

JUVENILE LAW IN TENNESSEE

Straight Answers About Your Child's Rights
and What to Expect Next

BARNES & FERSTEN
109 S. Northshore Drive, Suite 310
Knoxville, TN 37919
(865) 234-0410
www.knoxcrimdefense.com
questions@knoxcrimdefense.com

Copyright © 2023 John C. Barnes and Brandon D. Fersten

**DISCLAIMER: THIS BOOK DOES NOT FORM AN ATTORNEY
CLIENT RELATIONSHIP OR RENDER LEGAL ADVICE.**

This book is designed to provide information about the subject matter covered.

It is distributed with the understanding that the publisher and author are not hereby engaged in rendering legal, psychological, or other professional services. If expert assistance is required, the services of a competent professional should be sought. We are available for consultation on a professional basis.

Every effort has been made to make this book as accurate as possible. However, there may be mistakes both typographical and in content. This book contains the opinion of the author. For those reasons, this text should be used only as a general guide.

The purpose of this book is to educate and entertain. The authors and publisher shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused or alleged to be caused directly or indirectly by the information contained here.

Printed in the United States of America

First Printing 2020

Second Edition 2023

10 9 8 7 6 5 4 3 2 1

**Can you answer YES to these 5 questions?
If so, we may be able to help**

- (1) Has your child's child been arrested for a juvenile offense in east Tennessee?**
- (2) Are you concerned about your child's future?**
- (3) Are you willing to let us fight your child's case and not immediately plead guilty?**
- (4) Would having a juvenile conviction on your child's record seriously affect his or her education, career, family, or other important areas of his or her life?**
- (5) Can you afford to pay a reasonable attorney fee with a down payment and a payment plan?**

If you answered YES to all these questions then give us a call to discuss how we can help you avoid the worst consequences of a juvenile arrest.

**BARNES & FERSTEN
109 S. Northshore Drive, Suite 310
Knoxville, TN 37919
(865) 234-0410
www.knoxcrimdefense.com
questions@knoxcrimdefense.com**

Table of Contents

Foreward.....	<i>i</i>
The Way We Approach Juvenile Delinquency Cases Makes The Difference	
Chapter 1.....	1
Juvenile Delinquency Myths You May Have Heard	
Chapter 2.....	6
What Attorney Should I Hire To Represent My Child?	
Chapter 3.....	8
You Have A Meeting With A Juvenile Lawyer, What Will It Be Like?	
Chapter 4.....	12
Does Everyone Charged With Juvenile Have To Hire A Lawyer?	
Chapter 5.....	14
Expungements: Will This Be On My Child's Record Forever?	
Chapter 6.....	17
How Can I Help/Protect My Child?	
Chapter 7.....	19
Can My Child Be Tried As An Adult?	
Chapter 8.....	23
Detained After Arrest: Can My Child Be Detained If He Or She Is Taken Into Custody By A Police Officer?	

Chapter 9	25
Detention Hearings: What Must The State Prove To Keep Your Child In Custody Pending Trial?	
Chapter 10	27
Juvenile Delinquency Case Roadmap: My Child Has Been Arrested And Has A Court Date, What Happens Now?	
Chapter 11	29
Adjudicatory Hearings: Judge Trial	
Chapter 12	34
Disposition Hearings: Sentencing Your Child	
Chapter 13	39
Confessions And Your Child's Miranda Rights	
Conclusion	43

FOREWARD

THE WAY WE APPROACH JUVENILE DELINQUENCY CASES MAKES THE DIFFERENCE

Just about every lawyer who practices criminal law, even part of the time, will take your child's juvenile delinquency case. What happens after the lawyer takes your child's case will make a huge difference in your child's stress level, how your child's case is handled, how good of a result you get, and ultimately how this arrest affects you and your child's life.

To give each client and their case the attention they deserve, we cannot advertise on TV and radio and take in hundreds of cases for very low fees. Instead, every client will get personal attention, will be able to reach and speak with an attorney, have their calls returned promptly, and know that every defense, whether legal or factual, has been fully investigated.

