

JUVENILE LAW VS. CRIMINAL LAW AN OVERVIEW

BY BRIAN J. WILLETT

he history of Texas juvenile law dates back to 1836 when the Republic of Texas established the age of eight as the age of criminal responsibility. Eighty-two years would pass (1918) before that age would be raised to the current age of 17. In 1943, the Texas Legislature adopted special civil procedures to replace the criminal procedures that were in place to deal with juveniles charged with a criminal offense.

It was the landmark case of *Morales v. Truman*, 1971 326 F. Supp (E.D. Tex. 1971), that led to sweeping changes to the Texas juvenile justice system. The case involved 15-year-old Alicia Morales, who was forced to work and surrender all of her income to her father. She became defiant of this practice, and in response, her father had her committed to the Texas Youth Commission (TYC). Morales never received notice of the charge against her, was never given an opportunity to be heard in court, and was never provided with legal counsel. In short, her due process rights were denied in several different ways.

To gauge the extent of such violations, letters were sent to the 2,500 youths then incarcerated by the TYC, inquiring if they had been given the opportunity to have a hearing before their adjudication and sentencing, and if they had been represented by counsel. The majority had been granted a hearing, but more than one-third had not been represented by an attorney. The letters were followed up by individual interviews of the confined youths. The court discovered that 60 percent of the boys incarcerated in TYC were in custody for the offense of theft, 19 percent for disobedience and immoral conduct, and only 9 percent for violent crimes. For girls, the imprisonment numbers were even more shocking, 68 percent were confined for disobedience and immoral conduct and only 4 percent for violent crimes.

After years of negotiations, including a hearing before the U.S. Supreme Court, a settlement was reached in 1984. The *Morales* case prompted a number of beneficial changes to Texas juvenile law and procedure, including the following:

- a separate category for juvenile court dispositions called "conduct indicating a need for supervision";
- 2. due process rights in juvenile court hearings and TYC administrative hearings;
- 3. corporal punishment prohibition;
- 4. the development of individualized, specialized, and community-based treatment programs; and
- 5. the appropriation of state funds to assist counties in providing probation services.

JUVENILE VS. CRIMINAL LAW

The fundamentals of the two systems can be found principally in three different Texas codes. The juvenile system is outlined in the Texas Family Code and the criminal system can be found primarily in the Texas Penal Code and the Texas Code of Criminal Procedure.

The two systems have basic similarities, including the right to receive Miranda warnings, the right to be free from self-incrimination, the right to an attorney during critical court proceedings, plea bargaining, the right to a jury at the delinquent/not

delinquent or guilty/not guilty stage of a trial, the requirement that the State prove its case beyond a reasonable doubt, pretrial detention, community supervision (probation), community service hour requirements, and restitution when appropriate.

Differences in the two systems mainly exist because of the distinction of their purposes. The juvenile system's principal function is to protect and rehabilitate a delinquent child, while it can be argued, the main goal of the adult system is to punish a guilty offender.

Even the terminology created for the juvenile system is one based on civil rather than criminal standards. A juvenile is referred to as a respondent, not as a defendant. A juvenile is alleged to have committed a delinquent act rather than a criminal offense. A juvenile is generally not charged by an indictment or information; he or she is brought before a juvenile court by the filing of a petition. A juvenile is not arraigned in court at his or her first appearance, but is instead held to appear for a detention hearing. While a juvenile is detained and adjudicated, an adult is arrested and convicted.

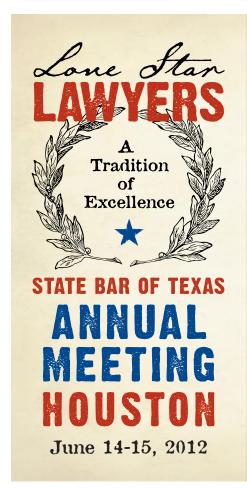
Age determines the jurisdiction of a juvenile court while the type of offense determines the jurisdiction of a criminal court. Juvenile court procedures are usually informal and may be held privately, while criminal court procedures are more formal and open to the public. Identifying information about a juvenile, as a rule, cannot be released to the media while information about an accused adult offender is considered public information. In the juvenile system, parents/guardians are encouraged and sometimes required to be involved in their child's rehabilitation, but not so in the adult system. A juvenile may be released into the custody of a parent/guardian, while an adult will typically be required to post bail.

Under most circumstances, a juvenile's adjudication/disposition record will be eligible for sealing, while an adult has only limited circumstances where an expunction or order of non-disclosure may be granted. A juvenile who is certified as an adult cannot be sentenced to death for a capital offense that occurred before the juvenile was 18 years of age. Finally, the juvenile court's main objective is to focus on the best interests of the child in determining what services or protections are needed to benefit the juvenile, while the criminal court generally focuses on invoking a punishment proportionate to the crime.

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