If you have issues viewing or accessing this file contact us at NCJRS.gov.

LEGAL ISSUES AFFECTING THE OPERATION OF RUNAWAY SHELTERS

62078

LEGAL ISSUES AFFECTING THE OPERATION OF RUNAWAY SHELTERS

July, 1977

Prepared by: National Juvenile Law Center
St. Louis, Missouri

for: NATIONAL YOUTH ALTERNATIVES PROJECT
1346 Connecticut Ave., N.W.
Washington, D.C. 20036

Under contract with:

The Office of Youth Development
HEW 105-76-2103

TABLE OF CONTENTS

INTRODUCTION	page 1
CHAPTER 1 - ZONING	4
A. Assertion that a Program Comes Within a Permitted Use	12
B. Seeking Special Exceptions or Variances	22
C. Direct Attacks on Exlusionary Zoning	27
D. Modification of Zoning Ordinances	34
E. Nuisance	47
Bibliography	50
CHAPTER 2 - LICENSING AND OTHER FORMS OF REGULATION	51
A. Licensing and Regulation of Facilities	53
B. Certification of Staff	61
Bibliography	78
CHAPTER 3 - LAW ENFORCEMENT AGENCIES AND RUNAWAY SHELTERS	80
A. Criminal Liability of Staff Members	83
B. Apprehending Youth	87
C. Amendment to Juvenile Codes	91
Bibliography	99
CHAPTER 4 - CIVIL LIABILITY OF STAFF AND SHELTER	100
A. General Civil Liability	103
B. Problems of Confidentiality	115
Appendix	
State Code Citations to Child Abuse Reporting Statutes	121
Bibliography	124

Table of Contents (Cont'd.) page

CHAPTER 5 - THE INTERSTATE COMPACT ON JUVENILES 125

A. Procedures Mandated by the Compact 130

B. Making the Compact Work to Retain a Child Within the State 137

C. Use of the Compact to Speed a Return Home 148

Appendix

Interstate Compact on Juveniles 156

State Code Citations to Interstate Compact on Juveniles 167

State Code Citations to Interstate Compact on the Placement of Children 169

Bibliography 171

CHAPTER 6 - PROBATION AND PAROLE 172

A. Duties While on a Supervisory Status 178

B. Revocation Procedures 186

Bibliography 192

ANNOTATED BIBLIOGRAPHY 193

INTRODUCTION

This work is primarily designed to aid those presently working in or hoping to establish services for runaway youth. It addresses a limited number of specific legal issues that affect the opening and continued operation of runaway shelters. An attempt was made to select topics that have proven to be recurring problems based on the experiences of those involved with runaway shelter programs.

The materials themselves are geared to an audience having a social science rather than legal background, and efforts have been made to eliminate technical legal terms whenever possible. At the same time it is hoped that the lawyer who works with an individual shelter will find information and ideas that may serve as a starting point for the development of more complex legal arguments. The choice of form to be used throughout was dictated by a desire for readability rather than strict adherance to accepted legal format.

It is suggested that the reader glance through the complete volume to familiarize himself with the range of information included. Although frequent references are made from one section to another, there still remains information and tactical advice in one section that may aid in the resolution of a problem considered elsewhere. The introductory sections of each chapter generally outline the issues addressed and discuss concepts applicable to the entire chapter.

A bibliography is included at the end of each chapter for those desiring additional information on particular subjects. Descriptions of works of general interest are contained in the annotated bibliography which completes the book. Although many of the references are legal works, the non-lawyer is encouraged to consult them. Law libraries containing these sources exist in all cites and are staffed by librarians employed to help locate materials.

In developing a monograph for a nationwide readership generalizations which may not apply to a particular jurisdiction necessarily occur. Whenever possible, care was taken to alert the reader of those differences and direct him to individual state codes. The reader is, however, cautioned once again that this book is not a substitute for a lawyer. To organize and operate a runaway shelter without local legal advice may ultimately harm the youth it attempts to serve.

Many programs have been able to develop close working relationships with legal advocacy groups for juveniles. Such centers exist in some cities as part of public defender, legal aid or legal services offices and in other localities as separate entities. Additonally, since many of the legal issues affecting shelters do not relate to juvenile law programs have found it advantageous to include general practitioners as members of their boards of directors.

Finally, a note of thanks is offered to all those who

made the completion of this project possible. The advice of many fine people with years of experience serving runaway youth was crucial in focusing the issues and providing practical suggestions for dealing with the problems presented. The energy, patience and cooperation of my own center's staff proved invaluable at every stage of the development of this monograph.

CHAPTER ONE

ZONING

In the past few years we have witnessed a revolution in the type of treatment facility used for the care of the mentally ill and retarded, the drug and alcohol abuser, the prisoner convicted of minor non-violent crimes, and perhaps most significantly, the juvenile status offender. From dependence on large institutional settings where hundreds of people were cared for in pastoral settings, miles away from the nearest neighbors, we have turned now to a preference for community based residential facilities located within the heart of our population centers. The use of the small, indigenous facility extends both to the provision of long-term care and to efforts to provide transitional living arrangements in which the ex-patient or prisoner may learn to adjust to life in the community on a gradual basis after a lengthy absence from its demands.

Perhaps in response to the sudden expansion in the number of these facilities, communities are evidencing growing opposition to the location of these institutions within their borders. With our historical preference for treating the mental patient and the criminal in institutions, rather than providing therapy while allowing the person to remain in the community, it is not too surprising that the news that these persons will be returning to our neighborhoods is met with fear and distrust by many.

Another factor which often accounts for much of the opposition to the location of these facilities in a particular area involves the effect such actions may have on the continued character of the neighborhood. Generally speaking, these facilities will attempt to accomodate between six and twenty individuals, necessitating the selection of large homes. Given typical budgetary constraints this usually means locating in an older part of the city where homes were traditionally more spacious. Unfortunately, many of these neighborhoods are currently undergoing other significant strains on their attempt to maintain a residential character. These outside pressures, and a fear of many of the potential residents of these facilities, combine to make many of the homes unwelcome.

A final objection which is frequently the primary complaint, deals with the concentration of these homes in one or a few neighborhoods. Because of the space needs and budgetary problems previously mentioned, the number of neighborhoods suitable for location of many of these programs is usually quite limited within any given city. Consequently, one geographical neighborhood may find itself the site of an adult criminal halfway house, a group home for delinquent youth, a transitional living arrangement for ex-mental patients and a runaway shelter for minors.

For the runaway shelter hoping to locate within a particular community difficulty may occur from failure to clearly differentiate its purpose and clients from that of

other community residential programs. Much opposition which a program faces springs from confusion over both the type of client the shelter will house, and the methods of care likely to be employed.

With the growing concern over rises in youth crime it is crucial to explain that the youth who will be served are not delinquents, but rather troubled children running from unhealthy and unhappy home situations. Care must also be taken to assure neighbors that the house will not be a crash pad where unsupervised juveniles will gather to avoid parental and societal controls. The structured nature of the program, including planned efforts to contact parents and work with police, should be stressed.

Throughout this chapter references will be made to legal decisions dealing with the zoning problems of a variety of types of community living arrangements. This is necessary as the number of judicial decisions reported in legal sources that pertain specifically to the zoning problems of runaway shelters is few. Reliance is consequently placed on cases raising analogous problems, like the location of community based treatment centers for juvenile delinquents or transitional living units for ex-mental patients. It is hoped that their use will not serve to confuse the reader by raising additional doubts about the location of a runaway program.

A primary method that communities use to regulate the building patterns within a city is the enactment of zoning ordinances. Zoning is the systematic regulation of the use

and development of land and buildings. It has traditionally been accomplished on the local level and is generally considered a legislative exercise of the state's police power.

Early constitutional challenges to its use were based on the theory that imposing different uses and building restrictions on property, resulting in reduced value for some lands, constituted a taking of property without due process of law. In 1926 the United States Supreme Court upheld this local power in Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926) stating "if the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgement must be allowed to control".

In the intervening years individual zoning ordinances have occasionally been declared void by lower courts as a violation of due process and equal protection of the laws. A recent case to come to the attention of the Supreme Court, however, upheld a zoning restriction which limited the occupancy of single family dwellings to no more than two unrelated persons. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). Although the Second Circuit Court of Appeals had concluded that the ordinance's discriminatory classification was not "supported by any rational basis that was consistent with permissible zoning objectives", the Supreme Court disagreed. It held that the ordinance was not aimed at transcients, did not deprive the residents of any fundamental rights and further that its passage was a valid exercise of legislative discretion in limiting land use. The opinion

went on to say "a quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible one.... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a santuary for people." 416 U.S. at 9.

Given the understanding that limitations on the use of land are constitutionally permissible exercises of a locality's police power, it is next necessary to describe the regulations commonly affecting the selection of a site for a runaway shelter.

Zoning ordinances are usually broad enactments delineating various types of uses in a hierarchical pattern. They generally envision at least three general classes: residential, commercial and industrial, each of which may be broken into sub-classes. When the zones are arranged in a hierarchy the broadest type of industrial zone will allow all uses of land, with some restrictions being placed on what can be built in commercial areas, and the most limiting guidelines imposed on residential areas. Typically R-1 (Residential sub-class 1) uses are limited to "single family dwellings," but individual ordinances vary considerably both in the clarity of their language and the comprehensive nature of the scheme they create.

Zoning ordinances are generally enforced through a system of permits which individuals are forced to secure before assuming occupancy of a structure. Zoning boards have been established in most areas to review the issuance of permits and to grant exemptions to compliance where appropriate. Appeal of the board's decisions is then made to the local courts.

An additional type of land restriction which may affect the use of certain properties is the restrictive covenant. This method of regulation is a promise contained in a deed to property which may purport to limit the acceptable uses to which the land may be put.

The most common type of covenant is contained in the original deeds of record, splitting a large tract of land into a neighborhood scheme of single family dwellings. The right to enforce the restriction contained in the deeds rests in the owners of the other properties which are a part of the common plan. While a municipality cannot order compliance to the terms of the covenant the private land owners have the option of enforcing the restrictions through private legal actions. Since the language contained in many of the covenants is similar to that found in zoning ordinances the arguments used against the latter can generally be employed to attack the former.

In any case in which a restrictive covenant is being enforced against an individual, some general arguments should also be made. While the use of these restrictions may increase the value of property, it also has the result

of raising title problems and thereby complicating the process by which property is transferred between owners. Consequently these limitations are disfavored before the law and strictly construed against the maker. This should mean that any ambiguity within the restriction should be resolved in favor of the person seeking to use the land.

Historically, those seeking to locate runaway shelters for youth have often been met with community opposition. On the local level this may manifest itself in extended battles to find a suitable house in an area with complementary zoning provisions. Much time may be spent on efforts to bring the proposed use into line with existing limitations imposed by either zoning ordinances or restrictive covenants.

This chapter will attempt to provide a basic primer for the individual about to embark on this task. Section A contains a brief review of language typically found in zoning ordinances and restrictive covenants and arguments which can be made to show that the proposed runaway shelter use would not violate the restrictions. Section B explains the difference between special exceptions and variances. It then makes suggestions for tactics to be used in seeking either before zoning boards. Section C outlines direct legal challenges which can be made to ordinances totally excluding the location of runaway programs. Section D deals with the modification of existing zoning ordinances both through local and state wide revision. Section E calls attention to an additional method an unhappy community may

use to rid itself of a runaway shelter: an action to enjoin its operation as a nuisance.

The runaway shelter faced with zoning difficulties will probably wish to consult some or all of these sections. Some of the tactics depend more upon the skills and actions of lawyers, while others can be solely accomplished without them. In certain circumstances you may wish to assume a very aggressive posture while in others waiting for community response before acting may be more appropriate. Many of the suggestions may be used in combination and may be more successful that way. In selecting a strategy, it is important in each situation to assess your program's weaknesses and strengths and the point in the community at which success is most likely. Using that knowledge formulate a plan and begin.

A. Assertion that a Program Comes Within a Permitted Use

Once a program has located a suitable building for use as a shelter you will probably wish to check the zoning status of the property and any restrictive covenants which may be found in the deed. For reasons discussed previously, many of the structures found suitable for your purposes will be located in older residential areas of cities which are usually zoned R-1 or R-2. Many of these older properties also will be found to have restrictive covenants governing their use.

Initially, you will want to determine what are the specific "permitted uses" in the applicable zone. The ordinance may spell out these specifics with great particularity or may talk in very general language, as will be discussed in detail later. Since provisions for group care facilities are rarely specifically included or excluded from zoning ordinances the program will be faced with a number of possible manners in which to proceed.

If some type of occupancy permit is required, you may be forced to go to a zoning board in order to secure it. In going before the board you will probably wish to argue that the proposed use comes within the statutorily defined permitted uses. If the board decides your case in an adverse manner, you may generally appeal its decision to the court of general jurisdiction within your area.

In some areas an alternative plan of action may be possible. Where no permit is required or where they are

issued pro forma you may just move in and commence operating the facility and wait and see if the board takes action against you. The board itself may choose to move against you or groups of outraged citizens may go to the board with a complaint. In either case an initial hearing may be held before the zoning board, the outcome of which may also be appealed to the local courts. Occasionally the boards or private citizens may initially file action against you in the local courts.

As was mentioned earlier, restrictive covenants can only be enforced by the other property owners whose deeds contain the like promises. Consequently, the enforcement of these provisions against a program will also commence with a filing of a suit in a local court.

In all of these situations probably the first argument that you will wish to make is that the shelter which you propose to open currently comes within the permitted uses of the applicable zoning or restrictive covenant provisions. The next part of this section will enumerate sample definitions and arguments that can be made to bring the normal runaway program within the definition given. Obviously, these same arguments can be used whether the forum is the zoning board hearing or a formal court proceeding, and whether the opposition be the board itself or a local group of citizens.

There are at least four common types of ordinances restricting single family dwellings. Some definitions focus on the type of activities going on within the home, while

others rely almost totally on blood lines and formal relationships. In the former category are those ordinances which define single families as being a "single housekeeping unit." Traditionally, these ordinances have been construed quite liberally by courts to allow groups of religious or small residences for nurses maintained by hospitals. Carroll v. City of Miami Beach, 198 So.2d 643 (Fla. Ct. App. 1967); Application of LaPorte, 152 N.Y.S.2d 916 (App. 1956); Missionaries of Our Lady of LaSalette v. Village of Whitefish Bay, 66 N.W.2d 627 (Wis. 1954); and Robertson v. Western Baptist Hospital, 267 S.W.2d 395 (Ky. Ct. App. 1954).

Since the courts in this type of case seem to focus not on the relationships between the parties but on the way the occupants relate to one another, it would seem that a runaway shelter should have no difficulty in coming within the single housekeeping unit definition. In Oliver v. Zoning Commission, 326 A.2d 841, (Conn.C.P. Middlesex County 1974), a group home for employable, retarded adults was held to come within the single family unit use. The conditions in the typical runaway shelter where children sleep, eat and cook in family units, sharing the responsibilities of the house, would seem to clearly come within any logical definition of a single family unit.

Some ordinances while going further than the single housekeeping unit merely mention a "family" without going into any definition of what is included within that unit. In Brady v. Superior Court, 19 Cal. Rptr. 242 (App. 1962) a

one family dwelling was defined as a detached building designed for or occupied exclusively by one family. The court totally disregarded any of the relationships between the parties, focusing solely on the number of separate living units within the building. Since the two students who occupied the structure had not broken it into separate apartments, their occupancy was permitted.

A contrary result was reached by the courts in Planning and Zoning Commission v. Synanon Foundation Inc., 216 A.2d 442 (Conn. 1966), which dealt with a residential drug treatment center. In this case the court looked to the ever changing nature of the individuals residing in the facility, the varying number of individuals participating (between 11 and 34), and found them not to constitute a family. While it is clear that a typical runaway program may have many of the unfortunate attributes existing in the Synanon House, perhaps the extreme size of the house and the fact that the participants were adults can be used to differentiate the situation.

Runaway shelters facing this type of ordinance would do well to replicate the running of a traditional family as closely as is possible. Where a number of children are under the supervision of one or two house parents, a stronger argument must surely be made than with respect to a group home for adults. Again, group activities approximating typical family interactions should be emphasized.

A third type of ordinance defines family as a group of persons related by blood, marriage or adoption with not more

than a given number of unrelated persons. This was the type of ordinance specifically upheld in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), the case described in the initial introduction.

Group homes that have attempted to circumvent these types of ordinances have met with varied success. In Browndale International Ltd. v. Board of Adjustment of County of Dane, 208 N.W.2d 121 (Wisc. 1973), a resident care facility for emotionally disturbed children was found not to be a permitted use in the broadly defined family zone. Perhaps of importance in this case, was the fact that the facility was a profit making home which, although cosmetically set up as a family type facility, had many of the aspects of a larger institution about it.

A group home for boys under the jurisdiction of the juvenile court fared better in being permitted in an area zoned for single family dwellings in State ex rel. Ellis v. Liddle, 520 S.W.2d 644 (Mo. App. 1975). Perhaps part of the difference in decisions can be explained by the differences in the homes themselves. Achievement Place, the name of the house in the Ellis case was organized in a family type manner with married teaching parents being in charge of the boys residing there. The children would attend public schools, have assigned work responsibilities and would earn points under a merit system, functioning as a family type group with the end goal of rehabilitation and integration into the community's life. Such strong commitment to a family type structure and integration into the community

must have argued strongly for a favorable decision in this case.

Realistically, runaway programs will be faced with substantial problems under this type of ordinance. Since the average length of stay in a facility is relatively short, a family type atmosphere may be hard to foster and clearly it cannot be expected that the program will integrate itself into the community in the same manner that a family would. To overcome these difficulties, actions similar to those taken where a broadly defined family ordinance is applied would be advised.

The most restrictive ordinance likely to be found is that which defines a family as persons related by blood, marriage or adoption. This very narrow definition would seem to exclude the location of any type of community living arrangement within the given zone.

This type of definition, coupled with the Supreme Court's approval of local zoning ordinances in _Village of Belle Terre_, would seem to combine to bode extreme difficulties for circumventing these ordinances. In reality, one of the first cases since the _Belle Terre_ decision that dealt with a narrowly defined family ordinance allowed the establishment of a group home for ten foster children. _City of White Plains v. Ferraioli_, 357 N.Y.S.2d 449 (1974). In this case the court considered the city's purpose in providing residential districts limited to single family units and concluded "Whether a family be organized along ties of blood or formal

adoptions, or be a similarly structured group sponsored by the state, as is the group home, should not be consequential in meeting the test of the zoning ordinance. So long as the group home bears the generic character of a family unit as a relatively permanent household and is not a framework for transients or transient living, it conforms to the purpose of the ordinance. . . . Moreover in no sense is the group home an institutional arrangment, which would be another matter. Indeed, the purpose of the group home is to be quite the contrary of an institution and to be a home like other homes." 357 N.Y.S.2d at 452-453.

The New Jersey Supreme Court considered a similar situation in Berger v. State of New Jersey, 364 A.2d 993 (N.J. 1976). In this case, a group home for multi-handicapped pre-school children was found to be properly located in an area restricted to single family dwellings. The court considered both the overall importance of the proposed endeavor and the long term effect it was likely to have upon the community in validating the use. In discussing the meaning of "family" the court quoted from the Ferraioli case saying "an ordinance may restrict a residential zone to occupancy by stable families occupying single-family homes, but neither by expressed provision nor construction may it limit the definition of family to exclude a household which in every but a biological sense is a single family. The minimal arrangement to meet the test of a zoning provision, as this one, is a group headed by a householder caring for a

reasonable number of children as one would be likely to find in a biological unitary family." 364 A.2d at 1004.

The problems of proof existing under this type of ordinance are similar to all the ones discussed above. The transient nature of the children coming through the house should be down played, while emphasizing the program's structural resemblance to a traditional family. The need for and value of the program should be stressed with support being demonstrated by local community leaders and groups. Police and juvenile court personnel may become valuable allies since you will be dealing with a population they find troublesome. Clearly zoning boards are influenced by the communities they serve and even courts, as in the cases above, have overlooked the strict language of the statutes choosing instead to assess the value that the proposed use would offer the community.

Finally, some ordinances affecting the location of runaway shelters will include far more than a single family dwelling as a permitted use. They may contain such phrases as community center, hospital, institution, or similar language. In these cases, the shelter would once again have to argue that the use it intended to make of the property fit within the ordinance definition.

In Swift v. Zoning Hearing Board of Abington Township, 328 A.2d 901 (Pa. Cmwlth. 1974), a halfway house for the treatment of former drug addicts was able to show that it

would come within a definition of "community center or similar use". They emphasized the outreach aspects of their program which included educating young people and their parents to the dangers of drug use and abuse, counseling and advising drug users and former addicts, and referrals of such people to outside sources of medical, legal and spiritual help.

Extensive case citation is given in the materials in Section B on bringing a runaway shelter program within the common institutional type definitions. Although the material contained in that section refers specifically to definitions contained in conditional use ordinances, they are totally applicable to permitted uses if the same language is involved.

If despite all attempts to convince the zoning boards and courts that your program comes within the enumerated permitted uses of a zoning ordinance, you are still denied occupancy, the shelter must then turn to one of the other tactics discussed.

B. Seeking Special Exceptions or Variances

When a program has been unsuccessful in its attempts to be included within the definition of those uses specifically permitted by the ordinance, it may wish to apply for a special exception. Since the individual terms used in the zoning ordinances vary considerably across the country, it is perhaps important at this point to define what is meant by a special exception.

Special exception or conditional use means a specific use not allowed as a matter of right, which is established after authorization by the political subdivision in accordance with standards and conditions set out within the zoning ordinance. A number of other terms including special use permit, special permit, conditional use permit, and conditional zoning permit are synonymous with special exception and will be used throughout this section interchangeably.

To obtain a special exception then, it is necessary to apply to an administrative board, usually a board of zoning appeals, which will grant or deny the request after deciding if the substantive and procedural requirements have been met. Typically, the applicant must show that specific building, fire, health and safety standards will be met. Care must be given to assure conformance to the particular standards of the applicable ordinance.

Another procedure commonly confused with the conditional use permit is an application for a variance. Variances

differ significantly from special exceptions since the latter requires proof that the applicant meets the standards enumerated in the ordinance, whereas the former is a request for permission to violate the ordinance. Applications for variances, like conditional use permits, are made directly to the zoning board of a municipality, but the actual proof presented will vary considerably.

The justification for granting a variance must usually include a showing that the denial of the nonconforming use would create substantial impairment of the value of the property. Cal. Gov't. Code §65906 is typical in allowing variances:

> "... when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.
>
> Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

These careful requirements are further narrowed by the final paragraph which requires that: "A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property."

The proof necessary to establish the necessity for granting a variance is indeed high. First, a program would

be compelled to show that a proposed use would have no negative impact on the general zoning plans; second, the land owner must show, that because of some special condition relating to the piece of property, the enforcement of the ordinance would create a specific hardship upon him. This would necessitate the collection of statistical and economic data relating to the enforcement of the provision and other existing uses in the community. While this would not necessarily bar success in these attempts it may call for expertise not immediately available to the ordinary runaway program.

While special exception ordinances may lay out numerous criteria which must be met by the applicant, such as health and safety, building and fire standards, licensing requirements, and numerical limitations within a geographic boundary, most litigation revolves around two other issues. The determination that a particular type of proposed use comes within the special exception definition has caused considerable litigation. Likewise, clauses requiring that proposed uses have no adverse affect on neighboring property values may allow for the exercise of almost unfettered discretion.

This latter problem occurred in East House Corp. v. Riker, 339 N.Y.S.2d 511 (1973) in which a halfway house for ex-mental patients was denied a special exception by the local zoning board. The court found that there was no substantiation in the record of the charge that the allowance of the home

would cause injury to the surrounding property, and hence they reversed the board and allowed the granting of the special exception to the halfway house.

The problem of bringing a particular community residential use within existing definitions calls for tactics similar to those discussed in the permitted use section. Scerbo v. Board of Adjustment of City of Orange, 297 A.2d 207 (N.J. Super. 1972), held that a residential narcotic rehabilitation and treatment center was a "hospital" and qualified as an "institutional" use under the local zoning ordinance. An alcoholic recovery rehabilitation intermediate care center was considered to be a "hospital, sanitarium, or rest home" within the meaning of a zoning ordinance authorizing issuance of conditional use permits in rural zones in State ex rel. Lyon v. Snohomish County Board of Adjustment, 512 P.2d 1114 (Wash. App. 1973).

Sometimes the petitioning parties will argue that a parent funding organization can bring them within an existing special exception. In Slevin v. Long Island Jewish Medical Center, 319 N.Y.S.2d 937 (1971), a non-residential drug treatment center which operated out of a synagogue was brought within a definition of a "religious institution". Courts, however, do not always accept such stretching as evidenced in Arkansas Release Guidance Foundation v. Hummel, 435 S.W.2d 774 (Ark. 1969), in which a halfway house was held not to be a "philanthropic" organization.

