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Wyoming's "Outlaw" Juvenile Justice Act

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COMMENT

Wyoming’s “Outlaw” Juvenile Justice Act

Jeremy Kisling*

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I. INTRODUCTION

Consider the following situations: The first involves Ashley, a thirteen-year-old girl who went out one night with her friends. They vandalized a local museum, throwing paint on the walls of a restored historical building and breaking windows. Afterward, Ashley got in a fight. The police detained Ashley, and contacted her parents with a request they pick her up. She eventually went to juvenile court. During adjudication, the judge learned Ashley had been physically abused, diagnosed with clinical depression, and was rarely supervised by her parents. She had also been in trouble with the law before. The judge ordered Ashley to help clean up the damage to the museum and attend counseling and anger management classes through a local mental health agency. No fine was

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assessed and her actions are not available for public perusal. The state expended \$100,000 in supervision, counseling and other support services for Ashley, and her family received therapeutic intervention to resolve family issues. Ashley was properly medicated and her anger problems were addressed. By the time she was eighteen years old, Ashley was enrolled in college. Because of the juvenile court's intervention, she functions as a productive member of society. Over her lifetime, Ashley's contributions to the state coffers by being educated and employed may offset the expenditures made toward her rehabilitation. This is particularly encouraging in light of the possibility that Ashley could have continued her criminal behavior as an adult, further draining the state's resources.

The last situation involves John, a fifteen-year-old attending high school in Wyoming. He received a ticket for stealing a key to one of the doors in the school. He signed the ticket promising to appear in court with a parent. Approximately one month later, John was called out of science class, placed in handcuffs, taken to the juvenile detention center in Casper, and deloused. When picking John up at the jail, his father learned John had been arrested on a bench warrant for failure to appear. Had his parents been aware of the mandatory appearance at the time John was cited, they would have assured his appearance in court. The municipal court heard John's case, fined him \$160 and ordered him to perform thirty-two hours of community service. There was no effort to adjudicate him as a juvenile. Because he was tried in an adult court, his adoption and behavioral issues stemming from his pre-adoption childhood were not considered. He was given a punitive sentence which may not have been in the best interests of John or society.

What is the difference in the treatment of these juveniles under these hypothetical scenarios? Could the state have helped John? Did he need the same types of services that Ashley received? The answers are all yes, but Juvenile Justice does not work that way in Wyoming. The different outcomes are possible under the Wyoming Juvenile Justice Act since Wyoming often deals with juveniles in a manner similar to the way John was adjudicated.

This comment examines Wyoming's Juvenile Justice Act (Act), and explores one case that illuminates the failures, illegalities, and inconsistencies of the Act. *D.D. v. City of Casper, Wyo.* contains facts similar to those mentioned in the second scenario. A sixteen-year-old boy, D.D., was cited for stealing a key worth less than twenty dollars.¹ Approximately one month later he was pulled from his high

¹ Brief of Appellant at 2, *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A (Dec. 4, 2005). This case was tried in municipal court, and the actual name of the juvenile is in the decision letter. Out of respect for the parties and the comment author's belief that this case should have been adjudicated in a juvenile court, the initials D.D. have been used to protect the name of the individual.

school class, placed in handcuffs and taken to jail.² At the jail he was deloused and then his parents were notified of his arrest.³

In Wyoming, juveniles are split into two groups by the jurisdictional provisions in the Act.⁴ Comprising one group are those who commit delinquent acts under the age of thirteen over which the juvenile courts have exclusive jurisdiction.⁵ The other group is made up of juveniles ages thirteen to eighteen who commit delinquent acts over whom the juvenile court has concurrent jurisdiction.⁶ The broad granting of concurrent jurisdiction in the Act that allows absolute prosecutorial discretion violates the due process and equal protection rights of Wyoming juveniles.⁷ The majority of Wyoming juveniles in Natrona County never get the opportunity to appear in juvenile court where the rehabilitative nature would be extended to all of them.⁸ D.D., a male youth tried in Natrona County Municipal Court, did not get this opportunity.⁹

