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JUVENILE COURT LAW AND PRACTICE

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What's New In The 2025-2026 Edition

Juvenile Court Law and Practice contains a comprehensive and in-depth analysis of the essential aspects of juvenile cases, including both child welfare and juvenile justice cases, guardianships, custody cases and termination of parental rights proceedings from the preadjudication phase to the final disposition of the case. This “nuts and bolts” manual of the law and procedures relating to Nebraska juvenile court cases provides detailed and straightforward analyses and practice insights regarding the Nebraska Juvenile Code and pertinent caselaw. It is a guide for lawyers, social workers, counselors, probation officers, educators, child welfare advocates, and anyone who is involved in the juvenile court process.

New developments and revised or updated discussions include:

- Statutory changes to detention, custody and release of juveniles
- “Comprehensive Supervision Probation”
- Inconsistent Standards: Transferring cases to vs. from the juvenile court
- Appellate analysis of specific factors of transfer
- The Department’s duty to secure Social Security benefit payments for juvenile beneficiary
- Amendment of petition vs. filing an amended petition
- Continuances: Meeting the legal requirements

TO PETE & ANITA—
THE VERY BEST

About the Author

Christine P. Costantakos is an attorney in private practice in Omaha, Nebraska. She graduated from Creighton University Law School in Omaha, Nebraska, and has practiced extensively in the area of juvenile court law for over 25 years. She is the author of articles relating to juvenile court practice that have been published in *The Nebraska Lawyer*, including “The Myth of Open Adoption: The Perils of Policy” published in June, 2002, and “Bearing the Best Interest: The Guardian ad Litem and the ‘CASA’ Volunteer in Juvenile Court Proceedings” published in June, 2007. She is a member of the Nebraska Supreme Court Commission on Children in the Courts, serving as chairman of the Guardian ad Litem subcommittee. She was chairman of the committee that revised the rules of practice for juvenile court proceedings in Douglas County, Nebraska, in 2013 and also a member of the current rules revision committee. She has also given numerous presentations at juvenile law seminars as well as the Nebraska Children’s Summit, and participated in the training of CASA volunteers and members of local Nebraska Foster Care Review boards. In 2013, she was awarded the “Shining Light Award” by the Nebraska State Bar Foundation for legal research and her work in writing this practice manual.

Ms. Costantakos is president of the Guardian ad Litem Project, Inc., a Nebraska nonprofit corporation comprised of attorneys with significant experience in serving as guardians ad litem for juveniles. The Guardian ad Litem Project, Inc., works to support and increase the effectiveness of guardian ad litem representation in juvenile court cases by presenting an annual training seminar that addresses complex issues in juvenile court representation.

Preface

“Give me something easy . . . like a murder-1 case!”

This volume represents the 17th edition of this book. In the past decade-plus years since I first put pen to paper, juvenile court law in Nebraska continues to change remarkably. This is the result of almost yearly legislative enactments aimed at increasing the protection of the rights of children and parents involved in juvenile court proceedings. The decisions of Nebraska’s appellate courts have also filled in countless gaps within the framework of juvenile court jurisprudence. Add to that the Nebraska Supreme Court’s adoption of various training and practice standards designed to improve the quality of legal representation provided by attorneys practicing in juvenile court proceedings. No one who clearly comprehends the breadth and the depth of these efforts can seriously characterize juvenile court proceedings as “kiddie court.”

Years ago, I recounted the story of an attorney who had spent a great deal of his career as a public defender and worked almost exclusively with adults in the criminal justice system. After having retired from public service, he decided to try his hand at private law practice and took on a few juvenile court cases. One day he called me to discuss one of our cases and confessed that he was feeling quite lost due to the lack of case law and statutory guidance. “These juvenile cases just drive me crazy,” he said. “Give me something **easy** ... like a murder-1 case—any day, over these cases!”

Indeed, one who feels quite comfortable in a criminal or corporate law practice might feel a sense of unease when entering the juvenile court arena. It takes a special kind of lawyer to be competent and effective in juvenile court practice, one who can display versatility in working at many roles. At times, a good juvenile court lawyer is more like a teacher, explaining to clients the contours of the juvenile case; a translator, to render into plain language the highly technical terms, the legalese, and the torrent of acronyms; a shaman, to divine the occasionally unspoken intentions of the participants, dynamics that can drive the case just as much as stated intentions; a pathfinder, to inform and guide parents and children about the various options they might select; a scout, to see ahead to the likely consequences of

the choices that the parties or the court might make; and a warrior, armed with the trial skills required to vigorously fight for the rights of the parent or the child.

