

MAINE STATE LEGISLATURE

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INTRODUCTION¹

There is little consensus about what constitutes "juvenile delinquency". In a broad sense, the term has been used to describe any "anti-social" acts of children.² But some commentators contest that only those actions which would be considered crimes if committed by an adult should constitute delinquent behavior in children.³

Currently, Maine's statutes are somewhat confusing. They refer to a "juvenile offense".⁴ Thus, in Maine, a juvenile is adjudicated to have committed a

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For relevant sections of our reports on Maine's statutes and regulations see: Arthur Bolton Associates, "Statutes of Maine's Juvenile Justice System, Report on Task 3, pp. 51-80 and "Regulations of Maine's Juvenile Justice System, Report on Task 4", pp. 44-72.

2

Kobetz and Bosarge, Juvenile Justice Administration (Maryland, International Chiefs of Police Association, 1973) p. 15.

3

American Bar Association/Institute of Judicial Administration, Juvenile Justice Standards Project, unpublished paper on delinquency, scheduled for publication in Fall, 1976.

4

15 M.R.S.A. Section 2502(1) (Supp. 1975).

"juvenile offense" if he has been found to have committed any offenses or acts referred to by the Juvenile Justice Act.⁵ Yet, that section of the Juvenile Code specifically distinguishes offenses from acts of non-criminal conduct.⁶ While the current statutes are somewhat unclear, they do attempt to distinguish between criminal and non-criminal behavior in children. Since this is so and since the Commission has decided to consider non-criminal behavior as a separate category, these materials will be restricted to activity of children which would be considered criminal if committed by an adult.

A. Theories of Delinquency

1. Ecological⁷

Urban slum areas have long been recognized as centers of juvenile delinquency and crime. The first sociological studies of delinquency in the United States concentrated on the ecological factors in the distribution of crime; Clifford R. Shaw, Henry D. McKay, Frederic M. Thrasher, Ernest W. Burgess, Robert E. Part and other sociologists affiliated with

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Ibid.

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Ibid. Note also that not all acts of criminal behavior are included in a juvenile court's jurisdiction in Maine. For example, numerous motor vehicle violations are specifically excluded.

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Much of this discussion is abstracted from Rodman and Grams, "Juvenile Delinquency and the Family" in the President's Commission on Law Enforcement and Administration of Justice, Task Force Report--Juvenile Delinquency and Youth Crime (1967). More exact citations to referenced studies will be found there.

the University of Chicago in the twenties and thirties made most of their contribution to the literature on delinquency in isolating the various factors of community organization often associated with high delinquency rates. Shaw and McKay (1942) especially, in documenting the varying crime rates of 21 United States and Canadian cities, contributed much to ecological data on delinquency. Their book, "Juvenile Delinquency and Urban Areas," included studies of Chicago, Philadelphia, Boston, Cleveland, Baltimore, and Vancouver, British Columbia. They found that delinquency rates were generally highest in the center of a city and decreased in regular gradients in surrounding zones. This pattern was repeated in city after city and even held in zones as far as 125 miles from an urban center. Many cities, however, showed significant variations on this theme, and Shaw and McKay based their conclusions regarding ecological factors in delinquency distribution on the amount of land for commercial use in an area rather than the distance from the center of the city.

In addition to "Juvenile Delinquency and Urban Areas," other researchers have published studies similar to Shaw and McKay's. Earl R. Moses (1942) found patterns similar to those documented by Shaw and McKay with areas surrounding business districts,

industrial complexes, and railroad property having the highest delinquency rates.

Sullenger (1936) found delinquency concentrated in areas of high population density and mobility. Barker (1940) replicated the findings of Shaw and McKay in a study conducted a decade after theirs.

Shaw and McKay present a brief historical account of ecological studies of delinquency in France, England, and Italy, which preceded the studies in the United States and which initially pointed to variations in crime and delinquency rates among cities or large districts within a country. Later studies, however, showed that such differences also were to be found "among local areas, communities, or neighborhoods within the corporate limits of large cities" (Shaw and McKay, 1942, p. 5). Shaw and McKay themselves also have data on intercity differences, but they do not comment on these differences, and for a long time little research attention was paid to such differences independent of social class as a variable. However, research conducted in the 1960's by Reiss and Rhodes (1961) and by Clark and Wenninger was carried out on four communities in northern Illinois, and was based on a self-report delinquency questionnaire administered to children at school. It uncovered minimal differences in

reported delinquency within a community and much larger differences between communities. Similar studies by Nye, Short, and Olson (1958), Akers (1964), and Voss (1966) also support these findings. The communities studied by Clark and Wenninger included two "communities" within metropolitan Chicago, and in this sense their findings are comparable to those of Shaw and McKay who also reported differences of communities within larger cities.

Shaw and McKay, whose studies showed a significant correlation between high crime rates and high juvenile delinquency rates, place much importance on the presence of criminal role models in a slum area (especially when the criminals hold positions of high prestige in the community) in leading adolescents into delinquency. The idea that criminal behavior is learned through association with criminals has been formulated and elaborated by Sutherland as the theory of "differential association." One of the areas in which Sutherland and Cressey (1960) use the theory of differential association is in attempting to explain variations in crime rates between the native population, first generation immigrants, and second generation immigrants. They refer to studies by Crook (1934), Hayner (1943), Lind (1930), and others

which showed that European immigrants usually have low crime rates at first upon arrival in the United States, but that their rates increase with their continued contact with native groups, whose rates are generally higher. These findings, they conclude, indicate that the higher rate of delinquency among second-generation ethnic groups in comparison to the first generation is due to their assimilation of delinquency behavior patterns found in America. Different conclusions have been reached by other sociologists. For example, Reckless (1961) attributes the higher rates in the second generation to a conflict in values between immigrant parents and their children who have become adapted to American cultural patterns. Cloward and Ohlin (1960) see the lack of opportunity for legitimate advancement among children in minority immigrant groups as the cause of their delinquency.

2. Psychological⁸

Psychiatric criminologists have suggested a

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Much of this discussion is abstracted from Tappan, Juvenile Delinquency (1949); Staton, Dynamics of Adolescent Adjustment (New York: Macmillan, 1961, p. 469); Lijins, "Pragmatics Etiology of Delinquent Behavior" SOCIAL FORCES, Vol. 29, March, 1951; Rafferty, "Community Mental Health Centers and the Criteria and Quantity and Universality of Services for Children"; Adams, "Children and Paraservices of the Community Mental Health Centers"; Beach, "The Child Psychiatrist Attempts to Introduce Community Psychiatry into a State Mental Health Program"; Berlin, "Some Models for Revising the Myth of Child Treatment in Community Mental Health Centers"; Sonis and Sonis, "Children, Youth and Their Gatekeepers" all in JOURNAL OF CHILD PSYCHIATRY (Yale University Press) Vol. 14, No. 1, Winter, 1975.

number of criminal classifications based fundamentally upon Freudian analysis of personality motivations; their schema relies on the psychic mechanisms of repression, frustration, and reactive behavior. These explanations vary somewhat with different commentators but to a great extent borrow from and elaborate upon Freud's theory of the "criminal out of the sense of guilt." The conceptual division below is, in the main, an example of such a schema of delinquent types, with some amplification and reinterpretation in the light of additions by other and more recent psychiatric analysis.

The Acute Delinquent

This type is the accidental or involuntary offender, or one who is pressed by unusual and extreme circumstances into single or rare law violations.

The Chronic Delinquent

The literature recognizes three categories of chronic delinquents:

● The "normal" delinquent

Product of a sociological etiology, their offenses result from pathological social forces, for example, from associations and experiences that lead to the individual's identification with criminal patterns.

These individuals are socialized but are so in relation to a delinquent subculture. The types of offenders discussed in the studies of Shaw and Sutherland, referred to above,⁹ are "normal delinquents" who developed through identification with a delinquent subculture.

- The "psychological delinquent

This type is the product of a psychological etiology. Their misbehavior is symptomatic of their anxiety, guilt feelings, and unresolved conflicts.

- The "physiological" delinquent

This type is the product of a biological etiology, wherein misconduct is a result of some pathological phenomenon of an organic nature. This includes offenders with some organic defect that has contributed to a distortion of their psychological processes. Though the line between the "physiological" and the "psychological" offender is often difficult to draw, the distinction may be made that the "physiological" type is conditioned more generally by organic phenomena than by circumstances in their life history.

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See note 7 and accompanying text.

2. Family¹⁰

Of all the hypotheses as to the origins of maladjustment or delinquency, perhaps the most generally accepted is that which associates such social failure with the 'broken home'. Some researchers have found a very high incidence of broken homes among delinquents and have attributed much significance to broken homes as a cause of delinquency. Others have given less direct emphasis to the importance of broken homes and have suggested that the broken home may have a differential effect by variables such as sex, area, or family cohesiveness. The controversy over the effect of broken homes on delinquency began with a paper published by Shaw and McKay (1932), in which they concluded from a study of Chicago school boys and juvenile court cases that only slightly more broken homes appeared in the delinquent group than in the control group (42 percent:36 percent) and that the correlation between high delinquency rate areas and high broken home rate areas was small.¹¹ The data

related?

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The material in this section is based largely on Erikson, Childhood and Society (1950); Whiting and Child, Child Training and Personality (1953); Wootton, Social Science and Social Pathology et al, (ed) Theories of Society (1961); and President's Task Force Report, *supra*. note 7.

¹¹

Shaw and McKay, "Are Broken Homes a Causative Factor in Juvenile Delinquency?" SOCIAL FORCES Vol. 10, pg. 514.

they presented contradicted several earlier studies, especially one by Burt (1925)¹² in London which had found delinquents coming from broken homes twice as often as non-delinquents.

Shaw and McKay's study was criticized as unrepresentative, since it made no attempt to discover delinquents in the control group, and refutations of it soon appeared. A study by Weeks and Smith (1939)¹³ in Spokane, Washington, found that 41.4 percent of the delinquents and only 26.7 percent of the controls came from broken homes; their correlation between delinquency and broken homes by area was considerably higher than Shaw and McKay's. Eleanor and Sheldon Glueck (1950),¹⁴ in their monumental study of 500 matched pairs of delinquents and nondelinquents, found 60.4 percent of the delinquents and 34.2 percent of the nondelinquents with broken homes in their backgrounds. In 1957 Monihan¹⁵ reported that delinquents coming

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Burt, The Young Delinquent, (London: University of London Press, 1925).

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Weeks and Smith "Juvenile Delinquency and Broken Homes in Spokane, Washington" SOCIAL FORCES, Vol. 18, p. 48.

14

Glueck and Glueck, Unraveling Juvenile Delinquency (New York: Commonwealth Fund, 1950).

15

Monahan, "Family Status and the Delinquent Child: A Reappraisal and Some New Findings" SOCIAL FORCES, Vol. 35, pg. 250.

from broken homes were more likely to be recidivists than delinquents from unbroken homes. Browning (1960)¹⁶ found significantly greater numbers of Los Angeles delinquents coming from "disorganized" homes. Slocum and Stone (1963)¹⁷ found a significant correlation between broken homes and delinquent-type behavior. Peterson and Becker (1965)¹⁸ also found a relationship between broken homes and delinquency.

Many researchers, however, have indicated that broken homes have a differential effect upon children-- that the delinquency-producing effect is higher for pre-adolescents than adolescents and higher for property offenders than "authority" offenders.

Early studies by Barker (1940)¹⁹ and Weeks and Smith (1939)²⁰ found significant variations in the

16 Browning, "Differential Impact on Family Disorganization on Male Adolescents", SOCIAL FORCES, Vol. 8, p. 37.

17 Slocum and Stone, "Family Culture Patterns and Delinquent-Type Behavior" MARRIAGE AND FAMILY LIVING, Vol. 25, p. 202.

18 Becker and Peterson, "Family Interaction and Delinquency", chapter in Quay, editor, Juvenile Delinquency: Research and Theory (Princeton, 1965).

19 Barker, "Family Factors in the Ecology of Juvenile Delinquency" JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SERVICE, Vol. 30, p. 681.

20 See supra. note 13.

correlation between delinquency rates and broken home rates among different areas of a community, and there is similar evidence on rural-urban differences in a study by Ferdinand (1964).²¹ But the most common observation about the differential effect of the broken home has been that delinquent girls come from broken homes more often than delinquent boys. An early study by Hodgkiss (1933)²² which repeated Shaw and McKay's Chicago study on delinquency and broken homes using girls instead of boys, found that 66.8 percent of delinquent girls came from broken homes compared to 44.8 percent of the school girls. Hodgkiss' ratio of 1.49 to 1, delinquent girls to school girls, is considerably higher than the ratio computed by Shaw and McKay (1932) for boys, 1.18 to 1. Wattenberg and Saunders (1954)²³ studying Detroit juvenile delinquents also found a greater percentage of delinquent girls as compared to delinquent boys coming from broken homes. Monahan (1957)²⁴ reported much the same results from Philadelphia delinquents--55.4 percent of white girls and 74.3 percent of black girls coming from broken homes compared to 32.3 and 57.9 percent of white and black boys, respectively.

