JUVENILE COURTS

INTRODUCTION*

This goal area is divided into six topics: (A) Police Procedures; (B) Decision to Request Adjudication; (C) Pre-Hearing Detention; (D) Adjudication; (E) Disposition; and (F) Appeals.

A. Police Procedures

Within the police procedures area, it has been important to examine: (1) matters that reach or should reach constitutional concern; and (2) matters that do not reach constitutional dimension but which should require attention by legislative bodies or administrative agencies on public policy grounds. In the constitutional area, a basic question must always be asked: Should juveniles in the pretrial stage of the juvenile justice system receive the same constitutional safeguards available to adults at the pretrial stage in the criminal justice system? In In re Gault,[1] when the Supreme Court recognized the applicability of certain adult procedural safeguards to juvenile delinquency proceedings, a new dimension of constitutional protection

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* For relevant statutes and regulations, see, "Statutes of Maine's Juvenile Justice System: Report on Task 3" at pp. 81-99 and "Regulations of Maine's Juvenile Justice System: Report on Task 4" at Appendix VI.

1 387 U.S. 1 (1967).

seemed to be emerging. With the Court's opinion in McKeiver v. Pennsylvania,[2] however, it became clear that the Court is of the opinion that, given the distinct nature and objectives of the juvenile court system, all constitutional requirements surrounding a criminal prosecution do not have to be extended to juvenile proceedings.[3] The Court's opinion, which dealt with the issues of right to a jury trial, concluded this even though it recognized the massive failures of juvenile justice in this country. With the future movement of the Supreme Court in the juvenile area unclear, it is essential that attention be focused on the questions of under what circumstances should greater or lesser protections or intrusions be allowed and under what rationale. For example, should greater intrusions than normally allowed under the Fourth Amendment for adults be allowed where the justification is that the intrusions are needed to protect a child from his home environment, to protect a child from himself or to accelerate a necessary treatment program? Or, should there be greater protections in certain areas such as waiver of counsel or consent to search because a child is not in as good a position as an adult to make certain crucial decisions affecting his or her welfare? Should juveniles

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2 403 U.S. 528 (1971).

3 See Stephens, The Burger Court: New Dimensions in Criminal Justice, 60 GEO. L.J. 249, 275-77 (1971).

in the investigation and pretrial stage of the juvenile justice system receive the same constitutional safeguards available to adults at the pretrial stage in the criminal justice system?

To date, the Supreme Court has not determined the extent of the rights of juveniles applicable in the pretrial phase of juvenile justice. In recent years, however, an increasing number of state and federal courts have considered the application to juveniles of various provisions of the Bill of Rights on a piecemeal basic. Some of this development will now be reviewed.

1. Search and Seizure

There has been a consistent trend nationally within recent years toward applying to juveniles the Fourth Amendment guarantees against unreasonable searches and seizures (which were incorporated into the Fourteenth Amendment in adult cases in Mapp v. Ohio.[4] If this trend continues and is given formal recognition by the Supreme Court, it will undoubtedly require incorporation into the juvenile area of all the

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[4] 367 U.S. 643 (1961). See Ferster and Courtless, The Beginning of Juvenile Justice, Police Practices, and The Juvenile Offender, 22 VAND. L.REV. 567,590 (1969); See also Fox, S., The Law of Juvenile Courts in a Nutshell 99-104 (1971) (hereinafter referred to as Fox); for some representative cases, see In re Lang, 44 Misc. 2d 900, 255 N.Y.S.2d (1965) and In re Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968).

various rules and procedures that have evolved from "constitutional" interpretations of the search and seizure provisions. For example, the required use of the exclusionary rule to suppress illegally-obtained evidence;[5] the required adoption of Fourth Amendment standards for obtaining search warrants;[6] the preference for use of warrants;[7] the recent limitations placed on searches without warrants incident to arrest;[8] and, the newly-developed scope of the constitutionally-protected right to privacy[9] would all have to be incorporated at least into delinquency cases, and maybe, even in other types of juvenile matters as well, since an argument can be made that the Fourth Amendment is not limited to criminal cases.[10]

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5 Mapp v. Ohio, 367 U.S. 643 (1961).

6 See Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. U.S., 394 U.S. 410 (1969); U.S. v. Harris, 403 U.S. 573 (1971); Coolidge v. New Hampshire, 403 U.S. 443 (1971).

7 See, e.g., United States v. Ventesca, 380 U.S. 102 (1965); U.S. v. Harris, 403 U.S. 573 (1971).

8 See Chimel v. California, 395 U.S. 752 (1969).

9 Katz v. U.S., 389 U.S. 347 (1967).

10 See Camera v. Municipal Court, 387 U.S. 523 (1967); but see also, Wyman v. James, 400 U.S. 309 (1971).

Few states today deal with searches and seizures within the context of juvenile court statutes.[11] Further, even the model juvenile court acts are largely silent on search and seizure issues. The only exception to this is the virtually identical provisions in the Legislative Guide for Drafting Family and Juvenile Court Acts (hereinafter referred to as Legislative Guide) and the Uniform Juvenile Court Act (hereinafter referred to as Uniform Act) which suggest at least a partial exclusionary rule:

> "Evidence illegally seized or obtained shall not be received [in evidence] over objection to establish the allegations against him."[12]

As will be seen in later discussion, a conclusion that Fourth Amendment search and seizure provisions should apply to juveniles is not dispositive of issues that should be dealt with in standards relating to juvenile justice, since application of existing case law is a mixed blessing. The existing state of the law is extremely confusing and, in many instances, subject to serious question; certain classes of citizens (such as parolees) have not yet even received

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[11] See Fox at 100.

[12] Legislative Guide, Section 28; Uniform Act, Section 27(b) (bracketed material not in Uniform Act).

the protection of the Fourth Amendment in many jurisdiction;[13] and issues such as consent or waiver of Fourth Amendment rights require more sophisticated development generally than they have yet received. The police, particularly, are confused by the development of search and seizure law, and justifiably so. There is a substantial need to formulate guidelines and standards in this area for that reason alone. An effort was made in 1971 by the American Law Institute to formulate standards in the area of search and seizure.[14] But, for the most part, the ALI directed its efforts only toward attempting to codify the decisions of the Supreme Court into understandable language.

In summary, there is a great need for innovation and development in the search and seizure area generally, and there is no reason why this development cannot take place in the juvenile field.

