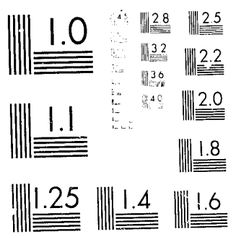

Federal Probation

JUNE 1981

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All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies—both public and private—are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

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This Issue in Brief

A Revisionist View of Prison Reform.—According to Professor Hans Toch, the assumption that prisons are here to stay suggests new directions for prison reform. Among these is the amelioration of stress for those inmates who because of special susceptibilities and/or placements in prison are disproportionately punished. A classification process that is attuned to inmate coping problems can make a considerable difference, he asserts. In addition, the constructive critic of prison life (as opposed to the nihilistic one) can help prison staff and their administrators run more humane institutions.

A Positive Self-Image for Corrections.—The tendency of corrections workers to be apologetic about their work has been a self-defeating characteristic for many years, writes Claude T. Mangrum of the San Bernardino County Probation Department. This tendency, he says, is the result of a poor self-image and it is high time corrections professionals acted to improve this image. The importance of a positive self-concept is discussed in his article.

Changes in Prison and Parole Policies: How Should the Judge Respond?—Anthony Partridge of the Federal Judicial Center reminds us that, although sentencing marks the end of a criminal proceeding in the trial court, a sentence of imprisonment is also the beginning of a process presided over by prison and parole authorities. To a substantial extent, the meaning of such a sentence is determined by these authorities. Their policies, therefore, have implications for the performance of the judicial role—both for the duty to select an appropriate sentence and for the duty to ensure procedural fairness.

Federal Court Intervention in Pretrial Release: The Case for Nontraditional Administration.—One of the most unique and comprehensive class action suits involving a major jurisdiction in the United States (Houston, Texas) is the case of *Alberti* v. *Sheriff.* In December 1975 U. S. District Judge Carl Bue, Jr., issued a sweeping order directed at improving the operation of the pretrial release programs and streamlining other criminal justice procedures to relieve overcrowding and improve conditions of the county jail. This article, by Gerald R. Wheeler, director of Harris County Pretrial Services, describes the pretrial

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achieved by withstanding the inmate's most intense rage and hatred.

Many contributions have been offered concerning infantile and psychotic anger.[9] All are in agreement, however, that in such states a person is in a state of infantile helplessness. Isolation at these times only promotes the pathology which is derived from infantile reactions to abandonment. The presence of another, however, must be of a special type. The person must provide a "holding environment" while protecting the safety of the patient and others. The rage must be lived through with the primary therapist until reparation begins.[10] At that time, the patient is ready for re-establishment of positive relationships whereupon the staff person may once again become the provider of good things.

[9]H. Guntrip, *Schizoid Phenomena, Object Relations and the Self* (New York: International Universities Press, 1969). M. Klein and J. Riviere, *Love, Hate and Reparation* (New York: W. W. Norton & Co., Inc., 1964). H. Spotnitz, *Modern Psychoanalysis of the Schizophrenic Patient* (New York: Grune & Stratton, 1969).

[10]The term "reparation" was originally used by Melanie Klein to describe the mechanism whereby the patient seeks to repair the effects his destructive phantasies have had on his love-object. For further explanation of the term, see J. LaPlanche and J. B. Pontalis, *op. cit.*, note 5.

Summary

A case is presented of a 34-year-old Black female who was admitted to the Female Psychiatric Unit with a diagnosis of paranoid schizophrenia. After 1 month, she became assaultive and gradually deteriorated to a state in which restraints were needed. The process of her rage, the descriptions of her anger, and the method of staff intervention are discussed. The crucial part of the therapeutic endeavors has derived from the staff's unwillingness to desert her during the height of her rage. Such interaction formed the basis for future therapeutic stages which are summarized.

