

Times Have Changed

What Every Parent And Child Should Know About The Juvenile And Criminal Justice Systems

By Lara E. Marks

When you were a kid, how many times did you watch (or hear about) two boys slugging it out behind the school? Bell would ring, everyone would gather around in a circle and the two kids would punch each other until one kid gave up or everyone had to go home for dinner. Happened a lot, right? I certainly remember being one of the spectators to such an event - on a number of occasions. Sometimes a teacher would break it up and call both kids' fathers. You'd see them sitting in the hallway outside the principal's office, noses bleeding, more afraid of their father's wrath than any punishment someone else could impose. There were some fathers – not unlike mine – who would encourage their son to go back out and fight the other kid again – "don't stand there with your tail between your legs. Go show him he can't push you around." So, the next day or week the kids would be back at it behind the school. (Eventually, they'd probably make up and life would go on).

Times have changed. Today, if one of those boys ended up with so much as a small permanent scar or a knocked out tooth from a fight, he would be charged with 2nd Degree Assault – a class 4 felony. If both boys ended up with scars, they would both be prosecuted as felons. Think I'm joking? Prosecutors in Colorado routinely file felony cases following a fight between two kids.¹

Please don't get me wrong. I do not condone violence. One of the first things we learn in kindergarten is keep your hands to yourself. Kids should not be encouraged to bloody each other behind the schoolhouse, despite what our grandfathers used to encourage. And, I think every concerned parent – in good faith - tries to teach their kids right from wrong. We tell them not to drink and drive. Don't steal. Stay away from drugs. The basic common sense admonitions. But, our kids' world is so much different than the one in which we

lived. It is no longer that simple. "Tough on Crime" and "Law and Order" are much more prominent themes in our society and amongst prosecutors than they were 20 years ago. What's

¹ See §18-3-203 (1)(g), Colo.Rev.Statutes: A person commits the crime of assault in the second degree if with intent to cause bodily injury to another, he causes serious bodily injury to that person or another. Serious bodily injury is defined as bodily injury which involves a substantial risk of death, serious permanent disfigurement or protracted loss or impairment of the function of any part or organ of the body. *People v. Martinez*, 189 Colo. 287 (1975).

more, today's politicians, including elected prosecutors, are afraid of ignoring a kid who could someday do something that would cause a community to say, "All the warning signs were there. Why didn't anybody do anything earlier?"

Here's another true story. Three kids walking home from school through their neighborhood. They pass a garage with an open door and see a six-pack of beer sitting on the floor. Kid A says to Kids B and C, "Let's take 3 of those and go sit in the park." B and C nod their heads and watch as Kid A quickly walks to the garage and picks up three beers. The neighbor happens to see it happen. Now probably in my day, A, B and C would each get walked home to their respective parents by the scruff of his neck. Now, Kid A gets charged with a class 3 felony – Burglary of a Dwelling, in addition to some misdemeanor theft and trespass charges.² Kids B & C are prosecuted as accomplices to the burglary because they nodded their heads and agreed to aid the crime.³

How about the girl who suffers her first heartbreak? She's 18 years-old, a senior in high school. After going steady with a boy in her class for a year, he breaks it off one day, telling her only that he doesn't want to talk to her anymore. At her age, it feels like the world will end. She sits in her bedroom one night, sad and lonely, and thinks that if he would just talk to her, they would work this whole thing out. So, she sends him a text. He doesn't respond so she sends another. "He can't just ignore me," she thinks, so she calls him. He doesn't answer, so she calls him again. She just knows he's ignoring her call. So, later that night, she texts and calls him a few more times through her tears. Meanwhile, on the other end of the line, the boy's family is trying to have dinner. They are completely annoyed with the constant buzzing of his phone. When they get frustrated with the boy, his response is – "It's not my fault. I can't get this girl to leave me alone. She's been calling me non-stop and won't stop. I told her to leave me alone." So, his parents think – "well, then, we'll just call the police and ask the police to tell her to quit calling. That will get her attention." The next thing that happens is that the police show up at the girl's house, and place her under arrest for domestic violence, harassment by use of the telephone (which statutorily requires an immediate arrest).⁴ Unfortunately, she is 18, which makes her an adult

² See §18-4-203 (1), (2), Colo.Rev.Statutes: A person commits second degree burglary if the person knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit therein a crime against another person or property. Second degree burglary is a class 4 felony, but is a class 3 felony if the burglary is a dwelling.