Seventeen years ago it seemed to me that it could be very helpful for the practitioner if there were a written work available that would lay out the basic principles of juvenile court law and procedure in an intelligible fashion, with references to legal authorities and—for better or worse—offer some thoughts from the perspective of this practitioner. This book, then, is intended as a manual to aid attorneys and other professionals who venture into the halls of the juvenile court.

I hope it is helpful to you.

CHRISTINE P. COSTANTAKOS

What Is This Book?

Unless you are seeking a cure for insomnia, do not sit down and read this book from cover to cover. Rather, the book is intended to be a manual, sort of a troubleshooter's guide or basic outline for attorneys and others who enter the tangles of juvenile court law and procedure. Pick it up when you find yourself wondering, "Can I even appeal this order?" or "How do I raise the fact that reasonable efforts have not been made?" or "How can I get the court to understand that this foster placement needs to be changed?" or "How can I get the Department to start scheduling these court-ordered visits?" "Does the Indian Child Welfare Act apply to this case?" If you have ever had thoughts like these, then you are like me, and this book might be a small flashlight to help guide your way through those murky waters.

The book is not intended to be an exhaustive treatise on all dimensions of juvenile law, but the subjects included here are drawn from nuts-and-bolts issues and problems that characterize many of the day-to-day aspects of a juvenile court proceeding. Some of the issues and questions addressed in this book are not so routine, but nevertheless, they do arise, if not today, then tomorrow.

I would like to offer some explanation regarding a couple of terms used in this book. The Nebraska statutes provide for the establishment of a "separate juvenile court" in certain counties based solely upon the factor of population and the results of a vote. In all other counties, juvenile cases are heard by the county court "sitting as a juvenile court." The substantive and procedural laws regarding juvenile proceedings in both tribunals are essentially the same, and where they differ, they are noted in this book. Therefore, solely for the sake of ease in writing this book, unless designated otherwise, all references in this book to "the juvenile court" include "the county court sitting as a juvenile court." Please understand that by using this form of shorthand, no slight is intended to the very fine county courts and judges of this State, who accommodate a considerable number of juvenile cases, and wrangle with the very same issues that the separate juvenile courts face.

The former Nebraska Department of Social Services was renamed the "Nebraska Department of Health and Human Ser-

vices,” and is now incorporated into one administrative agency called the Nebraska Health and Human Services System. Because so many of the appellate opinions regarding juvenile court cases refer to the agency as the “Department” and because it is uncertain as to if or when there might yet another administrative reorganization involving a change of name, the agency will usually be referred to throughout this book as “the Department.”

Lawyers who practice with any regularity in the area of juvenile law cannot help but notice that juvenile court jurisprudence is developing at a rapid pace in Nebraska. The majority of juvenile cases which are appealed, are decided by the Nebraska Court of Appeals, unless the case worked its way to the Supreme Court of Nebraska by means of bypass and transfer. The decisions cited in this book include those rendered by both the Nebraska Supreme Court and the Nebraska Court of Appeals. In many cases, the Nebraska Court of Appeals was the court of last resort, either because the losing party did not seek or was not granted further review by the Nebraska Supreme Court.

Regarding the matter of case citations: Where I found that a certain point of law was addressed by more than one case, if the choice was between a non-juvenile law case, and a juvenile case, I chose the latter, even if it was an older case, simply to include an illustration of how the principle worked, or how the issue was decided in the context of a juvenile court proceeding. Doubtless, between the time I have written the last word in this book and the time of its publication, some of the cases I have cited in this book will have been modified or possibly, even overruled by new decisions. For this, you cannot hold me accountable.

I would like to extend my appreciation to all of the judges of the Separate Juvenile Court of Douglas County, Nebraska, from whom I have learned a great deal. I would also like to acknowledge the administrative staff members and clerks of the juvenile court, the bailiffs, secretaries, and court reporters, all of whom work in their own ways to help children, and whose efforts make life easier in the juvenile court. It is not easy to write a book while you are maintaining a law practice. And so, my gratitude also goes to Tiedeman, Lynch, Kampe, & McVay, for their good humor, encouragement, and support throughout this effort. And last, but not least, to my learned colleagues, with whom I have had the pleasure of kicking around all of the topics of this book—at least once, if not more.

Introduction

How many times have you heard someone complain about the juvenile court system?

“My neighbor lost her rights to her children, because the court system was against her.”