Most of all, a lower case load helps us to do battle in the courtroom when negotiated resolutions fail, rather than settling for a plea and moving on to the next dozen cases.

We hope this short book will answer some of your child's questions about what we think are the best ways to defend a juvenile delinquency case and what you can expect during your child's case.

If you would like to speak with us about your child's specific case just give us a call or text message to (865) 805-5703 or email us questions@knoxcrimdefense.com.

CHAPTER 1

JUVENILE DELINQUENCY MYTHS YOU MAY HAVE HEARD

- **The State must prove my child's guilt to a jury beyond a reasonable doubt.**
 - While it is true that your child's guilt must be proven beyond a reasonable doubt, your child is not entitled to a jury trial. Your child's case will be heard by a judge, rather than a jury, that will determine your child's guilt or innocence.
- **My child really is innocent, so I do not need to hire my child a lawyer.**
 - False. Innocent juveniles get charged with crimes more often than we would like to think. Many are understandably upset at the expense, embarrassment, and inconvenience of being charged with a crime they did not commit. Unfortunately, rarely would these people be able to win their cases without professional representation. A lawyer has the ability to discuss your child's case with the assistant district attorney assigned to your child's case to advocate your child's innocence effectively in a way that will generally be more effective than you speaking to the assistant district attorney directly.
- **My child has never been arrested before, so this will not be that difficult.**
 - Most children charged with juvenile delinquency have no prior record. It is an unusual crime in that respect. Having no prior record

is a good thing and can aid an attorney in negotiating your child's case, but it will not get you very far in winning your child's case alone.

- **The more the lawyer charges the better he must be.**

- There is a relationship between a lawyer's fee and his expertise, but it is not direct. A fee is influenced by supply and demand, level of expertise and years of experience, and also by factors that make no difference to your child's case such as how much a lawyer spends on offices, staff, and advertising. At the end of the day, you should choose the attorney that makes you and your child feel the most comfortable and confident in fighting for him or her.

- **The court system treats everyone equally and every case is decided based solely on its merits.**

- This is ideal but unfortunately it is not reality. Like every other system in the world, the justice system consists of people who are not 100% perfect. Case outcomes depend on many factors and factual guilt or innocence is just one of those.

- **The court will give my child a lawyer, so I do not need to hire one.**

- Your child has a right to an attorney. The court will give your child a lawyer if you qualify as indigent. Whether your child qualifies for an appointed attorney is up to the judge who looks at your sworn financial statement, known as an "Affidavit of Indigency," that is based on your financial situation. There are many good lawyers working as public defenders, but even the best public defenders will have a much larger case load to focus on than private attorneys.

JUVENILE DELINQUENCY CASES IN TENNESSEE

Generally speaking, a private attorney will likely have more time to give you personalized attention and be able to take the time to explain the process to you in more depth.

BARNES & FERSTEN

CHAPTER 2

WHAT ATTORNEY SHOULD I HIRE TO REPRESENT MY CHILD?

It is important to let your child have a say in the decision of what attorney they want you to hire. Of course, this is likely one of the biggest, if not the biggest, decision that you have faced as a parent during your child's lifetime. Your decision in hiring a lawyer can greatly impact how your child's case is handled and ultimately resolved. However, it is important to remember that it is your child's case.

The reason that I say it is so important to allow your child to have a say in what lawyer to hire is because the attorney-client relationship is between your child and his or her attorney. In almost every juvenile case that Barnes & Fersten has taken, the juveniles always hide some information from their parents because they do not know how their parents will react, or for various other reasons. This is where the attorney-client relationship is so important.

Your child should trust his or her attorney because everything that your child tells his or her attorney is confidential and privileged information. This means that the information will stay between your child and your child's attorney unless your child says that it is okay for us to inform you, the parent.

Inevitably, you, as the parent, will want to know every detail that your child has told their attorney. However, maintaining this kind of relationship, if the child chooses to maintain a confidential

relationship, is essential to the attorneys at Barnes & Fersten receiving such good end results in their cases.

