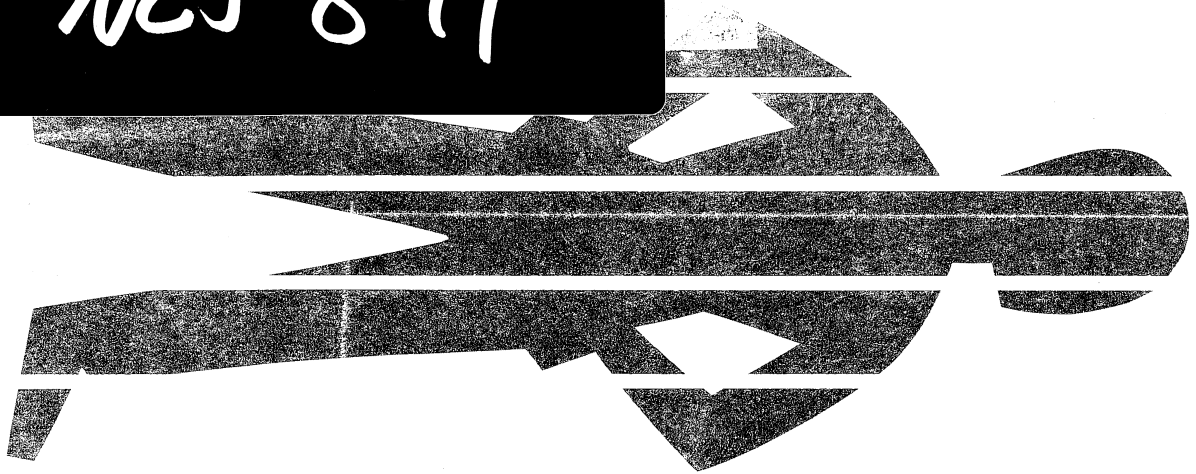


DELINQUENT CHILDREN

children's bureau publication no. 415—1964
reprinted 1965

FOREWORD

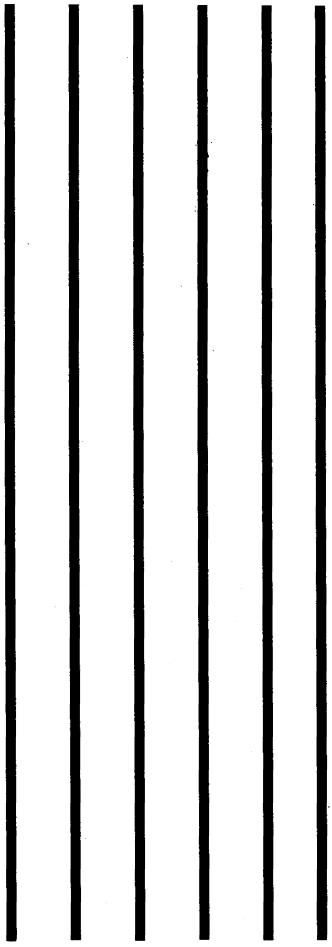
This publication, *Delinquent Children in Penal Institutions*, was developed because of the increasing concern throughout the country regarding the practice of direct commitment of children by juvenile courts to penal institutions, and the practice of administratively transferring children from training schools to penal institutions without court process.

These practices have been controversial and the subject of litigation for some years. Court decisions, however, are in conflict as to their validity.

The extent of these practices, policy questions both legal and social in nature, and the decisions of the courts are discussed in this publication. Also included are recommendations, including legislation, which, it is hoped, will help to resolve programing problems and at the same time assure that youth receive individualized treatment through fair and equitable procedures.

Katherine B. Oettinger

KATHERINE B. OETTINGER
Chief, Children's Bureau
WELFARE ADMINISTRATION



DELINQUENT CHILDREN in PENAL INSTITUTIONS

WILLIAM H. SHERIDAN *assistant director*

ALICE B. FREER *program analyst*

Division of Juvenile Delinquency Service

statistical analysis

I. RICHARD PERLMAN
chief of branch

DUPLAIN R. GANT
program statistics analyst

Juvenile Delinquency Studies Branch, Division of Research

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

WELFARE ADMINISTRATION Children's Bureau 1964

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C., 20402 - Price 20 cents

CONTENTS

Introduction 1

Transfer of Children to Penal Institutions 3

Legal Issues 10

The Older Aggressive Delinquent 21

Recommended Corrective Action 25

Appendix 30

DELINQUENT CHILDREN IN PENAL INSTITUTIONS

IT IS POSSIBLE for children who have been removed from their homes through informal, noncriminal process in juvenile courts to end up in jails, reformatories, penitentiaries, or other facilities for persons convicted of crimes.

This is not only a possibility, but an actuality in over one-half of the States of the United States, the Federal system, and the District of Columbia.

These are children who, for the most part, had been adjudicated as delinquent by the juvenile court. Many of them, found to be delinquent, have not committed acts which would be crimes if committed by an adult. In some jurisdictions the same situation can apply even to children who have been found to be neglected.

Two questionable practices cause this unfortunate and inequitable situation. The first practice is the process whereby a child committed to an institution for children is transferred to a penal institution for persons convicted of crime. This practice is generally referred to as administrative transfer and has been condemned by national agencies, professional organizations, and practitioners in the field of child welfare. It has also been criticized in standard-setting publications,[1] and prohibitions on its use have appeared in suggested legislative language and the Standard Acts.[2]

---

[1] *Standards for Specialized Courts Dealing with Children.* Children's Bureau Publication No. 346. Washington, D.C. 20402: U.S. Government Printing Office, 1954. 99 pp.

[2] *Standard Juvenile Court Act,* 6th edition. National Probation and Parole Association (now National Council on Crime and Delinquency). New York: The Association, 1959. 71 pp.

Standard Family Court Act. National Probation and Parole Association (now National Council on Crime and Delinquency). New York: The Association, 1959. 64 pp.

Proposals for Drafting Principles and Suggested Language for Legislation on Public Child Welfare and Youth Services. U.S. Department of Health, Education, and Welfare, Welfare Administration, Children's Bureau, 1957 (Multilithed).

It should be noted at this point that the concept of transfer between facilities for delinquent children is endorsed. The changing treatment needs of a child require that the agency vested with legal custody have this power. This authority has been provided for in the above publications.

The second practice is that of direct commitment of delinquent children by the juvenile court to a penal institution. While this occurs in fewer jurisdictions, a similar issue is involved as such a procedure is contrary to the very purposes for which the juvenile court has been established. This brochure, however, will deal primarily with administrative transfer although both procedures are equally undesirable.

Transfer of Children to Penal Institutions

For purposes of this study, the Children's Bureau added to the 1962 annual statistical study of public training schools for delinquent children a questionnaire on the transfer of children from such training schools to penal institutions administratively; i.e., without court action. This questionnaire (see appendix for copy) covered such matters as the source of authority for transfer, the criteria for transfer, and other items relating to the decision-making practice.

Authority to Transfer to Penal Institutions Administratively

The data from the supplementary questionnaire on administrative transfer revealed that of the 141 State training schools for delinquents located in 53 political jurisdictions,[3] 47 State training schools located in 22 jurisdictions reported having statutory authority to transfer children to penal institutions without referral back to court. Two additional institutions, both located in the Southern Region,[4] claim that they have administrative or executive authority to do this, although they have no statutory authority. One of these institutions, located in the same jurisdiction with institutions having no statutory authority, derives its authority through that vested in the Governor's office; the other, in a jurisdiction where one institution is alleged to have statutory authority and others have no authority, derives its authority through the Commissioner of Correction.

