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## Professional Responsibilities toward Children in Trouble with the Law

Donna Sheen

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# PROFESSIONAL RESPONSIBILITIES TOWARD CHILDREN IN TROUBLE WITH THE LAW

*Donna Sheen\**

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Representing a child in trouble with the law can be the most rewarding case an attorney handles. Well-trained attorneys use the legal system to obtain what a child needs to change the course of his or her life.<sup>1</sup> However, accurately identifying those needs and then getting the system to deliver is a tremendous challenge. This article explores some of the professional re-

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1. 42 U.S.C. § 5601(a)(2) (2004). "[A]llowing 1 youth to leave school for a life of crime and of drug abuse costs society \$1,700,000 to \$2,300,000 annually." *Id.*

sponsibilities, challenges and opportunities for attorneys who represent children charged with adult crimes or delinquent acts, and highlights distinctions between Wyoming's adult and juvenile court processes. Current Wyoming processes are contrasted with the statutory purpose of Wyoming's Juvenile Justice Act.

The article is divided into three sections or perspectives for examining the representation of these children. The first section details two interrelated systemic problems for attorneys representing juveniles in Wyoming. They are: (1) Wyoming's poorly designed juvenile justice system;<sup>2</sup> and (2) a child's legal competence and the impact of recent research on the limited capacity of adolescents to participate in and appreciate the court processes, due to developmental immaturity. The second section explores the application of Wyoming's Rules of Professional Conduct<sup>3</sup> to the representation of children, examining ways to ensure that children receive effective legal representation in Wyoming. The third section outlines some specific legal issues and inconsistencies in Wyoming law and current practices that might be scrutinized by attorneys representing children in adult or juvenile court.

## I. SYSTEMIC PROBLEMS

### *A. Wyoming Lacks a Clear Vision of Juvenile Justice*

In Wyoming, the skillful representation of children charged with crimes or delinquent acts becomes even more difficult to achieve because of the complexity and contradiction of Wyoming juvenile justice laws. Recently, Professor John M. Burman of the University of Wyoming College of Law wrote an article entitled "Juvenile Injustice in Wyoming."<sup>4</sup> The article is but one in a series of articles, studies, reports and audits spanning twenty-five years that describe the serious structural shortcomings in Wyoming's juvenile justice system.<sup>5</sup>

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2. See, e.g., John M. Burman, *Juvenile Injustice in Wyoming*, 4 WYO. L. REV. 2 (2004); COLUMBIA RESEARCH CTR., THE WYOMING JUVENILE JUSTICE SYSTEM: AN EVALUATION (1981); WYO. ST. LEGISLATURE MGMT. AUDIT COMM., PROGRAM EVALUATION JUVENILE JUSTICE AND DELINQUENCY PREVENTION (JJDP) PROGRAM (Nov., 1993); WYO. ST. LEGISLATURE COMM'N ON JUVENILE ISSUES, REPORT TO THE LEGISLATURE (Oct. 1994); WYO. ST. LEGISLATURE MGMT. AUDIT COMM., COURT-ORDERED PLACEMENTS AT RESIDENTIAL TREATMENT CENTERS (Nov. 2004).

3. WYOMING RULES OF PROF'L CONDUCT (2003).

4. Burman, *supra* note 2.

5. *Id.* See also COLUMBIA RESEARCH CTR., THE WYOMING JUVENILE JUSTICE SYSTEM: AN EVALUATION (1981); WYO. ST. LEGISLATURE MGMT. AUDIT COMM., PROGRAM EVALUATION JJDP PROGRAM (Nov. 1993); WYO. ST. LEGISLATURE COMM'N ON JUVENILE ISSUES, REPORT TO THE LEGISLATURE (Oct. 1994); WYO. ST. LEGISLATURE MGMT. AUDIT COMM., COURT-ORDERED PLACEMENTS AT RESIDENTIAL TREATMENT CENTERS (Nov. 2004).

The primary problem is Wyoming's broad grant of concurrent jurisdiction,<sup>6</sup> which has created inconsistent and arbitrary court processes and legal outcomes for juveniles in Wyoming.<sup>7</sup> In addition to the broad concurrent jurisdiction, the system has no viable transfer process from circuit or municipal courts.<sup>8</sup> Attorneys who represent juveniles in adult and juvenile court must constantly assess the impact of many disparate factors to provide their child client with information about the best available options and alternatives.

In November of 2004, the University of Wyoming Statistical Analysis Center (WYSAC) and the National Center on Juvenile Justice (NCJJ) released the final report on a research study examining the court processing practices for children in four Wyoming counties.<sup>9</sup> The study found the overarching problem in Wyoming to be the lack of clear standards in statutes and policies relating to juvenile justice issues, stating that "[a] juvenile justice system must be directed at clearly articulated and widely shared goals."<sup>10</sup> The report points out "[c]ourts and probation departments cannot succeed (or fail for that matter) without aiming at something."<sup>11</sup>

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6. Concurrent jurisdiction allows the prosecutor to direct-file cases in juvenile court or direct-file charges in an adult court with no transfer or waiver provisions to review the decision. In practice, most cases are direct filed in circuit or municipal court through the issuance of a citation by law enforcement. See WYO. STAT. ANN. § 14-6-203(c), (e) & (h) (LexisNexis 2003).

7. See *supra* note 5.

8. WYO. STAT. ANN. § 14-6-237(h) (LexisNexis 2003) states,

No court other than the district court shall order the transfer of a case to juvenile court. At any time after a proceeding over which the juvenile court has concurrent jurisdiction is commenced in municipal or circuit court, the judge of the court in which the proceeding is commenced may on the court's own motion, or on the motion of any party, suspend further proceedings and refer the case to the office of the district attorney to determine whether a petition should be filed in the juvenile court to commence a proceeding under this act. If a petition is filed under this act, the original proceeding commenced in the municipal or circuit court shall be dismissed. If the district attorney determines not to file a petition under this act, the district attorney shall immediately notify the municipal or circuit court and the proceeding commenced in that court may continue.

*Id.*

9. WYO. SURVEY & ANALYSIS CTR., YOUTH CASE PROCESSING IN THE STATE OF WYOMING: AN ANALYSIS OF FOUR COUNTIES REPORT TO THE WYOMING DEPT. OF FAMILY SERVICES (2004), available at <http://www.uwyo.edu/wysac/CrimJustice/JuvenileCourtProcessing/docs/DFS%20Final%20Report.pdf> (last visited Apr. 30, 2005) [hereinafter WYSAC Report]. The research project examined the case processing of children in all court systems in Natrona, Sheridan, Sweetwater and Teton counties. *Id.*

10. *Id.* at 154.

11. *Id.*

The study gathered critical data to help Wyoming understand and quantify the various actions and outcomes involving juveniles accused of crimes and status offenses in Wyoming. "For the first time, . . . through the collection of court data, the current study documents that the vast majority of Wyoming children are in fact tried in municipal and circuit courts where they are subject to the same sentences as adults."<sup>12</sup> The study found "approximately 88 percent of the cases heard in Sheridan, Sweetwater, and Teton counties were heard in either a municipal or circuit court,"<sup>13</sup> and in Natrona county, 93 percent of juvenile offenders were processed in circuit or municipal courts.<sup>14</sup> The study clearly establishes that the overwhelming majority of children are charged as adults in Wyoming, which affords little or no opportunity for therapeutic interventions known to be effective with children.

As a result of the systemic problems, Wyoming now holds the dubious distinction of being the only state not in substantial compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP A).<sup>15</sup> The Act requires participating states to meet four mandates. They are to (1) eliminate the inappropriate jailing of status offenders<sup>16</sup> and nonoffenders; (2) separate children from adult offenders in secure institutions; (3) eliminate the practice of confining juveniles in adult jails and lockups; and (4) address the disproportionate confinement of minority children.<sup>17</sup> The use of various courts and the lack of clear standards and processes for detaining and jailing children in

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12. *Id.* at 151.

13. *Id.*

14. *Id.* at 46.

15. 42 U.S.C. §§ 5601-81 (2004). The Federal Act was promulgated in response to congressional findings that "[c]oordinated juvenile justice and delinquency prevention projects that meet the needs of juveniles through the collaboration of the many local service systems juveniles encounter can help prevent juveniles from becoming delinquent and help delinquent youth return to a productive life." 42 U.S.C. § 5601(a)(11) (2004). Wyoming formally withdrew from participation in the JJDP A around 1993. The nonparticipation was prompted by a lack of operational juvenile detention facilities and strict federal standards, which were believed to be unrealistic in a rural state like Wyoming. The federal law and regulations have since been revised to address rural issues and the number of juvenile detention facilities meeting JJDP A requirement have increased. *See, e.g.*, WYO. ST. ADVISORY COUNCIL ON JUVENILE JUSTICE, STRATEGIC PLAN (2005), available at [http://www.wyjuvenilejustice.com/strategic\\_plan.html](http://www.wyjuvenilejustice.com/strategic_plan.html) (last visited Apr. 30, 2005). On February 17, 2005, the State Advisory Council on Juvenile Justice voted to recommend to Governor Freudenthal that Wyoming again become a participant in the JJDP A and receive the associated federal funding. The council recommended the State come into substantial compliance with the act as soon as possible but not later than July 1, 2006. WYO. ST. ADVISORY COUNCIL ON JUVENILE JUSTICE, MINUTES OF THE WYOMING STATE ADVISORY COUNCIL ON JUVENILE JUSTICE MEETING (Feb. 2005), available at [http://www.wyjuvenilejustice.com/PDF/feb\\_05\\_minutes.pdf](http://www.wyjuvenilejustice.com/PDF/feb_05_minutes.pdf) (last visited Apr. 30, 2005).

16. Generally, a "status offense" is an offense that would not be considered criminal if it were committed by an adult. Common status offenses are drinking, smoking, truancy, running away from home or curfew violations. BLACK'S LAW DICTIONARY 1420 (7th ed. 1999).

17. 42 U.S.C. § 5633 (2004).

various courts is a major barrier to achieving compliance with the Act. Lack of processes and data systems that compile information from the various courts keeps the problem hidden.

### *B. Limited Competence*

The question of a juvenile's competence is especially relevant given Wyoming's heavy use of adult courts for prosecution of juvenile defendants. The general standard for competence to stand trial is primarily meant to address mental illness and disability.<sup>18</sup> Wyoming's evaluation of competence to stand trial follows the *Dusky* standard.<sup>19</sup> Generally, this evaluation assesses the capacity to: (1) understand the nature of the trial process and the possible consequences; (2) meaningfully assist counsel and participate in the trial process; (3) understand the other participants' roles, and one's own rights; and (4) make decisions about exercising or waiving important rights.<sup>20</sup>

The *Dusky* standard does not provide absolute criteria. However, tests have been developed to indicate the presence and degree of a capacity problem. While adult defendants may exhibit capacity only to some degree, the ABA Report on juvenile competence notes "[t]he question for policy and judicial decisions about juveniles' competence, therefore, is not whether they have deficits in these areas, but whether their deficits are sufficiently great to render them less capable of participating in their defense than is the average adult defendant."<sup>21</sup>

The ABA report further notes that "[f]or children, determining competence to stand trial would require not only evaluating mental illness and intelligence, but also assessing the impact of immaturity on their ability to assist in their own defense."<sup>22</sup> A recently completed study on juvenile competence funded by the MacArthur Foundation questions the application of adult legal standards of competency to children. The researchers assert that "[a]lthough psychosocial immaturity is not addressed in the formal legal

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18. THOMAS GRISSO ET AL., JUVENILES' COMPETENCE TO STAND TRIAL: A COMPARISON OF ADOLESCENTS' AND ADULTS' CAPACITIES AS TRIAL DEFENDANTS 3 (2004), available at [http://www.jcpr.org/wpfiles/steinberg\\_juvenile.pdf?CFID=5725179&CFTOKEN=27060380](http://www.jcpr.org/wpfiles/steinberg_juvenile.pdf?CFID=5725179&CFTOKEN=27060380) (last visited Apr. 30, 2005) (A research study and report funded by the John D and Catherine T. MacArthur Foundation, in press, Law and Human Behavior) [hereinafter MACARTHUR REPORT].

19. *Dusky v. United States*, 362 U.S. 402 (1960) (establishing a standard method of assessing competence to stand trial).