The first thing one must do in preparing for an application for a special exception permit is to carefully consider the

language contained in the statute. Any licensing and regulation requirements must be carefully adhered to. If the ordinance imposes limitations on the number of similar facilities existing within an area, care must be taken to document the exact number and concentration of such programs. When the effect of the facility upon the surrounding neighborhood is a consideration, efforts should be made to obtain support from the affected property owners. Special exception provisions that apply only to certain denominated types of facilities call for imaginative project descriptions emphasizing those factors which correspond to the normal activities of accepted institutions. Look to both the function of the program and the methods it employs in arriving at a definition for the shelter. Funding sources and sponsoring organizations can also be used to bring it within statutory definitions.

As with other appearances before zoning boards, the support of local civic and church groups can add much to your presentation. Other agencies with whom you expect to deal, if already respected within a community, may grant further legitimacy to your application. Finally, if efforts before the board are unsuccessful, appeal to your local courts may be possible as described in the previous section describing permitted uses.

C. Direct Attacks on Exclusionary Zoning

When a party has been unsuccessful in arguing that a program fits within a permitted use and the special exception or variance routes discussed in Section B are likewise blocked, additional legal actions may be necessary. A municipality may have acted directly on the issue by totally excluding any type of community based residential facility from its borders or by specifically excluding the type of use which you are proposing. Consequently, a direct legal attack on the zoning ordinance itself is necessary. Complete development of these issues will not be attempted in this limited space as they involve complex legal issues which must be researched within the particular jurisdiction affected, but some general suggestions as to lines of attack and pertinent cases can be offered.

A principle argument used long before the placement of community living arrangements was a problem, is that a particular exclusion thwarts state policy and is consequently void. Three New York cases dealing with different kinds of residential facilities are illustrative of the point. In Hepper v. Town of Hillsdale, 311 N.Y.S.2d 739 (1970), the proponents of a drug treatment center challenged the town's regulation excluding such facilities. Because state policy and specific legislation encouraged the establishment of such centers, the court held the local ordinance to be invalid. A similar result was reached with respect to the

establishment of a group home established for the care of neglected and abandoned children. Abbott House v. Village of Tarrytown, 312 N.Y.S.2d 841 (App. Div. 1970). After considering the local zoning ordinance definition of family, which would not have permitted the establishment of the home, the court concluded: "[T]he Zoning Ordinance has the effect of totally thwarting the State's policy. . .[o]f providing for neglected children. . . . [I]nsofar as it conflicts and hinders an overriding State Law and policy favoring the care of neglected and abandoned children, [it] is void as exceeding the authority vested in the village of Tarrytown. . . ." 312 N.Y.S.2d at 843. This line of reasoning was extended to the establishment of small community based youth correction and rehabilitation centers in Nowack v. Department of Audit and Control, 338 N.Y.S.2d 52 (Sup. Ct. Monroe County 1973).

While not finding the issue determinative, other courts have given it considerable attention. Noting that the juvenile code expressed a strong preference for treating its delinquent and neglected chilren in a family type setting, the court in State ex rel. Ellis v. Liddle, 520 S.W.2d 644 (Mo. App. 1975), permitted the placement of a group home in an area zoned for single family dwellings.

It would seem that those seeking to locate runaway shelters would have a particularly strong state policy argument. Many of the programs were established in direct response to the passage of the federal Runaway Youth Act, 42

U.S.C. 5701 which expresses a stated need to "develop an effective system of temporary care outside the law enforcement structure." Some states have supplemented this legislation with state statutes further authorizing the development of runaway programs. These enactments strongly support the concept that runaway shelters further state policy.

Additionally, the Juvenile Justice Delinquency Prevention Act of 1974, 42 U.S.C. 5601, contains strong language encouraging the states to treat all status offenders in non-secure facilities. Many states have responded by passing legislation requiring that status offenders, including runaways, be detained separate and apart from adults and other children charged with delinquent acts. Non-secure shelter care facilities are often specified as the appropriate form of placement for these juveniles. These acts likewise strongly support the assumption that state policy favors the creation of runaway shelters.

Finally, almost all juvenile codes begin with a paragraph delineating the purposes for which the juvenile courts are created. Typically, they express a concern that the care and rehabilitation to be provided children under their jurisdiction be done in a manner as closely approximating a family situation as possible. What other type of care more nearly duplicates the healthy conditions within the traditional family than those in a runaway house?

The use of these three kinds of statutes to illustrate a state policy favoring the establishment of runaway shelters

may well overcome any local interest in excluding such facilities from a community's borders.

Two related theories are occasionally used to defeat exclusionary zoning provisions. Eminent domain is a concept by which the sovereign is free to devote land to any normally authorized use. The established governmental entity may take a parcel of land by offering the owner the fair market value of the property and then use it for public purposes.

A closely related theory, sovereign immunity, allows a state agency performing a normal state function to be exempt from local regulatory statutes. Rather than relating to the taking of land, this concept allows one performing a state function to ignore local land use restrictions. The basis for this exemption rests on the state's possession of superior powers necessary to accomplish the legitimate purposes of government. A lower court in Ohio allowed a county to take possession of land and create a group home for the mentally retarded despite the local zoning ordinances to the contrary. The eminent domain powers of the county were held to preclude the application of the zoning ordinances. Boyd v. Gateways to Better Living, Inc., Case No. 73-CI-531, (Mahoning County Court, Ohio, April 18, 1973).

Since, traditionally, the state has been immune from local zoning ordinances, when a particular community living arrangement has contracted to perform a state function, it has argued that the immunity should extend to itself. After a careful consideration of the sovereign immunity concept

and other theories argued in this arena, the Florida Court of Appeals adopted a balancing of interests test in City of Temple Terrace v. Hillsborough Ass'n., Etc., 322 So.2d 571 (Fla. App. 1975). It concluded that when an arm of the government wishes to violate applicable zoning regulations it "should have the burden of proving that the public interests favoring the proposed use outweigh those mitigating against a use not sanctioned by the zoning regulations of the host government." 322 So.2d at 579.

In authorizing the continued operation of a state group home for handicapped children, one court found the purposes of the local zoning ordinance were actually furthered by the home. Berger v. State, 364 A.2d 993 (N.J. 1976). Additional consideration was given to the state's immunity, the public interest in quality care for the handicapped, and the home's slight impact on local interests when compared to the beneficial goals pursued.

If one wishes to raise the eminent domain or sovereign immunity arguments, it is first necessary to show that a particular program is performing a function that would otherwise be provided by the state. Where a program has contracted for services directly with the state or county, this should be no problem. However, if no such reimbursement is anticipated, a more general argument must be made based on the proposed use of the facility and statutes delineating duties of state and county departments of welfare. Given the Florida court's adoption of the balancing of interests

test, assertion of a strong state policy favoring community treatment and care for children would also be in order at this point.

Finally, while Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), indicated a presumption of the validity of local zoning ordinances, they may be attacked if the power is exercised in an arbitrary and unreasonable manner. The most recent zoning case to come before the Supreme Court invalidated an ordinance defining "family" so as to exclude essentially all but a couple and its dependent children. Moore v. City of East Cleveland, 97 S.Ct. 1932 (1977). The city had defended its regulation as being necessary to avoid over-crowding, traffic congestion and an undue financial burden on the school system. Justice Stevens in an excellently reasoned concurring opinion stated:

> The city has failed totally to explain the need for a rule which would allow a homeowner to have two grandchildren live with her if they are brothers, but not if they are cousins. Since this ordinance has not been shown to have any 'substantial relation to the public health, safety, morals or general welfare' of the City of East Cleveland...it must fall....

97 S.Ct. at 1946-47.

This is a tactic that has been employed for many years by what would now be considered traditional social service institutions in their battles to circumvent zoning prohibitions. Women's Kansas City St. Andrews Society v. Kansas City, Missouri, 58 F.2d 593 (8th Cir. 1932), struck down a zoning restriction against a home for twelve elderly women in a residential

district. A similar result was reached in Village of University Heights v. Cleveland Jewish Orphans Home, 20 F.2d 743 (6th Cir. 1927), which involved the location of an orphanage in a previously residential district. In both cases, the courts considered the structural requirements of the projects and analyzed the way they would fit into the general existing neighborhoods. Since, in neither case was the use found to differ significantly from that which currently existed, the restrictions were declared void.

The use of these litigative methods to directly attack exclusionary zoning provisions entails substantial legal research and writing. Since a favorable decision would necessarily be a rebuke to a local zoning authority, a program's chances of success might only be favorable at an appellate level. Because of this problem and the typically overcrowded and hence delayed court calendars, such action may only be advisable when other methods of addressing this problem have failed. Decisions on such matters can probably only be adequately reached after extensive consultation with trusted local counsel.

D. Modification of Zoning Ordinances

Another tactic which some runaway shelters may wish to employ in their battle to find adequate housing is to seek modification of the zoning ordinances which currently prohibit their locating in desired spots. These efforts may be directed at enacting state legislation exempting certain community living arrangments from the control of local zoning ordinances, or at seeking local legislative change within a home community.

Whichever method is contemplated, it is important that a few initial inquiries be made: first, a review must be made of existing ordinances and their effect upon community living arrangements; second, an enumeration of other programs adversely affected by these ordinances should be attempted; and third, an assessment of potential sources of community support for proposed changes should be made. This process should help the program in deciding which forum to use for change and in establishing a potential plan of action.

When the state-wide agency responsible for the placement of adult parolees is meeting with opposition to placements of its proposed halfway houses in your community, but it and other state agencies using community living arrangements have significant legislative support, a state-wide action might seem appropriate. Conversely, if local church and civic groups support the concept of community living arrangements and have considerable political clout with city council, local change might be the most effective.

Other factors which may affect an eventual choice of action include the expected time necessary for proposed methods of change: state legislative action generally takes much longer than amendment of a local zoning ordinance. The amount and type of opposition expected at different levels of the legislative process may also be crucial. Small groups of outraged citizens may be quite vocal and powerful in a local forum, but in a state legislature virtually powerless.

A final choice, which will probably be made with quite mixed emotions, is your selection of potential allies. Uniting with groups that provide living space for adult criminal ex-offenders may have adverse affects on the possibilities of locating a facility for the treatment and care of the non-delinquent runaway minor, but may be consistent with your program's overall philosophy and goals. On the other hand, traditional social service systems which are viewed with distrust by some can prove an invaluable source of support.

Once an initial plan of attack has been formulated work must begin on drafting the statutes or amendments one wishes to offer. Statutes effectuating the location of community care facilities vary substantially in complexity and length.

To further the intent of providing residential care for mentally and physically handicapped persons California enacted Cal. Welf. & Inst. Code §5116 (Supp. 1977) which permits facilities housing six or fewer individuals as a

residential use for zoning purposes. The act which also applies to homes for dependent and neglected children is a model of simplicity in containing just two paragraphs:

> §5116. Property used for care of six or fewer handi capped persons or dependent or neglected children as residential use for zoning purposes.
>
> Pursuant to the policy stated in Section 5115, a state-authorized, certified, or licensed family care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons or dependent and neglected children, shall be considered a residential use of property for the purposes of zoning if such homes provide care on a 24-hour-a-day basis.
>
> Such homes shall be a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit any city or county from requiring a conditional use permit in order to maintain any home pursuant to the provisions of this paragraph; provided that no conditions shall be imposed on such homes which are more restrictive than those imposed on other similar dwellings in the same zones unless such additional conditions are necessary to protect the health and safety of the residents.

In contrast the following six page proposal is a copy of Assembly Bill 383, Permitting Community Living Arrangements to Locate in Residential Areas Under Certain Circumstances, which was introduced in the Wisconsin Legislature on February 17, 1977, and is currently pending. Its principle features include a definition of the facilities to be covered as those licensed, operated, or permitted under the authority of the Department of Health and Social Services. Covered facilities housing between one and eight persons are permitted uses in areas zoned as single-family dwelling areas and in sections restricted by similar deed covenants. Covered facilities housing between nine and fifteen individuals are

permitted uses in areas zoned for all other residential uses and in areas governed by similar deed covenants. They may apply for permits as special exceptions in areas zoned as single-family dwellings. Spacing and density limits are also set to eliminate the ill effects of clustering of these homes.

1977 ASSEMBLY BILL 383

SECTION 1. LEGISLATIVE PURPOSE. The legislature finds that the language of statutes related to local zoning codes should be updated to take into consideration the present emphasis on preventing or reducing institutionalization. This change in emphasis has occurred as the result of recent advances in corrections, mental health and social service programs. It is the legislature's intent to enable persons who otherwise would be institutionalized to live in normal residential settings, thus hastening their return to their own home by providing them with the supervision they need without the expense and structured environment of institutional living. To maximize its rehabilitative potential, a community living arrangement should be located in a residential area which does not include numerous other such facilities. The residents of such facilities should be able to live in a manner similar to the other residents of the area. The legislature finds that zoning ordinances and deed covenants should not be used to keep out all community living arrangements since these arrangements resemble families in all senses of the word except for the fact that the residents might not be related. The legislature believes these goals can be achieved only by establishing criteria which restrict the density of community living arrangements while limiting the types and number of facilities which can exist in residential neighborhoods having an appropriate atmosphere for the residents, thereby preserving the established character of a neighborhood and community.

SECTION 2. 46.03 (22) of the statutes is created to read: 46.03 (22) COMMUNITY LIVING ARRANGEMENTS. (a) "Community living arrangement" means any of the following facilities licensed or operated, or permitted under the authority of the department: child welfare agencies under §48.60, group foster homes for children under §46.62 and community-based residential facilities under §50.01; but does not include day care centers, nursing homes, general hospitals, special hospitals, prisons and jails.

(b) Community living arrangements shall be subject to the same building and housing ordinances, codes and regulations of the municipality or county as similar residences located in the area in which the facility is located.

(c) The department shall designate a sub-unit to keep records and supply information on community living arrangements under §§59.97(15)(f), 60.74(9)(f) and 62.23(7)(i)6. Such sub-unit shall be responsible for receiving all complaints regarding community living arrangements and for coordinating all necessary investigatory and disciplinary actions under the laws of this state and under the rules of the department relating to the licensing of community living arrangements.

(d) A community living arrangement with a capacity for eight or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single-family residences. A community living arrangement with a capacity for fifteen or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to multi-family residences. Covenants in deeds which expressly prohibit use of property for community living arrangements are void as against public policy.

SECTION 3. 59.97(15) of the statutes is created to read: 59.97(15) COMMUNITY LIVING ARRANGEMENTS. For purposes of this section, the location of a community living arrangement, as defined in §46.03(22), in any city, village or town, shall be subject to the following criteria:

(a) No community living arrangement may be established within 2,500 feet of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local municipality. Two community living arrangements may be adjacent if the local municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each city, village or town without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or 1% of the municipality's population, whichever is greater. When the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or 1% of the population, whichever is greater, of the district, the municipality may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this paragraph, and such exceptions may be granted at the discretion of the municipality.

(bm) Foster homes for four or fewer children licensed under §48.62 shall be a permitted use in all residential areas and are not subject to paragraphs (a) and (b).

(c) In all cases where the community living arrangement has capacity for eight or fewer persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission.

(d) In all cases where the community living arrangement has capacity for nine to fifteen persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, or operated or permitted under the authority of the department of health and social services, the facility is entitled to locate in any residential area except areas zoned exclusively for single-family residences, but is entitled to apply for special zoning permission to locate in an exclusively single-family residential area. The local municipality may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) In all cases where the community living arrangement has capacity for serving sixteen or more persons, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The local municipality may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single sub-unit within the department to maintain appropriate records indicating the location and the capacity of each community living arrangement, and such information shall be available to the public.

(g) In this sub-section, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this sub-section.

SECTION 4. 60.74(9) of the statutes is created to read: 60.74(9) For purposes of this section, the location of a community living arrangement, as defined in §46.03(22), in any town shall be subject to the following criteria:

(a) No community living arrangement shall be established within 2,500 feet of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the local township. Two community living arrangements may be adjacent if the town authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each town without restriction as to the number of faciliites, so long as the total capacity of the community living arrangements does not exceed 25 or 1% of the town's population, whichever is greater. When the capacity of the community living arrangments in the town reaches that total, the town may prohibit additional community living arrangements from locating in the township. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the town.

(bm) Foster homes for four or fewer children licensed under §48.62 shall be permitted use in all residential areas and are not subject to paragraphs (a) and (b).

(c) In all cases where the community living arrangement has capacity for eight or fewer persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission.

(d) In all cases where the community living arrangement has capacity for nine to fifteen persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential area except areas zoned exclusively for single-family residences, but is entitled to apply for special zoning permission to locate in an exclusively single-family residential area. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) In all cases where the community living arrangement has capacity for serving sixteen or more persons, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The town may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single sub-unit within the department to maintain appropriate records indicating the location and the capacity of each community living arrangement, and such information shall be available to the public.

(g) In this sub-section, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services to enforce compliance with this sub-section.

SECTION 5. 62.23(7)(i) of the statutes is created to read: 62.23(7)(i) COMMUNITY LIVING ARRANGEMENTS. For purposes of this section, the location of a community living arrangement as defined in §46.03(22) in any city shall be subject to the following criteria:

(a) No community living arrangement shall be established within 2,500 feet of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.

(b) Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or 1% of the city's population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or 1% of the population, whichever is greater, of the district, the

city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this paragraph, and such exceptions may be granted at the discretion of the city.

(bm) Foster homes for four or fewer children licensed under §48.62 shall be a permitted use in all residential areas and shall not be subject to paragraphs (a) and (b).

(c) In all cases where the community living arrangement has capacity for eight or fewer persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission.

(d) In all cases where the community living arrangement has capacity for nine to fifteen persons being served by the program, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to locate in any residential area except areas zoned exclusively for singe-family residences, but is entitled to apply for special zoning permission to locate in an exclusively single-family residential area. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(d) In all cases where the community living arrangement has capacity for serving sixteen or more persons, meets the criteria listed in paragraphs (a) and (b), and is licensed, operated or permitted under the authority of the department of health and social services, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health and social services shall designate a single sub-unit within the department to maintain appropriate records indicating the location and number of persons served by each community living arrangement, and such information shall be available to the public.

(g) In this paragraph, "special zoning permission" includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take all necessary action, upon the request of the department of health and social services, to enforce compliance with this paragraph.

SECTION 6. 62.23(7)(a) of the statutes is amended to read: 62.23(7)(a) EXTRATERRITORIAL ZONING. The governing body of any city which has created a city plan commission under sub-section (1) and has adopted a zoning ordinance under sub-section (f) may exercise extraterritorial zoning power as set forth in this sub-section. Insofar as applicable sub-section (7)(a),(b),(c), (ea),(h) and (i) shall apply to extraterritorial zoning ordinances enacted under this sub-section. This sub-section shall also apply to the governing body of any village.

SECTION 7. APPLICATION. This act shall not affect the rights, powers or duties of any county or municipality as to their zoning authority over any community living arrangement which had obtained special zoning permission prior to the effective date of this act. However, those community living arrangements shall be required to register in accordance with §§59.97(15)(f), 60.74(9)(f) and 62.23(7)(i)(6) of the statutes, as created by this act, and under such sections the department must maintain public records of those community living arrangements. The location and capacity of those community living arrangements shall be included when determining whether a new community living arrangement can be located in a municipality under §§59.97(15)(a) and (b), 60.74(9) (a) and (b) and 62.23(7)(i) (a) and (b) of the statutes.

Two groups have published model ordinances which vary somewhat from the Wisconsin proprosal but address many of the same concerns. Each is contained in a handbook outlining the various steps to be taken in working towards statutory modification.

> Hopperton, Robert, Zoning for Community Homes: A Handbook for Local Legislative Change (1975). Order from Law Reform Project, Developmental Disability Law, College of Law, Ohio State University, 1659 North High Street, Columbus, Ohio 43210.

> Pritchard, Michael, Dianne Greenley, Matthew Dew and Frank Thompson, Regulation and Zoning of Community Living Arrangements (1976). Order from Center for Public Representation, Inc. 520 University Avenue, Madison, Wisconsin 53703.

Many other excellent sources for drafting legislative amendments and providing supplementary materials are contained in the bibliography to this chapter.

The passage of state legislation similar to the type reproduced here, presents the interesting question of whether the state can restrict the zoning powers it has delegated to municipalities. Montana has enacted a statute providing that community residential facilities for the developmentally disabled may be located in all residential zones. The authority of the state to supercede the zoning powers of municipalities in this manner was upheld in State ex rel. Thelen v. City of Missoula, 543 P.2d 173 (Mont. 1975).

Despite the broad powers intimated to exist in Village of Belle Terre v. Boraas, the state may still regulate zoning in order to further permissible state objectives. It may be

in some states that provision for facilities such as runaway shelters will only be accomplished by this type of state action. The process, however, is likely to be slow and tedious, with favorable results only likely to occur after many months or even years.

E. Nuisance

A final problem with which those seeking to locate a runaway shelter should be aware is the possibility of neighboring property owners seeking an injunction against the operation of the facility on the basis that it constitutes a private nuisance. A nuisance is an interference with the use and enjoyment of land, and includes disturbing the peaceful, quiet and undisturbed use and enjoyment of nearby property. Courts will enjoin such actions when the resulting injury to the neighboring property and residents is certain, substantial and beyond speculation and conjecture. What this means is that despite the fact that a particular shelter may conform to all existing zoning regulations, if the facility is creating a condition which substantially interferes with the use and enjoyment of neighboring property it may be closed.

Although the author has found no reported cases of successful nuisance actions against runaway shelters, there has been active litigation centering around the operation of halfway houses for parolees and prisoners. The Supreme Court of Arkansas looked at two factors in deciding to enjoin the operation of a halfway house in the case of Arkansas Release Guidance Foundation v. Needler, 477 S.W.2d 821, (Ark. 1972). The Court found that a significant decrease in adjacent property values and fear and apprehension of the occupants of the halfway house were sufficient justification for finding the existence of a private nuisance. Although the residents of the house had previously been screened to

exclude those criminals whose crimes involved sex or drug offenses, or alcoholism, it appeared that during the period of time that the house was open, at least one of the residents had been convicted of a sex offense and another had been removed for activities relating to alcohol.

In contrast to these decisions, two other courts have refused to issue requested injunctions in similar cases. In Nicholson v. Connecticut Halfway House, Inc., 218 A.2d 383 (Conn. 1966), the Connecticut Supreme Court refused to enjoin the proposed use of a boarding house for state prison parolees. The plaintiffs in that case alleged the possiblity of injury similar to that which had actually occurred in the Arkansas case. As the Center had not yet opened, the plaintiffs could offer no evidence of specific acts of the residents causing them physical or actual harm. Further, their claim of depreciated property values could only be supported by the subjective apprehensions of neighboring property owners and potential buyers. Since any injury likely to be caused was purely speculative, the Court denied an injunction against the facility. A similar result was reached by the Commonwealth Court of Pennsylvania in West Shore School District v. Commonwealth, 325 A.2d 669, (Pa. Cmwlth. 1974).

Because of the extraordinary nature of the remedy sought in nuisance actions plaintiffs must be able to show a certain and substantial injury. Courts will only grant injunctions prohibiting the operation of an enterprise if the use of the land is unreasonable and irreparable harm cannot be prevented otherwise.

Despite the fact that these attacks seem to have a limited chance of success, the mere filing of the suit may have adverse affects upon a program.

Community education is important for developing an atmosphere in which a program will receive favorable treatment before a zoning board. As the program proceeds, continuing efforts must be made to keep the public informed of services provided. Actions should also be taken to register valid complaints and suggestions from the community and to respond to them. If procedures such as these are adopted, a program will not only reduce the likelihood of having an injunction rendered against it, but will probably eliminate the possibility of having any action filed.

BIBLIOGRAPHY

Bay Area Social Planning Council. The Effect of Zoning Regulations on Residential and Day Care Facilities in San Mateo County: Report and Recommendations of the Study Committee. San Mateo, California: San Mateo County Council, March 1970.

California State Department of Health. Report and Recommendations to the Legislature on the Impact of Local Ordinances on Community Care Facilities. Sacramento: California State Department of Health, March 31, 1974.

Comment, Exclusionary Zoning and Its Effects on Group Homes in Areas Zoned for Single-Family Dwellings, 24 Kan. L. Rev. 677 (1976).

Empey, LaMar; Newland, George; and Lubeck, Stephen. The Silverlake Experiment: A Community Study in Delinquency Rehabilitiation, Progress Report No. 3. Los Angeles: Youth Studies Center, University of Southern California, 1966.

Hecht, Judith A. Effects of Halfway Houses on Neighborhood Crime Rates and Property Values: A Preliminary Study. Research Report No.37. District of Columbia Department of Corrections, November 1970. Mimeographed.

Hopperton, Robert. Zoning for Community Homes: A Handbook for Local Legislative Change. Columbus, Ohio: Ohio State University College of Law, 1975.

Hopperton, Robert. Zoning for Community Homes: Technical Assistance Handbook for Municipal Officials. Columbus, Ohio: Ohio State University College of Law, 1975.