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Ferdinand, "The Offense Patterns and Family Structures of Urban, Villages and Rural Delinquents", JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE, Vol. 55, p. 86.

22

Hodgkiss, "The Influence of Broken Homes and Working Mothers" SMITH COLLEGE STUDIES IN SOCIAL WORK, Vol. 3, p. 259.

23

Wattenberg and Saunders, "Sex Differences Among Juvenile Offenders" SOCIOLOGY AND SOCIAL RESEARCH, Vol. 39, p. 24

24

Supra. note 15.

Jackson Toby (1957)²⁵ reviewed some of the literature on the differential impact of broken homes, and added a good deal of clarity to the findings of previous studies. For example, he introduced age as a differential variable in order to explain the apparent discrepancies between the data of Shaw and McKay and others. He pointed out that while Shaw and McKay found little overall difference between their delinquent group and control group in the percentage of broken homes, some differences did show up when controlling for age. The delinquents were considerably older than the control group, and it turned out that in the older age groups there is little difference between delinquents and controls in the rate of broken homes, while in the younger age groups there is a good deal of difference. Toby reasons that well-integrated American families generally have less control over their older, adolescent sons. As a result, family disorganization (broken homes) would have its greatest impact upon younger, preadolescent sons, where the well-integrated family could generally exert greater control. Toby's data lend support

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Toby, "The Differential Impact of Family Disorganization" AMERICAN SOCIOLOGICAL REVIEW, Vol. 22, p. 505.

to the hypothesis of differential impact with age, and a similar differential effect was observed by Lees and Newton (1954)²⁶ in their study of British delinquents.

Toby also applied the same reasoning to account for the differential impact of broken homes on boys and girls. He suggested that, in general, families exercise more control over girls, hence they are more affected by a broken home. Toby's data showed that, as predicted, the impact of broken homes was greater for girls than for boys. He further presented data that urban areas and blacks, assumed to be characterized by high rates of family disorganization, do have a disproportionate number of female delinquents. But Toby did not have data on types of offenses, and it appears that the relationships between sex and rate of broken homes is eliminated when one controls for type of offense. Weeks (1940)²⁷, for example, suggested that the differential effect of broken homes on boys and girls was due to the types of offenses for which they were arrested. Most girls

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Lees and Newson, "Family or Sibship Position and Some Aspects of Juvenile Delinquency" BRITISH JOURNAL OF DELINQUENCY, Vol. 5, p. 46.

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Weeks, "Male and Females Broken Homes Rates by Types of Delinquency" AMERICAN SOCIOLOGICAL REVIEW, Vol. 5, p. 601.

are arrested for ungovernability, running away, and sex offenses, while most boys are arrested for vandalism, theft, and assault. Testing his theory on Spokane, Washington delinquents, Weeks found that when type of offense is held constant, delinquent boys and girls come from broken homes in nearly the same proportions. Other studies, by Nye (1958)²⁸ (1964)²⁹ using Michigan court data, have also shown that broken home rates vary according to the type of delinquency, being higher for "authority" offenses such as ungovernability and truancy.

4. Economic

Early studies³⁰ asserted with considerable confidence that while delinquency is likely to occur in all income groups, it most often appears among black males in lower income groups living in urban areas.

But during the 1960's this assertion was questioned in two leading studies, one by Belton

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Nye, Family Relationships and Delinquent Behavior, (New York: Wiley and Sons, 1958).

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See, supra. note

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Cohen, Delinquent Boys: The Culture of the Gang (Illinois: The Free Press, 1955); Lander, Toward an Understanding of Juvenile Delinquency (New York: Columbia University Press, 1954); Kvaracus, The Community and the Delinquent (New York: World Book Co., 1954).

Fleisher of the University of Chicago³¹ and one by Singell.³² Both studies concluded that:

- a) There is a positive correlation between unemployment and delinquency;
- b) There is a positive correlation between increased family incomes and a decrease in delinquent behavior;
- c) There is a negative correlation between race and delinquent behavior.³³
- d) There is a positive correlation between population mobility and an increase in delinquent behavior.³⁴

The most consistent findings in research on economics and delinquency emphasize the significance of opportunities for work and for education. But while work and education are

³¹ Fleischer, The Economics of Delinquency (Chicago: Quadrangle Books, 1966).

³² Singell, "Some Private and Social Aspects of the Labor Mobility of Young Workers" QUARTERLY JOURNAL OF ECONOMICS AND BUSINESS, Vol. 6, No. 1 (Spring, 1966) p. 26.

³³ In short, Fleischer and Singell concluded that race is an extremely small and insignificant factor in delinquent behavior. See Fleischer, *supra*. note 31 at p. 89.

³⁴ Fleischer and Singell's findings square almost completely with earlier studies by Ogburn and Thomas. "The Influence of the Business Cycles on Certain Social Conditions" JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, XVIII, September, 1922 p. 305; Henry and Short, Suicide and Homicide (Illinois: The Free Press, 1954); and Glazer and Rice, "Crime, Age and Unemployment", AMERICAN SOCIOLOGICAL REVIEW, XXIV, October, 1959, p. 679.

conditions for fullfledged participation in our society, they are not often objectives to which poor children can aspire with much confidence. The fact of their poverty leaves them disadvantaged; the perceived irrelevance of education to their parents leaves them disillusioned;³⁵ yet occupational aspirations raise questions about the meaning of education in relation to work.

It is at this point that the facts of upper-middle class delinquency become relevant, for they clearly indicate that when non-poor youngsters live in high-delinquency areas,³⁶ experience substantial neighborhood change, fail in school,³⁷ and fail to see the relevance of education to work,³⁸ they have delinquency rates that are only slightly lower than those of low-income offspring. The studies from which these conclusions are taken were based on sufficiently large samples to make them more than simply suggestive. Indeed the Reiss-Rhodes study³⁹ was based on a sample of 9,238 white boys, nearly 10 percent of whom were adjudicated delinquents.

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One need only point out, as an illustration, that there are often substantial differences between the wages and salaries of whites and non-whites even when education is held constant.

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Palmer and Hammond, "Factors in Juvenile Delinquency," AMERICAN SOCIOLOGICAL REVIEW, Vol. 29, No. 6, Dec., 1964, pp. 848-854; and Reiss and Rhodes, "The Distribution of Juvenile Delinquency in the Social Class Structure," AMERICAN SOCIOLOGICAL REVIEW, Vol. 26, No. 5, pp. 720-732. These studies also suggest that low-income youngsters in "good" neighborhoods have low rates of delinquency.

37

Ibid.

38

Dentler and Warschauer, Big City Dropouts and Illiterates (New York: Center for Urban Education, 1966).

39

Supra. note 36.

B. Statutes Currently in Force, or Proposed, for Adjudication of Delinquency and for Dispositional Alternatives for Delinquent Youth in States Other than Maine.⁴⁰

1. Statutes Currently in Force

a. Grounds for adjudication of delinquency or other status resulting in same dispositional alternatives

In the form of a jurisdictional prerequisite or in the definition of "child" or "delinquent", all states have some age requirements as to who may be adjudicated delinquent. The most common requirement, imposed by nearly two-thirds of the states and the District of Columbia, is that a person must be less than eighteen years of age to come within the juvenile court provisions.⁴¹ Although the age limitation is usually formulated to include all persons committing "delinquent

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Based on unpublished data collected in 1973 by John Junker, University of Washington Law School for the Institute of Judicial Administration/American Bar Association's Juvenile Justice Standards Project.

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Ariz. Rev. Stat. Ann. Section 8-201(5) (Supp. 1972); Ark. Stat. Ann. Section 45-201 (Supp. 1971); Cal. Welf. & Inst'n's Code Ann. Section 506 (West 1973); Colo. Rev. Stat. Section 22-1-3(3) (1963); Del. Code Ann. Section 901 (Supp. 1972); Idaho Code Ann. Section 16-1802(c) (Supp. 1973); Kan. Stat. Ann. Section 38-802(b) (Supp. 1972); Ky. Rev. Stat. Ann. Section 208.010(2) (1972); Md. Ann. Code art. 26, Section 70-1(c) (1973); Minn. Stat. Ann. Section 260.015(2) (1971); Miss. Code Ann. Section 43-21-5(c) (1972); Mont. Rev. Code Ann. Section 10-602(10) (1947); Neb. Rev. Stat. Section 43-201 (1969); Nev. Rev. Stat. Section 62.020(1,b) (1967); N.J. Rev. Stat. Section 2A:4-14 (Supp. 1973); N.M. Stat. Ann. Section 13-143(A) (Supp. 1972); N.D. Cent. Code Section 27-20-02 (Supp. 1971); Ohio Rev. Code Ann. Section 2151.011(B,1) (Supp. 1972); Okla. Stat. Ann. tit. 10, Section 1101(a) (Supp. 1972); Ore. Rev. Stat. Section 419476(10) (1972); Pa. Stat. Ann. tit. 11, Section 50-102(1) (Supp. 1973); R. I. Gen. Laws Ann. Section 14-1-3(C) (1971); S. D. Compiled Laws Ann. Section 26-8-1(3) (Supp. 1972); Tenn. Code Ann. Section 37-202(1) (Supp. 1972); Utah Code Ann. Section 55-10-64(3) (Supp. 1971); Va. Code Ann. Section 16.1-141(3) (Supp. 1973); Wash. Rev. Code Ann. Section 13.04.010 (1962); W.Va. Code Ann. Section 49-5-2 (Supp. 1972); Wis. Stat. Ann. Section 48.02(3) (Supp. 1973); Who. Stat. Ann. Section 14-115.2(e) (Supp. 1971).

acts" prior to the specified age,⁴² some jurisdictions require that a person must be less than twenty-one years old to be adjudicated delinquent even if the alleged delinquent act was committed prior to the age of eighteen.⁴³ Other jurisdictions impose age limits of less than sixteen,⁴⁴ less than seventeen,⁴⁵ or less than nineteen.⁴⁶

Minimum age limits for adjudications of delinquency are imposed in a small number of states.⁴⁷

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See, e.g., Ind. Ann. Stat. Section 9-3204 (Supp. 1972).

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See, e.g., D.C. Code Ann. Section 16-2301(d) (Supp.V, 1972); Ga. Code. Ann. Section 24A-401(c) (Supp. 1972).

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Ala. Code tit. 13, Section 350(3) (1958); Conn. Stat. Ann. Section 17-53(a) (Supp. 1973); N.Y. Consol. Laws Ann. Section 712(a) (1963); N.C. Gen. Stat. Section 7A-728(1) (1969); Vt. Stat. Ann. tit. 33, Section 632 (9,1) (Supp. 1972).

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Fla. Stat. Ann. tit. V Section 39.01(4) (Supp. 1973); Ill. Stat. Ann. ch. 37, Section 702-2 (1972); La. Stat. Ann. Section 13:1569(3) (Supp. 1973); Mass. Gen. Laws Ann. ch. 119, Section 52 (1965); Mich. Stat. Ann. Section 27.3178(a); Mo. Ann. Stat. Section 211-021(2) (1959); N.H. Rev. Stat. Ann. tit. 12 Section 169:1(a) (Supp. 1972); S.C. Code Ann. Section 15-1103(9) (1962); Tex. Rev. Civ. Stat. Ann. art 2338-1, Section 3 (Supp. 1973).

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See, e.g., Iowa Code Ann. Section 232.2(4) (Supp. 1973), which defines "minor" as person less than nineteen, or less than twenty-one if regularly attending an approved high school.

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Mass. Gen. Laws Ann. ch. 119 Section 52 (1965); Miss. Code Ann. Section 43-21-5(g) (1972); N.Y. Consol. Laws Ann. Section 712(a) (1963); S. C. Code Ann. Section 15-1103(9) (1962); Tex. Rev. Civ. Stat. Ann. art. 2338-1 Section 3 (Supp. 1973); Vt. Stat. Ann. tit. 33 Section 632(9,1) (Supp. 1972).

These requirements range from seven to ten years of age. More frequently such limitations are imposed in the form of minimum age limits on commitment to specified institutions for delinquent children.

All states incorporate, in some form and with various exceptions, statutory standards of adult criminal conduct as a basic for an adjudication of delinquency. The usual method of incorporation is to define a delinquent act as ". . . an act committed by a child, which would be designated as a crime under the law if committed by an adult, . . .".⁴⁸ Other jurisdictions refer only to violations of any state or federal law, local ordinance, etc.,⁴⁹ without specific reference to penal laws or crime.