20. AM. BAR ASSOC. JUVENILE JUSTICE CTR., MORE THAN MEETS THE EYE: RETHINKING ASSESSMENT, COMPETENCY AND SENTENCING FOR A HARSHER ERA OF JUVENILE JUSTICE 29 (May 2002), available at <http://www.njdc.info/pdf/mtmtefull.pdf> (last visited Apr. 30, 2005) [hereinafter RETHINKING COMPETENCE].

21. *Id.* at 29.

22. *Id.* at 3-4.

construct of competence to stand trial, it needs to be investigated in this context to provide a comprehensive account of adolescents' capacities to participate in the trial process."<sup>23</sup>

The ABA Report states that "[d]uring the first 50 years of the juvenile justice system, the concept of competence to stand trial was conceptually irrelevant for juvenile court proceedings."<sup>24</sup> The juvenile court system acts as a surrogate parent in providing guidance to wayward youth and avoiding adult criminal court consequences. However, the U.S. Supreme Court now recognizes various due process rights within the juvenile court, which likely include some due process rights related to competency.<sup>25</sup> The increasing prosecution of juveniles in adult courts across the country should heighten attention and concern regarding children's competence to stand trial. The U.S. Supreme Court has now abolished the death penalty for juveniles, in part due to concerns about their immaturity and the possibility that developmental growth often provides an opportunity for reform.<sup>26</sup>

The main contribution of the MacArthur Report on juvenile competence is the guidance it provides in assessing previously underdeveloped concepts of juvenile incompetence.<sup>27</sup> The research explores complex questions about when a child may not be competent to stand trial due to developmental immaturity.<sup>28</sup> The results call into question the current adult legal

23. MACARTHUR REPORT, *supra* note 18, at 4.

24. RETHINKING COMPETENCE, *supra* note 20, at 26.

25. See, e.g., *Kent v. U.S.*, 383 U.S. 541 (1966) (requiring a waiver hearing on transfer to adult court to ensure procedural regularity sufficient to satisfy basic requirement of due process and fairness); *In re Gault*, 387 U.S. 1 (1967) (elaborating on the due process requirement in juvenile court as one of fundamental fairness including, procedural regularity, adequate written notice, child and parent must be advised of their right to counsel, privilege against self-incrimination and the right to confront and cross-examine witnesses); *In re Winship*, 397 U.S. 358 (1970) (establishing proof beyond a reasonable doubt as the standard in juvenile delinquency); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (rejecting the right to a jury trial in juvenile delinquency adjudication). The ABA report generally notes the issue of competence remains murky and unresolved, stating:

The U.S. Supreme Court decisions in *Kent v. United States* and *In re Gault* ushered in revisions that provided to youths in delinquency proceedings many of the same due process rights that were afforded to adult defendants. This included a right to counsel and, presumably, the right to be competent to stand trial, without which the right to counsel would have little meaning. Within another 20 years, about one-third of the states recognized, by statute or case law, the right of youths to be competent to stand trial in delinquency proceedings. The issue, however, was rarely raised, and no significant body of case law emerged to define the meaning of competence for youths in juvenile court hearings.

RETHINKING COMPETENCE, *supra* note 20, at 26-27.

26. *Roper v. Simmons*, 125 S. Ct. 1183 (2005).

27. MACARTHUR REPORT, *supra* note 18, at 4.

28. *Id.* at 3.

criteria for determining competence because “psychosocial immaturity may affect the performance of youth as defendants in ways that extend beyond the elements of understanding and reasoning that are explicitly relevant to competence to stand trial.”<sup>29</sup> Stated more directly, the research found that children have a heightened propensity to follow orders of authority figures, which includes a tendency toward confession rather than silence and accepting offers of plea agreements. At the same time, children “are less likely, or perhaps less able, than others to recognize the risks inherent in the various choices they face or to consider the long-term, and not merely the immediate, consequences of their legal decisions.”<sup>30</sup>

The high incidence of disabilities among the juvenile justice population raises heightened concerns about a child’s ability to understand and make reasonable judgments about the legal process.<sup>31</sup> The ABA Juvenile Justice Center notes that “[l]earning difficulties compromise the ability of some children to digest information and often lead to a faulty thought process in delinquents.”<sup>32</sup> The report goes on to state that “research also shows that understanding of information about the trial process and rights is poorer for adolescents with lower intelligence test scores, problematic educational histories, learning disabilities, and mental disorders.”<sup>33</sup> In her book, *Juvenile*

29. *Id.* at 14.

30. *Id.* at 14-15.

31. The lack of consistent measures, standards and research has made it very difficult to quantify the occurrence of various disabilities in children involved in the juvenile justice system. However, there is little doubt that disabilities are a large factor in court involved children. It is estimated that in the Juvenile Justice System 10-88% of the children have mood disorders, compared to 5-9% in the general population; 2-76% have Attention Deficit Hyperactivity Disorder, compared to 3-7% in the general population; 36-53% of the children have learning disorders, compared to 4-9% in the general population; 13% of the children have mental retardation, compared to 1% in the general population; 5-49% of the children have posttraumatic stress disorder, compared to 6% in the general population; 32-100% of the children have conduct disorder, compared to 1-10% in the general population; 1-16% of the children have psychotic disorders, compared to .5-5% in the general population; and 46-88% of the children have substance abuse/dependence, compared to 5.5-9% in the general population. The large statistical variations are due to a lack of standard measures in defining these populations. However, comparison of the ranges between juvenile justice involved youth and the general population demonstrates a dramatic rise in likelihood of disability diagnosis for youth involved in the juvenile justice systems. LISA M. BOESKY, AM. CORRECTIONS ASSOC., *JUVENILE OFFENDERS WITH MENTAL HEALTH DISORDERS: WHO ARE THEY AND WHAT DO WE DO WITH THEM?* 4 (2002). “An estimated 18% of youth with mental retardation, 31% of youth with learning disabilities, and 57% of youth with severe emotional disturbances will be arrested within 5 years of leaving high school.” Joseph Tulman, Presentation at the Wyoming Juvenile Justice Conference (June 2004).

32. RETHINKING COMPETENCE, *supra* note 20, at 12.

33. *Id.* at 30. The report states,

For example, in the Miranda study noted earlier, delinquent youths 15- to 17-years-old with low IQ scores showed significantly poorer understanding than did the average 12-year-old. Moreover, while adolescents of average intelligence compared well with adults of average intelligence,



*Offenders With Mental Health Disorders: Who Are They and What do we do with Them*, author Lisa Boesky asserts that “[t]he juvenile justice system has become the default placement for many youth with mental health disorders who are not receiving appropriate psychological and psychiatric treatment in the community.”<sup>34</sup>

The American Bar Association (ABA) states that the key to effective determination of a child’s competence is a specialized evaluation to “tell the court where the child is developmentally and if an immature thought process influenced the offense.”<sup>35</sup> The evaluation should “describe what areas of developmental growth remain for the child, in anticipating consequences, making choices and applying moral values.”<sup>36</sup> This is critical information for the defense attorney. It can help the attorney to appropriately address the legal issues and effectively communicate with and advise the child.

The ABA notes that “specialized evaluations should describe what services would help this developmental process and what conditions—particularly an adult sentence—would impede it.”<sup>37</sup> It goes on to state:

Several aspects of thinking like a child during the offense should be explored in depth by the evaluator: (1) magical thinking,<sup>38</sup> (2) self-protection,<sup>39</sup> and (3) planning.<sup>40</sup> The child development expert’s view of these aspects of cognition may be substantially different from a layperson’s. All

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comprehension of legal information was poorer for adolescents of low intelligence than for adults of similarly low intelligence.

*Id.*

34. See Boesky, *supra* note 31, at 7.

35. RETHINKING COMPETENCE, *supra* note 20, at v.

36. *Id.*

37. *Id.*

38. *Id.* “[M]agical thinking is a uniquely childlike inability to approach situations with an adult decision-making process. The child’s wishes become his/her reality.” *Id.* at 5.

39. *Id.* “[S]elf-protection from the child development perspective is different from demonstrating self-defense in a legal context for adults. The egocentrism of adolescents exaggerates their sense of danger. Children’s fears are typically overpowering and irrational.” *Id.*

40. *Id.* at 6. The report states,

[P]lanning is weighed by the court as the determining element of premeditation . . . . Children operate with much more limited choices than adults. Stress constricts their choices even more. Adolescents are developmentally limited in their ability to plan because of the fluidity of time and structure. . . . The high incidence of adolescent suicides demonstrates the tendency to operate with an all-or-nothing mindset.

*Id.*

three contribute to the expert's understanding of whether the child's actions could be considered "willful."<sup>41</sup>

The ABA notes there is limited information about a child's understanding of the trial process:

Current research suggests that by ages 13 or 14, youths on average tend to have a basic idea of the roles of persons in the trial process, and they can understand that defendants are charged with offenses and that the consequences may be punitive. More questionable is their ability to deal with abstract legal concepts that are grasped by the majority of adults.<sup>42</sup>

However, "[t]he law currently is almost silent on how competence is to be defined for participation in juvenile proceedings, what characteristics of youths are relevant for decisions about their competence, and how the juvenile court will respond to incompetent youths."<sup>43</sup>

Competence is relevant in Wyoming juvenile court proceedings.<sup>44</sup> The juvenile court is also a "court of equity" with broad authority to act in a

41. *Id.* at 5.

42. *Id.* at 29. The report states,

Only at around ages 13 or 14 do youths develop the capacity to think of a right as "belonging" to them, and hence as something that they should be able to assert or waive as they wish. To say that younger adolescents develop the capacity to think about rights in this way, however, is not to say that most adolescents do think this way. Evidence for this point was found in a comprehensive, government-funded study that involved the administration of special tests to determine understanding of Miranda warnings among more than 400 delinquent youths in juvenile detention facilities and 200 criminal adults. Even at ages 14 through 16, youths were much less likely than adults to describe a "right" in a way that defines it as an entitlement (only about one-quarter of delinquent youths, compared to about one-half of adult offenders). Thus, when asked what is meant when police tell you, "You do not have to make a statement and have the right to remain silent," many youths give responses indicating a conditional view of legal rights: for example, "You can be silent unless you are told to talk," or "You have to be quiet unless you are spoken to." Even though many youths may develop the capacity for understanding rights early in adolescence, often it takes some additional time and life experiences for that capacity to develop so that it influences their actual understanding.

*Id.* at 29-30.

43. *Id.* at 28.

44. See WYO. STAT. ANN. § 14-6-219 (LexisNexis 2003). The statute establishes the fact that competence is relevant in juvenile court proceedings by providing a procedure for determining competence and directions to the court when a juvenile is found to be incompetent.

manner that allows the consideration of limited competence due to developmental immaturity.<sup>45</sup> Limited competence becomes a critical issue when a child is charged or cited in a municipal or circuit court because, in Wyoming, there is no statutory access to a transfer process, generally referred to as a “waiver,” that would allow appropriate cases to be moved to juvenile court.<sup>46</sup> Wyoming processes an extremely high volume of youth in circuit and municipal courts, and these adult courts, in turn, have no process allowing them to address a youth’s limited competence.

There was a trend during the 1990s to increase the use of adult courts for juveniles. However, Wyoming has always allowed broad adult jurisdiction over juveniles. In discussing the opportunity for waiver to juvenile court, the ABA states that “[i]n states that retained judicial waiver, threshold criteria often were modified (e.g., lower ages for allowable waiver, changes in standards and burdens of proof) in ways that increased the jeopardy of youthful defendants in waiver hearings.”<sup>47</sup> Furthermore, “[t]he decisions that some defendants might have to make regarding their choices in a waiver hearing are no less complex than in a criminal trial—arguably more so, because the range of outcomes is greater.”<sup>48</sup>

The recent U.S. Supreme Court decision prohibiting the execution of juveniles offered some authoritative guidance related to the concept of limited competence that is useful to Wyoming attorneys.<sup>49</sup> The Court noted that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s

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*Id.* Unfortunately, the statute is outdated and requires the commitment of incompetent juveniles in a manner that is no longer considered appropriate.

45. WYO. STAT. ANN. § 14-6-238 states that the juvenile court exercises “equitable jurisdiction” and further provides that “[n]o order or decree pursuant to this act shall be deemed a conviction of a crime or impose any civil disabilities, nor shall it disqualify the child for any civil or military service application or appointment or from holding public office.” *Id.* The court also has broad authority in juvenile court. Section 14-6-203(b) states:

Coincident with proceedings concerning a minor alleged to be delinquent, the court has jurisdiction to: . . . (ii) Order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary; or (iii) Order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition of the minor made by the court.