Keller, Oliver J. Jr., and Alper, Benedict S. Halfway Houses: Community-Centered Correction and Treatment. Lexington, Massachusetts: D.C. Heath and Company, 1970.

Knowles, Eric S., and Baba, Ronald K. The Social Impact of Group Homes: A Study of Small Residential Service Programs in First Residential Areas. Green Bay, Wisconsin: Green Bay Plan Commission, 1973.

Lauber, Daniel, with Frank S. Bangs, Jr., Zoning for Family and Group Care Facilities. Chicago: American Society of Planning Officials, 1974.

Law Enforcement Assistance Administration. Guidelines and Standards for Halfway Houses and Community Treatment Centers. Washington: U.S. Department of Justice, 1973.

Pritchard, Michael, et al. Regulation and Zoning of Community Living Arrangements. Madison, Wisconsin: Center for Public Representation, 1976.

CHAPTER TWO

LICENSING AND OTHER FORMS OF REGULATION

In December 1976, the Department of Health, Education and Welfare promulgated certain rules and regulations to govern the funding and operation of runaway programs authorized under the Runaway Youth Act, 42 U.S.C. §§5701 to 5751 (Supp. 1977). These provisions were originally published at 41 Fed. Reg. 54,297 (1976) and can be found at 45 C.F.R. §§1351.1 to 1351.40 (1977). They delineate the requirements for funding applications, set standards for approving such proposals, and establish procedures for administering the grants.

The section setting forth the application requirements directs the prospective program to include "a detailed description of a staffing pattern which conforms to applicable State and local licensing requirements," and "assurance that the runaway house shall comply with, or exceed, applicable State and local licensing requirements including, but not limited to, building, health and safety codes." (45 C.F.R. §§1351.14(c) and (k)). These guidelines should serve to alert programs that, aside from the local zoning difficulties discussed in the previous chapter, there may be other types of regulations both state and local which severely impinge on the operation of runaway shelters. Such restrictions relate both to the physical plant to be used and the people who are to staff it.

The first section of this chapter contains materials on the regulation and licensing of the facility itself. Building, housing, fire and electrical codes and their enforcement are explained. The possible designation of the facility as an "institution," with its attendant ramifications, is touched upon.

State regulation of these and other "child care facilities" is considered. Typical standards which must be met and the value of obtaining certification under such criteria are mentioned.

Section B concerns itself with staff certification issues. The requirements for such licensing are outlined with cursory attention given to alternative methods of compliance. The advantages of certification, including its effect on facility licensing, its impact on potential funding sources, and its creation of additional privacy protections, are discussed.

Since privileged relationships may arise as a result of professional licensing their implications and benefits are also explored. Although such protections are usually the result of statute, an argument for its creation as a common law privilege is offered.

A. Licensing and Regulation of Facilities

In most populated areas, building, fire, health, and safety standards have been adopted with respect to varying classes of dwellings and other structures. Like zoning ordinances, such codes are enacted as an exercise of the state's police power by the local municipalities. There has been little state action in this area and virtually no federal involvement; consequently codes vary significantly.

Some small degree of uniformity has been achieved because many cities have opted for the adoption of model codes which have been drafted by professional groups. The International Conference of Building Officials, Southern Building Codes Conference, Building Officials and Code Administrators, International, Inc., and National Board of Fire Underwriters have all produced model building codes. Similar duplication exists with respect to the other areas regulated. (Citations to the codes most widely available are found in the bibliography to this chapter.) Additionally, the Federal Housing Authority has established two sets of guidelines for federally financed housing programs: Minimum Property Standards for Multifamily Housing and Minimum Property Standards for Properties of One or Two Living Units. These standards, which vary across the country, often influence local code adoption.

Since standards differ so widely from location to location, little discussion of individual provisions is included. Generally, minimum standards for structures serving

large numbers of occupants will be stricter than those imposed for single-family dwellings. The type of factors which may be controlled includes: number and position of exits from a structure; sanitary facilities adequate to the number of expected users; facilities for the preparation and service of food; and floor space and ceiling heights. Codes generally delineate with great specificity such details as the necessity for hardwood floors, the requirement of fireproof stairwells, the number of industrial sinks, the type of sprinkler system and even the chlorine content of water in the house. With expanded attention being given the rights of the handicapped additional requirements reflecting their needs are likely to be imposed in the near future where they do not exist presently.

Enforcement procedures under the codes may also vary greatly. Building and housing regulations are usually implemented by requiring the receipt of a permit prior to making any substantial changes to a structure. The permit will only be granted after inspection indicates that the proposed changes will result in compliance with all applicable standards. Most codes establish Boards of Review to whom appeals of permit denials may be taken.

Fire code enforcement is most often left to the Chief of the Fire Department. Periodic inspections resulting in the issuance or denial of permits are commonplace. When permits are denied a period of time is set for compliance after which fines may be assessed for failure to comply. In

some areas police may aid in the administration of the ordinance and occasionally a specific Fire Prevention Bureau may exist. Again, an appeals procedure is often established by the code.

Probably the most important issue that arises with respect to these codes is the classification under which the shelter will fall. Due to some of the zoning problems discussed earlier, a program may have had to argue for a special exception on the basis that it came within a certain institutional definition. This classification may now preclude any arguments to exempt the house from compliance with particular building standards. This may be the type of unfortunate trade-off one reluctantly enters into when faced with the difficulties of finding appropriate housing.

Additional licensing requirements may be imposed on a program by a state agency controlling the operation of group homes or facilities providing care for children. Again, a shelter may have voluntarily brought itself under the licensing requirements by arguing before a zoning board that it should be classified as a particular type of institution. In these cases efforts must be made to obtain the appropriate certification. At other times, a program may seek state authorization for its own purposes.

Because every state's executive branch is organized differently and services to children come under a number of departments, there is no uniformity in who might license

runaway shelters. A department of health and social services may have state-wide responsibility for any program which attempts to provide residential care. The state department regulating the correction of children may have overlapping authority to issue licenses for facilities offering care for children. Other agencies responsible for services to families and children could also become involved when youngsters coming into your program can be classified as neglected. A program is advised to check with the various state agencies or the state's juvenile and social service codes.

Occasionally state statutes may actually set out the criteria for issuance of a license, but generally the authority to establish standards is delegated to the licensing agency. These agencies then promulgate regulations which are usually published in the state's Code of Regulations. California is typical of those states establishing standards in codifying an extensive set of regulations governing the Licensing of Community Care Facilities. 22 Cal. Adm. Code 2301-2453. Some of these standards, which include over 150 pages of specifics, apply exclusively to adult or children's facilities while others cover both. They set forth minimum acceptable levels for fire, safety and sanitation provisions, as well as establishing staff-client ratios and professional requirements for supervisory staff. Such provisions may aid a program in creating a safe environment for the youth it will serve, although the particularity of the provisions necessitate careful attention to detail.

Where licensing is not required for a particular program, the staff may be forced to decide whether to apply for such certification. There are at least four factors that programs should consider in making this decision: potential sources of funding; use of facilities by courts and police; community acceptance; and the possibility of limiting civil liability.

Although the Office of Youth Development has not imposed a strict licensing provision upon its grantees, when federal moneys for such programs end it will be necessary to seek new sources of funding. Many people are impressed by paper credentials and a myriad of licenses, and in some respects they do assure the outsider that at least minimal standards are maintained within a facility. Exhibiting a state license may be a useful psychological tool in legitimating the methods and goals of a shelter.

In addition to private funding, some programs may begin to seek grants dependent on court referrals. In many instances, local juvenile courts are limited in placement decisions to facilities meeting certain state standards. The same considerations may apply when police apprehend a child and wish to place the juvenile prior to a court hearing. For further discussion of this problem see Chapter Three.

When community acceptance in a particular area is slow, compliance with these minimum criteria may at least serve as the starting point from which to defend a particular facility. Objections based on failure to obtain occupancy permits from

zoning boards may be lessened when the degree and quality of regulation to which a facility is subjected is known. Hostile police and unfriendly court staff may also be influenced by a sincere effort to meet accepted professional standards.

While the project may see these procedures as institutionalized harrassment, to many in the community they are viewed as a valuable aid in regulating unscrupulous programs. Where sincere criticism of standards is in order, the source of such comments should be a program that comes well within the accepted norms. Working within these guidelines, while providing a truly innovative and successful approach to the problems of youth, gives the critic added legitimacy.

Finally, compliance with a comprehensive regulatory scheme enforced by periodic monitoring should help establish a defense for a program being sued for failure to provide supervision of one of its clients. For a discussion of other factors influencing civil liability see Chapter Four, Section A.

Given the strong arguments for seeking state and local licenses, and the knowledge that in many areas a program will not be given the luxury of choice, a consideration of practical methods to be used in securing governmental approval is now presented. It is important to note initially that consideration of problems that may arise as a result of zoning and licensing requirements should always be carefully considered <u>before</u> a site is secured and a house purchased.

Requesting an inspection of a property and obtaining cost estimates of work needed to bring a building into compliance with local and state codes is expected by most sellers, and can save a program countless headaches later.

Some programs have found that personnel within the state licensing agency are often willing to provide aid in identifying problems and finding ways to comply with requirements. A local architect willing to donate a few hours of time may prove invaluable in estimating the cost of repairs. Occasionally lending institutions (banks or savings and loan associations) have employees who will perform this same type of service. Acquainting oneself with the resources within a community and thereby obtaining as much voluntary help as possible is curcial to stretching a shelter's funds to serve as many clients as possible in a quality fashion.

One suggestion for bringing a building into compliance with code standards involves using the given space in a creative manner. Since regulations for residential facilities usually differ from those applied to buildings solely for day use it is wise to investigate the possibility of splitting a building into two separable units which might be inspected and licensed on the basis of different criteria. One section may then be devoted to office and administrative space with possibly some counseling uses while the portion with better structural conditions might be used for the residence. In some buildings this might be accomplished simply by using a second or floor for the office needs while reserving

the first floor as the living space.

Finally, some programs have found it advisable to establish prior contact with the inspector who will enforce the applicable codes. Advice on methods a program might use to bring a property into code compliance can be sought, as well as an opinion on the present state of the building. Such efforts will help to cultivate an atmosphere in which program and inspector will work together to find adequate quarters for a shelter's needs.

As with so many of the problems confronting a runaway shelter, obtaining state and local licenses can be simplified by working with the individual charged with administering the system. Adopting this approach, rather than a confrontive stance, invests the decision maker in rendering a decision favorable to your cause. Likewise by using the technical skills of other groups and individuals within the community a program can greatly increase its likelihood of obtaining the necessary licenses and permits.

B. Certification of Staff

While certain professions like nursing, medicine, law and accounting have always been subject to extensive regulation by state licensing boards, more recently the trend has extended to other professions. Teachers, psychologists, social workers and even unclearly defined "counselors" are in many states being regulated by statute.

While occasionally the statutes themselves establish criteria by which applicants will be judged, in many instances complete discretion is given to the board of examiners. Whatever body sets standards, the requirements often include obtaining a degree from a certified academic institution, exhibiting a certain number of years or hours experience within the field, and in many instances, demonstrating proficiency on a licensing exam.

For some years, the movement advocating alternative community organized and supported social services placed a higher priority on commitment to the provision of services than on the demonstration of professional qualifications. While early workers in these programs may not have actually been hostile to individuals having degrees no recognition was given except on the basis of demonstrated ability in dealing with people.

Today we are witnesses to changes in these early attitudes. More and more people working as directors and administrators of these programs have gone on and received the academic credentials to accompany their years of practical experience.

The programs themselves are often used as practicums for students working toward degrees in the social sciences.

The reasons for the move to certification are multiple. As discussed in the preceeding section, some states require certification of certain staff members, prior to licensing a shelter as a child care facility. This factor alone can have an effect on funding since some public sector support is dependent upon complying with local licensing provisions. Private funding sources have traditionally regarded the credentials of an applicant project's staff as one measure of competence upon which the foundations' grants might be awarded.

For these and other reasons often relating to a desire for personal growth, many of the individuals working in runaway shelters are currently obtaining professional certification. Without making any value judgments as to the propriety of this trend in the context of the alternative services movement, this section offers suggestions to programs attempting to increase the ability of their staff to become licensed, and provides at least a partial argument for this certification effort.

Prior to wholly adopting this position it is important for a program to consider potential problems which may arise from the decision to license staff. In many states such an action may expose both individuals and the program to possible liability for professional malpractice. For a discussion of malpractice, the difficulties in obtaining adequate insurance

coverage and other ways in which to minimize liablity see Chapter Four, Section A.

Assuming that thorough consideration has been given this issue, some general observations can be made about ways a house can work toward certification of its employees, despite the differences in standards from state to state and between professions. Many shelters currently provide staff development programs in the context of weekly staff meetings. Such training is thought to be necessary to provide counselors and others working within a house the skills necessary to deal with the continually changing needs of the client population. These sessions often become a part of a degree granting program if carefully planned and integrated with a sympathetic, local university social work department.

Where social work schools have a need for finding practical placements for students, arrangements can be made to provide these experiences in return for credits offered to staff members currently working within the house. These hours should enable staff members to at least begin to obtain the credits necessary for licensing.

Where experience in the field is necessary before certification, years spent working in a runaway program should be invaluable. However, it is sometimes necessary to find an individual with the proper credentials to provide the required supervision. When credit is given for prior experience establishing the mandatory number of years may be largely a matter of constructing creative descriptions of past jobs and duties performed.

One potential benefit flowing from professional licensure in some jurisdictions is the creation of a privileged relationship which can provide both program and client with additional confidentiality protections. While the alternative services movement has a history of providing its clients with services on a confidential basis, and although this policy is now codified in statute, there are circumstances in which pressure may be exerted upon staff to reveal client related information.

When newsmen and academic researchers are being called before grand juries and investigative subcommittees to disclose information of a highly confidential nature, there is no reason to believe that workers in runaway youth services will be exempt. The relationship between closing records by statute, and compelling testimony that may be based on those reports from individuals, has never been clear. From a reading of the Runaway Youth Act, it would seem that its provisions will not immunize an individual worker from being compelled to answer questions concerning a specific client and/or his family. Because this is true, the author has undertaken to explore a possible method of avoiding such disclosures: the use of evidentiary privileges.

In general, rules of privilege are established by statute in the various states. The underlying concept behind their creation is that society has benefited from the creation of certain relationships in which openness and honesty are paramount. When such a relationship exists certain protections from forced disclosures will be granted

if the social utility of the professional relationship is felt to outweigh society's interest in the correct disposition of litigation.

Wigmore, a foremost commentator on evidence, has established four conditions which must be satisfied in order to justify a privilege:

(1) the communications must originate in a confidence that they will not be disclosed;

(2) this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;

(3) the relation must be one which, in the opinion of the community, ought to be sedulously fostered;

(4) the injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

8 Wigmore, Evidence §2285 (McNaughton rev. 1961).

From this general background it is clear that there are certainly arguments to be made in favor of the creation of a privilege for those working within runaway shelters. In order to gain the confidence of the clients served, it is often necessary to assure the child and his family that information obtained will not be used against them in other actions. Because of a recognition that many similar circumstances exist in society at large, many states have begun to enact privileges protecting a wide range of people, including

social workers and counselors.

Alaska has allowed the communications between a psychologist or psychological associate and his patient to be privileged. Alaska Stat. §08.86.200 (Cum. Supp. '73). California has broadened the scope of the term "psychotherapist" so as to privilege the communications between clinical social workers, school psychologists and marriage, family and child counselors and their clients. Cal. Evid. Code §1014 (Cum. Supp. 1977).

Arkansas views as privileged the relationships between clients and registered social workers or master social workers as well as psychologists and psychological examiners. Ark. Stat. Ann. §71-2822 (Cum. Supp. 1975); Ark. Stat. Ann. §72-1516 (1957). Illinois also recognizes a certified social worker-client privilege. Ill. Ann. Stat. ch. 23, §5320 (Smith-Hurd 1968). Michigan extends a privilege to social worker-client communications, and broadens the definition of social worker to include social worker technicians--who can be qualified with only an associate degree or 2,000 hours of volunteer work. Mich. Stat. Ann. §18.365(14) (Cum. Supp. 1977); Mich. Stat. Ann. §18-365(5) (Cum. Supp. 1977). New York grants a privilege to certified social worker-client relationships, although this privilege may be of lesser scope than in other states. N.Y. Civ. Prac. Law §4508 (McKinney 1976). (See _In re Clear_, 296 N.Y.S.2d 184 (1969), _rev'd on other grounds sub nom._, _In re Klug_, 302 N.Y.S.2d 418 (1969).) _Clear_ held that even if a communication between a mother and social worker met the classic

requirements of confidentiality, the procedural safeguards under N.Y. Civ. Prac. Law §4508 would have to yield where the prevention of disclosure interfered with the substantive law set forth in Art. 6 of the Family Court Act, N.Y. Fam. Ct. Act §§600-663. (Article 6 of the Family Court Act comprehends the permanent termination of parental rights, guardianship and custody. However, Clear may or may not be construed to apply to other articles of the Family Court Act.)

Connecticut has created a separate privilege for confidential communications between professional school employees: i.e., nurses, teachers, counselors and administrators. Conn. Gen. Stat. Ann. §10-154(a) (1977). Pennsylvania has also recognized the confidentiality of student communications. Pa. Stat. Ann. tit.24, §13-1319 (Cum. Supp. 1977).

New Mexico has recently enacted a privilege protecting the communications by clients to juvenile probation officers and social services workers employed by the state department of health and social services. N.M. Stat. Ann. §20-4-509 Rule 509 (Interim Supp. 1976).

This brief summary of a few representative jurisdictions should give the reader an idea of the scope of the protection provided in some states. To find the statutes applicable in your own jurisdiction check the descriptive-word index of your state's statutes. The following is a list of the more successful descriptive words used to compile the survey:

Privileges
Privileged Communications
Privileged Information
Confidential Communications
Confidential Information
Evidence
Witnesses
Competency
Psychotherapist
Psychologist
Psychiatrist
Social Worker

(This is a suggested order for search as well.)

Unfortunately, at the present time, it seems to be the pervasive tendency of the judiciary to recognize only privileges which have been legislatively sanctioned. (See, McCormick's Handbook of the Law of Evidence, at §77, p.156 (2d ed., '72); Social Worker-Client Privilege, 65 Wash. U.L.Q. 362, at 372 and 388 n.130 (1965). However, there is a colorable argument, based on statutes requiring that certain records remain confidential, which can be made for judicially recognizing a social worker/counselor-client privilege. Although the following analysis employs Missouri's statutes, it has application to other jurisdictions by substituting the particular state's parallel provisions.

Missouri does not recognize by statute either a social worker-client or counselor-client privilege. But the state has passed two statutes, Mo. Ann. Stat. §211.231 (1959) and Mo. Ann. Stat. §211.321 (Cum. Supp. 1977), which prohibit the public dissemination of juvenile records and reports with specific exceptions. Similarly, the Federal Rules of Evidence do not recognize a privilege of this kind. But,

the Runaway Youth Act, 42 U.S.C.A. §§ 5701-5751 (Supp. 1976), contains two sections regulating the dissemination of records containing the identity of runaway youths. This information may only be released with parental consent to a limited number of third parties. See, 42 U.S.C.A. §§5712(6) and 5732 (Supp. 1976).

On the practical level, it can be argued that these statutes provide merely illusory protection if they only prohibit the revelation of written records and reports, but allow anyone with knowledge of their contents to testify and reveal in court their content. The legislative bodies have expressed a strong interest in keeping this information confidential by passing statutes of this type. This interest would be defeated by allowing anyone familiar with these records and reports to disclose their contents. In order to effectuate the state and federal policy as expressed in these statutes it is necessary to extend the statutes to include prohibition of the disclosure of the contents of written reports through the testimony of persons familiar with those reports. This type of finding by the courts would not be in the nature of a privilege, but could be viewed as statutory construction of existing law.

The Missouri and federal statutes cited above likewise provide the basis for an argument in support of an evidentiary privilege. The Wigmore requirements for establishing evidentiary privileges, discussed earlier, have been generally recognized by modern authorities. (See, e.g., State ex rel.

Haughland v. Smythe, 169 P.2d 706 (Wash. 1946); In re Clear, 296 N.Y.S.2d 184 (1969), rev'd on other grounds sub nom., In re Klug, 302 N.Y.S.2d 418 (1969); Humphrey v. Norden, 359 N.Y.S.2d 733 (1974); 1965 Wash. U.L.Q., supra at 366.) When deciding whether to create a privilege encompassing knowledge of the contents of juvenile court, social, and runaway shelter reports, the statutory provisions prohibiting public dissemination of certain records is of great significance. Congress and the state legislature by enacting these statutes have in effect determined that "confidentiality" of these records is necessary for the "full and satisfactory maintenance" of the social worker-client relationship. In addition, the legislature, as the voice of the community, has passed these statutes in order to "sedulously foster" the confidentiality which it believes is a necessary element of the social worker/counselor-client relationship. This relationship is in turn seen as a necessity if the juvenile court system and the runaway shelter program is to operate effectively.

Two of Wigmore's requirements remain to be met: first, do the communications originate in a confidence that they will not be disclosed; and second, would disclosure of these communications injure the relationship sought to be fostered to a greater extent than it would injure the correct disposition of the litigation. As noted above, legislative enactment of statutes which preclude public dissemination of juvenile court records and social reports would offer illusory protection if persons familiar with their content could

disclose that information when disclosure of the written records and reports themselves is prohibited.

It can be argued that the legislature, to the extent disclosure of records is prohibited by statute, intended that <u>any</u> disclosure of that information would injure the necessary confidentiality of those reports to a greater extent than it would benefit the correct disposition of litigation. Whether the reports themselves or testimony of witnesses familiar with their content were permitted the result would be the same: the confidentiality necessary to an effective counselor-client relationship would be destroyed. To promote the confidentiality necessary to a social worker/counselor-client relationship, the legislature in enacting these statutes has expressly withheld public disclosure of written records and reports. It is equally necessary to prohibit the testimony of witnesses familiar with these reports in order to insure the confidentiality of the social worker/counselor-client privilege.

The question of whether a communication is made upon a reliance that "they will not be disclosed" may be best answered on a case by case basis, for there may be communications which the client understands, believes, or intends not to be privileged. <u>See</u> 1965 Wash. U.L.Q., <u>supra</u> at 362. However, the legislature's recognition that information contained in juvenile court records and social reports should not be publicly divulged can be construed as presuming a "confidentiality" of all communications between the social

worker/counselor and client included in those reports. In any case, the question of whether a disclosure was made in confidence could be made the subject of formal proof with the burden on the party requesting disclosure to show a lack of confidence.

In addition to meeting Wigmore's four prerequisites to the recognition of a privilege, there exist policy reasons in support of establishing a social worker-client privilege. The social worker/counselor profession believes that the creation of a privilege is necessary to insure that confidentiality which is the basis of an effective relationship with the client. <u>See</u> 1965 Wash. U.L.Q., <u>supra</u> at 380.

The profession's argument stresses the importance of confidentiality as the basis of an effective social worker/counselor-client privilege. The profession believes "that confidentiality is 'necessary for effective casework service' because the social worker must often ascertain his client's innermost feelings about himself, his family and close friends, and the community." 1965 Wash. U.L.Q., <u>supra</u> at 380 (footnotes omitted). The social worker believes that disclosure often destroys the effective relation with the client as well as the relations of other social workers and clients. <u>See</u> 1965 Wash. U.L.Q., <u>supra</u> at 381 n.110 and 111. The ultimate result is the reluctance of clients to seek the assistance of social workers and runaway shelter counselors and, once having sought that help, their reluctance to

disclose necessary information. See 1965 Wash. U.L.Q., supra at 381 n.112; Legislative Hearings on S.2829, the "Runaway Youth Act," Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary, 92d Cong., 1st Sess. at 47 and 48 (1972) (Prepared Statement of Brian Slattery).

A privilege prohibiting the disclosure of information revealed to a social worker or counselor by his client would assure the client as well as the social worker or counselor of the confidentiality necessary to an effective relationship. Yet a privilege should not be recognized unless society believes the protection of that relationship is of greater importance than the availability to a court of information disclosed in the course of that relationship. This is the concern of Wigmore's four conditions. The statutory protection of juvenile court records and social reports, as argued above, supports the conclusion that the legislature has implicitly expressed its belief that the fostering of the relationship is of greater importance to society than the availability to a court of information disclosed in the course of that association.

A supportive argument to those proposed above, has emerged from recent court decisions involving the individual's right to privacy. In In re Lifshutz, 467 P.2d 557 (Cal. 1970), the California Supreme Court "suggested that the patient's interest in keeping confidential communications from public purview deserves constitutional protection as

being within one of the zones of privacy articulated by the United States Supreme Court in Griswold v. Connecticut [381 U.S. 479 (1965)]." 9 U.C.D.L. Rev. 477, at 486-87 (1976) (footnotes omitted).

