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MAINE COMMISSION TO REVISE
STATUTES RELATING TO JUVENILES

SUMMARY OF PRELIMINARY REPORT
OF
RECOMMENDATIONS AND ANALYSIS

This document summarizes the results of nine months of intensive research, discussion, and decision making about some very complex issues in Maine's juvenile justice system. Because this is a summary, many details of the Commission's research and analysis are not reported here. Any person interested in reviewing the work of the Commission in greater detail should contact any of the Commissioners, each of whom has a complete set of the Commission's research reports.

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The Commission's technical advisor is Mr. David Eis, Maine Criminal Justice Planning and Assistance Agency. In addition, Mr. Peter Goranltes of the Attorney General's Office and Ms. Elizabeth Belshaw, State Court Administrator, assisted the Commission in formulating the recommendations outlined in this report.

The Commission is staffed by the following consultants from Developmental Research Center: Joan FitzGerald, Peter DuBois, Dale Carter, Katherine Carter and Yvonne Sprowl.

The Commission is grateful to Justices McCarthy and Roberts, of the Superior Court and to Judges Batherson, Briggs, Clark, Devine, Henry, MacDonald, Ross, Smith and Spill of the District Court.

These jurists graciously shared their experience and expertise with the Commission.

The Commission's staff is also grateful to Mr. Kevin W. Concannon, Mr. Thomas V. Kane, Mr. Barry W. Nelson, Mr. N. Warren Bartlett and Mr. William M. Reid of the Children & Youth Services Planning Project for their assistance.

The views expressed herein are those of the Commission and not of any person or organization it consulted in the course of its work.

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INTRODUCTION

A. Establishment of the Commission

The Commission to Revise Statutes Relating to Juveniles was established on July 1, 1975 by an act of the Maine Legislature.¹ It is charged with responsibility for preparing a proposed juvenile code for Maine,² with particular emphasis on the areas of education, community-based corrections, institutional corrections, policing agencies and the court system.³

B. Chronological History of the Commission's Work to Date

Governor Longley convened the first Commission meeting on October 2, 1975. Subsequently, the Commission has met at least once a month.⁴ Additionally, the Commission has already completed one series of public hearings⁵ and has scheduled another.⁶

In response to its enabling legislation;⁷ opinions expressed at the public hearings held last May and June;⁸ activities of other committees and

¹ H.P. 1271-L.D. 1752, See Appendix I.

² Ibid.

³ Ibid., Section I.

⁴ October 2, 1975; October 21, 1975; October 30, 1975; November 6, 1975; December 19, 1975; January 8, 1976; March 5-6, 1976; April 22, 1976; June 10, 1976; July 1, 1976; August 5, 1976; September 10, 1976; September 24-25, 1976; October 15, 1976.

⁵ On May 25, 26 and 27 in Portland, Bangor and Augusta and on June 1, 2 and 3 in Saco, Lewiston and Presque Isle.

⁶ On November 4, 5, 6 and 8 in Portland, Presque Isle, Bangor and Augusta.

⁷ See supra., note 1.

⁸ Supra., note 5.

and projects currently working in Maine;⁹ the experience and concerns of individual Commission members; and the parameters of time and budget, the Commission decided to narrow the scope of its inquiry to four areas: prevention, non-criminal behavior, criminal behavior, and juvenile courts.¹⁰

C. Procedures Employed to Reach the Recommendations Outlined in

This Report

After meeting with the Commission as a whole, staff extensively interviewed each Commissioner individually. The results of this process, of interviews with members of the Children & Youth Services Planning Project, and of interviews with the Commission's advisors are outlined in "Goals of Maine's Juvenile Justice System: Report on Task 1" which staff prepared for the Commission in February, 1976. On March 5 and 6, 1976, the Commission, after extended discussion, voted to concentrate on the areas of prevention, non-criminal behavior, criminal behavior and juvenile courts.

A series of Commission meetings were then held, each of which focused on one of these four areas. Before each session, Commissioners received a packet of materials, prepared by staff, to read as background material. Each meeting began with a staff presentation based on available demographic information;¹¹ relevant sections of Maine's existing statutes¹² and

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Criminal Law Advisory Committee; Project on Standards and Goals of the Maine Criminal Justice System; Correctional Economics Project; Child Abuse and Neglect Task Force, Maine Human Services Council; Criminal Code Impact Project; Substitute Care Task Force, Greater Portland United Way; and Community Justice Project.

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For an extended discussion of the procedure by which these four areas were selected see, FitzGerald, et al, "Goals of Maine's Juvenile Justice System: Report on Task 1", February, 1976.

11

See Appendix II.

12

See, "Statutes of Maine's Juvenile Justice System: Report on Task 3", prepared in March, 1976.

regulations¹³ and available model legislation where appropriate.¹⁴ The goal of each of these work sessions was to provide Commissioners with the information necessary to make tentative decisions about recommendations for change in Maine's juvenile justice system and to achieve a concensus among Commissioners about preliminary recommendations in the four areas.

This document is the result of that process. It contains a synopsis of the Commission's recommendations and analysis in each of the four areas on which the Commission has concentrated.¹⁵ The second, and final scheduled series of public hearings¹⁶ will focus on this report.

Based on public reaction to this report, gathered during the November public hearings, the Commission will make final decisions about its analysis and recommendations, and will prepare a draft of proposed statutory amendments that reflect these decisions.

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See, "Regulations of Maine's Juvenile Justice System: Report on Task 4", prepared in July, 1976.

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For background material on each of the four topic areas see, "PREVENTION" prepared for the Commission meeting held on August 5, 1976; "CRIMINAL BEHAVIOR" prepared for the Commission meeting held on September 10, 1976; "NON-CRIMINAL MISBEHAVIOR" prepared for the Commission meeting held on September 24, 1976; and "JUVENILE COURTS" prepared for the Commission meeting held on September 25, 1976.

15

On July 1, 1976, the Commission voted unanimously that if four or more Commissioners disagreed with any resolution, they could submit a minority report of their findings and such report would be included in this document. In fact, no recommendation included here was opposed by four members.

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See, *infra.*, note 6 and accompanying text.

GUIDING PRINCIPLES

The Commission's recommendations are based on the following philosophical principles:

- I. Children and youth at risk should be provided with whatever supportive and rehabilitative services are necessary to ensure their healthy development.
- II. Children and youth services must be provided in a way that recognizes the individual differences among people and the essential differences between young people and adults.
- III. The liberty of individual children and youth is no less important than that of adults and is therefore to be protected so long as it is consistent with the liberty of others.
- IV. Children and youth who are accused of criminal behavior should be treated by the justice system in a manner that clearly acknowledges the seriousness of the crime and adequately protects the constitutional rights of the accused.
- V. The state is obligated to observe strict parsimony in intervening in the lives of children and youth. The state has the burden of justifying why any given intrusion -- and not a lesser one -- is called for.

