

The Children's Immigration Law Academy Presents:

Litigation and Advocacy For UC in the Next Four Years

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Presented By:
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Juvenile Law: Who is Eligible?

- ▶ Persons at least 10 years old up to 17 years old
- ▶ Jurisdiction is determined by the age at the time the offense was committed
 - ▶ A crime committed before the child turns 17 years old will be prosecuted as a juvenile
 - ▶ A crime committed after the child turns 17 years old will be prosecuted as an adult
- ▶ Level of Offenses: Class B Misdemeanors – 1st Degree Felonies

How long does a juvenile court maintain jurisdiction/authority over a juvenile?

- ▶ Misdemeanor Offenses:
 - ▶ Until juvenile's 18th birthday
 - ▶ Juvenile may remain at home or in the Harris County Juvenile Detention Center during the pendency of the case
 - ▶ Upon conclusion of the case: Juvenile may be ordered home to parent/guardian or to a county-run facility/private placement while on probation

How long does a juvenile court maintain jurisdiction/authority over a juvenile?

- ▶ Felony Offenses: (most cases are indeterminate petitions)
 - ▶ Jurisdiction can last until juvenile's 19th birthday
 - ▶ Juvenile may remain at home or in the Harris County Juvenile Detention Center during the pendency of the case
 - ▶ Upon conclusion of the case: Juvenile may be ordered home to parent/guardian or to a county-run facility/private placement while on probation, or to the Texas Juvenile Justice Department (TJJD, formerly TYC)

How long does a juvenile court maintain jurisdiction/authority over a juvenile?

- ▶ Felony Offenses, Continued
- ▶ Two ways a juvenile case can end up in adult court:
 - ▶ State of Texas can seek a Determinate Petition
 - ▶ Enhances the punishment available for certain serious offenses
E.g. Murder, Aggravated Robbery, Sexual Assault
 - ▶ Allows for possible transfer to an adult criminal court for continued supervision or adult penitentiary for incarceration
 - ▶ State gets "permission" for determinate sentencing from a grand jury — state's discretion to seek determinate
 - ▶ Juvenile Jurisdiction can be waived, upon request of the state, and the juvenile is treated as an adult going forward
 - ▶ Waiver of Jurisdiction, or "Certification" – juvenile is eligible for the full range of punishment as an adult would be
 - ▶ Hearing is held in juvenile court first – judge has discretion to transfer
 - ▶ Any felony offenses eligible for Certification

Adjudication

- ▶ Similar to "Guilt/Innocence" phase in adult criminal court
- ▶ Juvenile can plead "True" (or *Guilty*) to the criminal allegation, or can have a trial by Judge or Jury
- ▶ Right to a jury trial belongs ONLY to the juvenile – unlike adult court
- ▶ Court makes findings that juvenile "did engage in delinquent conduct" and that rehabilitation is necessary
- ▶ Most court procedure rules follow adult criminal rules (unless Family Code states that civil law applies)

Disposition

- ▶ After Adjudication comes the Disposition, or Punishment, phase
- ▶ If *Indeterminate* adjudication, disposition is ALWAYS done by the Court — unlike adult criminal court, where defendant can always elect jury to assess punishment
- ▶ If *Determinate* adjudication, juvenile can elect to have either Court or Jury assess punishment
- ▶ Defense can present any relevant information to the Court in the disposition phase (school transcript, letters of reference, etc)
- ▶ State can present any relevant negative information

Disposition Ranges

- ▶ Indeterminate Misdemeanor:
Probation until the juvenile's 18th birthday
- ▶ Indeterminate Felony:
Probation until the juvenile's 18th birthday
or
TJJD (juvenile prison) until the juvenile's 19th birthday
- ▶ Determinate Felony (no determinate misdemeanors)
 - 1st Degree Felony: 0 – 40 years, or up to 10 year probation
 - 2nd Degree Felony: 0 – 20 years, or up to 10 year probation
 - 3rd Degree Felony: 0 – 10 years, or up to 10 year probation

“No Disposition” means No Punishment — adjudication stands!

Am I in Custody?

- ▶ Factors:
 - ▶ Was a parent asked to accompany or bring a juvenile to a location (versus law enforcement bringing the juvenile)
 - ▶ Whether the juvenile was handcuffed or restrained
 - ▶ Whether the juvenile was allowed to leave after the interview
 - ▶ Whether Miranda warnings were provided by a magistrate
 - ▶ Whether parent was notified of arrest and crime alleged
 - ▶ School principal's office is not being in custody if providing an administrative statement

In Custody: Written Statement

- ▶ Lawful detention
- ▶ Go directly to a Juvenile Processing Office without unnecessary delay
- ▶ Notify parent/guardian of arrest, including legal reason
- ▶ Have a magistrate give the juvenile Miranda Warnings before taking the statement
- ▶ Magistrate is not present during the statement
- ▶ Typed or written statement in the juvenile's words
- ▶ Law enforcement leaves and Magistrate re-enters
- ▶ Magistrate verifies that statement was given knowingly, intelligently and voluntarily and that the juvenile is waiving rights, and juvenile signs statement

Custody: Oral/ Video Statement

- ▶ Lawful Detention
- ▶ Same steps as above (take juvenile to Juvenile Processing Office and notify parent or guardian)
- ▶ Magistrate must provide Miranda warnings on the recording (video or audiotape)
- ▶ Then law enforcement can conduct the interview outside the presence of the Magistrate but in a Juvenile Processing Office only
- ▶ Magistrate's discretion to order juvenile back to review the audio or videotaped statement for voluntariness

Ultimate Question To Determine A Custodial Situation

- ▶ Prior to giving a statement ...

AM I FREE TO GO?

Other topics . . .

Working with juveniles versus adults

The “Parent” Factor—how to incorporate them without killing them!

Duty to the Client versus Tough Love

Court Appointed Attorneys versus Public Defenders

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