In Lifshutz the patient had placed his mental condition in issue. On this basis, the court found the patient's right to privacy had been outweighed by the state's "substantial" interest in hearing the psychotherapist's testimony. Lifshutz at 568. However, the court did recognize that under other circumstances the patient's right to privacy would mandate constitutional protection.

In states which possess statutes, such as Missouri's, which prohibit public disclosure of juvenile court records and social reports, these acts as well as the Runaway Youth Act can be construed to express the legislature's recognition of the individual's right to privacy in this area. Once an individual's right to privacy is held in a protected status by Congress or a state's legislature it becomes easier for the court to invoke additional safeguards.

In Ravin v. State, 537 P.2d 494 (Alaska 1975), the concurring opinion of Justice Boochever, joined by Justice Connor, found a broader right to privacy under the Alaska Constitution than is provided by the United States Constitution. 537 P.2d at 514-15. This broader right to privacy was based on an amendment to the Alaska Constitution which expressly provided for a right to privacy not found in the United States Constitution. Although of less weight than a constitutional

amendment, statutes like Missouri's and the federal Runaway Youth Act can form the basis for an argument in support of a runaway's right to privacy in this area.

At the beginning of this section it was made clear that the courts are reluctant to recognize new evidentiary privileges without legislative direction. This may be an insurmountable prejudice to the recognition of a common-law social worker/ counselor-client privilege. However, there is at least one recent development in the law of evidence which may support the resurgence of the recognition of common-law privileges of all types.

The Federal Rules of Evidence became effective in 1976. As originally proposed by the Supreme Court's Advisory Committee, evidentiary privileges were to be limited to those specifically recognized in Rules 501 et seq. (See, Weinstein and Berger, Weinstein's Evidence at 501-21 to 501-24 [1976].) However, Congress vehemently reacted to this proposal and enacted only a general privilege rule: Federal Rule of Evidence 501. Fed. Rules Evid. Rule 501, 28 U.S.C.A. (1975). This general rule called for the development of privileges in the federal courts on a case by case basis where federal law provided the rule of decision on the issue invoking the privilege. See Weinstein's Evidence, supra at 501-12 to 501-20.5. Thus, Congress opened the way for federal courts to recognize, develop and create common-law privileges. This can be seen as a crack in the wall of resistance to judicially created privileges.

For the youth counselor in a runaway shelter the ability to assert a privileged relationship between himself and the client may some day be an invaluable shield against an investigatory body. While the privilege may be developed as was done here on the basis of the common-law reasons for privileges, protection is more likely to be afforded if created by statute. However where such enactments exist, only those falling within their definitions, usually requiring adherence to professional licensing standards, will qualify for protection.

Because of this difficulty thought might be given to ways in which the protections afforded one staff member may be extended to cover all the records within the program. If a licensed individual possessing a privilege has supervisory powers over records and the counseling relationships it is possible to extend the privilege to others as agents of the licensed staff member. This theory has been previously recognized in the context of lawyers and their employees.

The same principle may, in some cases, be applied in jurisdictions where no privilege exists for social workers or counselors. Almost all states privilege communications between doctors, lawyers, clergymen and those coming to them for advice. If a shelter has an association with one of these professionals it may be possible to employ their privilege to protect many of the activities of a program.

As is probably apparent, many of the concerns discussed

vary considerably from state to state and depend on technical legal judgments. For these reasons it is wise for a program to consult its attorney before adopting a course of action.

BIBLIOGRAPHY

Building Officials and Code Administrators International, Inc. Basic Building Code. Chicago: 1975.

Building Officials and Code Administrators International, Inc. Basic Fire Prevention Code. Chicago: 1975.

Cleary, Edward, ed. McCormick's Handbook of the Law of Evidence. St. Paul, Minn.: West Publishing Co., 1972.

Comment, Limitations on California Professional Privileges: Waiver Principles and the Policies They Promote, 9 U.C.D.L. Rev. 477 (1976).

Comment, Privileged Communications: The Federal Rules of Evidence and Indiana Law; Who's Got A Secret?, 9 Ind. L. Rev. 645 (1976).

The Committee on Federal Agency Evaluation Research Assembly of Behavioral and Social Sciences National Research Council. Protecting Individual Privacy in Evaluation Research. Washington: 1975.

Federal Housing Administration. Minimum Property Standards, Vol. 2, For Multifamily Housing. Washington: 1973.

Federal Housing Administration. Minimum Property Standards, Vol. 1, One and Two Family Dwellings. Washington: 1973.

Field, Charles, and Rivkin, Steven. The Building Code Burden. Lexington, Mass.: Lexington Books, 1975.

International Conference of Building Officials. Uniform Building Code. Whittier, Cal.: 1976.

International Conference of Building Officials. Uniform Fire Code. Whittier, Cal.: 1976.

International Conference of Building Officials. Uniform Housing Code. Whittier, Cal.: 1976.

McKinnis, Juvenile Social Records and Criminal Discovery, 35 Mo. L. Rev. 113 (1970).

National Fire Protection Association. National Fire Codes. New York: 1977.

National Fire Protection Association. _National Electrical Code_. New York: 1975.

Note, _The Social Worker-Client Relationship and Privileged Communications_, 1965 Wash. U.L.Q. 362 (1965).

Weinstein, Jack and Berger, Margaret. _Weinstein's Evidence_. New York: Mathew Bender, 1976.

CHAPTER THREE

LAW ENFORCEMENT AGENCIES AND RUNAWAY SHELTERS

In the introductory section of this chapter it is important to spell out some differences between the "law" as it is articulated in criminal and juvenile statutes, and as it is enforced by local law enforcement agencies. As anyone who regularly deals with the problems of juveniles knows, the police exercise an incredible amount of discretion with respect to minors. When two children are apprehended for the same offense one may be immediately released to parents, while the other may remain in detention until a hearing is held, often as long as a week later.

What are the factors which cause such differential treatment? Often the statutes which define criminal conduct, whether it be juvenile or adult, are phrased in such broad terms as to be capable of application to many individuals under a wide variety of circumstances. While an individual act technically violates one of these provisions, the chances of prosecution may be slight when the action has generally gained acceptance within a particular community. For example, laws prohibiting gambling are rarely enforced against church sponsored raffles and bingo games.

Most police forces consider themselves to be understaffed; concomitantly, many illegal acts which are not considered serious threats to public peace or morals escape prosecution. Typical of this phenomenona is the response of many police

departments to the victimless crimes of marijuana possession and prostitution. Informal adjustment by police departments is also encouraged in areas where crowded court dockets make the probability of prompt adjudications slim.

Overlaid upon all of these factors, existing in both adult and juvenile systems, is the added concept, paramount in the juvenile system, of individualized treatment and rehabilitation to benefit the minor. A youth apprehended for the first time while spray painting words on a school building may be charged with destruction of public property, but when middle-class parents promise to repair the damage the child is likely to be released after a stern lecture.

The great amount of discretion exercised, coupled with notions of individualized justice, make any assessment of the likelihood of imposing criminal liability in a given situation uncertain at best. It is with these practical concerns in mind that this chapter attempts to discuss the actions of law enforcement agencies having a significant impact upon runaway shelters and their operation.

In Section A the criminal liability of staff under statutes prohibiting contributing to the delinquency of minors or harboring such individuals is considered. Statutory duties under child abuse reporting legislation are appraised and the special responsibilities of dealing with the runaway from another state are mentioned.

Section B deals with the problems police officers may

have in attempting to function under the statutory provisions of a juvenile code while directing children to the services offered in runaway shelters. Sample language which could be used to amend codes currently causing difficulties is suggested in Section C; a comparison between that proposal and legislation later adopted is made.

A. Criminal Liability of Staff Members

Most jurisdictions currently have laws prohibiting any person from contributing to the delinquency of a minor. In addition, many statutes provide penalities for the sheltering or "harboring" of a minor. Herbert Beaser, in his monograph The Legal Status of Runaway Children, devotes a chapter to the discussion of these statutes and their effect on those who operate runaway programs.

He notes that the broad phraseology employed by such statutes makes them particularly susceptible to void-for-vagueness challenges. Simply stated, this legal theory invalidates any statute imposing criminal penalties where the ordinary person would be unable to ascertain what type of conduct is permitted or prohibited thereunder.

Although no court has struck down a "contributing to the delinquency of a minor" law on vagueness grounds, Beaser points out the difficulties faced by runaway program staff in determining their legal obligations under these loosely-worded statutes. Case law in this area is sparse, but at least one state court has absolved a program from liability. It held that the giving of shelter by a church to a runaway youth was not a violation of the statute since the church did not induce the child to run away, but was merely providing care for the youngster. State v. Macri, 498 P.2d 355 (Utah 1972).

Because Beaser's work is probably found in the libraries of most shelters, no attempt has been made here to duplicate

the information contained therein. The counselor is reminded, however, that if a youth residing in the house is apprehended by police for possessing alcohol or illicit drugs, or engaging in prohibited sexual activity there remains a possibility of prosecution for both staff and administrators. This concern should give impetus to strict enforcement of house rules prohibiting such conduct within the shelter.

The author views as significant the fact that additional judicial decisions involving runaway programs have not appeared since the earlier work. With the number of shelters increasing dramatically in the past few years, it would seem that if prosecution were likely, it would have occurred by now. This lack of case law is perhaps best explained by the existence of the discretionary law enforcement powers discussed in the introduction to this chapter.

Because runaway shelters attempt to contact parents almost immediately upon the admission of a child, the number of complaints issuing from parents should be minimal. Additionally, the police force who are called upon to enforce the statutes against the staff have, in most cases, entered into agreements with the shelters delineating acceptable methods of operation. (See Chapter Four for a discussion of such agreements.) Both of these practices, which are mandated by the regulations promulgated pursuant to the Runaway Youth Act, and in many cases by applicable state statutes, do much to minimize friction between police and the shelters.

Despite the generally good relations existing between police and runaway programs it is important to note two situations in which the shelter may be under additional responsibilities enforced by criminal penalties. In some jurisdictions before a runaway from another state may be served the legal authorities of that home state must be contacted. Such provisions may be used to facilitate the return of a child under the Interstate Compact on Juveniles. If this occurs the shelter will wish to consult Chapter Five which outlines actions that can be taken either to retain a youth within the program's jurisdiction or to expedite a return to the home state. To determine a program's duties a check of state law is advised.

A second problem posing potential liability for shelter and staff involves the client child who may be the victim of child abuse or neglect. Presently over thirty states impose criminal liability for failure to report child abuse, although individual statutes vary significantly in both to whom the duty adheres and in which actions must be reported. (The table contained in the appendix to Chapter Four can be used to check the law of the individual state in which a program is located.)

Because the issue of criminal liability under child abuse reporting statutes is fairly complex and may overlap with civil liability, one consideration of this material is included in Chapter Four. It would be wise to consult this

discussion if children who appear to suffer from child abuse or neglect become clients.

In most situations in which the police and runaway shelters maintain a cordial association the likelihood of criminal prosecution seems slim. Attention must always be given, however, to insure that statutory requirements are met when criminal enforcement remains a possibility.

B. Apprehending Youth

While the informality of juvenile courts has often been cited as one of its strong points, in the wake of the landmark decision of In re Gault, 387 U.S. 1 (1967), there followed a movement towards the implementation of procedural regularity in the juvenile justice system. Since discretion is only as benign as the most repressive of the individuals who exercise it, many juvenile codes began to specify with great detail exactly what procedures were to be followed at each step along the way.

Although there is no stage in juvenile proceedings exactly akin to the arrest process, most juvenile court statutes make reference to procedures to be followed when taking a child into custody. They typically outline a number of steps which must be taken once the child has been picked up. For example, Sheridan's Legislative Guide for Drafting Family and Juvenile Court Acts, U.S. Department of Health, Education and Welfare (1968), provides at §15:

> (a) A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:
>
> (1) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under Section 14; or
>
> (2) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which required prompt treatment. He shall promptly give written notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. . . .

Because of duties imposed by this type of statute, law enforcement authorities may feel that they are not free to bring a child directly to a shelter without first obtaining court approval. Indeed, the police officer could conceivably incur civil liability for false arrest or imprisonment for violating the provisions governing the handling of juveniles.

There are nevertheless, even under such statutes, ways in which a police officer who actually wants to divert a child to a runaway shelter may do so without exposing himself to civil liability. Because the law's terms apply to those situations in which the youth is "taken into custody," all the officer must do is not exercise the degree of control necessary to override the youth's free will.

Advice to a youngster that a shelter exists where those without a place to sleep or eat might go, could hardly be considered the exercise of custodial control. Other officers may choose to actually offer to deliver a child to a shelter when the youth expresses a desire to be taken there. All of these actions would fall well within the normal bounds of police discretion and are the practical methods by which an officer, convinced of the value of a program, will take advantage of it.

As already discussed, the exercise of discretion in the juvenile justice system is not unusual. It has been the opinion of both the most strident civil libertarians and the heads of police forces, as expressed in a book published by

the International Association of Chiefs of Police, that the bounds of the juvenile justice system should be circumscribed.

In Juvenile Justice Administration, authors Richard Kobetz and Betty Bosarge propose that certain guidelines be established within which police officers should make their decisions. They cite at least four jurisdictions which have adopted standards to be used with respect to taking children into custody. (Kobetz and Bosarge, Juvenile Justice Administration 149 [1973]).

Quoting from the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 82 (1967), they outline numerous problems which can arise where police discretion is unfettered:

> Opportunities occur for illegal and even discriminatory results, for abuse of authority by the ill-intentioned, the prejudiced, the overzealous. Irrelevant, improper considerations--race, nonconformity, punitiveness, sentimentality, understaffing, over-burdening loads--may govern officials in their large personal exercise of discretion. The consequence may be not only injustice to the juvenile but diverson out of the formal channels of those whom the best interests of the community require to be dealt with through the formal adjudicatory and dispositional processes.

Perhaps in response to some of these criticisms numerous police forces are beginning to enact some regulations governing the detention of juveniles. If such actions are being taken in your community, care must be exercised to carefully inform the police of the existence of your house and the role it may play in providing temporary care for runaway children. Since many traditional service providers feel ill-equipped to serve these youth, your presence may be greeted

cordially. Encouraging the authorities to consider your shelter as a potential temporary placement for children may do much to establish your legitimacy with the community at large.

Unfortunately, there are some instances in which the police are not free to divert a child without adhering to the procedural requirements of the applicable juvenile code. Such situations arise when a juvenile court petition has already been filed against a youth by parents or other authorities. Likewise, if a requisition under the Interstate Compact on Juveniles is outstanding against a minor, he must be taken before the court immediately. (See Chapter Five, Section A for a description of procedures employed under the compact.)

Where the child will actually be taken into custody some other method of working within the confines of a code must be found. In some areas this can be accomplished by having a program designated a shelter as set forth in the statute. Since this may be dependent upon gaining the acceptance of the juvenile court judge, such measures may not always be practical. In these jurisdictions some consideration may possibly be given to legislative revision on a state-wide level. Suggestions for such actions are contained in Section C of this chapter.

C. Amendment to Juvenile Codes

As discussed fully in Section B of this chapter many juvenile codes present statutory roadblocks to the full use of runaway shelters. When police must take a child into custody because of an outstanding warrant they are generally required to bring the child before the court, if release is not made to the parents. This precludes any immediate diversion to a house, and may cause actual harm to the child, by the resulting stay in detention occasioned when a pick up is made at night or on the weekend.

Although it may be possible in some jurisdictions to circumvent the code difficulties by obtaining the approval of the court, such measures depend solely on the largess of the local judiciary. Some programs will be unsuccessful in gaining such endorsement, while others may choose not to be associated with the court in such a formal manner. Consequently, programs may wish to work towards legislative revision of the debilitating provisions.

In many areas these efforts will come at a most opportune time since a number of states are currently considering proposals to reform juvenile and family codes. These moves are made necessary by the present existence of juvenile statutes which predate the juvenile court revolution that followed the Gault decision. Additional impetus is lent to many states by the passage of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C.A. §§5601 to 5751 (West Supp. 1977).

CONTINUED

1 OF 3

This federal statute encourages states to make improvements in their treatment of juvenile offenders. A major thrust of the act is to separate juveniles from adults, and the more "sophisticated" delinquent from the status offender. Significant sums of money are available under the act, but legislative revision is needed to bring most jurisdictions into compliance.

The act specifies that states must:

> provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities.
> ...

42 U.S.C.A. §5633(12) (West Supp. 1977). This requirement has caused much attention to be focused on enactments dealing with status offenders and runaways.

In 1975 a proposal significantly altering the procedures to be followed in apprehending a runaway was introduced into the California assembly. Its major thrust establishes that the runaway who is detained be notified he may return to his parents or go to a runaway house where he will receive counseling and help in attempting a reconciliation with his parents. There is no requirement that the youth be taken before any representative of the court; rather the police will immediately transport the juvenile after his decision is made.

The relevant sections of California Assembly Bill 1819 (1975) are reprinted on the following page:

§800. For purposes of this part:

(a) Runaway youth means any person over the age of ten and under the age of seventeen years who has left home without the permission of his parent, who has remained away from home overnight or for a period of time longer than six hours, and whose parent has requested governmental assistance in his location and return home;

(b) Runaway house means a nonsecure shelter facility, public or private, providing temporary shelter services for runaway youth and mediating, counseling, and aftercare services to runaway youth and their parents.

§801. (a) Where the objective cricumstances surrounding the conduct and appearance of a minor give any peace officer reasonable cause to believe that the minor is or may be a runaway youth, the officer may require the minor to identify himself and to account for his presence at the place where he is encountered. If there is communication by telephone or radio between the place where the minor is encountered and police headquarters, the officer may detain the minor for not more than fifteen minutes in order to establish whether he is the subject of a warrant, requisition, or parental request for return. If there is no telephone or radio communication between the place where the minor is encountered and police headquarters, or if the minor refuses to identify himself, the minor may be transported to police headquarters. He may not be held for longer than fifteen minutes past the time of arrival at police headquarters, and if it is determined that he is not a runaway youth, he shall be offered transportation free of charge back to the place where he was first encountered.

(b) A peace officer may take into temporary custody any minor who is the subject of a warrant issued by a judge of the juvenile court which alleges the minor to be a runaway youth; or he may, without a warrant, take any minor into temporary custody where investigation pursuant to subdivision (a) has furnished reasonable cause to believe that the minor is a runaway youth.

(c) No minor who is taken into temporary custody or transported to police headquarters pursuant to this section shall be held in any police jail or lockup used for the detention of adults or minors

accused of criminal offenses; and no such minor shall be handcuffed or subjected to a search of his person or belongings unless objective and articulable circumstances justify a conclusion that the minor has a dangerous weapon and thereby poses an immediate threat to the physical safety of the officer if such measures were not employed which cannot be alleviated by any less onerous means.

§802. A peace officer who takes a minor into temporary custody as a runaway youth pursuant to Section 801 shall proceed as follows:

(a) If it is determined that the minor is a runaway youth, he shall first be asked whether he wishes to be returned to the custody of his parent.
   (1) If the minor indicates that he wishes to be returned to the custody of his parent, the officer shall proceed according to Section 804.
   (2) If the minor indicates that he does not wish to be returned to the custody of his parents, the officer shall deliver him forthwith to a runaway house if there is a runaway house within the county or available for use by the county. If there is no runaway house available, the minor shall be delivered forthwith to the probation officer.

(b) If it is determined that the minor is not a runaway youth, he shall be released forthwith, and shall be offered transportation free of charge to the place where he was first taken into custody.

§803. If the runaway youth wishes to be returned to his parent, the peace officer shall explain to him that before being returned, he has the right to reside for seven days in a runaway house during which time he will receive counseling and mediation will be attempted between him and his parents.

§804. If, after the admonition pursuant to Section 803, the runaway youth still wishes to be returned to his parent, the peace officer shall deliver him forthwith to his parent. If his parent resides beyond the jurisdiction of the official's law enforcement agency, or if his parent is not at home or cannot be located by the peace officer, he shall deliver the runaway youth to the

probation officer. If the peace officer delivers the runaway youth to his parent, he shall, as soon as possible thereafter, report the circumstances to a runaway house in the county where the parent resides, or if none exists, to the probation officer or other authority having responsibility for services to runaway youth and their families in the jurisdiction to which he is returned.

§805. When a runaway youth who wishes to be returned to his parent is delivered to the probation officer, he shall ensure that the runaway youth understands his rights under Section 803, and if he still wishes to be returned to his parent, the probation officer shall immediately contact his parent and arrange for transportation home. If the parent resides outside the state, transportation may be arranged pursuant to Article VI of the Interstate Compact on Juveniles. If the runaway youth cannot be returned to his parent immediately, the probation officer shall place him temporarily in a foster home or nonsecure facility upon his written promise that he will not run away, and the probation officer shall explain to him that a warrant of arrest may be issued for him if he runs away from such temporary foster or shelter care and that he thereafter may be held in secure detention pending transportation to his parent. When the runaway youth is returned to his parent pursuant to this section, the probation officer shall report the circumstances to a runaway house in the jurisdiction to which he is returned, or if none exists, to the probation officer or other authority having responsibility for services to runaway youth and their families in the jurisdiction to which he is returned.

§806.(a) If a runaway youth informs a peace officer or probation officer that he does not wish to return to his parent, such officer shall deliver the minor to a runaway house, if a runaway house is within or available to the county, and shall report the circumstances to the runaway house. The staff of the runaway house shall contact the parent, as soon as he can be located, by telephone, and shall if the parent is within the state admonish the parent and the runaway youth that the latter has the right to remain at the runaway house for seven days, that he will be subject to an arrest warrant if he runs away from the runaway house and may be held in secure detention thereafter pending delivery to this parent, that he will receive counseling during the seven day period, and that his parent may visit him

> at the runaway house during the seven day period. If the parent resides outside the state, the staff shall request his permission to allow the runaway youth to remain at the runaway house for up to seven days under the same arrangement. If the parent does not grant permission and the runaway youth still wishes not to return to his parent, the parent shall be advised to petition the appropriate court for a requisition pursuant to Article IV of the Interstate Compact on Juveniles, and the matter shall thereafter proceed according to Article IV thereof.
>
> (b) During any period of residence at a runaway house, the staff shall attempt to adjust and mediate the problems existing between the runaway youth and his parent.

Unfortunately this progressive piece of legislation, which placed significant power for self-determination in the hands of youth, failed to obtain the necessary votes for passage. Instead in 1976 California enacted Assembly Bill 3121 bringing the state into compliance with the Juvenile Justice Delinquency and Prevention Act by limiting detention of status offenders to shelter care facilities, crisis resolution homes or other nonsecure facilities. No significant changes, however, were made in the placement process so police and probation officers maintain almost unfettered discretion with respect to these decisions.

The prospects of obtaining major legislative revision in most states are not favorable. Powerful forces, including judges, police and probation officers are likely to align themselves against any effort to limit their authority to control youth. Indeed in California the few advances made in 1976 are likely to be eroded by what seems like almost certain pasage of Assembly Bill 958 by the 1977-78 legislative

session. This proposal would once again permit the detention of status offenders in secure facilities under a variety of circumstances, greatly increasing the placement options available.

In contrast to the sweeping reforms envisioned by the initial California proposal, attempts at much narrower revision of juvenile codes may meet with improved chances of success. To clearly allow police to place status offenders in runaway programs, amendment to restrictive codes like the model reproduced in the preceeding section may be achieved more simply by amending the first portion of Section 15:

Section 15 of the Code is amended to read:

> (a) A person taking a child into custody who is reasonably believed to have committed an act which would be criminal if committed by an adult with all reasonable speed and without first taking the child elsewhere, shall:
>
> (1) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under Section 14; or
>
> (2) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which required prompt treatment. He shall promptly give written notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. . . .

And by adding an additional portion which applies to the apprehension of status offenders:

(b) A person taking a child into custody who is reasonably believed to have committed an offense that would not be criminal if committed by an adult, with all reasonable speed and without first taking the child elsewhere, shall:

(1) release the child;

(2) release the child to his parents, guardian or other custodian if the child indicates his wish to be returned to their custody;

(3) bring the child to an available runaway house if the child indicates he does not wish to be returned to the custody of his parent or guardian;

(4) bring the child to a shelter care facility or other nonsecure facility if the child can not be disposed of under (1) or (2) and no available runaway house exists under (3).

While this statute allows police to maintain the authority to dispose of children as they deem best, it does allow them to utilize the community resources currently in existence. Such modest changes are likely to result in less organized opposition thereby increasing the possibilities of adoption by legislatures.

Individual modifications will have to be made to adapt the provisions for use in a particular jurisdiction, but they provide a starting point for such efforts. There are a number of publications included both in the chapter bibliography and the longer annotated listing which will be of aid to those attempting legislative revision; reference should be made to these sources.

BIBLIOGRAPHY

Beaser, Herbert. The Legal Status of Runaway Children, Washington: Educational Systems Corporation 1975.

Kobetz, Robert and Bosarge, Betty. Juvenile Justice Administration Gaithersburg, Md.: International Association of Chiefs of Police 1973.

National Conference on Juvenile Court Reform: Legislative Advocacy. Conference Materials. St. Louis: 1976.