RECOMMENDATIONS AND ANALYSIS

A. Prevention

RECOMMENDATION #1: THE COMMISSION AGREES THAT CHILDREN AND YOUTH SHOULD RECEIVE WHATEVER SERVICES ARE NECESSARY TO PREVENT THEM FROM COMING INTO CONTACT WITH THE JUVENILE COURT SYSTEM AND TO AID IN ACCOMPLISHING THIS RESULT THE COMMISSION RECOMMENDS THAT A SINGLE STATE AGENCY, NOT NECESSARILY A NEW ONE, BE CHARGED WITH RESPONSIBILITY FOR:

- a. ENSURING THE PROVISION OF ALL SERVICES NECESSARY TO --
 - PREVENT CHILDREN AND YOUTH FROM COMING INTO CONTACT WITH THE JUVENILE COURT SYSTEM; AND
 - SUPPORT AND REHABILITATE THOSE CHILDREN AND YOUTH WHO DO COME INTO CONTACT WITH THE JUVENILE COURT;
- b. GATHERING STANDARDIZED INFORMATION ON THE PRESENT AND PAST SERVICES NEEDS OF CHILDREN WHO HAVE COME INTO CONTACT WITH THE JUVENILE COURT;
- c. GATHERING STANDARDIZED INFORMATION ON THE EXTENT TO WHICH SUCH SERVICES NEEDS ARE BEING MET;
- d. MAKING PROPOSALS FOR MEETING THE SERVICES NEEDS WHICH ARE NOT BEING ADDRESSED; AND
- e. COORDINATING WITH ALL OTHER EXISTING AGENCIES THAT GATHER DATA ON THE SERVICES NEEDS OF MAINE'S CHILDREN AND YOUTH.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: None

Current Regulatory Provisions: None

Discussion:

The Commission has found that there is a need for more and varied diversion programs for children in Maine; and that there is a need for well-trained family workers, street workers and counselors to work with a child in his community before he becomes involved with the juvenile court in any way. We suggest that diversion services should be provided by already-existing human services agencies and that the ability of such agencies to provide necessary services to both delinquent and non-delinquent youth be expanded.¹⁷

The informational basis for these Commission recommendations was available national and state literature,¹⁸ the testimony of a variety of experienced and knowledgeable people at Commission hearings, and the comments of Commission members. Although this information has been helpful in focusing the Commission's work, it is the unanimous opinion of Commissioners that planning, administration and provision of prevention services would be far more effective in Maine if a single state agency were given the responsibility and capability to gather and analyze standardized information on the services needs of children and youth who come into contact with the juvenile court.

This information along with data on the extent to which these needs were being met would provide a sound foundation for decision making about

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These conclusions were also reached by the Substitute Care Task Force of United Way, Inc. See: Children and Families at Risk in Cumberland County, United Way Substitute Care Task Force, (September, 1976).

18

Analyzed in Commission to Revise Juvenile Statutes, Preliminary Report of Recommendations and Analysis, October, 1976, pp. 14-24 (of which this document is a summary).

resource allocation and new services development. The agency could therefore also be responsible for making proposals for meeting needs which present services are not adequately addressing.

Such an agency need not be a new, additional one. Ideally these functions should be performed by a unified children and youth services agency which combined functions presently provided by elements of the Departments of Mental Health and Corrections and Human Services. The agency should be located in one of the two Departments and would perform the following general functions:

Provision of direct services for children and their families --

- administering, supervising and insuring the provision of public child protective and welfare services;
- administering, supervising and insuring the provision of correctional programs for delinquent offenders;
- assisting communities to establish and provide necessary local services through technical assistance and additional financial resources in establishing the necessary range of comprehensive treatment and evaluation services;
- using to best advantage the available resources of both the income maintenance and social service programs in appropriate titles of the Social Security Act and other federal statutes;
- using other public and voluntary agencies as resources for the purchase of care and services;
- stimulating the creation of voluntary services; and
- intervening if local agencies fail to provide adequate services for which they are responsible.

Leadership in statewide program planning --

- collecting and reporting all pertinent data on services recipients, programs, and unmet needs;
- analyzing needs of children and families;
- promoting the development of comprehensive child welfare services systems based on needs;
- ensuring effective utilization not only of social services, but of all existing services and resources for children and their families, under both public and private auspices, and, when necessary, encouraging their development and expansion;
- promoting a teamwork approach and bringing together the various fields interested in developing services for children and their families;
- providing planning grants for local communities; and
- seeing that state planning is implemented and that comprehensive services are available in all communities.

Regulation of agencies --

- setting standards and minimum requirements;
- licensing voluntary agencies and others in the private sector;
- approving program agencies as meeting the minimum requirements of the licensing authority; and
- supervising public agencies and providing consultation to assist voluntary agencies and others in the private sector to improve services.

Evaluation and accountability --

- ensuring compliance with the regulations for use of public funds;
- evaluating quality and cost effectiveness of services; and
- monitoring and assisting local agencies and service contractors, including proprietary agencies, to assure that they are carrying out their service responsibilities appropriately and effectively.

Provision for appeals, fair hearings and grievances --

- protecting the rights of individuals to appeal against denials of or exclusion from the services to which they are entitled, actions that negate the individual's right of choice to specific programs, or actions that force involuntary participation in a service program.

Staff development and training --

- meeting the need for professional personnel for public child welfare services, through inservice training, institutes, conferences, and educational leave grants;
- upgrading education and competence of professional and subprofessional personnel and volunteers; and
- making staff and training facilities available for training of staff and volunteers in contractor agencies or facilities to assure effective provision of purchased services.

Research and demonstration --

- engaging in research; and

- entering into contracts with other agencies and making grants for research, including basic research into the causes of social problems of children and their parents, evaluation of methods in use, and development of new approaches.

In regard to individual children for whom such agency has accepted responsibility, it should:

- make appropriate services available to them, either directly or by purchase of or payments for such services provided by another agency;
- assume responsibility, to the extent that parents are unable to do so, for payment for services;
- assume legal custody of children or legal guardianship, vested by the court, when parental rights are temporarily abrogated or terminated (as, for example, when the agency is authorized to place the child for adoption);
- take necessary action for the appointment of a guardian of the person of children who do not have a parent to exercise effective guardianship;
- carry continuing responsibility for seeing that the children and parents are receiving appropriate services in accordance with their needs.

Such a unified agency could pull together most of Maine's children and youth serving resources and employ them most efficiently and effectively in the meeting of many unmet needs. It could also bring order to the efforts of various unrelated programs and agencies which are now working in Maine.

RECOMMENDATION #2: THE COMMISSION AGREES THAT:

- a. THERE SHOULD BE MANDATED RESPONSIBILITY ON THE PART OF SCHOOLS AND PARENTS TO ADEQUATELY AND APPROPRIATELY MEET THE EDUCATIONAL NEEDS OF MAINE'S CHILDREN THROUGH AGE 17 YEARS;
- b. IT IS NOT APPROPRIATE TO DETAIN OR COMMIT STUDENTS WHO TRUANT OR DROP OUT FROM SCHOOL IN THE MAINE YOUTH CENTER OR ANY OTHER CORRECTIONAL FACILITY FOR THAT REASON ONLY;
- c. THE PRESENT TRUANCY STATUTES SHOULD BE REPEALED AND REPLACED WITH A MANDATE THAT --
 - STUDENTS PARTICIPATE TO THE MAXIMUM EXTENT THAT THEIR ABILITY PERMITS WITH PARENTS AND SCHOOL PERSONNEL IN THE PROCESS OF ACHIEVING AN EDUCATION FOR THEMSELVES; AND
 - A DECISION NOT TO SO PARTICIPATE BY ANY OF THE THREE PARTIES WILL BE REVIEWED BY A COMMUNITY-BASED COMMITTEE COMPOSED OF PARENTS, TEACHERS, PROBATION DEPARTMENT PERSONNEL AND/OR OTHER APPROPRIATE PROFESSIONALS AND STUDENTS; AND
- d. IF, AFTER REASONABLE EFFORTS TO MAINTAIN THE CHILD IN AN EDUCATIONAL PROGRAM WHICH IS RESPONSIVE TO HIS NEEDS, THE CHILD DOES NOT PARTICIPATE IN AN EDUCATIONAL PROCESS, THAT CHILD WILL BE PERMITTED TO WITHDRAW FROM SCHOOL WITHOUT PENALTY TO HIMSELF OR OTHERS.

