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# DEVELOPMENT OF THE LAW IN WISCONSIN IN THE AREA OF JUVENILE DELINQUENCY

CHARLES L. LARSON\*

Following a precedent established in Illinois two years earlier, Wisconsin's legislature created the first juvenile court in this state by enacting chapter 90 of the Laws of 1901.<sup>1</sup> By its provisions the act regulated the "treatment and control of dependent, neglected and delinquent children in counties having over one hundred and fifty thousand population."<sup>2</sup>

The idea of special treatment for children charged with being delinquent, neglected or dependent was not conceived in Illinois.<sup>3</sup> A more compassionate consideration for children in those circumstances had been employed in other places, but it was in Illinois that the first juvenile court was organized in 1899, when the state legislature created such a court in populous Cook County. Thereafter the movement spread rapidly throughout the United States.<sup>4</sup>

When chapter 90 was first enacted, only one county in Wisconsin, Milwaukee County, came within the provisions of the act. In the legislative session of 1903, chapter 359<sup>5</sup> provided for juvenile courts beyond Milwaukee County by extending jurisdiction to all counties having populations of sixty-five thousand or more. After one further amendment in 1905,<sup>6</sup> chapter 460 of the Laws of 1911 expanded application of the act to all Wisconsin counties.<sup>7</sup>

In each of the several legislative acts referred to above, the

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1. Wis. Laws 1901, ch. 90.

2. *Id.*

3. For a concise survey of the origins of the juvenile court system, see *ENCYCLOPEDIA BRITANNICA*, VOL. 5, p.476-78.

4. By 1904 ten states had juvenile courts; after the first ten years, twenty states and the District of Columbia; by 1914, thirty states; and in 1928 only two states (Wyoming and Maine) were without juvenile courts. *Id.*

5. Wis. Laws 1903, ch. 359.

6. Wis. Laws 1905, ch. 496.

7. Wis. Laws 1911, ch. 460.

intent of the legislature to aid in the rehabilitation of delinquent children is clearly recited. Section 6 of Chapter 90, Laws of 1901, provided:

In case of a delinquent child the court may continue the hearing from time to time, and may commit the child to the care and guardianship of a probation officer duly appointed by the court, and may allow said child to remain in its home, subject to the visitation of the probation officer; such child to report to the probation officer as often as may be required, and subject to be returned to the court for further proceedings whenever such action may appear to be necessary; or the court may commit the child to the care and guardianship of the probation officer, to be placed in a suitable family, subject to the friendly supervision of such probation officer; or it may authorize the said probation officer, to board out the child in some suitable family home, in case provision is made by voluntary contribution or otherwise; for the payment of the board of such child until a suitable provision may be made for the child in a home without such payment; or the court may commit the child if a boy, to an industrial school for boys, or if a girl, to an industrial school for girls; or the court may commit the child to the care and custody of some association or institution that will receive it, embracing in its objects the care of neglected, dependent or delinquent children.<sup>8</sup>

Section 8 of chapter 90<sup>9</sup> required a preliminary hearing for a child under age sixteen charged with violation of any law of this state, the penalty for which was imprisonment in the state prison and permitted release of the child on bail, provisions not presently contained in the Juvenile Code. Section 8 granted the courts great latitude in the disposition of juvenile cases. The section provided that:

[A]ll provisions of law relating to proceedings in criminal cases in circuit court shall be applicable to the trial, sentence and commitment of such offenders in such juvenile court; provided however that such court may in its discretion commit such offenders as provided in section 6 of this act.<sup>10</sup>

In view of the harsh language contained in the last two sentences of section 8, it may appear that creation of the juvenile

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8. Wis. Laws 1901, ch. 90, § 6.

9. Wis. Laws 1908, ch. 90, § 8.

10. *Id.*

court did little to aid some delinquent children in 1901. While laws were enacted to provide special treatment for delinquent children in order to aid in their rehabilitation, in those cases involving commission of a felony, a judge clearly had discretion to commit the child to adult prison.

Under the provisions of the present Wisconsin Statutes section 48.18,<sup>11</sup> a judge may exercise the same discretion when considering certain cases involving sixteen and seventeen year olds by waiving the jurisdiction of the juvenile court. However, rules promulgated by statute and federal and state appellate decisions protect a child's constitutional rights and make existing procedure a far departure from that outlined in this early law. Relying on a presumption of fairness on the part of juvenile court judges, the early legislature adopted the *parens patriae* philosophy in outlining treatment and control of its wayward youth. That philosophy and the decisions affecting it will be considered later.

Chapter 97, Laws of 1903,<sup>12</sup> and Chapter 496, Laws of 1905,<sup>13</sup> redefined the term "delinquent child" to include all juveniles who had committed any one of numerous acts of misconduct. With two or possibly three exceptions, none of the offenses listed constituted crimes. Chapter 496 provided:

The words "delinquent child," shall include any child, under the age of sixteen years, who violates any law of this state, the penalty for which is not imprisonment in the state prison, or who violates any city or village ordinance; or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who is growing up in idleness or crime; or who knowingly patronizes any place where any gaming device is or shall be operated; or who knowingly visits or enters a house of ill-repute; or who patronizes, visits, or enters any stall, saloon, or wine room, or any saloon frequented by men or women of bad repute; or who attends, visits or enters any dance held in any room or hall in connection with a saloon, unless accompanied by parents or legal guardian; or who loafs or congregates with groups or gangs of other boys at or about any railroad yards or tracks; or who habitually uses obscene, vulgar or profane language, or is guilty of immoral conduct in any public place, or about any

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11. Wis. STAT. § 48.18 (1973).

12. Wis. Laws 1903, ch. 97.

13. Wis. Laws 1905, ch. 496.

schoolhouse. Where a parental school is available, a juvenile disorderly person may be classed as a delinquent.<sup>14</sup>

Chapter 460, Laws of 1911, extended the definition of "delinquent child" to include "any girl under the age of eighteen years and any boy under the age of seventeen years."<sup>15</sup> Chapter 439, Laws of 1929, provided that the words "delinquent child" shall mean "any child under the age of eighteen years."<sup>16</sup> Since 1929, no change has been made concerning the age of children who are subject to the provisions of Wisconsin's juvenile laws.