Limitations on the incorporation (i.e. limitations on how much is incorporated from the adult code) are defined in a variety of ways. Arkansas limits incorporation to acts that would render an adult subject to prosecution for a felony or misdemeanor.⁵⁰ Colorado's Children's Code, incorporates municipal ordinances, but requires that they be punishable by a jail sentence.⁵¹

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N.M. Stat. Ann. Section 13-14-3(N) (Supp. 1972).

⁴⁹
See, e.g., N.H. Rev. Stat. Ann. tit. 12 Section 169:2 (II) (Supp. 1972).

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Ark. Stat. Ann. Section 45-205(a) (Supp. 1971).

⁵¹
Colo. Rev. Stat. Section 22-1-3(17,a) (1963).

Virginia's law, however, not only incorporates all federal, state and municipal criminal law, but it also brings within the jurisdiction of the juvenile court (and thus subject to commitment in the same degree as those who violate penal laws) children who violate any ordinance of a service district.⁵²

The Kansas Juvenile Code offers an interesting variation on the incorporation of adult criminal standards. A delinquent child is defined as one who, inter alia, does an act which if done by an adult would make him liable to be prosecuted for a felony, or has been adjudged a "miscreant child" three times or more. "Miscreant child" is defined as one who commits an act which would be a misdemeanor if committed by an adult, or one who has been adjudged a "wayward child" (runaway, disobedient, etc.) three times or more.⁵³ Similar provisions for accumulation of minor offenses are included in Rhode Island⁵⁴ and Texas.⁵⁵

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Va. Code Ann. Section 16.1-158(k) (Supp. 1973).

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Kan. Stat. Ann. Section 38-802 (Supp. 1972).

54

R. I. Gen. Laws Ann. Section 14-1-3(F) (1971).

55

Tex. Rev. Cit. Stat. Ann. art. 2338-1 Section 3 (Supp. 1973).

Many jurisdictions specifically exclude juvenile traffic offenses as a basis for delinquency adjudication.⁵⁶ Most jurisdictions that have adopted this exception, however, also limit the type of traffic offenses excepted. Thus, for example, in Montana a child who operates a motor vehicle so as to endanger life or property, or while under the influence of alcohol or other drugs, or who so commits other traffic violations as to show a lack of respect for traffic laws, may be adjudged delinquent.⁵⁷ Driving without a valid license or permit (often specified in terms of driving under the age required to operate a motor vehicle) is included as a ground for delinquency adjudication in several states that generally exclude traffic offenses.⁵⁸

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Cal. Welf. & Inst'ns Code Ann. Section 562 (West 1972); Colo. Rev. Stat. Section 22-1-3(17,a) (1963); Fla. Stat. Ann. tit. V Section 39.01(9) (Supp. 1973); Ga. Code Ann. Section 24A-401(e) (Supp. 1972); Kan. Stat. Ann. Section 38-802(c) (Supp. 1972); Minn. Stat. Ann. Section 260.015(5) (1971); Nev. Rev. Stat. tit. 5 Section 62.040 (1967); Ohio Rev. Code Ann. Section 2151.02(a) (Supp. 1972); Okla. Stat. Ann. tit. 10, Section 1101(b) (Supp. 1972); R.I. Gen. Laws Ann. Section 14-1-3 (F) (1971); S.D. Compiled Laws Ann. Section 26-8-7 (Supp. 1972); Vt. Stat. Ann. tit. 33 Section 632(3) (Supp. 1972).

57

Mont. Rev. Codes Ann. Section 10-602(2,f) (Supp. 1971).

58

D.C. Code Ann. Section 16-2301(5) (Supp. V, 1972); N.M. Stat. Ann. Section 13-14-3 (N,4) (Supp. 1972); S. C. Code Ann. Section 15-1103(9,a) (1962).

A few states except from incorporation a variety of minor violations other than traffic offenses. California excludes from delinquency jurisdiction non-felony violations of the Fish and Game Code and violations of the equipment and registration provisions of the Harbors and Navigation Code.⁵⁹ Colorado also excepts game and fish laws and regulations.⁶⁰

In addition to the violation of laws applicable to adults, a delinquency adjudication in many states may be premised on behavior (or status) which is not a violation of the law for adults, i.e. uniquely juvenile crime. In Connecticut a child may be adjudged delinquent on a finding that he is beyond the control of parents, guardians, or other lawful authority, or has engaged in indecent or immoral conduct.⁶¹ In Delaware a child who is uncontrolled by school authorities may be adjudicated delinquent.⁶² Similar bases for a delinquency adjudication exist in many states.⁶³ Perhaps the most

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Cal. Welf. & Inst'ns Code Ann Section 562 (West, 1972).

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Colo. Rev. Stat. Section 22-1-3(17,a) (1963).

⁶¹

Conn. Stat. Ann Section 17-53 (Supp. 1973).

⁶²

Del. Code Ann. tit. 10, Section 901 (Supp. 1972).

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Ala. Code tit. 13, Section 350(3) (1958); Ark. Stat. Ann. Section 45-204(d) (Supp. 1971); Ind. Ann. Stat. Section 9-3204(6) (Supp. 1972); Iowa Code Ann. Section 232.2(13,c) (1969); Ky. Rev. Stat. Ann. Section 208.020(1,b) (1972); Minn. Stat. Ann. Section 260.015 (5,d) (1971); Miss. Code Ann. Section 43-21-5(g) (1972); Mont. Rev. Codes Ann. Section 10-602(2,c) (Supp. 1971); N.H. Rev. Stat. Ann. tit. 12 Section 169:2 (II,b) Supp. 1972); N.J. Rev. Stat. Section 2A:4-14(2); Pa. Stat. Ann. tit. 11 Section 50-102(2) (Supp. 1973); S. C. Code Ann. Section 15-1103(9) (1962).

commonly uniquely juvenile crime is that of habitually so deporting one's self as to injure or endanger the health or morals of one's self or others.⁶⁴ Other usual grounds are: leading an idle, dissolute, lewd, or immoral life, or associating with vicious or immoral persons;⁶⁵ curfew violation;⁶⁶ running away from home;⁶⁷ truancy,⁶⁸ and being found in a place for permitting which an adult may be punished.⁶⁹

⁶⁴ Del. Code Ann. tit. 10 Section 901 (Supp. 1972); Ind. Ann. Stat. Section 9-3204 (17) (Supp. 1972); Iowa Code Ann. Section 232.2(13,d) (1969); Minn. Stat. Ann. Section 260.015(5,e) (1971); Miss. Code Ann. Section 43-21-5(g) (1972); Mont. Rev. Codes Ann. Section 10-602(2,e) (Supp. 1971); N.H. Rev. Stat. Ann. tit. 12 Section 169:2(II,a) (Supp. 1972); N.J. Rev. Stat. Section 2A:4-14(2,m) (Supp. 1973); S.C. Code Ann. Section 15-1103(9,j) (1962); Tex. Rev. Civ. Stat. Ann. art. 2338-1, Section 3(f) (Supp. 1973).

⁶⁵ Ala. Code tit. 13, Section 350(1958); N.J. Rev. Stat. Section 2A:4-14(2,h) (Supp. 1973); Tex. Rev. Civ. Stat. Ann. art. 2338-1, Section 3(g) (Supp. 1973).

⁶⁶ Idaho Code Ann. Section 16-1803(1,a) (Supp. 1973); Ind. Ann. Stat. Section 9-3204(10) (Supp. 1972); N.J. Rev. Stat. Section 2A:4-14(2,k) (Supp. 1973).

⁶⁷ Ark. Stat. Ann. Section 45-204(b) (Supp. 1971); Conn. Stat. Ann. Section 17-53(b) (Supp. 1973); Ind. Ann. Stat. Section 9-3204(4) (Supp. 1972); S.C. Code Ann. Section 15-1103(9.d) (1962).

⁶⁸ Ark. Stat. Ann. Section 45-204(c) (Supp. 1971); Conn. Stat. Ann. Section 17-53(e) (Supp. 1973); Idaho Code Ann. Section 16-1803(1,a) (Supp. 1973); Ind. Ann. Stat. Section 9-3204(3) (Supp. 1972); Ky. Rev. Stat. Ann. Section 208.020(c) (1972); Minn. Stat. Ann. Section 260.015(c) (1971); Miss. Code Ann. Section 43-21-5(g) (1972); Mont. Rev. Codes Ann. Section 10-602(d) (Supp. 1971); S. C. Code Ann. Section 15-1103(9,c) (1962); Tex. Rev. Civ. Stat. Ann. art. 2338-1, Section 3(e) (1973).

⁶⁹ Ala. Code tit. 13, Section 350(3) (1958).

Failure to obey a lawful order of the juvenile court is also a basis for delinquency adjudication in eight states.⁷⁰

Most jurisdictions do not require a finding of need for treatment supervision, rehabilitation, etc., as a prerequisite to commitment. Of those states that do impose such a requirement, most include it as a condition precedent to incarceration, although several states make "need for treatment" a part of the definition of "delinquent child".⁷¹ No such jurisdiction provides standards for making such determinations.

The significance of an adjudication of delinquency in many jurisdictions is to authorize commitment of a

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Ariz. Rev. Stat. Ann. Section 8-201(8) (Supp. 1972); Cal. Welf. & Inst'ns Code Ann. Section 602 (West 1972); Colo. Rev. Stat. Section 22-1-3(17,a) (1963); Conn. Stat. Ann. Section 17-53(f) (Supp. 1973); Ill. Stat. Ann. ch. 37, Section 702-2 (1972); N.C. Gen. Stat. Section 7A-278(2) (1969); Ohio Rev. Code Ann. Section 2151.02(B) (Supp. 1972); Wis. Stat. Ann. Section 48.12(1) (Supp. 1973).

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Ga. Code. Ann. Section 24A-401(f) (Supp. 1972); La. Stat. Ann. Section 13:1569(14) (Supp. 1973); Md. Ann. Code art. 26, Section 70-1(h) (1973); N.M. Stat. Ann. Section 13-14-3 (o) (Supp. 1972); N.D. Cent. Code Section 27-20-02(3) (Supp. 1971); Pa. Stat. Ann. tit. 11, Section 50-102(3) (Supp. 1973); Tenn. Code Ann. Section 37-202(4) (Supp. 1972).

child so adjudged to a children's prison, i.e. to the most severely incarcerating institution which may be used to house juveniles. Thus, children adjudged "dependent" or "neglected" by the juvenile court may only rarely be sent to so-called "reform schools".⁷² Likewise, in many of the jurisdictions which have created categories such as "minors in need of supervision" or "unruly child", specific provisions prohibit their being incarcerated under the same degree of security as delinquents.⁷³ Nonetheless, in a sizable number of jurisdictions an adjudication other than that of delinquency can lead to the same kind of incarceration as can a delinquency adjudication. Thus, in Arizona, an "incorrigible child" (disobedient, truant, runaway, habitually so deports self. . . , etc.) may be awarded to the department of corrections.⁷⁴ In Georgia an "unruly child" (disobedient, truant runaway, curfew violator, committed uniquely juvenile offense)

⁷² However, see Wash. Rev. Code Ann. Section 13.04.200 (1962), allowing a dependent child, subclassified "incorrigible", to be transferred to the state reformatory.

⁷³ See, e.g., Colo. Rev. Stat. Section 22-3-12(1963), providing that a "child in need of supervision" may be placed in any institution but the state "training schools".

⁷⁴ Ariz. Rev. Stat. Ann. Section 8-241(A,2) (Supp. 1972).

may be incarcerated in the same institutions as persons adjudged delinquent, upon a finding that the child is not amenable to treatment or rehabilitation pursuant to less severe commitment.⁷⁵ Eight other jurisdictions permit similar dispositions of non-delinquent children.⁷⁶ Similarly, under Oregon law (which does not distinguish between categories of delinquent and other children) children beyond control, runaways, etc., may be placed with the department of corrections upon a finding that the behavior of the child is found to endanger his own or others' welfare or that he is a persistent runaway.⁷⁷

b. Nature of dispositional orders of incarceration

As to the duration of incarceration that may be imposed pursuant to dispositional orders of commitment

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Ga. Code Ann. Section 24A-2304 (Supp. 1972).

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Idaho Code Ann. Section 16-1814 (Supp. 1973; Ill. Stat. Ann. ch. 37, Section 705-2(b,3) (1972); Kan. Stat. Ann. Section 38-826(a,6) (Supp. 1972); Neb. Rev. Stat. Section 43-210,01 (1969); Okla. Stat. Ann. tit. 10 Section 1137(a) (Supp. 1972); R.I. Gen. Laws Ann. Section 14-1-36 (1971); Utah Code Ann. Section 55-10-100(4) (Supp. 1971); Who. Stat. Ann. Section 14-115.30(b) (Supp. 1971).