2. Stop and Frisk

In 1968, the Supreme Court in Terry v. Ohio[15] established the principle that, within the Fourth Amendment, a police officer may in appropriate

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13 See, e.g., People v. Hernandez, 220 Cal. App.2d 143, 40 Cal. Rptr. 100 (1965).

14 See A Model Code of Pre-Arraignment Procedure, The American Law Institute, Council Draft No. 6, Part II (Nov. 17, 1971).

15 392 U.S. 1 (1968).

circumstances approach a person for purposes of investigating possible criminal behavior even when there is no probable cause to make an arrest and may frisk the person if he has reason to believe that he is dealing with an armed and dangerous person. In a companion case, Sibron v. New York,[16] the Court established that it was carefully limiting the right to stop and frisk without probable cause when it refused to uphold the right of an officer to seize heroin from a defendant when there was a tenuous basis for a stop and when the "frisk" was apparently to look for drugs and not for a weapon.

Terry established that certain stops and frisks (for weapons) are reasonable within the Fourth Amendment even though probable cause to arrest or to search may not exist. Although this is an important holding, it leaves open several related questions. Can a suspect be detained either on the street or at the police station for a period of time while an investigation is being conducted when probable cause to arrest does not yet exist? If so, under what conditions and for how long? Can he be questioned under such circumstances? Can a suspect be required to provide fingerprints, be photographed, give handwriting samples or appear in a lineup with or without a warrant? If so, under what conditions?

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16 392 U.S. 41 (1968).

The answers to these questions are important and by no means clear. They are of equal importance in the juvenile area. The Supreme Court in Terry utilzed a balancing test in determining the validity of the officer's action:

> "In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally-protected interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.'"[17]

If this is the test that is applied in juvenile cases as well, the significant issue is whether the governmental interest will be more liberally applied in juvenile cases. For example, arguments have been made that the deviation authorized by Terry from the standard probable cause requirement should, for the most part, be limited to serious crime activity. Therefore, the government interest is not nearly as strong in cases involving gambling, prostitution, or possession of narcotics.[18] If this is true, should the courts be more willing to allow the police to stop, detain,

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[17] Terry v. Ohio, 392 U.S. 1,____ (1968).

[18] See LaFave,"'Street Encounters' and The Constitution: Terry, Sibron, Peters, and Beyond," 67 MICH. L.REV. 40,57 (1968).

question, and search juveniles even if the conduct might not justify intervention in an adult setting?[19] It is clear, regardless of what the answer to that question is, that standards must be developed to provide guidelines on when, under what circumstances, and with what safeguards can the police stop, detain, search, or question when probable cause to arrest does not yet exist. Some work has already commenced in this area. In 1969, the American Law Institute, for example, attempted to deal with some of these issues in its Model Code of Pre-Arraignment Procedure.[20] Again, however, as in the case of the provisions on search and seizure, expanded development is warranted and such development would be appropriate within the ambit of standards for juvenile justice. Other proposals, relating to issues such as nontestimonial identification procedures, have also been proposed and require analysis as standards in the juvenile area.[21]

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19 The juvenile cases are not yet clear on this point. See, e.g., Fox at 95-97.

20 See Tentative Draft No. 2 (1969) and Council Draft No. 6 (1971).

21 See, e.g. Nontestimonial Identification Proposal contained in Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure (April, 1971) which responded to some encourage from the Supreme Court for rules in this area in Davis v. Mississippi, 394 U.S. 721 (1969).

In other words, standards can be extremely valuable in identifying more precisely what factors should be applied in the juvenile area in utilizing the balancing test that is now being used to determine reasonableness under the Fourth Amendment in adult cases.

3. Arrest

There has been considerable and understandable confusion over the issues of whether Fourth Amendment standards and common law and statutory requirements relating to arrest 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 broader purposes for bringing juveniles within the custody of the juvenile justice system than arrest for criminal or delinquency acts.

It is interesting to note that all the model acts recognize there broader purposes and give the police broad authority to take juveniles into custody (although narrower than many of the existing state statutes). For example, Section 13 of the Uniform Juvenile Court Act provides:[22]

"(a) A child may be taken into custody:

(1) pursuant to an order of the court under this Act;
(2) pursuant to the laws of arrest;
(3) by a law enforcement officer [or duly authorized officer of the court] if there are reasonable grounds to believe that the child is suffering from illness or injury or

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22 For comparable provisions, see Legislative Guide, Section 18 and Standard Act and Model Rules, Section 16.

is in immediate danger from his surroundings, and that his removal is necessary; or

(4) by a law enforcement officer [or duly authorized officer of the court] if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.

(b) The taking of a child into custody is not an arrest, except for the purposes of determining its validity under the Constitution of this State or of the United States."

But, combining the authority to take custody for delinquency purposes with the authority to take custody for welfare or other purposes can result in circumventing a juvenile's constitutional rights:

> "Courts have sometimes greatly abused this parens patriae doctrine, however, by finding, for example, that when the police were investigating a complaint of use of obscene language and interference with use of playground equipment, 'the minor herein was found in such surroundings as to endanger his welfare,' upon his refusal to identify himself to the police. In re James., Jr.[23] Arrests cannot be justified by such semantic manipulations."[24]

Thus, by allowing the police to take juveniles into custody under the same statute both when they have committed acts which justify their arrest and prosecution and when they have committed no such acts but require assistance or protection, the application of Fourth Amendment standards to such a statute becomes blurred

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23 Case is reported in 194 N.E.2d 797 (Juv. Ct. Cuyahoga Cty., Ohio, 1963).

24 Id. at 95.

and confused. What should happen, for example, when a juvenile makes incriminating statements after he has been taken into custody to "remove him from surroundings which endanger his welfare?" Should probable cause and warrant requirements apply in situations where police intervene not because of criminal acts but because of such matters as being neglected, being a truant, or being a runaway.

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.[25] The needs in this area obviously require more than simply reducing police authority to intervene to criminal-type situations. Standards must be developed which deal comprehensively with police authority and restrictions both in: (1) criminal-type situations; and, (2) situations where intervention is for other essential reasons and arrest and prosecution are not contemplated.

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25 Ferster and Courtless, The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender, 22 VAND. L.REV. 567, 589 (1969).