Vote By Which Resolved:

Unanimous

Current Statutory Provisions:

Part a - Maine Constitution, Article VIII;
20 M.R.S.A. Sections 220, 859, 911.

Part b - 15 M.R.S.A. Section 2552

Part c - Maine is moving toward this concept through its Positive Action Committees (20 M.R.S.A. Section 917).

Current Regulatory Provisions: Department of Educational and Cultural Services, Administrative Letters Nos. 43, 51, 72, 2, 15, 16, 17, 22, 28, 37, 40, 41, 44, 48, 49, 50, 63, 66, 69, 68, 76, 77, 82. See also, Department Missions and Goals Statement (1974); Maine State Plan for Vocational Education, Parts 1 and 2 (1976); Program Budget Plan (1976-77); Program Budget Plan - Guidance; Program Budget Plan - Follow Through (1976-77); Program Budget Plan, Human Development and Guidance Unit - Human Development/Drug Education Section (1976-77); Program Budget Plan, Program Approval Independent Schools (1976); Program Budget Plan - Right to Read (1976-77); Special Education Administrative Handbook (1974); Student Suspension and Expulsion (June, 1975).

Discussion:

For generations, the thrust of truancy laws has been the same. There are still laws which threaten recalcitrant children and parents with stiff punishment if a child is truant. This is so despite the fact that very little is known about the causes and effects of truancy and dropping out of school.¹⁹ Whether there is a positive correlation between children who have trouble in school and children who commit delinquent acts is a disputed question.²⁰ If the correlation between truancy or dropping out and delinquency has not yet been established, the mere fact that a child does not attend school

¹⁹ President's Science Advisory Committee, Youth: Transition to Adulthood, 66 (1973).

²⁰ See Judicial Conference of the State of New York, "The PINS Child: A Plethora of Problems" (1973); Polk, Frease and Richmond, "Social Class, School Experience and Delinquency" 12 CRIM. 84 (1974); Senna, Ratus and Siegel, "Delinquent Behavior and Academic Investment among Suburban Youths" 9 ADOLESCENCE 481 (1974).

may not be sufficient cause to justify state intervention to compel attendance.²¹

This Commission recommends the elimination of judicial intervention in truancy situations because: (1) there is no evidence that such intervention, however benign, prevents truancy;²² and (2) there is some evidence that judicial intervention, rather than working as intended, sometimes harms both parents and children.²³

The Commission, therefore, supports the philosophy Maine has already espoused in forbidding the detention or incarceration of children for truancy alone. We suggest that a further refinement of that philosophy is to completely remove jurisdiction over truancy matters from judicial tribunals and to place it where it belongs—in the hands of educators, parents and

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It is argued that failure to attend school may be a symptom of greater problems of the child and that the state should intervene in truancy situations to avoid greater disruption in a child's life. Children's Defense Fund, Children Out of School in America, 19 (1974).

22

We were unable, after an extensive search, to develop accurate and complete data about truancy in Maine. In fact, the Commission was told that the Department of Education in Maine does not keep such data on a state-wide basis. (Testimony of Mr. Omar Norton before the Commission at a public hearing held in Augusta, Maine on May 27, 1976.)

Neither does there appear to be any state-wide program designed to alleviate truancy which has been monitored in a way that would make extrapolation of generated data useful for our purposes. We are therefore unable to formulate any evidence that intervention, of whatever sort, affects truant behavior in any way.

23

Wald, "State Intervention on Behalf of 'Neglected Children'" 28 STAN. L. REV. 63 (April, 1976).

representatives of social service agencies, more equipped than are courts to deal with the problems of a truant child.²⁴

We believe that only when the barriers separating teachers from parents and administrators from teachers are removed will we begin to address the problems of truancy. Implicit in our recommendations is the belief that:

1. Suspension of students from school should be curtailed.

State and local school officials should immediately examine their school discipline policies and practices in light of the interests of children and of good educational sense. The use of expulsion, suspension and other disciplinary exclusions should be curtailed except where serious danger of harm to person or property exists. Fair hearings in these latter emergency cases should be held prior to or within 24 hours of the exclusion. Exclusion should last only as long as the danger persists. In-school alternatives should be devised to keep children with discipline problems in school. Alternative educational approaches should be more fully

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We recognize that the problems of children out of school, or those who do poorly in school or act out in school reflect their and their families' broader needs. Reforms inside the educational system must be viewed in tandem with reforms outside schools. But while school officials cannot solve all the problems of the children they serve, they can alleviate many, particularly those that are a direct outgrowth of their own policies or the lack of them.

Some may view these comments as a wholesale indictment of schooling and school officials in Maine. It is not. We do not mean to imply that all school districts, administrators and teachers are falling down on their jobs. Many are struggling daily with genuine concern and commitment to educate Maine's children. But many are not. It is clear to this Commission that drastic changes in attitudes and programs must occur if schools are to serve all children, including troublesome ones, effectively.

explored and implemented to avoid many of the behavior problems that now result in exclusion.²⁵

2. State educational officials should provide (1) model discipline codes and (2) technical assistance to aid local districts revising discipline policies. To ensure enforcement, states should adopt regular local district reporting requirements whose results are used in furtherance of an established state goal for school attendance by all children.
3. School officials should undertake specific and continuing outreach efforts to involve parents in important school decisions affecting their children. These include disciplinary and other exclusions and special education testing and placement.²⁶

25

It may also be advisable to use Pupil Evaluation Teams to assess a disruptive or truanting student's needs.

26

A common argument used to discourage educational innovation these days is that "there is no money." It's true that some of the problems of children who are not in school will require more money before they are solved. But many will not.

A change in attitudes may be the most crucial factor to the many children who are pushed out because of school hostility, condescension, and indifference. It does not cost much money to design and implement fair discipline policies and procedures, to establish periodic teacher-parent-child conferences or to inform parents of special education placement procedures.

Many changes that are required are matters of data collection. Knowing the extent of the problem will help officials design good outreach programs. That is the first step. Others involve enforcement of existing policies, taking the time to ask the right questions, to insist that reporting requirements be met, to relate what is reported to policy implementation. These steps would go a long way to identify some of the problems that cause children to be excluded from school.

The final implication of our recommendations is that Maine's age for compulsory education should remain unchanged - i.e. five - seventeen years. We believe that lowering the age for compulsory school attendance would only mask a critical problem in Maine's educational system--that most of Maine's youth who are not attending school are between fourteen and seventeen years of age.²⁷ While recognizing that any upper limit on compulsory education is necessarily arbitrary, we believe that Maine should err on the side of more public education rather than less.

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Children's Defense Fund, Children Out of School in America, Cambridge, 1974; and U.S. Bureau of the Census, Census Population: 1970, Detailed Characteristics, Final Report P.C.(1)-D Series, Tables 146 and 154.

B. Non-Criminal Behavior

RECOMMENDATION #1: THE COMMISSION RECOMMENDS THAT SUCH TERMS AS "BEHAVIOR WHICH MIGHT INDICATE A TENDENCY TO LEAD AN IDLE, DISSOLUTE, LEWD OR IMMORAL LIFE" OR ANY OTHER SIMILARLY VAGUE TERMS SHOULD NOT BE USED TO DEFINE NON-CRIMINAL JUVENILE BEHAVIOR AND STATUTES EMPLOYING SUCH LANGUAGE SHOULD BE REPEALED.