³ See §18-2-201 (1)(3), Colo.Revised Statutes: A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he agrees with another person or persons that they, or one or more of them, will engage in the conduct which constitutes a crime or an attempt to commit a crime, or he agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such a crime.

⁴ See §18-9-111 (e), (f), (g), Colo.Revised Statutes: A person commits harassment if, with intent to harass, annoy or alarm another, he or she: (e) initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network or computer system that is obscene; or (f) makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or (g) makes repeated communications at inconvenient hours that invade the privacy of another and interfere with the use and enjoyment of another's home or private residence or other private property. See also, §18-6-800.3(1), (2): Domestic violence means an act or threatened act upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person...when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or

under the law. She does not go to the juvenile detention center when arrested. She goes to the county jail.

Once her parents have bonded her out, they think, "this is all just a big misunderstanding. It should be an easy enough matter to resolve, right? We'll just talk to the boy and his parents, they won't want the case to go forward, and we can get the district attorney to drop this whole, crazy thing." Wrong. A mandatory protection order has gone into place. Neither your daughter – nor her parents acting on behalf of the daughter - can talk to the boy (short of a court order or an investigator) or attempt to influence his parents to drop the charges.

But, let's say the boy and his parents did not intend this kind of result. They go to the district attorney themselves and ask that the charges be dropped. The district attorney explains that their office has a "no drop" policy on domestic violence cases because too often victims of domestic violence recant so their paramour doesn't have to be punished for breaking the law. So, the DA's hands are tied. He can't drop the case. "Not to worry, though. The next best thing to dismissal is to offer the 'perpetrator' a deferred judgment, which will allow the case to be dismissed if she complies with the treatment she'll be required to undergo."⁵ Boy and his family think that can't be so bad, so they agree that she can get some counseling about her emotional distress over the break-up.

In this kind of situation, the girl may have no choice but to enter a guilty plea and take the deferred judgment offer. After all, how can she dispute that she sent the text messages? They have her phone records and pictures of the texts taken from his phone. His parents were witnesses to the calls. Everyone in her life knows that she was heartbroken after he dumped her. And all the law requires is that her telephone communication was "repeated" and caused "alarm, annoyance or harassment."⁶ So, she is put on probation for a year or two, required to attend domestic violence classes every week for 36 weeks, and sit there amongst men or women who actually did beat their spouse. She has to meet with a probation officer, and pay \$600 per year for the privilege of doing so. Likely she has to complete dozens of hours of community service. Perhaps the DA will require a mental health evaluation. What does she have to disclose on her college applications? To prospective employers? The DA is not concerned. She broke the law. That's her problem.

These are just a few examples of the kinds of cases this practice has handled in recent months. No one wants to live in a world where our children are afraid of walking outside the front door. However, unless the kids, and you as parents, understand today's laws and the consequences for breaking the laws, and also understand the attitude of those in charge of enforcing the laws, you both can find yourselves in a very difficult, costly mess—a mess that can have severe consequences, not just in terms of the criminal and juvenile justice system, but also in terms of our children's future education and career choices as well. Not everyone is or wants to be a

has been in a relationship. Intimate relationship means a relationship between spouses, former spouses, *past or present unmarried couples*, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together for any time. (Emphasis added).

⁵ See §18-1.3-102: Defendant may enter a guilty plea pursuant to an agreement with the District Attorney which, upon full compliance with the terms and conditions of the plea agreement, the guilty plea will be withdrawn and the charge upon which the judgment and sentence of the court was deferred shall be dismissed with prejudice.

⁶ See footnote 4, *supra*.

lawyer. However, parents should educate themselves and their children about the pitfalls of the criminal/juvenile justice systems. As in all facets of parenting, the more educated and involved you are, the safer your kids.

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