WYO. STAT. ANN. § 14-6-203(b). Sections 14-6-229 and 14-6-245 through 14-6-252 provide broad authority to the juvenile court in entering a disposition after a juvenile is adjudicated delinquent. WYO. STAT. ANN. §§ 14-6-238, 229, 245-52.

46. See *supra* note 8 for a citation of the statutory provisions that preclude a judicial waiver from circuit or municipal court.

47. RETHINKING COMPETENCE, *supra* note 20, at 27.

48. *Id.*

49. *Roper v. Simmons*, 125 S. Ct. 1183 (2005).

character deficiencies will be reformed.”<sup>50</sup> The opinion also noted that “[t]heir own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”<sup>51</sup> These findings should be applied to the vast majority of Wyoming youth who are currently tried as adults. The adult charges foreclose access to an array of treatments, services and supports available in juvenile court, and therefore, preclude any reasonable opportunity to be reformed.

The ABA has taken the formal position that when youth are charged in adult court, any child under age fifteen and any child age fifteen or older whose competency is questioned should receive a competency evaluation before standing trial or waiving any rights.<sup>52</sup> This position is now more strongly supported by the MacArthur study which found that “juveniles aged 15 or younger are significantly more likely than older adolescents and young adults to be impaired in ways that compromise their ability to serve as competent defendants in a criminal proceeding.”<sup>53</sup> The ABA further notes that “[r]ecognition of youths’ competence to stand trial in juvenile court, however, is only the beginning of a series of questions yet to be answered in law, policy, or practice.”<sup>54</sup> This new research provides Wyoming attorneys an opportunity to contest the inherent lack of procedural due process in the typical application of Wyoming’s concurrent jurisdiction provisions. As the U.S. Supreme Court declared in *Kent*, “[i]t is clear beyond dispute that the waiver of jurisdiction is a ‘critically important’ action determining vitally important statutory rights of the juvenile.”<sup>55</sup> The lack of any clear procedural criteria for application of concurrent jurisdiction creates a *de facto* waiver from juvenile court with no opportunity for hearing.

## II. APPLICATION OF THE RULES OF PROFESSIONAL RESPONSIBILITY

For attorneys who represent children in trouble with the law, the evolving concept of legal competence within Wyoming’s fractured juvenile justice system have implications on the attorney’s professional responsibilities. It requires attorneys to develop a very sophisticated understanding of the local “flavor” of juvenile processing in order to adequately represent their clients and meet the professional and ethical obligations due these vulnerable children. The Wyoming Rules of Professional Conduct for Attorneys at Law provide some helpful direction to attorneys as they wade

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50. *Id.* at 1195-96.

51. *Id.* at 1195.

52. AM. BAR ASSOC., *YOUTH IN THE CRIMINAL JUSTICE SYSTEM: GUIDELINES FOR POLICYMAKERS AND PRACTITIONERS* (2001) [hereinafter *GUIDELINES FOR POLICYMAKERS AND PRACTITIONERS*].

53. MACARTHUR REPORT, *supra* note 18, at 29.

54. *RETHINKING COMPETENCE*, *supra* note 20, at 28

55. *Kent v. U.S.*, 383 U.S. 541, 556 (1966).

through this murky area of law. Some of the relevant provisions are discussed below.

*A. Preamble: A Lawyer's Responsibilities*

The Wyoming Rules state that “[a]s advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.”<sup>56</sup> For children in adult courts, there is no statutory directive to represent or consider the child’s best interests. There is also no requirement that parents be involved in the adult court processes to inject some paternal concern and responsibility.<sup>57</sup> Conversely, in juvenile court, the lawyer appointed to represent a child may be faced with conflicting directives<sup>58</sup> that may impede the application of “zealous advocacy” of the client’s position when appointed to serve as both guardian *ad litem* (GAL) and counsel for the child. It could be asserted that the processes of the juvenile court, a court of equity intended to be nonadversarial and therapeutic, mitigate this problem. However, an attorney must also remember that the U.S. Supreme Court has recognized a number of procedural due process rights when children are charged with delinquency in juvenile court.<sup>59</sup> This includes the right to counsel.<sup>60</sup>

A child’s due process right may not allow the appointment of an attorney/GAL in delinquency cases because the right to counsel is presumably a right to “conflict free” counsel.<sup>61</sup> The Board of Judicial Policy and Administration might consider revising the Wyoming Rules of Professional Conduct to either prohibit or provide more guidance on the circumstance of when a hybrid attorney/GAL appointment is appropriate in delinquency proceedings and how attorneys should address conflicts that arise.

The preamble also notes that “[a]s negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others.”<sup>62</sup> The talent of a skilled negotiator is critical in these cases because most children have little experience or understanding of the art of

56. WYO. RULES OF PROF’L CONDUCT Preamble 2 (2003).

57. See *infra* note 106-09 and accompanying text for further discussion of the parent’s role when a child is in court.

58. The conflict could arise because the child’s wishes may not coincide with the determination of the child’s best interests.

59. See *supra* note 25.

60. *In re Gault*, 387 U.S. 1 (1967).

61. See *New Mexico v. Joanna V.*, 94 P.3d 783 (N.M. 2004). The New Mexico Supreme Court addressed an ineffective assistance of counsel appeal where the child was represented by an attorney who was her GAL in a dependency and neglect proceeding. *Id.* The court ruled that the appointment of the GAL to also serve as the juvenile’s attorney in a delinquency action did not constitute ineffective assistance of counsel due to the absence of evidence of any actual, active conflict. *Id.* However, the court discussed the high risk of potential conflict for the attorney role in meeting their obligation to effectively represent the child as zealous advocate. *Id.*

62. WYO. RULES OF PROF’L CONDUCT Preamble 2 (2003).

negotiating. This is especially true when the child is in a court of equity where nonadversarial processes, such as multidisciplinary team meetings, provide the defense attorney an opportunity to learn the position of others and negotiate the most helpful and beneficial disposition, given the unique circumstances of the case.<sup>63</sup> However, the attorney should keep in mind the child's heightened susceptibility to influence from authority figures and temper his or her explanations and recommendations accordingly.<sup>64</sup>

### B. Rule 1.1—Competence

Wyoming's rules of professional conduct require that attorneys provide competent representation to their client,<sup>65</sup> noting "[e]xpertise in a particular field of law may be required in some circumstances."<sup>66</sup>

Nationally, the lack of expertise and specialization of attorneys practicing juvenile law highlights attorney competency as an ongoing issue.<sup>67</sup> In *A Call For Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, the ABA's Juvenile Justice Center noted:

In 1967, in *In re Gault*, the United States Supreme Court established a constitutional right for children to receive counsel in juvenile delinquency proceedings. . . . When it reauthorized the Juvenile Justice Act in 1992, Congress re-emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of prosecutorial and public defender offices to provide individualized justice. . . . The ABA's Presidential Working

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63. However, the attorney should not forget the U.S. Supreme Court began recognizing procedural due process rights in juvenile courts as a result of persistent problems in this "nonadversarial" court. In *Kent v. U.S.*, the Court noted,

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.

*Kent v. U.S.*, 383 U.S. 541, 555-56 (1966).

64. See *supra* notes 27-36 and accompanying text discussing heightened susceptibility.

65. WYO. RULES OF PROF'L CONDUCT R. 1.1 (2003).

66. WYO. RULES OF PROF'L CONDUCT R. 1.1 cmt. 1 (2003).

67. AM. BAR ASSOC. JUVENILE JUSTICE CTR., *A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS* 5 (December, 1995) [hereinafter *A CALL FOR JUSTICE*].

Group on the Unmet Legal Needs of Children and their Families also called for the juvenile justice system to fulfill children's right to competent counsel.<sup>68</sup>

The ABA conducted a national assessment and is now conducting state assessments of the competence of counsel representing juveniles.<sup>69</sup> A number of widespread problems are cited in the assessments.<sup>70</sup> While Wyoming has not undergone a state level assessment, there is little doubt that the problems identified in both the national and state assessments exist in Wyoming.<sup>71</sup>

The American Council of Chief Defenders at the National Juvenile Defender Center recently published the *Ten Core Principles for Providing Quality Delinquency Representation through Indigent Defense Delivery Systems*.<sup>72</sup> The second principal states:

The indigent defense delivery system recognizes that representing children in delinquency proceedings is a complex specialty in the law and that it is different from, but equally as important as, the legal representation of adults. The indigent defense delivery system further acknowledges the specialized nature of representing juveniles processed as adults in transfer/waiver proceedings.<sup>73</sup>

In addition, the principles encourage attorneys to become involved at the earliest possible stage of the proceeding to ensure the child client does not waive his or her right to an attorney.<sup>74</sup>

When a child is charged in an adult court, the attorney has an obligation to understand and explain the potentially harsh consequences of this charge to his or her client. Consequences include (1) the loss of confidentiality normally available in a juvenile court; (2) the implications of an adult criminal record; (3) the potential of exhausting the first offender option for a misdemeanor offense in circuit court when the juvenile would also have the right to seek expungement of the record;<sup>75</sup> (4) the absence of treatment and

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68. *Id.*

69. *Id.*

70. *Id.* For example, attorneys often spend inadequate time investigating the case or advising the child client.

71. *See infra* note 126.

72. AMERICAN COUNCIL OF CHIEF DEFENDERS, NATIONAL JUVENILE DEFENDER CENTER, *TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS 1-3* (Jan. 2005), available at [http://www.njdc.-info/pdf/10\\_Principles.pdf](http://www.njdc.-info/pdf/10_Principles.pdf) [hereinafter *PRINCIPLES OF PROVIDING QUALITY JUVENILE REPRESENTATION*].

73. *Id.* at 2.

74. *Id.*

75. The adult first offender statute, Wyoming Statutes section 7-13-301, is only available once. WYO. STAT. ANN. § 7-13-301(e) (LexisNexis 2003). However, section 14-6-241(c)

rehabilitation options that would have been available in the juvenile court; (5) the lack of jurisdiction over family members who may be neglectful or partially responsible for a juvenile's behavior problems; and (6) the loss of direct involvement and responsibility of the juvenile's school which is available in juvenile court.

Comment 2 to Rule 1.1 states that "[a] lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar."<sup>76</sup> It goes on to note "[p]erhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve. . . . A lawyer can provide adequate representation in a wholly novel field through necessary study."<sup>77</sup> A new attorney develops the skills necessary to competently represent a child client by following a learning process. The learning process typically follows a linear progression through four distinct stages: (1) In Stage One—Unconscious Incompetence—the attorney does not yet know what she does not know; (2) In Stage Two—Conscious Incompetence—the attorney knows what she does not know; (3) In Stage Three—Conscious Competence—the attorney is aware of what she knows; and (4) In Stage Four—Unconscious Competence—the attorney has mastered the skills and performs them automatically.<sup>78</sup>

To demonstrate the learning process, consider a newly licensed attorney appointed to represent a fifteen-year-old boy arrested for being under the influence of alcohol and destruction of property. When the attorney gets the appointment she learns that her client has been in jail for the past six days and reportedly has a serious alcohol abuse problem. The attorney reads Title XIV of the Wyoming statutes and becomes confused. The Juvenile Justice Act seems to have a number of contradictory provisions. For example, the Act states there must be a detention hearing for juveniles, (she presumes in juvenile court) within forty-eight hours excluding weekends or holidays, yet her client was arraigned on adult misdemeanor charges in the circuit court.

When the attorney obtains the court documents, she learns her client is charged with two misdemeanors. The misdemeanors include violations of

allows for expungement of crimes committed as a juvenile. *Id.* § 14-6-241(c). Thus, using the adult first offender statute for an offense committed as a minor could forfeit an important future opportunity for the juvenile. *Id.* §§ 7-13-301(e), 14-6-241(c).

76. WYO. RULES OF PROF'L CONDUCT FOR ATTORNEYS AT LAW R. 1.1 cmt. 2 (2003).

77. *Id.*

78. Paula Young, *Consciously Incompetent: A Mediator's Cycle of Learning*, available at <http://mediate.com/articles/young10.cfm> (last visited May 2, 2005) (citing PETER ALDER, BRINGING PEACE INTO THE ROOM: HOW PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION (Daniel Bowling & David Hoffman eds. 2003)). See also Laurie R. Geary, *Risk-taking: The Path to Personal Growth & Transformation*, at <http://www.ingearcoaching.com/risktake.htm> (last visited May 2, 2005).