The Juvenile Court Needs a New Turn

BY SOL RUBIN

Counsel Emeritus, National Council on Crime and Delinquency

THE BY NOW "old" juvenile court system has in its history been subject to considerable criticism and attack. The criticism, not much noticed when an occasional article or state court decision complained that neither the child nor the parent received even a semblance of due process before the court or other elements of the juvenile justice system,[1] startled the juvenile court judges when the Supreme Court of the United States rendered decisions in the same vein. The first decision, in 1962, condemned confessions obtained by "secret inquisitorial processes" as suspect, especially so when applied to a 14-year-old boy.[2] This did not touch the juvenile court directly, but presently others did.

In 1966, in *Kent* v. *United States,*[3] the Court reversed a conviction in a case transferred from juvenile to criminal court in accordance with the statute. It held that required elements of due process and fairness had not been met; it required a hearing, effective assistance of counsel, and a statement of reasons. The storm came over the following language in the decision: "There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities, and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child received the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." The next case, *In re Gault,*[4] generated even more excitement, yet its holding broke no new ground, and any other decision—once the Supreme Court took the case for review—could hardly have been expected.

The case is really of significance for its bringing to attention the still prevalent paternalistic (autocratic) pattern of the juvenile courts, what Roscoe Pound called "star chamber." The Arizona Supreme Court upheld a commitment, to age 21, of a 15-year-old boy who was alleged to have made a lewd telephone call to a neighbor. The complainant was not present at the meeting; the adjudication was based on the judge's statement that the boy had admitted making some of the

[1]H. N. Lou, *Juvenile Court Laws in the United States (1927).*
[2]Gallegos v. Colorado, (370 U.S. 49 (1962).
[3]Kent v. United States, 383 U.S. 541 (1966).
[4]In re Gault, 387 U.S. 1 (1967).

remarks, although Gault denied the charge. The parents never received a copy of the petition and they were not informed of their right to subpoena or cross-examine witnesses. One must blink at the crassness of the procedure, upheld by the Arizona Supreme Court on the ground that the juvenile court is noncriminal, hence the child was not being punished (despite the fact that he was committed to a training school for a potentially 6-year term), and, no punishment being involved, no due process was required. The United States Supreme Court reversed, only on procedural grounds, saying nothing about the 6-year commitment on a charge for which an adult could have been punished at most by a commitment of 2 months. We shall have more to say about this omission, and about the concept of "noncriminal."

The attack on the court (as distinguished from what we have called legalistic criticism) was of a different order. It was a reproach that the juvenile court was not stemming the tide of delinquency. It resulted at first in such statutes (of dubious constitutionality) as contributing to delinquency, sometimes requiring no fault on the part of the parent or other adult, and curfew and other restrictions on children. It included reducing juvenile court jurisdiction over serious offenses, giving jurisdiction to criminal courts concurrently with juvenile courts, or exclusively. More recently it has included demands, which legislatures initiated or to which they acceded, to expand these exceptions, so that more severe terms could be imposed on young people, and to reduce or eliminate such typical juvenile court provisions as protection against fingerprinting and dissemination of juvenile records.

In general, juvenile court judges were less agitated at the latter encroachments on juvenile court jurisdiction than they were at the due process requirements. Yet their complaint that the decisions threatened to make the juvenile court a "junior criminal court" could much more legitimately be directed to the legislative reductions in the privacy and confidentiality protections.

But such resistance as there was on the part of the old juvenile court system was principally based on proprietary values—due process additions were seen as taking prerogatives away from the judges, and the legislation was taking jurisdiction away from the courts. In fact, children were not necessarily dealt with more harshly in criminal court than in juvenile court, and the old charge that children were being overdetained and overcommitted by juvenile courts was demonstrated repeatedly with little or no correction. It is this circumstance, and other substantive protections that are needed, that point the way to the basic failure of the court—the failure to protect children.

Doesn't "Welfare" Include Rights?