In short, before hiring an attorney for your child, allow your child to meet the attorney and talk to the attorney one-on-one. Your child is the client and thus, every important decision is ultimately your child's decision, including the initial decision of which lawyer you decide to hire. Make sure that you hire a lawyer that listens to your child's concerns and is able to provide you with answers regarding important aspects of your child's case. You should feel that your child is your lawyer's primary concern.

The attorneys at Barnes & Fersten pride themselves on their ability to connect with juveniles in a way that results in them learning more details about the charges against your child to effectively advocate on their behalf. We care about your child's future and we want to help them succeed. Whether they are falsely accused or they made a mistake and need some help to get back on the right path, we would love to help your child's tomorrow be better than their today.

CHAPTER 3

YOU HAVE A MEETING WITH A JUVENILE LAWYER, WHAT WILL IT BE LIKE?

New clients are often nervous about their first meeting with a lawyer, especially when they have never needed a lawyer before. If you are coming to meet with an attorney at Barnes & Fersten there is no need to be nervous. You will be treated and spoken to with respect. You will find a relaxed but professional atmosphere that is designed, not to intimidate or impress you, but to make the process as easy as possible for you. At the end of the day, your child is the client and we want to make sure that we relieve some of the stress that you and your child have been having over your child's recent juvenile charges.

Like a job interview, both you and the attorneys at Barnes & Fersten are considering whether a professional relationship would be beneficial to you. At the end of the day, we want to do everything that we can to help you and your child because your child is the one facing charges that could have a significant impact on your child's life. As such, we want to help guide you towards a successful disposition of your child's case that will help you move forwards with as little consequences, if any, as possible.

During that first meeting, we will spend anywhere from 30 minutes to an hour together. You and your child will be given an opportunity, at the very beginning of each meeting, to get your child's questions answered and all of you and your child's concerns addressed.

After that the attorneys at Barnes & Fersten will need to get as many details as possible about any prior arrests or convictions, the day leading up to your child's arrest, your child's interactions with school personnel and the police, your child's medical history, and other details that might relate specifically to your child's case.

By this point, we will have a good idea what some of our defenses and strategy will be and I will share them with you. Some lawyers will not discuss these potential defenses and strategies with you for fear that you will take his strategy and hire a cheaper lawyer to implement it.

However, the lawyers at Barnes & Fersten are skilled advocates that have the oral, research and writing skills to convey your child's legal defenses to the prosecutor and to the court in a way that not many lawyers can successfully.

In every meeting, we are asked some version of the question, "what are my odds of winning my case." We cannot and will not make you any guarantees. If a lawyer does that, do not walk out, run. It is an empty promise that no lawyer should make or is even allowed to ethically make to you. But, the lawyers at Barnes & Fersten will give you their best professional opinion on the possible outcomes of your child's case. If we do not believe that you have real defenses or if we do not believe that we can help you, we will not accept your child's case. We have declined cases in the past and will continue to decline cases where we believe that we cannot accomplish the goals that someone wants and expects us to accomplish.

We, unlike many firms, do allow you to pay your child's case fee on a payment plan. A down payment is required to start work. The amount varies, but is usually between one-third and one-half of the

fee. We will work together on a payment plan that you can afford that will get your child's fee paid off before the case is concluded.

There is one exception to the above paragraph. If your child's case is removed from juvenile court to criminal court, we charge separately for that service because it consumes many, many hours of attorney preparation and court time. If your child's case ends up one of the that is removed to criminal court, you will know that well ahead of time and we will decide together on what trial fee makes sense, given what has already happened in your child's case.

JUVENILE DELINQUENCY CASES IN TENNESSEE

CHAPTER 4

DOES EVERYONE CHARGED WITH JUVENILE HAVE TO HIRE A LAWYER?

The answer is yes and no. Not everyone charged with juvenile delinquency strictly has to have a lawyer. You do have the option to speak directly with the district attorney or even defend the case yourself. I would not recommend it though. While you could probably learn the steps to perform your child's own appendectomy on YouTube, that does not make doing so a good idea. The same is true of defending your child's case.

Only a lawyer who defends juvenile cases regularly will likely be able to recognize what defenses might be available in your child's case, how the district attorney and the judge are likely to respond to those defenses and will be able to implement a strategy to use them effectively on your child's behalf. For that reason, it makes the most sense when dealing with a juvenile charge to hire counsel who defends these cases for a living.