While some State training schools located in every region have

---

[3] This analysis is limited to State training schools. The 53 political jurisdictions include 49 States (Alaska excluded since it has no State training school), District of Columbia, Puerto Rico, Virgin Islands, and one Federal jurisdiction operating the National Training School for Boys to which boys are committed by the District of Columbia Juvenile Court.

[4] See appendix for jurisdictions by region.

Table 1. Authority to Transfer Children to Penal Institutions Administratively (without Court Action): State Training Schools for Delinquent Children in United States [1]

Geographic region*	Total number of State training schools	Total number of jurisdictions covered [2]	No authority to transfer to penal institutions		With authority to transfer to penal institutions			
					Through statutory provision		Through administrative regulation	
			Number of institutions	Number of jurisdictions	Number of institutions	Number of jurisdictions	Number of institutions	Number of jurisdictions
All regions	141	53	92	39	47	22	2	2
Northeastern	37	13	21	8	16	8	.....	.....
Northcentral	25	12	14	8	11	6	.....	.....
Southern	52	16	44	15	6	3	2	2
Mountain	12	8	9	6	3	3	.....	.....
Pacific	15	4	4	2	11	2	.....	.....

[1] Includes 53 jurisdictions as follows: 49 States (Alaska excluded since it has no State training school), District of Columbia, Puerto Rico, Virgin Islands, and 1 Federal jurisdiction operating the National Training School for Boys.

[2] The number of jurisdictions under each type of authority adds to more than the totals in this column, since in some jurisdictions there are institutions with authority to transfer and some without authority. In such cases the jurisdiction is counted under both types of authority.

*See appendix for States included in each region.

Table 2. Number of Children Transferred from State Training Schools for Delinquents to Penal Institutions Administratively (without Court Action), United States,[1] 1959, 1960, 1961

Geographic region*	Total	Number of children transferred—								
		By institutions with no authority to transfer			By institutions with authority to transfer					
					Through statutory provision			Through administrative regulations		
		Reformatory	Penitentiary	Other penal institutions	Reformatory	Penitentiary	Other penal institutions	Reformatory	Penitentiary	Other penal institutions
1959										
All institutions	504	....	2	.....	211	18	262	....	11	.....
Northeastern	335	....	....	.....	135	5	195	....	....	.....
Northcentral	75	....	2	.....	68	....	5	....	....	.....
Southern	24	....	....	.....	.....	13	.....	....	11	.....
Mountain	8	....	....	.....	8	....	.....	....	....	.....
Pacific	62	....	....	.....	.....	....	62	....	....	.....
1960										
All institutions	525	1	2	.....	234	19	269	....	....	.....
Northeastern	290	....	....	.....	160	8	122	....	....	.....
Northcentral	96	....	2	.....	65	6	23	....	....	.....
Southern	6	1	....	.....	.....	5	.....	....	....	.....
Mountain	9	....	....	.....	9	....	.....	....	....	.....
Pacific	124	....	....	.....	.....	....	124	....	....	.....
1961										
All institutions	407	....	....	.....	169	20	215	....	3	.....
Northeastern	229	....	....	.....	99	8	122	....	....	.....
Northcentral	72	....	....	.....	63	....	9	....	....	.....
Southern	12	....	....	.....	.....	9	.....	....	3	.....
Mountain	3	....	....	.....	.....	3	.....	....	....	.....
Pacific	91	....	....	.....	7	....	84	....	....	.....

[1] Includes 50 jurisdictions as follows: 46 States (Alaska excluded since it has no State training school), District of Columbia, Puerto Rico, Virgin Islands, and 1 Federal jurisdiction operating the National Training School for Boys. 3 jurisdictions did not report—1 located in the Southern Region having 4 State institutions, 1 in the Northcentral Region having 2 State institutions, and another in the Pacific Region having 4 State institutions. All of the institutions in these three jurisdictions have statutory authority to transfer.

*See appendix for States included in each region.

778-605 O-65-2

authority to transfer children to penal institutions, the greatest concentration is in the Northeastern Region. (See table 1).

A comparison of institutions reporting on authority for administrative transfer in both 1956 [5] and 1962 indicates that none of the institutions having statutory authority in the earlier year lost this authority by 1962. Two institutions, not having any authority in 1956, gained it by 1962—one through administrative regulation and the other through statutory revision.

Number of Children Transferred to Penal Institutions

An average of about 478 children per year were transferred by State training schools for juvenile delinquents to penal institutions in the period 1959–61. (See table 2).[6] While data for 3 years are insufficient to establish any trend, the 22-percent decrease between 1960 and 1961—from 525 to 407—in the number of children transferred to penal institutions is a significant one. This drop may reflect an increasing tendency on the part of some institutions to refrain from transferring children even when permitted to do so by their own State law. For example, eight institutions in six jurisdictions which have statutory authority transferred no children in any of the 3 reporting years. Recent publicity and discussion of the constitutionality of the transferring process may have something to do with this tendency.

On the other hand, two institutions reported that they transfer children administratively to penal institutions without any specific authority; i.e., without either statutory provision or administrative regulation. The number of such children transferred is very small—two to penitentiaries in 1959, one to a reformatory, and two to penitentiaries in 1960, and none in 1961.

It should be noted that table 2 includes only the number of children that were reported as transferred. It does not include the number of children who are incarcerated in penal institutions on direct commitment by juvenile courts, which is possible in a number of States. In some States both practices exist—transfer and direct commitment. For example, in one such State there are six direct commitments for every one transfer. Nor does this include those few States which failed to report, some of which have such authority and are known to trans-

---

[5] Information obtained from Children's Bureau 1956 annual statistical study of public training schools for delinquent children.

[6] Ten institutions in three jurisdictions did not report on the number of children transferred. All are located in jurisdictions that have statutory authority to transfer.

fer. There is every reason to believe, therefore, that an actual count of children processed through juvenile court who end up in penal institutions would probably be considerably in excess of the figure shown in table 2.

Transfer Process

All training schools reported they used some form of staff committee to determine whether a particular child should be transferred from the juvenile institution to a penal institution.

Staff attending these conferences is determined by a variety of factors. It is usually composed of key personnel including the staff members having day-to-day contacts with the child. In general, those institutions which have professional persons on their staff reported it desirable to have such staff represented on this committee to insure that their technical knowledge is brought to bear on the situation under consideration.

Most of the institutions reported that when a child's case is being reviewed or considered for possible transfer to a penal institution, the child is informed of the reasons for the committee's decisions and in most instances is given an opportunity to present his side of the case. The six institutions that do not inform the child of the reasons for the committee's decisions also do not give the child an opportunity to present his side of the case.

Criteria Used in Transferring Children

Reporting institutions used a variety of criteria in determining the need for administrative transfer of children. These criteria can be classified into two broad groups: (1) incorrigible behavior and (2) institution program not effective to meet the needs of the child. A weighted average of the frequency of the various criteria shows that "incorrigible behavior" was used by institutions more often than any other reason. Similarly, "incorrigible behavior" was reported the No. 1 criterion most frequently used by the institutions.

The general use of the criterion "incorrigible behavior" probably reflects the wording of the statutes, many of which use the same term in their provisions granting authority to transfer. Such behavior is not usually defined as a crime unless it is accompanied by an overt act which constitutes a defined crime. The determination as to whether a child is incorrigible is also extremely subjective in nature. What may be deemed incorrigible by the officials in one institution may be acceptable as symptomatic, acting-out conduct in another.

The philosophy which pervades the institution, the adequacy of the program, the services available, and the training and skill of the staff are all factors which would have a bearing upon making this determination. In any event, under this terminology a child can still end up in the penitentiary for conduct which would not be a crime on the part of an adult.