Case law and statutes suggest juveniles have a right to be adjudicated in juvenile court.¹⁰ By granting concurrent jurisdiction over juveniles ages thirteen to eighteen, the Act allows unchecked, absolute prosecutorial discretion to decide if a juvenile's case is heard in juvenile court.¹¹ Natrona County adjudicated ninety percent of juveniles as adults in 2004.¹² Under the Wyoming Rational Basis Test, broad granting of concurrent jurisdiction violates juveniles' constitutional rights to due process and equal protection.¹³

This is not a unique occurrence. According to the ruling in *D.D.* achieving judicial efficiency is the crux of the argument in support of this disparate treatment.¹⁴ Investing state time and money in juveniles who commit minor

² *Id.*

³ Anthony Lane, *A Missing Key*, CASPER STAR TRIBUNE, Aug. 28, 2006, at A1 and A11.

⁴ WYO. STAT. ANN. § 14-6-203 (a)-(d) (2007).

⁵ *Id.* at § 14-6-203(d).

⁶ *Id.* at § 14-6-203(c) (2007).

⁷ See discussion *infra* Part III.D.

⁸ See *infra* note 31 and accompanying text.

⁹ *D.D.v. City of Casper, Wyo.*, Seventh Judicial Dist., Criminal Action No. 16885-A (Dec. 4, 2005).

¹⁰ See discussion *infra* Part III.B.

¹¹ See *infra* notes 161-65 and accompanying text (citing *Kelley v. Kaiser*, 992 F.2d 1509, 1511 (10th Cir. 1993)).

¹² Wyoming Survey and Analysis Center, Youth Case Processing in the State of Wyoming: An Analysis of Four Counties Report to the Wyoming Department of Family Services, 12-13 (2004), available at <http://www.uwyo.edu/wysac/CrimJustice/JuvenileCourtProcessing/docs/DFS%20Final%20Report.pdf> (last visited Nov. 10, 2007) [hereinafter WYSAC].

¹³ See Discussion *infra* Part III.F.

¹⁴ *D.D.*, Criminal Action No. 16885-A at 11.

crimes is not important according to the ruling in *D.D.*¹⁵ Applied to *D.D.*, it was more efficient to adjudicate him in circuit court, impose a fine and/or community service, and send him on his way without ever delving into whether or not there were underlying circumstances contributing to his actions.¹⁶ In contrast, juvenile offenders rehabilitated by early interventions may not become societal burdens as adults.

Juveniles are tried and convicted of non-violent misdemeanor crimes every day in Wyoming. Statistics show the vast majority of them, at least in four Wyoming counties, are tried or adjudicated in an adult court, not subject to the rehabilitative nature of an almost non-existent juvenile justice system in Wyoming.¹⁷ This comment examines *D.D.* to address the right and duty of parents to appear with their child in court and the right of a juvenile to have the opportunity to be heard in court. Further, this comment addresses a juvenile's right to due process, Wyoming's constitutional problems by granting concurrent jurisdiction in juvenile cases (including the constitutionality of a prosecutor's absolute discretion concerning juveniles), and touches on Wyoming's Rational Basis Test for constitutionality of current juvenile justice statutes in Wyoming. This comment exposes confusion in the statutes and advocates legislative changes to provide clear criterion so juvenile justice will be consistently applied throughout the state.

II. BACKGROUND

A. *Evolution of Juvenile Justice*

Juveniles were first recognized as "different" from adults in the eyes of the justice system in the 1700s.¹⁸ As a result, social transformations began when minors were no longer perceived as "miniature adults" but were viewed as having different needs.¹⁹ However, not until 1899 in Cook County, Illinois, was the first juvenile justice court established.²⁰ The Cook County Juvenile Court was based on the premise that more thought should be put into rehabilitating and preventing crimes in young offenders.²¹ This rehabilitative ideal promoted the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *infra* note 31.