From 1919 until 1955, Chapter 48 of the Wisconsin Statutes bore the title "Child Protection and Reformation." In 1955 it was comprehensively revised and renamed "The Children's Code." Among the many changes and additions, one which appeared in several sections was a statement declaring the intent of the new chapter. Section 48.01(2) prefaces the Code and provides as follows:

INTENT. It is declared to be the intent of this chapter to promote the best interests of the children of this state through:

(a) Juvenile courts adequately equipped to review each case on its individual merits under procedures designed to safeguard the legal rights of the child and his parents.<sup>17</sup>

Five additional subsections follow section 48.01(2), all of which recite how the code is intended to promote the best interests of delinquent, dependent and neglected children.

Subsection (3) relates to construction and provides as follows:

This chapter shall be liberally construed to effect the objectives in sub (2). The best interests of the child shall always be of paramount consideration, but the court shall also consider the interest of the parents or guardian of the child and the interest of the public.<sup>18</sup>

Section 48.18, permitting waiver of juvenile court jurisdiction contains the following:

Except as provided in s. 48.17, the criminal and civil courts

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14. Wis. Laws 1905, ch. 496.

15. Wis. Laws 1911, ch. 460.

16. Wis. Laws 1929, ch. 439.

17. Wis. STAT. § 48.01(2) (1973).

18. Wis. STAT. § 48.01(3) (1973).

shall have jurisdiction over a child 16 or older who is alleged to have violated a state law or a county or municipal ordinance only if the juvenile court judge deems it contrary to the best interest of such child or of the public to hear the case and enters an order waiving his jurisdiction and referring the matter to the district attorney, corporation counsel or city attorney, for appropriate proceedings in a criminal or civil court.<sup>19</sup>

The "best interests of the child" doctrine appears to have originated in the case of *Chapsky v. Wood*<sup>20</sup> in which the Kansas Supreme Court repudiated the rule which held that the rights of parents were primary. A later decision by the New York Court of Appeals, *Finlay v. Finlay*,<sup>21</sup> held that the chancellor acted as *parens patriae* to do what is best for the interests of the child.<sup>22</sup>

The constitutionality of Wisconsin's laws relating to the treatment and control of dependent, neglected, and delinquent children was not considered by the Wisconsin Supreme Court until 1918. In that year the constitutionality of the juvenile code was tested in the combined cases of *State v. Scholl* and *State v. Pollard*.<sup>23</sup> That case involved an appeal from the circuit court of Milwaukee County which had found the juveniles to be delinquent and placed them on probation. The appellants contended that the law was unconstitutional because it denied a jury trial and authorized conviction of a crime without due process. In this landmark case, the Wisconsin Supreme Court upheld the constitutionality of the law. In essence, Chief Justice Winslow's opinion ratified the *parens patriae* approach to the treatment and rehabilitation of juvenile delinquents. The opinion states in part as follows:

It is sufficient to say on this point that the proceedings under this law are in no sense criminal proceedings, nor is the result in any case a conviction or punishment for crime. They are simply statutory proceedings by which the state in the legitimate exercise of its police power, or, in other words, its right to preserve its own integrity and future existence,

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19. WIS. STAT. § 48.18 (1973).

20. 26 Kan. 650 (1881).

21. 240 N.Y. 429, 148 N.E. 624 (1925).

22. The development of this doctrine is traced by Chief Justice E. Harold Hallows in the decision in *Adoption of Tachick*, 60 Wis. 2d 540, 210 N.W.2d 865 (1973).

23. 167 Wis. 504, 167 N.W. 830 (1918).

reaches out its arm in a kindly way and provides for the protection of its children from parental neglect or from vicious influences and surroundings, either by keeping watch over the child while in its natural home, or where that seems impracticable, by placing it in an institution designed for that purpose.<sup>24</sup>

Again in 1920, an appeal from a finding of delinquency was heard by the Wisconsin Supreme Court. In *State v. Zirbel*,<sup>25</sup> the court said:

The proceedings are not to be conducted according to the practice and procedure governing actions. The court is to act in place of a parent and necessarily has great power which is not to be restricted by the rules of procedure followed in criminal courts.<sup>26</sup>

The *Zirbel* case was followed by the case of *In Re Alley*,<sup>27</sup> in which the policy established in the prior two cases was affirmed and restated.

This law was not designed as a method of punishment for crimes committed by juveniles. Every section and paragraph of the statute is permeated with the benevolent purpose of improving the child's condition and not with punishing his past conduct. The whole object and purpose of this law will be defeated if it is construed and applied as a punitive statute.<sup>28</sup>

Many years passed before another constitutional test of Wisconsin's juvenile code was made. In the 1944 case of *Harry v. State*,<sup>29</sup> the court affirmed *Scholl*, *Zirbel* and *Alley*, and with regard to a challenge that the petition did not set forth a specific act or acts constituting delinquency, the court responded that a petition need not do so to give the juvenile court jurisdiction.<sup>30</sup>

At no time following the establishment of juvenile courts in Wisconsin and all other states did the United States Supreme Court consider the constitutionality of juvenile court procedure

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24. *Id.* at 509, 167 N.W. at 831.

25. 171 Wis. 498, 177 N.W. 601 (1920).

26. *Id.* at 499, 177 N.W. at 601.

27. 174 Wis. 85, 182 N.W. 360 (1921).

28. *Id.* at 91-92, 182 N.W. at 362.

29. 246 Wis. 69, 16 N.W.2d 390 (1944).

30. *Id.* at 77, 16 N.W.2d at 393.

until 1966 when the celebrated case of *Petition of Kent*<sup>31</sup> was decided. Kent, a youth of sixteen, was charged with several violent offenses in the District of Columbia. A petition for waiver of juvenile court jurisdiction was filed with the juvenile court in Washington, D.C., and the court granted the waiver. Under its juvenile code, the juvenile court in the District of Columbia had the right to waive jurisdiction and was not required to conduct a hearing or give reasons for its action. No hearing was conducted and no reasons for waiving were given.

In an opinion written by Justice Fortas, the Supreme Court stated that the right of a child to be heard in juvenile court could not be waived arbitrarily and required that he receive:

- (1) a hearing,
- (2) a statement of reasons for waiver, and
- (3) effective assistance of counsel.