All juvenile court statutes include the criterion of the *welfare of the child* in guiding the action of judges or other personnel dealing with the child or his parents. One would think that the "welfare" of the child included the notion that the child was a *person*, with *rights*. This is hardly the case. A juvenile court judge slated for the presidency of the National Council of Juvenile Court Judges wrote, in an article entitled "Should Children Be as Equal as People?" — "should children be as equal as people? Certainly not. They should not have equal liberty; they should have less."[5] When the National Juvenile Law Center issued a statement on the rights of children, this was its key sentence: "Youth or juveniles of today are the most discriminated-against class in the world."[6]

These statements of partisans might be of minor significance if not for what the Supreme Court of the United States has and has not done. In the Gault case the Court said: "The right of the state, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is 'delinquent'—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none." The Supreme Court having said that, it did nothing to improve the situation, either in the Gault case or in any other case.

The phrase, a right "not to liberty but to custody" is confusing. It is the parents, not the state, who have the basic right to the child's custody. The child has a right to liberty, subject to that custody. To deny that right is still another way of asserting that the child is property.

The Court even recognized (again, in Gault) that "the constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the *Kent* Case, . . . the results have not been entirely satisfactory." Yet recognizing all that, the Court treats the child

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[5]Lindsay G. Arthur, "Should Children Be as Equal as People?" 43 North Dakota L. Rev. 204 (1969).

[6]National Juvenile Law Center, St. Louis University, St. Louis, Mo., July 6, 1970, mimeo.

as property, not as a person, when it holds that a child may be beaten by its custodian.[7]

It would appear that a turn is needed in this "peculiar system." Since the needed change does not appear to be forthcoming in the courts, and since the juvenile court system is entirely statutory, the needed change ought to come through legislation. What is needed? As I see it—to truly protect the child (the *parens patriae* concept), the child must be treated as, must be, a person, with rights, not merely procedural rights in the court, but substantive rights without which he is not a person.[8]

In a book published in 1976[9] I include a model juvenile court act that proposes this turn, setting forth statutory language to effectuate it. So far as I know, it is the only model statute (or existing statute) to undertake this path. Section 1, Construction and Purpose, reads: "This act shall be liberally construed to assure children their specially needed services, human rights, dignity, and freedom as individuals and as functioning responsible members of the community. Each child is an individual, entitled in his own right to appropriate elements of due process of law, substantive and procedural."

To support this concept, I begin in the jurisdiction section (section 5), giving the juvenile court jurisdiction

> Where it is alleged that the child's rights are improperly denied or infringed. Such rights shall include:
> (a) Rights specifically granted to children, or which inhere in responsibilities imposed on parents or others on behalf of children;
> (b) Any complaint by a child, his parents or next friend, that an agency, public or private, which provides services or care to children, has discriminatorily denied such service or care, whether based on race, religion, nationality, or a child's or a family's social or economic status.

The concept of a child as a person with rights is also supported by *not* giving the court jurisdiction over "incorrigible" children, children beyond the control of their parents, and other such language, and certainly not the newest, vaguest, language in the statutes—"person in need of supervision." The evidence is that more harm than good is done by the court taking jurisdiction in these cases.[10] Instead, the neglect section (§5 (2)) gives the court jurisdiction "Concerning any child who is in a situation subjecting him to serious physical harm, or who is in clear and present danger of suffering lasting or permanent damage."

The neglect section differs from current neglect provisions in being applicable only in serious cases. Early cases declared that courts did not have neglect jurisdiction unless the parents were totally unfit. One case says: "Before any abridgement of the right (to custody) gross misconduct or almost total unfitness on the part of the parent, should be clearly proved." The author of an article tracing neglect law writes: "Certainly it cannot be questioned that where the child has been subjected to or threatened with serious physical harm, such as a brutal beating or starvation, the right of a parent to deal with his child as he sees fit must give way to the state's fundamental interest in protecting the lives of children. Short of some such severe and fairly objective danger, however, the state's interest becomes much more speculative."[10]

The same subdivision gives the court jurisdiction "Concerning any child who requires emergency medical treatment in order to preserve his life, prevent permanent physical impairment or deformity, or alleviate prolonged agonizing pain." Such a provision is needed because current acts are no better—no more protective of children—than the 1959 Standard Juvenile Court Act, which allows a judge to order a medical examination of any child, without criteria, concerning whom a petition has been filed; and it can order treatment, without limitation or restraint stated in the statute, of a child who has been adjudicated. It can order examination of parents with only the vague restraint that the parent's ability to care for the child be at issue, and require a hearing.