“Timmy was sent home only to be beaten up again by his mother’s boyfriend. Obviously, the system does not care.”

“I do not understand why Lisa was placed into foster care in the home of a complete stranger, when I am her grandmother and I would be able to take her.”

“This child has been in our foster home for 2 years. Why would they remove her now and place her with her aunt?”

“Raymond stole that car while he was on probation. He never went to jail for that, but he is back on probation I guess it doesn’t matter, since he’s only 15.”

The law is designed to protect our children and preserve our families. But just as musical notes are nothing more than curious marks on paper until brought to brilliance by musicians, and rules of baseball remain silent concepts until brought to life by the crack of the bat and the roar of the crowd, so too, the statutes of the juvenile code remain dead words and cannot protect anyone without vigorous advocacy by its participants.

The law comes to life when prosecuting attorneys, after careful examination of reports from law enforcement or social workers, exercise their powers to file appropriate actions in order to protect children in trouble—whether those children are victims or offenders themselves. The law is also working when attorneys square off with the State by vigorously asserting and defending the interests of the other members of the family—whether they be parents, grandparents, or others. Equally as vital are the guardians ad litem, charged with the duty to advocate and represent children who compromise the focus of every case. The bat they swing for children in the juvenile court will be only as big as they make it. Those who do the spadework and the footwork, and who consult with children wherever they may be, will be those guardians ad litem making the greatest difference in the lives of the children they represent.

Any number of other players might also line up in this arena, such as guardians ad litem for mentally incapacitated parents, probation officers, case managers and attorneys for Health and

Human Services, tribal representatives, members of the Nebraska Foster Care Review Office, and “court-appointed special advocates.” Add to this mix the possibility that relatives and others who are concerned about the children in the case—cousins, neighbors, pastors, friends, and even the media—might also attend hearings. While the first challenge might be finding enough chairs for everyone in the room, the bigger one, certainly, is handling all of the competing interests who have come to the juvenile court to be heard.

But by whom?

By the judge, who must also be an advocate, if the juvenile court system is to work. But not for one side or the other. Rather, the judge must advocate for fairness. A juvenile court judge often labors very hard in order to cut through sometimes complex or disjointed evidentiary presentations to derive a clear ascertainment of the facts and the issues of the case upon which he or she will apply a correct understanding of the law. That, of course, resembles a textbook definition of the judge’s role. In real practice, when managing the tug-of-war in the courtroom, an effective juvenile court judge must be something more than a jurist—sometimes a teacher, at other times, more like an air-traffic controller, or boxing referee.

It is in this swirl of competing, pushing, and pulling, interests that advocacy reaches its highest point, and the juvenile law system can work. This does not mean that with effective advocacy, parents will always have their children returned to them, nor does it mean that the State will win its cases every day, as a matter of course. But at its best, it means that the parties come away knowing that they have had their day in court; that their voices have been heard, even if not heeded, and that somewhere in the painting of facts, feelings, and thoughts in the courtroom, enough information has been brought forward in order for the judge to make the best decision for the child, while respecting the legal rights of those who come before the court.

Some members of the bar tend to regard the juvenile court as “kiddie court,” a type of low-stakes tribunal where new lawyers can get their feet wet, a place to hang out before they can graduate to the more glamorous arenas of law practice. But the stakes in juvenile court are far from low. On a daily basis, decisions are made that change lives. A child may be removed from an abusive parent, not just for today, but forever. A gangbanger may discover that strength consists in more than fighting. It might be only when a child is removed from her drug-addicted parent, that the parent can experience what it really means to “hit the bottom.”

INTRODUCTION

The juvenile court might bring a man to face the toughest decision of his life—whether he will step up to the plate and do what is required of him to become his child’s father—or walk away. A child who refuses to go to school may be placed in a school more appropriate to meet his or her developmental level and needs. What happens today in juvenile court can shape lives for years and years beyond that moment when the juvenile court closes its file in the case.

Juvenile court practice can be complex, but fascinating. While it draws upon elements from the criminal law, it is not criminal law. Every day juvenile judges must honor and enforce rights guaranteed by our State and federal constitutions, yet it is not purely constitutional law. Many areas of juvenile law are grey. To some, that represents a source of frustration; to others, a chance to light the way. While committees, commissions, and studies can recommend change upon change, and the re-vamping of court procedures, at the end of the day, there is simply no substitute for competent and qualified professionals to be involved, from the very beginning of the case to its end. To be competent means to understand the law, and the juvenile court process, and to put it all into action. It starts with you.

How?

Get curious, and read this book.



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