In criminal-type situations, standards should undoubtedly reflect the same strict constitutional requirements and common law distinctions that relate to arrest of adults.[26] In nonarrest situations, police authority to take juveniles into custody or otherwise intervene in their lives should be carefully circumscribed and limitations should be placed on the use of nonarrest custody to obtain evidence or otherwise assist in the investigation of potential criminal or delinquency cases. The suggestion that this Commission clearly distinguish between police intervention in arrest and non-arrest

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26 See, e.g., California's statute on arrest of juveniles which became effective on March 4, 1972: "625.1. A police officer may, without a warrant, take a minor under the age of 18 into temporary custody as a person described in Section 602: (a) Whenever the officer has reasonable cause to believe that the minor has committed a public offense in his presence. (b) When the minor has committed a felony, although not in the officer's presence. (c) Whenever the officer has reasonble cause to believe that the minor has committed a felony, whether or not a felony has in fact been committed. (d) Whenever the minor has been involved in a traffic accident and the officer has reasonable cause to believe that the minor had been driving while under the influence of intoxicating liquor and any drug."

situations has support in the American Bar Association's "Standards Relating to the Police Function."[27]

In summary, in drafting standards in the "arrest" area, 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. As the ABA Standards Relating to the Police Function note in considering the issues in an adult context, this difficult task should not be handled simply by drafting omnibus arrest procedures:

> "Neither should legislatures, under an omnibus arrest procedure, confer authority upon police to help drunks, settle family disputes, or maintain order. The task of conferring specific and appropriately limited authority is likely to be a difficult one, but it is necessary if police are to be given the authority and guidance needed to deal with a variety of increasingly complex problems."[28]

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27 ABA "Standards Relating to Police Function" at pp. 94-113. These Standards recommend that police have authority to use methods other than arrest and prosecution in certain instances to deal with the variety of behavioral and social problems which they confront. The suggestion is, for example, that recognized and properly-limited authority be considered in areas such as interferences with the democratic process, self-destructive conduct, resolution of conflict, and prevention of disorder, but that this authority to intervene without having to invoke the arrest power is not to be used to circumvent Fourth Amendment requirements and is subjected to checks and balances of its own. Id. at 99.

28 Id.

4. Questioning

Basically, the issues to be considered here include : who must be present at the questioning of a juvenile, can a juvenile waive his "right to remain silent" and to counsel;[29] and more importantly, should Miranda requirements be applied even more strictly in juvenile cases?[30]

It has been argued that the answer to this last question should be yes for the following two reasons:

> "There are two 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 reason is that juveniles are not mature enough to understand their rights and are not competent to exercise them."[31]

There is little evidence, however, that the courts are willing to establish stricter rules for juveniles than for adults as a matter of constitutional princple. For example, the courts generally have held that a juvenile can "waive'

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29 Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

30 Rezneck, "The Rights of Juveniles" in The Rights of Americans (N. Dorsen, editor, 1971).

31 Ferster and Courtless, The Beginning of Juvenile Justice, Police Practices, and The Juvenile Offender, 22 VAND. L.REV. 567, 596-97 (1969).

his constitutional rights to counsel and to silence and the issue of whether the waiver is given voluntarily and intelligently is assessed by examining the "totality of the circumstances."[32] The fact that a parent was not present when the waiver was made or that the statement was made in the police station may not be dispositive of the issues, therefore. In addition, several courts have held that a confession may be admitted into evidence even though it was obtained in violation of statutes or rules requiring actions such as taking a juvenile promptly to a judicial officer, notifying parents or probation officers or having them available, or taking a child to a sanctioned detention center.[33] There is, however, some authority for the opposite view.[34] Further, it is not clear what the effect is of statements made to probation or other court personnel in the absence of Miranda warnings while in custody for

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32 See In re R.W., ___N.J. Super.___(App. Div. 1969); People v. Lara, 62 Cal. Rptr. 586, 432P.2d 202 (1967); McClintock v. State, 253 N.E.2d 233 (Ind. 1969). For a valuable general discussion of this issue, see Fox at 121-135.

33 See, e.g. In re R.L., 3 Cal. App.3d 100, 83 Cal. Rptr. 81 (1970); Commonwealth v. Wallace, 190 N.E.2d 224 (Mass. 1963); United States v. Glover, 372 F.2d 43 (2d Cir. 1967); State v. Arbeiter, 408 S.W.2d 26 (Mo. 1966).

34 See. U.S. v. Binet, (2d. Cir. 1971) reported in 5 Clearinghouse Rev. 551 (1972); State v. Shaw, 93 Ariz. 40, 378 P.2d 487 (1963). See also Uniform Act, Section 27(b) which states: "An extra-judicial statement, if obtained in the course of violation of this Act. . .shall not be used against him."

reasons other than for criminal or delinquency activities. All of these issues indicate the obvious lack of clear guiding principles on the questioning of juveniles.

5. Identification

As in other areas previously discussed, the questions surrounding pretrial identification cannot be limited to whether adult standards[35] apply to juveniles.

At least one article has suggested that a child should never be required to submit to a lineup.

> "There are, however, strong arguments that a child should not be required to submit to a lineup. First, lineups are identified by the populace as a normal incident to an adult criminal prosecution. The suspect and generally his fellow prisoners are assembled on a stage, height lines appear on the backdrop and bright lights prevent the suspects from seeing their possible identifiers. It is the dangerous animal being viewed from a safe distance by the forces of good. There can be little doubt in the child's mind as to his status in this situation; he is a dangerous criminal.
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> Avoiding such stigmatizing is one of the principal and traditional goals of the juvenile courts. The home-like atmosphere envisioned in the purpose clause of most statutes is altered by the image of a multi-suspect lineup conducted in a juvenile detention facility. Such activities raise additional questions of whether the child in preadjudication detention might have more care and benefits in his own home than in the detention center's 'home-like' atmosphere."[36]

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35 As outlined in: U.S. v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967); and Stoval v. Denno, 388 U.S. 293 (1967).

36 "Lineups in Detention Are Constitutionally Impermissible" 5 CLEARINGHOUSE REV. 441 (Dec. 1971).

Whether this is a supportable position or not, it does raise the important question of whether the adverse effects of a lineup on a juvenile might outweight its law enforcement value.

In addition to "lineups," there is the question of what types of other identification investigation (e.g. fingerprinting, handwriting exemplars, voice samples, photographs, etc.) can be done when probable cause to arrest does not exist but reasonable suspicion (the Terry standards for stop and frisk) does exist. And further, should limits be placed on the police in this area even when an arrest has been made.[37]

Clearly, this is an area of concern to the police. It is of even more importance in the juvenile area since the police have broader authority to take juveniles into custody in the first place in instances where probable cause to arrest may not exist.