I cite, in support of the provision, a publication of the Council of Judges of the National Council on Crime and Delinquency,[11] whose suggested language I have adopted. Section 20 in my model act

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[7] *Ingraham* v. *Wright*, 97 S. Ct. 1401 (1977). Outside the school systems the decision has generally been criticized; e.g., Joan Clark Olsen, "Physical Punishment in Public Schools," 61 Marquette L. Rev. 199 (1977); Nancy K. Splain, "The Ingraham Decision. Protecting the Rod," *Trial*, October 1977.

[8] The idea of children having rights is quite *frightening* to some: Grace C. Hefen, "Puberty, Privacy, and Protection: The Risks of Children's 'Rights,' American Bar Association Journal, October 1977. But see: *The Children's Rights Movement: Overcoming the Oppression of Young People*, ed. Beatrice and Ronald Gross (1977); Henry H. Foster, *A 'Bill of Rights' for Children* (1974).

[9] *Law of Juvenile Justice, With a New Model Juvenile Court Act* (Ocean Publications, 1976).

[10] One California study found this: "Section 601 in effect permits irresponsible parents, overworked or ineffective school personnel and agencies unable to effectively collect evidence to establish parental neglect, to 'put a record' on a youngster who, in most cases, is not the one primarily responsible for the activity involved. It is a section ofttimes used against dependent and neglected children who are difficult to handle in company with other dependent and neglected children. It is also used as a 'dealing' section to encourage a plea where a delinquency conviction could not be sustained. The experience of Juvenile court judges has been that the intrusion of the juvenile court accentuates and perpetuates the family schism that is characteristic of the 601 cases."—Report to the Governor and legislature of the Special Judicial Reform Committee of the Superior Court of Los Angeles County, February 22, 1971. That community agencies can do better in these cases is supported by another California study, "Preventing Delinquncy Through Diversion—The Sacramento County Probation Department," noted in 3 Crim. Justice Newsletter 151, Sept. 25, 1972. See also Jill K. McNulty, "The Right to Be Left Alone," 11 American Criminal Rev. 141 (1972); Sol Rubin, "Legal Definition of Offenses by Children and Youth," 1980 III. L. Forum 512 (1960).

[10a] Note, "Child Neglect: Due Process for the Parent," 70 Columbia L. Rev. 465 (1970).

[11] Council of Judges, NCCD, "Guides to the Judge in Medical Orders Affecting Children" (reprinted from *Crime and Delinquency*, April 1968).

provides for procedural requirements, attempting in it to provide due process protections in both emergency and nonemergency situations.

In contrast to the foregoing approach, existing juvenile court laws are like the Standard Juvenile Court Act provision, declaring that each child within the jurisdiction of the court "shall receive . . . the care, guidance and control that will conduce to his welfare and the best interests of the state." "The best interests of the state"—this is the kind of language that enables courts to take control over almost any child they want to, at the request of parents, schools, police, neighbors. The state should have no interest except seeing to it that the child's rights are given to him, the same responsibility it has to other citizens.