Final Authority to Transfer

Final approval for administrative transfers from the institutions are vested in a variety of authorities. The superintendent or other institutional staff has this responsibility in two institutions. Four institutions reported that the institution's own governing board has final authority to transfer children administratively. The central administrative or parent agency has this authority with most institutions. The remaining institutions reported that final authority was vested in a combination of unique ways; i.e., an independent board of trustees, written order of the commissioner of social welfare certifying the reasons, and the written consent and approval of the commissioners of correction and mental hygiene.

Responsibility for Release

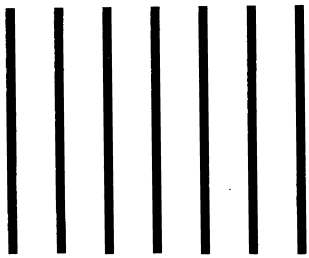
The responsibility for releasing the juvenile from the penal institution after he has been administratively transferred to that institution lies in a variety of agencies. About a third of the institutions reported that this responsibility is retained by the juvenile institution, parent or central administrative body. Another one-third of the institutions indicated that this responsibility is transferred along with the child to the penal institution to which he may be sent. The remaining institutions reported varying combinations of agencies or methods for sharing this responsibility, i.e., "Classification staff and final approval by board of trustees"; "authority by virtue of statute (release with good time)"; or "parole by Youth Division of U.S. Board of Parole or by the committing court."

Period of Time Held

Most institutions reported that, after the juvenile is administratively transferred to the custody of the penal institution, the period of time for which he can be held is indeterminate to 21 years of age. One institution reported that the juvenile may be transferred to a

penal institution for an indeterminate period to 21 years of age or an earlier age set by the committing court. Another institution reported that its juveniles may be transferred for either indeterminate to 21 years of age or indeterminate beyond 21 years of age. One institution reported that juveniles are transferred to penal institutions for a period of time indeterminate beyond 21 years of age. Five institutions indicated a variety of sentences which include: until paroled or released by good time; until 19 years of age; not more than 2 years nor less than 1 year; 30 days maximum for any transfer; indeterminate to 20 years of age.

In the Mountain and Southern Regions, where juveniles can be held indeterminately beyond 21 years of age by a penal institution, confinement beyond 21 years of age was unknown in actual practice, as reported by the training schools.



Legal Issues

Legislation

Juvenile court statutes, as far as delinquency is concerned, are based upon the extension of the English common law relating to the capacity to commit a crime. A child under juvenile court jurisdiction does not have the capacity to commit a crime, except where jurisdiction of the child is waived by the juvenile court to the criminal court.

The constitutionality of administrative transfer and the direct commitment by the juvenile court to a penal institution is subject to serious challenge. Both practices, through informal, noncriminal court procedure, permit the imposition of criminal sanctions for an act not deemed to be a crime. The ultimate effect of both practices is to enlarge a delinquent act to a crime, and to commit delinquent children to penal institutions without the benefit of the safeguards of criminal procedure.

It is not only illogical but patently inconsistent with fair treatment of the child to argue, on one hand, that the safeguards of criminal procedure are unnecessary in noncriminal cases, and then, on the other hand, to apply criminal sanctions in such cases. Not only do these practices deny the youngster the protection of criminal proceedings but also they undermine the philosophy of the whole juvenile court movement. If permitted to continue, the demand for full criminal proceedings in delinquency cases may be the ultimate result.

These practices do not appear to be consistent with the legislative intent or spirit of the juvenile court laws in the jurisdictions in which they are exercised. In about three-fourths of these jurisdictions the juvenile court law either provides specifically that an adjudication of delinquency shall not be deemed a conviction of a crime, and/or that such proceedings are noncriminal. An equal number of jurisdictions either prohibit absolutely detention in jail, or provide special protections when jail detention is permitted under certain conditions.

A purpose clause [7] similar or identical to that clause contained in the Standard Juvenile Court Act is a provision of the statutes in over one-half of the jurisdictions currently permitting these two prac-

tices. Such a purpose clause hardly implied the intent of incarceration in a penal institution of a child under the jurisdiction of the juvenile court.

The Federal Juvenile Delinquency Act [8] also provides for special proceedings for children who have committed acts which would be crimes if committed by an adult. The act provides that the child shall be proceeded against as a juvenile delinquent if he consents, unless the Attorney General directs otherwise.

If he gives his consent, he is to be proceeded against by information and "no *criminal prosecution* shall be instituted for the alleged violation." The Act also provides that the consent given by the juvenile "shall be deemed a waiver of trial by jury." As far as the statutory provisions go, this is all that he has waived. Hearings, however, can be held in chambers or otherwise presumably on an informal basis the same as in State courts.

Detention in jail is prohibited unless necessary to secure the custody of the child or to insure his safety or that of others. Where he is detained in jail he must be held apart from adults when facilities are available. The Attorney General is permitted to designate any public or private agency or foster home for his care. Nowhere is there any indication that incarceration in a penal institution was contemplated. In fact, the tenor of the Act is to the contrary. The legislative history further supports this point of view. In explaining the purpose of the Federal Juvenile Delinquency Act, the Attorney General, in submitting the measure to Congress, stated:

> "Many [juvenile offenders] can be reclaimed and made useful citizens if they are properly treated and cared for, and are not permitted to mingle with mature and hardened criminals. *In order to achieve these purposes it is important that juvenile offenders should not become inmates of penitentiaries or other penal institutions in which adults are incarcerated.* It is likewise advisable that a juvenile delinquent for whom there is some hope of rehabilitation *should not receive the*

---

[7] Standard Juvenile Court Act, Art. 1, Sec. 1.

"This Act shall be liberally construed to the end that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him."

[8] 18 U.S.C. 5031–5037.

stigma of a criminal record that would attach to him throughout his life." [Emphasis supplied.] S. Rept. 1989, 75th Cong., 3d Sess. 1938.

Federal Court Decisions

In *Huff* v. *O'Bryant*, 74 App. D.C. 19, 121 F. 2d 890 (1941), the U.S. Court of Appeals held that the Attorney General had no authority to transfer a juvenile committed there by the District of Columbia Juvenile Court from the National Training School to Lorton Reformatory because of incorrigibility.

Subsequent to the decision in *Huff* v. *O'Bryant*, legislation was introduced which was passed by Congress in 1941,[9] amending the provision which authorized the Attorney General to transfer prisoners from one institution to another, extending this jurisdiction to juveniles committed to the National Training School by the Juvenile Court of the District of Columbia and by any court of the United States. Despite this amendment, the decisions of the Federal courts are nevertheless in conflict as to the authority of the Attorney General to transfer a juvenile delinquent committed to his custody to a penal institution used for persons convicted of crimes.

In *Suarez* v. *Wilkinson*, 133 F. Supp. 38 (1955), the court confirmed the power of the Attorney General to designate the place of confinement of a juvenile committed to him under the Federal Juvenile Delinquency Act. The place of confinement in this instance was a Federal penitentiary. The question of the delinquent's constitutional rights was not raised in this case.

In *Arkadiele* v. *Markley* 186 F. Supp. 586 (1960),[10] the court held there was no constitutional deprivation in the transfer of a juvenile from an institution designed for the care, custody, and training of juveniles to a Federal penitentiary. The petitioner, a juvenile, had consented in writing to be proceeded against as a juvenile delinquent for a violation of a law of the United States, under the Federal Juvenile Delinquency Act, and, committed initially to an institution designed for the care, custody, and training of juveniles, was later transferred to a Federal penitentiary. He filed a writ of habeas corpus in Federal district court alleging that his confinement was invalid since he had not been convicted of any crime and his constitutional rights had been denied him under the Fifth and Sixth Amend-

[9] Act of Oct. 21, 1941 (recodified as 18 U.S.C. 4082).