Vote By Which Resolved: Unanimous
Current Statutory Provisions: Maine's statutes currently include such language. 15 M.R.S.A. Section 2552.
Current Regulatory Provisions: None

RECOMMENDATION #2: THE COMMISSION RECOMMENDS THAT THE "BEYOND-CONTROL-OF-PARENTS" CHILD, WHERE THE CHILD PERFORMS ANY CRIMINAL ACT, SHOULD BE TREATED AS A DELINQUENT CHILD, AND WHERE THE CHILD HAS NOT COMMITTED A CRIMINAL OFFENSE, HE, AND HIS FAMILY, SHOULD BE OFFERED AND ENCOURAGED TO ACCEPT VOLUNTARY SOCIAL SERVICES WHICH THE STATE SHALL PROVIDE FOR THEM.

Vote By Which Resolved: 8-1
Current Statutory Provisions: Maine provides that such children may be found to be juvenile offenders. 15 M.R.S.A. Section 2552.
Current Regulatory Provisions: None

Discussion:

For better than a decade, there has been increasing criticism of jurisdiction over non-criminal behavior of juveniles.²⁸ Recent years have seen

²⁸

For an early attack on the vagueness and overbreadth of the empowering statutes, see Rubin, S., "Legal Definition of Offenses by Children and Youths", (1960) Illinois Law Forum, 512, 1960.

sharply mounting challenges, both in legislatures and in the courts.²⁹

The following appear to be the chief arguments propounded for abolition of jurisdiction over non-criminal behavior:

1. The unruly child jurisdiction fails to provide effective rehabilitation; it simply doesn't work. No evidence supports its central theses that the behavior encompassed in its ambit is evidence of probable future law violation or that official intervention will prevent future crimes.³⁰
2. The handling of non-criminal behavior requires a diversion of effort, time and resources of the juvenile justice system that is vastly disproportionate to any good achieved. If the unruly child jurisdiction were abolished, resources and personnel could better attend to and serve those cases involving conduct which more seriously endangers the community.
3. Cases involving children who have violated no penal law present issues for resolution which are peculiarly ill-fitted for, and unbenefited by, legal analysis and judicial fact-finding. Legal compulsion cannot restore (or provide) parent-child understanding and tolerance nor can it build up mechanisms for conflict resolution within any given family.

²⁹

See: Report of the Cal. Assembly Interim Committee on Criminal Procedure: Juvenile Justice Processes, 1971, recommending abolition of the juvenile court's beyond-control child statute.

³⁰

Sacramento Co. Probation Dept., Preventing Delinquency Through Diversion: The Sacramento County Probation Department 601 Diversion Project - A First Year Report, 1972; Andres, R.H., and Cohn, A.H., Unruly Children: The Juvenile Non-Criminal Offender, 117, 167 unpub. manuscript prepared for the IJA/ABA Juvenile Justice Standards Project, October 1973.

4. Many, if not virtually all, statutes conferring on the juvenile court jurisdiction over the unruly child are arguably void for vagueness; language conferring such jurisdiction falls far short of such specificity as would allow the actor to determine what conduct fell within the prohibitions of the statute.
5. The unruly child and person-in-need-of-supervision statutes essentially impose sanctions upon a status, not upon a specific act.³¹
6. The existence of non-criminal jurisdiction weakens the responsibility of community agencies and families and dulls their ability to respond to problems that are essentially theirs.
7. There is no good data on this point, but the non-criminal jurisdiction is thought to afford an unfortunate and convenient haven for the lodging of cases which properly belong under the rubrics of neglect or delinquency.

The Commission recognizes that non-criminal behavior may indicate that a child and his family need assistance. But we believe that services designed to respond to such behavior should be voluntary and completely removed from judicial intervention.

We suggest that such a comprehensive system of child welfare services should include:

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See Robinson v. California, 370 U.S. 660 (1962), overturning a California statute making the status of narcotic addiction a criminal offense. The decision rested on the constitutional prohibition against cruel and unusual punishment, which the court found was violated when a person was jailed for a status.

Diagnostic services and case finding --

- outreach services for children and their families in their homes and communities; and
- comprehensive evaluation.

Services to support and reinforce parental care --

- social work or other professional support services for children in their own homes;
- child protective services for neglected, abused and exploited children; and
- services to unmarried parents.

Services to supplement parental care or compensate for its inadequacies --

- homemaker service for children; and
- day care service, both group and family day care, including services for children with special needs (such as emotionally disturbed and physically handicapped children).

Services to substitute in part or in whole for parental care --

- foster family care service, including foster homes capable of handling emotionally disturbed juveniles;
- group home care service;
- institutional care service;
- residential treatment service;
- adoption service; and
- professional consultants to foster home and services staff.

Preventive services --

- social action to improve and ensure conditions and services that will promote wholesome child development, strengthen family life and preserve the child's own home, and to reduce the incidence of circumstances that deprive children of the requirements for their optimal development; and
- early case finding and intervention to protect children at risk and to avert unnecessary separation from their parents.

Regulation of agencies and facilities --

- standard setting, licensing, certification, approval of agencies and facilities providing care and services for children (outside and in their own homes).

Community planning of services for children and parents --

- developing the full range of child welfare services and coordinating these services with one another and with the other social services and community resources serving children and families (income maintenance, family services, health services, mental health services, education, housing, legal and court services, vocational counseling and training, recreation).

Follow-up --

- continuing case management services including periodic reevaluation and placement reassessment.

RECOMMENDATION #3: THE COMMISSION RECOMMENDS THAT RUNAWAY CHILDREN, FOR THAT BEHAVIOR ALONE, SHOULD NOT BE DETAINED OR INCARCERATED IN ANY CORRECTIONAL FACILITY.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: "Repeatedly deserting one's home without just cause" is an offense. (15 M.R.S.A. Section 2552). Maine has signed the Interstate Compact on Juveniles which provides for the return of runaway children to their home state. (34 M.R.S.A. Section 181).

Current Regulatory Provisions: None

RECOMMENDATION #4: THE COMMISSION RECOMMENDS THAT THE JURISDICTIONAL BASIS FOR JUDICIAL INTERVENTION IN CASES OF RUNAWAY CHILDREN AND YOUTH SHOULD BE ALTERED SO AS TO TREAT THEM ESSENTIALLY AS NEGLECT CASES.

Vote By Which Resolved: 10-1

Current Statutory Provisions: Currently children who repeatedly desert their home without just cause are considered to be juvenile offenders. (15 M.R.S.A. Section 2552).

Current Regulatory Provisions: Approved Policy Statement #52, Bureau of Social Welfare, Department of Human Services (November 1, 1973),³² which defines "child protective services" as "a set of specialized social services, based on law and supported by community standards which carry a delegated responsibility to intervene in behalf of any child considered, or found to be, neglected, abused, exploited, or delinquent. It is a service to children directed mainly

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Reproduced as Appendix B in Maine Human Services Council, "Report and Recommendations on Child Abuse and Neglect", June, 1976.

to parents for the benefit of children. It is a service available to any child in the State of Maine, dependent on community referrals, including self-referrals and may necessarily be offered on a non-voluntary basis to a child's family." ³³

Discussion:

These recommendations reflect two assumptions:

- Even the act of running away - which is probably the most common act of non-criminal misbehavior - will not provide a ground for juvenile court jurisdiction, because the act of running away is likely reflective of developing independence on the part of the youth on the one hand and family conflict on the other. Neither of these actors is aided by formal induction into the juvenile justice system and adjudication as an unruly child.

- There will remain a need for police and other enforcement agencies to take into temporary custody some youths who are runaways.