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Ore. Rev. Stat. Section 419.509 (1972).

of delinquents and others, the large majority of states provide that such sentences shall be of an indeterminate length, subject to release either by order of the juvenile court following a hearing on the motion of an interested party, or by order of the director of the facility to which the child is committed.⁷⁸ A small number of states and the District of Columbia, however,⁷⁹ limit the effect of dispositional orders.

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Ariz. Rev. Stat. Ann. Section 8-246 (Supp. 1972); Fla. Stat. Ann. tit. V, Section 39.11(4) (Supp. 1973); Ill. Stat. Ann. ch. 37, Section 705-7(5) (1972); Ind. Ann. Stat. Section 9-3207 (1956); Ky. Rev. Stat. Ann. Section 208.200(1,c) (1972); La. Stat. Ann. Section 13:1580 (Supp. 1973); Mass. Gen. Laws Ann. ch. 119, Section 58 (Supp. 1972); Mich. Stat. Ann. Section 27.3178 (Supp. 1973); Minn. Stat. Ann. Section 260.181(4) (1971); Mo. Ann. Stat. Section 211.231(1) (1959); Mont. Rev. Codes Ann. Section 10-612 (Supp. 1971); Neb. Rev. Stat. Section 43.210.02 (1969); N.M. Stat. Ann. Section 13-14-35 (Supp. 1972); N.C. Gen. Stat. Section 7A-286 (Supp. 1971); Ohio Rev. Code Ann. Section 2151.38 (Supp. 1972); Okla. Stat. Ann. tit. 10, Section 1139 (Supp. 1972); S.D. Compiled Laws Ann. Section 26-8-48 (Supp. 1972); Tenn. Code Ann. Section 37-237 (Supp. 1972); Tex. Rev. Civ. Stat. Ann. art. 2338-1, Section 13(c,2) (1971); Utah Code Ann. Section 55-10-103 (Supp. 1971); Vt. Stat. Ann. tit. 33, Section 658 (Supp. 1972); Va. Code Ann. Section 16.1-180 (1960); Wash. Rev. Code Ann. Section 13.04.095 (Supp. 1972); Wis. Stat. Ann. Section 48.34(3) (1957); Wyo. Stat. Ann. Section 14-115.32 (Supp. 1971).

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Conn. Stat. Ann. Section 17-69 (Supp. 1973); D.C. Code Ann. Section 16-2322 (Supp. V, 1972); Ga. Code Ann. Section 24A-2701 (Supp. 1972); Md. Ann. Code art. 26, Section 70-20 (1973); Pa. Stat. Ann. tit. 11, Section 50-323 (Supp. 1973).

In Connecticut, for example, commitment of delinquent children is for an indeterminate period not to exceed two years, subject to re-commitment for an additional two years upon a finding that such extension would be in the best interest of the child.⁸⁰ A provision unique to Pennsylvania limits the length of commitment to a period no longer than three years, or a period no longer than the maximum sentence for an adult convicted of the same offense, whichever is less.⁸¹ Juvenile court laws provide for periodic review of dispositional orders.⁸²

Whether commitment is specified as indeterminate or limited, the effect of dispositional orders of

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Conn. Stat. Ann. Section 17-69 (Supp. 1973).

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Pa. Stat. Ann. tit. 11, Section 50-323 (Supp. 1973).

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See, e.g., Iowa Code Ann. Section 232-36 (1969);
Tenn. Code Ann. Section 37-237 (Supp. 1972).

juvenile courts usually terminates when the juvenile reaches twenty-one⁸³, or some earlier specified age.⁸⁴

A few rather limited conditions precedent to commitment are applied by some states. Minimum age requirements are often imposed, ranging from eight to thirteen years of age.⁸⁵ Need-for-treatment requirements

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Ariz. Rev. Stat. Ann. Section 8-246(B) (Supp. 1972); Colo. Rev. Stat. Section 22-3-19 (1963); Fla. Stat. Ann. tit. V, Section 39.11(4) (Supp. 1973); Idaho Code Ann. Section 16-1814(3) (Supp. 1973); Ill. Stat. Ann. ch. 37, Section 705-11 (1972); Ky. Rev. Stat. Ann. Section 208.200 (1,c) (1972); La. Stat. Ann. Section 13:1580 (Supp. 1973); Md. Ann. Code art. 27, Section 70-20 (1973); Mass. Gen. Laws Ann. ch. 119, Section 58 (Supp. 1972); Minn. Stat. Ann. Section 260.181 (1971); Mo. Ann. Stat. Section 211,231 (Supp. 1973); Neb. Rev. Stat. Section 43.210.02 (1969); N.M. Stat. Ann. Section 13-14-35(H) (Supp. 1972); Ohio Rev. Code Ann. Section 2151.38 (Supp. 1972); Okla. Stat. Ann. tit. 10, Section 1139 (Supp. 1972); S.D. Compiled Laws Ann. Section 26-8-48 (Supp. 1972); Tex. Rev. Civ. Stat. Ann. art. 2338-1, Section 13(c,2) (1971); Utah Code Ann. Section 55-10-103 (Supp. 1971); Vt. Stat. Ann. tit. 33 Section 658 (Supp. 1972); Va. Code Ann. Section 16.1-180 (1960); Wash. Rev. Code Ann. Section 13.04.095 (Supp. 1972); Wis. Stat. Ann. Section 48.34 (1957); Wyo. Stat. Ann. Section 14.115.32 (Supp. 1971).

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Iowa Code Ann. Section 232.36 (1969), specifies age for termination of orders; Miss. Code Ann. Section 43-21-19(1972), allows state training schools to retain child until twentieth birthday; Mich. Stat. Ann. Section 27.3178 (Supp. 1973), and N.C. Gen Stat. Section 7A-286(5) (Supp. 1971), both provide that orders terminate at age of eighteen.

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Ariz. Rev. Stat. Ann. Section 8-244 (Supp. 1972); Cal. Welf. & Inst'ns Code Ann. Section 733 (West 1972); Ill. Stat. Ann. ch. 37, Section 705-2(5) (1972); Kan. Stat. Ann. Section 38-826(a,6) (Supp. 1972); Miss. Code Ann. Section 43-21-19(2) (1972); Mo. Ann. Stat. Section 219.160 (1959); Okla. Stat. Ann. tit. 10, Section 1139(c) (Supp. 1972).

also exist in several jurisdictions.⁸⁶ California is typical: prior to commitment to the California Youth Authority, the judge must find that:

. . . the mental and physical condition and qualifications of the ward are such as to render it possible that he will be benefited by the reformatory educational discipline or other treatment provided by The Youth Authority.⁸⁷

2. Proposed Standards

a. Grounds for adjudication of delinquency or other status resulting in same dispositional alternatives

The age requirements for an adjudication of delinquency of all the model acts and standards herein reviewed⁸⁸ are substantially the same as those for the

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Conn. Stat. Ann. Section 17068(a) (Supp. 1973); Ga. Code Ann. Section 24A-2304 (Supp. 1972); Ill. Stat. Ann. ch. 37, Section 705-2(5) (1972); Md. Ann. Code art. 26, Section 70-19 (1973); N.Y. Consol. Laws Ann. Section 743 (1963); N.C. Gen. Stat. Section 7A-286(3) (Supp. 1971); Ore. Rev. Stat. Section 419.509 (1972).

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Cal. Welf. & Inst'ns Code Ann. Section 734 (West. 1972).

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The Uniform Juvenile Court Act, Handbook of the National Conference of Commissioners on Uniform State Laws (1968). This Act, hereinafter referred to as the Uniform Act, was drafted by the National Conference of Commissioners on Uniform State Laws and was approved the the American Bar Association on August 7, 1968. The Standard Juvenile Court Act, N.P.P.A. Journal, vol. 5 (1959). This Act, hereinafter referred to as the Standards Act, was drafted by the National Probation and Parole Association in cooperation with the National Council of Juvenile Court Judges and the U.S. Children's Bureau.

Children's Bureau (Pub.No.472) standards for Juvenile and Family Courts. These standards, hereinafter referred to as the Children's Bureau Standards, was drafted by the U.S. Children's Bureau in cooperation with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime (Washington, D.C.: U.S. Government Printing Office, 1967). These recommendations will hereinafter be referred to as the President's Commission Report.

great majority of jurisdictions reviewed in part A, supra, providing that a person must be less than eighteen years of age to come within the juvenile court's jurisdiction.⁸⁹ None of the model acts or standards specifies a minimum age below which a child may not be adjudicated delinquent.

Incorporation of adult standards for criminal offenses is common to all the proposals. The Uniform Act defines "delinquent act" as an act designated a crime under the law, except for offenses applicable only to a child.⁹⁰ The Children's Bureau Standards and the Standard Act do not use the term "delinquent child" but rather define the situations that give the court jurisdiction of a child, including neglect, dependency, etc.⁹¹ Each includes as one such situation, however, the violation of federal, state, or local law.⁹² Although the President's Commission Report does not specifically recommend what sorts of adult crimes should be incorporated, it recognizes the necessity of

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Uniform Act Section 2(1); Children's Bureau Standards, p. 36; Standard Act Section 2.

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Uniform Act Section 2(2), (4).

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Children's Bureau Standards, p. 33; Standard Act Section 8(1).

⁹²

Ibid.

utilizing some standards from criminal codes,⁹³ and
as a general proposition recommends:

The range of conduct for which court
intervention is authorized should be
narrowed, with greater emphasis upon
consensual and informal means of meeting
the problems of difficult children.⁹⁴

Juvenile traffic offenses are recognized as
a problem warranting special consideration by all the
model acts and standards. The Uniform Act excepts
juvenile traffic offenses as a basis for a delinquency
adjudication, but limits the definition of juvenile
traffic offense so that driving while intoxicated,
driving without a license, and negligent homicide,⁹⁵
are excluded from the exception. The Children's Bureau
Standards recommend that juvenile traffic offenses
either be removed from the jurisdiction of the juvenile
court, or be retained only in the event that special
procedures and limited dispositions are provided for
by statute.⁹⁶ The Standard Act would allow the
juvenile court to retain jurisdiction over juvenile
traffic offenders, but recommends that separate procedures
be developed for handling such cases.⁹⁷ The President's

⁹³ President's Commission Report, p. 23.

⁹⁴ President's Commission Report, p. 2.

⁹⁵ Uniform Act Section 44.

⁹⁶ Children's Bureau Standards, p. 37.

⁹⁷ Standard Act Sections 12(2) and 19.

Commission Report concurs with the recommendations of
98
the Children's Bureau.

Only the Uniform Act requires a finding of need-for-treatment as a basis for either a delinquency adjudication or juvenile court jurisdiction, by defining a "delinquent child" as one who has committed a delinquent act, and is in need of treatment of rehabilitation.⁹⁹

The Uniform Act, the Standard Act, and the President's Commission Report recommend that only violations of laws that are incorporated from adult codes be a basis for incarceration of juveniles.¹⁰⁰ However, the Children's Bureau Standards would permit the same dispositional alternatives that apply to juvenile law-violators to apply to children who are so beyond the control of their parents or guardians as to endanger their own or another's welfare.¹⁰¹

b. Nature of dispositional orders of incarceration in delinquency-oriented institutions

All of the model acts limit the effective length of commitment orders. The Uniform Act limits the duration of any order committing a delinquent child to an institution for delinquent children to two years, but allows a two-year extension of the order upon a hearing and finding that

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President's Commission Report, p. 24.

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Uniform Act Section 2(3), (4).

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Uniform Act Sections 31, 32; Standard Act Section 24(2);
President's Commission Report, p. 27.

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Children's Bureau Standards, pp. 85-86.

extension is necessary for the treatment or rehabilitation of the child.¹⁰² The Children's Bureau Standards recommend the limitation of orders to three years duration,¹⁰³ as does the Standard Act,¹⁰⁴ both providing for extensions similar to the Uniform Act provision. Such orders terminate at the age of majority under all the acts.¹⁰⁵

Only the Children's Bureau Standards require a specific finding of a need for institutional treatment as a condition precedent to commitment, providing that:

. . . The court should be required to find either that the child cannot receive in his own home the care, supervision or guidance needed, or that his removal is necessary for the protection of the community.¹⁰⁶

¹⁰² Uniform Act Section 36(b).

¹⁰³ Children's Bureau Standards, p. 82.

¹⁰⁴ Standard Act Section 24(3).

¹⁰⁵ See, e.g., Standard Act Section 34(3).

¹⁰⁶ Children's Bureau Standards, p. 86, Section 1(d).

GOAL 1 - INCREASE THE ABILITY OF JUVENILE COURTS TO WAIVE JURISDICTION OF SELECTED CASES

Currently a district court in Maine under certain circumstances may bind a child over to the Superior Court for a grand jury hearing.¹⁰⁷ In order to do this, the court must find all of the following facts from the totality of the child's circumstances:

- the child's age, maturity, experience and development require prosecution under the general law;
- the nature and seriousness of the child's conduct represents a threat to the community;
- the conduct of the child was committed in a violent manner;
- there is a reasonable likelihood that like future conduct will not be deterred by continuing the child under the juvenile justice system.¹⁰⁸

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15 M.R.S.A. Section 2611(3) (Supp. 1975).