[10] See Va. L. Rev., Vol. 47, No. 3, April 1961, pp. 518–523.

ments of the U.S. Constitution. The writ of habeas corpus was denied and the matter of the place of confinement adjudged to be within the province of the Attorney General to whom custody had been given. The issue of constitutionality seems to have been resolved by reason of the fact that the juvenile consented to be tried under the Federal Juvenile Delinquency Act and had waived his right to indictment and trial by jury. Was not the purpose of the waiver designed to afford the juvenile a judicial proceeding noncriminal in nature? After such a judicial proceeding, was not the juvenile's transfer to a penal institution lacking in due process? Did such consent therefore waive his right to commitment to an institution for the care, custody, and treatment of children? The court in the instant case sanctioned such custody in a penal institution without benefit of full criminal proceedings. The purpose of the Federal Juvenile Delinquency Act—the rehabilitation of the offender, not as an adult criminal but as a juvenile delinquent—appears to be defeated by the decision in this case.

Federal and State legislation was enacted so as to provide informal hearings for juveniles, noncriminal in nature, to place juveniles in homes or institutions for children instead of jails or other penal institutions, with the welfare, safety, and interest of the child the prime consideration. If a juvenile is to be committed to a penal institution, his constitutional rights should be secured initially and he should be committed as a criminal and not as a juvenile, and as a criminal have the full protection afforded an adult charged with the commission of a crime.[11] Important rights such as due process of law cannot be ignored or lost by reason of the age of the offender.

In a later case, *Sonnenberg* v. *Markley*, 289 F. 2d 126 (1961), the petitioner filed a writ of habeas corpus in which he alleged he was illegally detained in the custody of the respondent at the U.S. penitentiary at Terre Haute, Ind., an institution for adult criminals. He was adjudged a juvenile delinquent under the Federal Juvenile Delinquency Act (18 U.S.C. 5031) and "committed to the custody of the Attorney General or the National Training School or a comparable institution for care, custody, and training of juveniles."

The court basing its decision on *Suarez* v. *Wilkinson*, 133 F. Supp. 38 (1955), said that the Federal Juvenile Delinquency Act did not take away any powers from the Attorney General but rather added further discretionary powers. It also referred to *Arkadiele* v. *Markley*, 186 F. Supp. 586, holding once committed, "the nature of such custody in line with the juvenile's reaction thereto, must be left necessarily to the discretion of those in charge of the problem of rehabilita-

[11] See *United States ex rel. Stinnett* v. *Hegstrom*, 178 F. Supp. 17 (1959).

778-605 O-65-3

tion" (citing *Suarez, supra*). The petitioner Sonnenberg argued that the Attorney General may confine him only in an institution comparable to the National Training School. The court disagreed with this contention.

It appears that the court did not consider constitutional issues, although the petitioner relied on *United States ex rel. Stinnett* v. *Hegstrom*, 178 F. Supp. 17 (1959), where the court said: "The constitutional guarantees appear to this court to present an insuperable obstacle to a construction of the statute which would give the Attorney General unlimited discretion over transfer to places of confinement of juveniles which would include mingling them with general prison populations in penal institutions of all types." Here was a juvenile tried under a Federal act enacted for his protection and rehabilitation to give him assistance and training and individualized treatment as needed. The court was of the opinion that the petitioner Sonnenberg was receiving these specialized benefits in an institution for adult criminals; viz, U.S. penitentiary at Terre Haute, Ind.

In *White* v. *Reid*, 125 F. Supp. 647 (D.D.C. 1954), the validity of an administrative transfer of a juvenile committed to the federally operated National Training School by the Juvenile Court of the District of Columbia was considered. It was held that "Unless the institution is one whose primary concern is the individual's moral and physical well-being, unless its facilities are intended for and adapted to guidance, care, education, and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or jailor, it seems clear a commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental constitutional safeguards." Whereupon the court held that the Attorney General could not place the boy in the District of Columbia jail for continued detention. And in a later case [12] the same court held that the Attorney General could not designate the Federal Correctional Institution at Ashland, Ky., as confinement for the same juvenile, stating "that both Constitution and statute forbid the transfer of a youth committed under the Juvenile Court Act to any institution designed for the custody of persons convicted of crime. . . ." Here the court made the distinction between Ashland, an institution for juveniles convicted of crime in criminal courts, and the National Training School for Boys, an institution not designed for those convicted of crimes but for those adjudged delinquent under noncriminal procedure in a juvenile court.[13]

---

[12] *White* v. *Reid*, 126 F. Supp. 867 (D.D.C. 1954).

[13] A contrary opinion is found in *Clay* v. *Reid*, 173 F. Supp. 667 (D.D.C. 1959), which upheld transfer from the National Training School to a Federal reformatory on statutory grounds.

Kautter v. *Reid*, 183 F. Supp. 352 (D.D.C. 1960), is another opinion concerning the administrative transfer of a juvenile committed by the Juvenile Court of the District of Columbia to the National Training School. It agrees with *White* v. *Reid*, 125 F. Supp. 647 (D.D.C. 1954), that the detention in jail of a juvenile awaiting parole hearing is unlawful "If it could not be done initially, it should not be permissible by transfer or justified because of the occurrence of parole." The court held that the juvenile's detention in the District of Columbia jail pending outcome of a hearing or parole was not lawful. "To put such a child in a place for the punishment for crime . . . would therefore raise a serious constitutional question."

For a similar interpretation of the power of administrative transfer, see *Cogdell* v. *Reid*, 183 F. Supp. 102 (D.D.C. 1959), where the court held that the authority conferred upon the Attorney General is directed to ***convictions*** of an offense against the United States and in the district courts of the United States, and cannot by its very terms be held to apply to one committed under a juvenile court statute which regards him as a juvenile and specifically provides he is not to be regarded as convicted of a crime by the fact of such commitment.

In *Harris* v. *Kennedy*, an unreported case, U.S. District Court for the District of Columbia, Civil Action No. 2111–62, April 4, 1963, plaintiff's motion for voluntary dismissal was granted with prejudice—the case would be moot before trial could be held. Harris was committed to the National Training School by the Juvenile Court of the District of Columbia, transferred by the Attorney General to the Federal Reformatory at Petersburg, Va., and later to the Federal Correctional Institution at Ashland, Ky. Harris asked for a mandatory injunction directing his return to National Training School, which was denied. On appeal, the case was remanded by the U.S. Court of Appeals to the U.S. District Court for trial of the fact issue only as to whether the Federal Correctional Institution at Ashland, Ky., is a "suitable and appropriate institution" for the confinement of juveniles committed under the Juvenile Court Act. Although Harris may have needed reformatory treatment, the manner in which such treatment was thrust upon him is subject to serious question. Harris' release to the community before a conclusive determination by the courts was rendered left unanswered the serious question.[14]

Since the *Harris* v. *Kennedy* case, the Senate Committee on the Judiciary found Ashland not "suitable" even for the care of youth convicted of crime. The Committee reported that "The youth

---

[14] For a scholarly discussion of this problem in the Juvenile Court of the District of Columbia, see: *In re Eleven Youths*, 91 Wash. L. Rep., 1963, p. 3009. Opinion of Ketcham, J.

center at Ashland, Ky., originally constructed as a facility for adult male offenders is not suitable for the purposes of the Youth Corrections Act. The construction of a new youth institution is on the long-range program of development submitted to this committee by the Attorney General two years ago. The subcommittee requests that the Attorney General study the current requirement for a new youth center and give the subcommittee his views." [15]

In *United States ex rel. Stinnett* v. *Hegstrom*, 178 F. Supp. 17 (1959), the court, in releasing these youths from the Federal Correctional Institution at Danbury, held that "due process requires that a youthful criminal be tried and sentenced at the outset as such, . . . if an original decision to invoke juvenile rather than criminal proceedings is made and proves ill advised . . . then he be accorded same right of trial for later misconduct necessitating treatment as criminal . . . The petitioners in these cases are in custody as juveniles. They have not been tried and sentenced for crime committed before they were placed in custody as juveniles or for any offense since committed while in such custody. They must be confined only with other juveniles until and unless charged and convicted of crime."