The Commission believes that there is a substantial difference between allowing law enforcement officers to take temporary custody of a runaway child and the present practice of institutional detention and possible court adjudication.

The principle of these recommendations is that a minor's absence from home without the consent of his parent, guardian or custodian shall not constitute a ground for asserting juvenile court jurisdiction over that minor. We intend that such recommendation apply whether or not the minor is found

In a state other than the state of residence of his parents, guardian or custodian. In short, we recommend Maine withdraw from the Interstate Compact as a means for returning runaways who have committed no criminal offense. Experience with the Interstate Compact has shown that its processes are lengthy and expensive,³⁴ necessarily involving the assumption of juvenile court jurisdiction in each case, followed by commitment to the Compact Administrator of the sending state who arranges with his counterpart in the receiving state for the minor's return. In the interim, the minor is most often housed with delinquent youth.

Notice that these recommendations are inapplicable if the minor is the subject of a petition alleging violation of the criminal law, even though the minor is absent from home without parental consent.

We make these recommendations in part because available research indicates that no generalizations can be articulated about whether children are helped by any one particular complex of services.³⁵ In light of the absence of any evidence that judicial intervention in the lives of runaway children aides those children, or diverts them from future criminal activity, we are unwilling to sanction continued judicial intervention into their lives. We simply do not see a state interest compelling enough to support such intervention.

Where, however, a minor desires to return home and his parents, guardian, or custodian unreasonably refuse to allow the minor to return to the

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Gough, A., "Non-Criminal Behavior" unpublished paper prepared for the IJA/ABA Juvenile Justice Standards Project, 1973.

³⁵

National Assessment of Juvenile Corrections, "Juvenile Corrections in the States: A Preliminary Report", November, 1975 (unpublished paper available from the University of Michigan).

family home, child neglect proceedings may be initiated in the juvenile court by the Department of Human Services. Where a minor is of the age of sixteen years or over and wishes to continue in placement against the wishes of his or her parent, guardian or custodian, the minor may file with the juvenile court a Petition for Emancipation. Briefly, the system we recommend would function as follows:

- If the minor and the parents, guardian or custodian agree to the minor's return home, the minor shall be transported as soon as practicable to the county of residence of the parent, guardian or custodian at the latter's expense, unless indigent.
- If the minor refuses to return home and is under the age of sixteen years, and if no other living arrangements agreeable to the minor and to the parent, guardian or custodian can be made, the minor shall be offered shelter in a licensed temporary residential care facility in the county of residence of the parent, guardian or custodian.
- If the parent, guardian or custodian refuses to allow the minor to return home, and no other living arrangements agreeable to the minor and the parent, guardian or custodian can be made, legal counsel shall be appointed for the minor and a neglect petition shall be filed in the court. The court shall schedule a hearing date and notify the minor's parent, guardian or custodian of the date of the hearing, the allegations of the petition, the legal consequences of an adjudication of neglect, and their rights to be represented by legal counsel and to present evidence at the hearing.

- If the minor is sixteen years of age or older, and either the minor refuses to return home or the parents refuse to permit the minor to remain away from home, legal counsel shall be appointed for the minor and the minor may file with the court a Petition for Emancipation. The court shall schedule a hearing date and shall notify the parent, guardian or custodian of the date of the hearing, the legal consequences of an order of emancipation, and their rights to be represented by legal counsel and to present evidence at the hearing. The court shall grant an order of emancipation if it finds either

(i) that the refusal of the parent, guardian or custodian to permit the minor to remain away from home is unreasonable, or

(ii) that the minor is sufficiently mature to assume responsibility for his or her own care.

It shall be the responsibility of the juvenile and his counsel to identify available community resources to help in the juvenile's emancipated life to any extent necessary, to develop a plan for the provision of such services, and to demonstrate that these social service agencies have agreed to provide such support. Before the court grants a Petition for Emancipation, it shall review and approve this services plan.

If the court denies the petition for emancipation, it shall offer the minor shelter in a licensed temporary residential care facility in the county of the parent, guardian or custodian. The cost of such return shall be borne by the transferring jurisdiction.

RECOMMENDATION #5: THE COMMISSION RECOMMENDS THAT MAINE'S STATUTES BE AMENDED TO INCLUDE THE FOLLOWING CUSTODY STANDARD AND PROCEDURE:³⁶

A CHILD MAY BE TAKEN INTO CUSTODY --

- a. PURSUANT TO AN ORDER OF A COURT: OR
- b. BY A LAW ENFORCEMENT OFFICER OR DULY AUTHORIZED OFFICER OF THE COURT IF THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CHILD HAS DESERTED HIS PARENTS, GUARDIAN OR CUSTODIAN WITHOUT JUST CAUSE. A CHILD TAKEN INTO CUSTODY SHALL BE TAKEN FORTHWITH TO THE DEPARTMENT OF HUMAN SERVICES WHICH SHALL ARRANGE FOR HIS PLACEMENT.

Vote By Which Resolved: 8-1

Current Statutory Provisions: A child may be arrested either because his conduct attracts the attention of police or because he fails to obey a citation. (15 M.R.S.A. Section 2604).

Current Regulatory Provisions: None

Discussion:

The purpose of this recommendation is to fix responsibility for the care of runaway children where we believe it belongs -- with the Department of Human Services,³⁷ not the judiciary -- and to distinguish between taking

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Recall that this standard applies to runaway children only.

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We note with concern the allegation that the Department of Human Services "through policy and practice, tends to narrowly interpret its role as the state's designated agency responsible for safeguarding the health and welfare of all children at risk. Rather than broadly extending its protective mantle to cover all children in jeopardy, it has instead allowed the evolution of restrictive eligibility criteria to govern the availability of its resources. Often, these services are limited exclusively to children already in its custody." United Way Substitute Care Task Force, "Children and Families at Risk in Cumberland County", September, 1976.

This well-documented analysis of foster care services for children in Cumberland County was of enormous help to the Commission's staff in the preparation of the Preliminary Report. We wholeheartedly support its recommendation #3 - "The Department of Human Services Must Improve And Expand Its Capability To More Effectively Serve Children At Risk".

a runaway into protective custody and arresting a juvenile suspected of delinquent activity. Implicit in this recommendation is the belief that a runaway child should be given maximum opportunity to return home or to other living arrangements voluntarily. We recognize that the place for most children is with their families. And therefore, if the parents and child agree to the child's return home, the child should be allowed to return home immediately. If an agreement to return the child to his home cannot be reached immediately, the child should be taken to a temporary shelter program designated by the Department of Human Services, regardless of the time of day.

It is the intent of our recommendations that in most cases, substitute residential care should be used only as an interim measure while services are provided to abate the problem and enable a minor to return to his family. The spectrum of services provided should include both crisis intervention and continuing service components.

Crisis intervention services should consist of an interview or series of interviews with the minor or his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the minor or the family. Crisis intervention services should include the arrangement of temporary residential care, if required, which shall not be in a secure detention facility or in an institution used for the detention or treatment of minors charged with or adjudged guilty of violation of the criminal law. Insofar as practicable, temporary residential care should be provided in a family or small group

setting through the use of relative's homes, foster homes, runaway shelters, group homes and similar services.

Other crisis intervention services appropriate to the needs of the minor and the family include: the provision of, or referral to, services for suicide prevention, psychiatric or other medical care, psychological, welfare, legal, educational or other social services.

Continuing services include, as appropriate to the needs of the minor and the family: psychiatric or other medical care, psychological, welfare, legal, educational or other social services, and the arrangement of substitute residential placement.