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Note also that in order for a child's case to be transferred from district to Superior court, such findings must be made by the district court because if the district court does not use its jurisdiction to bind a juvenile over, then the Superior Court will not have jurisdiction to hear the matter.

Wade v. Warren, 145 Me. 120, 73 A.2d 128 (1950).

Traditionally, juvenile courts have had jurisdiction over all offenders under a certain age.¹⁰⁹ When a juvenile commits a serious crime, however, juvenile courts can waive their jurisdiction and transfer the case to the criminal courts.¹¹⁰

Because of concern over the increase in violent crimes committed by children, there has been a movement in the states to make the provisions for waiver easier.¹¹¹ The forerunner of this movement was the controversial provision in the District of Columbia's juvenile statutes which eliminated the need for a waiver hearing by allowing a prosecutor discretion to arraign

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Note "Juvenile Justice", 53 B.U.L.Rev. 212,223 (1973).

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Id.

111

Note, "Waiver of Juvenile Jurisdiction and the 'Hard Core' Youth", 51 N.D.L.Rev. 655,657 (1975).

juveniles for certain crimes in the criminal court. In the District of Columbia, a "child" is defined as any individual less than 18 years old, except any individual sixteen years or older who has been:

- (A) charged by the United States attorney with (i) murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;
- (B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or
- (C) charged with a traffic offense.
D.C.Code §16-2301(3) (1970).

This law has been heavily criticized. It's been suggested that there is no possibility that a case brought in the criminal courts will be transferred to the juvenile courts.¹¹² Furthermore, since it is a prosecutor and not a judge who determines where charges will be brought, some commentators feel there is an increased danger of administrative abuse and arbitrariness.¹¹³

However, the statute has been sustained as constitutional. The District of Columbia Court of Appeals, reviewing the statute, first stated that it was

¹¹²
Note, "Juvenile Justice", supra. at 216.

¹¹³
Id. at 224.

reasonable for Congress to improve the operation of the juvenile justice system by removing from the system individuals between 16 and 18 who were beyond rehabilitation and whose presence might serve as a negative influence on the other juveniles.¹¹⁴ Further, the court found no violation of due process in the provisions which allowed the prosecutor to exercise discretion in determining whom to prosecute.¹¹⁵ The court stated that in the absence of evidence that a prosecutor used suspect factors¹¹⁶ in exercising his discretion, the law always permitted him to determine whom to prosecute.¹¹⁷

Another state which has recently made waiver easier is Colorado. Previously, Colorado had required a full investigation and hearing before waiver.¹¹⁸ However, Colorado now allows district attorneys discretion to file suit in the criminal courts in certain specific cases.

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United States v. Bland, 472 F.2d 1329,1332 (D.C., 1972) cert. den.

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Id. at 1335.

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such as race.

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Id. at 1337.

118

Colo. Rev. Stat. Ann. Section 22-1-4 (4) (a) (Supp.1967).

In Colorado, a delinquent child is defined as an individual between the ages of 10 and 18 who has violated any federal, state or local law or any order of the court.¹¹⁹ However, this definition does not apply to children 14 years or older who have committed crimes of violence defined as class 1 felonies (those punishable by death or life imprisonment), those children who have been adjudicated delinquent within the last two years, provided the act for which they were adjudicated would have been a felony if committed by an adult, and who are now 16 years or older and commit either a class 2 or 3 felony (punishable by five to fifty years) or a nonclassifiable felony punishable by death.¹²⁰ Those children 14 or older who commit a felony subsequent to having committed any other felony for which the juvenile court had previously waived jurisdiction are also not considered delinquents but are considered adult criminals.¹²¹

¹¹⁹ Colo. Rev. Stat. Ann. Section 19-1-103 (9) (a) (1975).

¹²⁰ Colo. Rev. Stat. Ann. Section 19-1-103 (9) (b) (I) and (II) (1975).

¹²¹ Colo. Rev. Stat. Ann. Sections 10-19-1-103 (9) (b) (III) (1975).

Colorado also allows waiver at the request of a district attorney whenever a child 14 years or older commits an act which would have been a felony if committed by an adult.¹²² After such a request, a juvenile court holds a transfer hearing. At the transfer hearing, the court decides:

- (a) Whether there is probable cause to believe that the child has committed an act for which waiver...may be sought...; and
- (b) Whether the interests of the child or of the community would be better served by the juvenile court waiving its jurisdiction...¹²³

A few states require that juvenile courts hold a hearing on the waiver issue before hearing other evidence in the case.¹²⁴ Thus, Illinois states that the transfer hearing must be held before the adjudicatory hearing and that taking evidence in the adjudicatory hearing first will bar criminal prosecution on the matter.¹²⁵

¹²²
Colo. Rev. Stat. Ann. Sections 19-31; 19-3-106 (4) (1975).

¹²³
Colo. Rev. Stat. Ann. Section 19-3-108 (1) (1975).
Four other states which deny juvenile courts jurisdiction of certain offenses are Delaware (capital felony), Louisiana (any capital crime plus aggravated rape), Mississippi (any crime punishable by death or life imprisonment) and Pennsylvania (murder). Virginia repealed a provision similar to that of Mississippi in 1973.

¹²⁴
Georgia, Illinois, Maryland, New Mexico, North Carolina, Pennsylvania, Tennessee, Texas and Wyoming.

¹²⁵
see Rev. Stat. Ch.37, Section 707-7(3) (Smith-Hurd, 1974).

Other states currently provide for a transfer hearing to be held after the adjudicatory hearing on the matter. For example, California provides for a waiver hearing "at any time during the hearing".¹²⁶ Massachusetts provides that a juvenile court may dismiss the complaint and waive jurisdiction of the child after a hearing if the court determines that the complaint alleges an offense against the law, the child who committed the act was between the ages of 14 and 17, and the "interests of the public" require that the child be tried as a criminal.¹²⁷

Florida now requires prosecutors to petition a juvenile court to stay its proceedings for two weeks while a grand jury indictment is sought.¹²⁸ Although this requirement avoids the imposition of double jeopardy, it does impose a substantial delay in the proceedings.¹²⁹

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Cal. Welf. and Inst'ns Code, Section 707 (West, 1972 as amended through West Supplement, 1973).

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Mass. Gen. Laws Ann. c.119 Section 61 (1964).

128

Fla. Stat. Ann. Section 39.02 (5)(c) (1974).

129

Whitebread and Bates, "Juvenile Double Jeopardy", 63 GEORGETOWN L.J. 857,868 (1975).

However, the Supreme Court has recently held that a juvenile is guaranteed the same constitutional rights against double jeopardy as an adult, and therefore the waiver hearing must be held before any adjudicatory hearing of the case.¹³⁰ The Court indicated that the nature of the evidence presented at the waiver hearing may require a different judge preside at the hearing on the merits.¹³¹ However, the Court indicated that a juvenile should be given the opportunity to waive this requirement since the judge who presided at the waiver hearing may have shown that he is sympathetic to the juvenile and rapport and rehabilitation may already have begun.¹³²

Standards for waiver differ greatly among jurisdictions. In Kent v. United States,¹³³ the Supreme Court suggested eight areas for a judge to consider in waiver hearings. Some states basically adopted

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Breed v. Jones, ___ U.S. ___, 44 L.S. 2d 346 (1975).

¹³¹

Id. at 360. This already occurs in Florida, Tennessee and Wyoming.

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Id. at 361, n.21.

¹³³

383 U.S. 541,566-67 (1965).

the Court's suggestions. For example, Colorado's statute provides that a judge must consider:

- (I) The seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded by juvenile facilities;
- (II) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (III) Whether the alleged offense was against persons or property, greater weight being given to offenses against person;
- (IV) The maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living;
- (V) The record and previous history of the child; and
- (VI) The likelihood of rehabilitation of the child by use of facilities available to the juvenile court.¹³⁴

The only factors suggested for consideration in the Kent decision which Colorado omits are the desirability of trying the juvenile in the same court as adult criminals and the prospects for adequately protecting the public if the youth is tried in juvenile court.¹³⁵

A few statutes only delineate general standards.

¹³⁴
Colo. Rev. Stat. Ann. Section 19-3-108 (2) (b) (1973).

¹³⁵
Kent. supra., at 566-67.

Massachusetts, for example, merely states that a transfer should occur:

if the court is of the opinion that the interests of the public require that he should be tried for said offense or violation.¹³⁵

It has been held in Massachusetts that the term "public interest" is sufficiently definite to allow a judge to properly carry out the judicial function of declining jurisdiction.¹³⁶ The court held that a consideration of both the individual juvenile's needs and the treatment available to him were inherent in a consideration of the "public interest".¹³⁷

Many states' statutes specifically refer to some of the considerations which Kent suggested. In Ohio, for example, juvenile courts may transfer a case only if the juvenile was 15 years or older at the time he allegedly committed an offense and the court finds probable cause to believe that he did the act.¹³⁸

Furthermore, the juvenile court must conduct an investigation of the child including both mental and physical examinations to determine whether there are

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Mass. Gen. Laws Ann. c,199 Section 61 (1964).

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In re a Juvenile, 74 Mass. Adv. Sh. 61,67,306 N.E. 2d 22 (1974).

137

Id. at 68.

138

Ohio Rev. Code Ann. Section 2151.26 (A) (1) (2) (Page Supplement 1973).

reasonable grounds to believe that the child is not amenable to rehabilitation and that the safety of the community requires that he be placed under legal restraint which will extend beyond when he attains his majority.¹³⁹

In determining whether a child is amenable to rehabilitation, the juvenile court must consider:

- (1) The child's age and his mental and physical health;
- (2) The child's prior juvenile record;
- (3) Efforts previously made to treat or rehabilitate the child;
- (4) The child's family environment; and
- (5) The child's school record.¹⁴⁰

These considerations are clearly derived from Kent, but do not include all of the factors mentioned in that case. Furthermore, juvenile courts are given considerable latitude in determining whether to transfer jurisdiction.¹⁴¹

Illinois does not limit the factors which a judge may use but does list areas which must be

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Ohio Rev. Code Ann. Section 2151.26 (A) (3) (Page Supp. 1973).

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Ohio R. Juv. P. 30(3).

¹⁴¹

Note, "Juvenile Court and Direct Appeal from Waiver of Jurisdiction in Ohio", 8 AKR. L.R. 499,513 (1975).

considered "among other matters":

- (1) Whether there is sufficient evidence for a grand jury to return an indictment;
- (2) Whether the offense was committed in an aggressive and premeditated manner;
- (3) The age of the minor;
- (4) The previous history of the minor;
- (5) The facilities available to the juvenile court for the treatment and rehabilitation of the minor; and
- (6) Whether the best interests of the minor and the security of the public may require custody of the minor beyond his minority.¹⁴²

Provisions for determining whether a juvenile will benefit from the rehabilitative facilities available to him through the juvenile system are common. However, such provisions have come under attack. It has been suggested that they provide a convenient subterfuge for those states which seek to provide only the most meager facilities for their juvenile systems.¹⁴³

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Ill. Ann. Stat. c.37, Section 702-7(3) (a) (Smith-Hurd Supp. 1974).

¹⁴³

See, Note, "Waiver of Juvenile Jurisdiction" supra. at 674.

- GOAL 2 - PLACE CHILDREN WHO COMMIT OFFENSES IN
SETTINGS WHERE THEY CAN RECEIVE
REHABILITATIVE TREATMENT¹⁴²
- GOAL 3 - INCREASE THE CLIENT CAPACITY, RANGE OF
SERVICES, AND EDUCATIONAL AND OTHER PROGRAMS
DESIGNED TO PREVENT THE USE OF ALCOHOL AND/OR
DRUGS BY CHILDREN

What should be done with the juvenile delinquent
after adjudication?

The need for an answer to this question has been
made apparent by recent disclosures about detention
centers. Such centers have been the mainstay of America's

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Appendix 1 is a commentary on the psychological effects on a child of being detained in an adult jail. We know that such detention occurs in Maine (meeting with Maine Sheriff's Association, March 18, 1976). In 1974-75, the Children's Defense Fund, then engaged in litigation about the jailing of children in certain southern states and preparing to issue a report on Children in Adult Jails in America, conducted an extensive literature search. It revealed that nothing had been written about the psychological effects of being jailed on a child. I was asked to prepare something on that topic and so, for some weeks, I traveled around the country, interviewing acknowledged experts in criminology, psychiatry, psychology and social sciences. Appendix I is a synopsis of those interviews. Since the study for which it was prepared has not yet been issued and since some litigation is still pending, Appendix I must not be quoted or distributed. It is included only for Commissioners' information.

juvenile correctional systems since the 1820's,¹⁴³ but in the last three decades they, and other places of confinement, have been subjected to closer scrutiny. Sociologists and psychologists have documented their social life,¹⁴⁴ courts have inquired into institutional conditions,¹⁴⁵ and inmates have made their grievances heard.¹⁴⁶ Incarceration, it became apparent, is a far harsher measure than was once supposed. Not surprisingly, there has been much recent interest in

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See Rothman, David J., The Discovery of the Asylum, (Boston: Little, Brown, 1971) for a history of the development of persons and other institutions of confinement in the United States.