Judge Julian Mack, testifying on the bill to amend District of Columbia Juvenile Court Act (H. Rep. 177, 75th Cong. 1937), stated that "the moment the State holds the child responsible as a criminal, then the child has a constitutional right to those safeguards that are accorded under the Constitution to all criminals, irrespective of age."

State Court Cases

The more recent decisions of State courts uphold transfer and direct commitment; however, these decisions are based upon statutory interpretation or outmoded or illogical precedent.

A recent unreported case—*State of Wisconsin ex rel. Gary Schmitt* v. *Michel A. Skaff*, *State of Wisconsin ex rel. Robert Hoffman* v. *Michel A. Skaff*, decided January 28, 1963—concerned two juveniles committed as delinquents (one for habitual truancy) to the State Department of Public Welfare and transferred from the Wisconsin School for Boys to the Wisconsin State Reformatory by the State Department of Public Welfare. The court concluded that there was statutory power to transfer. In 1955 a limitation was included which

---

[15] See: Report No. 928, Feb. 28, 1964, National Penitentiaries—Report of the Committee on the Judiciary, U.S. Senate, 88th Cong., 1st sess., made by its Subcommittee on National Penitentiaries Pursuant to S. Res. 64, 88th Cong., 1st sess. as extended, at p. 4.

excepted *penal* institutions after July 1, 1959, or earlier if medium security facilities for juveniles were provided. However, this limitation was removed in 1959 because "no medium facilities for delinquents had been constructed." In other words, transfer became justified on the basis of the State's failure to provide proper facilities for delinquent children. The legislative council child welfare committee itself went on record "in opposition to the transfer of delinquent children to penal institutions." The opinion also indicated that "several juvenile court judges advised the Department of Welfare that the transfer procedure was without due process of law." In discussing the constitutionality of the statute, the court cited a case [16] decided in 1876 which permitted the placement of persons convicted of crime in the same institution with "destitute children"—a concept not acceptable today even to those who advocate the commingling of delinquent children with adult criminals.

The court also cited two Attorney General opinions [17] which upheld the legality of such transfer. One opinion cited the *Milwaukee Industrial School* case mentioned previously. In the same opinion, it was pointed out that the State now has "highly trained and thoroughly competent" treatment staff and that the State "is now striving to make its penal institutions instruments of education and reform. . . ."

It is submitted that the real issue in this and other cases is the imposition of criminal sanctions upon children found under informal, civil proceedings to have committed acts not deemed to be crimes. Comparability of treatment in a penal institution and a juvenile institution is not the real issue.

In *Long* v. *Langlois*, 170 A. 2d 618 (Rhode Island, 1961), the court stated that the statute permitting administrative transfer was clear, leaving no room for interpretation. The question of constitutionality, however, seems to have been treated lightly. The court indicated that there was a right to counsel in the juvenile court, but this is only one of a number of safeguards in criminal procedure

---

[16] The *Milwaukee Industrial School* v. *The Supervisors of Milwaukee County,* 40 Wisc. 328.

[17] Op. Att'y Gen., Wis., dated Sept. 6, 1950, Vol. 39, p. 304, and Op. Att'y Gen., Wis., dated Sept. 21, 1950, Vol. 39, p. 334.

For an Attorney General's opinion holding to the contrary, see Op. Att'y Gen., Ind., dated Nov. 29, 1948, p. 431. "The Indiana State Reformatory, being a prison and a State penitentiary for the confinement of those convicted of felonies, is different in all respects from the Boys' School. The environment, the associations, the discipline, were the very causes for the creation of juvenile courts. It is my opinion, therefore, that that which the Juvenile Court itself could not do—commit the boy to the penitentiary—the administrative authorities of the State have no such power."

accorded adults which is found in this State's juvenile court process.

It is interesting to compare this decision with a later case[18] in the same jurisdiction where the court prohibited the transfer of an adult, who had committed a serious criminal offense, to a penal institution. He had been committed to the Department of Social Welfare as a defective delinquent. The court pointed out that the statute provided for "commitment, not the sentencing of defective delinquents." In view of the statutory language relating to noncriminality of juvenile court proceedings, it is difficult to follow the reasoning which permits a child not convicted of a crime to be transferred to a penitentiary, and a similar transfer prohibited in the case of an adult who has committed a serious crime.

The court in the case *In re Maddox*, 351 Mich. 358, 88 N.W. 2d 470 (1958), parallels the finding in *Pelletier* v. *Langlois*, 179 A. 2d 856 (R.I. 1962). The facts in these two cases were practically identical. *In re Maddox*, the court said that "incarceration in a penitentiary designed and used for the confinement of convicted criminals is not a prescription available upon medical diagnosis and order to an administrative branch of government. Such confinement can only be ordered by a duly constituted court after trial conducted in accordance with the guarantees pertaining to individual liberty contained in the Constitution of this State and this nation. . . . This prisoner has been denied the due process of law pertaining to criminal trial to which he was entitled before penitentiary sentence or confinement. U.S. Const. Amend. XIV."

It also appears that the court would have applied the same principles to the transfer of a juvenile, for the court further said: "the constitutional problem posed by transfer to a penal institution of a person committed under civil procedures for treatment has recently been before the Federal courts and decided in a well-considered opinion by Chief Judge Laws of the United States District Court of the District of Columbia.[19] In the case involved, Judge Laws was dealing with a juvenile committed through civil, noncriminal, juvenile court proceedings for correctional treatment, but subsequently proposed to be transferred to a Federal institution employed for the incarceration of criminal offenders. The court concluded that the proposed transfer violated both the U.S. Constitution and the statute under which the youth had been committed. In reasoning, this closely parallels the situation with which we are here confronted."

---

[18] *Pelletier* v. *Langlois*, 179 A. 2d 856 (Rhode Island 1962).

[19] *White* v. *Reid*, 126 F. Supp. 867 (D.D.C. 1954).

In re Darnell 173 Ohio St. 335, 182 N.E. 2d, 321 (1962), the court held, basing its decision on *Prescott* v. *State*, 19 Ohio St. 184, which was decided in 1869, that State constitutional provisions for jury trial and grand jury indictments, as well as the U.S. Constitution's fifth and sixth amendments, had not been violated in the commitment of a male juvenile over 16 by juvenile court to the Ohio State Reformatory as provided by Ohio Rev. Code, Sec. 2151.35, in cases in which the act which if committed by an adult would be a felony. If an adult had committed such a felonious act, he would be entitled to the constitutional protections. Darnell, without indictment by a grand jury and at a hearing without a jury trial, was committed to the Ohio State Reformatory by the juvenile court. The court pointed out that the petitioner was not "convicted" nor "sentenced" but rather "committed." Ironically, the Rhode Island Court in *Pelletier* v. *Langlois* relied upon the same reason to prevent the transfer of an adult felon, tried as a defective delinquent, to a prison.

Direct commitment to a reformatory for persons convicted of crime was also upheld in *Cope* v. *Campbell*, 175 Ohio St. 475 (1964), where a 17-year-old boy was found to be a delinquent child by reason of an act of malicious entry which if committed by an adult would be a felony. The juvenile court then committed the appellant to the Ohio State Reformatory. Appellant instituted a habeas corpus proceeding, claiming the court lacked jurisdiction because he had not been provided with legal counsel and had not been advised in advance of the hearing as to his constitutional rights.

