

JUVENILE LAW AND ITS UNIQUE ISSUES

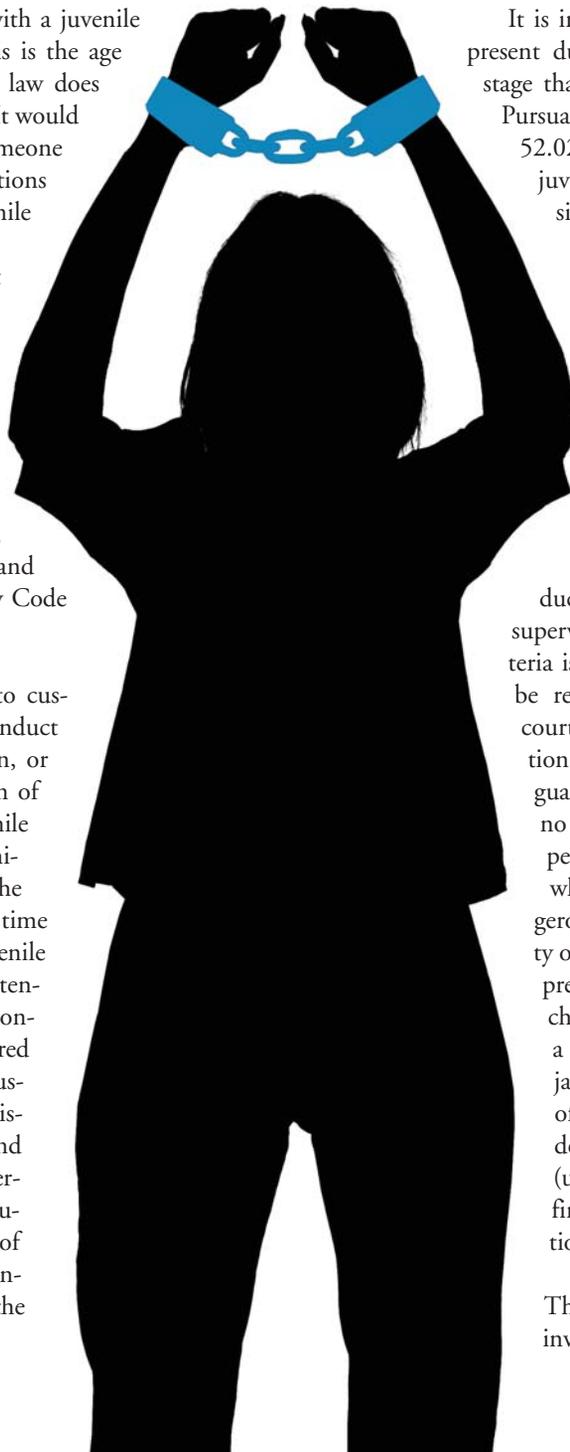
BY JUDGE BILL MAZUR

It's after midnight, your cell phone rings, and it's your best client on the line. He's received a call from local law enforcement informing him that his 16-year-old son has been arrested for a criminal offense. Confused and panicked, he wants you to intervene and bond his son out. What do you do? First, you must realize that juveniles are not entitled to bond. There is an entirely new set of rules that applies to the release of a child once taken into custody. The notice, or phone call, your client received is required by Section 52.02(b) of the Texas Family Code, which states: "A person taking a child into custody shall promptly give notice of the person's action and a statement of the reason for taking the child into custody, to (1) the child's parent, guardian, or custodian; and (2) the office or official designated by the juvenile board." Even a criminal practitioner may not be fully aware of these distinctions between the juvenile and the adult criminal system.

If at all possible make contact with a juvenile practitioner at this early stage. This is the age of legal specialization and juvenile law does present a number of unique issues. It would serve the juvenile well to have someone fully acquainted with the distinctions between the adult and the juvenile system.

For instance, the child is not entitled to bond; however the child is, under Texas Family Code Section 61.103, entitled to have a parent, guardian, or attorney present while the juvenile is being processed. If possible, the parent and/or attorney should be present during this processing, which can include interrogation and obtaining confessions. Texas Family Code Section 61.103 states:

The parent of a child taken into custody for delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court has the right to communicate in person privately with the child for reasonable periods of time while the child is in: (1) a juvenile processing office; (2) a secure detention facility; (3) a secure correctional facility; (4) a court-ordered placement facility; or (5) the custody of the Texas Youth Commission; (b) the time, place, and conditions of the private, in-person communication may be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.



It is important to have a parent or attorney present during processing because it is at this stage that most written confessions are taken. Pursuant to the Texas Family Code Section 52.025(d), a child may not be detained in a juvenile processing office for longer than six hours, so time is of the essence.

In the event that a child is not returned to the parent by the pertinent filing agency, a detention hearing must be held. The parent should be present along with counsel. The Texas Family Code mandates an administrative release if:

(1) The person is not a child; (2) there is no probable cause to believe the person engaged in delinquent conduct or conduct indicating a need for supervision; or (3) none of the detention criteria is met; (a) child is likely to abscond or be removed from the jurisdiction of the court; or (b) suitable supervision or protection is not being provided by a parent, guardian, custodian, or other person; (c) no parent, guardian, custodian, or other person is able to return the child to court when required; (d) the child may be dangerous to himself or may threaten the safety of the public if released; (e) the child has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term in jail or prison and is likely to commit an offense if released; or (f) the child's detention is required under 53.02(f) (use, possession or exhibition of firearm). See Texas Family Codes Sections 53.01 and 53.02.

This obviously sets up for a more involved hearing than the adult arraignment.

ment. The judge is faced with a much more personal decision than just setting a number for a bond.

If the allegation is that the child has engaged in delinquent conduct, the hearing will be scheduled by the second business day after the child is taken into custody or the first business day if the child is detained on a Friday or Saturday. The release of a child may be conditioned on requirements reasonably necessary to ensure the child's appearance at later proceedings. Texas Family Code Section 54.01(a) provides that if release is denied at the initial detention hearing, the child has a right to an additional detention hearing every 10th day under Section 54.01(h) of the Texas Family Code. These detention hearings become extremely significant if the juvenile is violent and the judge must give serious consideration to whether or not the child might become violent again.

The offense charged in a petition to determine whether or not a child is delinquent is governed by the Texas Penal Code, which is familiar to the criminal lawyer. In addition, there are procedures germane only to the juvenile process. For example, there are specific provisions that address certification of a juvenile (Sections 53.04 and 54.02) and violent or habitual offenders.

Any discussion of juvenile law must include a strong reminder that most juvenile offenses are covered under Section 58.003 of the Texas Family Code, which stipulates that the records can be sealed. Notwithstanding its availability, this sealing provision is often ignored. Please remind your clients that they should look into the possibility that any juvenile record can be sealed under Section 58.003 of the Texas Family Code.

One final caveat: Make the juvenile's parents immediately aware that the child is your client. This is a difficult pill for some parents to swallow. However, juvenile practitioners have an attorney-client relationship with the child that must be protected.

The lawyers that work in the juvenile justice system make significant financial sacrifices in order to make a difference in the lives of youth. I highly recommend that you contact a specialized juvenile practitioner in the event that you are faced with representation of a juvenile.

JUDGE BILL MAZUR

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