Wyoming Statutes section 6-3-201(b)(i) (misdemeanor property destruction) and section 12-6-101(b) (misdemeanor minor under the influence of alcohol). The prosecutor tells her the juvenile was charged and arraigned in circuit court in lieu of a juvenile detention hearing pursuant to the concurrent jurisdiction provisions of the Juvenile Justice Act.<sup>79</sup> She ponders whether such arraignment is allowable, given the fact that the Juvenile Justice Act makes no reference to arraigning detained juveniles in adult courts and provides very different requirements for detention or shelter care hearings.<sup>80</sup>

She learns her client was allegedly throwing rocks at the local high school and broke five windows. When detained by police, he allegedly behaved in a belligerent manner, cursing and flailing when the officers approached. The police report indicates her client was physically restrained by the officers. When she visits her client, he behaves a bit erratically, alternating between sullen silence and agitation when questioned. He does not seem to appreciate the gravity of his situation and has trouble understanding the possible ramifications of the charges.<sup>81</sup> He has heard from other inmates that he will probably be able to get off with a fine and some probation now that he has an attorney. He asks her to hurry up and get him out—"please"—and tells her he will pay the fines and restitution, but when she probes further, it is clear that neither the child nor his family have much in the way of resources.<sup>82</sup> She asks him about school and learns he was expelled last month for threatening to "take his teacher's head off" in an altercation over unfinished homework.

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79. WYO. STAT. ANN. § 14-6-203(f).

80. Whether any juvenile who is detained must be provided a detention hearing in accord with the Juvenile Justice Act is an area of Wyoming law that, while questionable, has never been challenged. Wyoming Statutes sections 14-6-205 to -209 contain the statutory provisions related to juvenile detention. WYO. STAT. ANN. §§ 14-6-205 to -209.

81. The client's behavior calls his competence into question, indicating a need for specialized evaluations. *See supra* notes 18-55 and accompanying text.

82. The continued detention of the client, given the circumstances, does not appear to meet the juvenile detention requirements of sections 14-6-205 and -206, which delineate the circumstances necessary for continued detention. WYO. STAT. ANN. §§ 14-6-205, -206. The applicable subsections of section 14-6-205(a) that would allow the initial detention by law enforcement would be "(i) The circumstances would permit an arrest without a warrant under W.S. 7-2-102" or "(iv) The child's conduct or behavior seriously endangers himself or the person or property of others and immediate custody appears necessary." *Id.* § 14-6-205(a). The continuation of detention required by section 14-6-206(a) requires a juvenile court order or requires that detention be necessary to "(ii) Protect the person or property of others; (iii) Prevent the child from absconding or being removed from the jurisdiction of the court; or (iv) Provide the child having no parent, guardian, custodian or other responsible adult with supervision and care and return him to the court when required." *Id.* § 14-6-206(a). Since the known facts do not support any of these reasons, section 14-6-208(b) requires the district attorney to "immediately review the need for detention or shelter care" and he "may order the child released unless he determines detention or shelter care is necessary under the provisions of W.S. 14-6-206(a) or unless ordered by the court." *Id.* § 14-6-208(b).

The client's parents call the attorney and tell her they think their son may have a drinking "problem." They seem relieved he has been "caught" because they hope that means he will finally get some help.<sup>83</sup> The parents also tell the attorney their son has always done poorly in school and has frequent emotional outbursts at school.<sup>84</sup> The client was supposed to be receiving special education services for severe learning disabilities, but the parents were told he is no longer eligible because of the threat that led to his expulsion.<sup>85</sup> The parents tell her they both work during the day and do not know how to supervise him if he is released. The parents also tell the attorney that they have no insurance or money for mental health or substance abuse treatment.<sup>86</sup>

The attorney again consults the statutes but cannot find a mechanism to get the client any treatment as part of the circuit court process. The attorney wonders if she should attempt to get her client's case moved to juvenile court, but the statutes say the prosecutor, rather than a judge, will have the final say<sup>87</sup> and the attorney can find no criteria that will be applied to the decision. She is unsure of what she should disclose to the prosecutor in an attempt to argue for juvenile court.

The attorney visits again with her client and the uneasy feelings overwhelm her. The child does not seem to grasp what the attorney tries to tell him about his options and he just keeps asking if she has talked with the judge yet about letting him go home.<sup>88</sup> The attorney has a vague recollection of an article about a juvenile competence study where many juveniles age fifteen or younger were not considered legally competent.<sup>89</sup>

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83. This warrants exploration of any opportunities in the client's jurisdiction to participate in a "drug court" process. If no drug court is operating in the jurisdiction, juvenile court has similarly broad authority to establish clear accountability and closely monitor progress.

84. This behavior, coupled with the facts she knows about the client and surrounding circumstances of the event, indicate the need for both a mental health and substance abuse assessments.

85. This information coupled with what was learned previously raises a concern about whether the school district has violated the client's right to a free and appropriate education under the federal Individuals with Disabilities Education Act (IDEA), which obligates the attorney to investigate further and take action to protect her client's rights. 20 U.S.C. §§ 1400-1491 (2004).

86. Demonstrating a need for treatment may be a way to convince the prosecutor to move the action to juvenile court.

87. See *supra* notes 6-8 and accompanying text explaining the prosecutors authority to keep juvenile offenses in the municipal and circuit courts. See also WYO. STAT. ANN. § 14-6-203(c)-(f) which delineates the offenses subject to concurrent jurisdiction that allow prosecutorial discretion.

88. The attorney has a number of obligations under the Wyoming Rules of Professional Conduct, e.g., she must pursue his release pursuant to Rule 1.2 and explore the competence of her client pursuant to Rule 1.14. WYO. RULES OF PROF'L CONDUCT R. 1.2, 1.14 (2003).

89. See *supra* notes 52-5 and accompanying text.

The attorney is nervous about what to do next. She is entering stage two of the learning process because she recognizes that she is “consciously incompetent.” In other words, she now knows that she lacks the necessary knowledge and skills to adequately represent her client. For example, she is unsure if she should pursue a fine and probation, which is what her client wants, or try to obtain the treatment and education services her client appears to need. Another area of confusion is whether she is supposed to “consider the best interest.”<sup>90</sup> She wonders if she considers best interest only when a client is in juvenile court and whether Rule 1.14 provides guidance on this question. Should she spend more time trying to counsel him herself, though she has not had much success, or should she seek some professional assistance from a licensed counselor?

While questioning her competence to provide adequate legal representation, she recognizes her obligation to this child. She knows she must perform further research and/or consult with more experienced attorneys to determine the best course of action in representing her client. These efforts eventually lead the attorney to become “consciously competent,” through research, consultation with more experienced attorneys, CLE courses, research articles, listserves and other resources that educate her about the complexities of juvenile justice in Wyoming. In becoming “consciously competent” the attorney learns about a variety of services and resources available in the local community. She should also learn about helpful federal laws applicable to her client: (1) the Adoption and Safe Families Act (ASFA),<sup>91</sup> which requires the State to make reasonable efforts to prevent the removal of her client from the home; (2) the Individual’s with Disabilities Education Act (IDEA),<sup>92</sup> which assures a free and appropriate education to children with disabilities; (3) the Juvenile Justice and Delinquency Prevention Act (JJDP),<sup>93</sup> which protects against unnecessary detention of juvenile offenders. In addition, she should learn about national resources, such as the National Center on Juvenile Justice, the American Bar Association Juvenile Justice Center, the National Association of Counsel for Children and the National Juvenile Defender Center, that provide consultation and assistance to attorneys.

Eventually, she understands many specialized aspects of representing children. Armed with these new skills, the attorney can focus a larger portion of her practice in this area. After applying this new knowledge in a variety of cases, she eventually becomes “unconsciously competent.” This means she expertly responds to a variety of difficult circumstances and the response is now second nature. She begins to look for opportunities to appeal problematic areas of the law that substantially impact juvenile client

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90. WYO. STAT. ANN. § 14-6-222(d).

91. 42 U.S.C. § 622 (2004).

92. 20 U.S.C. §§ 1400-1491 (2004).

93. 42 U.S.C. §§ 5601-5785.

interests. Developing this competence to represent children in Wyoming is no small feat given the complexities of Wyoming's system. Many of the issues presented in this example would be overlooked by seasoned attorneys who are content to remain at the "unconsciously incompetent" stage. Attorneys who make a difference in the lives of children know that it takes more than their natural instincts and good intentions.

Most children charged with crimes and delinquent acts in Wyoming are represented by the Wyoming Public Defender's Office. One of the major challenges facing this office is a lack of training resources and technical support for juvenile cases. Recent efforts, through partnership with the State Advisory Council on Juvenile Justice and the Department of Family Services, have increased the specialized training available to public defenders who represent juveniles. In June 2004, the State sponsored a Juvenile Justice Conference with the hope of beginning an annual event. These training efforts must be sustained if we are to provide Wyoming attorneys with the knowledge necessary to be competent and effective advocates for juveniles.

### C. Rule 1.2—Scope of Representation

There are inherent problems with the typical interpretations of responsibilities toward children under Rule 1.2 of the Wyoming Rules of Professional Conduct, primarily because of children's lack of maturity and sophistication. This rule requires that "[a] lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are pursued."<sup>94</sup> Unfortunately, children will often willingly abdicate this responsibility to their attorney, parent, probation officer, police officer, prosecutor, etc.<sup>95</sup>

The ABA report notes that ethical confusion is a barrier to quality representation of juveniles.<sup>96</sup> The Wyoming Rules of Professional Conduct were amended in 2002 to delineate responsibilities for lawyers appointed as guardians *ad litem*. The following language was added to Rule 1.2: "When a lawyer is appointed to act as a guardian *ad litem* . . . the lawyer shall represent what he or she reasonably believes to be in the best interest of the individual."<sup>97</sup> The Wyoming Juvenile Justice Act provides for appointment of counsel "who may be the guardian *ad litem*"<sup>98</sup> and also requires that "[c]ounsel representing a child alleged to be delinquent under this act shall consider, among other things, what is in the best interest of the child."<sup>99</sup> The statute falls short of directing counsel to take any action regarding rep-

94. WYO. RULES OF PROF'L CONDUCT R. 1.2(a) (2003).

95. See *supra* note 29-30 and accompanying text.

96. A CALL FOR JUSTICE, *supra* note 67, at 26.

97. WYO. RULES OF PROF'L CONDUCT R. 1.2(f) (2003).

98. WYO. STAT. ANN. § 14-6-222(b) (LexisNexis 2003).

99. *Id.* § 14-6-222(d).

resentation of best interest, though it appears to create a specific duty to advise the juvenile client in this area.<sup>100</sup>

A due process concern arises from the provision authorizing counsel to also serve as the GAL and represent the child's "best interests" in a delinquency proceeding.<sup>101</sup> In most situations, the attorney/GAL role would probably fail to meet the child's minimal due process right to counsel because counsel should be free of conflicting responsibilities.<sup>102</sup> The ABA research notes that "juvenile court attorneys are often uncertain whether to accede to the expectations of the court, the child's parents, or the child."<sup>103</sup> In fact, "[i]t has been suggested that some lawyers fail to raise legitimate legal claims, fail to notify clients of their right to appeal, or even solicit harsher sentences for their young clients, believing that such actions are in their clients' best interests in the long run."<sup>104</sup> The blurred ethical boundaries in attorney roles promotes a lackadaisical juvenile justice model that fails to meet the due process rights of children in juvenile court.<sup>105</sup>

This provision also does not align well with the GAL appointment statute, which presumes a parent will represent the juvenile's best interest to the court. The legislature directs that "[t]he court shall appoint a guardian *ad litem* for a child who is a party to proceedings under this act if the child has no parent, guardian or custodian appearing in his behalf or if the interests of the parents, guardian or custodian are adverse to the best interest of the child."<sup>106</sup> If a parent is unable or unwilling to fulfill this duty, the circumstances likely involve some level of family dysfunction, perhaps rising to the level of legal neglect. In this case, there is a heightened probability that a conflict exists between the client's objectives and the attorney's determination of best interest.