National Juvenile Law Center. Law and Tactics in Juvenile Cases, 2nd ed. §§4.1 to 4.4. St. Louis: 1974.

Piersma, Ganousis, and Kramer, The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act, 20 St. Louis U.L.J. 1 (1975).

CHAPTER FOUR

CIVIL LIABILITY OF STAFF AND SHELTER

As was discussed in the introductory sections of Chapter Three which dealt with concerns arising under the criminal law, it is vital to distinguish between that which is technically the law and the practical way in which it will be implemented. All people possess certain rights which unfortunately often overlap causing conflicts. It is the lawyer's function to assert the rights of his particular client, while opposing counsel presents the counterview of the matter in controversy. The courts, through judges and juries, resolve these differences, in reality often giving a little to either side.

When the lawyer is presented with the classic question "Can I sue?" his most common answer will be "yes, but. . ." Because of the myriad number of rights that people possess, a legal basis can generally be found for the assertion of most any claim. Whether this claim will overcome the defenses of another party is usually a different question; even more crucial is whether an adequate remedy can be fashioned by the judgment of the court and then recovered or enforced against the defendant.

This last criterion will often be the most important in deciding to pursue legal action, and a complete answer will really have two parts. If money damages are sought, the defendant's resources from which any award must be satisfied are a primary consideration. Legal action against many

runaway programs and their counselors may be circumvented because of the unlikelihood that a significant sum of money will ever be recovered.

A second factor of at least equal importance is the probability that a substantial verdict will be assessed against the defendant. The plaintiff must rely on judge or jury to determine not only liability, but also to place a dollar value on the injury sustained. Since such decisions are necessarily subjective, the personal feelings and prejudices of the decision maker will often enter into the deliberations.

Where a defendant represents an unpopular faction in the community, he may entertain substantial doubts about maintaining a successful defense. Conversely, a clearly liable defendant who presents an appealing figure may escape with a modest judgment against himself. As in so many other issues of concern to programs, the interest and support of the community may largely immunize a shelter from fear of civil suit.

This chapter is divided into two sections. The first deals with the staff and program's potential civil liability for tortious conduct: personal or property damage inflicted upon another usually through negligence. Basic common law negligence theories for harm that may befall a client are outlined and methods of immunizing staff and program are set forth.

The possibilities of suit for interference with parental

rights is discussed, along with the potential protections offered by court orders and agreements. Since the use of these instruments may have serious ramifications for both parent and child some precautionary advice is given.

Because many of the youth seen in runaway programs may be present or potential victims of child abuse the likelihood of judicial action under state child abuse reporting statutes is addressed. Both civil and criminal liability is presented as the issues overlap significantly.

Section B of this chapter describes the confidentiality provisions of the Runaway Youth Act and other statutes which may impose similar duties upon staff members and the program itself. While most of these provisions do not currently impose civil liability upon those who violate them, there may be implied statutory remedies among the possibilities for enforcement. Consideration is also given to situations in which a conflicting responsibility to communicate privileged information may arise.

A. General Civil Liability

With the growing acceptance of runaway shelters, programs and staff should feel less apprehensive about having criminal prosecutions brought against them. Irate parents, however, may still feel the need to retaliate against programs which provide a shelter for their troubled children in time of crisis. Recognizing that problems may arise both under the criminal and civil law, the federal Runaway Youth Act specifically required that shelters make efforts to contact parents or relatives of the children they serve. 42 U.S.C.A. §5712(b)(3) (Supp. 1977).

Regulations, promulgated by HEW and published at 45 C.F.R. §1351.14(1) (1977), require the house to contact the youth's parents, legal guardian or relatives preferably within twenty-four hours, but no more than seventy-two hours, following the time of the child's admission into the runaway house. If applicable state laws require more immediate action, they will override these provisions.

Where state statute requires parental consent to the provision of temporary housing, shelters must refuse the admission of minors when permission cannot be obtained. Strenuous efforts will be made to convince parents to allow their children to remain within a program, but such efforts may not be met with success. Naturally this causes a great amount of concern to both shelter and child, so in an effort to avoid these difficulties many programs have formed alliances with local juvenile courts and/or police departments.

Parents generally have an almost unfettered right to the companionship, care, custody and control of their children. This right has been recognized as rising to a constitutional level by the Supreme Court of the United States, which deemed it "essential," Meyer v. Nebraska, 262 U.S. 390, 399 (1923), recognized it as one of the "basic civil rights of man", Skinner v. Oklahoma, 316 U.S. 535, 541 (1942), and a right "far more precious. . .than property rights", May v. Anderson, 345 U.S. 528, 533 (1953). Consequently, it may only be infringed upon a showing of an overriding state interest.

Such a concern can be demonstrated by the state when acting in its capacity as parens patriae it intervenes for the protection of the child or in the interests of society. Juvenile codes typically set out the grounds upon which such interference is authorized as where:

(a) a child has committed an act that would be a crime if done by an adult;

(b) a child has committed an act which, although not forbidden to adults, is prohibited to children (status offenses); and

(c) a parent has failed to provide the necessary care and control of its offspring.

Hence, any action taken by a juvenile court that impinges upon the parental rights must be bottomed on one of the foregoing conditions.

Where agreements have been negotiated between runaway shelters and the courts, they most often provide for simplified procedures by which a house may seek to have a petition filed alleging one of the statutory provisions. Reprinted below is a sample agreement setting forth the steps that are to be taken when a youth enters the house:

> The following is a summary of guidelines for holding runaways which has been agreed upon by this Court and the Board for the House.
>
> The parents of runaways who come to the House will be contacted and advised of their child's whereabouts within 24 hours of the runaway arriving at the House. Permission for the child to stay will be requested for those cases where an immediate return home is not workable. When permission is given, no legal question arises.
>
> When parental permission is denied, the legal issues will be resolved in the following manner:
>
> 1. If the incident occurs during the hours of 8:00 a.m. to 12:00 p.m., the House worker will call the intake office of the Court and set up an immediate appointment. The intake worker will hear all sides of the case and will decide whether the Court favors return home or a brief stay at the House. If deemed necessary, a detention order for the child to stay at the House may be issued. If the child is to stay at the House and the parents wish to appeal the counselor's decision, the parents will be notified that they may file a petition the next working day and a hearing will be held before a judge.
>
> 2. If the incident occurs when court is closed, the House has court approval to keep the runaway without parental permission, and will do the following:
>
>   a. immediately notify the parents that they may file a petition the next working day and a hearing will be held before a judge;

b. immediately notify the police that the runaway is at the House with the permission of the Court;

c. the next working day, notify the intake office of the Court by 9:00 a.m. that the runaway is at the House and arrange for an appointment.

If the runaway has already been determined to be in the purview of the Juvenile Court, the House will do the following:

1. If the incident occurs during the hours of 8:00 a.m. to 12:00 p.m. on a working day, the House worker will immediately call the assigned probation counselor, investigator, or intake officer and notify him of the child's whereabouts. The court worker will make the determination about whether or not the child is to stay at the House.

2. If the incident occurs when court is closed, the House will notify the assigned probation counselor, investigator or intake officer as soon as possible, but definitely by 9:00 a.m. the next working day, of the child's whereabouts. Until a determination is made by a court worker, the House may keep the runaway at the House.

The major problem with using such procedures is that they may have serious ramifications in the future for both parent and child. If a petition is filed against the child alleging delinquent acts or the commission of status offenses the juvenile court may take direct action against the child resulting in some type of supervision. Even when the charges are eventually dismissed, if the child comes before the court again the earlier record may surface with a negative impact on the judge.

Petitions filed against parents alleging neglectful treatment of a child may, of course, have serious effects

upon their rights to care for the youth. While an individual in the midst of a crisis situation may not wish to return to a parent's home, his feelings may have altered radically by the time of the hearing or a few months later when the impact of his decision is felt. Because of the potentially damaging long term results, such court interference should probably be undertaken only as a last resort when all other methods of voluntary persuasion have failed.

Many programs clothe themselves with further protection by having the parent or guardian consent in writing to the juvenile's admission to the house. Such agreements may be part of a housing "contract" which youth and staff enter into as part of the counseling program, or it may be a separate consent form executed by the parent. In either case its use may help a project demonstrate that parental consent had been secured if a question were to arise later. It further serves to remind the parents of their continuing responsibilities to and for the child presently out of their care.

Reproduced on the following page is a sample consent form:

I give permission for my son or daughter ____________,
age _____, to be housed in the House and to be transported by the House staff when appropriate. I authorize the staff of the House to consent to emergency medical care on behalf of my child.

I realize that the House and its sponsoring agency is not responsible nor liable for any actions of or injury to my son or daughter. I also understand that the House is a temporary housing situation and full responsibility for my son or daughter shall remain with me.

(Signed)______________________________ (Date)__________

Another type of civil liablity which most programs will encounter at one time or another is the result of accidents which may occur while a child remains in the shelter. All individuals and organizations have the duty to maintain their premises in such a fashion as to protect one who ventures on it from injury. This means that if a child is injured while he is on the shelter's property or under the shelter's care, the parents may sue to obtain damages. If the house has maintained its premises in a negligent fashion an award may be made.

Because shelters have voluntarily undertaken to aid children, certain additional duties may be imposed upon them for failure to provide the necessary and proper supervision.

Since legally children are considered less responsible for their actions, liability for failure to supervise may be imposed when a youth injures himself through his own carelessness. Similar liability may arise when another client within the program inflicts the injury.

A California Attorney General's opinion advises that reponsiblity for the actions of a child normally vested in parents would not be extended to foster parents when the liability was created by statute. Op. No. CV 75/131 (March 5, 1976), 2 Fam. L. Rep. (BNA) 2387. Unfortunately this opinion specifically states that no consideration was given to the possibility of finding liability under general principles of law. Hence, it is likely that a program would be held responsible for injuries caused by a client if inadequate supervision could be shown.

Occasionally a project will try to absolve itself from liability by having parents execute release of liability forms. Once an individual or organization has assumed duties with respect to a child, the signing of releases has been generally held to have had no effect on limiting liability for negligent acts which result in injury or loss.

When a shelter is alleged to have acted negligently, it will wish to show strict adherence to appropriate standards of care and supervision. In states with detailed licensing requirements enforced by periodic monitoring the process will be simplified. (As mentioned in Section A of Chapter

Two, this may be an argument in favor of seeking a license where not required by law.)

Programs in areas with no formalized system of regulation would do well to institute their own extensive rules and guidelines for operation. By showing their existence and enforcement a shelter can hope to prove that it acted reasonably in providing care or supervision of an individual.

Regardless of other steps taken to limit the liability of a projec. 't is imperative that insurance coverage be obtained for both staff and shelter. The limits of your liability coverage must be sufficient to compensate a plaintiff for serious injury or even death. Likewise care should be taken to ensure the policy includes coverage for injuries which may be caused by shelter residents.

Once a program has protected itself in this manner it may wish to consider malpractice insurance for its counselors. (With the increasing professionalism seen in programs it is logical to assume that suits alleging malpractice against counselors cannot be far behind.) For the programs which have considered this option, most have found it prohibitively expensive. Instead many take care to deny that they offer any form of "counseling" or "treatment" failure of which could generate liability, but rather describe their efforts by explaining they "help" people. If malpractice becomes an important issue it would be wise to consult both your lawyer and an insurance agent, as the important factors are a mixture of legal and practical concerns.

As mentioned elsewhere in this work, many of the youth seen in runaway shelters are present or potential victims of child abuse and neglect. Recent media coverage emphasizing some of the more sensational cases of child abuse has been reflected in public support for tough new child abuse reporting laws. These statutes in their "penality for failure to report" sections, threaten to expose the runaway counselor to whole new areas of potential liability, both civil and criminal.

Currently every statute in the nation requires physicians to report suspected cases of child abuse. The legislative trend is to extend the duty to report not only to other medical-care professionals (nurses, chiropractors, osteopaths and dentists), but to persons who, by virtue of their training, expertise, and close work with children, are supposedly able to recognize victims of child abuse. This latter group includes at a minimum religious practitioners, teachers, counselors, school principals, social workers, police officers, and day care, foster care and institutional workers. As is the case with medical professionals, the breach of an imposed duty to report creates for those listed in the statute a distinct possibility of exposure to some type of liability.

At present thirty-five states (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,

Virginia, Washington, Wisconsin) impose criminal liability for failure to report, five (Arkansas, Colorado, Iowa, Michigan, New York) impose civil liability, and fourteen (Alaska, Washington, D.C., Georgia, Hawaii, Idaho, Illinois, Massachusetts, Mississippi, North Carolina, North Dakota, Rhode Island, Virginia, West Virginia, Wyoming) provide for neither civil nor criminal liability.

However, even in the absence of a specific civil damages clause a court may permit a negligence action. Following judicial acceptance of the "battered child syndrome" as a clinical diagnosis, the failure of a physician to report was held to be an actionable wrong on general negligence principles. Landeros v. Flood, 551 P.2d 389 (Cal. 1976). Similarly, if it can be said that teachers, social workers and those working in runaway shelters have a common law duty to report suspected cases of the "battered child syndrome," failure to report would render them amenable to suit at well.

Traditionally, a duty to act has only been imposed when the relationship between parties is "of such a character that social policy justifies the imposition of a duty to act." W. Prosser, Law of Torts §56 (4th Ed. 1971). If after examining the relationship and the issues arising therefrom a court decides it would benefit society to impose a duty, it may do so. Whether courts will extend this duty so far as to include those who work in runaway shelters remains an open question in most jurisdictions.

Although the imposition of civil liability strictly on

a negligence basis may be uncertain, there is no doubt that those who fail to report when required by statute may have the appropriate civil or criminal penalty invoked against them. For this reason it is crucial that a check be made of state law to determine if the staff of a runaway shelter falls within the ambit of the reporting statute. An argument could be fashioned asserting that the staff member does not fall within the description of the persons required to report, but where the law uses terms like counselor or child care worker the chances of defending on that point seem slim.

Another point at which a defense might be fashioned involves the provisions describing those acts which must be reported. When an act specifies "suspected child abuse" one might assert that the term implies a medical diagnosis which a runaway project counselor is not competent to make. However, the level of certainty required before reporting is mandated in many jurisdictions is law; the duty is imposed as soon as the would-be reporter observes physical injury and forms the opinion that it was caused by other than accidental means. One court has already evidenced an intent to extend liability to non-medical personnel on the basis of similar language in the statute. Landeros v. Flood, 551 P.2d 389, 394 fn.8 (Cal. 1976).

Since the responsibilities imposed are broad and there appear to be no adequate methods to defend against a charge of failure to report, care must be exercised to guarantee

that those working in runaway shelters fully understand their duties under applicable state law. Important provisions include that which must be reported ("suspected child abuse" or "unexplained injury"), those persons upon whom the duty is placed, and those mechanisms which can be employed to enforce the responsibility. (For the reader's convenience the state code citations to the child abuse reporting statutes in the fifty states and the District of Columbia are contained in the appendix to this chapter.)

B. Problems of Confidentiality

Both the federal Runaway Youth Act, 42 U.S.C.A. §§5701 to 5751 (West Supp. 1977), and the regulations promulgated by HEW to enforce the act impose certain responsibilities on runaway shelters to keep their records of client related information confidential. As early as the application stage a project must be able to assure that:

> [R]ecords on individual youth will not be disclosed without the written consent of the youth and parents or legal guardian except to a court involved in the disposition of criminal charges against the youth or to another agency compiling statistical records. Disclosure of information to an agency compiling statistical records shall be in a non-personally identifiable form. In order for an agency compiling statistical records to obtain access to individual case records, such agency must document that it is conducting a bona fide research on or otherwise has a bona fide interest in runaway youth programs. Reports or other documents based on such statistical records shall not disclose the identity of individual youth. Youth under the supervision of the runaway house shall have the right to review their records; to correct a record or file a statement of disagreement; and to be apprised of the individuals who have reviewed their records. Procedures shall be established for the secure storage of records and for the training of project personnel regarding the protection of these rights.

45 C.F.R. §1351.14 (v) (1977). Further protection is afforded a participant in the program by the regulations requiring that youth and parental consent must be obtained before any identifiable client information is released and before any participation in research is approved:

> (a) Confidential Information. All information, including lists of names, addresses, photographs, and records of evaluation, obtained as to personal facts about individuals served by any runaway house assisted under the Act shall be held to be confidential and may not be disclosed without written consent of the youth and parent or legal guardian except as provided in §1351.14(v).

(b) Protection of rights of recipients.
(1) No youth shall be the subject of any research or experimentation under this part, other than routine testing and normal program evaluation, unless the youth and parent or legal guardian is informed and given an opportunity as of right to exempt such youth therefrom;
(2) No youth shall be subject to medical, psychiatric or psychological treatment under this part without the consent of the youth and parent or legal guardian unless otherwise permitted under State law.
(3) The foregoing provisions shall not apply if the Secretary finds that there is in State law a provision which is more protective of the rights of runaway youth.

45 C.F.R. §1351.34 (a) and (b) (1977).

Although the Act provides no enforcement mechanisms it is clear that initial funding will not be approved without the required assurances, and that continued support may be contingent upon compliance. Whether private damage actions might be maintained against individual programs or staff members for the wrongful dissemination of information remains unanswered.

While the responsibilities of staff members under the Runaway Youth Act are relatively clear, there are in most jurisdictions other laws imposing additional burdens on the actions of runaway house personnel. Because the overall purpose of the juvenile justice system is to provide the proper care and rehabilitation of those children who come before the courts, most juvenile codes contain extensive provisions assuring anonymity.

Generally the public is excluded from juvenile court hearings, the press is discouraged from printing any identifying

information about such hearings, and juvenile court and police records are closed from public scrutiny. Since shelter staff members will often find themselves participating in the juvenile court process on behalf of clients, it is vital to be aware of the relevant restrictions.

Many states have statutes which prohibit the public from attending juvenile court proceedings. Cal.Welf.&Inst.Code §346 (West Supp. 1977), limits attendance: "Unless requested by the minor. . .and any parent. . .present, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court." Such sections may actually cause problems for counselors by raising bars to their admittance, although with their intimate knowledge of the child and his problems they would normally be deemed to have the necessary interest in the case.

Almost all states have laws requiring that police and court records in juvenile cases shall be kept separate from the adult files and shall be closed to the public. Typical of the provisions is Missouri's juvenile court record statute, Mo. Ann. Stat. §211.321.1 (Vernon Supp. 1976), which provides that the records "as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having a legitimate interest therein."

The corresponding police files may only be inspected upon order of the court also. Mo. Ann. Stat. §211.321.2 (Vernon Supp. 1976).

If a runaway house becomes involved in working with a child with significant court contact, it is likely that at some point his court or police records will be open to the counselor. Copies of reports contained in these files may often find their way into the personal records of the staff member. When this occurs, the staff member may be subject to the original limitations contained in the statute.

Unlike the Runaway Youth Act, some statutes establishing these privacy limitations have also mandated enforcement mechanisms. The Missouri Juvenile Code specifies that any person who violates the provisions protecting police and juvenile court records is guilty of a misdemeanor. Mo. Ann. Stat. §211.431 (Vernon 1962). Other state laws rely upon the general contempt powers of the courts to discipline those who reveal confidential information. Pa. Stat. Ann. tit.11, §50-336 (Purdon Supp. 1977). Depending upon the applicable state laws, any of these mechanisms could theoretically be employed against an individual or program who, through carelessness or design, violates the state's confidentiality provisions.

A final factor which may be of importance when copies of police or court records are obtained is the state's provision for the expunction of juvenile records. Some jurisdictions mandate it automatically when the child reaches

majority or when court proceedings are dismissed, Alaska Stat. §47.10.090(a) (1975), while others require a judicial hearing on the issue. Ariz. Rev. Stat. §8-247 (Supp. 1976). In either case, when an order is issued a program would probably wish to supply at least the same protections provided by statute, and may consequently want to initiate a procedure for the destruction of such records.

At least two different situations may arise in which a runaway program's responsibilities may come into conflict with the privacy protections just considered. As part of a shelter's normal counseling and aftercare services, referrals are frequently made to other individuals and agencies. Many times the proper treatment of a youth and family may depend upon a thorough knowledge of past experiences, and requests for sharing of client information among service providers are made.

It is crucial that the child and parents be told that such a request has been made and why. Care must be taken to ensure that both understand that any disclosure of records is totally voluntary. The use of a formal release or other type of consent to disclosure is advised both to signify the importance of the action and to protect the program.

Duties imposed under state child abuse reporting statutes are likely to present some problems incapable of simple resolution. As discussed at length in the preceeding section provisions of the individual acts vary significantly both as

to who must report and what must be related.

In some situations shelters may choose to limit inquiry into matters when it appears that a breach of the privacy protections will be necessary. Other times a report that is limited to the injured child's name and address might be made. The formulation of a program's policy regarding these issues involves many conflicting considerations; careful thought should be given these problems prior to a crisis arising.

The maintenance of strict confidentiality has long been a special concern of alternative service providers. While it is assumed that programs are presently providing safe-guards to insure protection of individual records, periodic examination of the methods employed is advised. The probability of having a civil judgment entered against an individual or shelter for violations of confidentiality provisions is probably remote except possibly for gross or intentional dissemination. Nevertheless, a review of the shelter's state laws and the federal guidelines may help to remind staff of the importance of confidentiality to youth and families in crisis.

STATE CODE CITATIONS

TO CHILD ABUSE REPORTING STATUTES

Alabama	Ala. Code tit.27, §§21 to 25 (Supp. 1973).
Alaska	Alaska Stat. §§47.17.010 to 47.17.070 (1975).
Arizona	Ariz. Rev. Stat. §§8-546.01 to 8-546.04, 13-842.0 (A-F) (Supp. 1976).
Arkansas	Ark. Stat. Ann. §§42-807 to 42-818 (Supp. 1975).
California	Cal. Penal Code §§11160 to 11162 (West Supp. 1976).
Colorado	Colo. Rev. Stat. §§19-10-101 to 19-10-115 (Supp. 1975).
Connecticut	Conn. Gen. Stat. Ann. §17-38a (West Supp. 1976).
Delaware	Del. Code tit.16, §§901 to 908 (1975).
District of Columbia	D.C. Code §§2-161 to 2-166 (1973).
Florida	Fla. Stat. Ann. §§827.07(1) to 827.07(10) (West Supp. 1976).
Georgia	Ga. Code Ann. §74-111 (Supp. 1976).
Hawaii	Hawaii Rev. Stat. §§350-1 to 350-5 (Supp. 1975).
Idaho	Idaho Code §§16-1601 to 16-1629 (1976).
Illinois	Ill. Ann. Stat. ch.23, §§2051 to 2061 (Smith-Hurd Supp. 1976).
Indiana	Ind. Code Ann. §§12-3-4.1-1 to 12-3-4.1-6 (Burns 1975).
Iowa	Iowa Code Ann. §§235A.1-235A.24 (West Supp. 1976).
Kansas	Kan. Stat. §§38-716 to 38.724 (Supp. 1975).
Kentucky	Ky. Rev. Stat. Ann. §§199.335, 199.990 (Baldwin Supp. 1976).
Louisiana	La. Rev. Stat. Ann. §14.403 (West Supp. 1976).
Maine	Me. Rev. Stat. tit.22, §§3851 to 3857 (Supp. 1975).
Maryland	Md. Ann. Code art.27, §35(a) (1976).

Massachusetts	Mass. Ann. Laws ch.119, §§51A to G (Michie/Law Co-op Supp. 1976).
Michigan	Mich. Comp. Laws Ann. §§722.621 to 722.636 (Supp. 1976).
Minnesota	Minn. Stat. Ann. §626.556 (West Supp. 1976).
Mississippi	Miss. Code Ann. §43-21-11(d) (Supp. 1973).
Missouri	Mo. Ann. Stat. §§210.110 to 210.165 (Vernon Supp. 1976).
Montana	Mont. Rev. Codes Ann. §§10-1300 to 10-1308 (Supp. 1975).
Nebraska	Neb. Rev. Stat. §§28-1501 to 28-1508 (1975).
Nevada	Nev. Rev. Stat. §§200.501 to 200.507 (1975).
New Hampshire	N. H. Rev. Stat. Ann. §§169:37 to 169:45 (Supp. 1975).
New Jersey	N. J. Stat. Ann. §§9:6-8.8 to 9:6-8.20 (West Supp. 1976).
New Mexico	N. M. Stat. Ann. §13-14-14.1 (1976).
New York	N. Y. Soc. Serv. Law §§411-a to 420 McKinney 1976).
North Carolina	N. C. Gen. Stat. §§110-115 to 110-122 Supp. 1975).
North Dakota	N. D. Cent. Code §§50-25.1-01 to 50-25.1-14 (Supp. 1975).
Ohio	Ohio Rev. Code Ann. §§2151.42.1, 2151.99(c) (Page Supp. 1976).
Oklahoma	Okla. Stat. Ann. tit.21, §§845 to 848 (West Supp. 1975).
Oregon	Or. Rev. Stat. §§418.740 to 418.775 (1975).
Pennsylvania	Pa. Stat. Ann. tit.11, §§2201 to 2212 (Purdon Supp. 1976).
Rhode Island	R. I. Gen. Laws §§40-11-1.1 to 40-11-10 (Supp. 1975).
South Carolina	S. C. Code §§20-310 to 20-310.6 (Cumm Supp. 1976).
South Dakota	S. D. Compiled Laws Ann. §§26-10-10 to 26-10-15 (Supp. 1976).