JUVENILE DELINQUENCY CASES IN TENNESSEE

CHAPTER 5

EXPUNGEMENTS: WILL THIS BE ON MY CHILD'S RECORD FOREVER?

One of the most common questions we receive regarding juvenile charges is whether the charge will remain on your child's record forever.

The short answer is most likely no. Most juvenile delinquency charges can and should be removed from your child's record, but the time limit for when the charge may be removed from your child's record depends on the result of your child's case. Our attorneys will be able to discuss your child's specific circumstances, and when the case can be expunged with you before agreeing to any sort of resolution of your child's case with the district attorney. Subsequently, we will ensure that your child's record is expunged as quickly as possible under the Tennessee law.

For example, if your child's case is dismissed by the judge, unlike in adult criminal court, the judge will actually order the expungement of your child's record with the order of dismissal.

On the other hand, the vast majority of cases, including any case that is resolved through informal adjustment, pretrial diversion, judicial diversion, or even a conviction for an offense that would constitute as a misdemeanor if committed by an adult, your child's charges can be expunged by filing a motion to expunge the record after a year from successfully completing any and all requirements of your child's case.

JUVENILE DELINQUENCY CASES IN TENNESSEE

Significantly, once a juvenile record is expunged, your child cannot be held criminally liable under any state law of perjury or giving a false statement by reason of the failure to recite or acknowledge such record or arrest in response to an inquiry made of the person for any purpose. In short, this means that your child can legally, under state law, answer that they have never been arrested, charged, or convicted of the offense once the record is expunged.

However, it is important to remember that this only applies to state laws. Under some federal laws, you may have to disclose your juvenile record, even after it is expunged, to some federal agencies. For example, if your child applies for a job at the FBI, your child may have to disclose his or her juvenile record even after it is expunged.

CHAPTER 6

HOW CAN I HELP/PROTECT MY CHILD?

The attorneys at Barnes & Fersten understand that this is one of the most, if not the most, difficult time that you or your child has faced during your and their lifetime. This may be the first time that you cannot physically do everything possible to help and protect your child. That is why the first step in helping your child is hiring him or her an attorney.

Once you hire your child an attorney, there are a few more things that you can do to help your child. All of those things relate to your job as a parent.

To start, try to keep your child's mind off of the charges against him or her and show your child that you support him or her regardless of what happens. Do everything you can to relieve your child of the stress of having open charges. If you ever need help, you can have your child call us to explain to him or her how the case is progressing and what we think will be the end result of the case.

Additionally, it is important that you make sure that your child attends all court dates on time and abides by any and all conditions of your child's probation, pre-sentence conditions or release. By ensuring your child's compliance with these important requirements set out by the court, we will have additional people advocating for your child.

For example, the probation officer assigned to your child is more likely to agree with our recommendations to the district attorney if

your child abides by the conditions. Similarly, the judge will be more inclined to listen to us advocate for a favorable result for your child.

At the end of the day, these are the things that you can specifically do to help your child's case. We will always be available to answer your phone calls and emails or answer them shortly after if we are busy in court or in a meeting. We want this process to be as easy and low stress for you and your child as it possibly could be, despite the circumstances.

CHAPTER 7

CAN MY CHILD BE TRIED AS AN ADULT?

It is very rare for a juvenile case to be transferred to adult criminal court.

There are multiple requirements and steps that the district attorney must follow to attempt to transfer your child's case to criminal court. It is essential that your child is represented at the hearing making such a determination.

To start, every offense committed by a juvenile does not qualify for transfer to juvenile court. The following offenses qualify for a district attorney to seek a hearing to transfer the case to criminal court:

14 years or younger: If your child is under the age of 14 years of age at the time of the alleged conduct, the only way that the case can be transferred to criminal court is if he or she is charged with first degree murder, second degree murder or attempted first or second degree murder.