¹⁸ Howard N. Snyder, and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 Report*, Washington DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 94 (2006), available at <http://www.ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

belief that modification of human behavior was possible.²² As the public perceived a surge in juvenile criminal activity early in the twentieth century, legislation was enacted across the country to deal with young offenders.²³ The federal standards for juvenile justice are found in the Juvenile Justice and Delinquency Prevention Act (hereafter “JJDP A”).²⁴ Wyoming was the last state to enact a juvenile code in 1945.²⁵

B. Findings of the National Center for Juvenile Justice and the Wyoming Survey and Analysis Center Report

The goals of juvenile justice systems have generally been to rehabilitate, aid, and guide youthful offenders into becoming law-abiding citizens.²⁶ Wyoming, however, amended the original guide to include an emphasis on punishment and “law and order.”²⁷ The National Center for Juvenile Justice (NCJJ), in conjunction with the Wyoming Survey and Analysis Center (WYSAC), published a study in 2004 that found numerous problems with the Act.²⁸ Specifically, the NCJJ stated the “purpose clause is an amalgam of contradictory and competing concerns that have created conflict over how to respond to the best interests of the child and protect the community.”²⁹

The report also found no other state restricts access for juveniles to juvenile court or favors processing juvenile offenders as adults.³⁰ Additionally, the majority of court activity in Wyoming addressing criminal behavior of minors occurred in adult courts in the study counties.³¹ The findings also noted police officers and sheriff deputies “essentially control the gate into the justice system for many juvenile offenders.”³² For the most part, these same officers also decide which

²² Marygold S.Melli, *Symposium: Juvenile Justice Reform: Introduction: Juvenile Justice Reform in Context*, 1996 WIS. L. REV. 375, 376-77 (1996) (citing Francis A. Allen, *The Border Land of Criminal Justice* 26 (1964)).

²³ Allan B. Korpela, Annotation, *Expungement of Juvenile Court Records*, 71 A.L.R. 3d 753 (1976).

²⁴ The JJDP A is codified at 42 U.S.C. § 5633 (approved 2007).

²⁵ Wyoming State Advisory Council on Juvenile Justice, *Annual Report to the Governor*, Jan. 3, 2003.

²⁶ Snyder & Sickmund, *supra* note 18, at 94.

²⁷ *Id.* at 97-99.

²⁸ WYSAC, *supra* note 12, at 12-13.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 12 (citing 70% in Teton County, 85% in Sweetwater County, 93% in Sheridan County, and 97% in Natrona County).

³² *Id.*

cases to forward to the county attorney who considers whether or not to prosecute in juvenile court.³³

The report found concurrent jurisdiction can result “in the co-occurring involvement of a juvenile in more than one court at the same time.”³⁴ As a result, “[t]his phenomenon can foster a number of problems, not the least of which include conflicts between the different courts’ expectations and orders, duplication of effort, and public confusion over which court takes precedence.”³⁵ Even though Wyoming’s concurrent jurisdiction issue was not the focal point of the study, interviews of various judges throughout Wyoming conducted for the purpose of the report, confirmed it is an issue.³⁶ The report indicated:

Despite current and prior efforts by the Department of Family Services (DFS) and the Wyoming State Advisory Council on Juvenile Justice (SACJJ) to provide direction for the state, these bodies are not balanced by the collective vision of a statewide body of judges who are full time juvenile law specialists or juvenile and domestic relations law specialists.³⁷

It also recognized “[c]oncurrent jurisdiction . . . prevents consistent policy concerning its use, and interferes with efforts to plan for separate juvenile detention resources, all of which contribute to overuse [of concurrent jurisdiction].”³⁸ Among other problems, the report concluded “[j]udicial leadership is a requisite for both dependency and delinquency court improvement. A fractured court system that places concurrent jurisdiction for the criminal and non-criminal behavior of minors in three different courts presents obstacles for nurturing statewide juvenile justice leadership among the judiciary.”³⁹

Although not an exhaustive list of the problems found in the Act, the WYSAC report provides an official study of the areas addressed in this comment including: prosecutors’ absolute discretion, concurrent jurisdiction, the high rate of juveniles adjudicated in adult courts, and the difference in Wyoming’s law and philosophy to first subject juveniles to adult courts rather than initially trying them in a juvenile court.⁴⁰

³³ *Id.*

³⁴ WYSAC, *supra* note 12, at 12.

³⁵ *Id.* at 12-13.

³⁶ *Id.* at 13.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ WYO. STAT. ANN. § 14-6-201 et. seq. (Juvenile Justice Act) (2007), *See also* WYSAC, *supra* note 12.