Tennessee	Tenn. Code Ann. §§37.1201 to 37.1212 (Supp. 1975).
Texas	Tex. Fam. Code Ann. tit.2, §§34.01 to 34.08, 35.04(c) (Vernon 1976 & Supp. 1976).
Utah	Utah Code Ann. §§55-16-1 to 55-16-7 (Supp. 1975).
Vermont	Vt. Stat. Ann. tit.13, §§1351 to 1355 (Supp. 1976).
Virginia	Va. Code §§63.1-248.2 to 63.1-248.6 (Supp. 1976).
Washington	Wash. Rev. Code Ann. §§26.44.010 to 26.44.090 (Supp. 1975).
West Virginia	W. Va. Code §§49-6A-1 to 49-6A-4 (1974).
Wisconsin	Wis. Stat. Ann. §48.981 (West Supp. 1975).
Wyoming	Wyo. Stat. §§14-28.7 to 14-28.13 (Supp. 1973).

BIBLIOGRAPHY

American Civil Liberties Union/Eastern Missouri Fund. Privacy Handbook. St. Louis: 1976.

Biederman, Child Abuse and the Right to Privacy: Resolving A Conflict of Interest, 1 Fam. L. Rep. 4029 (1975).

Brown, Controlling Child Abuse: Reporting Laws, 80 Case and Com. 10 (1975).

Brown, Fox, and Hubbard, Medical and Legal Aspects of the Battered Child Syndrome, 50 Chi.-Kent L. Rev. 45 (1973).

Committee on Federal Agency Evaluation Research Assembly of Behavioral and Social Sciences National Research Council. Protecting Individual Privacy in Evaluation Research. Washington: 1975.

Lehto, Civil Liability for Failing to Report Child Abuse, 1 Det. C. L. Rev. 135 (1977).

McCoid, The Battered Child and Other Assaults Upon the Family, 50 Minn. L. Rev. 1 (1965).

Restatement (Second) of Torts, §§321 to 324A (1977).

Sussman, Reporting Child Abuse: A Review of the Literature, 8 Fam. L. Q. 245 (1974).

Sussman, Alan and Cohen, Stephan. Reporting Child Abuse and Neglect: Guidelines for Legislation. Cambridge, Mass.: Ballinger Publishing Co., 1975.

CHAPTER FIVE

THE INTERSTATE COMPACT ON JUVENILES

The Interstate Compact on Juveniles, portions of which have been enacted in all states, is a statute which can be of critical importance to those working in runaway shelters. Simply stated, it provides a formal mechanism to return children who have left the state of their parent or guardian's residence and are now found in another jurisdiction, commonly called the asylum state. Funds to cover transportation are supplied by the state seeking the return of the child, generally denominated the demanding state.

The original compact as prepared by the Counsel of State Governments, with the assistance of the Legislative Drafting Research Fund of Columbia University, was given formal approval in 1955. This version, containing 15 articles or sections, has since been amended twice, once to include an article allowing for the speedy return of the juvenile runaway, and again to establish procedures for the return of a juvenile alleged to be delinquent.

The statute was originally proposed to accomplish four goals as enumerated in Article I: first, to provide for the cooperative supervision of delinquent juveniles on probation or parole; second, to effectuate the return from one state to another of delinquent juveniles who have escaped or absconded; third, to accomplish the return from one state to

another of non-delinquent juveniles who have run away from home; and fourth, to provide additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively. This article goes on to say, "In carrying out the provisions of this compact, the party states shall be guided by the non-criminal reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally." This language, and the fact that the compact is usually contained within the general provisions of the juvenile code of the state, allow us to read protection of the child through furthering his best interest into the purpose of the compact.

Those working with runaway youth are likely to come into contact with at least two, or as many as five, separate procedures under the interstate compact. The first, and perhaps most frequent procedure likely to involve a shelter is a request for the return of a youth pursuant to Article IV of the compact. This is a proceeding initiated to return a non-adjudicated delinquent who has run away without the consent of a parent.

A second proceeding with which a shelter may become involved is an Article V return, or an action to return a delinquent youth who has absconded from institutional custody or other court supervision.

Another kind of return can occur under Article VI of the compact, and it may be employed with either the runaway described in Article IV, or the absconder described in

Article V. This is a consensual return, agreed to by the juvenile and his counsel or guardian ad litem, and completed as soon as the state to which the juvenile is to be transported agrees to pay for the return.

A fourth type of action created by the compact is a proceeding under the optional Article XVI, currently in effect in sixteen states plus the District of Columbia. This supplemental agreement provides that a state must be willing to accept the return of a runaway upon the consent of the child and a finding by the court of the asylum state that return will be in the child's best interest.

Nineteen of the states and the District of Columbia have enacted an additional amendment to cover the juvenile who flees a state before the juvenile court exercises any control over the youth, but after the youth has committed a delinquent act that would normally bring the child within the jurisdiction of that court. These renditions, as such returns are called, may also be used against children found in runaway shelters.

Because the Interstate Compact on Juveniles is a voluntary agreement between states, in order to effectuate the return of a particular child to his place of residence, the two states involved must both be members of the compact. This means that both the state in which the runaway shelter is located and the state demanding the return of the child must be parties to the compact.

Because Article XVI and the Rendition Article have not been adopted by all the states their use is somewhat restricted.

With respect to returns under Article XVI, only exchanges between the following states may be accomplished: Arizona, Colorado, Florida, Idaho, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Ohio, Oklahoma, Pennsylvania, Texas, Vermont, West Virginia and the District of Columbia.

The Rendition Article has been adopted by Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Mexico, Oklahoma, Pennsylvania, Rhode Island, Texas, Vermont, West Virginia, and the District of Columbia. To use either of the supplementary provisions, or any other additional measures, both of the states involved must be a signatory to the section to be employed.

This chapter first, in Section A, acquaints the reader with the type of procedures usually established under Articles IV, V and VI. Each article is considered separately to simplify the reader's task in finding his way through the court process, and to identify the points in the system at which impact might be attempted.

In Section B methods to use in helping a child remain in an asylum state despite a demand under Article IV or V are discussed. Separate treatment is given the child alleged to be a delinquent whose return is sought under the Rendition Article. Since a demanding state may wish to maintain some control over a child remaining in an asylum state, the provisions for interstate supervision or actual placement are also outlined.

Finally, in Section C procedures which can aid in speeding the return process are explored. Additionally the potential ramifications, to both child and parent, of employing the compact's mechanisms are addressed.

A copy of the Interstate Compact on Juveniles as it appears in one state's statutes is included at the end of this chapter. Although the statutes may vary among the states in some small ways, this sample should serve as a model to clarify points as the reader proceeds through these materials. Also included in the appendix is a citation to the individual compacts as they appear within a state's code. Reference can then be made to the exact provisions as they apply within a particular jurisdiction.

A. Procedures Mandated by the Compact

Article IV provides that any person or agency entitled to the legal custody of a juvenile who has not been adjudged a delinquent but who has run away, may petition the appropriate court in the demanding state for the issuance of a requisition for return of the youth. The judge of the court receiving the application <u>may</u> hold a hearing to determine: (1) who is entitled to legal custody; (2) whether the juvenile has in fact run away without consent; (3) whether the juvenile is an emancipated minor; and (4) whether it is in the juvenile's best interest that he make a formal requisition to the appropriate court or executive authority in the asylum state.

If the judge determines either with or without a hearing that the return of the child is proper, he authorizes a written requisition for the child to be presented to a designated court or executive authority within the asylum state. The requisition itself must be executed in duplicate and signed by the judge. It <u>must contain</u> the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. One copy of this requisition is then filed with the compact administrator of the demanding state to remain on file.

Upon the receipt of a requisition demanding the return of a juvenile runaway, the court in the asylum state will order the juvenile's detention. Once the juvenile has been taken into custody, he shall only be turned over to an officer of the demanding state after he has been taken before a judge of the court in the asylum state. This judge shall inform him of the demand and may appoint counsel or a guardian ad litem for him.

If the court in the asylum state finds that the requisition is "in order" (contains the necessary findings of fact and conclusions as described above) it will turn the juvenile over to the authorities of the demanding state. The request may, however, be denied if there are any pending criminal charges or proceedings to have the minor adjudicated a delinquent in the asylum state.

Generally, a reasonable time will be fixed by the court of the asylum state for the purpose of testing the legality of the procedures followed by the demanding state. Although the compact does not contain a specific provision for a hearing on this issue, the time requirement appears to be a recognition that legal challenges may occur at this point.

In addition to the procedures just described, the authorities within a state to which a juvenile has fled may, upon reasonable information that a youth would come under the provisions of this article, take the juvenile into custody without a requisition. The youth shall then be

brought immediately before a judge who may appoint counsel or a guardian ad litem to represent his interests. A hearing shall be held to determine if sufficient cause exists to issue an order to hold the child for his own protection and welfare. The order may not extend past ninety days and is to allow the home state of the minor to execute a proper requisition for the youth.

Under this article, then, at least three separate decision making processes will occur. First, the parents must decide to request a return, then a judge in the child's home state, the demanding state, must make a determination that such move will be in the youth's best interest. Finally, a judge in the asylum state will review the action before a return is authorized. The possibility of intervention by both child and shelter at any of these points should be considered.

In addition to its many provisions dealing with the runaway child, the Interstate Compact on Juveniles provides the means by which a juvenile who has escaped or absconded from a state institution or other formal supervision may be returned to his state of origin with a minimum of difficulty. In contrast to the procedures outlined under Article IV of the compact, the procedures used for the return of an escapee or absconder are extremely simplified.

The person or authority from whose probation or parole supervision a delinquent youth has absconded, or from whose

institutional custody he has escaped, can make a written request for the child's return to the appropriate court or executive authority where the juvenile is believed to be located. The authority to whom it is addressed shall issue an order that the youth be taken into custody and detained. Upon detention, the child shall be taken before an appropriate judge who shall inform the youth of the demand for his return and who may appoint counsel or a guardian ad litem for him. If the request for return of the child is found to be in order by the judge, the juvenile shall be delivered to the person authorized to receive him on behalf of the demanding state.

As with Article IV returns, requisitions under this section are considered to be in order if they comply with the minimum procedural requirements outlined within the article. These include that the demand shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent, the circumstances of the breach of the terms of his probation or parole, or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent if known at the time the requisition is made. The requisition must be verified by affidavit, executed in duplicate, and be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the juvenile to probation or parole or to the legal custody of the institution or agency concerned. As under Article IV,

one copy of the requisition shall be filed with the compact administrator of the demanding state.

If the request is not found to be in order, the court may refuse to authorize the requested return. Where the request complies with the requirements just outlined, courts have often felt bound to honor it regardless of any mitigating circumstances that may exist. A reasonable time may be fixed, however, for testing the legality of the procedure.

The one general exception to the rule of automatic return occurs when there are criminal charges or a delinquency petition pending against the juvenile in the asylum state. Likewise, if the child is suspected of having committed such an act within the asylum state his return need not be accomplished without the consent of the state or until the pending actions are acted upon and disposed in accordance with the law and procedures of the asylum state.

As with juveniles who may come to the attention of the authorities under Article IV, Article V provides that upon reasonable information that a person is a delinquent juvenile who has absconded or escaped he may be taken into custody without a requisition. A child detained in this manner must be taken before a judge of the appropriate court who may appoint counsel or a guardian *ad litem*, and who shall determine after a hearing whether sufficient cause exists to hold the person. If the judge orders the child detained, the state of origin will then have ninety days within which to execute a formal request for a return of the minor.

Under this article, the chances to affect the decision whether or not to move a child are somewhat limited. The person or agency making the request for return of the child may be fairly isolated from any outside input on whether to demand a child's return. Efforts must probably be focused on the judge in the asylum state to exercise some discretion in making the return. Tactics for doing so are discussed at length in Section B.

Any child who is detained under either Article IV or Article V, when no request for return has been issued by the demanding state, may expedite a return to his home state by taking advantage of the provisions of Article VI which provide for a consensual return. This consent shall be given by the juvenile and his counsel or guardian *ad litem*, if one has been appointed, by executing a writing in the presence of a judge which states that the individual and his counsel consent to the return to the demanding state.

These consents may only be executed after the judge, in the presence of counsel, has informed the juvenile of his rights under the compact. Once completed, the consent is forwarded to and filed with the compact administrator of the asylum state. The judge will also direct that the juvenile be delivered to the duly accredited officer of the demanding state along with a copy of the consent.

Occasionally, the child will be allowed to return home on his own where permission has been received from the

demanding state. In these cases, the minor will be given a copy of the order authorizing his unaccompanied movement and the consent will be sent directly to the compact administrator of the demanding state.

When the child is in large measure determining his own fate through the consent mechanism, the shelter may play a crucial role. Since an attorney is not mandatory in these proceedings, the counselor may be the only person available to advise the child. Additionally, many of the lawyers appointed will only dimly be aware of the practical effects flowing from a return under the compact.

The youth should know of the potential consequences of a decision to return to his home state. If some type of legal action against him is possible or likely, the ramifications should be discussed. The reasons for consenting should be fully explored to uncover potential threats or promises which may have been made by those encouraging assent. Finally, the juvenile should be fully informed of his rights and how he may take advantage of them to protect his interests.

Because of the rapport generally existing between the clients and staff of shelters, counselors would seem to be excellent persons to convey the needed information to affected youths. The types of concerns which should be addressed are discussed at length in Section C.

B. Making the Compact Work to Retain a Child Within the State

The first point at which the worker in a runaway shelter may have a chance to influence a decision to return a child under the Interstate Compact on Juveniles may actually come before formal procedures have been set in motion. Since in some cases the runaway shelter will be the instrument for informing the parent or agency having custody of the child of the youth's whereabouts, often no request for return will have, as yet, been filed. In these instances, the worker's primary task may be to actually discourage the guardian of the child from making use of the compact's provisions.

While the compact does, in many cases, provide crucial services by paying for the return of children who might otherwise be forced to remain far from home, the cost of its use may be high to both parent and child in other than monetary terms. Parent and child must be made aware that once the youth is returned to the home state further proceedings may be exercised against one or both of them.

The child may be charged in juvenile court as a person in need of supervision (PINS) or, in states still denominating status offenders as delinquents under this more serious charge. Parents may face petitions alleging neglect for failure to provide proper supervision of their charge. The youth who has been on probation or parole may run the risk of a revocation of this status and, in many states, a concomitant finding of delinquency.

Additionally, although funds for a return are provided under this agreement, in many instances the return is not effectuated with any degree of speed. This may result in the child's being held in detention in the asylum state for prolonged periods of time. This consideration, coupled with the potential for court intervention upon the return of the child, may convince both parent and child that some means other than the compact can be found to facilitate the return of the child.

If the person or authority exercising custody over the child cannot be convinced that use of the compact is inappropriate, or if the process has already begun, the shelter may next become involved in Article IV returns at the stage where a requisition is requested in the juvenile court of the demanding state. Although participation at this point by a representative for the child is rare, if a hearing is held before a judge it would clearly be a critical stage for the child. This may be the only time at which the four factors listed in Section A, including the best interest of the child, are considered.

As is often the case with runaways, the decision to leave home may actually be a positive or reasonable action on the part of the youth. Assumption of a new life in an asylum state may place the child in a far healthier environment than that provided in the natural home. If the demanding court is to determine the best interests of the child, these

facts should be taken into consideration, as should other dispositional alternatives.

The question then arises as to who shall present this evidence. The counselor will generally not have access to these proceedings if they are going on in a jurisdiction outside his own state. Consequently someone else must be found to present the information.

It is suggested that the public defender or local legal services attorney who generally represents children before the particular juvenile court should be contacted. Since one of these organizations is usually required to represent children appearing before the juvenile courts, they should be willing to provide counsel. Often times, someone within one of the offices may have had prior contact with the child. Although the attorney may have some difficulties in representing the child in this long-distance fashion, the counselor should be able to provide help and facilitate the communication between the youth and lawyer.

Where possible the counselor may wish to appear and present testimony, outlining his views of the child's needs and potentials as well as his opinion of the course of action that would be most likely to serve the child's best interests. If traveling to a distant state is impossible, the court may be willing to accept some type of report or may have its own staff social worker make contact with the program. In many cases, informal contact by local programs with existing relationships with the court may facilitate

input from a distant project. Existing networks may be employed to further these goals.

Unfortunately, since under Article V there is no hearing in the demanding state, there will be no opportunity to contest these returns at this initial stage. Reliance must be placed on the possibility of obtaining a hearing in the asylum state.

As was spelled out in Section A of this chapter, whether the child is to be returned under an Article IV or Article V request, the youth will be taken before a judge in the asylum state who may appoint counsel, inform the child of the request for his return, and then determine if the requisition is in order. At this point the child should be encouraged to request that an attorney be appointed to represent him. Since such appointment is optional under the compact an affirmative request by the youth is advised.

Because of the deficiencies normally occurring at the hearing in the requisition state, lack of notice to the child and lack of an opportunity to be heard, the assertion is now being made in many cases that the child is entitled to a new finding on his best interests. An early case, Application of Chin, 246 N.Y.S.2d 306 (Sup. Ct. 1963) criticized this aspect of the requisition hearings. "[S]ome right must be given the juvenile to establish, if such is the case, that those who seek to have him returned to their custody in the state from which he has run away are not in fact acting

in his interests, but on the contrary seek to have him returned to a custody which will endanger his physical or moral welfare." 246 N.Y.S.2d at 313. The court in this case, however, found that the necessity for providing a forum was met by the availability of other legal remedies such as habeas corpus actions or petitions to the juvenile court.

Although the Chin case relied on the availability of supplementary remedies in the asylum state, two recent cases arising under Article V requests have placed the duty to inquire into the child's best interest directly on the judge who is considering the propriety of the requisition. Since this article requires no determination that a return be in the child's best interest, even in the demanding state, it is perhaps surprising that such a requirement was imposed upon the asylum state judge.

Such was the result in In re Welfare of Wiles, 547 P.2d 302 (Wash. App. 1976), and In the Matter of D.B.C., No. 13318, (Tenn. Juv. Ct., Memphis and Shelby County, July 22, 1976). In both cases the court reasoned that since the paramount consideration in all proceedings under the juvenile code is the welfare of the child, and since the Interstate Compact on Juveniles is part of the juvenile code expressing that concern, the judge considering the request is under a duty to make inquiry and exercise sound discretion to return the child only if it is in his or her best interests.

This concept was recently extended to cases arising under Article IV of the compact in the case of In the Matter of B.L., No. 5490, (Wash. Juv. Ct., Grays Harbor County, May 11, 1977). Although one determination of the child's best interest had already been made in the demanding state under Article IV, the court felt that where the child had had no opportunity to participate in the hearing, an opportunity had to be afforded.

Allowing the inquiry to come at the point at which the requisition is reviewed is a move toward judicial economy that would satisfy the objections raised in Application of Chin. If the courts refuse to honor such requests, however, some other judicial proceeding may be necessary such as habeas corpus.

Clearly, if the shelter's counselors and the child himself are interested in arguing for retaining the child in the asylum state, an ability to present evidence going to the best interest of the child is crucial. Where such right is gained, considerable evidence may be produced to show the advantages in continuing placement within the asylum state. In each of the cases discussed, the court went on to describe the considerable evidence presented justifying the retention of the child in the asylum state despite the request made by another jurisdiction.

Where arguments to present evidence on the best interest of the child fall on deaf ears, as in State ex rel. Juv. Dept.

of Multnomah Cty. v. Edwards, 516 P.2d 1303 (Or. App. 1973) (Article IV return), and In the Matter of G.C.S., 360 A.2d 498 (D.C. Ct. App. 1976) (Article V return), a program may still maneuver to keep a child within the asylum state by attacking the formalities of the requisition. Those formalities are described in detail in Section A of this chapter.

Returns have been denied under Article V where no certified copy of the findings and judgment were contained within the requisition and the order of commitment was not signed, State v. Ford, 376 S.W.2d 486 (Tenn. 1964), and where no jurat, seal, stamp or typed verification authenticating the document appeared on the requisition. In re Delrosa Hill, (D.C. Super. Ct., Aug. 25, 1972, Pov.L.Rep. ¶16, 233).

Although checking these technical requirements may be quite time consuming and frustrating, it is evident that the process may be rewarding. The fact that many compact administrators and judges are often rushed and over-worked may provide ample source for these technical difficulties that often can be turned to the advantage of a careful advocate.

Another technicality that may be turned to the advantage of the individual seeking to keep a child in an asylum state involves the age of the juvenile. Article IV and Article V contain different criteria by which to determine whether or not an individual comes under their provisions. Article IV relates to "juveniles" and in subsection (c) defines that term for use within the article as "any person who is a minor under the law of the state of residence of the parent."

Since the age at which a juvenile is no longer a minor varies considerably from state to state and is in the process of changing so rapidly, it may well be worth the time and trouble to check the applicable provisions.

In contrast, Article V, applies to "delinquent juveniles." This term is defined in Article III of the compact as an individual who "at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court." These time limitations generally differ from the age of majority in a given state, and may even differ between those under court supervision and under agency supervision. Again, a quick check of the applicable statutes may produce some important results.

Strikingly absent from the original compact and from the compacts in effect in most states is any provision covering a fact situation in which a juvenile allegedly commits a delinquent act but flees the state before a petition has been filed in the appropriate juvenile court. Article V only applies to a delinquent juvenile who has absconded or escaped from institutional custody or other supervision and hence, while conceivably covering a situation in which a petition has been filed, could not possibly cover the situation in which the petition is not filed until after the child flees the state. A request under Article IV may only be

made by the parent or other person having legal custody of the juvenile. If this individual cannot be convinced to make a request for the return of the child, the state cannot use the provision on its own. If the program believes that a juvenile may fall within this situation, its counselors should be particularly careful when examining the papers contained in the requisition. A state may try to circumvent the difficulties created by this loophole by specific and concerted non-compliance with the requirements of either section or by improperly alleging jurisdiction where none exits.

Some states have acted to plug this hole by adopting an amendment commonly called the Rendition Article, mentioned in the introduction to this chapter. The article, which is reprinted in full in the appendix to the chapter, allows that the provisions and procedures of Articles V and VI may be employed whether the petition charging delinquency was filed before or after the juvenile left the demanding state. Currently only Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Mexico, Oklahoma, Pennsylvania, Rhode Island, Texas, Vermont, West Virginia, and the District of Columbia have enacted the supplementary article. In order that it be employed against a child, both the demanding state and the asylum state must be contained in this list. If the Rendition Article is not available to the states wishing to transfer the juvenile, return of the juvenile

should not properly be authorized absent a demand by the parent or guardian of the child.

If return under the compact is not possible for the reasons just discussed, a state wishing to have a child returned may conceivably invoke the criminal extradition procedures. Whether or not this is proper in a particular case can be a technical, legal decision requiring the advise of counsel. In researching the question, the attorney will probably wish to consult an annotation on the extradition of juveniles found at 73 A.L.R.3d 700.

As part of a shelter's efforts to keep a child within the asylum state, a program may wish to make arrangements for the youth to become involved in some kind of alternative living situation. If the child is already under court or agency supervision, provisions can be made for the transfer of this supervision to an agency of the asylum state.

Article VII would seem to provide the procedure necessary for this transfer. The state originally having jurisdiction over the child requests the asylum state to accept the supervision of the youth, providing it with assistance in whatever investigation of the youth is deemed necessary. The receiving state may then agree to accept the child and the transfer is accomplished.

Where placement within a public institution is contemplated, Article X of the compact provides a mechanism. This section specifies who shall maintain jursidiction over the child,

establishes protections for the sending state, and requires that the juvenile be given a court hearing prior to the move. At this time, consent of the parent or guardian of the child must be secured. The clear implication of Article X is that if this type of placement is considered, the child would have to be removed to his home state for the necessary hearing.

Since Article X's application seems to be limited to public institutional placement another device may be employed to effectuate placement of a child in a private facility: the Interstate Compact on Child Placement. Presently thirty-nine states are parties to this agreement. To locate its provisions and determine if the applicable states have signed it, see the list of citations to this compact which follow the citations to the Interstate Compact on Juveniles.

It is this author's experience from meeting and working with individuals in the runaway movement that little instruction can be given in arguing for the child's best interests. In many instances counselors and children themselves have provided attorneys with valuable lessons in advocating for the rights of youth. This section, like the following one, has consequently centered on the points at which these arguments can be advanced and the practical considerations which affect the decisions which must be made, rather than on individual advocacy techniques.