Thus far, there has been little judicial or statutory development in this area. All of the Model Rules, however, have attempted to limit the circumstances under which fingerprints and photographs may be taken of juveniles and place such actions under court control. Rule 43 of the Standards Act and Model Rules provides, for example:

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37 Such as requiring a court order for nontestimonial identification.

> "A child may not be fingerprinted or photographed unless he has been taken into custody for a violation of law and the court has determined that there is probable cause to believe that the fingerprints or photographs must be taken for the purpose of establishing the court's jurisdiction over him. The court shall designate the official who shall take the fingerprints or photographs. Unless otherwise ordered by the court, originals and all copies of such fingerprints or photographs shall be destroyed after a disposition of the case has been made and shall not be filed in the court or with any other governmental unit or agency."[38]

Certainly, there are strong policy reasons for placing severe restrictions upon widespread identification procedures. On the other hand, as suggested by there Model Rules, there may be a sound basis for court-authorized nontestimonial identification procedures when serious crimes are involved and reasonble suspicion centers upon one suspect.

6. Police Disposition

a. Street or Stationhouse Adjustment

The police obviously do not refer all juveniles they take into custody to the juvenile court. On the contrary, the studies of the President's Crime Commission, among others, established that discretionary action by the police in screening juvenile offenders accounted

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38 See also Legislative Guide, Section 47 and Uniform Act, Section 56. Also, for another strong statement against fingerprinting and photographing children in most instances, see Myren and Swanson, Police Work with Children (1962).

for the removal of significant numbers of cases from the formal juvenile justice system.[39] In many cities, for example, the police adjust over 50 percent of the cases in which they become involved.[40] According to one study, these adjustments might include: (1) release; (2) release accompanied by an official report describing the encounter with the juvenile; (3) an official "reprimand" with release to parent or guardian; (4) referral to other agencies when it is believed that some rehabilitative program should be set up after more investigation; (5) voluntary police supervision used when it is felt that an officer and parent can assist a child cooperatively.[41] Although some departments have issued carefully-developed criteria or guidelines to govern adjustment or referral,[42] these departments are clearly

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39 See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 12-14 (1967) (hereinafter referred to as Task Force Report: Juvenile Delinquency and Youth Crime.).

40 Id. at 12; see Ferster and Courtless, The Beginning of Juvenile Justice, Police Practices, and The Juvenile Offender", 22 VAND. L.REV. 567, 573-583 (1967).

41 Piliavin & Briar, "Police Encounters with Juveniles," 70 AM. J. SOCIOL. 206 (1964).

42 See Ferster and Courtless, supra at 575-581.

the exception. Thus, police officers in most departments are typically left to their own devices in deciding how to handle individual cases. This must raise legitimate cause for concern as the President's Crime Commission points out in its discussion of all informal adjustments made by police and court personnel:

> "There are grave disadvantages and perils, however, in the vast continent of sublegal dispositions. It exists outside of and hence beyond the guidance and control of articulated policies and legal restraints. It is largely invisible--unknown in its detailed operations--and hence beyond sustained scrutiny and criticism. Discretion too often is exercised haphazardly and episodically, without the salutory obligation to account and without a foundation in full and comprehensive information about the offender and about the availability and likelihood of alt-rnative dispositions. Opportunities occur for legal and even discriminatory results, for abuse of authority by the ill-intentioned, the prejudiced, the overzealous. Irrelevant, improper considerations--race, nonconformity, punitiveness, sentimentality, understaffing, overburdening loads may govern officials in their largely personal exercise of discretion. The consequence may not be only injustice to the juvenile but diversion out of the formal channels of those whom the best interests of the community require to be dealt with through the formal adjudication and dispositional process."[43]

Different recommendations have been offered to deal with police discretion in prejudicial adjustment and its potential abuse. In the opinion of some, the

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[43] The Challenge of Crime in a Free Society, 82 (1967).

use of police discretion to divert cases away from the juvenile court or to develop alternative dispositions should either be eliminated entirely or drastically limited.[44] This opinion is normally embellished with the further opinion that adjustments in juvenile cases should be made by probation staff at the intake stage.

The President's Crime Commission, on the other hand, in spite of its grave concerns, felt that, on balance, informal prejudicial handling by the police is preferable in many cases because of the gross limitations of formal treatment and of the desirability of diverting a substantial percent of the cases at the earliest possible opportunity. In the Commission opinion, the challenge lies in obtaining "the benefits of informal prejudicial handling with a minimum of its attendant evils."[45] In summary, the Commission recommended that this challenge be met through: (1) the formulation of policy guidelines for release, for referral to nonjudicial sources, and for referral to the juvenile court; (2) the circulation of these guidelines to all agencies of delinquency control for review and appraisal

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[44] See, e.g., Ferster and Courtless, supra. at 58.

[45] The Challenge of Crime at 82.

at periodic intervals; (3) the availability of juvenile specialists within police departments at all hours to assist officers in prejudicial decisionmaking; (4) the use of policy guidelines and information about juveniles and community resources for in-service training; (5) the use of youth services bureaus for adjustment after juveniles have been taken into custody; (6) the cessation of police hearings or the imposition of sanctions by the police; and (7) the restriction of court referrals to those cases which involve serious criminal conduct or repeated misconduct of a more than trivial nature.[46]

A major component of the Commission's recommendations, the development of policy guidelines to structure and control police discretion, has also received considerable attention in the ABA Standards Relating to The Police Function.[47] These Standards, however, go substantially further than the Commission in recommending both internal and external means for ensuring that administrative rules are developed effectively and are followed. The ABA Standards, for example, recommend that

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46 Id. at 80,82-83.

47 See particularly Part IV of the Standards, 115-143.

legislatures and courts require that appropriate rules be developed and followed. The Standards further recommend administrative machinery for ensuring compliance with rules as well as suggesting positive incentives for police officers to follow administrative policies on police discretion.[48]

Thus, although there is considerable debate on how it should be done, there is almost unanimous opinion that steps must be taken to provide better control and guidance over police discretion in street or stationhouse adjustments of juvenile cases.

b. Detention and Release

Unlike the area of informal dispositions by the police which is rarely dealt with in statutes or model rules, many state statutes and model rules devote substantial attention to requirements and criteria for notifying parents or guardians and for detaining and releasing juveniles after they have been taken into custody.[49] But in spite of the attention given to this area, major

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48 ABA Standards Relating to The Police Function, Parts IV, V, VII and X.