The *parens patriae* basis on which the juvenile court system rests is caring for incompetent persons. But some courts find children, at least in their teens, to be pretty competent. A United States Court of Appeals, in a case upholding the right of students not to participate in flag pledge ceremonies, stated that "neither students nor teachers 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gates"; and it said, of the 14- to 16-year-old students, that they were not fresh out of their cradles . . . Young men and women at this age of development are approaching an age when they form their own judgments. They readily perceive the existence of conflicts in the world around them; indeed, unless we are to screen them from all newspapers and television, it will be only a rather isolated teenager who does not have some understanding of the political divisions that exist and have existed in this country. Nor is this knowledge to be dreaded."[12]

The Supreme Court, on the other hand, does not speak in this vein. A Queens, New York, school board barred children from borrowing Piri Thomas' book *Down These Mean Streets* from the school library. A principal, a librarian, parents and child sued to assert their right to know; but they lost, and the Supreme Court refused to review it,[13] but there was a dissenting opinion by Justice Douglas who said,"Are we sending children to school to be educated by the norms of one School Board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to the world's problems?" The majority view is consistent with what is deemed "the welfare of the state," which equates with great control over children, through truant officers, police—but principally the juvenile courts and their personnel and detention homes. And of course it is through the juvenile court laws and other special statutes restricting children that it is possible to conclude that this is a most discriminated against group.

As for the attack on the court for its failure to prevent delinquency (the cover for more punitive treatment), the Supreme Court in the Gault case says, "The high crime rate among juveniles. . . could not lead us to conclude that the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders."

But if I share the sense of some courts regarding the competency of teenagers, then I also place on them a corresponding responsibility. Accordingly, my model act would give the court jurisdiction over children only under 16 years of age, whereas most juvenile court statutes give some jurisdiction to children under 18.

Substantive Protections Are Also Needed

If the requirements of the *parens patriae* concept are to be fulfilled, more than procedural due process must be provided. Substantive protections are also needed. In the Gault case the Supreme Court made no reference to the provision in the Arizona juvenile court law permitting commitment of a juvenile until he reaches majority, in that case, 6 years. This provision, common to almost all juvenile court laws, has not been held to be unconstitutional, although the violence they do to the 14th amendment requirement of equal protection is obvious.[14] Accordingly, in my model act I provide that if a child is committed, "in no case may the commitment or order exceed the term of commitment authorized for an adult committing the same violation of law" [§ 22].

More than this provision is needed. Considerable data attest to the general overcommitment of children.[15] The same section reads: "Provided the act which the child is found to have committed was a violent act seriously endangering another person, and the child has a history of violent behavior, commit the minor" etc. Senator Birch Bayh, when chairman of the Subcommittee to Investigate Juvenile Delinquency of the Senate

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[12] *Russo* v. *Central School District*, 469 F. 2d 623 (2nd Cir. 1972).

[13] *President's Council, District 25 et al.* v. *Community School Board No. 25 et al.*, 93 S. Ct. 308 (1972). But the Court did uphold the first amendment right of public school pupils to wear black armbands in protest against the Vietnam War, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969). See Mike Wiener, "Free Press in the High Schools," *The Nation*, January 28, 1978.

[14] Sol Rubin, *The Law of Criminal Correction* ch. 12 §§ 10-12 (1973).

[15] Sol Rubin, "Children as Victims of Overinstitutionalization," *Child Welfare*, No. 1 1972.

Judiciary Committee, wrote, "The incarceration of youthful offenders should be reserved for those dangerous youths who cannot be handled by other alternatives."[16] This result has been substantially achieved in Massachusetts, by administrative action.[17] That is, such a provision is feasible.

There is another, perhaps even more basic protection that must be realized. Every juvenile court statute declares the proceeding to be noncriminal, and spells out some protections to the child that do not prevail in a criminal proceeding. Among these are confidentiality of records, and the declaration that a juvenile court record shall not be used against the interest of the person with the record. I doubt that there is a single jurisdiction in which these provisions are not violated. Violations are routine, even, and perhaps especially, where another government agency requests juvenile court information.[17a] *Yet without the noncriminality of the proceeding the juvenile court special procedure constitutionally fails.* And so long as in *practice* the noncriminality is violated, the proceedings are skating on thin ice.