It also established the following eight standards to guide a trial court in making its determination:

- (1) the seriousness of the alleged offense to the community and whether the protection of the community required waiver;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted;
- (4) the prosecutive merit of the complaint, i.e., whether there is evidence upon which a grand jury might be expected to return an indictment (to be determined by consultation with the United States Attorney);
- (5) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the United States District Court for the District of Columbia;
- (6) the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living;
- (7) the record and previous history of the juvenile, including previous contacts with a youth aid division, other law enforcement agencies, juvenile courts and other jurisdictions, prior period of probation to this Court, or prior commitments to juvenile institutions;

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31. 383 U.S. 541 (1966).



(8) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the juvenile court.<sup>32</sup>

In making its decision, the Court reviewed the purpose and philosophy of juvenile courts, and concluded that:

1. The State is *parens patriae* rather than prosecuting attorney and judge. But the admonition to function in a "parental" relationship is not an invitation to procedural arbitrariness.

2. Because the State is supposed to proceed in respect of the child proceedings as *parens patriae* and not as adversary, courts have relied on the premise that the proceedings are "civil" in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment. For example, it has been held that he is not entitled to bail; to indictment by grand jury; to a speedy and public trial; to trial by jury; to immunity against self-incrimination; to confrontation of his accusers; and in some jurisdictions [citations omitted] that he is not entitled to counsel.

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. 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 receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.<sup>33</sup>

After a lull of twenty-two years following *Harry v. State*,<sup>34</sup> an appeal in a juvenile case was taken to the Wisconsin Su-

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32. *Id.* at 566-67.

33. *Id.* at 554-56.

34. 246 Wis. 69, 16 N.W.2d 390 (1944).

preme Court in *Winburn v. State*.<sup>35</sup> At issue was the question of whether insanity constituted a defense in juvenile court. The court's opinion holding that it did was rendered six months after the decision in *Kent* and contained lengthy excerpts from *Kent* and raised many questions concerning the philosophy behind the existing approach to juvenile delinquency. The court stated:

The philosophy behind the juvenile act is rehabilitation and treatment, but what may appear to a juvenile worker or judge as treatment may look like punishment to the juvenile. Irrespective of what we call the juvenile procedure, and no matter how benign and well-intended the judge who administers the system, the juvenile procedures, to some degree at least, smack of "crime and punishment." While the primary statutory goal is the best interest of the child, that interest is, as it should be, conditioned by the consideration of "the interest of the public." Section 48.01(3), Stats. The interest of the public is served not only by rehabilitating juveniles when that is possible, but the interest of the public is also served by removing some juveniles from environments where they are likely to harm their fellow citizens. Retribution, in practice, plays a role in the function of the juvenile court. The judgments of juvenile courts do serve as deterrents to the conduct of at least a segment of our juvenile society, not because those juveniles fear rehabilitation, but because they fear incarceration and punishment. Despite all protestations to the contrary, the adjudication of delinquency carries with it a social stigma. This court can take judicial notice that in common parlance "juvenile delinquent" is a term of opprobrium and it is not society's accolade bestowed on the successfully rehabilitated.<sup>36</sup>

*Kent* and *Winburn* were harbingers of significant changes to come. They were soon followed by the far-reaching decision of the United States Supreme Court in *In re Gault*,<sup>37</sup> which considered the rights of a fifteen-year-old boy who had been charged with the minor but annoying offense of making indecent telephone calls. Gerald Gault was sent to an Arizona school for boys for a period of time which could have extended to his twenty-first birthday. It was pointed out by the Court

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35. 32 Wis. 2d 152, 145 N.W.2d 178 (1966).

36. *Id.* at 161-62, 145 N.W.2d at 182-83.

37. 387 U.S. 1 (1967).

that an adult found guilty of that offense would have received a fine or a comparatively short jail sentence.

The decision in *Gault* held that the due process of the law requires that juveniles charged with being delinquent must be accorded certain fundamental rights:

(a) the right of parents and juvenile to receive a written copy of a petition or complaint containing a recitation of charge alleging delinquency, with particularity;

(b) the right to receive in sufficient time to prepare a defense to the charges;

(c) the right to legal counsel at every stage of the proceedings;

(d) the right to invoke the privilege against self-incrimination;

(e) the right to confrontation and cross-examination; and

(f) the right to receive a transcript of the proceedings and to seek appellate review.<sup>38</sup>

Although the holding in *Gault* made sweeping changes in juvenile court procedure, the Court reiterated that the hearing to be held need not conform with all of the requirements of a criminal trial.<sup>39</sup> No consideration was given to burden of proof, rules of evidence, record to be kept during a hearing, right to bail, requirements of the court to make findings of fact, right to a trial by jury, right to a preliminary hearing to determine probable cause, or right of the public to attend juvenile hearings. Most of those areas have been considered on appellate review in the years which have passed since 1967.

*Gault* referred to the penalty which would have followed the conviction of an adult on the same charge. A recent decision of the Wisconsin Supreme Court in *In re Interest of J.K. (a minor)*,<sup>40</sup> also considered the issue of whether or not the term of a juvenile's commitment should exceed that which would be imposed on an adult convicted of the same charge.

Appellant notes that transfers of legal custody to the state department of health and social services are "until the age of 18," and claims constitutional infirmity in such commitment to the department for institutional placement for an indeter-

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38. *Id.* at 10.

39. *Id.* at 30, citing *Kent v. United States*, 383 U.S. 541, 562 (1966).

40. 68 Wis. 2d 426, 228 N.W.2d 713 (1975).

minate period which may extend “. . . beyond the sentence permissible for an adult as punishment for the equivalent crime.” This argument equates institutional placement under the Children’s Code with incarceration of an adult offender under the Criminal Code. Such exact and complete analogizing of proceedings in the children’s court with proceedings in the criminal courts was early rejected by this court. More recently, we stated: “The juvenile law is not to be administered as a criminal statute,” and, very recently, held:

“. . . Due process and fair treatment are to mark juvenile proceedings as well as adult trials. Both have a common harbor, the fair and just disposition of matters before the court, but they may sail by different routes to the shared destination. Each must avoid the reefs of constitutionally assured protections, but they need not sail side by side in so doing. Any analogy established between steps in juvenile proceedings with states in the processing of criminal cases may be arguably persuasive, but it is not controlling.”