C. Use of the Compact to Speed a Return Home

Perhaps the most valuable aspect of the Interstate Compact on Juveniles is that it provides a mechanism and funding source for the return of a child who has left home and who wishes to return. Unfortunately for many children the state of their residence is quite often dilatory in either making the initial request for their return or in supplying the supervision and payment generally required to effectuate this return. The original compact draftsman commented frankly on the problem: "[I]f. . . no requisition for the return of the juvenile [is] received by the asylum state, there is no procedure under the compact whereby that state can compel the state of his alleged origin to retake him. It is probably impossible to devise a procedure to compel a party state to live up to its agreement or to compel a party state to accept the return of a particular juvenile allegedly a runaway". Conference Resume, (Draftsman's Notes 8), in Counsel of State Governments, Handbook on Interstate Crime Control, 122-123 (rev. ed., 1955).

Despite these problems, once a program has decided that the interstate compact is the only vehicle by which a child will be able to return to his home, it will wish to make every effort to speed the move along. The most commonly used mechanism to accomplish this goal is Article VI, which, as described in Section A, allows the child to consent to his return prior to the filing of a request.

To assure that this consent is freely and intelligently made, the compact provides that an attorney may be appointed to represent the child and explain his rights to the youth. Because this protection is discretionary and, even when invoked, often illusory, the shelter should assume an active role in providing the child with counseling on the ramifications of possible actions open to him. As an individual genuinely concerned about the future of the child, the worker in a runaway shelter should do his best to provide the child with the information necessary to give an informed consent.

Just as the counselor was advised in Section B to inform both parent and child of the potential dangers inherent in utilizing the compact provisions, similar measures should be taken at this stage. The juvenile should be warned that the very act of running away is probably enough to invoke juvenile court jurisdiction over him. In most states such an action can result in an adjudication that the child is a person in need of supervision (PINS or MINS or CHINS), and lead to possible placement in a detention facility or on a supervisory status like probation. In many states such actions are still considered to be delinquent acts and consequently can result in even harsher penalties. Finally in a number of states with separate status offender classifications, a youth under supervision for a previous status offense, may be found delinquent for violating the conditions of his supervision. If the youth was adjudicated a status

offender in one of these states (e.g. South Carolina), a runaway charge can be a sufficient basis for a finding of delinquency.

In addition to measures taken against the child himself, a welfare department or juvenile court worker may decide that the juvenile's flight is an indication of problems at home. Petitions may be filed against his parents charging them with neglect, the end result of which may be that child and parent are either temporarily or permanently separated.

While none of these outcomes can be predicted with accuracy, the possibilities should be noted.

Whenever possible, the counselor should take care to discuss with the child all methods that might be available as possible vehicles for a return. It is not unusual to hear reports that a child has been told by a juvenile court worker that he will "never see his parents again" if he does not consent to his return under the compact. Such fear should be dispelled as much as possible with some realistic discussion of ways in which family or friends might be able to aid in moving the youth.

The child should likewise be cautioned that moves under the compact may involve a lengthy dealy. Because procedures from state to state vary greatly, no generalizations can accurately be made as to the actual length of time needed to effectuate a return. Those working in the field will probably be able to give an estimate to a child based upon past experience, but no prediction should be made that does not

include the caveat that the wait may be prolonged. The child should additionally be cautioned that it may be the local court's practice to keep a minor in juvenile court detention while awaiting the receipt of a requisition.

Occasionally a child may agree to sign a consent form because of a feeling of hopelessness and an attitude that the court will act with or without his consent. The youngster should be educated that there are methods to oppose returns under the compact, and that legal counsel is available to help the child. Since children are entitled to representation before juvenile courts, most public defender offices, legal aid or legal services organizations can provide the needed assistance. If a sympathetic attorney can be found it is often valuable to have this person talk to the child and discuss the youth's options.

After the juvenile has decided that he does indeed wish to consent to the procedure, the necessary forms must be executed in the presence of the judge. At this stage it is important that the program or the child's attorney be prepared to offer the court viable alternatives to placement of the youth in regularly designated detention facilities. Agreements may be reached by which the child can remain in the shelter or other non-secure facility while awaiting his return home.

Whether the child is to be returned under an Article IV or Article V provision, the shelter may wish to contact the necessary requesting party: the natural parent or legal custodian of the child, or the institution or agency from

which the youth has escaped or absconded. Occasionally these parties can be influenced to act quickly, hence speeding along the date of return. A reminder to these individuals that the child may be held in detention while waiting for the requisition may often be enough to produce a prompt response.

Similar measures may be taken with respect to a judge in the demanding state who may be sitting on these requests. Again reference to the conditions under which the child is being held, or to the rehabilitation which can only be provided in the home state, may often move the process along.

The other procedure existing under the compact to speed the return of runaways is the optional runaway article often times called Article XVI. This Article provides that when any child is brought before the court of an asylum state, and that court is willing to permit the child to return home, the asylum state may require the home state to take action immediately to determine the residence of the child and other jurisdictional facts. Upon a finding that the child is a resident of the home state, and thus subject to the jurisdiction of the court thereof, the home state shall authorize the return of the child within five days to the parent or custodian agency legally authorized to accept the child.

Unfortunately, only Arizona, Colorado, Florida, Idaho,

Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Ohio, Oklahoma, Pennsylvania, Texas, Vermont, West Virginia and the District of Columbia have enacted this additional article. Consequently, only returns between those states can be speeded along through its use. Where this mechanism exists, however, it is perhaps the most effective method of obtaining the prompt return of children.

While efforts are being made to increase the speed of these returns, supplementary actions may be taken to lessen the degree of harm occuring to the youth who languishes in the asylum state. Most importantly, attention should be given to the juvenile who is forced to remain in detention while awaiting the return. If a court cannot be convinced that another placement is adequate to both protect the child and insure his continued presence, legal action may be necessary.

The general trend in the juvenile justice area is to limit the use of detention wherever possible, utilizing the procedure only when clearly necessary. Typically statutes authorize detention only upon a finding by a court that the child is a danger to himself or the community, or that he is likely to flee the jurisdiction if allowed to remain in the custody of his parents. Many codes provide that hearings on the necessity for detention must occur within given periods of time, such as seventy-two hours. Other jurisdictions require that if no delinquency petition is filed within a

stated period, often three to five days, the child must likewise be released from custody. Finally, the period of time that a child may be kept in detention pending an adjudicatory hearing is often limited to thirty days with similar limitations on the length of time between adjudication and disposition.

Although none of these provisions apply generally to proceedings under the Interstate Compact on Juveniles, language in Article II that "all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures" would seem to support the argument that the state's juvenile code protections should apply.

In making an argument for the institution of procedural safeguards, if detention is being enforced, one should consult the juvenile codes both of the demanding state and the asylum state. Comparisons might be made and an argument for release formulated from the two sets of provisions. These arguments could be buttressed by reference to clauses existing within the two juvenile codes that express a preference for maintaining youth in environments as similar to parental care as possible.

Unfortunately, effectuating the speedy return of juveniles is perhaps the hardest task to accomplish under the compact. States are under very few duties and the process of involving state-wide administrators is always likely to cause delays. This problem alone may be enough to argue for a very limited

use of the interstate compact in effectuating the return of children to their homes.

INTERSTATE COMPACT ON JUVENILES

The contracting states solemnly agree:

ARTICLE I Findings and Purposes

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the non-criminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II Existing Rights and Remedies

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III Definitions

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged and who, at the time the provisions of this compact are

invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV Return of Runaways

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has runaway is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person

or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away,

there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this article shall be responsible for payment of the trasnportation costs of such return.

(c) That "juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V Return of Escapees and Absconders

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an instituion or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with

such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency.

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI Voluntary Return Procedure

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV(a) or article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII Cooperative Supervision of Probationers and Parolees

(a) That the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state", may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "receiving state", while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officer of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency,

he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII Responsibility for Costs

(a) That the provisions of articles IV(b), V(b) and VII(d) of this compact shall be be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV(b), V(b) or VII(d) of this compact.

ARTICLE IX Detention Practices

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X Supplementary Agreements

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for

the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI Acceptance of Federal and Other Aid

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any other purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII Compact Administrators

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII Execution of Compact

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV Renunciation

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party thereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

ARTICLE XV Severability

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XVI Additional Article

That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child", as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that

such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

AMENDMENT TO THE INTERSTATE COMPACT ON JUVENILES, CONCERNING INTERSTATE RENDITION OF JUVENILES ALLEGED TO BE DELINQUENT

(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(b) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

STATE CODE CITATIONS TO INTERSTATE COMPACT ON JUVENILES

Alabama	Ala. Code tit.49, §§108(1) to 108(7) (Supp. 1973).
Alaska	Alaska Stat. §§47.15.010 to 47.15.080 (1975).
Arizona	Ariz.Rev.Stat. §§8-361 to 8-367 (1974).
Arkansas	Ark.Stat.Ann. §§45-301 to 45-307 (1964).
California	Cal.Welf. & Inst.Code §1300 (West 1972).
Colorado	Colo.Rev.Stat. §§24-60-701 to 24-60-708 (1973).
Connecticut	Conn.Gen.Stat.Ann. §§17-75 to 17-81 (West 1975).
Delaware	Del. Code tit.31, §§5203, 5221 to 5228 (1974).
District of Columbia	D.C.Code §§32-1101 to 32-1106 (1973).
Florida	Fla.Stat.Ann. §§39.25 to 39.31 (West 1974).
Georgia	Ga.Code Ann. §§99-3401 to 99-3407 (1976).
Hawaii	Haw.Rev.Stat. §§582-1 to 582-8 (1968).
Idaho	Idaho Code §§16-1901 to 16-1910 (Supp. 1976).
Illinois	Ill.Ann.Stat. ch.23, §§2591 to 2597 (Smith-Hurd 1968).
Indiana	Ind. Code Ann. §§31-5-3-1 to 31-5-3-9 (Burns 1973)
Iowa	Iowa Code Ann. §§231.14, 231.15 (West 1969).
Kansas	Kan.Stat. §§38-1001 to 38-1007 (1973).
Kentucky	Ky.Rev.Stat. §§208.600 to 208.670 (1972).
Louisiana	La.Rev.Stat.Ann. §§46:1451 to 46:1458 (West Supp. 1977).
Maine	Me.Rev.Stat. tit.34, §§181 to 195 (1964).
Maryland	Md.Ann.Code art.41, §§387-95 (1971).
Massachusetts	Mass.Gen.Laws Ann. ch.119 app., §§1-1 to 1-7 (West 1969).
Michigan	Mich.Stat.Ann. §§4.146(1) to 4.146(6) (1969).
Minnesota	Minn.Stat.Ann. §§260.51 to 260.57 (West 1971).
Mississippi	Miss.Code Ann. §§43-25-1 to 43-25-17 (1972).

Missouri	Mo.Ann.Stat. §§210.570 to 210.600 (Vernon 1962).
Montana	Mont.Rev.Codes Ann. §§10-1001 to 10-1006 (1968).
Nebraska	Neb.Rev.Stat. §§43-1001 to 43-1009 (1974).
Nevada	Nev.Rev.Stat. §§214.010 to 214.060 (1973).
New Hampshire	N.H.Rev.Stat.Ann. §§169-A:1 to 169-A:9 (1964).
New Jersey	N.J.Stat.Ann. §§9:23-1 to 9:23-4 (West 1976).
New Mexico	N.M.Stat.Ann. §§13-16-1 to 13-16-8 (1976).
New York	N.Y.Unconsol.Laws §§1801 to 1806 (McKinney Supp. 1976).
North Carolina	N.C.Gen.Stat. §§110-58 to 110-63 (1975).
North Dakota	N.D.Cent.Code §§27-22-01 to 27-22-06 (1974).
Ohio	Ohio Rev.Code Ann. §§2151.56 to 2151.61 (Page 1976).
Oklahoma	Okla.Stat.Ann. tit.10, §§531 to 537 (West Supp. 1977).
Oregon	Or.Rev.Stat. §§417.010 to 417.080 (1975).
Pennsylvania	Pa.Stat.Ann. tit.62, §§731 to 745 (Purdon 1968).
Rhode Island	R.I.Gen.Laws §§14-6-1 to 14-6-11 (1969).
South Carolina	S.C.Code §55-65 (Supp. 1975).
South Dakota	S.D.Compiled Laws Ann. §§26-12-1 to 26-12-13 (1976).
Tennessee	Tenn.Code Ann. §§37-801 to 37-806 (Supp. 1976).
Texas	Tex.Fam.Code Ann. tit.2, §§25.01 to 25.09 (Vernon 1975).
Utah	Utah Code Ann. §§55-12-1 to 55-12-6 (1974).
Vermont	Vt.Stat.Ann. tit.33, §§551 et seq. (Supp. 1976).
Virginia	Va.Code §§16.1-213.1 to 16.1-213.7 (1975).
Washington	Wash.Rev.Code Ann. §§13.24.010 to 13.24.900 (1962).
West Virginia	W.Va.Code §§49-8-1 to 49-8-7 (1976).
Wisconsin	Wis.Stat.Ann. §§48.991 to 48.997 (West 1957).
Wyoming	Wyo.Stat. §14-52.10 (1965).

STATE CODE CITATIONS TO

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Alaska	Alaska Stat. §§47.70.010 to 47.70.060 (Supp. 1976).
Arizona	Ariz.Rev.Stat. §§8.548 et seq. (Supp. 1977).
California	Cal.Civ.Code §§264 to 274 (West Supp. 1977).
Colorado	Colo.Rev.Stat. §§24-60-1801 to 24-60-1802 (Supp. 1975).
Connecticut	Conn.Gen.Stat.Ann. §§17-81a et seq. (West 1975).
Delaware	Del.Code tit.31, §381 (1974).
Florida	Fla.Stat.Ann. §§409.401 to 409.405 (West Supp. 1977).
Idaho	Idaho Code §§16-2101 to 16-2107 (Supp. 1977).
Illinois	Ill.Ann.Stat. ch.23, §§2601 to 2609 (Smith-Hurd Supp. 1976).
Iowa	Iowa Code Ann. §238.33 (West 1969).
Kansas	Kan.Stat. §§38-1201 et seq. (Supp. 1976).
Kentucky	Ky.Rev.Stat. §§199.341 to 199.347 (1972).
Louisiana	La.Rev.Stat.Ann. §§46:1700 to 46:1706 (West Supp. 1977).
Maine	Me.Rev.Stat. tit.22, §§4191 to 4200 (1964).
Maryland	Md.Ann.Code art.16, §§208 to 212F (Supp. 1976).
Massachusetts	Mass.Gen.Laws Ann. ch.119 app., §§2-1 to 2-8 (West 1969).
Minnesota	Minn.Stat.Ann. §§257.40 to 257.48 (West Supp. 1976).
Mississippi	Miss.Code Ann. §§43-18-1 to 43-18-17 (Supp. 1976).
Missouri	Mo.Ann.Stat. §§210.620 to 210.640 (Vernon Supp. 1976).
Montana	Mont.Rev.Codes Ann. §§10-1401 to 10-1409 (Supp. 1975).
Nebraska	Neb.Rev.Stat. §43-1101 (Supp. 1974).
New Hampshire	N.H.Rev.Stat.Ann. §§170-A:1 to 170-A:6 (Supp. 1975). (Supp. 1975).

New York	N.Y.Soc.Serv.Law §374a (McKinney 1966).
North Carolina	N.C.Gen.Stat. §§110-57.1 to 110-57.7 (1975).
North Dakota	N.D.Cent.Code §§14-13-01 to 14-13-08 (1971).
Ohio	Ohio Rev.Code Ann. §§5103.20 to 5103.28 (Page Supp. 1976).
Oklahoma	Okla.Stat.Ann. tit.10, §§571 to 576 (West Supp. 1977).
Oregon	Or.Rev.Stat. §§417.200 to 417.260 + 417.900 (1975).
Pennsylvania	Pa.Stat.Ann. tit.62, §§761 to 765 (Purdon Supp. 1977).
Rhode Island	R.I.Gen.Laws §§40-22-1 to 40-22-10 (1969).
South Dakota	S.D.Compiled Laws Ann. §§26-13-1 to 26-13-9 (1976).
Tennessee	Tenn.Code Ann. §§37-1401 to 37-1409 (Supp. 1976).
Texas	Tex.Civ.Code Ann. tit.20, §695a-2 (Vernon Supp. 1976).
Utah	Utah Code Ann. §§55-8b-1 to 55-8b-8 (Supp. 1975).
Vermont	Vt.Stat.Ann. tit.33, §§3151 to 3160 (Supp. 1976).
Virginia	Va.Code §§63.1-219.1 to 63.1-219.6 (Supp. 1976).
Washington	Wash.Rev.Code Ann. §§26.34.010 to 26.34.080 (Supp. 1976).
West Virginia	W.Va.Code §§49-2A-1 to 49-2A-2 (1976).
Wyoming	Wyo.Stat. §§14-52.1 to 14-52.9 (1965).

BIBLIOGRAPHY

Annot., Extradition of Juveniles, 73 A.L.R.3d 700 (1976).

Callanan and Wendell, The Interstate Compact on the Placement of Children, 6 Juv.Just. 41 (1975).

Martin, Interstate Compact on Juveniles, 7 Crime & Delinquency 121 (1961).

North, Extradition of Juveniles and the Interstate Compact, 8 Clearinghouse Rev. 92 (1974).

Volenik, Article V Returns Under the Interstate Compact on Juveniles, 10 Clearinghouse Rev. 350 (1976).

CHAPTER SIX

PROBATION AND PAROLE

When a child comes before a juvenile court and is adjudicated a delinquent or person in need of supervision (commonly referred to as PINS), the judge has many alternatives open to him. Dispositional orders may vary from a simple admonition to the parent and child to a commitment to a secure detention facility for an indeterminate period. Despite this wide range of variables the majority of children having juvenile court contact will at some point be placed on probation or parole. It is not too surprising then, that large numbers of the youth who come through our runaway shelters are currently under one type of supervision or the other.

Both parole and probation impose certain duties on the individual. These commonly include requirements that the youth obey the commands of his or her parents, observe a specific curfew, attend an identified academic or vocational program, submit to counseling and meet with a parole or probation officer on a regular basis. In return for observing these or other specific conditions, the youth is permitted to remain at home. Leaving home will generally be sufficient to trigger a review of the propriety of the parole or probationary status, and may result in loss by the child of additional freedoms. Because of these serious consequences it is important that those working in shelters be well acquainted with both types of control and the mechanisms they employ.

While probation and parole are both forms of supervision used while a child is residing at home, they differ in the point at which they are imposed. Parole, commonly called aftercare in the juvenile system, is the release of a child from an institution prior to the time that the institution's jurisdiction over the child terminates. Probation is a supervisory status imposed prior to any institutional confinement.

Since the two conditions impose very similar duties upon juveniles the most important question is usually not which status you are on, but who supervises it. This varies depending upon who has jurisdiction over the youth. In several states the juvenile court at all times retains jurisdiction over adjudicated youth. The juvenile court may order that a youth be placed in a specific program or facility operated by the state or available to the state on a contract basis. Despite the placement and the vesting of custody in another agency, the court retains jurisdiction over the child. Therefore, any alteration in the status of the youth must be approved by the court.

If a youth is placed on probation by the court and is then accused of violating probation conditions, the juvenile court must hold a hearing to decide whether a violation occurred and, if so, whether the violation justifies a change in placement. Likewise, if the youth is committed to an institution, released on parole, and then accused of a parole violation, the juvenile court must also hold a hearing to determine the veracity of the accusation and settle on an appropriate disposition.

In many other states, these determinations are not always judicial. State juvenile courts may divest themselves of jurisdiction over certain youth, transferring not only physical but also legal custody to a state agency. This results in the existence of two somewhat parallel as well as somewhat competing systems concerned with the care and treatment of children. In these states juvenile courts may place children directly on court probation with supervision being provided by their own probation office. They may additionally place youths in institutions operated by the court or contract for placement in private facilities. In any of these cases the juvenile court, and often a particular judge, maintains control over the child and must be consulted before any change in the child's status can be effected.

On the other hand these states also have a state agency charged with the responsibility for treating and rehabilitating children. In addition to the alternatives listed above, judges may commit juveniles to the care and custody of the organization which generally operates the state's system of secure correctional institutions. By statute, commitment of a child to this agency gives the agency total control over the placement decision while divesting the judge of his authority over the youth. The agency may, in its discretion, decide to place the minor on probation or commit him to one of its facilities. From that point in time decisions concerning the child's movements will be made by the agency. If the agency places a child on a probationary or parole status, it must also decide, if a violation is alleged, whether there

is merit to the charge and whether an alteration in the youth's status is merited. The child has no right to a court hearing on these issues, but is entitled to an administrative proceeding before a neutral and detached hearing officer.

The distinction between this arrangement and the situation described earlier where the child has his right determined in a judicial, rather than administrative, proceeding may appear illusory but that is not the case. A court, for example, has the authority to issue summons and subpoenas, thus insuring the production of important witnesses or evidence at a proceeding. An administrative tribunal has no such power. A youth, by statute, may have the right to counsel in all judicial proceedings under the juvenile code. In an administrative hearing he or she may have no such absolute entitlement.

In those states where the court does not lose jurisdiction over a youth committed to a state agency, there may be greater uniformity of treatment of youth since judges will be overseeing all placement decisions. In those jurisdictions where the judge relinquishes jurisdiction over a youth upon commitment of the youth to a state agency, placement decisions are made not only by judges but also by agency employees. The result may be a lack of uniformity in decision making. This lack of uniformity in placement decisions may be augmented by an uneven distribution of resources. Urban juvenile courts may have large budgets and, concomitantly, access to many programs separate from those offered by the state agency. Alternatively, rural juvenile courts may have small

budgets and so be forced to commit most children to the state agency. As a result rural youths can be said to receive harsher sentences than urban youths who have committed the same crimes. On the other hand, a child may benefit as the result of some of the peculiarities existent in the dual system. Where either the court or the agency may exercise jurisdiction over the child, the options available to either organization for placement may vary considerably and a youth who is adjudicated either delinquent or in need of supervision is eligible for all of them.

The dual system can also provide a buffer between a youth and an over-zealous or punishment oriented judge. It is not unheard of for a juvenile court judge to view his or her function as that of disciplining the delinquent youth and consequently authorizing the most restrictive or onerous disposition available. That disposition is normally commitment to the state agency.

Since a state agency is usually removed from public pressure generated by concern over rising juvenile crime rates, it is likely to be more lenient in making placements. In addition, the full range of alternatives, from probation to secure detention, is available to it.

Finally the ages at which the different groups may actually lose jurisdiction over the child may actually vary. For instance, in Missouri the juvenile court may retain jurisdiction over a youth until he is twenty-one, but the Division of Youth Services, the state agency, loses control at eighteen.

With this information providing an overall idea of how the parole and probation systems operate, let us now look at the ways they effect youth on the run. Section A of this chapter outlines the duties that children assume under these arrangements. The theory behind imposing conditions upon the youngster is explored and ways of working with these restrictions posited.

Section B deals with the procedures established for revocation of parole and probation. The child's rights at these hearings are described and a potential role for the shelter is detailed. The broader legal ramifications of the outcome of these actions are also discussed.

For the child on a supervisory status running away may result in legal action culminating in the imposition of harsh sanctions against the youth. It is hoped that this chapter will increase understanding of both child and staff of the problems facing a runaway youth who is subject to the jurisdiction of either a juvenile court or a state agency. It is further hoped that the information contained herein will enable child and staff to logically and intelligently chart a realistic and practical course of action.

A. Duties While on a Supervisory Status

As mentioned in the introductory section parole and probation are actually very similar. Whether court or agency imposed, the supervision one receives and duties one accepts are likely to be the same. Consequently this discussion of the duties of a child on a supervisory status will consider all of these conditions together.

Generally, juvenile court judges and agency officials exercise almost unfettered discretion in imposing conditions upon the minor about to be paroled or placed on probation. The statutory authority given the judge is frequently phrased in the broadest of terms. For example, §24(1)(a) of the Standard Juvenile Court Act, National Council on Crime and Delinquency, (1959), provides merely that the child may be placed on probation "upon conditions determined by the court."

The latitude given to the juvenile court to shape probationary conditions parallels the broad discretion given the criminal courts to impose restrictions upon adult probationers. Although some degree of judicial discretion is, no doubt, useful in promoting individualized treatment, too much latitude may prove counter productive and may actually result in negating the "purpose and effect" of probation. See, Best and Birzon, Conditions of Probation: An Analysis, 51 Geo. L.J. 809, 811 (1963).

Theoretically the goal of probation is to accomplish the rehabilitation of the child by treatment and guidance while the child remains an active and useful member of the

community. If probation conditions do not promote this end, it would seem that they should not be employed or permitted.

Any conditions imposed upon the probationer, moreover, should be set forth with specificity to ensure that the probationer is able to understand the terms of his probation and the conduct expected of him. Further, any condition imposed on the juvenile should have a clear relation to the rehabilitative goal of the juvenile court. Although some courts have recognized this requirement, statutes could eliminate any uncertainty by including the specific requirement that any conditions imposed be related to rehabilitation.