Accordingly I have in my model act sections that attempt to make real the noncriminal effect of an adjudication. Section 23 reads as follows:

> No adjudication by the court of the status of any child shall be deemed a conviction; no adjudication shall impose any civil disability ordinarily resulting from conviction; no child s... be deemed guilty or be deemed a criminal by reason of adjudication; and no child shall be charged with crime or be convicted in any court. The disposition made of a child, or any evidence given in the court, shall not operate to disqualify or prejudice the person in any civil service or military application or appointment or in any employment, license, or service. On any application or in any proceeding a person may state that he has not been arrested or taken into custody if such arrest or custody occurred when he was under 16 years of age. On any application or in any proceeding a person may not be asked questions to elicit information of juvenile court proceedings or adjudication, or apprehension when a child.

Section 27 on records and publication contains much that is found in the model acts and existing statutes, but attempts to strengthen them. Section 28 provides for erasure of arrest and court records, a procedure that has some precedent even in models and statutes relating to adults in criminal court.

Above I cited Senator Bayh who spoke of "other alternatives" to avoid commitment of most juveniles. My model act authorizes a fine as a disposition. Few juvenile court laws authorize fines as a disposition, but fines are an alternative disposition as important as any other. The Supreme Court in one case has encouraged the use of fines, to avoid commitment wherever possible,[17b] a view that supports the least restrictive alternative in sentencing.[18] I see no reason why this alternative should not be available for juveniles.

In the model act I have attempted to provide substantive due process ingredients again to avoid overcommitment. This is done in section 14, authorizing use of citation in place of taking a child into custody, and prompt attention to deciding on release if a child is taken into custody; section 17 authorizing trial by jury where an adult would be entitled to a jury trial for the underlying offense. The Supreme Court has upheld the almost universal provision in juvenile court statutes that deny children a right to trial by jury,[19] but several states do provide for trial by jury in children's cases, and the dissenters in the Supreme Court's decision cite the satisfactory experience in those states. In addition, some state courts have decided (as they can) that a jury trial is a right of juveniles in their jurisdiction.[20]

In all of the foregoing I have stressed the provisions in the model act that would turn the court around from one enforcing controls on children to one recognizing children with rights, the juvenile court enforcing those rights. But most of the act is a reaffirmation of the basic concept of a juvenile court—a noncriminal procedure, with informal hearings, and an intake process, fairly typical detention and shelter provisions, and so on. My view is that the current juvenile court statutes are in great danger of invalidation. As already cited above, the Supreme Court has said that "the constitutional and theoretical basis for this peculiar system is—to say the least—debatable." The doubts about the constitutionality of the system can be overcome only by making its noncriminality a truth rather than a fiction; and the *parens patriae* foundation also must be based on factual caring for the child, not a fictional pretense covering a quite punitive system. It is these fictions that I have tried to revise, so that the juvenile court can survive against constitutional doubts that now exist.

The concern of judges is that such a model

[16]Birch Bayh, "New Directions for Juvenile Justice," *Trial Magazine*, February 1977.

[17]Task Force on Secure Facilities, Division of Youth Services, Massachusetts, "The Issue of Security in a Community-Based System of Juvenile Corrections" (1978).

[17a]Edward V. Sparer, "Employability and the Juvenile 'Arrest' Record," N. Y. U. Graduate School of Social Work, Center for the Study of Unemployed Youth, June 1966; John C. Caffee, "Privacy Versus *parens patriae*: The Role of Police Records in the Sentencing and Surveillance of Juveniles," 57 Cornell L. Rev. 571 (1972). Sol Rubin, "The Juvenile Court System in Evolution," 2 Valparaiso U. L. Rev. 1 (1967) relates the effort—that failed—by a Council of Judges committee to convince the Job Corps not to reject applicants because of a juvenile court record.

[17b]*Tate* v. *Short*, 401 U.S. 395, 91 S. Ct. 668 (1971).