49 As does Maine. 15 M.R.S.A. Section 2607 (Supp. 1975).

deficiencies continue to exist.[50] For example, in most jurisdictions there is no obligation to release an arrested child to his parents, even though this is implicit in most of the model acts. Further, police authority to detain children even in the Uniform Act (See Section 14) goes well beyond any of the highly-controversial proposals that adults be held in pre-trial "preventive detention" in order to protect the persons or property of others. Also, many states do not prohibit and even condone taking juveniles to police stations after arrest -- a practice that has been explicitly condemned in the literature.[51] Finally, it has been pointed out that even in states like California, where there is explicit statutory language giving high priority to release of juveniles by police, the detention rate continues to be high.[52]

Therefore, the need exists both to strengthen standards governing police responsibility upon arrest and to develop means for ensuring that such standards are not ignored by the police and the courts.

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50 See generally, Fox at 104-116.

51 Id. at 109.

52 Id. at 110.

B. Decision to Request Adjudication

In this section, attention will be focused on the need for standards for five aspects of the pre-adjudication process: (1) precomplaint screening for legal sufficiency; (2) precomplaint screening for alternative dispositions; (3) filing of the complaint; (4) post-complaint screening for legal sufficiency; and (5) post-complaint procedures for alternative disposition.

1. Precomplaint Screening for Legal Sufficiency

Until recently, it has been assumed that the "treatment" rather than the "punitive" orientation of the juvenile justice system eliminates the need to test the legal basis for the arrest and subsequent charges filed against a juvenile prior to adjudication. Since the process is always supposed to act "in the best interests of the child," little concern has been given to early screening for sufficiency of evidence or compliance with technical Fourth Amendment requirements.

In theory, anyway, this is quite different from how the process works in adult cases since the prosecutor does not perform a role of providing guidance to and review of police action and of deciding whether or how to proceed in a case.[53]

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[53] The Challenge of Crime in a Free Society 11 (1967).

Given the accepted fact today that constitutional safeguards and checks and balances are equally needed within the juvenile justice system, the role of prosecutors, magistrates, or other legal officials within this system should be considered anew.

In some jurisdictions and through some proposed model rules, the need for some early screening for legal sufficiency by trained legal personnel has already been recognized.[54] For example, in Minnesota, a court rule requires that every petition filed with the juvenile court (with minor exceptions) "shall be drafted by the county attorney upon a showing to him of reasonable grounds to support the petition."[55] Also, Section 13 of The Legislative Guide requires that the appropriate prosecuting authority prepare and countersign petitions before they are filed with the juvenile court. Further, another author has recently called for the creation of an Office of Community Advocates to represent the State in juvenile matters and to play a role in screening requests for complaints or petitions.[56]

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[54] Maine's current statutory provision, 15 M.R.S.A. Section 2601(1) (1964), has been cited by several Commission members as indicative that Maine's juvenile procedures are, in fact, often consistent with this theory. However, staff is of the opinion that present statutes are not sufficiently clear on this subject and could be improved.

[55] Rules of Procedure Minnesote Probate-Juvenile Courts Rule 3-1 (1971).

[56] Fox, Prosecutors in the Juvenile Court: A Statutory Proposal, 8 HARV. J. LEGIS. 33, 44-45 (1970).

Given the potential serious impact of delinquency or criminal charges against juveniles and the need to provide guidance to and review of the actions of police officers in the complex area of investigation and charging, it would appear that there should be provision for precomplaint review of the legal sufficiency of actions already taken and to be taken. Certain cases should not get to the complaint stage, and police officers should receive direct guidance so they do not continue to make "legal" mistakes. Review at this stage, whether it is provided by a prosecutor, a magistrate, or someone else, might also consider early decisions to detain, etc.

Certainly, adding review for legal sufficiency at this stage while ending some abuses may create new ones since prosecutors, for example, may abuse their discretion as well as police officers or intake personnel. This will require that a prosecutor's office, if it is to perform a review role, should develop a statement of policies to guide the exercise of prosecutorial discretion in juvenile cases just as has been recommended for adult cases.[57] It will also require, as is pointed

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[57] See ABA Standards Relating to the Prosecution Function, Section 2.5 (1971).

out in the next section, that the relative roles and authority of prosecutors and intake staff in precomplaint screening be carefully outlined.

2. Precomplaint Screening for Alternative Disposition

Typical juvenile court statutes provide that when a case is referred to court, an investigation should be made at intake by nonjudge court personnel to determine whether a petition should be filed in court or whether some sort of "informal disposition should be made."[58] The options at intake might include outright dismissal, referral to another community agency for service, informal supervision by the probation staff, detention, and filing of a petition.[59] Some studies have revealed that roughly half of all delinquency cases are disposed of without petition by intake staff.[60]

The President's Crime Commission, in reviewing intake procedures in several courts, found desirable

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58 For model rules on intake procedures, see Legislative Guides, Section 13; Uniform Act, Section 10; Model Rules 2-4.

59 See Task Force Report: Juvenile Delinquency and Youth Crime 15.

60 Id.

their objective of diverting juveniles away from formal adjudication and authoritative disposition and to non-judicial institutions for guidance and other services.[61] It also pointed out, however, the dangers that can arise in "informal" dispositions under current procedures in many jurisdictions. For example, it noted that coercive dispositions may be made without counsel being present; that substantial and punitive curtailment of a juvenile's activities may be accomplished without adjudication and judicial control (and in some cases, by using the continuing threat of the filing of a petition); and that the factors used at the intake stage in selecting various alternative dispositions are hidden for the most part and may be unfair, arbitrary, or discriminatory. And, in the Commission's view, "pre-judicial methods that seek to place the juvenile under substantial control in his pattern of living without genuine consent are not permissible."[62]

The problem is how to maintain necessary informality and flexibility at the intake stage (to encourage preadjudication diversion) while preventing the potential punitive uses of informality (e.g. unequal arbitrary or discriminatory treatment) and the lack

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61 Id. at 16. The Commission did, however, suggest that there should be a greater emphasis on official handling of the more serious and intractable offenders.