If the state legislature were to eliminate incarceration as an appropriate penalty for the adult crime of possession of LSD, that would not limit or change the right of a juvenile court judge to place an adjudged delinquent, found to have possessed LSD, in the custody of the state department until the age of eighteen, unless earlier released. Such commitment of a juvenile is not for the purpose of penalty or punishment, but for the purpose of effecting a result that will serve the best interests of the child, its parents and the public. The same measuring stick does not apply to both adult criminals and juvenile delinquents.<sup>41</sup>

In its “Final Report to the Governor” in 1972,<sup>42</sup> the Citizen’s Committee on Offender Rehabilitation made a recommendation which is at odds with the Wisconsin Supreme Court’s decision in *In re Interest of J.K. (a minor)*. Their recommendation was that, “Any court order for supervision or transfer of custody which affects a child shall extend for a definite period of time which may not exceed the period of time that an adult would serve for the same offense.”<sup>43</sup> Whatever the relative merits of the two positions, such statutory changes as were made

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41. *Id.* at 430-32, 228 N.W.2d at 715-16, quoting *In re D.M.D. (a minor) v. State*, 54 Wis. 2d 313, 317, 195 N.W.2d 594, 596 (1972).

42. The Wisconsin Council on Criminal Justice, § 5.03, p. 112.

43. *Id.*

in 1971 and 1973<sup>44</sup> have leaned toward the philosophy expressed in the final report to the governor, that is, reduction of control of juvenile offenders.

The right of a juvenile to trial by jury was considered by the United States Supreme Court in 1971. In the companion cases of *McKeiver v. Pennsylvania* and *In Re Burrus*,<sup>45</sup> the Court concluded that a trial by jury is not a constitutional right, but that any state may install a system providing for a juvenile jury trial.

*McKeiver* contains this observation relative to trial before juvenile court, quoting *In the Matter of Edward Terry*:<sup>46</sup>

It has been said such proceedings are to insure that the juvenile court will operate in an atmosphere which is orderly enough to impress the juvenile with the gravity of the situation and the impartiality of the tribunal and at the same time informal enough to permit the benefits of the juvenile system to operate.<sup>47</sup>

In Wisconsin a jury trial is permitted by section 48.25(2).<sup>48</sup> A demand for a jury trial is required and selection of jurors follows the practice in civil actions. It would seem that a constitutional objection could be addressed to the provision that practice in civil actions be followed in selection of jurors.

Clearly that part of section 48.25(1) which recites, "The presence of the child in court may be waived by the court at any stage of the proceeding," is unconstitutional. It may operate to deny a juvenile's right to confrontation and cross-examination. Even before *Gault* asserted those rights, the constitutionality of that provision was questioned in *Winburn v. State*.<sup>49</sup>

Wisconsin Statutes section 48.25(3) providing that the finding of fact in juvenile trials shall rest on a preponderance of evidence, was invalidated by the case of *In the Matter of Samuel Winship*.<sup>50</sup> *Winship* holds that proof beyond a reasonable doubt is the constitutionally required standard when a juvenile

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44. WIS. STAT. §§ 48.34(3)(a), 48.44(2), 48.525, and 48.12(1) (1973).

45. 403 U.S. 528 (1971).

46. 438 Pa. 339, 265 A.2d 350 (1970).

47. *Id.* at —, 265 A.2d at 356.

48. WIS. STAT. § 48.25(2) (1973).

49. 32 Wis. 2d 152, 145 N.W.2d 178 (1966).

50. 397 U.S. 358 (1970).

is charged with acts which would constitute crimes if committed by an adult.<sup>51</sup> ❄

Appointment of counsel is authorized on a discretionary basis by Wisconsin Statutes section 48.25(6). However, since the decisions of the Supreme Court in *Petition of Kent* and *In re Gault*, the matter is no longer discretionary. Even prior to these cases, one state, California, required the appointment of counsel if the child was charged with conduct which would constitute a felony if committed by an adult.<sup>52</sup>

Although the Wisconsin legislature has not acted to amend the invalidated statute, the supreme court has held that a juvenile is entitled to representation by counsel as a matter of constitutional right and, if indigent, he is entitled to have counsel appointed for him by the juvenile court at an administrative hearing before a review board considering revocation of his release to liberty under supervision.<sup>53</sup> With specific regard to the revocation hearing, *State ex rel. R.R. v. Schmidt*<sup>54</sup> enumerated other constitutionally required procedures.

The procedural guarantees which are constitutionally required in revocation hearings consist of the following:

- (a) A written statement and notice or reasons revocation was recommended;
- (b) the right to present and cross-examine witnesses;
- (c) the right to present arguments and evidence orally before the hearing examiner;
- (d) the right to a transcript if requested;
- (e) a prompt notification of the decision; and
- (f) the right to inspect and a written reply to the hearing examiner's report.<sup>55</sup>

Eight years have passed since *Gault* first outlined the procedural requirements of due process of law with respect to juvenile justice. While Wisconsin courts are guided by the law as prescribed in appellate decisions, the Wisconsin statutes offer no assistance in several areas because the state legislature has failed to correct unconstitutional statutory provisions. At each of the five legislative sessions since *Gault* was decided, one and sometimes several bills have been prepared to update the chil-

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51. *Id.*

52. CALIFORNIA WELFARE AND INSTITUTIONS CODE, § 634.

53. *State ex rel. Bernal v. Hershman*, 54 Wis. 2d 626, 196 N.W.2d 721 (1972).

54. 63 Wis. 2d 82, 216 N.W.2d 18 (1974).

55. *Id.* at 90, 216 N.W.2d at 21.

dren's code, all of which have died in committee. At the present time, Assembly Bill 795 is pending legislative action. The Wisconsin Board of Juvenile Court Judges, a statutory body created by Wisconsin Statutes section 257.31, considered the measure and declined to approve it. Differences in philosophy between the judges and proponents of the bill can be expected to cause its death in committee. It would appear that another legislative session will pass, and the unconstitutional provisions of the children's code will probably remain unchanged. Some sections may be added or changed not relating to the constitutional issues by riding along in another bill if prior legislative sessions are indicative of what may be expected. Illustrations will follow.