Wyoming should address this problem by improving the training and resources available to juvenile defense attorneys and creating clear guidance, through statutes or court rules, to deal with the situation where the parents can not adequately represent their child's best interest to the court.<sup>107</sup>

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100. If the attorney is serving in the traditional attorney role, the attorney could take action to effectuate the child's best interests, only if these interests were consistent with the child's directives on the objectives of the representation, or other circumstances permitted him to act without the client's direct authorization. However, the Wyoming Rules of Professional Conduct for Attorneys at Law, coupled with the statutory directive would seem to mandate at least some discussion with the client about what the attorney perceived as the client's best interests and how these interests could be achieved.

101. WYO. STAT. ANN. § 14-6-222(d).

102. *Id.*

103. A CALL FOR JUSTICE, *supra* note 67, at 26.

104. *Id.*

105. See *supra* note 25 and accompanying text.

106. WYO. STAT. ANN. § 14-6-216.

107. This problem is not unique to Wyoming. The ABA notes,

Until then, comment 2 of Rule 1.2 provides some limited guidance. It states that “[i]n a case in which the client appears to be suffering mental disability, the lawyer’s duty to abide by the client’s decisions is to be guided by reference to Rule 1.14.”<sup>108</sup> The term “mental disability” can and should be broadly construed to include children whose developmental immaturity limits their ability to make reasoned decisions.<sup>109</sup>

Another consideration within the scope of representation is the presence of peripheral legal issues for the child client. Adequate education advocacy by attorneys representing children in delinquent and criminal actions is critical.<sup>110</sup> A recent study by the Wyoming Department of Education found that over fifty percent of the juveniles residing in detention or other court ordered placement were currently identified as qualifying for special education services.<sup>111</sup> Sadly, the delivery of special education services to these children in court ordered placements was haphazard and poorly coordinated between responsible school districts and the institutions where the

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The ethical boundaries and obligations of a child advocate are not clearly defined. Even in states that have statutory directives regarding the role of the lawyer, there is confusion and debate among lawyers and judges about the parameters of representation, particularly with respect to whether the lawyer should advocate the position from the child’s perspective or from the lawyer’s perspective about what is in the child’s best interests. Some lawyers are not aware of their ethical obligations toward their child clients. Many lawyers for children do not understand their obligation to represent their clients vigorously, or they routinely ignore conflicts of interest.

THE ABA STEERING COMM. ON THE UNMET LEGAL NEEDS OF CHILDREN, AMERICA’S CHILDREN STILL AT RISK 203-04 (2001) [hereinafter CHILDREN STILL AT RISK].

108. WYO. RULES OF PROF’L CONDUCT R. 1.2 cmt. 2 (2003).

109. See *infra* note 138-47 and accompanying text for a further discussion of the application of Rule 1.14.

110. The State Justice Institute and ABA note that:

Lawyers who want to help children in the delinquency system should incorporate special education advocacy into their delinquency practice. By using special education rights and remedies to augment competent delinquency representation, lawyers can prevent placements in juvenile incarceration facilities and unnecessary placements in residential treatment facilities. Lawyers can also free children from juvenile prisons, detention centers, and restrictive mental health placements.

STATE JUSTICE INSTITUTE AND AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, A JUDGE’S GUIDE TO IMPROVING LEGAL REPRESENTATION OF CHILDREN 50 (Kathi L. Grasso ed. 1998).

111. FRED HANSEN ET AL., WYO. ST. LEGISLATURE JOINT APPROPRIATIONS INTERIM COMM. AND THE JOINT EDUCATION INTERIM COMM., A STUDY FOR THE JOINT APPROPRIATIONS INTERIM COMMITTEE AND THE JOINT EDUCATION INTERIM COMMITTEE OF THE WYOMING LEGISLATURE REFERENCING 2004 SESSION LAWS, CHAPTER 111 COURT ORDERED PLACEMENTS OF CHILDREN 6 (Oct. 12, 2004).

children were placed.<sup>112</sup> Juvenile courts have the authority to address education needs within the delinquency or Children in Need of Supervision (CHINS) petition.<sup>113</sup> The juvenile court provides a mechanism to address and coordinate these services, using a multidisciplinary team.<sup>114</sup> However, that mechanism is currently underutilized. Education representatives are frequently absent or provide limited participation on the multidisciplinary team.<sup>115</sup> Noncompliance with the statutory mandate for participation by school district representatives is another area of Wyoming law that has not been challenged on appeal.

Since the vast majority of children in Wyoming are charged in adult courts, the attorney's advice and advocacy on behalf of his or her child client regarding education issues becomes even more critical. Unfortunately, there is no comparable statutory mandate to ensure that educators are directly involved in the legal process when juveniles are charged in the municipal, circuit or district courts. However, applicable state and federal education laws should be utilized (in a separate legal action when necessary) to obtain appropriate education services for child clients charged and sentenced in the circuit or municipal courts.

In addition to special education, there are other relevant federal and state laws that may assist the attorney in attaining the child client's objectives. The Adoption and Safe Families Act (ASFA)<sup>116</sup> is applicable to any delinquent child at risk of removal from his or her home. When a state accepts federal funding available through this act, the law obligates the State to provide services designed to prevent the need for removal or return a child to their home or to another permanent arrangement in a timely manner. This statute is applicable even when the child's initial placement is in detention or to the Wyoming Girls School or Wyoming Boys School. ASFA compliance requires very specific court findings, and court orders so attorneys who represent children in juvenile court must be well versed in this area of law.<sup>117</sup>

One final point on scope of representation—Wyoming's fragmented juvenile justice system creates large inequities for children charged in adult courts. There is no direct access to education, treatment or social services that are often needed by these children and their families. Because the adult criminal court system has few available options for these children (typically fines, unsupervised probation and jail), it results in a disproportionate num-

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112. *Id.* at 47.

113. *See, e.g.*, WYO. STAT. ANN. §§ 14-6-227, 14-6-427, 21-13-315 (LexisNexis 2003) (establishing a requirement for the school district to serve on the multidisciplinary team and provide the court with information about the appropriate educational placement of a juvenile).

114. *Id.*

115. This statement is based on the author's experience working with courts, attorneys, state and local Department of Family Service employees and other professionals.

116. 42 U.S.C. § 622 (2004).

117. *Id.*

ber of Wyoming youth languishing in juvenile detention facilities or adult jails. Until there is effective legal advocacy that exposes these problems, there will be scant progress made toward repairing the fundamental flaws in Wyoming's juvenile justice system.

#### *D. Rule 1.3—Diligence*

Another important rule for the representation of children is diligence. The ABA found “[a]n alarming aspect of juvenile defense is the infrequency with which appeals are taken.”<sup>118</sup> A search of Wyoming Supreme Court appeals involving juveniles charged in either juvenile or adult courts substantiates the fact that this problem exists in Wyoming as well.<sup>119</sup> There is minimal case law appealing either criminal or delinquent actions brought against juveniles in Wyoming and none have challenged the basic due process issues raised by the arbitrary application of Wyoming's concurrent jurisdiction provisions between juvenile court and the circuit or municipal court.<sup>120</sup> This is especially troublesome considering the existence of many reports and studies over the past twenty-five years clearly outlining the inequities of Wyoming's system.<sup>121</sup> The reports identify the same basic problems, such as the lack of objective standards or judicial review in the application of prosecutorial discretion for decisions to charge a child in circuit or municipal court rather than juvenile court.

According to the Office of Juvenile Justice and Delinquency Prevention, “in some states with concurrent jurisdiction statutes, the State legislature has mandated that prosecutors develop detailed guidelines and policies for filing a juvenile case in criminal court.”<sup>122</sup> In Wyoming, the legislature has enacted a detailed purpose statement as part of the Juvenile Justice Act, which provides guidance to prosecutors in the intended application of concurrent jurisdiction. Again, there is no indication that attorneys representing juveniles in municipal or circuit courts have ever challenged prosecutorial discretion, even though most, if not all, prosecutors in Wyoming have no written court processing standards for juveniles to ensure objective charging decisions consistent with the purposes of the Juvenile Justice Act.

Another factor relevant to diligence is the need for attorney participation in juvenile court and related processes after the disposition hearing.

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118. GUIDELINES FOR POLICYMAKERS AND PRACTITIONERS, *supra* note 52, at 10.

119. A search of the Wyoming Supreme Court database using the keywords “crime” and “juvenile” returned sixty-six cases. After reviewing the details of each case, only thirteen involved juveniles accused of crimes or delinquency. All cases involved juvenile court actions or transfer challenges from district court. None involved appeals from cases originally brought in circuit or municipal court. One involved under-age drinking.

120. *Id.*

121. PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION, *supra* note 72.

122. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, JUVENILES PROSECUTED IN STATE CRIMINAL COURTS 4 (March 1997).



A juvenile adjudicated as a delinquent or a CHINS typically remains under the jurisdiction of the juvenile court for an indefinite period of time. In many cases, a juvenile's disposition and case plan evolve considerably after the initial disposition. The disposition at review hearings and revocation hearings can move to more and more punitive and restrictive actions. This is sometimes a result of improper assessments that failed to identify and address underlying needs.<sup>123</sup> Because of the indefinite nature of juvenile dispositions, an attorney must stay actively involved in counseling and advocating for his or her child client until the case is closed.

Finally, the attorney should devote adequate time and effort to fully understanding the systems and processes available to the client, and even more importantly, accurately identifying the client's needs. This includes understanding various assessments, using professionals effectively, ensuring that rehabilitative services are sufficient to meet the child's needs, insisting on sufficient detail in the plan to hold providers accountable and then following up to ensure the client receives the services. The American Bar Association Juvenile Justice Center describes common pitfalls in case planning:

Instead of stating the child's basic needs and then thinking about services, a shortcut is often taken in case planning and services are confused with needs: "Child needs tutoring" or "Child needs counseling." These are services, not needs. Regardless of the services that are available, it is essential to itemize specifically the child's emotional, educational and other needs.<sup>124</sup>

Child clients are likely to accept their attorney's advice without question, even when the advice may not be well founded or ultimately beneficial to the child. Attorneys who represent children should keep this enhanced vulnerability in mind when advising and acting on behalf of their client. While it may be easy to take shortcuts, diligent representation must be a high priority in these cases.

#### *E. Rule 1.4—Communication*

Communication is another critical and difficult responsibility when representing a juvenile. Rule 1.4 requires the attorney to keep his or her client reasonably informed and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions."<sup>125</sup> An ABA report notes that "[o]ther writers have suggested that children's rights are violated not only by counsels' failure to understand their role, but also by a failure to advise young clients properly, and to prepare their cases ade-

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123. See *supra* note 36 and accompanying text.

124. RETHINKING COMPETENCE, *supra* note 20, at 8.

125. WYO. RULES OF PROF'L CONDUCT R. 1.4(b) (2003).

quately."<sup>126</sup> Inadequate time spent advising child clients and working juvenile cases is a national problem. Studies indicate extremely high caseloads and minimal time (usually less than two hours) spent on the average juvenile's case.<sup>127</sup>

In a survey of children sentenced to the Wyoming Boys School (WBS) and Wyoming Girls School (WGS) conducted by the Department of Family Services in October, 2002, thirty-five percent of the children sentenced there were not represented by counsel.<sup>128</sup> Twenty-five children reported they were represented by a GAL.<sup>129</sup> The average time spent with an attorney before court was forty minutes, after court fifteen minutes, and since placement fourteen minutes.<sup>130</sup> Many children at WBS and WGS reported they met their attorney for the first time in court.<sup>131</sup> This is consistent with the national findings.<sup>132</sup>

The tendency of children to be easily influenced by authority figures supports the need for their attorney to spend more time with the child clients to ensure they truly understand their circumstances and choices rather than simply trusting what they are told. In addition, the communication issue goes directly to the attorney's ability to recognize evidence of disability or immature thought processes for which the attorney must try to compensate or otherwise address. The American Bar Association Juvenile Justice Center report notes:

Not seeing choices is developmental, and choice-making experience is more limited for youth with few opportunities and those with lower intelligence. Sensation-seeking or

126. A CALL FOR JUSTICE, *supra* note 67, at 26.

127. *Id.*

128. DONNA SHEEN, DEPT. OF FAMILY SERV., UNPUBLISHED SURVEY (Oct. 2002) (on file with author). The author conducted the study in the fall of 2002 while working for the Department of Family Services. The purpose of the study was to examine representation problems and report them to the Title 14 Review Committee, which was then working on revisions to Title 14 (the statutes governing children and juvenile court). The study included a file review and written survey of Wyoming Boys School (WBS) and Wyoming Girls School (WGS) residents seeking information about their legal representation. One-hundred-thirty-five surveys were returned. Only eighty-eight of these youth were represented by an attorney. Of those who were represented, nineteen said they did not meet their attorney before court. Of those who reported meeting their attorney before court, eight said they spent zero hours with them before court, inferring that they met them just before they went into court. Another ten reported spending less than fifteen minutes with the attorney before court. Only thirty-four of the 135 surveyed reported spending at least one hour with an attorney before going to court. This suggests that even if the juvenile met his or her attorney before court, most had very little opportunity to learn anything about the upcoming legal process or possible outcomes from their attorney before they went in to court.