62 Id.

of accountability that may result from informality.[63] This is not an easy task. The President's Crime Commission suggested that the following general principles might assist in achieving this end:

- "Pre-judicial dispositions should be made as early as possible in the stages of official agency contract;
- They should be based on stated criteria that are shared with and regularly reviewed by all delinquency control authorities within the community; and
- Whenever attempts are undertaken to render guidance or exert control (as distinct from screening without further action), the pre-judicial handling agency should be alert to coercive possibilities and the dispositions it can render should be effectively restricted."[64]

Further it has been suggested that provision must be made for representation of a child at intake either by counsel or counsel substitute and for protection against use of statements made by the juvenile at the intake stage.[65]

3. Filing the Complaint

Formal proceedings in a juvenile court are commenced through the filing of a complaint or petition. There are substantial differences between jurisdictions over who may file a complaint, standards governing the

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63 Id. at 17.

64 Id. at 18.

65 See Fox at 147-150. See also Gough, "Consent Decrees and Informal Service in The Juvenile Court: Excursions Toward Balance," 19 KAN. L.REV. 733 (1971) (hereinafter referred to as Gough).

decision to charge, procedures for charging, and the form of the complaint. This is particularly true with reference to who may file a complaint:

> "At the extremes are states such as California which authorize only the probation officer, West's Ann. Cal. Welf. & Inst. Code Section 650 and those like Illinois, which permit anyone to do so. Ill. Juv. Ct. Act, Section 704-1. Others, such as New York, list certain persons who may initiate proceedings by filing the petition. McKinney's N.Y. Family Court Act Section 331 (neglect), 733 (delinquency and persons in need of supervision)."[66]

Generally, however, it appears that probation or intake staff normally prepare petitions and control the filing of petitions prepared by others and the Uniform Juvenile Court Act supports this approach.[67] In the Legislative Guide, the intake staff recommends the filing of the petition and the prosecuting attorney prepares and countersigns it.[68] Further, if a complainant is not satisfied with the refusal of the intake staff to file a petition, the complainant can go to the prosecuting attorney for review. Apparently, the prosecuting attorney can then file a petition even over the complaint of the intake staff.[69]

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66 Fox at 153. In Maine, anyone may file a petition in delinquency. 15 M.R.S.A. Section 2601(2) (1964).

67 See Uniform Act, Sections 19 and 20.

68 Legislative Guide, Section 13.

69 Id.

There is considerable value in having decisions on the filing of petitions made by intake or probation staff rather than prosecuting attorneys since decisions may be made not to file even when there is a sufficient legal basis to do so. On the other hand, there is a need for legal skills that intake staff normally do not possess both in assessing the legal sufficiency of the evidence before filing a petition and in preparing the petition itself. Further, there may be situations when the refusal by probation or intake staff to file a petition requested by a complainant (such as a victim or a police officer) or by a prosecuting attorney may be entirely improper. What this all may suggest is that the overall responsibility for filing complaints or petitions should be given to intake or probation staff, but once the decision has been made to charge, prosecuting officials should be required to determine whether there is a sufficient legal basis for doing so and should also be required to prepare the complaints or petitions. In addition, if a prosecuting attorney feels that the decision not to charge is not in the public interest, provision should be made for him to have the decision of the intake staff reviewed by the court.

There are other issues relating to the complaint that require analysis. For example, should the standards for a delinquency complaint be required to meet the same requirements of specificity, etc., as complaints in adult criminal proceedings? Should the requirements for such matters as amendment, variances between allegations and proof and lesser-included offenses by the same? Further, should the effects of deficiencies, technical and otherwise, also be the same? Apparently, some courts are beginning to apply the requirements of criminal cases to this area.[70]

C. Pre-Hearing Detention

In no area of the pretrial process are there more abuses than in the area of detention of juveniles prior to any determination of misconduct.[71] A study for the President's Crime Commission in 1965 found, for example, that two-thirds of all juveniles apprehended were admitted to detention facilities and held there an average of twelve days.[72] It also found that most detention facilities were seriously inadequate.[73]

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70 See Fox at 155-157. For examples of various provisions on the contents of complaints or petitions, see Legislative Guide, ection 14 and Uniform Act, Section 21; N.Y. Family Court Act, Sections 731-732; and Minn. Juvenile Court Proceedings Rules 3-2, 3-6.

71 Norman, "Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation and Courts," NCCD 11 pp. (1971).

72 The Challenge of Crime in a Free Society 87.

73 Id. In Maine, inadequacy has to do with a lack of appropriate facilities more than with inadequacies in existing facilities.

When considering the real and potential abuses in the detention of juveniles, it is difficult to know even where to start. To begin with, without question, there is an overreliance by the police on temporary detention of juveniles after arrest even though most acts require the police to give preference to release.[74] And even though in theory court officials are supposed to control decisions to detain, in processing juveniles brought to detention facilities by the police, these officials appear to be influenced significantly by the prior police determination of the need to secure custody.[75] Possibly of even greater significance is the typically broad criteria that are used to make detention decisions.[76] Along with the lack of narrowly-drawn criteria for detention, provision often does not exist for time restrictions on detention: (1) pending filing of a petition or complaint; (2) pending detention hearing to consider probable cause for arrest and basis for detention; and (3) pending the adjudication hearing.[77] Also, provision is usually

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74 Id.

75 Task Force Report: Juvenile Delinquency and Youth Crime 13.

76 See 15 M.R.S.A. Section 942(1) (Supp. 1975) and 15 M.R.S.A. Section 2608 (Supp. 1975). Currently, Maine's statutes do provide for a detention hearing if a child is to be held in custody pending an adjudicatory hearing on a juvenile petition. However, the current statutes lack narrowly-drawn criteria for detention.

77 Fox at 142-147.

not made for bail or other forms of release which may be preferred means of ensuring the juvenile's appearance at a hearing.

In considering the question of pre-hearing detention, this Commission must weight:

1. Eligibility and Criteria for Detention

Several recommendations have been made on this issue. For example, the late Sherwood Norman of the National Council on Crime and Delinquency (NCCD) proposed that detention be permitted only when "a delinquency petition has been, or is about to be, filed and there is reason to believe that unless the delinquent or alleged delinquent child is removed from his home, there will be:

- Serious risk of his committing an offense dangerous to society;
- Substantial probability of his leaving the jurisdiction or not being available when summoned for interview or court appearance.[78]

Proposals such as those suggested by Sherwood Norman, which both narrow the class of juveniles that can be detained and the criteria for detention deserve careful consideration by this Commission.

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78 Norman, Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation and Courts, NCCD 11 pp. (1971). See also, "Preventive Detention-A Step Backward for Criminal Justice" 6 HARV. CIV. RIGHTS-CIV. LIB. L.REV. 291-396 (1971).