May a juvenile waive his constitutional rights? Is it proper to admit his confession in evidence against him? Wisconsin has held that he can waive such rights and that his confession may be used at his trial.<sup>56</sup> Before that question was considered in this state, it was held in *West v. United States*<sup>57</sup> that the factors to be considered in accepting statements of juveniles are: (1) age of accused; (2) education; (3) knowledge of substance of the charge and nature of his rights to consult an attorney and to remain silent; (4) whether held incommunicado or allowed to consult with relatives, friends or an attorney; (5) whether interrogated before or after formal charges were filed; (6) methods used in interrogation; (7) length of interrogation; (8) whether accused refused to give statements on prior occasions; and (9) whether he repudiated an extra-judicial statement at a later date. Later, in *United States v. Miller*,<sup>58</sup> the court said, "We are not prepared to hold that a boy of 14 is never capable of making an intelligent waiver of his rights . . ."<sup>59</sup> In a Minnesota case, *State v. Lloyd*,<sup>60</sup> a confession by a juvenile was admitted when the court held that a voluntary waiver of constitutional rights by a juvenile offender was proper. Wisconsin's consideration of that subject is reported in *Theriault v. State*,<sup>61</sup> in which the Wisconsin Supreme Court quoted several authori-

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56. *Theriault v. State*, 66 Wis. 2d 33, 223, N.W.2d 850 (1974).

57. 399 F.2d 467 (5th Cir. 1968).

58. 453 F.2d 634 (4th Cir. 1972).

59. *Id.* at 636.

60. 297 Minn. 442, 212 N.W.2d 671 (1973).

61. 66 Wis. 2d 33, 223 N.W.2d 850 (1975).

ties, including the Minnesota case referred to above, and stated:

The courts of numerous states have held that failure to notify parents or guardian in accord with statute does not per se render a confession inadmissible unless the statutes expressly so provide. The failure to promptly notify and the reasons therefor may be a factor, however, in determining whether the confession was coerced or voluntary. If the police fail to call the parents for the purpose of depriving the juvenile of the opportunity to receive advice and counsel, that would be strong evidence that coercive tactics were used to elicit the incriminating statements. On the other hand where, as in the instant case, defendant was fully advised of his rights, and where he failed to avail himself of the opportunity given him to make a phone call and specifically requested the police not to call his semi-invalid grandmother because he was afraid it might adversely affect her health, an inference of coercion should not be drawn.<sup>62</sup>

There is no question but that defendant's confession in the instant case is admissible in adult criminal proceedings. He was placed in custody by regular policemen, questioned at the detective bureau, and warned that his statements could be used against him "in a court of law." No evidence indicates defendant confessed expecting that his statements could only be used in juvenile proceedings.

We conclude, therefore, that none of the defendant's contentions, pointing to the inadmissibility of his admittedly voluntary confession to the detectives, has any merit and we, therefore, affirm the judgment of conviction which was based on a guilty plea made by the defendant after he had confessed.<sup>63</sup>

Is a juvenile court required to conduct a probable cause hearing? In Wisconsin an appeal was taken when such a hearing was denied in the case entitled *In Re D.M.D.*,<sup>64</sup> in which the court quoted *McKeiver* in saying, "The applicable due process standard in juvenile proceedings is fundamental fairness,"<sup>65</sup> and held that a juvenile trial without a prior judicial determination of probable cause is constitutionally valid.

Dissatisfaction with the rule contained in *In Re D.M.D.*

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62. *Id.* at 48, 223 N.W.2d at 857.

63. *Id.* at 52, 223 N.W.2d at 859.

64. 54 Wis. 2d 313, 195 N.W.2d 594 (1971).

65. *Id.* at 318, 195 N.W.2d at 597.



relating to probable cause is seen in the 1975 Assembly Bill 795. A provision would require that probable cause be shown on the face of the petition filed against any child alleged to have violated any law. A less exacting standard, designated sufficient facts to furnish "reasonable notice," is applied to petitions containing allegations not constituting violations of a law.

In *Moss v. Weaver*,<sup>66</sup> a Florida federal court passed on the constitutionality of ordering pre-trial detention for juveniles accused of law violations without according them a probable cause hearing.

The state maintained that at this stage the court was not particularly concerned with guilt or innocence, but with the welfare of the child, and even an innocent child might be detained if detention were necessary for his welfare. The federal court said:

This concern for the welfare of the juvenile is laudable, but detention absent a probable cause showing is not constitutional where the juvenile was taken into custody by an arm of the government for an alleged violation of law.

. . . Since money bail is not available in the Juvenile Court System, a Judge's decision to detain the juvenile necessarily results in pretrial detention. The Court is persuaded that a probable cause hearing must be provided to such detained juveniles to test the validity of detention, because the event which triggers their being taken into custody in the first instance is the alleged commission of a criminal offense. Indeed, the very nature of a delinquency proceeding is to determine whether the accused has committed a violation of law . . . . The commission of an offense is thus the only legal basis for detention. If the state cannot show that there is probable cause to believe that the detained juvenile committed an offense, then the juvenile must be released from custody.<sup>67</sup>

*Moss v. Weaver* related that the practice had been for an intake officer to make the first determination concerning retaining or releasing a juvenile and went on to say that within forty-eight hours a judicial detention hearing was conducted at which the judge considered the matter of further detention. A statutory provision in Wisconsin<sup>68</sup> grants the judge of the juve-

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66. 383 F. Supp. 130 (S.D. Fla. 1974).

67. *Id.* at 133-34.

68. WIS. STAT. § 49.29(2) (1973).

nile court the right to authorize any person designated by statute<sup>69</sup> to provide services for the court, to order detention of the child under certain circumstances. In *State ex rel. Morrow v. Lewis*<sup>70</sup> the court held that after the initial detention of twenty-four hours permitted by statute, an order for further detention can be made only by the juvenile court specifying the reason for such detention and not by a social worker authorized by the juvenile court judge.

The use of probation officer's reports as evidence at court hearings was considered by the Wisconsin court in *Rusecki v. State*.<sup>71</sup> That case held that the business entry exception to the hearsay rule should not be interpreted to allow a probation officer's report containing hearsay allegations to be received in evidence, and stated, "Important is preservation of the constitutional rights afforded juveniles, of confrontation and cross-examination."<sup>72</sup>

The question of the right to bail has not been before the Wisconsin Supreme Court in a juvenile case, although *Theriault v. State*<sup>73</sup> made brief reference to the subject in saying:

Thus, the purpose behind notification of parents is to allow the child to be released to the custody of his parents or in our case, his legal guardian, until he must appear in court, unless it is "impracticable, undesirable, or has been otherwise ordered by the court." Thus this provision is designed to supplant the need for bail as in adult proceedings.<sup>74</sup>

No statutory authority provides for release on bail pending trial or appeal. A New York Appellate Division Court ruled in 1975 that a juvenile has no right to bail, when in *People ex rel. Wayburn on behalf of Charles L. v. Schupf*<sup>75</sup> it said:

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69. WIS. STAT. §§ 48.06 and 48.07 (1973).