129. *Id.*

130. *Id.*

131. *Id.*

132. A CALL FOR JUSTICE, *supra* note 67, at 26, 46, 48, 51-52, 53-54.

risk-taking behavior characteristic of adolescents is a component of choice-making. Difficulty in managing impulses, or limited “temperance,” is a normal aspect of immaturity . . .

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In order to adequately inform and effectively advise the child, the attorney must effectively communicate to fully understand the child’s capacities and perspectives. This requires attorneys with a high level of skill and training.

#### *F. Rule 1.6—Confidentiality*

A juvenile’s right to confidential communication with his attorney is a critical aspect of a juvenile’s due process right. Rule 1.6 establishes the general rule that “[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).”<sup>134</sup> Rule 1.6(b)(3) creates an exception for a lawyer who is appointed in the hybrid role as attorney/GAL, stating: “A lawyer may reveal such information to the extent the lawyer reasonably believes necessary . . . to protect the best interests of an individual when the lawyer has been appointed to act as a guardian *ad litem* . . . of that individual.”<sup>135</sup> While Wyoming’s Juvenile Justice Act allows a judge to appoint counsel who also serves as the GAL, the appointment creates ethical conflicts and constitutional due process concerns.<sup>136</sup>

National representation standards discuss the ethical problem of attorneys substituting their subjective opinions and beliefs for the child client’s wishes.<sup>137</sup> While Wyoming statutes allow for the hybrid appointment of an attorney/GAL in delinquency and CHINS actions, the judge must consider the circumstances carefully before using this statutory power. When a judge does order this hybrid appointment, the child should be clearly advised of the modification of the traditional attorney-client privilege when communicating with the attorney/GAL. The judge should also provide clear guidance to the attorney on how to address any conflicts that arise. The creation of explicit court rules that specifically address the hybrid representation of children in criminal and delinquency actions would better ensure protection

133. RETHINKING COMPETENCE, *supra* note 20, at 6.

134. WYO RULES OF PROF’L CONDUCT R. 1.6 (2003).

135. *Id.* at R. 1.6(b)(3). However, an attorney/guardian ad litem would have a duty to communicate his or her role to the child ensuring the child understands that the attorney/GAL represents the child’s “best interests” rather than the child’s wishes and the fact that the attorney/GAL may not be able to keep their communications confidential. *Id.* See also *id.* at R. 1.6(b)(3) cmt. 14 (“Any such disclosure should be no greater than that which the lawyer reasonably believes necessary to protect the individual’s best interests.”).

136. See *supra* notes 94-106 and accompanying text.

137. See generally MARVIN VENTRELL, ESQ., NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, ETHICS AND THE REPRESENTATION OF CHILDREN (2000).

of child clients' due process rights and provide clarity and statewide consistency in application.

*G. Rule 1.14—Client Under a Disability*

This rule begins with the directive that “[w]hen a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”<sup>138</sup> Wyoming statute allows separate appointment of a GAL when the parent is not able to represent best interests, which allows the lawyer to maintain the attorney-client relationship, preserve the client’s confidences, counsel the juvenile client, and encourage him or her to seek the advice and involvement of a parent or the GAL.

If the juvenile court also appoints an attorney as GAL for the child, Rule 1.14 provides guidance to the GAL. It directs the attorney/GAL to attempt to maintain a normal client-lawyer relationship, with the client. Comment 4 to Rule 1.14 states:

A lawyer who is appointed to act as a guardian *ad litem* . . . of an individual has a fundamentally different responsibility than a lawyer who represents an individual. The lawyer acting as guardian *ad litem* . . . of an individual shall act as reasonably necessary in the best interests of the individual. See Rule 1.2. In such circumstances the lawyer is expected to be ultimately responsible for making decisions regarding the welfare of the individual, after appropriate consultation with the individual, and take steps to implement those decisions, even if the individual disagrees with the attorney for the best interests.<sup>139</sup>

Comment 4 allows an attorney/GAL to make the same arguments to the court that a parent might make on behalf of his or her child’s best interest. This reinforces the need for clearly differentiating the role of an Attorney/GAL from traditional counsel appointed to represent the juvenile in a delinquency petition.<sup>140</sup>

In the circuit and municipal courts, there are no specific provisions for the appointment of a GAL for juvenile defendants, so the attorney who represents the juvenile in adult court would be ethically bound to maintain a

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138. WYO. RULES OF PROF’L CONDUCT R. 1.14(a) (2003).

139. *Id.* at R. 1.14 cmt. 4.

140. VENTRELL, *supra* note 137, at 6.

normal attorney-client relationship unless there has been some determination that the juvenile lacked legal competence.<sup>141</sup>

The next challenge for the attorney is how to maintain a normal attorney/client relationship. Comment 1 notes “a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. Furthermore, to an increasing extent, the law recognizes intermediate degrees of competence.”<sup>142</sup> Defendants must make decisions, and attorneys have a heightened responsibility to ensure juveniles are given adequate time and information to allow them to understand, deliberate upon, and reach conclusions. “Some decisions are related to important rights—waiving jury trial, pleading, and weighing plea bargains. These and other decisions are the client’s and the attorney must honor them as he or she prepares a defense.”<sup>143</sup>

It may be tempting, given an attorney’s time constraints, to limit conversations with the juvenile and use the attorney’s position of authority to unconsciously influence a juvenile to make the choices the attorney believes should be taken. Hence, the finding that some attorneys may have a bias that leads juveniles to receive harsher consequences in an attempt to “help” the juvenile learn a lesson.<sup>144</sup> Unfortunately, the harsher consequences do not assure rehabilitation and may in fact increase the likelihood of recidivism.<sup>145</sup> The ABA report notes “[i]t is often appropriate, therefore, for attorneys to advise their young clients on certain matters of

141. *Id.*

142. WYO. RULES OF PROF’L CONDUCT R. 1.14 cmt. 1 (2003).

143. RETHINKING COMPETENCE, *supra* note 20, at 32.

144. *See supra* note 104 and accompanying text.

145. There is a large body of literature and research on “what works” with youthful offenders. Dr. Edward J. Latessa Ph.D., Professor and Head of the Division of Criminal Justice at the University of Cincinnati is a nationally recognized expert in criminal justice research and the reduction of recidivism through evidence-based programs. In an article co-authored by Dr. Latessa, he discussed the problems related to ineffective correctional programming: “Need we now point to the numerous programs that have been implemented with much fanfare and with amazing promises of success, only later to have ‘no effect’ on reoffending?” Edward J. Latessa et al., *Special Issue: “What Works” in Corrections; Beyond Correctional Quackery-Professionalism and the Possibility of Effective Treatment*, 66 SEP. FED. PROB. 43, 44 (Sept. 2002) [hereinafter *Beyond Correctional Quackery*]. He goes on to state that “boot camps could not possibly have ‘worked.’ In fact, we know of no major psychological theory that would logically suggest that such humiliation or threats are components of effective therapeutic interventions . . . .” *Id.* Yet, “boot camps were put into place across the nation without a shred of empirical evidence as to their effectiveness . . . .” *Id.* In his presentation at the 2003 National Conference on Juvenile Justice, Dr. Latessa reported that the application of criminal sanctions alone have been shown to actually increase recidivism, while appropriate treatment will decrease recidivism. He notes part of this result is due to the inappropriate overuse of punishment. Dr. Edward J. Latessa, Address at the National Juvenile Justice Conference in Philadelphia, PA (Mar. 2003). When punishment is inappropriately applied, several negative consequences can occur, including unwanted emotional reactions, aggression, withdrawal, or increase in the behavior that is being punished. *Id.*

trial strategy and to honor their choice concerning whether or not to accept counsel's advice—for example, to testify, to provide evidence against one's cohorts, or to reveal family secrets in court."<sup>146</sup>

Honoring the child's choice may be more problematic when the child's developmental immaturity is a barrier or other disabling conditions impact the child's legal competence to stand trial. While problematic, it is not always necessary to formally question the client's competency. The ABA report also explains that:

Attorneys who represent youths in cases involving serious offenses should be sensitive to the questionable capacities of some juvenile clients to participate in their defense. When a youth's incapacities are identified, however, a motion for a finding of incompetence need not be the first order of business, nor is it necessarily in the youth's best interest. The attorney might first consider what steps are necessary, within the reasonable role of counsel, to try to augment the youth's understanding or decisionmaking ability.<sup>147</sup>

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146. RETHINKING COMPETENCE, *supra* note 20, at 32. The report goes on to say:

An essential part of meaningful decision making about such matters is the ability to imagine the future consequences of one's options. Defendants must be able to think about hypothetical situations, envisioning conditions that do not now exist and that they may never have experienced, but which may be the outcomes of a choice they have to make. Imagining those outcomes, they must then evaluate and compare them using their own notions of what is more or less desirable or painful in life.

*Id.*

147. *Id.* at 36. The report goes on to explain that:

Sometimes this can be accomplished by providing careful explanations and discussion that may correct the youth's misunderstanding. Parents' assistance might be considered. Although there are exceptions, sometimes parents' familiarity with their children's difficulties allows them to communicate matters in ways that their children can best understand, or to assist the youth in dealing with decisions that exceed the youth's own abilities or emotional capacities.

When these efforts fail, however, attorneys may consider raising the question of youths' competence to stand trial, especially (a) when their capacities actually preclude their meaningful participation in their defense such that their trial would be unfair, and (b) when their immature decisions as defendants place them in serious legal jeopardy that otherwise might be avoided.

*Id.*

The attorney should consider which court the child is charged in when making this decision. Juvenile court processes will be far more amenable to addressing limited capacity.

#### *H. Rule 2.1—Advisor*

Perhaps the most important rule by which an attorney of a juvenile should abide is the role of advisor in rendering “candid advice.”<sup>148</sup> The rule allows the attorney to “refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant.”<sup>149</sup> Comment 4 to Rule 2.1 cautions about advising on matters that fall in the domain of another profession. Attorneys should be careful not to advise children when they have no objective basis for the advice. This provision is relevant to attorneys when discussing sanctions, placement and treatment options. It is critical for the attorney to select and base advice on data, evaluations, assessments and recommendations obtained from unbiased sources and highly qualified professionals.<sup>150</sup>

There is an inherent tendency in all of us to short circuit the learning process by simply telling children what to do. Children appearing in court often have limited access to opportunities and poor role models. They will probably not volunteer their ignorance of the situation or ask any questions. They typically do not benefit much from lectures, though they will probably receive many during the course of the legal process. What they benefit from is “candid advice” that is delivered in a way they can understand and in a way that does not humiliate, patronize or disempower. The mark of a good juvenile defense attorney is one that can establish an open and honest communication that helps the child take responsibility for making his or her own choices whenever possible, hopefully in a manner that ultimately improves his or her life.

An attorney should also consider another aspect of advising the child about non-legal factors, which may be important. Although the rule says a

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148. WYO. RULES OF PROF’L CONDUCT R. 2.1 (2003).

149. *Id.*

150. Dr. Lattessa states:

In contrast to professionalism, *quackery* is dismissive of scientific knowledge, training, and expertise. Its posture is strikingly overconfident, if not arrogant. It embraces the notion that interventions are best rooted in “common sense,” in personal experiences (or clinical knowledge), in tradition, and in superstition . . . . “What Works” is thus held to be “obvious,” derived only from years of an individual’s experience, and legitimized by an appeal to custom (“the way we have always done things around here has worked just fine”). It celebrates being anti-intellectual. There is never a need to visit a library or consult a study.

lawyer “may” discuss non-legal factors, however there are situations where the attorney has an ethical obligation to discuss those non-legal factors.<sup>151</sup> This advice may have to do with the child’s relationship with the parent or the child’s need for education or treatment.