2. Time Limitations

Several of the model acts and some of the existing juvenile court statutes have already proposed time restrictions for certain aspects of the detention process that deserve consideration. For example, Section 23 of the Legislative Guide requires that a petition must be filed within twenty-four hours of the time a child has been detained (excluding Sundays and legal holidays), and a detention hearing must be held within twenty-four hours from the time of filing the petition to determine whether continued detention is required.[79]

Specific timelimits such as these should be built into legislation as should time limits on the adjudication hearing for a child in detention. There have been few cases in this area, although in one case, a Missouri Appellate Court reprimanded the juvenile court for allowing a juvenile to be detained for over one month before a petition was filed. The juvenile court thereafter promulgated a rule requiring that petitions must be filed within five days of the detention of the juvenile.[80]

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79 Maine currently requires such a hearing to be on "the next business day of the court." 15 M.R.S.A. Section 2608 (Supp. 1975).

80 In re Cheeks (Mo. Ct. App., St. Louis County, filed July 27, 1971) 5 CLEARINGHOUSE REV. 476(1971).

3. The Right to Bail or Other Forms of Release

Mixed into the issue of detention in juvenile cases is the question of a juvenile's right to bail. As Professor Fox points out, "courts and statutes are divided on the question of whether, in addition to the right to release from custody and upon the promise of his parents to bring him to court, the child has a right to release on bail."[81] It should be noted that in 1967, the President's Crime Commission strongly opposed the application of bail procedures to juvenile cases.[82]

D. Adjudication[83]

The literature indicates that two areas concerning adjudication require specific attention. These are: (1) notice and (2) discovery.

1. Notice

The juvenile court, in delinquency matters, like an adult court in criminal matters cannot make an order affecting the juvenile until it has acquired personal jurisdiction over him, informed him of the charges against him, and provided him an opportunity to defend him.[84] The need for adequate notice

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81 Id.

82 Task Force Report: Juvenile Delinquency and Youth Crime at 36.

83 Commissioners are referred to pp. 20-42 of our "Proposal to Revise Maine's Statutes Relating to Juveniles," dated Dec. 12, 1975 for an overview of the constitutional issues relating to juvenile adjudication proceedings. The discussion contained in those pages will not be repeated here.

84 Fox at 73.

in juvenile cases was specifically addressed by the Supreme Court in the Gault case.[85]

It is not yet clear, however, what this notice requirement entails. For example, who must receive notice (child, parents, guardian, lawyer)?; how specific must the charges be in the notice and what else must be provided as part of the notice?; how much time prior to a hearing must notice be provided?; do civil or criminal notice requirements apply (e.g. is service by publication adequate?; and, can notice requirements be waived and by whom? Gault does not provide direct answers to these questions. Many existing statutes and all of the model rules do spell out procedures for obtain personal jurisdiction and providing notice.[86]

Some cases have attempted to define notice requirements more precisely.[87] In re Edgar, for example, held that since adequate notice of charges is essential to comply with due process requirements, a juvenile is entitled to a bill of particulars.

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85 In re Gault, 387 U.S. 1, 33 (1967).

86 For example, on the issue of summons, who must receive notice, and content of notice, see Legislative Guide, Section 15, Uniform Act, Section 22, Standard Act and Model Rules, Section 14 on service of summons and time requirements, see Legislative Guide, Section 16; Uniform Act, Section 23 and Standard Act and Model Rules, Section 20; on service by publication, see Legislative Guide, Section 36 and Uniform Act, Section 25.

87 9 Cr. L. Rptr. 5127 (Kings County Family Ct., N.Y.4/20/71); See also Miller v. Quatsoe, 10 Cr. L. Rptr. 1027 (E.D. Wisc. 10/19/71) on adequate time on notice.

2. Discovery

One area which has been given very little attention so far within existing statutes, model acts, or in court decisions is the area of pretrial discovery. Most litigation on pretrial discovery issues has arisen in New York, and some of the judges within New York Family Court have required some discovery on due process grounds.[88] Both Kent and Gault also seem to require certain types of pretrial discovery on constitutional grounds.[89]

It is not yet clear, however, what the extent of discovery must be both on constitutional and public policy grounds. Even suggesting that it be as broad as discovery in adult cases is not helpful since it is not clear whether the analogy is to civil cases (where discovery is fairly broad) or to criminal cases (where it is not, except in certain jurisdictions). Two opinions have held that even though delinquency cases are civil in nature, broad civil discovery rules do not automatically apply and the extent of discovery should be within the discretion of juvenile court judges.[90]

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88 Fox at 138.

89 Id. at 139-141.

90 Hanrahan v. Felt, 9 Cr. L. Rptr. 2119 (see Sup. Ct. 4/1/71); Joe Z v. Superior Court, 8 Cr. L. Rptr. 2259 (Calif. Sup. Ct. 12/29/70).

E. Disposition

Juvenile Courts have traditionally been granted exceedingly broad dispositional authority. Increasingly, however, commentators have suggested that juvenile courts' dispositional authority be rigorously limited in type and duration according to the age and prior record of the juvenile and the seriousness of his offense.[91] This move toward determinacy is consistent with the direction of widely accepted model legislation.[92]

Briefly, it has been suggested that the sanctions that a juvenile court may impose on a juvenile should be of four types:

1. Imprisonment - where the juvenile is ordered to be confined in a juvenile institution which is the functional equivalent of an adult prison or jail;
2. Institutionalization - where the juvenile is ordered to reside in a juvenile facility other than a family residence or place of imprisonment;
3. Foster Care - where legal custody and

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91 Junker, "Sanctions", unpublished paper prepared for IJA/ABA Juvenile Justice Standards Commission, September, 1974.

92 Uniform Juvenile Court Act (1968) and the Legislative Guide for Drafting Family and Juvenile Court Acts (1969).

supervision of the juvenile are temporarily vested in surrogate parents with whom the child is ordered to reside in a family setting;

4. "Conditional Release" - where the child is ordered to periodically report to probation or other authorities; and/or to perform or refrain from performing certain acts; and/or to make restitution to persons harmed by his offense; and/or to pay a fine.[93]

Notice that these sanctions are not intended to distinguish according to the level or effectiveness of treatment provided to juveniles. Nor do they differentiate according to whether the official motive for imposing a sanction is to treat, correct, isolate or punish the juvenile - or all four. Instead, they are designed to assure that juvenile court sanctions that abridge freedom be proportional to the offense committed and determinate in the type and duration of sanction imposed. To further that end, it has also been suggested[94] that language similar to the following should be adopted to limit the use of the imprisonment or institutionalization sanctions on juveniles under a certain age or for less than certain offenses:

1. Imprisonment:

No juvenile court shall have jurisdiction

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93 Junker, supra.