70. 55 Wis. 2d 502, 200 N.W.2d 193 (1972). The court stated:

We cannot approve of the proceeding under this section whereby the juvenile judge signs the order of detention made by a social worker without hearing the evidence or reading the transcript. The signing of such an order by a judge is not the proper procedure for the operation of a court. There is a difference in what a judge can do in chambers and as a court. Detention hearings are court hearings.

71. 56 Wis. 2d 299, 201 N.W.2d 832 (1973).

72. *Id.* at 316, 201 N.W.2d at 842.

73. 66 Wis. 2d 33, 223 N.W.2d 850 (1975).

74. *Id.* at 47, 223 N.W.2d at 857.

75. 47 App. Div. 2d 79, — N.Y.S.2d — (1975).

The Family Court Act, which governs juvenile proceedings, nowhere mentions any power to fix or admit to bail. On the contrary, the statutory scheme gives the court and other authorities only two choices at each step of the proceeding, i.e., to either release the juvenile outright to his parent or another person legally responsible for his care or to detain him in a juvenile center.

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The entire statutory scheme is designed to afford the juvenile a speedy preliminary hearing and a speedy fact-finding hearing, so that he need not be detained, prior to trial, for more than a brief period of time. Moreover, where the juvenile is released to the custody of his parent, such release may be conditioned upon nothing stronger than a written promise, without security. To judicially imply a power in the Family Court to fix bail for a juvenile would impermissibly make the child's release or detention dependent upon the financial circumstances of his parent or guardian.<sup>76</sup>

Since, as matter of fact, juveniles are often detained for long periods of time, New York's argument is not impressive. With the adoption of the "fundamental fairness" doctrine by the United States Supreme Court and in view of the trend toward equal rights for juvenile offenders, it would seem probable that the right to bail in juvenile cases will be prescribed by statute or case law.

Prior to the enactment of chapter 213 of the Laws of 1971,<sup>77</sup> section 48.34(3)(a) provided for transfer of legal custody to the department until age twenty-one unless the department discharged the child sooner under section 48.53. Transfer of legal custody to any person or agency other than the department could only be for a designated period to be determined by the court which period was subject to renewal until a child became twenty-one years of age. Sections of chapter 213 reduced the period during which legal custody continued to age eighteen. Persons and agencies other than the department, including county departments of social services, are required to release a juvenile in their custody upon his reaching his eighteenth birthday. Only the Wisconsin Department of Social Services may petition the court, under section 48.44(2) to retain legal custody of a person adjudged to be delinquent, who has reached

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76. *Id.* at 81, \_\_\_\_ N.Y.S.2d at \_\_\_\_.

77. Wis. Laws 1971, ch. 213.

age eighteen. In the absence of such petition, the court is unable to exercise further control.

At the hearing stage, when an alleged delinquent is charged with a serious offense and is months beyond his seventeenth birthday, a judge is faced with two alternatives. He may stay within juvenile procedure, which would provide an unsuitable disposition, or he may waive jurisdiction and order trial in criminal court. Waiver may appear a ready answer except that the principle on which the children's code is based is that, "The best interests of the child shall always be of paramount consideration" and this principle is ignored. It would not be in a child's best interest to be convicted of a felony and deprived of citizenship when treatment beyond age eighteen could answer his needs. Legislation restoring control to juvenile courts of juveniles over the age of eighteen who have been found delinquent would seem to be in the juvenile's best interests.

As stated above, Wisconsin Statutes section 48.44(2) grants the department the authority to petition the court for the right to retain legal custody of a person over the age of eighteen who has been adjudged delinquent. This procedure must comply with Wisconsin Statutes section 48.52 and 54.32, the latter of which provides as follows:

**Continuance of control; order and application for review by the committing court.** Whenever the department is of the opinion that discharge of a person from its control at the time provided in s. 54.31, would be dangerous to the public for reasons set forth in s. 54.33(2), it shall make an order directing that the person remain subject to its control beyond that period and shall make application to the committing court for a review of that order at least 90 days before the time of discharge stated. The application shall be accompanied by a written statement of the facts upon which the department bases its opinion that discharge of the person from control of the department at the time stated would be dangerous to the public.

Thus, the standard established by the statute is whether termination of control would be dangerous to the public, rather than whether continued control would be in the best interests of the child. There will be few petitions for continued control under the standards set for the department by the statute. Clearly, there are circumstances when a judge believes that control beyond age eighteen is in the child's best interests,

although termination of control over him would not, strictly speaking, pose a danger to society. The judge is faced with a vexing problem when he considers the case of a seventeen year old charged with a serious crime. If he retains jurisdiction in juvenile court, control ceases soon thereafter if no consideration is given to proof of the element of danger. On the other hand, if he transfers jurisdiction to criminal court, the child receives an adult criminal record which he carries with him for the rest of his life unless pardoned.

To illustrate probable consequences, consider this set of facts: An eighteen year old, many-time offender, is released from the boys' school on the day he reaches his youthful majority. He has no parole officer to monitor his behavior. His freedom is complete. His stay was too brief for an adequate program of rehabilitation and his new liberty is like heady wine. He returns to any environment he chooses—very likely the environment from which he departed before arriving at the boys' school. His prospect of becoming a useful citizen is remote, and he will more than likely become a recidivist.

This sad condition, which is detrimental to the juvenile offender and society, is the result of inattention by the Wisconsin legislature to the need for continuing discipline of weak, immature young people who, for whatever reason, have been in deep trouble. However earnest and well intentioned, the proponents of this legislation did not approach obvious problems realistically. Just as an immature child of tender years requires direction and discipline to develop a sufficiently strong character to become a solid member of society, so does a youth whose early direction was faulty.