The court held that constitutional provisions relate to the rights of an accused in criminal prosecution and that proceedings in juvenile court are civil in nature and not criminal, not intended to brand the appellant with a mark of infamy or disgrace, but rather to correct and rehabilitate him. The court further commented that the law implies protection for the minor and not punishment.

Direct commitment to penal institutions by juvenile courts has also been upheld in cases where the alleged misconduct would not be a crime in the case of an adult. In a recent case, *In re Anonymous*, 242 N.Y.S. 2d 571 (1963), direct commitment was made to a penal institution [Westfield] of a girl between the ages of 16 and 18 years who was adjudged to be a "Person in Need of Supervision." Despite the fact that the Department of Corrections and the Department of Social Welfare contended that the family court lacked the power to place or commit the girl, the court said after reviewing the statutes involved, "I have not overlooked the statement of the Joint Legislative Committee that it does not believe that girls who have not committed any crime should be sent to such an institution [Westfield]. . . . The legislature could not have intended the absurd and farcical result of

stripping the courts of all power to place girls in this age group in a suitable public facility. . . . The court therefore orders placement of this girl at Westfield. . . ." A contra disposition will be found in *In re Anonymous* 245 N.Y.S. 2d 264 (1963).

In *State ex rel. McGilton* v. *Adams*, 102 S.E. 2d 145 (1958), the court condemned direct commitment by the juvenile court to the penitentiary. Here the court held that a youth under 18 committed to the State industrial school could not thereafter for the same offense be committed to the penitentiary unless the youth was committed to the industrial school under a valid indictment or presentment of a grand jury for a felony, the latter being a constitutional requirement.

The Older Aggressive Delinquent

It is not the intent of this brochure to discuss institutional programs for all delinquent children. This has been covered in detail elsewhere.[20] This material is focused primarily upon the problems—both legal and social—which are encountered in the care and treatment of a specific group; namely, the older, aggressive, adolescent delinquents.

The fact that administrative transfer or direct commitment from a juvenile court to a penal institution exists in over one-half the States in the country indicates the existence of a practical problem which must be considered. It is generally recognized that there will be some juveniles, particularly in the 16- to 18-year-old group, who, because of their personality and stage of social and emotional development, do not benefit from institutional programs designed for the treatment of adolescents. These are usually the more mature, aggressive, acting-out youth who need to be held in secure custody on a continuing basis over a considerable period of time, often beyond the age of majority. To continue to retain these older, adolescent youth in the open training school setting is harmful to the program as well as to the youth involved.

The placement of the hyperaggressive, sophisticated, habitual recidivist delinquent with others who are less mature and sophisticated in their behavior and whose needs are less intense in terms of treatment creates serious problems of discipline and control. This group demands a disproportionate amount of staff time which in turn detracts from the effectiveness of the program as far as the other children are concerned. Moreover, their conduct may be dangerous to the other children and to the staff as well.

An additional problem created by this small group of youth is that they are frequently apt to project delinquent behavior patterns upon the other children under care. Their actions are contagious despite the efforts of staff and the effectiveness of program. Some of the socially unacceptable norms and values of this group are adopted

---

[20] *Institutions Serving Delinquent Children—Guides and Goals.* CB Pub. 360. 1957. 119 pp.

by the less mature youth. It therefore becomes necessary to confine them repeatedly in isolation rooms and other security facilities during their stay at the training school. This practice is destructive rather than therapeutically helpful, both for them and for the rest of the institutional population.

This problem was recognized in the first—and all subsequent editions of—the Standard Juvenile Court Act by including a provision for waiver under certain conditions.[21] These conditions have remained the same over the years; namely, a child over 16 who has committed an act which would be a felony if committed by an adult.[22]

In spite of such provisions, a number of youth of this type are confined in institutions for children. This may be due to the lack of any waiver provision, to a faulty diagnosis at the time of commitment, or to the fact the conditions precedent to waiver were not satisfied at the time of commitment.

The number of such youth should be very small, particularly in those States where waiver is provided for in the juvenile court law and is effectively used, and where the institutional program meets recognized standards. This observation is supported by the fact that in the 22 jurisdictions where transfer is reported as taking place, the number transferred in 1961 represented less than 2 percent of the total number of children in these institutions during that year. If this is the case, it is believed that there are very few, if any, States at the present time where the establishment of a separate, secure custody institution for such delinquents is feasible either from an economic or program standpoint.

The treatment of these youngsters demands a full, complete, yet self-contained program. This means a physically separate facility, because of the higher degree of security involved. Such a program should include intensive treatment services, including casework, psychological and psychiatric services, educational services, recreation and leisure-time activities.

To establish and maintain such a facility for a relatively few youngsters would require the investment of a sizable amount in physical plant and an exorbitant per capita cost which, if appropriated,

---

[21] "It is true that some 16- and 17-year-olds, and even some younger, have strongly developed tendencies which render them impervious to the average juvenile or family court's services. Accordingly, it is necessary to authorize transfer to the criminal court." See comment on sec. 13 of the Stand. Fam. Ct. Act, and Stand. Juv. Ct. Act.

[22] In the 1959 ed. of the Stand. Juv. Ct. Act, the National Council of Juvenile Court Judges recommended 14 as the minimum age for transfer. See comment on sec. 13 of the Stand. Juv. Ct. Act, p. 33.

would no doubt have an adverse economic effect upon needed facilities and services for other delinquent children.

It would be physically impossible to provide for such a program within the confines of a single cottage in an existing institution. Other problems also negate such a suggestion. The primary treatment goal of an institution for delinquent children is to help a child develop controls within himself. If outer controls are too rigid, the youngster has no opportunities for freedom of choice, self-direction, and experimentation with self-control. The treatment institution, therefore, must maintain a balance between acceptance and permissiveness, on the one hand, and necessary controls, on the other. This balance must be consistent with the safety of the children under care and the community in general.

It is therefore questionable whether two programs similar in many respects, but one requiring a high degree of restraint and security and the other relaxed, can operate effectively on the same grounds.[23] This is due in part to the effect such an operation has upon the total institutional program. For example, the atmosphere of the more relaxed program is apt to become more concerned with custody and security. In this connection, the staff becomes preoccupied with the operation of the security system which can easily infiltrate the rest of the program, thus destroying the necessary balance discussed previously.

Where two such programs operate on the same grounds, there is also a tendency to use the facility for every unmanageable youngster in the open program. In other words, it becomes an abused substitute for a more carefully developed treatment program. In addition, if such a facility is on the same grounds and is not occupied to capacity, it is quite likely that population demands in the open program will affect the intake criteria for the security program and youth will be transferred to relieve the population pressures in the rest of the institution.

Many children in training schools can be expected to have emotional flareups and become unmanageable at times. In order to protect the child, other children, and staff members, it may be necessary to isolate children from the group for periods ranging from a few hours to a few days.[24] For this reason, training schools need a

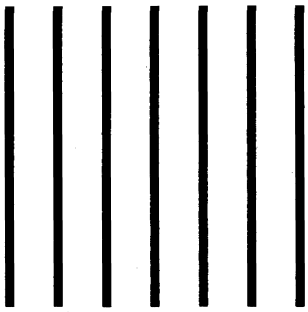
---

[23] "Although it is recognized that most training schools need to have some such segregation facilities, the establishment of a security unit which is practically tantamount to an institution within the training school is not recommended as a general pattern." *Institutions Serving Delinquent Children—Guides and Goals,* p. 125.