We recommend that the sources of assistive services be convenient, decentralized and flexibly managed, so that function does not become submerged in form. The services offered and the staffs that provide them should be aligned with the needs of the people served. A center serving an area with a significant proportion of non-English speaking families, for example, can hardly be responsive if its staff speaks only English and must rely on outside interpreters.

In appropriate cases, such service centers should make maximum use of hot-line and other services offered elsewhere, including national or regional hot-lines for the reuniting of runaway minors with their families.³⁸

Services should be well-publicized and stickers with telephone numbers and locations should be affixed to each public telephone.

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Two national toll-free runaway hot-lines are presently in operation. They are intended to act as clearing centers which runaway youth anywhere in the country can use to get in touch with their families through the use of a neutral intermediary. One of these numbers is 1-800-231-6946, and the other is 1-800-621-4000, National Runaway Switchboard funded by HEW.

C. Criminal Behavior³⁹

RECOMMENDATION #1: THE COMMISSION AGREES THAT NON-RESIDENTIAL COMMUNITY BASED PROGRAMS ARE THE MOST DESIRABLE MEANS FOR ADDRESSING JUVENILES' PROBLEMS RELATED TO DRUG OR ALCOHOL ABUSE OR PROSTITUTION. AND, THEREFORE, THE COMMISSION RECOMMENDS THAT MAINE'S STATUTES BE AMENDED TO REQUIRE THAT A JUVENILE WHO HAS BEEN ADJUDICATED A DELINQUENT BECAUSE OF DRUG OR ALCOHOL ABUSE OR PROSTITUTION MAY NOT BE COMMITTED TO THE MAINE YOUTH CENTER OR ANY OTHER RESIDENTIAL PROGRAM UNTIL HE HAS BEEN PLACED IN AT LEAST ONE NON-RESIDENTIAL PROGRAM APPROPRIATE TO HIS NEEDS AND HAS NOT BEEN REHABILITATED BY THAT PROGRAM; AND THAT SUCH RESIDENTIAL COMMITMENT MAY BE MADE ONLY IF THERE IS EVIDENCE THAT SUCH PLACEMENT WILL PROVIDE THE JUVENILE WITH APPROPRIATE PROGRAMMING.

THE COMMISSION FURTHER RECOMMENDS THAT COURTS BE PROVIDED WITH SUFFICIENT INTAKE ASSISTANCE TO ADEQUATELY CARRY OUT THIS REQUIREMENT.

Vote By Which Resolved:

Unanimous

Current Statutory Provisions:

Alcohol or drug abuse or prostitution are juvenile offenses. (15 M.R.S.A. Section 2552)

Current Regulatory Provisions:

Significant regulations exist only for alcohol or drug abuse. These regulations focus on either preventing the child from abusing these substances through an education program or providing treatment for the child who is an abuser. See: Ed. Adm. Letter No. 67, Ed. Budget Plan, Human Development and Guidance Unit - Human Dev./Drug Ed. Section, Programs 1 and 2, Ed. Adm. Letter Nos. 63, 68, Department of Human Services, "A Procedural Manual for the Involuntary Commitment of Intoxicated, Incapacitated and Alcoholic Persons in Maine," OADAP,

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Note that serious and/or violent crimes by juveniles are dealt with under the section on "Juvenile Courts" which follows section.

"Regulations for the Licensing of Residential Alcohol Treatment Facilities in the State of Maine," OADAP, "Alcohol Treatment Facilities Regulations," "Regulations for Licensing and Certification of Drug Treatment Facilities."

Discussion:

Many commentators⁴⁰ 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.

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. The suggestion has often been made that 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.⁴¹

This Commission has decided that the abolition of juvenile court jurisdiction over "private offenses" of juveniles, while attractive is at present unworkable. This recommendation, therefore, envisions continuing jurisdiction over such behavior by minors. However, the question of what to do with juveniles after they have been adjudicated delinquent because of drug or alcohol abuse or prostitution remains. While we recommend that continuing efforts

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

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Id.

be made to rehabilitate juveniles who abuse drugs or alcohol or who engage in prostitution, we recognize that the results of such attempts are often disappointing.⁴² For example, available literature indicates that:

- The character of the rehabilitative institution seems to have little or no influence on recidivism.
- 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.⁴³

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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, 1973).

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, MacFarline and Scarpitte, "Delinquency Prevention: A Description and Assessment of Projects Reported in the Professional Literature" CRIME AND DELINQUENCY 297 (1976).

43

Id.

- 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.⁴⁴
- Vocational training has been advocated, on the theory that people turn to crime because they lack the skills enabling them to earn a lawful 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.⁴⁵
- Education and literacy training⁴⁶ or psychiatrically oriented counseling programs⁴⁷ have also not had any appreciable success.

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Id.

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Ibid. In California, where this technique has most extensively been used, a 1971 evaluation of vocational training concluded: "Profiting 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.

46

Supra. Gough

47

Ibid.

- 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,⁴⁸ its long-term rehabilitative usefulness has yet to be demonstrated.⁴⁹

It would be an exaggeration to say that no treatment methods work, for some positive results have been reported.⁵⁰ But it is uncertain to what extent even the successes would survive replication.

Therefore, until the success of a particular type of state intervention has been established, the Commission recommends limiting intrusion. We do not, however, find this a basis for ignoring responsibility to continue attempts to develop successful programs. Since no one specific approach can be seen as a complete solution, a comprehensive range of services must be developed and monitored.

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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).

49

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

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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 Jerome Miller's attempted reform of the Massachusetts Youth Correctional System. (Some materials 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.

RECOMMENDATION #2: THE COMMISSION RECOMMENDS THAT IT IS MOST INAPPROPRIATE AND UNDESIRABLE TO DETAIN JUVENILES IN FACILITIES WHICH ARE ALSO USED TO DETAIN ADULT OFFENDERS. AND, THEREFORE, THE COMMISSION RECOMMENDS:

- a. THAT THE DETENTION OF JUVENILES IN FACILITIES WHICH ARE ALSO USED TO DETAIN ADULTS BE STRICTLY FORBIDDEN BY LAW; AND
- b. THAT THE STATE ESTABLISH A NETWORK OF REGIONAL JUVENILE DETENTION AND EVALUATION FACILITIES WHICH WILL ENSURE THAT JUVENILES WILL NEVER HAVE TO BE DETAINED IN ADULT JAILS.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: A juvenile may be detained in a "designated" jail he is separated from criminal offenders. (15 M.R.S.A. Section 2608-Supp. 1975)

Current Regulatory Provisions: None

Discussion:⁵¹

We were unable, in an extensive literature search, to find a single study about the psychological effects on a child of being jailed. But from interviews with nationally recognized criminologists, sociologists, psychiatrists, psychologists and social workers,⁵² our staff has developed the following brief commentary.

A child in jail is very much alone. His physical surroundings are strange and may be fearsome; his trust in his family and other adults is undermined; and his own stability is shaken. In addition to enduring the anxiety of abandonment to, and dependence on, potentially hostile strangers

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This discussion is a brief 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 the Maine Sheriff's Association, March 18, 1976)

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Among those interviewed: Hans Mattick, Professor and Director, Center for Research in Criminal Justice, University of Illinois at Chicago Circle; Philip Zimbardo, Ph.D., Professor of Psychology, Stanford, Univ., San Francisco, Ca.; George Tarjan, M.D., Department of Psychiatry, University of California at Los Angeles; Margaret Rosenheim, Ph.D., School of Social Work, University of Chicago; Rosemary Sarri, Ph.D., Co-director, National Assessment of Juvenile Corrections Project, School of Social Work, University of Michigan at Ann Arbor; Margarite Warren, Ph.D., School of Criminal Justice, State University

and the sadness that accompanies the loss of trust in adults experienced by most jailed children, they also feel stigmatized. Their self-image is altered.

