

Understanding Juvenile Law

Understanding Juvenile Law

FIFTH EDITION

Martin R. Gardner

STEINHART FOUNDATION PROFESSOR OF LAW
UNIVERSITY OF NEBRASKA, COLLEGE OF LAW



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In memory of my goodly parents.

Martin R. Gardner

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Preface

This text examines the topic of juvenile law. The book addresses issues of children and the law in the context of common law doctrine, federal constitutional principles, and statutory enactments.

The book discusses these various bodies of law in relation to a fundamental issue permeating the entire field of juvenile law: the extent to which the law should protect young people rather than recognize them as autonomous persons. While the law traditionally adopted a protectionist posture, recent legal developments appear to recognize autonomy rights of adolescents in certain contexts. These developments are praised by some commentators who advocate wholesale rejection of the paternalistic model in favor of a system that treats adolescents as full-fledged persons under the law. This book does not advocate any particular resolution of the current debate about the nature of the rights of young people; rather, it suggests that sensitivity to the issues and arguments entailed in that debate is essential to any true understanding of the present state of juvenile law.

With these concerns in mind, the text begins with a general discussion of the nature of the rights of juveniles and the perception that young people constitute a unique class under the law. This theoretical introduction will serve as a background for subsequent discussion of juvenile law doctrine. The discussion separates aspects of juvenile law arising outside the juvenile justice system (defined in this text as the system of separate courts organized to deal with “delinquents” and “status offenders”)¹ from those arising within that system. This division is created as a useful means of organizing the doctrinal material, given the extensive body of rules that govern the juvenile justice system. Moreover, this organization permits the juvenile justice section to stand by itself as an independent text for students in courses that cover only that aspect of juvenile law.

Finally, for readers interested in single sources providing broader attention to juvenile law issues than provided in this text, two multi-volume sources may be useful starting points. Donald Kramer’s three-volume second edition to *Legal Rights of Children* offers a well organized treatment of a host of legal issues affecting young people. In addition, the various volumes of *Juvenile Justice Standards* from the Institute of Judicial Administration and the American Bar Association Joint Commission provide useful commentary on a variety of juvenile law issues. Finally, for a treatment of the juvenile justice system, the second edition of Samuel Davis’s *Rights of Juveniles* provides an excellent source.

1. A separate section (Part Three) is devoted to the delinquency/status offense aspects of juvenile law under the label “juvenile justice system.” Sometimes this label is used more broadly to include abuse and neglect jurisdiction or any other matter handled in a separate juvenile court. The label “juvenile justice system” always includes, however, and is often limited to, that system of courts created to deal with delinquents and status offenders.

