549
 551
 551
 551
 552
 552
 553
 554
 554
 556
 557
 559
 559
 560
 560
 561
 561
 562
 562
 564
 565
 567
 569
 569
 570
 571
 576
 576

.3a Theory 577
 .3b Methods 578
 .3c Criticism 580
 25.4 Guided Group Interaction (Positive Peer Culture) 581
 .4a The Theory Behind GGI 582
 .4b Characteristics of a GGI Program 583
 25.5 Behavior Modification 589
 .5a The Theory Behind Behavior Modification 590
 .5b Applying the Behavior Modification Approach to Delinquents 592
 .5c Summary of Behavior Modification 596
 25.6 Reality Therapy 596
 .6a The Theory Behind Reality Therapy 597
 .6b The Application of Reality Therapy 598
 .6c Reality Therapy in an Institutional Setting 600
 .6d Summary of Reality Therapy 601
 25.7 Transactional Analysis 602
 .7a The Theory Behind Transactional Analysis 602
 .7b Transactional Analysis in Practice 605
 .7c Summary of Transactional Analysis 607
 25.8 Selected Bibliography 607

Part V Institutions

Chapter 26

Challenges to Conditions of Confinement 611
 26.1 Scope of the Chapter 611
 26.2 Major Cases 611
 26.3 Treatment Programs 623
 26.4 Institutional Rules 624
 26.5 Disciplinary Procedures 626
 26.6 Solitary Confinement 633
 26.7 Access to Counsel and Courts 637
 26.8 Mail 638
 26.9 Education 640
 26.10 Recreation and Exercise 646
 26.11 Freedom of Religion 648
 26.12 Mental and Physical Care 652
 26.13 The Right to Privacy and Possessions 655
 26.14 Involuntary Servitude 657
 26.15 Freedom of Speech and Expression 659
 26.16 Selected Bibliography 661

Part VI Litigation

Chapter 27

Federal Court Litigation 665
 27.1 Scope of the Chapter 665

27.2	Federal Practice Considerations in Civil Rights Actions	666
.2a	The Proper Parties	666
.2b	Doctrines That Impede Civil Rights Cases	669
.2c	Three-judge Courts	672
27.3	The Federal <i>Habeas Corpus</i> Statute	672
.3a	Persons in Custody	672
.3b	<i>Habeas Corpus</i> Procedure	675
.3c	The Exhaustion of State Remedies Requirement	677
.3d	Search and Seizure Claims Under <i>Habeas Corpus</i>	678
27.4	Removal of State Cases to Federal Courts	678
27.5	Class Actions in Federal Courts	679
.5a	General Considerations	679
.5b	<i>Habeas Corpus</i> Class Actions	681
27.6	Selected Bibliography	681

Chapter 28

Forms	683
Table of Cases	741
Table of Statutes, Regulations, and Rulings	771
Index of Subjects	775

Preface

Preparing a practice manual for legal services and defense attorneys located in all parts of the country is a difficult assignment. Despite differences in state juvenile codes and significant variations in the evolution of case law in each jurisdiction, there are common issues and problems in the juvenile and family law fields. Although this Manual is not designed to answer definitively questions of law that arise in a particular jurisdiction, it does present a comprehensive overview of the issues. In addition, it proposes solutions to the common problems, outlines challenges to improper practices, and suggests tactics to be employed in representing the client.

The need for a manual of this nature was perceived several years ago. In response, the National Juvenile Law Center produced two prior editions of this book: an experimental first edition published in 1971 and an expanded edition in 1974. Each edition refined and added to the contents. The current edition incorporates comments and suggestions from legal services and defense attorneys who have used the Manual in practice. Their remarks have greatly enhanced the effectiveness and utility of this third edition.

Production of this Manual was a total staff effort; members of the staff authored various chapters and assisted in the writing of other sections. We wish to express our appreciation to Michael A. Wolff, an attorney and member of the Center's Advisory Board, for his contributions as an author and as an adviser during the completion of this project. We also wish to acknowledge the substantial contributions and suggestions made by David C. Howard and Stephen D. Smith, Center attorneys, who joined the staff in the final stages of the project.

Throughout the preparation of this Manual, we have been assisted by an extraordinary support staff: Jane M. Chambers, Mary E. Holstein, and Katherine H. Swanger, to whom we wish to express our gratitude.

We are also indebted to the following law students who assisted in the research and preparation of the text: Walter D. Barra, Robert S. Bogard, Marcia L. Conlin, Marla Meg Gordon, Vivien Hastings, Joseph A. McCormick, Jr., Timothy Noelker, Elyn Roth, Donald Russo, and James E. Sullivan.

PAUL PIERSMA
JEANETTE GANOUSIS

St. Louis, Missouri