Most commonly children are required to report to an officer of the supervision agency periodically, attend school regularly, adhere to curfew restrictions, and abide by state and municipal statutes. Occasionally these are supplemented by additional specific restrictions that may, in some instances, violate fundamental rights of the youth.

Until fairly recently, courts were reluctant to review conditions of probation. This reluctance stemmed, in part, from the traditional view of probation as an act of grace granted by the court. Having been granted this privilege in lieu of incarceration, the probationer was viewed as having no right to challenge its terms; if he found them unacceptable, he might always opt for imprisonment. This view, however, is changing and many conditions have been struck down because they violate constitutional rights.

The first amendment which guarantees freedom of expression may provide protection for the minor in a variety of ways.

Despite the possible positive effects such actions might have, children cannot be forced to attend church and Sunday school. Jones v. Commonwealth, 38 S.E.2d 444 (Va. 1946). This compulsion would be a violation of the individual's freedom of religion.

Further, the first amendment's right to freedom of expression and assembly should protect the child's right to join organizations and associate with individuals absent a showing that the youth's offenses grew out of such activities. Acceptable restrictions of these rights must be narrowly drawn and related to the protection of the public and the rehabilitation of the child.

For example, the imposition of restrictions on a college student that he not become a member of any organization protesting any activities nor advise any such organization, that he write no articles for publication, and that he remain off school campuses except when attending classes was held to be a violation of the youth's rights. In re Mannino, 92 Cal. Rptr. 880 (Ct. App. 1971).

> "Putting the gag" on the convicted probationer, insofar as it is not directly related to a past criminal abuse of the privilege of freedom of speech itself, or to the prospect of future criminality, does not serve to further "the end that justice may be done, that amends may be made to society for the breach of the law" nor does it provide "generally and specifically for the reformation and rehabilitation of the probationer." 92 Cal. Rptr. 888 (Ct. App. 1971).

Similar conditions including prohibitions against posting signs and placards and distributing leaflets were struck down in People v. Arvanites, 95 Cal. Rptr. 493 (Ct. App. 1971).

Parallel arguments should be available to defeat conditions which limit a child's right to associate with particular individuals unless the friendship can be shown to have a negative impact on the child's rehabilitation.

Restitution, or compensating the victim for the loss or injury inflicted, is a common condition of probation. When imposed against minors it seems particularly inappropriate since in most instances the child's limited resources will force repayment by the parents.

In _In re Weiner_, 106 A.2d 915 (Pa. Super. 1954), a thirteen year old boy was adjudicated delinquent for having committed a series of burglaries and placed on probation with a condition that restitution be made to the burglary victims. It was further ordered that the boy's father was to make the payments. Although the father paid most of the sums required, he was unable to pay in full and was found guilty of contempt and even committed to the county jail.

The father appealed and the court held that the juvenile court had no jurisdiction to require the parent to make restitution as a condition of a delinquent child's probation. Compelling restitution by the parent was not within the court's statutory jurisdiction, nor was the parent liable under the common law for his child's acts. Although restitution may be required as a condition of probation, the court stated that:

> [T]he terms imposed in requiring restitution by the juvenile, must be wholly in the interest of the child, looking to his reformation and not to make good the damages flowing from his illegal acts. Undoubtedly restitution by the parents of a delinquent child in some instances may be indicated to impress upon them their responsibility in the reformation of the child. But there is nothing in the Juvenile Court Law which authorizes the court to compel the parents to make restitution satisfying the civil demands of the victims of the child's delinquency and the juvenile court has no power by attachment to enforce such orders when made. Id. at 918.

When restitution is imposed as a condition of a juvenile's probation, it must not be so severe as to defeat the rehabilitative purpose of disposition. Restitution of $10 per week for two years was found to have "bound the boy to servitude and compelled him to surrender all that he could possibly earn for the period of two years. By its severity, it invited further delinquency and revolt against the authority of the court." In re Trignani, 24 A.2d 743, 744 (Pa. Super. 1942).

Children are as likely to suffer harm when they are uncertain of what behavior is prohibited as they are when restrictions are arguably illegal. Ideally probation conditions should be defined with specificity and clarity at the time of the grant of probation so that the probationer has a clear understanding of the behavior expected of him. "If a violation of a rule can serve as the basis for a revocation of probation, it needs to be clearly defined to the probationer." President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Corrections, 34 (1967). If probation can be revoked for behavior which the probationer

did not even know was prohibited, probation can hardly have a rehabilitative effect. Moreover, due process would seem to require a modicum of specificity, giving the offender notice of the standards required of him: "the probationer must be given notice in clear and concise language as to what conduct is expected from him under the terms of his probation." *Matter of Appeal in Maricopa Cty. Juv. Act. No. J77286*, 545 P.2d 74, 75 (Ariz. App. 1976).

Conditions should be phrased in understandable terms that have a clear, practical meaning. In *Morgan v. Foster*, 68 S.E.2d 583 (Ga. 1952), it was held that a statutory provision that every "person on probation shall maintain a correct life" could not be applied as a condition of probation. "If the words, 'maintain a correct life,' are intended to impose any condition upon the defendant over and beyond compliance with the rules prescribed for his conduct by the court, they are too vague, indefinite, and uncertain to be given any construction or application." 68 S.E.2d at 584.

Arguing for definite language in juvenile probation orders may be more difficult than in the adult arena because of the extensive rhetoric of rehabilitation and individualized treatment that inures to the juvenile system. Still vague conditions and nebulous language invite abuses of discretion and leave the juvenile without notice of the standards of behavior required of him, a condition ~~not~~ conducive to rehabilitation.

If conditions such as the ones just described have been imposed, staff and the client may wish to work together to have them modified. A simple conference with the individual imposing the conditions may serve to convince him that some changes might be advisable.

If the conditions are overly restrictive the court or agency should be reminded that there are some limits to conditions which may be permissibly imposed. Stress that all conditions should be related to the protection of the public and the rehabilitation of the offender. Remind the judge or agency supervisor that the purpose of the meeting is to make a good faith attempt to set reasonable conditions which can and, therefore, will be adhered to.

When the probation order is indefinite or vague a good approach to take is to request a meeting because the youth wishes to clarify his understanding of his duties. Compliance can only be obtained where the expectations are clear. Since the rehabilitation of the child is the goal of all concerned such requests should be met with cooperation.

If this route does not meet with success some legal action may be necessary. Most states have procedures by which an individual may ask for a modification of disposition, either through an administrative or court hearing. In other jurisdictions habeas corpus actions may be necessary.

Often legal action may be beyond the realm of immediate possibility. In these instances a defensive posture may be assumed. If the offensive conditions become the basis of a

revocation procedure as described in Section B, one might raise their illegality as a defense to revocation.

When supervision has been imposed upon a child the child may experience some difficulties if he moves. Procedures exist under Article III of the Interstate Compact for Juveniles to accomplish a transfer of supervision to another state. Chapter Five, Section C describes their use.

B. Revocation Procedures

Since the act of running away is, in most jurisdictions, a violation of the juvenile code it is grounds for the revocation of probation or parole. To the youth seeking refuge in a shelter this fact may be of greater consequence than the act of flight itself. The worker in the house then, must be ready to deal with this problem: to explain revocation procedures, outline the child's rights, and discuss the possible outcomes.

The decision to revoke parole or probation may be either judicial or administrative, depending on the type of supervision being used. Generally if the child has been committed to the care of the state agency the process will be an administrative hearing. Conversely, in those instances where the child has been under the court's supervisory powers a judicial proceeding will be employed. In those few states where the juvenile court retains jurisdiction over children committed to the state agency, a judicial decision will probably also be necessary to revoke parole.

The decision itself is most often based on whether there has been a substantial violation of the conditions imposed either by the court or the agency. Generally a failure to comply with a probation department's employment or reporting requirements will not be sufficient grounds to revoke a juvenile's probationary status. Further, a child should not be revoked for a violation of an unreasonable restriction on his freedom such as those described in Section A.

Two separate determinations should be made at each hearing. First, there must be a factual determination of whether or not there has been a substantial violation of the conditions of parole or probation. Second, the hearing officer must determine whether "the violation and the circumstances in which the violation occurred justify revocation, giving due consideration to the parolee's overall conduct." Morgan v. MacLaren School, Children Serv. Div., 543 P.2d 304 (Or. App. 1975) citing Comment, Due Process for Parolees: Oregon's Response to Morrissey v. Brewer, 53 Or. L. Rev. 57, 59-60 (1973). This necessarily involves the weighing of adverse and mitigating circumstances regarding the juvenile's overall conduct as required by Morrissey v. Brewer, 408 U.S. 471 (1972). Only then should the hearing officer make his decision whether or not to revoke parole or probation.

Although the United States Supreme Court has decided no juvenile cases dealing with probation or parole revocation, it has established clear standards for adults in both parole, (Morrissey v. Brewer, 408 U.S. 471 [1972]), and probation, (Gagnon v. Scarpelli, 411 U.S. 778 [1972]), finding the due process requirements for both to be identical. Because the court has spoken in interchangeable terms this discussion will likewise consider the two procedures as one.

The Supreme Court has required that prior to a revocation of a supervisory status the parolee or probationer must be afforded both preliminary and final hearings with due process protections. The preliminary hearing is to be conducted to

CONTINUED

2 OF 3

determine whether there is probable cause to believe that the accused has committed acts which would constitute a violation of parole conditions. This initial hearing should be conducted as near the place of the alleged violation and as promptly as is convenient. The determination of probable cause to revoke should be made by someone not directly involved in the case. This person need not be a judicial officer, but may be an administrative officer. It may even be a probation or parole officer as long as it is not the officer who has reported the violation or recommended revocation. Notice must be given that an initial hearing will take place and include a statement of the probation or parole conditions allegedly violated. At the initial hearing the accused may appear and speak, present letters, documents, or witnesses, and cross examine witnesses against him. A summary of the proceedings is to be made.

If a final hearing is held, the following minimal due process standards must be employed: notice of the alleged violations; disclosure of the evidence upon which the allegations are based; the opportunity to be heard and to present evidence; the right to confront and cross examine adverse witnesses (unless there is good reason for preventing a confrontation); the right to a neutral and detached hearing body; the right to a written statement of the decision, the evidence relied on, and the reasons for the decision.

Although prior to _Morrissey_ and _Scarpelli_ courts were divided on whether a juvenile was entitled to a hearing

before revocation, since then no court has found that juveniles are not entitled to a hearing replete with the minimum essentials of due process extended to adults in revocation proceedings. See, e.g., Adams v. Rose, 551 P.2d 948 (Alas. 1976); Naves v. State, 531 P.2d 1360 (Nev. 1975). Compare, Morgan v. MacLaren School, Children Serv. Div., 543 P.2d 304 (Or. App. 1975); State ex rel. Gillard v. Cook, 528 S.W.2d 545 (Tenn. 1975); State ex rel. R. R. v. Schmidt, 216 N.W.2d 18 (Wis. 1974).

Although the right to these minimal standards has been established there remain a number of protections not yet provided for adults or children. The standard of proof applied in revocation proceedings is normally a "preponderance of the evidence." This is a lesser standard than "beyond a reasonable doubt," the level needed for conviction in a juvenile delinquency proceeding.

The right to exclude illegally obtained evidence from revocation hearings has not yet been recognized. That means that both evidence seized without a warrant, and confessions made without Miranda warnings may be presented at these hearings.

Because these safeguards are not available, a youth may find that his probation may be revoked under circumstances that would not result in a new adjudication before the court on a delinquency petition.

A final protection which is often not provided the youngster in a revocation hearing is representation by

counsel. The Supreme Court has recognized only a conditional right to counsel and allows the agency responsible for supervision to make the decision to appoint an attorney. In Gagnon v. Scarpelli, 411 U.S. 778, 790-91 (1976) the Court concluded that an attorney:

> should be provided in cases where, after being informed of his right to request counsel, the probationer as parolee makes such a request, based on a timely and colorable claim (i) that he had not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present. In passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself.

Applying these guidelines to juvenile proceedings, one must conclude that a child would be entitled to counsel in virtually every case. Because of youth, immaturity, and relative inexperience in life, a juvenile probationer or parolee would almost inevitably be incapable of defending himself in a revocation proceeding. Even if a juvenile compares favorably to other juveniles on such factors as age, education, mental ability, emotional state and socio-economic background, a juvenile is always less capable of defending himself than an adult.

While this would seem to indicate that children would be but rarely unrepresented, the opposite is true. Perhaps this can be explained by noting that often the child must know to ask for the attorney. Further, the hearing officer

may discourage such requests, or he may cause lengthy delays, ostensibly to consider whether counsel should be appointed, during which time the child may wait in detention. Despite these difficulties the added protections afforded by vigorous advocacy representation should weigh heavily in the child's decision to request the appointment of counsel.

The ramifications of a decision to revoke may be severe: commitment or recommitment to an institution may occur. In many states a probation violation is a delinquent act. This can have the serious side effect of transforming a PINS to a delinquent. Where these are the consequences, every effort should be made to avoid revocation.

If it is clear that the child has in fact committed the alleged act, an attempt should be made to show that the violation was not a substantial one, or that the condition itself was inappropriate. Emphasis should be placed on the overall conduct of the child indicating that the act was a minor breach.

When running away is the charged violation, an argument can be made that the act is actually a positive expression by the youth, evidencing an effort to find solutions to a problem that was unresolved in his prior environment. Coming to the shelter demonstrates a willingness to work on difficulties and progress toward the desired goal of rehabilitation and integration into the community.

BIBLIOGRAPHY

Best and Birzon, *Condition of Probation: An Analysis*, 51 Geo. L.J. 809 (1963).

Comment, Juvenile Probation: Restrictions, Rights, and Rehabilitation, 16 St. Louis U.L.J. 276 (1971).

National Juvenile Law Center. *Law and Tactics in Juvenile Cases*, 2d ed. §§13.20 - 13.27, 13.30, 13.33. St. Louis: 1974.

President's Commission on Law Enforcement and the Administration of Justice. *Task Force Report: Corrections*. Washington, D.C.: 1967.

ANNOTATED BIBLIOGRAPHY

Dealing with juveniles in a runaway shelter is obviously very rewarding and usually equally frustrating. A major problem which is often the source of many difficulties is the short period of time in which the counselor may work with the runaway. The child is in the midst of crisis and, as mentioned in other sections of this work, may well have left the home for good reason. The constellation of life problems which surrounds the youth is likely to include problems at home, in school, and in the juvenile's larger community, and yet the counselor is usually limited to a brief period of intervention often lasting only five or ten days.

Despite the best efforts of shelter staff and the child, there will be problems that cannot be resolved without venturing into the larger context of educational, legal and social systems. Many programs have expressed a desire to broaden their work to begin advocacy on a class basis, or on an individual basis before a problem reaches the crisis state generally indicated by the child's appearance at a shelter. Finally, there remain many legal issues touching on the operation of runaway shelters and their clients which are not covered in this monograph.

To meet these needs this section provides additional resources designed to aid those working with youth in crisis to successfully deal with the appropriate system. Although

a bibliography is included at the end of each chapter, as a final addendum to this monograph it seems worthwhile to add new references touching on areas that comprise the larger legal context of juvenile rights and problems.

Works describing the juvenile justice system and its procedures are included as background material. Since the deinstitutionalization of status offenders and their continued jurisdiction under juvenile court systems are issues of concern presently, they are highlighted. Also mentioned are materials designed to aid the individual or group approaching a legislature or school system.

Entries are given priority if they contain information applicable across a variety of issues or provide a novel way of addressing a problem. When a book mentioned in a chapter bibliography is listed here, it is because it meets the earlier criteria and is of interest in situations broader than those described by any one chapter. Emphasis in this section was placed on writings geared to the lay person although some legal sources have been used. Generally, regional or local publications have not been cited, although it is worthwhile to note that many state and local organizations (e.g., American Civil Liberties Unions; State Councils on Crime and Delinquency; Bar Associations; etc.) publish excellent pamphlets and manuals on the rights of children within particular areas. Libraries and the organizations themselves can alert the reader to these invaluable aids.

Because selecting materials for such a work is highly subjective and limited by the writer's own memory and prejudices it is certain that there are many books which will be of equal or greater help to the reader which have been omitted through inadvertence. It is hoped, however, that this listing will be of value, at least as a starting point, in dealing with issues of concern to those working with runaway youth and their problems.

Action Planning Associates, Inc. Planning for Juvenile Justice: A Manual for Local YMCAs. New York: Urban Action and Program Division, National Council of YMCAs, 1975. The YMCA has moved into the juvenile justice field and is working to reach troubled youngsters. This very practical manual is divided into two parts, the first of which surveys different types of treatment programs, funding and evaluation problems, and community relations issues. The second part, the appendices, gives concrete examples of various YMCA youth treatment programs currently in operation.

Beaser, Herbert. The Legal Status of Runaway Children. Washington: Educational Systems Corporation, 1975. An extensive treatment of the statutes, major court decisions, and opinions of state attorneys general, this work is valuable to both the attorney and the shelter care worker interested in determining the law covering a number of topics affecting runaway youth. A few of the issues discussed include problems of consent to medical treatment, the runaway's relation to his or her school, and the laws of statutory rape.

Children's Defense Fund. Children in Adult Jails. Washington: Washington Research Project, Inc., 1976. According to the National Jail Census, 1970, children are being held in the jails of all but seven states. This book is a poignant survey of that problem. It includes statistical material, case studies, photographs that generally depict the bleak situation, and possible solutions to the legal and social nightmare of such "warehousing" of children.

Ferleger, David. "The Battle Over Children's Rights". Psychology Today. New York: Ziff Davis Publishing Co. (July, 1977) pp.89-91. David Ferleger summarizes the problems facing young people caught up in the mental health system. A special concern of his work and of this article is the paucity of rights held by a child faced with committment to a mental institution.

Foster and Freed, A Bill of Rights for Children, 6 Fam. L. Q. 343 (1972). Observing that youngsters are treated as "scapegoats for adult frustrations" although being complete persons with individual rights just as adults, the authors develop ten rights that the law should guarantee children. The ten principles are then explained and documented, with particular attention given to certain landmark juvenile cases, such as In re Gault, 387 U.S. 1 (1967).

Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 Stan. L. Rev. 1187 (1970). In this law review article Professor Fox describes the history and problems of the juvenile court movement. This relatively recent phenomenon is treated from as much a social standpoint as a legal one. The economic and racial problems that complicate the issue of juvenile court reform are emphasized.

Fox, Sanford. *The Law of Juvenile Courts in a Nutshell*. St. Paul, Minnesota: West Publishing Co., 1971. The *Nutshell* is a very readable and practical survey of juvenile law and issues across the nation. Since no particular jurisdiction is emphasized, the book provides a concise and interesting survey of the legal system and its procedures. It is important to note, however, that since 1971 there have been many changes in the law of the juvenile justice system.

Hutzler, John. *Juvenile Court Jurisdiction Over Children's Conduct: A Statutes Analysis*. Pittsburgh: National Center for Juvenile Justice, 1977. This very current monograph is one part of a forthcoming series designed to analyze the nation's juvenile codes. As those working in runaway shelters are constantly dealing with juveniles who have committed at least the "offense" of running away, it is worthwhile to have available a survey of classifications of status and criminal offenses that encompasses all the states and the District of Columbia. The booklet is an especially handy reference work because of the varied treatment of status offenses in different jurisdictions.

Levin, Mark and Sarri, Rosemary. *Juvenile Delinquency: A Comparative Analysis of Juvenile Codes in the United States*. Ann Arbor: National Assessment of Juvenile Corrections, 1974. The title of this work is very descriptive. The authors deal tersely and clearly with the similarities and differences in the juvenile codes of all states. The study is divided into different areas of the juvenile court process, from jurisdiction through adjudication and record keeping.

Levine, Alan; Carey, Eve; and Divoky, Diane. *The Rights of Students*. New York: Avon Books, 1976. As part of a series of handbooks from the American Civil Liberties Union, this work deals with youngsters in the school environment. It is written in question and answer form and addresses issues that are sure to arise in some

shelter care situations: whether a student may be disciplined at school for activities outside of school; school suspensions; and the student's rights regarding his school records.

National Conference of Jewish Women. Symposium on Status Offenders: Proceedings. New York: National Conference of Jewish Women, Inc., 1976. These extensive materials cover topics dealing with status offenders and juvenile courts and treatment centers that were presented to a conference held in Washington, D.C. in the fall of 1976.

National Conference on Juvenile Court Reform: Legislative Advocacy. Conference Materials. St. Louis: 1976. This book of varied material includes both an in depth survey of juvenile court procedures from jurisdiction through the petition and record keeping and an analysis of different youth treatment programs.

National Council on Crime and Delinquency. Jurisdiction Over Status Offenses Should be Removed from the Juvenile Court. Hackensack, New Jersey: 1974. In this brief policy statement the N.C.C.D. explains its position against the use of the coercive power of the juvenile court against status offenders. Its position is that social agencies (including, presumably, shelter care facilities) will not play a large enough role in the treatment of runaways, truants, and the like until the juvenile court has been removed from the picture.

National Institute of Law Enforcement and Criminal Justice. Juvenile Diversion and Family Counseling: An Exemplary Project. Washington: Law Enforcement Assistance Administration, 1976. In a short pamphlet a successful diversionary project is described. To avoid the coercive juvenile court the project treated status offenders and their families with short term counseling and crisis intervention techniques, significantly decreasing the number of cases going to court.

National Juvenile Law Center. Law and Tactics in Juvenile Cases. 2nd ed. St. Louis: 1974. Written primarily as a practice manual and starting point for attorneys involved in juvenile research and litigation, this work is, nonetheless, valuable to the lay reader as a survey of the law in juvenile courts. It is divided into chapters that follow the juvenile court process from

jurisdiction through disposition and institutional placement problems. A third edition, at the press as of this writing, will be available after September 1, 1977.

National Youth Alternatives Project. National Directory of Runaway Programs. Washington: 1976. Shelter care workers will find this a valuable resource for both keeping in touch with other centers and for comparing programs. Each entry in the directory is detailed with basic information about each center. The directory could be of value, too, when, as noted earlier in this monograph, the worker may need to make a contact in a distant city.

Piersma, Ganousis, and Kramer, The Juvenile Court: Current Problems, Legislative Proposals, and a Model Act, 20 St. Louis U.L.J. 1 (1975). This extensively researched work is a survey of problems existing under certain sections of juvenile codes found in most jurisdictions. The authors' model act has been adopted without substantial change in at least one jurisdiction.

Sarri, Rosemary and Hasenfeld, Yeheskel, eds. Brought to Justice? Juveniles, the Courts, and the Law. Ann Arbor: National Assessment of Juvenile Corrections, 1976. This collection of essays that question juvenile court effectiveness will be of use to the shelter care worker as resource material. Of particular value are the statistical surveys depicting the different kinds of problems treated by the juvenile courts, and the different characteristics of juvenile court staff.

Sheridan, William and Beaser, Herbert. Model Acts for Family Courts and State-Local Children's Programs. Washington: Office of Youth Development, Office of Human Development, Department of Health, Education and Welfare, 1975. Designed primarily as an aid for legislators in drafting laws affecting juveniles, this publication is worthwhile as a model for those seeking a change in existing systems.

Skinner, Brian and McClean, Phyllis. A Handbook on Child Advocacy. Los Angeles: The Institute for Child Advocacy, 1976. Designed solely for use in an education setting, this handbook gives advice to the "school visitor" who enters that unique environment to deal with administrators and teachers on behalf of students. While some of the

points seem rather basic at first glance, the treatment of the inevitably tense encounter in the school setting is very perceptive and helpful to those called upon to intervene on behalf of students.

Sussman, Alan. The Rights of Young People. New York: Avon Books, 1977. This is another of the series of books on human rights published by the American Civil Liberties Union. Written in question and answer form, it deals with topics of interest to shelter care workers in the areas of status offenders, child custody, and child abuse and neglect. Of particular interest are the clearly explained issues of juvenile court procedure and rights of juveniles within the court system.

United States Senate, Committee on the Judiciary. Legislative Hearings on the Runaway Youth Act, S.2829. Washington: U.S. Government Printing Office, 1972. This interesting and easily readable transcript deals with the problems of runaway youth and efforts then being made on their behalf.

Vinter, Robert; Newcomb, Theodore; and Kish, Rhea. Time Out: A National Study of Juvenile Correctional Programs. Ann Arbor: National Assessment of Juvenile Corrections, 1976. The N.A.J.C. has studied juvenile treatment programs in depth and, in this work, published many of its findings. Backed up with a wealth of statistical tables, the authors evaluate the programs, clients and personnel in different kinds of correctional settings. The authors conclude, among other things, that more separation between status and criminal offenders is desirable.

Weintraub, Judith. National Council of Jewish Women Symposium on Status Offenders: Manual for Action. New York: National Council of Jewish Women, Inc., 1976. Designed primarily for the lay reader, the manual deals with legislative reform in juvenile law.

END