14-16 years and 364 days: If your child is 14 years of age or more but under 17 years old at the time of the alleged conduct and charged with first or second degree murder, rape or aggravated rape, rape or aggravated rape of a child, aggravated or especially aggravated robbery, aggravated or especially aggravated burglary, kidnapping, aggravated kidnapping or especially aggravating kidnapping, commission of an act of terrorism, carjacking, or an attempt to commit any such offenses.

16 years or older: If your child is 16 years or older at the time of the alleged conduct and charged with the offense of robbery or attempt to commit robbery.

17 years: If your child is 17 years old or more at the time of the alleged conduct, he or she may be charged as an adult for potentially any conduct.

If your child's age and offense make it qualify for transfer to criminal court it does not necessarily mean that the district attorney will attempt to transfer it to criminal court. However, if the district attorney does want to transfer the case, then you and your child will receive written notice of the time, place and purpose of the hearing at least 14 days prior to the hearing.

If you do not have a lawyer before receiving written notice of the transfer hearing, it is imperative that you hire an attorney as soon as practicable for your lawyer to prepare for the hearing to avoid criminal court.

At the hearing, the court may transfer the case from juvenile court to criminal court if the court finds probable cause to believe that: (1) the child committed the act as alleged; (2) the child is not committable to an institution for the developmentally disabled or mentally ill; and (3) the interests of the community require that the child be put under legal restraint or discipline.

In finding probable cause, the court has 6 factors that they evaluate. Your lawyer should understand these 6 factors and argue why they do not apply, or if they do apply, advocate strongly for why they should not apply to your specific child's case to avoid transferring the case to criminal court.

Significantly, it is important that you hire a lawyer that understands the process of a transfer hearing. Your lawyer should know that any statements made by your child at the juvenile court hearing are inadmissible against your child in a criminal proceeding following the transfer. Your lawyer should fight for your child's rights and demonstrate to the court that the juvenile court is adequate to protect the community.

Lastly, if your child's case does get transferred, your child will be housed in a juvenile correctional facility unless the committing court orders commitment to an adult facility. If your child does get confined to an adult facility it is important to know that they will be housed separately and removed from adult inmates.

However, once again, if this is a possibility in your child's case, the attorneys at Barnes & Fersten will do everything possible to ensure the best result possible.

BARNES & FERSTEN

CHAPTER 8

DETAINED AFTER ARREST: CAN MY CHILD BE DETAINED IF HE OR SHE IS TAKEN INTO CUSTODY BY A POLICE OFFICER?

In the vast majority of cases, if your child was arrested and taken into custody, your child must be released to your custody within a reasonable amount of time. Before your child's release, he or she will appear in front of a judge who will inform your child of the charges against him or her, determine if your child qualifies for an appointed attorney, and likely place pre-trial conditions of your child's release. You will then be served with a summons that will require you to appear with your child at court on a specified date. As such, if your child has been released to your custody and you have already been served with a summons, please skip over to **Chapter 10**.

Why is my child currently in custody?

In some cases, your child may be taken into custody but those circumstances are limited. Generally, your child should only be taken into custody and be required to have a detention hearing to determine if he or she will remain in custody during the pendency of the case if he or she committed an offense that either: (1) resulted in the serious injury or death of the victim or involved the likelihood of serious injury or death to such victim; or (2) unlawfully possessed a handgun or carried a weapon.

However, your child may also be committed to custody if he or she committed any other delinquent offense involving the likelihood of

serious physical injury or death, or an offense constituting a felony if committed by an adult, and certain other circumstances are present such as currently being on probation, currently awaiting court action on a previous delinquency offense, among a few other scenarios.

My child was arrested and placed into custody within the last few days, what happens next?

If your child is currently in custody pending a detention hearing, you have a limited time to hire an attorney to seek his release during the pendency of his or her case because, depending on the circumstances, he or she may remain in custody for either up to 48 hours or up to 84 hours before a detention hearing must be held, which will be discussed in the subsequent chapter.

CHAPTER 9

DETENTION HEARINGS: WHAT MUST THE STATE PROVE TO KEEP YOUR CHILD IN CUSTODY PENDING TRIAL?

As explained in the previous chapter, if your child has been in custody since the time he was arrested, the court must hold a detention hearing within a specified time depending on the circumstances.