94 Id.

to order a juvenile confined in a place of imprisonment unless it finds:

(a) that the juvenile is at least ( ) years old; and,

(b) that such confinement is necessary to prevent the juvenile from causing physical harm to others; and,

(c) that no less severe sanction will adequately protect others from such risk of harm

2. Institutionalization:

No juvenile court shall have jurisdiction to order a juvenile to reside in a place of institutionalization unless it finds:

(a) that the juvenile is at least ( ) years old; and,

(b) that "conditional freedom" or foster care would be grossly inadequate to the needs of the juvenile; and,

(c) that such needs can be met by placement in a particular institution.

F. Appeals

Virtually no state has set out in statute the requisites of its juvenile appellate structure.[95] But, it seems to us that the goals of any juvenile appellate structure should be:

1. To insure uniformity of treatment to persons in like situations;
2. To correct errors in the application and interpretation of the law and in the finding of facts; and
3. To provide for limited growth in keeping with the legislatively defined goals of the juvenile justice system as a whole.

Therefore, we suggest the following criteria for Commissioners' consideration:

- It shall be the duty of the juvenile court judge to inform the parties immediately after judgment and/or disposition orally and in writing of the right to appeal, the time limits and manner in which that appeal must be taken, and the right to court appointed counsel and a copy of the transcript of the District Court proceeding in case of indigency.

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95 In Maine, the appellate procedure is a de novo review by the Superior Court. In short, the Superior Court rehears all of the evidence as if the District Court had not acted. 15 M.R.S.A. Section 2661(1)(1964).

- An appeal of right may be taken from any final order by filing a claim of appeal with the appellate court within 30 days. Further appeals shall be by leave of the Superior Court.
- The appellant shall file his brief on appeal in the Superior Court within 30 days after the filing of the claim of appeal or the entry of the order granting leave to appeal. The appellee shall file his response to the appellant's brief within 20 days after the filing of appellant's brief.
- Any juvenile alleged to come within the provisions of this act is entitled to the appointment of counsel at public expense upon a determination of indigency.
- Where a parent of the juvenile is indigent and desires to affect an appeal against the wishes of the child, that parent is also entitled to the appointment of counsel at public expense upon a determination of indigency.
- The appellant is entitled to a copy of the transcript of the proceedings at the District Court level and dispositional hearings and any matter appearing in the District

Court file, upon the filing of a request for same.

- Upon a determination of indigency, the above material shall be provided appellant at public expense.
- A copy of the transcript shall be provided by a court reporter within _____ days of the filing of the request for same.

JUVENILE COURT SHOULD BE A SPECIALIZED DIVISION OF THE DISTRICT COURT

In meetings with staff individually, and in discussions as a whole, this Commission has implicitly indicated its belief that:

- The vestiges of the juvenile court as an inferior institution need to be removed. (Other states have recognized this need, as well.[96])

- 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 part of a court of general trial jurisdiction.[97] Equal status cannot come even when there is a separate state-wide juvenile court operating under its own statewide rules and administration.[98]

- Significant attention and care must be given to the methods for assigning judges to the juvenile division.

- A rotation system, coupled with specialized and continuing training in handling juvenile cases

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96 Rubin, Ted, Institute for Court Management, unpublished paper on Juvenile Courts prepared for the IJA/ABA Juvenile Justice Standards Project, September 24, 1973.

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

98 Elizabeth D., and Richard B. Dyson, "Family Courts in the United Stated" 8 J.F.L. 4 (Winter, 1968) and 9 J.F.L. 1 (1969).

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.

employees of the Department of Mental Health and Corrections and shall become subject to the state personnel system laws of this state. With respect to retirement benefits, the services of officers and employees transferred under this section shall be deemed continuous. All transfers shall be made and processed in accordance with the state personnel system laws and rules and regulations promulgated pursuant thereto.

Section 711. Plans for shelter and detention services...(1) The Department of Mental Health and Corrections, with the advice of the Department of Human Services, the Department of Education, representatives of the Superior court justices, representatives of the district court judges, representatives of Maine's Criminal Justice Planning and Assistance Agency and the state court administrator, shall develop a statewide plan for providing shelters and services for children:

(a) referred to intake officers;

(b) pending court action;

(c) following adjudication.

(2) To the best of the department's ability, such plan shall include projected numbers of children to be served by type of service, including diagnosis, evaluation, and location; recommend the content and scope of detention and shelter services; and set forth the estimated cost of services and facilities which are recommended, including any alterations or remodeling of existing facilities. Such plan, with recommendations, shall be made available to the legislature not later than _____.

Chapter 8. Juvenile Probation Services.

Section 801. Juvenile probation officers in Department of Mental Health and Corrections...(1) Juvenile probation officers will be employees of the Department of Mental Health and Corrections.

(2)(a) The department is authorized to enter into agreements with the state agencies, other public agencies, private non-profit agencies to provide supervision or other services to children placed on probation by the juvenile court.

(b) The conditions and terms of any such agreements shall be set forth in writing, including any payments to be made by the department for the services provided.

(c) Any agreement made under this subsection may be terminated upon ninety days written notice by either party thereto.

Section 802. Juvenile probation officers, powers and duties...(1) Juvenile probation officers appointed under the provisions of this chapter shall make such investigations and keep written records thereof as the court may request.

(2) When any child is placed on probation, the juvenile probation officer shall give the child a written statement of the terms and conditions of his

probation and shall explain fully such terms and conditions to him.

(3)(a) Each juvenile probation officer shall keep himself informed as to the condition and conduct of each child placed under his supervision and shall report thereon to the court and to the department as they may direct.

(b) He shall use all suitable methods including counseling to aid each child under his supervision and shall perform such other duties in connection with the care and custody of children as the court may direct.

(c) He shall keep complete records of all work done.

(4)(a) When a juvenile probation officer learns that a child under his supervision has changed his residence to another district, he shall immediately notify the court.

(b) The court may then transfer the probation records of such child to the juvenile court of the district to which the child has moved together with a request that such court direct the probation supervision of the child. The juvenile court of the district to which the child has moved shall then place the child under probation supervision.