In most jails, there is absolutely nothing for children to do. They experience an overwhelming sense of boredom. Such enforced idleness is very painful for adolescents. They become restless and irritable. They may feel confused and disoriented. They may be unable to concentrate, unable to think clearly. If so, they will be frightened.

They are also frustrated. Generally, children do not view themselves as lawbreakers in a significant sense. Neither do they see themselves as dangerous. They see the police as overreacting to their behavior. To a juvenile, the criminal justice system appears unable to appropriately respond to his behavior.

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 juveniles to be jailed with adults.

Jailing children makes them frightened, sad, lonely and angry. Some children are resilient. Some of them will be all right. But by jailing children with adults, we make it more likely that some will grow up rebellious, hostile, aggressive and violent.

The Commission therefore recommends that, in order to ensure that children and youth are never detained in adult jails, the state establish a group of regionalized small detention facilities which are physically separate and distinct from adult jails. These centers should provide staff and services that are sensitive to the needs of the young people they detain.

RECOMMENDATION #3: THE COMMISSION RECOMMENDS THAT THE STATE CRIMINAL CODE PROVISIONS RELATING TO ARREST BE ADOPTED FOR JUVENILES ARRESTED FOR DELINQUENT BEHAVIOR.

RECOMMENDATION #4: THE COMMISSION RECOMMENDS THAT MAINE STATUTES BE AMENDED TO INCLUDE THE FOLLOWING ADDITIONAL STANDARD FOR JUVENILE ARREST:

A POLICE OFFICER MAY WITHOUT A WARRANT TAKE A MINOR UNDER THE AGE OF 18 INTO TEMPORARY CUSTODY WHENEVER THE OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT THE MINOR HAS COMMITTED A JUVENILE OFFENSE RELATED TO ALCOHOL OR DRUGS OR HAS ENGAGED IN PROSTITUTION.

Vote By Which Resolved:

Unanimous

Current Statutory Provisions:

When a juvenile is arrested, the arresting officer shall notify his parents, guardian or legal custodian. (15 M.R.S.A. Section 2607)
If a juvenile fails to obey a citation or if the juvenile court feels that its citation will not be obeyed, it may issue an arrest warrant for the juvenile. (15 M.R.S.A. Section 2604)

Current Regulatory Provisions:

None

Discussion:

There has been considerable and understandable confusion over the issues of whether Fourth Amendment standards and common law and statutory requirements relating to the arrest of adults apply when the police take custody of juveniles and what the effect is, regardless of whether the answer to this question is yes or no. This confusion stems from the fact that there are

usually broader purposes for bringing juveniles within the custody of the juvenile justice system than for arresting them for criminal or delinquent acts.

It is difficult to argue that the police should be precluded from taking a juvenile into custody when his health or life is endangered unless they have the basis for a constitutional arrest. The needs in this area obviously require more than simply reducing police authority to intervene to criminal-type situations.⁵³ But distinctions must be made between taking juveniles into custody for criminal vs. noncriminal reasons and between the nature and limits of the authority to act in both situations.

We recommend that in criminal-type situations, arrest procedures should undoubtedly reflect the same strict constitutional requirements and common law distinctions that relate to arrest of adults. And we recommend that separate and distinct statutory authority be developed to allow police to take juveniles into custody--

1. when they have committed acts which justify their arrest and prosecution; and
2. when they have committed no such acts but require assistance or protection.

We believe that this approach will help ensure that the application of adult procedural protections does not become blurred and confused.

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See *infra*, at note 36 and accompanying text for a discussion of the custody standard which we propose in cases of runaway youth.

D. Juvenile Courts

RECOMMENDATION #1: THE COMMISSION RECOMMENDS THAT THE JUVENILE COURT BE RETAINED AS A DIVISION OF THE DISTRICT COURT AND THAT CONTINUING LEGAL EDUCATION BE PROVIDED TO JUDGES AND ATTORNEYS TO INSURE THE HIGHEST POSSIBLE QUALITY OF LEGAL PRACTICE IN JUVENILE MATTERS.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: The district court currently acts as juvenile court in juvenile matters.

Current Regulatory Provisions: None

Discussion:

The Commission believes that --

- The organizational structure of the juvenile court as a specialized division of the District Court permits the unique features of today's juvenile courts to be retained, while foregoing the usual isolation of this forum which has turned out to be a major weakness of juvenile courts. As a specialized division, rather than as a separate court, the juvenile division of the District Court is an organic part of a general trial court and its judges are drawn from the bank of general trial judges, rather than being elected or appointed to an exclusive tenure on a juvenile bench.
- Equal status for the juvenile court cannot come other than as a part of a court of general trial jurisdiction.⁵⁴ Equal status cannot come even when there is a separate state-wide juvenile court operating

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Schultz, "The Cycle of Juvenile Court History", CRIME & DELINQUENCY, October, 1973, p. 457.

under its own statewide rules and administration.⁵⁵

- A rotation system, coupled with specialized and continuing training in handling juvenile cases and in the developments in the law as it relates to juveniles is the most effective means of achieving a uniform system of juvenile justice for Maine.

RECOMMENDATION #2: THE COMMISSION RECOMMENDS THAT DELINQUENCY HEARINGS BE CONDUCTED IN ALL PROCEDURAL RESPECTS, EXCEPT JURY TRIALS, AS ARE ADULT CRIMINAL HEARINGS.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: Juvenile hearings are informal, and require no formal arraignment or plea. (15 M.R.S.A. Section 2610).

Current Regulatory Provisions: None

Discussion:

We believe that in adopting this standard, Maine is merely adhering to constitutional standards for juvenile proceedings already articulated by the Supreme Court.⁵⁶

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Elizabeth D. and Richard B. Dyson, "Family Courts in the United States", 8 J.F.L. 4 (Winter, 1968) and 9 J.F.L. 1 (1969). Because such a system has not been successful in removing the vestiges of the juvenile court as an inferior institution. See, Rubin, Ted, Institute for Court Management, unpublished paper on Juvenile Courts prepared for the IJA/ABA Juvenile Justice Standards Project, September 24, 1973.

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See: Kent v. United States, 383 U.S. 541 (1966); In re Gault, 387 U.S. 1 (1967), both condemning informality in juvenile proceedings as an invitation to procedural arbitrariness; In re Winship, 397 U.S. 358 (1970) holding that proof beyond a reasonable doubt was among the "essentials of due process and fair treatment" that must be accorded to a juvenile offender at an adjudicatory hearing. But note that in 1971, the Supreme Court held that the right to a jury trial is not applicable in juvenile hearings. McKeever v. Pennsylvania, 403 U.S. 528 (1971).

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RECOMMENDATION #3: THE COMMISSION RECOMMENDS THAT ALL COURT PROCEEDINGS INVOLVING JUVENILES ACCUSED OF CLASS A, B, OR C OFFENSES BE OPEN TO THE PUBLIC.

Vote By Which Resolved: 7-2

Current Statutory Provisions: Juvenile hearings are not public hearings. In fact, any person who divulges or publishes the name of any juvenile brought before a district court or any of the matters which occurred at the hearing without the consent of the juvenile court may be found guilty of criminal contempt. (15 M.R.S.A. Section 2609-1965). And records of juvenile proceedings may not be inspected by the public. (15 M.R.S.A. Section 2606 - Supp. 1975).