A detention hearing is where the judge will decide if your child should go home pending the hearing of his case or if your child should remain in custody during the pendency of his or her case. At the hearing the judge will also determine if your child is eligible for an appointed attorney, if any conditions of release are required, and the judge will read the charges against your child.

It is important that your child has an attorney present for this hearing to ensure that he or she advocates for your child's release from custody. There are 7 conditions that the court considers when determining whether to keep your child in custody pending trial.

First time offenders or where over a year has passed since your child has been adjudicated delinquent of an offense constituting a felony if committed by an adult:

If this is your child's first offense, there are only a few scenarios where a court may continue to detain your child after the detention hearing. Your child may remain in custody if the judge finds probable cause that your child committed a crime that resulted in a serious injury or death of the victim or a likelihood of such harm, or unlawfully possessed a handgun or carrying of a weapon.

Other scenarios:

Your child may be detained pending trial for the reasons stated previously, as well as for a multitude of other reasons that we can go over if your child is currently in custody. For example,

if your child violated probation, if your child is awaiting court action on a previous offense, or if your child is an escapee from a facility.

Alternatives to custody where the court is leaning towards keeping your child in custody:

Most significantly, the State must also prove that there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with his or her parents, custodial alternatives or setting bail. Thus, even if the court believes that your child should remain in custody, the court must also consider a multitude of alternatives. This usually will allow us at the very least keep your child out of custody pending trial on strict conditions.

Tennessee law presumes that a defendant should be released on his or her recognizance, meaning that the defendant should not have to pay bail, or should have as low of a bail with as limited of conditions as possible. This is the position that all of the attorneys at Barnes & Fersten takes because it is beneficial to have your child out of custody for his or her mental and physical well-being, for your well-being as their parents, and for us in preparing for his or her defense.

CHAPTER 10

JUVENILE DELINQUENCY CASE ROADMAP: MY CHILD HAS BEEN ARRESTED AND HAS A COURT DATE, WHAT HAPPENS NOW?

YOUR CHILD'S FIRST TIME IN COURT: ARRAIGNMENT

Your child's first court date will not decide your child's case. Generally, the first court date will consist of: making sure you understand what you are charged with, the court finding out whether you have or will hire a lawyer, or whether you are applying for a public defender, and finally, setting a new court date for either negotiations or a hearing.

Do you need a lawyer for the first court date? Not strictly, but it is a good idea because even at the first court date there are things that can happen that could harm your child's case. In some circumstances, your child's lawyer may be able to request a change in your child's pre-trial conditions on that very first day. If you believe that your child's pre-trial conditions are too stringent and that they should be reduced, make sure to inform your lawyer and they should discuss this with the district attorney to have the conditions reduced immediately, if possible.

“STATUS” OR NEGOTIATION DATES

Your child’s second, and sometimes more, court dates will be a time for your child’s lawyer to discuss the case with the district attorney who is prosecuting your child’s case.

By the second court date your child’s lawyer should have most or all of the materials, reports, videos, medical records, etc..., necessary to investigate and defend your child’s case. The district attorney may or may not have also reviewed your child’s case and any video evidence. In some instances, your child’s lawyer may feel confident that the district attorney will eventually offer a better deal which may also result in your child’s case taking additional court dates.

Many cases will be resolved at one of these negotiation dates, either by a negotiated plea that you are happy with or with a dismissal of charges. We will also ensure that your child’s record gets expunged when his or her record qualifies for expungement, as discussed in Chapter 5 previously.

CHAPTER 11

ADJUDICATORY HEARINGS: JUDGE TRIAL

If your child's case does not get dismissed or resolved through negotiations between your child's lawyer and the prosecutor, then the case will proceed to an adjudicatory hearing.

An adjudicatory hearing is the equivalent to a trial in adult criminal court. The main difference between juvenile court and criminal court is that juveniles are not entitled to a jury trial. Instead, the judge will decide if your child committed the offense that your child was charged with committing.