[18]Sol Rubin, "Probation or Prison: Applying the Principle of the Least Restrictive Alternative" (*Crime and Delinquency*, October 1975).

[19]*McKeiver* v. *Pennsylvania*, In re Burrus, 403 U.S. 528 (1971).

[20]In the Matter of McCloud, Family Court of Providence, R.I., January 15, 1971; *R.L.R.* v. *State*, 487 P. 2d 27 (Alaska, 1971).

reduces the jurisdiction of the court, particularly taking away status offenses, and reducing the age limit; but this model also *adds* jurisdiction—the bundle of children's rights that are included. As for the age level, the provision in the model is that the jurisdiction over children under 16 is *exclusive*, whereas most juvenile court statutes have a variety of exceptions under which children not only under 18 but under 16 can be—or must be—tried in criminal court.

The model act that I have proposed is only a beginning, but I hope it *is* a beginning toward not only a constitutional court but a system affording to children their rightful status as people with rights. I do not view *parens patriae* as contradicting that status, especially in the light of the comments of the Supreme Court in the Gault case, calling the concept of "murky" meaning. It is also only a beginning only in the sense that numerous other statutes, outside the juvenile court act itself, affect or govern the status of children. Certainly in a code on children I would prohibit corporal punishment of children. We worry about violence in our society. All the rationalization by the Supreme Court upholding corporal punishment of children, amounts to a justification of violence against children. But this violence at an early age must surely contribute to the general atmosphere of violence. Denmark has very little violent crime. When asked about it, a Danish criminologist said, "It is a cultural phenomenon, something you have in the culture of the United States that we don't have here . . . We have never had this concept of fighting and competition in the Danish culture that you have in the States."[21]

It is quite clear that our system of compulsory education must be reexamined; that our child labor laws need modernization. Many states now permit children access to contraceptives and abortion without the approval of their parents. Most states have brought their age of majority down from 21 to 18. California has a freedom of the press statute applying to high school papers. Treating the child as a person and not the property of his parents would require a new look at the modes and ingredients of emancipation, perhaps not returning to an age level of 10, 11, or 12, as once prevailed, but not delaying until a child is out of his teens, either. [22] A code of children's laws, based on the concept of the child as a person and not property, a person to whom the Constitution applies, is badly needed.

[21]Quoted in Michael S. Serrill, "Profile/Denmark," *Corrections Magazine*, March 1977, p. 23 at 34.

[22]See letter of Peter Bull, *American Bar Association Journal*, January 1978, at 12.

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Juvenile Intake Decisionmaking Standards and Precourt Diversion Rates in New York

BY CHARLES LINDNER

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THE PROBATION intake process is widely accepted today as an integral part of the juvenile justice system. Intake can be viewed as the initial entry point to the family court, with the intake probation officer serving as "gatekeeper." The primary purpose of the intake process is to provide a prepetition screening of complaints to determine which cases to divert from or insert into the system. Intake diversion obviates the necessity of formal court intervention, and the matter is terminated, either with or without a referral to a community agency.

Waalkes' (1964) insightful description of intake is as relevant today as when it was written:

> Intake is a permissive tool of potentially great value to the juvenile court. It is unique because it permits the court to screen its own intake not just on jurisdictional grounds, but, within some limits, upon social grounds as well. It can cull out cases which should not be dignified with further court process. It can save the court from subsequent time consuming procedures . . . It provides machinery for referral of cases to the other agencies when appropriate and beneficial to the child. It gives the court an early opportunity to discover the attitudes of the child, the parents, the police, and any other referral sources.[1]

The intake process provides a number of important benefits. The removal of trivial or inappropriate cases, as well as those that can be better served nonjudicially, not only reduces court congestion, but allows the court to marshall its limited resources for more serious cases. Reduced caseloads also result in significant savings of court

[1]Wallace Waalkes, "Juvenile Court Intake," *Crime and Delinquency*, Vol. 10, April 1964, p. 123.

END