Viewing juveniles one-dimensionally is not sufficient to diagnose or treat juvenile criminal offenders.⁴¹ Social, biological, cognitive, and psychological factors must be considered when examining them.⁴² As a result, the treatment of youth offenders is multi-dimensional.⁴³ The centralized goal of juvenile justice is to rehabilitate and individualize juvenile offenders.⁴⁴ In theory, the Act has that goal at heart; in reality, the majority of juvenile offenders in Wyoming are never given the opportunity to be adjudicated in a juvenile court that treats them multi-dimensionally.⁴⁵

D.D. was tried in Natrona County where the overwhelming majority of juveniles (ninety-seven percent) were tried in adult courts.⁴⁶ As a practical matter, over one-half of the juvenile offenses in Natrona County were traffic offenses, cases not appropriate for juvenile adjudication.⁴⁷ However, there remain a large number of offenses that are proper for juvenile adjudication. Among these WYSAC mentioned alcohol, property, drug and other offenses.⁴⁸ Further complicating matters, Wyoming lacks a single-entry policy where children are screened to determine the appropriate court jurisdiction.⁴⁹ This comment does not advocate that the ninety-seven percent of juveniles adjudicated in adult courts in Natrona County required juvenile court adjudication. It also does not address the need for a centralized screening process to determine whether adult court or the rehabilitative approach of juvenile court is appropriate.⁵⁰ Clearly some form of single point of entry or evaluation of juveniles is needed.⁵¹ Sample discussions of the reasons for such use can be found in the OJJDP's *Juvenile Justice Bulletin*.⁵²

⁴¹ Charles Billikas, *Article: The Ideal Juvenile Rehabilitation Program: an Integrated System*, 21 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 411, 412-13 (Summer 1995).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 411.

⁴⁵ *See supra*, note 31 and accompanying text.

⁴⁶ *Supra* note 9, and accompanying text; *see supra* note 31.

⁴⁷ WYSAC, *supra* note 12, at 49-50.

⁴⁸ *Id.* at 48-50.

⁴⁹ *Id.* at 14 (citing John M. Burman, *Juvenile Injustice in Wyoming*, 4 WYO. LAW REV. 669 (2004) and the discussion of having a single entry policy to address which juveniles need to go into a juvenile court setting).

⁵⁰ WYSAC, *supra* note 12, at 14-15. (discussing the centralized screening process and a gatekeeper need in Wyoming). This is not the central focus of this comment, but simple traffic offenses may not need to be adjudicated in an adult court. This constitutes over one-half of the 97% of juvenile cases tried in adult courts in Natrona County. *Id.* However, there is still a need for a centralized "gatekeeper or screening process to decide in which court a juvenile is adjudicated." *Id.*

⁵¹ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin, Conceptual Elements, Single Point of Entry* (March 2000) available at http://www.ncjrs.gov/html/ojjdp/jjbul2000_03_6/pag3.html.

⁵² *Id.*

Though these matters are not the central focus of this comment, their practical considerations should be kept in mind throughout the reading of this comment.

The four-county study conducted by WYSAC concluded the majority of juvenile offenders in the state are indeed tried in adult courts.⁵³ Because of the many problems of the Act, one of which is the broad granting of concurrent jurisdiction over juveniles, there is little opportunity for Wyoming juveniles to assert their right to be adjudicated in a juvenile court where rehabilitation is the key focus.⁵⁴ The factors discussed in the Act emphasizing rehabilitation and differential treatment of juveniles are not utilized when a juvenile is adjudicated in an adult court system.⁵⁵

C. Problems with Juvenile Justice in Wyoming

This comment focuses on children who have committed delinquent acts, meaning acts that would have been crimes if committed by an adult.⁵⁶ Currently, Wyoming's direction in regard to the juvenile justice system can be found in the WYSAC Report. WYSAC recommended the goal of the state's juvenile justice system be moved from emphasizing punishment to rehabilitating children and serving families.⁵⁷ WYSAC further recognized that Wyoming is currently the only state that has failed to comply with the JJDP A of 2002.⁵⁸

1. Concurrent Jurisdiction

Ironically, Wyoming's non-compliance is not a new issue. The state has been non-compliant with the JJDP A since 1981.⁵⁹ In fact, Wyoming holds the "dubious distinction of being the only state not in substantial compliance with the [JJDP A]."⁶⁰ University of Wyoming College of Law Professor John M.