In its report to the 93rd Congress, the Select Committee on Crime reached a conclusion and made proposals to curb delinquency in the United States. The committee proposed:

1. Measures to alleviate some of the contributing factors to juvenile crime such as poverty, poor housing, educational failure, and family and home breakdown;
2. Improvements in police functioning in the juvenile area;
3. Alternatives to arrest;
4. Improvements in post-arrest, pre-trial procedures, including age-segregated or offense-segregated incarceration;
5. Alternatives to judicial disposition;
6. Use of intake consultants;
7. Improve court procedures;

8. Correctional innovations such as in-community facilities, adapted group therapy, segregation of offenders by personality type, and home substitutes;

9. Broader consultation with families at every stage;

10. Increased intelligent use (at every stage) of various existing public and private community-based organizations and programs, as well as development of new ones; and

11. Improved education of the major participants in the juvenile process.<sup>78</sup>

Proposals from so prestigious a committee are deserving of respect. Particularly meritorious are recommendations to alleviate family and home breakdown and broader consultation with families at every stage. However, any reference to a need for discipline is missing from the list.

A tendency to soft pedal discipline, to avoid it, to substitute for it what is deemed more consideration, understanding, humane treatment pervades the American approach to child management. Discipline, whether corporal or otherwise, is an important factor in the preservation of an orderly society. Administering discipline wisely is a difficult, unpopular, and painful process and is too often neglected for those reasons.

Sheldon and Eleanor Glueck, respected Harvard University social researchers, were quoted on this subject in a newspaper editorial ten years ago.<sup>79</sup> Their prescription for prevention of delinquency is "great firmness, administered with love." Among their reasons for a rise in delinquency is slack discipline.

In a treatise on alienation of youth, juvenile delinquency, adult crime and related problems contained in "Social Problems and Criminal Justice,"<sup>80</sup> authors Emilio Viano and Alvin Cohn refer to departure from traditional correctional rehabilitative practices:

The new model argues in the positivistic tradition that unless offenders are dealt with in the community and unless offender and community values are intertwined in the treatment process, it will not be possible to produce change and normative behavior in offenders. Efforts to implement this philosophy include community-based treatment facilities,

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78. SELECT COMMITTEE ON CRIME, REPORT TO 93RD CONGRESS.

79. *The Milwaukee Journal*, Ap. 27, 1965, *quoting* U.S. News & World Report.

80. E. VIANO & A. COHN, *SOCIAL PROBLEMS & CRIMINAL JUSTICE*, (1975).

such as halfway houses, and new programs, such as work-release and furloughs from prisons. Whether or not these devices will be any more helpful in controlling and reducing crime and delinquency remains to be tested.<sup>81</sup>

These new approaches together with a strong movement to reduce juvenile rehabilitative institutions has sharply cut the number of delinquents in custody of this state. Juveniles in all Wisconsin correctional institutions in 1971 numbered nine hundred eighty-five.<sup>82</sup> In 1974 the total population of all Wisconsin juvenile institutions was five hundred and fifty-nine.<sup>83</sup> Some of the decline can be attributed to the reduction of the age of majority and loss of control at age eighteen. Perhaps more important reasons are early releases and a policy directed toward reducing the number of such facilities. Kettle Moraine, a modern, well-operated minimum security boys' school, designed specifically to aid in rehabilitating delinquent boys, has been closed to juveniles since 1971 when it was converted to an adult prison. Years of careful planning and effort by the Department of Health and Social Services to create the ideal rehabilitative surroundings for wayward youth were nullified with little consideration for the highly publicized original purpose of this excellent facility for juveniles in trouble. Simple logic leads to the conclusion that a mistake was made—either in its construction in the late 1960's or else in its removal as an available facility for rehabilitation of youth in 1971.

If a reduction in juvenile crime can be effected by shortening periods of custody and control, there could be no criticism of Wisconsin's new method of procedure. However, what are the facts? A report by the Select Committee on Crime<sup>84</sup> to Congress on June 29, 1973, recites that from 1960 through 1971 the crime of larceny in America increased 269.6% and robbery 259.5%, and that half of those arrested for burglary and larceny were under eighteen years of age. Juvenile crime has increased since the release of those statistics. Senator Claude Pepper, chairman of the Select Committee made these statements in the report:

[I]t is a sign of failure on the part of families and schools as

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81. *Id.*

82. Wis. Blue Book 1975, p. 742.

83. *Id.*

84. SELECT COMMITTEE ON CRIME, REPORT TO 93RD CONGRESS.

well as a threat of further deterioration if society does not meet the correctional challenge those offenders pose. . . . While the need to attack the root causes of crime is irrefutable, we also need to pay increasing attention to the short-term task of removing from the streets those offenders who are disrupting the fabric of our society.<sup>85</sup>

Earlier this year a Justice Department report revealed a rise in serious crime in the nation of 17 percent in 1974. Attorney General Edward Levi called for an emphasis on deterrence to roll back the crime wave when he said "the figures represent a dismal and tragic failure on the part of our present system of criminal justice." He went on to say: "We must understand that an effective criminal justice system has to emphasize deterrence" and stated "There are many causes of crime, but among them is the failure of our system to move quickly and effectively to detect and punish offenders."<sup>86</sup>

Further evidence of an increase in juvenile delinquency is contained in a magazine article entitled "Children and the Law:"

The statistics on child criminals are awesome. Juvenile crime has risen by 1,600 per cent in twenty years. More crimes are committed by children under 15 than by adults over 25—indeed some authorities calculate that half of all crimes in the nation are committed by juveniles. Last year, police arrested 2.5 million youngsters under 18. In Los Angeles, juveniles account for more than one-third of all major crimes, and in Phoenix, officials estimate that juveniles are responsible for 80 per cent of law violations. In Atlanta, juvenile arrests for arson have tripled since 1970, and in New York, since 1972, burglary and rape charges against juveniles have nearly doubled.<sup>87</sup>

When an offender is released from custody he returns home, if there is a home for him. Was a program instituted during the delinquent's absence to improve home conditions? All of the statutory provisions are directed at treatment and care for the juvenile. Sheldon and Eleanor Glueck predicted in 1965 that "we are in for a period of violence beyond anything we have yet seen" unless much is done to keep maladjusted parents from bringing up maladjusted children.

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85. *Id.*

86. *The Milwaukee Journal*, Mar. 31, 1975.

87. *Newsweek*, Sept. 8, 1975, p. 71C.



Our trouble is that everyone is so busy managing the children who are already delinquent that they don't have the time to think of how to break the vicious cycle that is building up delinquency. We are not doing the main thing that must be done to prevent the pre-delinquent from becoming a full fledged delinquent by correcting conditions in the home.<sup>88</sup>

An example of strong home structure is described in a book, "Japanese Americans."<sup>89</sup> It presents techniques of social control relating to traditions which have been long a part of Japanese culture.