### III. ADVOCACY AND APPLICATION OF SPECIFIC WYOMING LAWS

Some areas of Wyoming law may be of particular interest for the attorney seeking ways to improve the legal system for children. Because some laws create conflicting statutory directives, attorneys might be able to make a legal distinction that could further the interest of their juvenile client. Some of the problematic areas of Wyoming law which carry major policy implications for the overall well-being of children apply to children in juvenile or adult courts. These areas include the absence of a transfer hearing or other types of judicial review in the concurrent jurisdiction or “waiver” provisions and the waiver of a child’s right to counsel. There are also areas of Wyoming law that are applied in an inconsistent manner that is unfair and often harmful to children. These areas include detention, education, alcohol violations, tobacco violations and emancipation.

#### A. *Judicial Review of Transfer and “Waivers”*

There are two important waiver issues in Wyoming that deserve attention. The first is the blanket ability of children to waive their right to counsel. Nationally, it is known that “large numbers of children appear in court without a lawyer, and are often induced to waive counsel either by the suggestion that lawyers are not needed because no serious dispositional consequences are anticipated, or by parental concern over the cost of legal services.”<sup>152</sup> Additionally, the waiver colloquy may not be delivered in a way that helps a child understand the gravity and impact of the waiver decision.<sup>153</sup> A substantial number of children in Wyoming are incarcerated by municipal or circuit courts where the detention is ordered as a sanction for failure to pay a previously imposed fine or failure to successfully complete probation.<sup>154</sup>

The ABA Criminal Justice standards recommend that youth should not be permitted to waive their right to an attorney without first consulting with an attorney and without full inquiry from the court into the child’s understanding of that right and his capacity to understand and intelligently

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151. See, John M. Burman, *Advising Clients About Non-Legal Factors*, Feb. 2004, WYOMING LAWYER, at 40.

152. CHILDREN STILL AT RISK, *supra* note 107, at 257.

153. *Id.*

154. WYSAC Report, *supra* note 9, at 159-60.



waive the right.<sup>155</sup> Attorneys and judges in Wyoming can improve the system by working together to ensure juveniles understand the gravity of their decision by improving the way the colloquy is delivered and by ensuring the child first consults with an attorney who fully explains the right before a judge allows it to be waived.<sup>156</sup> Addressing the inappropriate waiver of counsel is a critical issue in Wyoming.<sup>157</sup> Lack of effective legal advocacy may mean that a juvenile lingers longer in jail, detention or other restrictive placements, costing the State and local governments, not to mention children and families far more than is necessary.<sup>158</sup>

The second and more important waiver issue in Wyoming is the lack of statutory authority for a judicial transfer or “waiver” by circuit or municipal court judges to the juvenile court. According to the Office of Juvenile Justice and Delinquency Prevention, “some states with concurrent jurisdiction statutes . . . ha[ve] mandated that prosecutors develop detailed guidelines and policies for filing a juvenile case in criminal court.”<sup>159</sup> The filing of criminal charges against adults is clearly in the realm of prosecutorial discretion in Wyoming. However, a child’s access to juvenile court, which is a court of equity in Wyoming rather than a criminal court, does not warrant the same blanket discretion. Wyoming prosecutors should use objective and consistent methods when making charging decisions to ensure that such decisions are not arbitrary or capricious but based on the explicit purposes of the Juvenile Justice Act. Unfortunately, the lack of objective state-wide standards for applying prosecutorial discretion granted by the concurrent jurisdiction statutes have never been challenged.

The need for objective standards is supported by the fact that, while the legislature granted concurrent jurisdiction over juvenile cases, they also provided detailed guidance for the application of concurrent jurisdiction. Section 14-6-201(c) was intended to “effectuate the following public purposes:”<sup>160</sup>

- (i) To provide for the best interests of the child and the protection of the public and public safety;

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155. AM. BAR ASSOC., CRIMINAL JUSTICE STANDARDS ON PROVIDING DEFENSE SERVICES Standard 5-8.2 (3d ed. 1992).

156. The Wyoming Supreme Court could also consider standardizing the juvenile waiver process via court rules.

157. See *supra* note 128 and accompanying text.

158. See, e.g., WYO. ST. LEGISLATURE MGMT. AUDIT COMM., COURT-ORDERED PLACEMENTS AT RESIDENTIAL TREATMENT CENTERS (Nov. 2004) (discussing poor management of children in court ordered placements).

159. U.S DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAM, JUVENILES PROSECUTED IN STATE CRIMINAL COURTS, PUB. NO. 8732 (Mar. 1997).

160. WYO. STAT. ANN. § 14-6-201(c) (LexisNexis 2003).

(ii) Consistent with the best interests of the child and the protection of the public and public safety:

(A) To promote the concept of punishment for criminal acts while recognizing and distinguishing the behavior of children who have been victimized or have disabilities, such as serious mental illness that requires treatment or children with a cognitive impairment that requires services;

(B) To remove, where appropriate, the taint of criminality from children committing certain unlawful acts; and

(C) To provide treatment, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct, reduces recidivism and helps children to become functioning and contributing adults.

(iii) To provide for the care, the protection and the wholesome moral, mental and physical development of children within the community whenever possible using the least restrictive and most appropriate interventions;

(iv) To be flexible and innovative and encourage coordination at the community level to reduce the commission of unlawful acts by children;

(v) To achieve the foregoing purposes in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to ensure that individual needs will control placement and provide the child the care that should be provided by parents; and

(vi) To provide a simple judicial procedure through which the provisions of this act are executed and enforced and in which the parties are assured a fair and timely hearing and their constitutional and other legal rights recognized and enforced.

The legislative mandate can only be effectuated if a prosecutor honors the statute's purpose in making the juvenile charging decisions. This means the prosecutor must use objective criteria to screen for these circumstances prior to making a charging decision. Objective screening criteria will identify the special circumstances noted in the purpose statement and provide consistent

methods for processing cases. It could also be argued that the objective method should be uniform throughout the State.

The need for consistent prosecutorial screening is supported by recent research conducted by the Wyoming Survey Analysis Center and the National Center on Juvenile Justice.<sup>161</sup> This project analyzed the youth case processing in four counties and found examples of both excellent procedures and areas needing serious improvement.<sup>162</sup> In Teton County, for example, the National Center for Juvenile Justice found "progressive juvenile justice leadership" noting that "key stakeholders share a similar vision for a seamless juvenile justice system that . . . is supported by a centralized intake function."<sup>163</sup> However, they also cautioned that "[l]ittle exists in the way of written policy and procedure to entrench the new gatekeeper practice."<sup>164</sup> In Sweetwater County the recommendations suggest the need for a "comprehensive review of case processing steps at all key stages, from arrest or citation on."<sup>165</sup> In Natrona County, they found "there is no integration or standardization of intake processes across the three courts, the district attorney's office, and the city prosecutor."<sup>166</sup>

In addition to state law analysis of the issue, Wyoming's unique process of being able to direct-file almost all minor offenders as adults arguably invokes the U.S. Supreme Court's decision in *Kent v. United States*, which required an opportunity for hearing on the matter.<sup>167</sup> *Kent* involved a case under the exclusive jurisdiction of the juvenile court. The application of *Kent* to direct-file cases has been controversial, and the issue has not yet been decided by the U.S. Supreme Court.

Wyoming's expansive and subjective application of concurrent jurisdiction could tip the scale in favor of the *Kent* Court's analysis which "assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement . . ."<sup>168</sup> As the court notes, "It prevents the waiver of jurisdiction as a matter of routine for the purpose of easing the docket."<sup>169</sup> The Wyoming statute allows a judge to question the appropriateness of charging a specific child in circuit or municipal court but prohibits the judge from overriding the prosecutor's decision with no ability for the judge to hear testimony that might prove the decision to be contrary to the purpose of the Juvenile Justice Act. Docket control and fear of overwhelm-

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161. WYSAC Report, *supra* note 9, at 147-48.

162. *Id.*

163. *Id.* at 147-48.

164. *Id.*

165. *Id.* at 128.

166. *Id.* at 75.

167. *Kent v. United States*, 383 U.S. 541 (1966).

168. *Id.* at 553.

169. *Id.* at 553 n.15.

ing the juvenile court are often cited as the reason so many children are charged in adult courts.<sup>170</sup>

### *B. Juvenile Detention*

Wyoming now has the distinction of being the only state that is not in substantial compliance with the Juvenile Justice and Delinquency Prevention Act (JJDP).<sup>171</sup> One of the primary barriers to compliance is the difficulty of gathering the required juvenile jail data and monitoring jails and detention centers as the Act requires. However, hope looms on the horizon. The Wyoming County Commissioners Association (WCCA) has taken the initiative to develop a compliance monitoring program that is functioning in almost all counties.<sup>172</sup> WCCA reports that many counties are now in substantial compliance with JJDP.<sup>173</sup>

This program might be of interest to attorneys representing children because JJDP is intended to prevent the inappropriate jailing or detention of children. Since most counties receive program funding in exchange for agreeing to comply with JJDP, an attorney representing a child who is being detained may be able to use this "compliance" issue when advocating for the client. The relevant provisions of JJDP mandate: (1) deinstitutionalization of status offenders and nonoffenders (applying the federal definition of "offender" which does not include alcohol offenses),<sup>174</sup> (2) sight-and-sound separation of juveniles from adults in detention and correctional facilities; (3) removal of juveniles from adult jails and lockups; and (4) demonstration

170. The author bases this statement on personal experience while working on legislative processes for the Department of Family Services. The problem of overloaded dockets and limited resources in juvenile court as well as the need to conserve placement resources is often discussed and debated as part of broader policy discussions.

171. See *supra* notes 15, 93 and accompanying text.

172. The compliance monitoring program is funded by a grant from the Office of Juvenile Justice and Delinquency Prevention with the intent of bringing Wyoming into compliance with JJDP. The effort has been endorsed by the State Advisory Council on Juvenile Justice.

173. WYO. ST. ADVISORY COUNCIL ON JUVENILE JUSTICE, MEETING MINUTES (Feb. 2005) (on file with author).

174. Wyoming's definition of "status offense" differs from the federal interpretation. While Wyoming begins by defining a status offense as an offense that would not be a crime if committed by an adult, it goes on to specifically exclude the underage consumption, possession or purchase of alcohol from the definition. WYO. STAT. ANN. § 14-6-201(a)(xxiii) (LexisNexis 2004). The Juvenile Justice and Delinquency Prevention Act uses the term nonstatus offenses [which exclude alcohol violations] to delineate the juveniles that may be detained. The federal law requires assurances that "juveniles who are charged with an offense that would not be criminal if committed by an adult [status offense] . . . shall not be placed in secure detention facilities or secure correctional facilities." 42 U.S.C. § 5633(a)(11)(A) (2005). This difference allows for the jailing or detention of minors for alcohol offenses under Wyoming law but not federal law, and it has been a major impediment to compliance with the Juvenile Justice and Delinquency Prevention Act.

of efforts to reduce the disproportionate confinement of minority youth, where it exists.<sup>175</sup>

In addition to the federal incentive, the National Center for Juvenile Justice points out that “[c]oncurrent jurisdiction impedes the consistent use of detention and risks the overuse of detention, particularly as a sanction for violating probation, contempt of court or as a sentence.”<sup>176</sup> The report also recommends “an appropriate initial step for an objective process should include extending requirements for prompt judicial review of detention decisions within the 48-hour time frame of the Juvenile Justice Act [vesting this authority exclusively with the juvenile court].”<sup>177</sup>

In addition to encouraging this type of coordination, a defense attorney can advocate for his or her clients by ensuring compliance with provisions recently added to the jurisdiction statute, which require the municipal and circuit court to “provide to the district attorney in the juvenile’s county of residency and the department of education a copy of the judgment and sentence . . . .”<sup>178</sup> This notice is meant to ensure that appropriate education services are promptly delivered to children who are being held in detention.

### C. Education

Wyoming law provides some guidance on education services for children who are in trouble with the law. The main provisions govern payment for the education services available when children are in court ordered placements.<sup>179</sup> The statute appears to be limited to placements ordered by the juvenile or district court, though the language is not clear.<sup>180</sup> The statute also does not clearly specify the types of actions that result in qualified court ordered placements but makes reference only to delinquency statutes when discussing the requirements of the predispositional report which may indicate that the legislature intended the statute to be applicable only to children

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175. See *supra* notes 15-17 and accompanying text.