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See Clemmer, Donald, The Prison Community (New York: Holt, Rinehart & Winston, 1940); Goffman, Erving, Asylums (Garden City, N.Y.: Anchor Books, 1961); Sykes, Gresham, The Society of Captives (Princeton: Princeton University Press, 1958).

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A number of federal district courts have found that confinement of juvenile delinquents in anti-rehabilitative environments, or failure to provide rehabilitation, constitutes a violation of due process. See, e.g. Morales v. Turman, 364 F. Supp. 166, 175 (E.D. Tex. 1973); Nelson v. Heyne, 355 F. Supp. 431, 458-59 (N.D. Ind., 1972) (supplemental opinion) (by implication); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354, 1367 (D.R.I., 1972) (also based on equal protection rationale); cf. In re Elmore, 382 F.2d 125, 127 (D.C. Cir., 1967) (allegation that psychiatric treatment was not provided was a substantial complaint under D.C. statute); Creek v. Stone, 379 F.2d 106, 1-1 (D.C. Cir., 1967) (juveniles have a "legal right to a custody that is not inconsistent with the parens patriae premise of the law:"); In re Gault, 387 U.S. 1, 22-23, n.30 (1967) (noting that juvenile detainees are not always properly treated).

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Rothman, David J., "Decarcerating Prisoners and Patients" 1 CIVIL LIBERTIES REV. 8 (1973).

drastically reducing the use of detention centers, and developing alternatives to incarceration. The aim seems clear, and it seems to have been adopted by the Commissioners in their statement of this goal--to rehabilitate the offender. But researchers, who have monitored rehabilitative programs, both inside and outside detention centers, have been disappointed.¹⁴⁷ It has also become apparent that the ideal of treatment is not without its own dangers: it legitimizes more state intervention with fewer legal constraints.¹⁴⁸

This analysis rests on two premises:

1. We assume that the liberty of each individual is to be protected so long as it is consistent with the liberty of others.
2. We also assume that the state is obligated to observe strict parsimony in intervening in adjudicated delinquents' lives.¹⁴⁹ Even after adjudication, the state should have the burden of justifying why any given intrusion -- and not a lesser one -- is called for.

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See Robison, James and Smith, Gerald, "The Effectiveness of Correctional Programs," 17 CRIME AND DELINQUENCY 67 (1971); Ford Foundation, The Society of the Streets, (New York, 1962); James, Howard, Children in Trouble: A National Scandal (New York: David McKay Company, Inc. 1969) (discussion of a Michigan's community efforts to prevent delinquency); Ohlin, Coats, Miller, "Radical Correctional Reform: A Case Study of the Massachusetts Youth Correctional System" HARVARD EDUCATIONAL REVIEW, Vol. 44, No. 1 Feb. 1974, p. 74.

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Allen, Francis, The Borderland of Criminal Justice, (Chicago: University of Chicago Press, 1974); American Friends Service Committee, Struggle for Justice (New York: Hill and Wang, 1971).

149

Morris, Norval, The Future of Imprisonment (Chicago: University of Chicago Press, 1974) pp. 60-61.

The conventional viewpoint about rehabilitating delinquents consists of three main assumptions:

1. The disposition should rehabilitate -- the offender should receive the correctional treatment best suited to inculcate law-abiding habits in him. Rehabilitation should influence the choice of sentence as well as the manner in which the sentence is carried out.
2. Predictive restraint is a second theme. The disposition, supposedly, should be based on a forecast of the offender's likelihood of returning to crime. If he is considered a potential recidivist, he should be confined until he becomes safe.
3. Individualized decision-making is the third. The disposition is to be tailored to the offender's need for treatment and the risk he poses to the public. To allow decisions to be individualized, sentencing courts and correctional officials are to be given wide discretionary powers of disposition, with as few legal constraints as possible. During the first half of this century, these ideas had almost unchallenged ascendancy. While less fashionable notions (such as deterrence and retribution) did retain a measure of influence on the practical decisions of legislatures and judges, the dominant

trio of assumptions was thought to represent the enlightened viewpoint. In the last two decades, skepticism about these notions has been growing, but the conventional assumptions retain considerable influence. In crime commission reports, judicial opinions, and editorials, the familiar themes are still reiterated: sentence for treatment, incarcerate the dangerous, individualize the disposition.¹⁵⁰

A wide variety of rehabilitation programs have now been studied. A few successes have been reported, but the overall results are disappointing.¹⁵¹ For example:

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See, e.g. Model Sentencing Act; National Advisory Commission on Criminal Justice Standards and Goals, Corrections Washington, D. C. Government Printing Office, 1973 (hereinafter cited as Corrections).

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See Greenberg, David, "Much Ado About Little: The Correctional Effects of Corrections" Department of Sociology, New York University, June, 1974 (unpublished paper prepared for the Field Foundation, N.Y.City); and Lipton, Martinson and Weeks, Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger, 1975).

Note: Available long-term follow-up studies generally pertain to adult criminal populations. Hence, much of this material is derived from those studies. Therefore, the even more complex developmental questions presented by juvenile offenders are not addressed here.

We do know that there is no conclusive evidence that juveniles are helped by any one particular complex of services. For an excellent summary of the deficiencies of existing evidence about juveniles, see Lundman, McFarline and Scarpitte, "Delinquency Prevention: A Description and Assessment of Projects Reported in the Professional Literature" CRIME AND DELINQUENCY 297 (1976).

1. The character of the institution seems to have little or no influence on recidivism. It was hoped that children in smaller and less regimented institutions would return to delinquent behavior less often on releases, but that hope has not been borne out.¹⁵²
2. Although probation has long been acclaimed for its rehabilitative usefulness, the recidivism rate among otherwise like offenders fails to show a clear difference whether they are placed on probation or confined. While those on probation perform no worse, the claim that they perform better has not been sustained.¹⁵³
3. More intensive supervision on the streets, a recurring theme in rehabilitation literature, has not been shown to curb recidivism. Probationers or parolees assigned to small caseloads with intense supervision appear to return to crime about as often as those assigned to large caseloads with minimal supervision.¹⁵⁴
4. Vocational training has been widely advocated, on the theory that people turn to crime because they lack the skills enabling them to earn a lawful

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Ibid.

153

Ibid.

154

Ibid.

living. The quality of many programs has been poor. But where well staffed and well equipped programs of vocational training for marketable skills have been tried in institutions, studies fail to show a lower rate of return to crime.¹⁵⁵

5. Education and literacy training¹⁵⁶ or psychiatrically oriented counseling programs¹⁵⁷ have also not had any appreciable success.
6. Behavior control is another technique that has recently been tried. While there have been claims for its effectiveness in controlling disruptive behavior within a detention center,¹⁵⁸ its long-term rehabilitative usefulness has yet to be demonstrated.¹⁵⁹

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Ibid. In California, where this technique has most extensively been used, a 1971 evaluation of vocational training concluded: "Profiling from the experience of history, the Department of Corrections does not claim that vocational training has any particular capability of reducing recidivism." See Dickover, Maynard and Painter, "A Study of Vocational Training in the California Department of Corrections" California Department of Corrections, Research Report No. 40, 1971, p. 10.

156

Supra. note 151.

157

Ibid.

158

Note, "Condition and Other Technologies Used to Treat? Rehabilitate? Demolish? Prisoners and Mental Patients" 45 S.CAL. L.REV. 616 (1973); Note, "Aversion Therapy: Its Limited Potential for Use in the Correctional Setting" 26 STANFORD L.REV. 1327 (1974).

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Schwitzgebel, Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders (Maryland: National Institute of Mental Health, 1971).

It would be an exaggeration to say that no treatment methods work, for some positive results have been reported.¹⁶⁰ But it is uncertain to what extent even the successes would survive replication.

GOAL 4 - REDUCE THE INCIDENCE OF DRUG AND/OR ALCOHOL ABUSE BY CHILDREN

GOAL 5 - REDUCE PROSTITUTION AMONG MINORS

Many commentators¹⁶¹ recommend that juvenile misconduct that is not intended to cause, and does not cause or risk, injury to the person or property of another should not be criminally punished.

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For example, the model probation department project conducted by the California Youth Authority in Sacramento County between 1968 and 1969. (Unpublished material available from the Sacramento County Division, California Youth Authority.) See also, Lloyd Ohlin's analysis of Jerry Miller's attempted reform of the Massachusetts Youth Correctional System. (Some material as yet unpublished; some results reported in HARVARD EDUCATIONAL REVIEW, Vol. 44, No. 1, p. 74 and in TIME magazine, August 30, 1976 edition, p. 63.

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For example, Kadish, "The Crisis of Overcriminalization" 34 ANNALS 157 (1967), Packer, H., The Limits of Criminal Sanction (1968).

Accordingly, they suggest that juvenile criminal liability should not be based upon:

(1) acquisition, possession, use, gratuitous transfer of or being under the influence of narcotics, marijuana, alcohol or other drugs;

(2) acquisition, possession or gratuitous transfer of obscene or pornographic materials;

(3) engaging in consensual sexual behavior, including prostitution;

(4) gambling.

The aim of such recommendations is to "decriminalize" in juvenile proceedings behavior that harms or threatens harm, if at all, only to the interests of the person engaging in such behavior. While the juvenile court may rationally provide aid or treatment for young persons who engage in self-damaging behavior, criminal punishment does not promote, and may retard or defeat, such rehabilitative measures.

The decriminalization of so-called "victimless" crimes has been increasingly urged by legal scholars and others on a variety of grounds which are to some extent also applicable to juvenile criminal liability.¹⁶²

¹⁶² See, generally, Kadish, *supra*; Packer, *supra*, Morris and Hawkins, The Honest Politician's Guide to Crime Control (1970); Kolnick, S. "Coercion to Virtue: The Enforcement of Morals", 41 S. CAL. L. REV. 588 (1968); cf. Junker, "Criminalization and Criminogenesis" 19 U.C.L.A. L. REV. 697 (1972).

Because such behavior rarely if ever generates a complaint to initiate the enforcement process, the auto-offenses outlined in 1-4 above share the feature of being widely underenforced. Efforts to suppress such behavior must, therefore, be directed to the public and reasonably probable private manifestations of this private, often secret, behavior. While pervasive underenforcement may not alone provide a sufficient ground for decriminalization, many commentators have urged that the negative attitudes toward law and the legal system engendered by necessarily random or discriminatory enforcement patterns, and the subversion of law enforcement efforts occasioned thereby, warrant the elimination of at least some systematically underenforced offenses.

Although it is unlikely that the other consequences of underenforcement commonly urged as reasons for decriminalization--extortion and official corruption--apply with the same force to the juvenile justice system, there is potential for such abuses in that system as well.

A final and related ground for removing juvenile criminal liability from the described

behavior derives from the operation of what Professor Herbert Packer has termed the "crime tariff".¹⁶³ Because the official prohibition of commercial transfers of certain goods and services, narcotics or prostitution, for example, does not automatically extinguish the demand for such goods and services, attempts at suppression of such transfers will cause not a decrease in the prohibited behavior but an increase in the cost of the goods and services. This increase in cost - the "crime tariff" - will tend to cause users of prohibited substances and services to engage in other criminal behavior (secondary deviance) in order to continue their use. Of course, not all consumers of forbidden goods will turn to crime to meet the inflated cost of contraband: offenders as well as officials perceive the difference between harming oneself and harming another. Nor can decriminalization of consensual transfers of proscribed commodities only in juvenile proceedings be expected discernibly to reduce the crime tariff, since the risks to the seller, to compensate for which the tariff is imposed, will be undiminished.

¹⁶³ See Packer, *supra*.

In this context, therefore, economic analysis serves primarily to describe the law's relative inability to stem the flow of illicit goods and services and to suggest the potential for increased criminality that more rigorous enforcement efforts may entail.

Although the reasons commonly asserted for general decriminalization may have only limited applicability to criminal proceedings in juvenile court, features unique to the juvenile justice system nonetheless warrant consideration of these recommendations.

(1) As already noted, the recommendation does not preclude every juvenile court response to the behavior described; it merely bars the response of imposing juvenile criminal liability.