⁵³ WYSAC, *supra* note 12, at 48. (A breakdown of the numbers in Natrona County reflects 97% of Juveniles being adjudicated in adult court. The following was established in the report: municipal court (in Casper) handled 72% of juvenile cases; circuit court presided over 23% of juvenile cases in the City of Casper; an additional 2% of the juveniles in Natrona County were adjudicated in municipal or circuit courts in the two small towns of Edgerton and Evansville. Further numbers by category can be viewed on pps. 48–50.).

⁵⁴ See discussion *infra* Part III.D.

⁵⁵ See discussion *infra* Part III.B.

⁵⁶ See Juvenile Justice Act, WYO. STAT. ANN. §§ 14-6-201 to 252 (2007).

⁵⁷ Wyoming State Advisory Council on Juvenile Justice, U.S. Department of Justice, *Council on Juvenile Justice Annual Report 2006*, (2007) available at [http://www.wyjuvenilejustice.com/PDF/2006%20Annual%20report%20\(2\).pdf](http://www.wyjuvenilejustice.com/PDF/2006%20Annual%20report%20(2).pdf).

⁵⁸ WYSAC, *supra* note 12, at 8–9.

⁵⁹ Donna Sheen, *Professional Responsibilities Towards Children in Trouble with the Law*, 5 WYO. L. REV. 483, 484 (2005).

⁶⁰ *Id.* at 485.

Burman previously identified many shortcomings of the Juvenile Justice Act in Wyoming on a broad spectrum.⁶¹ The broad granting of concurrent jurisdiction in juvenile cases is the primary problem.⁶² *Kent v. United States* addressed exclusive jurisdiction, and stressed the right of juveniles to appear in juvenile court prior to an appearance in adult court.⁶³ *United States v. Bilbo* emphasized the necessity of a transfer hearing prior to a juvenile being adjudicated as an adult.⁶⁴

Wyoming statutes are confusing since it grants concurrent jurisdiction in all cases except status offenses.⁶⁵ A subsequent section of the statute states juvenile courts “have exclusive jurisdiction in all cases, other than status offenses, in which a minor who has not attained the age of thirteen (13) years is alleged to have committed a felony or a misdemeanor punishable by imprisonment for more than six (6) months.”⁶⁶ Only felonies or misdemeanors punishable by more than six months in jail are subject to exclusive juvenile jurisdiction.⁶⁷ A large gap exists between felonies and “all other cases” in allowing concurrent jurisdiction for “all other” crimes committed by a minor.⁶⁸ Concurrent jurisdiction allows all delinquent acts except felonies to be dealt with in an adult court without the rehabilitation available through a juvenile court.⁶⁹

Black’s Law Dictionary defines concurrent jurisdiction as, “[j]urisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action.”⁷⁰ Localized concurrent jurisdiction gives prosecutors, as litigants, the ability to choose in which court a child is adjudicated.⁷¹ This violates the JJJPA policy proscribing a sound and sealed system that allows for the delivery of the rehabilitative goals of juvenile justice.⁷² This legal “loophole” in the Act subverts the entire goal of the juvenile justice system.⁷³

⁶¹ John M. Burman, *Juvenile Injustice in Wyoming*, 4 WYO. LAW REV. 669, 671-72 (2004).

⁶² Sheen, *supra* note 59, at 485.

⁶³ *Kent v. U.S.*, 383 U.S. 541, 560-61 (1966).

⁶⁴ *U.S. v. Bilbo*, 19 F.3d 912, 915-17 (5th Cir. 1994).

⁶⁵ WYO. STAT. ANN. § 14-6-201(a) (xxiii) (2007). “Status offense means any offense which, if committed by an adult, would not constitute an act punishable as a criminal offense by the laws of this state or violation of a municipal ordinance” *Id.*

⁶⁶ *Id.* § 14-6-203(d).

⁶⁷ *Id.* § 14-6-203.

⁶⁸ *Id.*

⁶⁹ See *infra* notes 188-194 and accompanying text.

⁷⁰ BLACK’S LAW DICTIONARY 868 (8th ed. 2004).

⁷¹ See *infra* notes 161-165 and accompanying text.

⁷² See 42 U.S.C. 5602 et. seq. (2006).

⁷³ Burman, *supra* note 61, at 669.