[24] For a more detailed discussion of the use of this type of control, see *Institutions Serving Delinquent Children—Guides and Goals,* pp. 115–120.

detention room or rooms for this purpose. In this discussion, we are not concerned with this type of youngster but rather with the one whose behavior requires continuing care in such a setting. There is general agreement that an institution for young adult offenders is more appropriate for this type of youngster.

It is believed, therefore, that procedures must be devised, which will meet the test of fair treatment, whereby these few older adolescents may be referred by juvenile court action to courts which can commit them to facilities for the young adult offender. Such procedures should also provide protections against the indiscriminate transfer of adolescents out of the children's program who can and should continue to be treated as juveniles.



Recommended Corrective Action

It should be remembered that no one contends that offenses committed by young people, whether committed within or outside an institution, should be excused or condoned. Individuals in the institution and the general public should be protected, and young people should be held responsible, commensurate with their degree of maturity, for the consequences of their misconduct. The consequences of such misconduct, however, should result in individualized treatment authorized through the ordinary process of law, utilizing legal and judicial resources available in the statutes.

It is obvious from present law and practice throughout the country that not all adolescents ordinarily within the juvenile court age group are considered amenable to the care and treatment provided for in a program designed for children. Many of the States which provide for administrative transfer or direct commitment by juvenile courts to penal institutions also provide for waiver to adult court or exempt certain offenses from juvenile court jurisdiction. In the group of States which do not transfer administratively or commit directly, provision for waiver and exemption of certain offenses from juvenile court jurisdiction is generally contained in the statutes. It should be noted that in this specific group of States, youth of juvenile court age who are in penal institutions have been afforded the procedural safeguards of criminal law prior to incarceration.

One objective, therefore, is to see that all youth in penal institutions are afforded these protections. Another equally important objective is that each youth is provided with the care and treatment which will best meet his individual needs whether provided within a program for children or young adults. In order to attain these two objectives, action is necessary along several lines. The first and most obvious step is to work to amend the present statutes by including an express provision prohibiting the transfer or direct commitment of delinquent children to institutions established for the care of persons convicted of crimes.[25]

---

[25] The sixth edition of the Standard Juvenile Court Act prohibits such transfers. None of the editions have authorized direct commitment to an institution for persons convicted of crime.

The inclusion of the present provision [26] for waiver in the Standard Acts in State statutes should be strongly endorsed.[27] Where the court has jurisdiction of youth over 16 (which is the case in about two-thirds of the States), this provision provides flexibility in determining whether the youngster should be handled as a juvenile or as an adult. These provisions should also continue, since they protect against excessive use of the waiver power by imposing reasonable limitations upon the discretionary power of the court.

It is also recommended that there be a realistic appraisal by the courts of the present use of the waiver provision. Experience has shown that the youngsters who cannot be treated in an open children's institution are usually the older, aggressive, acting-out youth, many of whom have been committed to the institution several times previously. Their failure to adjust in the community after a stay in the institution calls for consideration of the waiver procedure. To permit such a pattern to continue is not fair to the youth, to the institution, or to the public. The appropriate use of waiver in individual cases requires that probation and clinical diagnostic services be available to the courts. Such services must be adequate in terms of quality and quantity.

Skilled institutional staff and adequate facilities will go far in preventing the development of a pattern of conduct which necessitates longtime care in a security facility. It is therefore urged that action be taken to improve the care and treatment of the older delinquent which should include broad support for the development of a comprehensive State program for the control and treatment of delinquency. Such a program should include diversified facilities and services, including detention facilities, diagnostic study centers, group homes, foster homes, forestry camps, and skilled supervision upon return to the community.

Even with the best diagnostic services and careful exercise of discretion in the use of waiver, there will be an occasional youngster who is later found to need longtime treatment in a security facility not available in the children's program. For example, under the present waiver provision, an older adolescent (16–21) who is continu-

---

[26] "If the petition in the case of a child 16 years of age or older is based on an act which would be a felony if committed by an adult, and if the court after full investigation and a hearing deems it contrary to the best interest of the child or the public to retain jurisdiction, it may in its discretion certify him to the criminal court having jurisdiction of such felonies committed by adults. No child under 16 years of age at the time of commission of the act shall be so certified." See first par., Sec. 13, of Stand. Fam. and Stand. Juv. Ct. Acts.

[27] Almost all of the States have provision for waiver. A very large number, however, deviate from the Standard Act in terms of the limitations which are imposed on this authority.

ally committing serious misdemeanors such as assault, destruction of property or disorderly conduct, which are dangerous to other children or staff, or are disruptive of program, must continue to be contained within the children's program. This problem has been recognized for some time and a procedure recommended for its solution.[28]

It is therefore recommended that an additional waiver provision be provided in State statutes as follows:

> **The court may also waive jurisdiction and order a minor 16 years of age or over held for criminal proceedings after full investigation and a finding by the court that the minor is not committable to an institution for the mentally deficient or the mentally ill; and is not treatable in any available institution or facility within the State designed for the care and treatment of children, when:**
>
> **(a) The minor is under commitment to an institution or facility designed for the care and treatment of children for an offense which would be a crime if committed by an adult, and**
>
> **(b) The minor is alleged to have committed an act which if committed by an adult would be a crime.**

---

[28] "It is recognized that there may be some—very few—juveniles, 16 years or older, who because of their personality and stage of social and emotional development do not benefit from training school programs designed for the treatment of adolescent children. If these few children repeatedly commit acts at the institution which are felonies or certain specified limited types of misdemeanors (i.e., simple assaults and malicious destruction of property) and, if these acts are disruptive of the institution's program or harmful to others in the institution, then some provision should be made for a procedure under which these facts could be brought to the attention of the specialized court. If the court should then find these facts to be true, that efforts to treat such children have failed, and that no other resources exist in the community through which the necessary treatment can be secured, then the court should be able to waive jurisdiction over such children to the criminal courts with respect to those specific acts committed at the institution. This procedure is suggested only on the assumption that every effort has been made to develop at these institutions the best possible treatment facilities. These safeguards have been suggested, for inclusion in specific terms in the law, as a means of insuring that this procedure will not become a substitute for the fullest development of resources and facilities for the treatment of children involved in delinquency." See *Standards for Specialized Courts Dealing With Children,* CB Pub. 346. 1954. 99 pp. (pp. 27–28). Also, Stand. Juv. Ct. Act. See comments on Sec. 13, "Transfer to Other Courts," p. 34, and on Sec. 24, "Decree," p. 57.

It should be noted that the effect of the above-recommended procedure affects only a specific group of children; namely, those who were under commitment for a delinquent act at the time the new offense occurred.[29] It maintains the 16-year-old limitation, but permits waiver under certain specified provisions for acts which may be misdemeanors. There is general agreement by treatment personnel that the nature of the offense, in and of itself, is not the controlling factor as to the type of treatment or care needed.

It assures judicial reviews of the cases of children now being transferred by administrative action. It also requires the adjudication of a specific offense under the procedural safeguards of criminal law rather than an administrative finding, usually incorrigibility, which by its very nature is highly subjective. It also contains provisions requiring specific findings which are designed to protect children against hasty or ill-advised reliance upon the waiver procedure by the court, agency, or institution. In this respect, it is stronger than the waiver provisions in the Standard Acts. It is believed that the ultimate cumulative effect of these recommendations will be an actual reduction of the number of children in penal institutions.

It may be that the adult court will not be constrained to consider the misdemeanor as serious. It may also be that the law does not provide for serious sanctions for the alleged misdemeanors. Also, the facility for misdemeants may be inadequate. Two of these three factors also apply to the present waiver provision for felonies. Intermediate institutions for young offenders may be nonexistent or far from adequate. There is also evidence which indicates that a fairly high percentage of children whose cases are now being waived either do not reach the trial stage or if convicted are not committed.