(2) Random or discriminatory enforcement, inherent in underenforcement, ought per se to be avoided in a system that seeks, as does the juvenile court, to encourage conformity to law by inculcating law-abiding attitudes in young persons. Surely systematically under-enforced offenses do nothing to promote such attitudes and, because juveniles prosecuted for such offenses can plausibly interpret their plight as the consequences of bad luck or bad law, or both, the juvenile court's rehabilitative

efforts and resources may be substantially nullified.

(3) The attribution to individuals by society of labels such as "criminal" or "delinquent" is widely believed to create or confirm in the individual so labeled a self-concept and way of life consistent with his or her official label.¹⁶⁴ Because young persons commonly have not yet developed stable self-concepts, and because the initial application of a negative label is the most potent, juveniles are particularly vulnerable to the labelling phenomenon. This latent consequence of criminal processing cannot be avoided by substituting clean labels for tainted ones, as the history of juvenile delinquency clearly demonstrates.

It follows that the juvenile justice system should, whenever possible, avoid characterizing "private offenses" as criminal or delinquent.¹⁶⁵

¹⁶⁴See generally, Schur, E., Radical Non-Intervention, 118-126 (1973).

¹⁶⁵Recall that the recommendations relate to conduct that neither harms nor risks harm to the legitimate interest of others.

Please read pages 61-80 of "Report on Maine's Juvenile Statutes" which we prepared for the Commission.

APPENDIX I

DRAFT: PSYCHOLOGICAL EFFECTS OF BEING JAILED ON A CHILD*

For these kids, being smart is not getting arrested. So they say 'I hate myself for having gotten into this. I hate myself for not having been smarter. I hate myself for being small. I hate myself for being weak.' That means I'm going to hate myself until I stop being small and weak. If you're ten years old, that's a long time.¹

"Generally speaking, a jail is not a pleasant place to be. One feels a strain, obviously, and one feels that one has been delivered into the hands of strangers...."² Probably the first, and one of the most critical, reactions of an adolescent to being jailed is a sense of abandonment.³ To some extent, many adolescents define themselves in terms of their situation --physically, with a certain environment and emotionally, with certain people.⁴ Cutting children off from everything--all the people they know and all the physical, environmental and situational experiences they know--

* We were unable, in an extensive literature search, to find a single study about the psychological effects of being jailed on a child. That's not surprising. "One of the problems with jails and their inmates is that they have gotten the reputation of being unimportant. That unimportance rubs off on everything associated with a jail. The people who are in jails, whether they are inmates or staff, are therefore very easy to neglect." Interview with Hans Mattick, Professor and Director, Center for Research in Criminal Justice, University of Illinois at Chicago Circle, 4/14/75 [hereinafter "Prof. Mattick"].

¹ Interview with Philip Zimbardo, Ph.D., Professor of Psychology, Stanford University, in San Francisco, California, 4/18/75 [hereinafter "Dr. Zimbardo"].

² Interview with Prof. Mattick, 4/14/75.

³ Interview with Dr. Zimbardo, 4/18/75; Prof. Mattick, 4/14/75; and George Tarjan, M.D., Department of Psychiatry, University of California at Los Angeles, 4/25/75 [hereinafter "Dr. Tarjan"].

⁴ Interview with Dr. Zimbardo, 4/18/75.

is devastating.⁵ To do so suddenly, as when a child is arrested and jailed, without any psychological preparation for the transition from freedom to imprisonment and from the familiar to the unfamiliar intensifies the sense of abandonment.⁶

Why do jailed children feel so abandoned? First, there is the shock of arrest. The child is put in the position of being dangerous--of being a criminal--and his freedom is snatched from him by strangers. He may begin to feel guilty, even if he is innocent.⁷ Then, at the sheriff's office, station house or jail, a child may be forced to empty his pockets.⁸ All the things he has on him, which are probably familiar and therefore comforting, may be taken from him.⁹ He may be asked to remove his clothes and take a shower.¹⁰ His clothes may be fumigated.¹¹ If so, he will be issued an institutional outfit.¹² At this point, the images of normal existence, upon which an adolescent depends for his definition of self,

⁵ Ibid.; interview with Dr. Tarjan, 4/25/75; and interview with Margaret Rosenheim, Ph.D., School of Social Work, University of Chicago, 4/15/75 [hereinafter "Dr. Rosenheim"].

⁶ Interview with Dr. Zimbardo, 4/18/75.

⁷ Interview with Dr. Zimbardo, 4/22/75.

⁸ Interview with Prof. Mattick, 4/14/75. Obviously, not all of these admission procedures will affect every jailed child. However, they are standard procedures recommended by the United States Bureau of Prisons. See Instructors Guide to the Jail: Its Operation and Management (Washington, D.C.: U. S. Government Printing Office #2700-00208). It is therefore likely that some, if not all, jailed children will experience some, if not all, of them.

⁹ Interview with Prof. Mattick, 4/14/75.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

have been collapsed.¹³ The child has lost all sense of continuity or sameness.¹⁴ He is alone in what must appear to him a bizarre environment.¹⁵ When a child compares a jail to the environment with which he is familiar, the extraordinary differences may be sufficient to distort his perception of reality.¹⁶ Behavior he normally employs to defend himself in stressful or novel¹⁷ situations, he finds less effective. His responses may become increasingly primitive and violent.¹⁸ His behavior may be, in other words, the opposite of that which would reduce his anxiety.¹⁹ The child is torn between a need to understand the situation and a desire to deny it--to ward it off.²⁰ He is confused.

¹³Interview with Dr. Zimbardo, 4/22/75. See also, Ruff, et al., "Factors Influencing Reactions to Reduced Sensory Input," pp. 72-90, at 87-88 in Solomon, et al. (Eds.) Sensory Deprivation (Cambridge, Mass.: Harvard University Press, 1961) [hereinafter "Ruff"].

¹⁴ Ibid.

¹⁵Interview with Dr. Zimbardo, 4/22/75.

¹⁶Redl and Wineman, Children Who Hate (New York: Free Press, 1951), pp. 117-121 [hereinafter "Redl and Wineman"].

¹⁷A "novel situation means two things. The first is an experience that has not been encountered before (initial). The second is an event which differs from a customary pattern and style of life (strange). A jail is a novel environment for children. To jail a child is to remove him from his usual surroundings, to alter the pattern and quality of known stimuli, to deprive him of known reassurance and to place him in a situation where characteristic modes of adaptation will probably be ineffective. Even if a child has been previously jailed, therefore, each incarceration is novel.

¹⁸Ruff, supra, note 13, at 85.

¹⁹Redl and Wineman, supra, note 16, at 121.

²⁰ Ibid.

Next, the child may be photographed and fingerprinted.²¹ He will then be locked, either in a holding tank, or, if the jail is not overcrowded, into a separate cell.²² Since his arrest--two hours, five hours, or half-a-day ago --the child has been surrounded by potentially hostile strangers who have treated him as a dangerous and guilty prisoner.²³ It is likely that by the time he reaches a cell, the child himself is not sure that his behavior is predictable or controllable.²⁴

Change from one environment to another is a stress-filled situation for any child. Change from a situation that the child basically considers better, being at home, to a worse situation, being in jail, is very stressful.²⁵ If there is any time when youngsters need increased support, it's when their environment is altered.²⁶ But jailed children rarely, if ever, receive any individual attention.²⁷ Often, they are left completely alone.²⁸ Even if they are not isolated, they are surrounded by unfamiliar people and are in an alien place. The natural result of this unfamiliarity

²¹ Interview with Prof. Mattick, 4/14/75.

²² Ibid.

²³ Interview with Dr. Zimbardo, 4/22/75.

²⁴ Ibid.

²⁵ Interview with Dr. Tarjan, 4/25/75.

²⁶ Ibid.

²⁷ "Generally, people processed into jails are kind of abstractions. They are simply cases and dispositions--people who have to be processed." Interview with Prof. Mattick, 4/14/75.

²⁸ Interview with Prof. Mattick, 4/14/75. Children are often placed alone in a separate cell to protect them from other inmates. It has been suggested that such isolation, particularly when imposed on severely troubled youngsters, may lead to suicide. Interview with Rosemary Sarri, Ph.D., Co-director, National Assessment of Juvenile Corrections Project, School of Social Work, University of Michigan at Ann Arbor, 4/16/75 [hereinafter "Dr. Sarri"]. We don't have any national picture of the number of children per year who seriously injure themselves in jails. Interview with Dr. Rosenheim, 4/15/75.

is that the child often will not seek reassurance despite available help.²⁹ And even if a child could express his feelings about being jailed, it is unlikely that he would find someone able to calm his anxious or hostile behavior.³⁰ So the sense of abandonment experienced by jailed children is compounded by the fact that the child either has no one with whom he can talk or he is unable to talk at all. "Such abandonment is enormously stressful and some children become terrified."³¹

A child's terror on being jailed springs in large part from a fact of childhood. Children do not have the spectrum of experience that adults do.³² They are therefore more likely to experience situations as first impressions. If a child has had no previous similar experience, he will be unable, when placed in a new situation, to project the future and so reassure himself.³³ Jailed children often don't know whether their incarceration is

²⁹ Interview with Margarite Warren, Ph.D., School of Criminal Justice, State University of New York at Albany, 3/20/75 [hereinafter, "Dr. Warren"]; and interview with Dr. Sarri, 4/16/75.

³⁰ "...the range of behavior when confronting someone is very limited and it may simply go from gruff words to a cuffing on the side of the head." Interview with Prof. Mattick, 4/14/75; and interview with Dr. Zimbardo, 4/22/75.

³¹ Interview with Dr. Tarjan, 4/25/75.

³² "The data suggests that in social-perceptual terms, that is, how complex is the world, can a person make any sense out of what is happening to him and be able to deal with that sense in some way that involves any kind of behavior alternatives or choices, you would be wrong one heck of a lot of the time, in talking about fifteen and sixteen year olds as though they were able to function as normal adults in society." Interview with Dr. Warren, 3/20/75.

³³ Interviews with Dr. Tarjan, 4/25/75; and with Dr. Sarri, 4/16/75.

temporary or long-term³⁴; whether or not their parents know they've been arrested³⁵; whether they will be abused or molested.³⁶ Such uncertainty of future, and of present, situation is psychologically traumatizing.³⁷

In any environment that is novel,³⁸ people are less assertive and more dependent.³⁹ Jailed children, then, in addition to feeling abandoned, experience a sense of loss of control.⁴⁰ They are now in an environment where they can control nothing and where they are totally controlled by strangers. For the adolescent, who is trying to achieve the delicate balance between learning from adult behavior and not being totally dependent upon adults⁴¹, the utter dependence of confinement is greatly disturbing.⁴²

³⁴ Ibid.

³⁵ Interview with Dr. Zimbardo, 4/18/75.

³⁶ Interview with Dr. Sarri, 4/16/75.

³⁷ Interview with Dr. Tarjan, 4/25/75.

³⁸ See supra, note 17.

³⁹ Interview with Dr. Zimbardo, 4/18/75.

⁴⁰ Ibid. and interview with Prof. Mattick, 4/14/75.

⁴¹ Erikson, E. H., "Growth and Crises of the 'Healthy Personality'" in Symposium on the Healthy Personality (New York: Josiah Macy, Jr. Found., 1950).

⁴² Interview with Dr. Rosenheim, 4/15/75.

One result of this feeling of dependence may be an increased susceptibility to external influence.⁴³ Such malleability is hazardous for jailed children because, generally speaking, jails, in their procedures and staffing and facilities, encourage inmates to be uncomplicated and to keep quiet.⁴⁴ There is a preference, in other words, for custodial convenience.⁴⁵ This preference is communicated to jail inmates.⁴⁶ When coupled with a child's increased impressionability, this institutional preference leads to a troublesome result. The child may cease his usual pattern of behavior.* In response to pressure--whether overt or implied--the child may incorporate behavior appropriate to a "good prisoner."⁴⁷ He will become usual,

⁴³ Peter Suedfeld, "Changes in Intellectual Performance and in Susceptibility to Influence," pp. 126-166, at 166 in Zubek (ed.) Sensory Deprivation: Fifteen Years of Research (New York: Century Psychology Series--Meredith Corp., 1969).

⁴⁴ Interview with Prof. Mattick, 4/14/75.

⁴⁵ Ibid.

⁴⁶ Ibid.

* (In-house note) I am grateful to Paul Smith for his help in articulating this concept.

⁴⁷ Generally, children, in a given situation, understand less about contributing elements, and so have fewer choices about what to do. In that sense, they are more vulnerable than adults. Things can more easily happen to them that they don't understand and they have fewer ways of dealing with experiences. Interview with Dr. Warren, 3/20/75.