2. *Prosecutorial Discretion*

The vast majority of juvenile cases in Wyoming, except felonies, are subject to adjudication wherever the prosecutor or a law enforcement officer chooses to bring the charges.⁷⁴ The Natrona County District Court and the Wyoming Supreme Court have held prosecutorial absolute discretion constitutional.⁷⁵ In 1984, the Wyoming Supreme Court held constitutional a prosecutor's choice whether a juvenile should be brought as an adult in district court or addressed in juvenile court.⁷⁶ Granting decision making authority to prosecutors removes jurisdiction from the hands of the judges and, in turn, creates numerous problems.⁷⁷

Police officers also decide in which court a juvenile appears when issuing a citation.⁷⁸ The Wyoming Supreme Court's determination that prosecutorial discretion is constitutional is contrary to the ideals of juvenile justice and does not comport with the rest of the country in addressing juvenile justice.⁷⁹ Case law established by the U.S. Supreme Court indicates Wyoming's process is contrary to the due process and fairness afforded to juveniles.⁸⁰ *In re Gault* requires notice to parents prior to a hearing and further sets forth the requirements needed for notice to satisfy due process.⁸¹

3. *Confusion in Wyoming Statutes*

In the words of a Wyoming District Court Judge, "Wyoming juvenile justice statutes are confusing and disorganized in the area of children. . . . Wyoming statutes concerning juveniles need to be clarified and more options need to be available for judges when adjudicating juveniles."⁸² The joint study by WYSAC and NCJJ also cite confusion in the Wyoming statutes.⁸³ The report found "the overarching problem in Wyoming [is the] lack of clear standards in statutes and policies relating to juvenile justice issues."⁸⁴ Generalizing that all districts apply the statutes incorrectly is erroneous because of the inconsistency and lack of guidance

⁷⁴ See *infra* notes 161-165 and accompanying text.

⁷⁵ *Jahnke v. State*, 692 P.2d 911, 929 (Wyo. 1984).

⁷⁶ *Id.*

⁷⁷ See discussion *infra* Part III.E.

⁷⁸ WYSAC, *supra* note 12, at 12.

⁷⁹ See discussion *infra* Part III.E.

⁸⁰ *In re Gault*, 387 U.S. 1, 33-34 (1967).

⁸¹ *Id.* at 33-34.

⁸² Email from a Wyoming District Court Judge, (Mar. 1, 2007) (On file with author, Judge to remain anonymous).

⁸³ Burman, *supra* note 61, at 685.

⁸⁴ *Id.* (citing Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, 24 CRIME & JUST. 189, 189 (1998)).

in the act.⁸⁵ Juvenile justice is not consistently or fairly applied in Wyoming.⁸⁶ The higher rational basis test articulated in *Johnson v. State Hearing Examiner's Office*, when applied to juvenile justice statutes in Wyoming, renders the statutes unconstitutional.⁸⁷

Ironically, the Act specifically states one of its purposes is “[t]o 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.”⁸⁸ The statutes are not simple and the contradictions within them prompt questions of whether the Act is constitutional and fair to the juveniles in the state who are not convicted of felonies or status offense crimes.⁸⁹ The Wyoming State Advisory Council on Juvenile Justice contends Wyoming has taken the rehabilitative stance in dealing with juveniles.⁹⁰ Wyoming does not treat the majority of juveniles consistent with the goals of the Act according to the analysis of the court in *D.D.*⁹¹

D. Facts of D.D. v. City of Casper, Wyoming

On October 5, 2005, Casper police cited D.D., a sixteen-year-old male, with petit larceny.⁹² The boy signed the citation and agreed to appear in court on October 28, 2005.⁹³ The citation stated he needed to bring a parent with him, but D.D. ignored the ticket and missed his court date.⁹⁴ On November 1, 2005, the court issued a bench warrant for D.D.’s arrest.⁹⁵ Approximately one month later, D.D. was called out of class, placed in handcuffs, and transported to the

⁸⁵ WYSAC, *supra* note 12, at 12-13. The WYSAC Report only focused on four counties and there is no known statistical data on other counties in Wyoming. *Id.* Generalizing that all counties are not correctly applying the Act is beyond the scope of current available statistical information. *Id.*

⁸⁶ WYSAC *supra* note 12, at 12.