176. WYSAC Report, *supra* note 9, at 159.

177. *Id.*

178. WYO. STAT. ANN. § 14-6-203(f)(i), (f)(ii)(B) (LexisNexis 2003).

179. *Id.* § 21-13-315.

180. See *generally id.* The statute uses a general reference to “court” throughout but makes reference to juvenile and district courts in section (b), which states in pertinent part:

Except to the extent costs are covered under subsection (n) of this section, the department of education using federal or foundation funds, or both, shall pay for the allowable education costs of juvenile and district court ordered placements of children residing in private treatment facilities and group homes where a fee is charged, including court ordered placements in programs for children with disabilities provided by a board of cooperative educational services.

*Id.* § 21-13-315(b).

placed as a result of a delinquency petition.<sup>181</sup> In the 2004 and 2005 session, the legislature provided additional funding for the education of children held in detention, including placements ordered by circuit and municipal courts.<sup>182</sup>

The Wyoming statute also makes reference to responsibilities for the educational placements for children with disabilities, but it fails to clearly delineate between State and local responsibilities.<sup>183</sup> Section 21-13.315 (h) explains how the court is to determine the child's school district of record, stating "[i]n the placement order the court shall declare the child's school district or school districts of residency in any district or districts which it deems proper in the best interests of the child. The declaration by the court shall be binding upon the school districts."<sup>184</sup> This determination will establish the school district responsible for compliance with federal IDEA<sup>185</sup> requirements for students who are eligible for these services, provided the court makes such a declaration. Fortunately, application of the federal Individuals with Disabilities Education Act (IDEA) provides clear guidance on the responsibilities of the child's school district.<sup>186</sup>

In *RM & BC v. Washakie County School District* the Wyoming Supreme Court recently settled the question of "whether an alternative education must be provided for lawfully expelled students under the Wyoming Constitution."<sup>187</sup> The court ruled that expelled students do not have a right to receive alternative education services. This case heightens the importance of attorneys becoming involved in any peripheral school suspension or expulsion processes to assure the action was appropriate and lawful.

Justice Golden's dissent in *RM & BC* provides guidance for defense attorneys looking for ways to advocate for a child's education needs. The dissenting opinion notes, "First and foremost, the propriety of this juvenile court order must be reviewed within the context of the Juvenile Justice Act."<sup>188</sup> The opinion points out the juvenile court's existing statutory authority to order any party to perform any act as the court deems necessary.<sup>189</sup> So, while there may not be a constitutional right to alternative education, the court has authority to order a party to provide appropriate education services

181. *Id.* §§ 21-13-315(a), (d).

182. 2005 Wyoming Legislature, Enrolled Act No. 90, Section 2, Sec. 205, Line 6.

183. WYO. STAT. ANN. § 21-13-315.

184. *Id.* § 21-13-315(h).

185. *Id.*

186. 20 U.S.C. § 1400 (2004). The federal IDEA provides the right to a free and appropriate education for children with disabilities. *Id.* § 1400(d)(1)(A) (2004). This right applies to over 50% of the children currently in court-ordered placements in Wyoming. See *supra* note 111 and accompanying text.

187. *RM & BC v. Washakie County Sch. Dist. No. One*, 102 P.3d 868, 870 (Wyo. 2004).

188. *Id.* at 879.

189. *Id.*

to a child in juvenile court. Cases like this have increased the need for zealous advocacy in the area of education services for children who are involved in or at-risk of involvement in any Wyoming court.

#### *D. Alcohol Violations*

Wyoming's response to alcohol use by children is inconsistent with the underlying purpose of enacting laws to protect children from this product. The use, possession and purchase of alcohol by minors under the age of eighteen is not considered a "nonstatus offense" (which is a backward way of saying it is a "status offense") under the federal Juvenile Justice and Delinquency Prevention Act (JJDP),<sup>190</sup> while alcohol violations are specifically excluded from the definition of "status offense" under Wyoming law.<sup>191</sup> The separate classification of "status offense" is meant to distinguish laws that are enacted specifically to "protect" children from harmful activities or products during their formative years and give authorities the right to intervene.

Wyoming law not only excludes alcohol offenses from the definition of "status offense" but further provides statutory authority for the offense to be charged as an adult misdemeanor regardless of the surrounding circumstances.<sup>192</sup> The consequence has been a harsh trend toward criminalizing this behavior with virtually no effort to provide effective interventions such as screenings, assessments or provision of substance abuse treatment. The offense is almost always prosecuted in an adult court, leaving the child with an adult criminal record, rather than protection from the product.<sup>193</sup>

Some have argued that the criminalization of minor alcohol use is key to a "zero-tolerance" policy for minor alcohol use in Wyoming. This attitude misses the point that the law provides little guidance on how to respond effectively when a child is caught with alcohol. Aside from the unfairness of labeling a child caught with alcohol a criminal; the adult criminal charge also exposes the child to potentially harmful detention or jail sentences.<sup>194</sup> This inadequate response is more likely to increase future delinquent or criminal behavior.<sup>195</sup> The excessive use of detention for these of-

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190. 42 U.S.C. § 5633(a)(11)(A) (2005). *See also supra* note 174.

191. In Wyoming, status offense is defined as "an offense which, if committed by an adult, would not constitute an act punishable as a criminal offense by the law of this state or a violation of a municipal ordinance, but does not include a violation of W.S. 12-6-101(b) or (c) or any similar municipal ordinance . . ." WYO. STAT. ANN. § 14-6-201(a)(xxiii) (LexisNexis 2004). Section 12-6-101(b) and (c) establish misdemeanor crimes for the use or possession of alcohol or controlled substances by minors under the age of twenty-one. WYO. STAT. ANN. § 12-6-101(b)-(c) (LexisNexis 2003).

192. *Id.* § 12-6-101(b)-(c).

193. *See generally* WYSAC Report, *supra* note 9.

194. *See supra* note 145 and accompanying text.

195. *See supra* note 145 and accompanying text.

fenses also disrupts the child's education and increases the likelihood he or she will drop out.<sup>196</sup> Defense attorneys must be prepared to educate judges about negative effects of current practices and zealously advocate for options that will promote the intent of the law to protect children from a dangerous product and their own immature decisions.

The statutes also make no distinction for the age range from eighteen to twenty when a person is no longer considered a "minor" or "child" but is still legally prohibited from possessing, buying or consuming alcohol. This lack of distinction, coupled with the exclusion of this offense as a "status offense," has encouraged a broad extreme of responses across the State. Prosecutors should consider establishing standards for prosecution in this area to promote more uniformity, fairness and early intervention across the State.<sup>197</sup>

#### *E. Tobacco Violations*

Wyoming's tobacco statutes also fail to provide clear and effective guidance for dealing with the use of tobacco products by minors. Since Wyoming's definition of "status offense" does include tobacco violations, the use of tobacco products by minors would appear to be a "status offense" within the exclusive jurisdiction of the juvenile court. Unfortunately, the juvenile court jurisdiction statutes are rather confusing and subject to differing interpretations.<sup>198</sup>

There is conflicting jurisdictional authority for the large volume of status offenses, including tobacco offenses, currently being charged in juvenile court.<sup>199</sup> Compounding the confusion is the fact that the tobacco statutes appear to authorize adult criminal misdemeanor penalties for minors charged with tobacco offenses, in direct contravention of the definition of "status offense." The tobacco provision states that "it is unlawful for any person under the age of eighteen (18) years to possess or use any tobacco prod-

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196. See *supra* note 145 and accompanying text.

197. See *supra* notes 159-66 and accompanying text for a discussion of the need for court processing standards.

198. The Juvenile Justice Act explicitly excludes "status offenses" from the concurrent (c), exclusive (d) and original (f) subsections of the jurisdiction statute. WYO. STAT. ANN. § 14-6-203(c)-(f) (LexisNexis 2003). The CHINS statute states, "[a] child in need of supervision includes any child who has not reached his seventeenth birthday who has committed a status offense." WYO. STAT. ANN. § 14-6-402(a)(iv). The exclusion of status offenders from delinquency jurisdiction, coupled with the inclusion of status offender in the definition of CHINS appears to establish "status offenses" as exclusively under the child in need of supervision statute. The limitation on the age of the offender in the CHINS statute also leaves a gap for dealing with the seventeen-year-old. In practice, almost all juveniles who are charged with status offenses, regardless of age, are charged as adults in circuit or municipal court. WYO. STAT. ANN. § 14-6-402(a)(iv).

199. *Id.*



ucts.”<sup>200</sup> It goes on to state a “person” (the minor) violating this section is “guilty of a misdemeanor.”<sup>201</sup> So the question remains: Which is it—a juvenile court “status offense” or an adult “criminal misdemeanor?” The conflicting provisions have yet to be challenged on appeal.

#### *F. Emancipation*

Wyoming’s emancipation statute also demonstrates conflicting policy directives, which further confound the application of a consistent approach to juvenile justice in Wyoming. Emancipation confers “certain rights of majority upon a minor.”<sup>202</sup> A youth under the age of eighteen is defined as a minor in Wyoming.<sup>203</sup> The emancipation statute limits the ability to seek emancipation to seventeen-year-old minors.<sup>204</sup> If a minor applies for emancipation, the legislature clearly stated in two separate portions of the statute that the effect of the emancipation is to “[r]ecognize the minor as an adult for purposes of . . . [t]he criminal laws of this state.”<sup>205</sup>

It seems clear that the legislature’s intent was to limit emancipation. They require, for example, that the seventeen-year-old “willingly lives separate and apart from his parents;”<sup>206</sup> and that the “parents consent or acquiesce in the separate living arrangement;”<sup>207</sup> the child is “managing his own financial affairs;”<sup>208</sup> the child’s livelihood is from legal means other than welfare;<sup>209</sup> and that emancipation is in the best interest of the minor.<sup>210</sup> When emancipation is granted, the court must advise the minor of and set forth in the decree, the legal effects of emancipation. Presumably the intent there is to ensure that the minor fully understands the risks and benefits.<sup>211</sup> As if to be absolutely clear that the emancipation has far reaching consequences, the legislature enacted a separate statute, section 14-1-206, titled “Emancipated minor subject to adult criminal jurisdiction,” which simply and clearly states that “[a]n emancipated minor is subject to jurisdiction of adult courts for all criminal offenses.”<sup>212</sup> A legislator voting to pass that statute might have presumed that it was included because an unemancipated minor would not otherwise be subject to adult criminal jurisdiction.

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200. *Id.* § 14-3-305(a).

201. *Id.* § 14-3-305(b).

202. *Id.* § 14-1-201.

203. *Id.* § 14-1-101(a).

204. *Id.* § 14-1-203(a)(i).

205. *Id.* § 14-1-202(a)(i)(E).

206. *Id.* § 14-1-203(a)(ii).

207. *Id.* § 14-1-203(a)(iii).

208. *Id.* § 14-1-203(a)(iv).

209. *Id.* § 14-1-203(a)(v).

210. *Id.* § 14-1-203.

211. *Id.*

212. *Id.* § 14-1-206.

#### IV. CONCLUSION

There are conflicting directives between protection and punishment of children throughout Wyoming's statutes. Wyoming attorneys have fought for clarity and assurance of due process and equal protection for children facing serious felony charges. It is time to turn attention to the vast number of misdemeanor offenses that Wyoming juveniles commit with some frequency. These lesser offenses expose far too many children to adult courts and afford these children little or no protection.

Wyoming prosecutors must also take responsibility for the overwhelming numbers of children in the adult courts and begin to establish objective court processes and screenings that will ensure that children who need services and interventions will receive them. Defense attorneys can encourage such practices through appropriate legal challenges. Regardless, the rights and individual needs of each delinquent youth, including peripheral legal needs, are the responsibility of the attorney representing a child in both juvenile and adult courts. In addition, attorneys who routinely do this work must begin to network to increase the pressure for system reforms.

In reporting on the youth case processing analysis in Wyoming, the National Center for Juvenile Justice concluded that "[t]he potential list of areas needing improvement in Wyoming is, frankly, OVERWHELMING."<sup>213</sup> While it is sometimes hard to know where to start, it is unlikely that anyone will take on such a politically charged effort without some pressure. Court decisions are a critical tool in creating the pressure necessary for change.

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213. WYSAC Report, *supra* note 9, at 156.