Current Regulatory Provisions: None

RECOMMENDATION #4: THE COMMISSION RECOMMENDS THAT, IN ORDER TO PROVIDE FOR MORE EFFECTIVE ADMINISTRATION OF JUSTICE WITH REGARD TO JUVENILES WHO HAVE COMMITTED SERIOUS OFFENSES, THE EXISTING CRITERIA FOR BIND-OVER OF JUVENILES TO SUPERIOR COURT BE REPEALED AND REPLACED BY THE FOLLOWING CRITERIA: THE JUVENILE COURT CONCLUDES AND SO STATES IN ITS PROBABLE CAUSE FINDING, THAT HAVING CONSIDERED --

- a. THE RECORD AND PREVIOUS HISTORY OF THE CHILD;
- b. WHETHER THE ALLEGED OFFENSE WAS COMMITTED IN AN AGGRESSIVE, VIOLENT PREMEDITATED, OR WILLFUL MANNER, GREATER WEIGHT BEING GIVEN TO OFFENSES AGAINST PERSON THAN PROPERTY; AND
- c. WHETHER THERE IS A REASONABLE LIKELIHOOD THAT LIKE FUTURE CONDUCT WILL NOT BE DETERRED BY CONTINUING THE CHILD UNDER THE JUVENILE JUSTICE SYSTEM,

THE COURT FINDS THAT --

1. THE MATURITY OF THE CHILD AS DETERMINED BY CONSIDERATIONS OF HIS HOME, ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING, INDICATES THAT THE CHILD WOULD BE MORE APPROPRIATELY PROSECUTED UNDER THE GENERAL LAW; AND
2. THE NATURE AND SERIOUSNESS OF THE OFFENSE INDICATE THAT THE PROTECTION OF THE COMMUNITY REQUIRES DETENTION OF THE CHILD IN FACILITIES WHICH ARE MORE SECURE THAN THOSE PROVIDED IN THE JUVENILE JUSTICE SYSTEM.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: In order to bind a juvenile over to the Superior Court for a grand jury hearing, a district court must find from the totality of the juvenile's circumstances that:

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

Current Regulatory Provisions: None

Discussion:

While we are unwilling to abandon the original curative concept of the juvenile court entirely, we recognize that some juveniles do commit serious crimes, are repetitive offenders and are unreached by the juvenile justice system.

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

Because of concern over the increase in violent crimes committed by children, there has been movement to make the provisions for waiver easier.

Standards for waiver differ greatly among jurisdictions. In Kent v. United States,⁵⁷ the Supreme Court suggested eight areas for a judge to consider in waiver hearings:

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

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383 U.S. 541 (1966).

We feel that the proposed recommendation about waiver, which is reflective of the standards outlined by the Supreme Court in Kent v. United States,⁵⁸ is a workable solution to the problems presented to juvenile courts by mature juveniles who commit serious offenses.

In the same view, we recommend that juveniles who are charged with aggravated crimes⁵⁹ should not be permitted to escape public scrutiny. In such cases, we feel that the public's right to know overrides the juvenile's right to secrecy. It has also been suggested that open juvenile proceedings conducted, as we recommend, in all procedural aspects except jury trials as are adult criminal proceedings may be beneficial to juvenile defendants since public scrutiny may insure consistent judicial adherence to procedural propriety.

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383 U.S. 5211 (1966).

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Class A, B, or C crimes.

RECOMMENDATION #5: THE COMMISSION RECOMMENDS THAT NO CHILD UNDER AGE 14 SHALL BE QUESTIONED ABOUT ALLEGED DELINQUENT BEHAVIOR UNLESS A LAWYER ACTING ON HIS BEHALF IS PRESENT.

Vote By Which Resolved: Unanimous

Current Statutory Provisions: At a hearing, a juvenile defendant has the right to be represented by any interested person or by counsel. (15 M.R.S.A. Section 2609)

Current Regulatory Provision: None

Discussion:

Although the Supreme Court has not yet ruled on the precise question, it is likely that the Court will rule that custodial interrogation of juveniles must comply with Miranda standards, and several state courts have already so held.⁶⁰ In addition, at least two states have made Miranda warnings applicable to juveniles by statute.⁶¹

As one commentator has pointed out, the more basic question than does Miranda apply is whether the Miranda requirements must be applied even more strictly and supplemented for juveniles.⁶² It has been argued that the answer to this question should be 'yes' for the following two reasons:

"There are special reasons for the use of special safeguards. The first is the basic premise, underlying the whole juvenile justice system, that juveniles who commit unlawful acts are not criminals and should not be treated as criminals... The second

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See, e.g., In re Creek, 243 A.2d49 (DC Ct.App. 1968); Leach v. State, 428 S.W.2d 817 (Tex.Civ.App. 1968); In re Forest, 76 Wash. Dec.2d84, 455 P.2d 368 (1969); In re Rust, 53 Misc.2d51, 278 N.Y.S.2d333 (1967).

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Calif. Welf. and Inst. Code Section 625; (1968); Okla. Stat. Ann. Tit. 10, Section 1109 (1968),

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Rezneck, "The Rights of Juveniles" in The Rights of Americans, 479 (N. Dorsen, ed., 1971).

reason is that juveniles are not mature enough to understand their rights and are not competent to exercise them."⁶³

To enforce this attitude, numerous recommendations and some special procedures have been made relating to the questioning process. For example, some jurisdictions have required that juveniles be turned over to probation officers before questioning or have required that they be interrogated only if parents or counsel are present.⁶⁴ The Legislative Guide for Drafting Family and Juvenile Court Acts excludes in the adjudication process use of any statements made without counsel.⁶⁵

RECOMMENDATION #6: THE COMMISSION RECOMMENDS THAT THE SALARY OF DISTRICT COURT JUDGES BE INCREASED AND FEES FOR COURT APPOINTED ATTORNEYS IN JUVENILE MATTERS BE DETERMINED ON A CASE-BY-CASE BASIS, ACCORDING TO THE COMPLEXITY OF THE CASE AND LENGTH OF THE ADJUDICATORY PROCESS.

Vote By Which Resolved: 8-0-1

Current Statutory Provisions: None

Current Regulatory Provisions: None

Discussion:

Provision of satisfactory legal representation and judicial expertise in juvenile court cases is the proper concern of all

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Ferster and Courtless, "The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender," 22 VAND. L. REV. 567 (1969).

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Id. at page 596.

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segments of the legal community. It is, accordingly, the responsibility of courts, defender agencies, legal professional groups, individual practitioners, and educational institutions to ensure that competent counsel, jurists and adequate supporting services are available to all juveniles in hearings before district courts.

We therefore further recommend that:

- suitable under-graduate and post-graduate educational curricula relevant to representation in juvenile courts should be regularly available;
- careful and candid evaluation of representation in cases involving juveniles should be undertaken by judicial and professional agencies;
- careful and candid evaluation of judicial behavior in cases involving juveniles should be undertaken by judicial and professional agencies; and
- lawyers active in general trial practice should be encouraged to qualify themselves for participation in juvenile court cases, and to this end, law firms should encourage members to represent parties involved in such matters.

We recognize that competent lawyers and jurists cannot be assured unless adequate compensation for counsel and judges is

available. Therefore, we recommend that lawyers and judges participating in juvenile matters should be reasonably compensated for time and services performed according to prevailing professional standards.

In the case of assigned counsel, compensation and awards of fees should reflect all appropriate services performed for the client and should fairly approximate the reasonable locally prevailing compensation for court appointed counsel performing comparable services for adults.