To alleviate these problems, at least in part, it is recommended

---

[29] A similar provision is contained in Tenn. Code Ann., 37–264 (1b): "The juvenile court after full investigation and hearing may order a child held for prosecution and sentencing as an adult in the court which would have jurisdiction if the child were an adult when:

"A child sixteen (16) years of age or over who has been adjudicated a delinquent child and has been committed to an institution for delinquent children, while in the custody of such institution commits an act which the committing court, upon petition from the superintendent of the institution, finds to be harmful to the other children or disruptive of the program of the institution and when the court finds that the child is not feebleminded or insane and is not reasonably susceptible to the corrective treatment in any available institution or facility within the state designed for the care and treatment of children."

It should be noted that at the present time, the statutes in over one-half of the States provide for waiver in misdemeanor cases, without the limitations included in the legislation recommended above.

that the statutes be amended to require that in cases of waiver and following a finding of guilt in the adult court, the juvenile court provide the judge in the adult court with an adequate summary of its information on the youth in order that the relationship, if any, between the overt act and the youth's total pattern of behavior may receive the emphasis its importance to proper sentencing requires.

It is also urged that priority be given to the development of intermediate programs for the youthful offender in the adult system. Our concern for improvement of the care and rehabilitation of youth should not be limited to a specific age group. Although most States have an intermediate institution for young offenders, only a few have developed a variety of facilities for this age group. In most States, the population age range in the intermediate institution ranges from 14 to 30 years. In 1960 there were over 28,000 youth under 21 years of age in reformatories and prisons. Over 5,000 of these were under 18 years of age and almost 150 were 14 or under.[30]

At least 500 and possibly 1,000 youth are in penal institutions today who have neither been charged with nor convicted of a crime. In fact, they need not even have committed an act which would be a crime. This criminal sanction was imposed without the protection of due process afforded those accused of crime. In the case of transfer, it was imposed by administrative action without benefit of any judicial process. Certainly the imposition of a criminal sanction through direct commitment or transfer can hardly be reconciled with the concept of fair treatment. The rights of all persons are endangered when abrogation of the rights of a few is permitted. It is believed that the recommendations set forth above will advance the essence of "individualized justice"; namely, the right to fair treatment and the right to adequate care and rehabilitative services.

[30] U.S. Bureau of Census. U.S. Census of Population: 1960 Inmates of Institutions, PC(2)-8A. U.S. Govt. Printing Office, Washington, D.C., 20402.

Appendix

Questionnaire sent to training schools

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WELFARE ADMINISTRATION
Children's Bureau
Washington, D.C., 20201

DIVISION OF RESEARCH
Form CB–214–JD
Budget Bureau No. 72–6203
Approval Expires Dec. 31, 1962

ADMINISTRATIVE TRANSFER OF CHILDREN FROM JUVENILE INSTITUTIONS TO PENAL INSTITUTIONS

Instructions: The purpose of this report is to provide needed information concerning the transfer of delinquent children administratively (without court action) from juvenile institutions to penal institutions (i.e., institutions which harbor persons convicted of crime under criminal procedures). Please circle the letter appearing before the most appropriate answer, or fill in the blank(s). No specific instructions are given since the questions are self-explanatory.

1. How many children were transferred administratively from your institution to a penal institution and to what type of penal institution did they go? Please show the number for the last 3 years for which data are available. (Fiscal or calendar years may be used.)

	Destination		
Year	*Reformatory*	*Penitentiary*	*Other penal institution*
19___	_____	_____	_____
19___	_____	_____	_____
19___	_____	_____	_____

2. Does your institution have specific authority to transfer children administratively (without court action) to a penal institution?
   a. Yes b. No

NOTE: If the above answer is "No," and if no children have been administratively transferred within the last 3 years, then sign on the last page and return without answering the remaining questions.

3. If your institution does have specific authority to transfer children administratively to a penal institution, how is this authority derived?
   a. Through statutory provision:
      Cite statutory source _____
      _____
   b. Through administrative regulation (without specific statutory provision):
      Cite administrative regulation _____
      _____

4. Has your procedure of transferring children administratively to penal institutions ever been challenged in the courts—to your knowledge?
   a. Yes b. No
   If *yes*, give the citation(s) to the court decision(s) or any other identifying information _____
   _____

5. List in order of frequency the criteria used to determine the need for administrative transfer.
   _____
   _____
   _____
   _____
   _____

6. Does your training school have a staff committee which reviews the cases of children in order to recommend transfer?
   a. Yes b. No
   If *yes*, what is the composition of the staff committee?
   _____ _____
   _____ _____
   _____ _____
   _____ _____
   If *no*, what is the procedure for recommending transfer of children?
   _____
   _____
   _____
   _____
   _____

7. When a child's case is being reviewed or considered for possible transfer to a penal institution:
   Is the child informed of the reasons?
   a. Yes b. No

8. Who has final authority to approve an administrative transfer from your institution?
   a. Superintendent or other institutional staff
   b. Institution's own governing board
   c. Central administrative or parent agency
   d. Other (specify) _____

9. After the juvenile is administratively transferred to the custody of the penal institution, where does the responsibility lie for releasing him from that penal institution?

_____

_____

10. After the juvenile is administratively transferred to the custody of the penal institution, what is the period for which he can be held?
   a. Indeterminate to 21 years of age
   b. Indeterminate beyond 21 years of age
   c. Other (specify) _____

   If the period for which the juvenile can be held is indeterminate beyond 21 years of age, have any of the juveniles, listed in Question 1, page 1, actually been confined beyond 21 years of age—to your knowledge?

   a. Yes b. No

   If *yes*, how many? _____

Report for _____ By _____
(Name of Institution) (Person completing report)

GEOGRAPHIC REGIONS

Northeastern Region

Connecticut
Delaware
District of Columbia
Maine
Maryland
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont

Southern Region

Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Oklahoma
Puerto Rico
South Carolina
Tennessee
Texas
Virgin Islands
Virginia
West Virginia

Northcentral Region

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

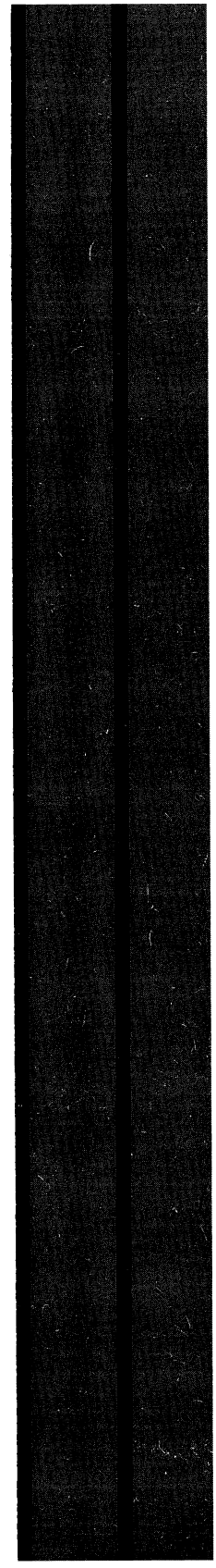
Mountain Region

Arizona
Colorado
Idaho
Montana
Nevada
New Mexico
Utah
Wyoming

Pacific Region

Alaska
California
Hawaii
Oregon
Washington

U.S. GOVERNMENT PRINTING OFFICE : 1965 O—778-605



children's bureau
publication no. 415–1964

reprinted 1965

U.S. DEPARTMENT
of HEALTH,
EDUCATION,
and WELFARE
WELFARE ADMINISTRATION
Children's Bureau