In respect to position in the Japanese community, the Japanese family functioned more as a unit. The family was considered to be more important than its individual members, who derived their positions inevitably from the position of their family. Conversely, the family profited from the success of its members and was damaged by their failures. Family techniques of social control were firm and effective. Desirable behavior was strongly reinforced, both within the family and by the community as a whole. The behavior of any Japanese was held to be a credit or a blot upon all members of the Japanese community. The prevailing attitude was "A Japanese delinquent harms us all." Therefore, family standards of social behavior were reflected in and reinforced by the whole community.

. . . These family ties were consolidated by family emphasis on duty, obligation, and responsibility. The Japanese word *giri* connotes a moral obligation toward others, and is related to role position, involving an individual through his family with the ethnic community as well. He therefore has a responsibility not only to himself but to his family and to the community, both of which exert much inhibiting pressure on deviant behavior.

Whatever the factors responsible for a low crime and delinquency rate in Japan, strength of the Japanese family can hardly be overlooked. Incidence of crime in Tokyo, Japan's principal city, is related in *Britannica*, 1975 Book of the Year.<sup>90</sup>

Tokyo, the world's most populous city with some nine million people, was probably also the least crime-troubled big city anywhere in the world. In 1973 Tokyo had 196 murders while

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88. *The Milwaukee Journal*, Ap. 27, 1965, *quoting* U.S. News & World Report.

89. HARRY H. L. KITANO, *JAPANESE AMERICANS*, pages 66, 67.

90. *ENCYCLOPEDIA BRITANNICA*, 1975 BOOK OF THE YEAR, p. 198.

New York City, with a population of only eight million had 1,680. During the same year, New York, with a 31,000-man police force, had 72,750 reported robberies, Tokyo had 361; New York had 3,735 reported rapes, Tokyo had 426. While cities across the U.S. and Europe had experienced spiraling rates of crime over the past decade, Tokyo's overall crime rate did not increase and in the category of major crimes, the rate actually dropped despite steady population growth.

Section 48.34 of the Wisconsin Statutes prescribes the available methods for disposition of delinquency cases. Except through a transfer of custody, no provision permits the detention of a juvenile as a means of discipline. Nor may the court impose a work program which could be directed at restitution of stolen or destroyed property, and which could be useful as an aid to the rehabilitation of the offender. Several proposals, presented to the legislature in past sessions, contained such provisions.<sup>91</sup> One such proposal would have empowered the court to place a delinquent in detention for limited weekends, or for a period not to exceed twenty consecutive non-school days. A supervised, limited work program was also suggested. This kind of proposed legislation died in committee. In light of the mounting incidence of crime and delinquency, it seems reasonable to inquire: Would it be inhumane to try discipline?

Edward Eldefonso, in his recent book<sup>92</sup> comments on efforts to curb juvenile delinquency which he believes to be ineffective. At one point, he states:

Equally convincing was the contention years ago, and even today, that if every child were given a fair chance to obtain an education, his criminal tendencies would be restrained and crime could be greatly diminished. Thus, playgrounds have been established in most of the towns and cities of America, but still crime and delinquency spread at an alarming rate.

During the early 1930's when the United States was gripped by an unparalleled depression, people suffered severe economic deprivation. Agencies were not established to deal with the problem and dire want went unattended except through private charity. It is well known that in the years since, a system of public welfare has been sponsored by state and federal gov-

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91. 1971 Senate Bill 251, 1973 Assembly Bill 510, and 1973 Senate Bill 99.

92. E. ELDEFONSO, *LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER* p. 91.

ernments to relieve economic hardship. Such programs are intended to provide the wherewithal to sustain life and, as a by-product, to improve the conditions which lead to juvenile delinquency. Additional programs intended to curb crime and delinquency are extensive, elaborate, and a heavy burden for the American people. No burden would be too great, if the objective was accomplished. But it is not.

Poverty, with the unhappiness, deprivation, and frustration which accompanies it, is considered a major contributing factor in the high crime and delinquency rate.<sup>93</sup> That condition of economic hardship prevailed during the depression years. Unemployment plagued this country and frequently families were without resources to provide the necessities of life. What was the situation in America relating to crime and delinquency during that period of crisis? It is revealing to read in *Encyclopedia Britannica* these observations: "During the depression of the 1930s crime rates in many U.S. cities remained relatively low, although unemployment and other economic hardships were widespread."<sup>94</sup> During that period, forty years ago, the nation was unprepared for the condition which came upon it suddenly. Because crime and delinquency at that time did not present the problem which has confronted the United States for the past twenty years, programs directed at its control were minimal.

America has a serious problem. On the basis of the country's experience during the early and mid 1930s, it may be suggested that the elaborate efforts of the 1970s to curb delinquency should be reexamined.

Nearly two generations have come and gone since 1930 and the country has grown enormously. Population shifts have changed the composition of its cities. Labor is organized, prosperous, and not in awe of capital nor of government. Individual entrepreneurs apparently are doing well, notwithstanding the burdens of inflation. The standard of living for the great majority of America's population is the envy of the outside world. Excellent schools, costly gymnasiums, indoor and outdoor pools and extensive athletic fields can be found in almost every community. They are intended to be available to everyone. America is the greatest country in the world and it is over-

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93. SELECT COMMITTEE ON CRIME, REPORT TO 93RD CONGRESS.

94. *ENCYCLOPEDIA BRITANNICA*, 1975 BOOK OF THE YEAR, p. 198.

whelmed by crime and delinquency.

Two hundred years ago this nation was created on the principle of freedom for all its people. Thirteen years later a constitution detailed and guaranteed what were considered fundamental human rights. Countless times courts have been requested to rule on those constitutional rights, and great care has been employed to protect and define them. Were the men who conceived the constitution to read interpretations of that document today they may well be disbelieving. Emphasis on individual rights, rather than those of the civic-minded, law-abiding majority would seem to be resulting in crime and delinquency which are out of control. The comment of University of Virginia Law School Dean, Monrad G. Paulsen, on the juvenile justice system, "I'm not going to tell you it's hopeless, because it may be hopeless"<sup>95</sup> need not be an accurate forecast if the approach to the increasing problem is altered.

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95. Newsweek, Sept. 8, 1975, p. 71C.