Obviously, since jailed children may well be susceptible to suggestion about their behavior from other inmates as well as from jailors, they probably will also learn behavioral patterns that are socially aberrant. Interview with Dr. Tarjan, 4/25/75.

quite and pass through the jail as anonymously as possible. In doing so, he may effectively block access to his normal behavior and emotions.⁴⁸ Obviously such a blockage is deleterious--in some cases seriously--to a child's emotional well being.⁴⁹ Since the adaptive behavior a child learns in jail will be inappropriate to his need for self-expression in other situations,⁵⁰ he may be uncomfortable and confused not only while he is in jail but after his release. In masking the child's usual behavior, learned attitudes may impede normal development and later attempts to provide corrective therapy.⁵¹ And if a child is repeatedly exposed to enforced adaptive behavior in jails, he may become totally unresponsive to later rehabilitative efforts.⁵²

In fact, a jailed child may become inaccessible to all adults. These children experience a loss of trust in adults which is extreme. Such a loss influences the way they relate to their parents:

⁴⁸ Dr. Zimbardo suggested that there are only two ways of surviving as a prisoner. Both involve constructing a buffer to insure emotional insulation. One is to be angry all the time. The other is to turn off all emotion. "I think that to survive in a prison--to be a good prisoner--you have to control limit, contain and in extreme, deny any emotional expression. My own feeling is that if you don't express emotion overtly you begin to lose the capacity to feel it internally...I think we need practice in expressing emotion--if you never do it publicly, you begin to not do it personally. You then can't allow the danger of experiencing it too much because you will express it." Interview with Dr. Zimbardo, 4/22/75.

⁴⁹ Ibid.

⁵⁰ Interview with Dr. Zimbardo, 4/22/75.

⁵¹ The only permissible purpose for state intervention is, of course, to "treat" or "rehabilitate" children. See infra: (Fern's chapter). Such behavioral adaptation makes diagnosis, the first step in any treatment process, more difficult.

⁵² See supra, footnote 48.

If you have parents and you're in jail one day and they don't release you, there is a sense that your parents are powerless. If your parents are powerless, you are ever more powerless. You don't know whether they are trying to get you out and can't...or they're not trying --which means they're either indifferent or want you to be in jail. For most adolescent kids, especially kids for whom this is a first experience, being in jail more than a day would start them thinking this way. The outcome of either decision--my parents are trying and are helpless or my parents are not trying--either way you feel helpless. You lose trust. More generally, you begin to resent parents and the authority they represent, which means resentment against society.⁵³

Normal development occurs for adolescents, as well as younger children,⁵⁴ only when they feel secure.⁵⁵ A child feels secure when he realizes that he is loved and wanted by his parents⁵⁶, when he is certain that he is not to be deserted by them; and when they protect him from external attacks or physical injury.⁵⁷ The way a child perceives himself, then, is largely a reflection of the way his family, and other adults whom he considers

⁵³ Interview with Dr. Zimbardo, 4/18/75.

⁵⁴ Gardner, "Adjustment Difficulties During Adolescence", pp. 329-339, at 330 in Stuart and Prugh (Eds.), The Healthy Child (Cambridge, Mass.: Harvard University Press, 1966).

⁵⁵ Ibid.

⁵⁶ We are referring to psychological as well as biological parents. See: Goldstein, Freud and Solnet, Beyond the Best Interest of the Child (New York: Free Press, 1973).

⁵⁷ Ibid., at 330. Of course, there are additional elements necessary in good parental-child relationships, such as the child's confidence that his parents treat him as an individual. These three, however, are basic to the feeling of security necessary for normal development.

important, react to him.⁵⁸ When a child feels rejected by his parents, as when he is jailed,⁵⁹ he develops a distorted and devaluated self-image.⁶⁰ If a child thinks that his parents do not approve of him, he finds it difficult to think positively of himself. Generally, children who are, or perceive themselves rejected, may become insecure, attention-seeking, jealous, aggressive, or hostile.⁶¹ Many have difficulty expressing and responding to affection.⁶² Jailing a child discourages belief in the security of his relationship with his parents. Instead, it fosters cynicism and bitterness about them.

It may also affect relations with other adults⁶³ who, adolescents have been led to believe, look out for, and care for, the rights of children.⁶⁴

⁵⁸ White House Conference on Children, Report to the President (Washington, D.C., U. S. Government Printing Office, 1970), p. 242; and Joint Commission on Mental Health of Children, Inc., Crisis in Child Mental Health: Challenge for the 1970's (New York: Harper and Row, 1969).

⁵⁹ Interview with Dr. Zimbardo, 4/18/75.

⁶⁰ Pepitone, A. and Wilpigieski, C., "Some Consequences of Experimental Rejection," J. ABNORM. SOC. PSYCHOL., 1960, vol. 60, pp. 359-364.

⁶¹ Sears, et.al., Patterns of Child-Rearing (Evanston, Ill.: Row, Peterson, 1957); Bandura, A. and Walters, R. H., Adolescent Aggression (New York: Ronald, 1959). Of course, there is considerable variation in the effects of parental rejection. The severity of a child's reaction depends on many things including the way the rejection is expressed, whether both parents are involved and other aspects of the child's total life situation. Ibid.

⁶² Ibid.

⁶³ Interview with Dr. Zimbardo, 4/18/75.

⁶⁴ "They are products of a society that doesn't encourage them to be all that grown up at 16 or 17.... It seems to me that there is an essential acceptance by kids of the authority of adults in their lives and that this authority rests on legitimate grounds.... The average expectation is that one can trust adults and that one should have some confidence in their judgment and in their doing things for you that will make sense. If we are talking about the jail risk population, it may be that we're talking about kids who just don't have that trust in adults. I'm not so sure about that. Even if they think that certain figures like the police are always going to have it in for them, I don't think that would be their general view about all adults and I think they would probably like to be proved wrong... They really want to be helped by someone who is interested in helping them." Interview with Dr. Rosenheim, 4/15/75.

Jailed children learn not that adults care for them but that a jail is a totally closed environment where the primary value is that of power.⁶⁵ Children, naturally smaller and weaker than other inmates, fare poorly. They may be abused physically; certainly they are abused emotionally. In any situation where a child is abused, he feels powerless.⁶⁶ He learns that power depends on two things--physical might and cunning.⁶⁷ "They learn not to be tolerant, not to be understanding. They learn that you have to become powerful in any way."⁶⁸ When abused, a child will not only experience repulsion, but may also see the convenience, or even pleasure, that his discomfort affords the abuser. In a paradoxical sense, the child learns that it is more pleasurable--certainly easier--to be powerful than powerless.⁶⁹ Once a child develops a sense that he is powerless, he will either repeatedly create situations that will prove him weak,⁷⁰ or he will have to prove himself powerful.⁷¹ He may become aggressive.⁷²

⁶⁵ Interview with Dr. Zimbardo, 4/22/75.

⁶⁶ Coleman, J., Abnormal Psychology and Modern Life (Chicago: Scott Foresman and Co., 3rd Edition), p. 271.

⁶⁷ Interview with Dr. Zimbardo, 4/18/75.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Perhaps, in part, juvenile-criminal careers so begin.

⁷¹ Interview with Dr. Zimbardo, 4/18/75.

⁷² Ibid.; and Whiting and Child, Child Training and Personality (New Haven: Yale University Press, 1953), pp. 273-275.

The analogy I think of is a kid building a sand castle at a beach and somebody walking over and in one second demolishing it. Who's more powerful--the kid who built it or the kid who tore it down? What you create in jails are kids who are never going to build sand castles.⁷³

The final disillusionment about adults comes for children who are physically mistreated in jails. If they have a basic faith that some adults, at least, can help them, to be physically assaulted while in the custody of adults who are symbols of authority is a shattering emotional experience.⁷⁴

A child in jail, then, is very much alone. His physical surroundings are strange and fearsome,⁷⁵ his trust in his family and other adults is undermined; and his own stability is shaken.⁷⁶ In addition to enduring the anxiety of abandonment to, and dependence on, potentially hostile strangers and the sadness that accompanies a loss of trust in adults, jailed children also feel stigmatized.⁷⁷ Their self-image is altered.⁷⁸ Confinement represents deliberate social rejection. A child's social depravity is assumed in order to legitimate custody.⁷⁹ Jailed children feel like outcasts.⁸⁰ They feel rejected, not only by their families, but by everyone.

⁷³ Ibid.

⁷⁴ Interview with Dr. Rosenheim, 4/15/75 and interview with Dr. Zimbardo, 4/22/75.

⁷⁵ Interview with Dr. Sarri, 4/16/75.

⁷⁶ Ibid.; and interview with Dr. Zimbardo, 4/22/75.

⁷⁷ Interview with Dr. Zimbardo, 4/22/75.

⁷⁸ Interview with Dr. Rosenheim, 4/15/75.

⁷⁹ American Friends Service Committee, Struggle for Justice (New York: Hill and Wang, 1971), pp. 86-88.

⁸⁰ Interview with Dr. Sarri, 4/16/75; Erving Goffman, Asylums (New York: Doubleday, 1961).

Then, there is the physical way people are handled in a jail.⁸¹ Whether because of overcrowding, understaffing or disinterest, prisoners are treated as cases to be processed.⁸² Little attention is paid to individual needs.⁸³ A jailed child cannot exercise any choice--not even about diet, physical exercise, or hygiene.⁸⁴ At a time when children are developing a sense of themselves as unique individuals, they find such curtailment of personal expression very disturbing.⁸⁵

In most jails, there is absolutely nothing for children to do.⁸⁶ They experience an overwhelming sense of boredom.⁸⁷ Such enforced idleness is very painful for adolescents.⁸⁸ They become restless and irritable.⁸⁹ They may feel confused and disoriented.⁹⁰ They may be unable to concentrate

⁸¹ Interview with Prof. Mattick, 4/14/75.

⁸² Ibid.

⁸³ Interview with Dr. Zimbardo, 4/18/75.

⁸⁴ Interview with Dr. Rosenheim, 4/15/75.

⁸⁵ Ibid.

⁸⁶ Interview with Prof. Mattick, 4/14/75.

⁸⁷ Interview with Dr. Sarri, 4/16/75.

⁸⁸ Ibid.; and interview with Dr. Zimbardo, 4/18/75.

⁸⁹ Kubzansky, P., and Leiderman, P., "Sensory Deprivation: An Overview," pp. 221-238, at 239 in Solomon, et al., (Eds.) Sensory Deprivation (Cambridge, Mass., Harvard University Press, 1961) [hereinafter "Solomon, et al."].

⁹⁰ Ibid.

--unable to think clearly.⁹¹ If so, they will be frightened.⁹²

They are also frustrated⁹³. Generally, children do not view themselves as lawbreakers in a significant sense.⁹⁴ Neither do they see themselves as dangerous.⁹⁵ "They must think that there is no earthly need to lock them up this way."⁹⁶ They see the police as overreacting to their behavior. One result of this perception is that the entire criminal justice system becomes ridiculous.⁹⁷ To a child, it appears unable to appropriately respond to his behavior.⁹⁸

Minority children suffer more in jails than do white children.⁹⁹ If a child is not white, does not speak English or speaks it with an accent, dresses unusually--in sum, is different--he is treated differently in jails as elsewhere.¹⁰⁰ In addition to the reactions outlined above, non-

⁹¹ Heron, "Cognitive and Physiological Effects of Perceptual Isolation," pp. 6-33, at 17, in Solomon, et al., supra, note 89.

⁹² Interview with Dr. Sarri, 4/16/75.

⁹³ Ibid.

⁹⁴ Interview with Dr. Rosenheim, 4/15/75. Although, of course, some children realize that what they do is wrong.

⁹⁵ Interview with Dr. Sarri, 4/16/75.

⁹⁶ Ibid.

⁹⁷ Ibid.; and interview with Dr. Zimbardo, 4/18/75.

⁹⁸ Ibid.

⁹⁹ See: American Friends Service Committee, Struggle for Justice, supra, note 79, at 107.

¹⁰⁰ Ibid.

white children experience an increased sense of self-devaluation.¹⁰¹ Minority children are made to feel even more ashamed of themselves than are white children.¹⁰² The ridicule, silent or overt, which they feel from jailers and other inmates makes minority children question the value of what they are. The small hints that no one expected them to be "good" children leaves them worn down and self-doubting.

We don't know the permanent effects on children of the experience of being jailed. At age forty, are they more prone to depression? To suicide? To homicide? We don't know. But we do know that it is immediately and substantially harmful for fifteen and sixteen year olds. Jailing children makes them frightened, sad, lonely and angry. Some children are resilient. Some of them will be all right. But by treating children so, we make it more likely that some will grow up rebellious, hostile, aggressive and violent.¹⁰³

¹⁰¹ Lief, H. T. and Stevenson, I. P., "Psychological Aspects of Prejudice with Special Reference to Desegregation," AMER. J. PSYCHIAT., 1958, 816-823.

¹⁰² Ibid.

¹⁰³ Interviews with Dr. Zimbardo, 4/22/75; and with Dr. Sarri, 4/16/75.