


Juvenile Defender Seminar  
ROLE OF COUNSEL  
WHY WE DO WHAT WE DO  
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Format & Purpose

- ◆ Don't be shy!!!
- ◆ It's way too early for me to do all of the talking.

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Attorney – Client Relationship

- ◆ § 43-21-201(1)
- ◆ .... In delinquency matters **the court shall appoint legal defense counsel** who is **not** also a guardian ad litem for the same child.

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### § 43-21-201(1)

- ◆ ... the child shall be represented by counsel at all **critical stages**: detention, adjudicatory and dispositional hearings; parole or probation revocation proceedings; and post-disposition matters.
- ◆ If **indigent**, the child shall have **the right to have counsel appointed** for him by the youth court.

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### Juvenile Defender's Statutory Responsibilities

- ◆ § 43-21-201(4)
- ◆ The Juvenile Defender owes the child **the same duties as are due an adult client**:
- ◆ **UNDIVIDED LOYALTY**
- ◆ **CONFIDENTIALITY**
- ◆ **COMPETENT REPRESENTATION**

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### Who's In Charge?

- ◆ We are to conduct the child's defense in accordance with the child's **EXPRESSED INTERESTS** – We are **CLIENT DIRECTED**.
- ◆ Thus, our Kid-Client is "**The Boss of Me.**"
- ◆ How do we reconcile this with neuro-scientific research during the past 15-20 years?

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## What Do You Do?

You have a 13-year old client charged with a serious offense that does not automatically invoke adult court jurisdiction. The State has filed a Motion to Transfer to Adult Court that you receive at the same time as the delinquency petition. This is the kid's first time in youth court, but he's been told by buddies in detention or on the street that he can't be released on bond in juvie, but he can get a bond in adult court. He tells you to agree to transfer so that he can get a bond.

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## What Do You Do?

- ◆ Your client admits to you that she did the delinquent act. You look at the discovery and notice that the cops did a shoddy job of investigating. The case is clearly defensible. Even the DA says it's a "loser" of a case. The kid doesn't want to go to trial, saying that "the truth will set me free."
- ◆ Change to: **the parents want her to admit and "suffer the consequences" in order to teach her a lesson.**

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## Speaking of Transfer Cases

- ◆ Is there a negative impact on children in the adult criminal system?
- ◆ Are there statistics that say so?

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### Children in the Adult System

- ◆ **Are 19 times more likely to commit suicide than children in general.**
- ◆ Mumola, C.J. (2005, August). *Suicide and Homicide in State Prisons and Local Jails*. Washington DC: US Department of Justice, Office of Justice Programs , Bureau of Statistics

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### Children in the Adult System

- ◆ **Are 36 times more likely to commit suicide than children in juvenile facilities.**
- ◆ Jailing Juveniles (2007, November). Washington, DC: Campaign for Youth Justice

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### Children in the Adult System

- ◆ **Are much more likely to be physically and sexually assaulted than adults incarcerated in adult facilities.**
- ◆ National Prison Rape Elimination Commission, Report 18 (June 2009), available at <http://www.ncjrs.gov/pdffiles1/226680.pdf>

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### Children in the Adult System

- ◆ **Are 34% more likely to be re-arrested than children “convicted” of the same offense in juvenile court.**
- ◆ Department of Health and Human Resources, Centers for Disease Control, “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System,” November 2007, Vol. 56, No. RR-9.

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### § 43-21-555 – Say What???

- ◆ **PLEA BARGAINING PROHIBITED**
- ◆ **Under NO CIRCUMSTANCES shall the party or the prosecutor engage in discussion FOR THE PURPOSE OF AGREEING to exchange concessions by the prosecutor for the party’s admission to the petition.**
- ◆ How can this be reconciled with your duty to zealously advocate for your client?

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### Lawyer is a Mandatory Reporter

- ◆ § 43-21-353 – Mandatory Reporter Statute Specifically Includes Attorneys
- ◆ How do you reconcile this statutory duty with potential criminal/delinquency consequences with your duty of undivided loyalty, confidentiality, and competent representation?

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## Lawyer is a Mandatory Reporter

- ◆ Is this provision constitutional?
- ◆ Doesn't this impinge upon the child's right to counsel, a fair trial and general due process rights?

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## Collateral Consequences of a Juvenile Delinquency Record

- ◆ There is no statutory provision that imposes a duty on a juvenile defender to notify a client and/or his/her parents of collateral consequences of a juvenile delinquency record.
- ◆ Is there otherwise a duty, ethical or otherwise?
- ◆ See, *Padilla v. Kentucky*, 559 U.S. 356 (2010), 6<sup>th</sup> Amendment Right to Effective Assistance of Counsel.

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## Youth Court Ain't Las Vegas!

- ◆ **WHAT HAPPENS IN YOUTH COURT DOESN'T NECESSARILY STAY THERE!!!**
- ◆ **Arrest Records Public** if child has been adjudicated delinquent:
  - 2 or more involving **felony** charges or **guns**
  - Violent offenses:** Murder, manslaughter, burglary, arson, armed robbery, aggravated assault
  - Any Sex Offense**

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**Youth Court Ain't Vegas**

- ◆ **Arrest Records (continued):**
  - Drug sale, manufacture or distribution**
  - Possession of drugs with intent to sell, manufacture or distribute**
  - Driving Under the Influence**

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**Youth Court Ain't Vegas**

- ◆ **Employment Opportunities** may be limited if records are public
- ◆ **Schools Can Easily Gain Access** - with just a written request to the law enforcement agency. § 43-21-255(3)
- ◆ **Schools Can Use Juvenile Adjudication as a basis to SUSPEND or EXPELL a student "for good cause."**
- ◆ **Public Benefits** – Temporary Assistance for Needy Families

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**Youth Court Ain't Vegas**

- ◆ **WORKING WITH CHILDREN PROHIBITED**
  - most juvenile sex offenders** are prohibited from "working with children" or owning/operating a child care service. § 43-15-305

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## Youth Court Ain't Vegas

- ◆ **PUBLIC HOUSING**  
**Registered sex offenders** not allowed, including juveniles  
**Anyone in the household's criminal activity** can be the **basis of an eviction** to protect the other residents' and staff's **health, safety**, or right to **peaceful enjoyment** of the premises

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## Youth Court Ain't Vegas

- ◆ **Driver's License Suspensions**  
**Drug Cases – 6 months**  
**DUI – 6 months**
- ◆ **Sex Offender Registries - SORNA**  
**13 years old & over must register**  
§ 45-33-49 (6) & (7)

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## Youth Court Ain't Vegas

- ◆ **Alabama Adult Criminal Sentencing Guidelines**
- ◆ **It Could Happen Here!**

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## Part-Time Defense Challenges

- ◆ If you can learn a simple trick, Scout, you'll get along better with all kinds of folks. **You never really understand a person until you consider things from his point of view...until you climb into his skin and walk around in it.** Atticus Finch in *To Kill a Mockingbird*

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## QUESTIONS

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