Just like a jury trial, the prosecutor must present admissible evidence against your child to prove that your child committed the offense beyond a reasonable doubt. The prosecutor must establish each element of the offense that your child is charged with committing beyond a reasonable doubt. Your child's lawyer should point out the elements that were not proven beyond a reasonable doubt to the judge in an endeavor to convince the judge to dismiss the case.

In addition to vigorously cross-examining all of the State's witnesses, your child's lawyer should determine how to present your child's defense. This may include having witnesses testify or having your child testify. Before ever coming to these decisions your child's lawyer should discuss the benefits and harms that may result from each of these decisions. Similar to adult court, your child has the right to testify or not to testify and your child's decision cannot be used

against your child. This is an important decision to make that your lawyer must discuss with your child.

Time limits on scheduling adjudicatory hearings:

Usually, all cases should be heard within 30 days of the filing of the petition if such scheduling appears to the court to be reasonable and possible under the circumstances of the case.

Otherwise, every case must be heard within 90 days of the date of the filing of a petition unless the State is able to show the judge good cause for the need for more than 90 days.

This is extremely critical for your lawyer to know these deadlines to push the court to dismiss the charges against your child for failure to prosecute if the hearing is not heard or scheduled to be heard within these time limits. Your lawyer should not continually allow these deadlines to continue to push further and further away but instead should push the judge to dismiss the case if the prosecutor is not ready to have a trial within these time limits.

Can illegally obtained evidence be used against my child?

Maybe. The State may introduce evidence that was illegally obtained and it is up to your lawyer to understand the law on seizures to be able to file a motion to suppress the evidence or to object to any evidence that was illegally seized or obtained at the adjudicatory hearing.

What about conversations that my child had with his or her probation officer?

No statements may by your child to the youth services officer or designated intake officer is admissible against your child prior to the

dispositional hearing. This means that any statements your child makes to his or her court designated officer cannot be used against your child unless he or she is found guilty and has a disposition hearing.

BARNES & FERSTEN

CHAPTER 12

DISPOSITION HEARINGS: SENTENCING YOUR CHILD

Your child will not have a dispositional hearing unless your child is found guilty beyond a reasonable doubt at an adjudicatory hearing. If your child has a dispositional hearing, the court must hold a dispositional hearing within 90 days of the adjudicatory hearing. However, if your child is in custody at the time of the adjudicatory hearing and remains in custody after the adjudicatory hearing then the dispositional hearing must be held within 15 days of the adjudicatory hearing.

Additionally, your child's dispositional hearing may be held immediately after the adjudicatory hearing, but it is important to know that it is considered a completely separate and distinct hearing. Your child's lawyer should consider whether your child's dispositional hearing should be held at a later date to present character witnesses and other potential statements from medical providers to decrease your child's sentence.

If we continue my child's dispositional hearing to another date, will my child be taken into custody?

It's very unlikely. The court may enter a temporary detention of your child, but only where such detention appears to be necessary for the protection of your child or others, or where necessary to assure your child's appearance at the dispositional hearing.

In nearly every case your child will not be taken into custody but the court may enter some other temporary order that is in the best

interest of your child. It is important for your lawyer to stress to the court that it does not need to enter any orders pending the dispositional hearing. Your child has been on probation for some length of time pending trial so your child's lawyer should stress that those conditions are adequate or should potentially be reduced.

Juvenile Detention Centers: Will my child be taken into custody after the dispositional hearing?

Not necessarily. The court will use the dispositional hearing to come up with a specific plan for your specific child's needs based on the court's findings from the adjudicatory and dispositional hearing. The judge is supposed to select the least restrictive punishment, in kind and duration, that is appropriate based on the seriousness of the offense, the degree of culpability indicated by the circumstances of the case, and the age and prior record of your child.

Judges prefer to sentence juveniles to be treated and rehabilitated through community services and resources when appropriate and available, rather than putting your child in a detention center. Your lawyer should do everything possible to convince the judge that your child does not belong in a detention center and to prove that a detention center is not appropriate to rehabilitate your child.

At the end of the dispositional hearing, your child will have the right to appeal the court's decision.

If an appeal may be appropriate in your child's case based on some sort of procedural error that occurred during the hearing or because of some legal reason, your child's lawyer should discuss the potential for an appeal with you and your child.

BARNES & FERSTEN

JUVENILE DELINQUENCY CASES IN TENNESSEE

CHAPTER 13

CONFESSIONS AND YOUR CHILD'S MIRANDA RIGHTS

If your child made any sort of verbal or written confession, in circumstances when your child was entitled to his or her Miranda rights, the burden is on the State to prove by a preponderance of the evidence that your child waived those rights. Your child's waiver of your child's Miranda rights must be made voluntarily after being made fully aware of the nature of the right being abandoned and the consequences of the decision to abandon that right. Thus, this is why when an officer reads you your child's Miranda rights the officer must inform you that anything you say may be used against you in court.

When must Miranda rights be given?

An officer does not need to mirandize your child immediately upon talking to your child or during the initial investigation into your child's alleged actions.

There are two requirements to proving that your child was entitled to be advised of his or her Miranda rights: (1) that your child was in custody; and (2) that your child was being interrogated. If both conditions are met, the officer's failure to mirandize your child makes any statements your child made subject to suppression. This is especially true for children who courts view as more easily manipulated by law enforcement and are less likely to understand and actually assert his or her rights against an authoritative police officer.

(1) Custody requirement

Your child's lawyer should focus on the facts specific to your child's case to prove that he or she was in custody any time that your child made any statements against your child's interest or any admissions.

You are "in custody" when, under the totality of the circumstances, a reasonable person in your child's position would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest. For example, if the police officer retains your child's driver's license during a traffic stop, then for Miranda purposes, your child is considered in custody because no reasonable person would believe that he or she could simply terminate the encounter by asking the officer to return their license and because driving without a license is an additional traffic violation.

(2) Interrogation requirement

This requirement does not mean that your child was in a room alone with the officer for hours being interrogated. Instead, an individual is the subject of an "interrogation" whenever a police officer asks questions that is reasonably likely to elicit incriminating information while that person is also in custody.

If your child made any admissions to the officer during the investigation your child's lawyer should evaluate whether a Miranda issue exists. Your child's lawyer should understand Miranda and the ways to skillfully and persuasively argue that you were entitled to Miranda rights before your child's incriminating statement was made by you.

Did I properly invoke my Miranda rights?

My child told the officer that he or she was invoking his or her right to remain silent then later on my child made incriminating statements, they cannot use those statements against my child, right?

(1) Right to remain silent

This is a situation that is extremely fact specific. Generally, once an individual invokes their right to remain silent, an officer cannot ask questions that are likely to elicit an incriminating response for the full time that your child is in custody plus an additional 14 hours. However, there are some exceptions to this rule. For example, if your child invokes his or her right to remain silent but then later begins speaking to the officer on his or her own, without being interrogated, then the statements may or may not be subject to suppression.

(2) Right to a lawyer

Similarly, if your child invokes his or her right to a lawyer, your child cannot be questioned about the specific crime that your child was arrested for committing without your child's lawyer present, after your child is advised of his or her Miranda rights.

However, exceptions to this rule exist as well. For example, an officer may question your child about another crime separate from the crime that caused your child to be in custody without there being a violation. In these instances, it is important that your child's lawyer analyzes the facts to determine whether a breach that entitles your child to suppression of his or her statements exists.

My child asked for a lawyer but the officer continued to interrogate my child, they cannot use my child's statements against my child right?

Once your child states **unequivocally** that he or she wants a lawyer, all questioning must stop. An issue exists where your child makes statements such as "I think I need a lawyer now," because your child must clearly and unequivocally state "I want a lawyer" for questioning to stop.

Overall, your child may be entitled to a suppression of statements that your child made even before he or she was mirandized. As such, your child's lawyer must always be weary of the circumstances under which your child made his or her admission or statement against interest.

CONCLUSION

We hope that this short book has given you some answers to your questions. We also hope that with the additional information you are feeling at least a little better about the juvenile charge that your child is facing. Much of the fear in this situation comes from the unknown.

Finally, we'd like to speak with you about your child's case and what we can do to help. Please give us a call to discuss your child's case. You can also text or email. Our number is (865) 805-5703.