⁸⁷ See discussion *infra* Part III.F. (citing *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992)).

⁸⁸ WYO. STAT. ANN. §14-6-201(c) (iv) (2007).

⁸⁹ See discussion *infra* Part III.C.

⁹⁰ Wyoming State Advisory Council on Juvenile Justice, *Annual Report to the Governor*. Jan. 3, 2003. (Philosophy of juvenile court vs. criminal court: It has long been recognized (over 100 years) that there are inherent differences between adult and juvenile offenders. This is why Juvenile Codes have been enacted in every state beginning with Illinois in 1899 and ending with Wyoming's juvenile code in 1945. The Wyoming Juvenile Code differs from the penal code with its emphasis on rehabilitating the juvenile offender and his family, while holding him/her responsible and accountable and protecting the community. . . .).

⁹¹ See *infra* notes 159-162 and accompanying text.

⁹² *D.D. v. City of Casper, Wyo.*, Seventh Judicial Dist. Criminal Action No. 16885-A, 2 (Dec. 4, 2005).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

Natrona County Juvenile Detention Center.⁹⁶ He was treated with lice killer and placed in jail clothing.⁹⁷ After an indeterminate period of time D.D. was released to his father.⁹⁸ Ultimately the City of Casper Municipal Court found D.D. guilty of stealing a key worth less than \$20 dollars and ordered him to pay \$160 in fines or perform thirty-two hours of community service.⁹⁹ D.D.'s parents were not notified of the ticket until after D.D. was arrested and processed at the Juvenile Detention Center.¹⁰⁰ On appeal, D.D. raised *inter alia*, the questions of whether or not his arrest fell within the Wyoming Juvenile Justice statutory structure, whether his arrest was constitutional for him or his parents, and whether all of his due process rights were correctly applied.¹⁰¹ On appeal, the Natrona County District Court ruled the arrest constitutional and valid.¹⁰²

III. THE ANALYSIS

A. *The Right and Duty of a Parent to Appear with Their Child in a Juvenile Delinquency Proceeding*

D.D.'s parents were not made aware of his citation, an issue of legitimate concern. Wyoming Statute § 14-2-205(a) states it is the responsibility of "one (1) or both parents [to appear when] the minor is required to appear and is alleged to have committed a criminal offense or to have violated a municipal ordinance."¹⁰³ Parents have the opportunity to address the court.¹⁰⁴ If a parent fails to appear when served with an order, he or she may be held in contempt.¹⁰⁵ Parents may also be liable for property damage committed by their child.¹⁰⁶ More pointedly, the definition section of the Act defines parties to include "the child, his parents, guardian or custodian, the state of Wyoming and any other person made a party by an order to appear, or named by the juvenile court."¹⁰⁷ Because D.D.'s case was in municipal court and not juvenile court, the Natrona County District Court

⁹⁶ Brief of Appellant at 7, *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A (Dec. 4, 2005).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Anthony Lane, *A Missing Key*, CASPER STAR TRIBUNE, Aug. 28, 2006, at A1 and A11.

¹⁰⁰ *Id.*

¹⁰¹ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 1 (Dec. 4, 2005).

¹⁰² *Id.*

¹⁰³ WYO. STAT. ANN. § 14-2-205(a) (2007).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at §14-2-205(c), (d).

¹⁰⁶ *Id.* at § 14-2-203.

¹⁰⁷ *Id.* at § 14-6-201(a)(xviii).

held the juvenile justice statutes did not apply.¹⁰⁸ Had D.D. been adjudicated in juvenile court, the position this comment supports, his parents would have been required parties and their presence would have been mandatory under the Act.¹⁰⁹

Parents are unable to perform their statutory duties to appear with their child if they are not notified of a citation.¹¹⁰ The district court in *D.D.* dismissed this argument on the basis that Wyo. Stat. Ann. § 14-2-205(c) does not require parents to appear in municipal courts.¹¹¹ Further, *D.D.* “provides no authority for the proposition that the parents of a child who is suspected of criminal or delinquent conduct must be notified of an investigation into this conduct.”¹¹² However, these assertions do not align with a juvenile’s right to be subjected to a juvenile court, or a parent’s rights and duties according to the definitions and ideals of the Act.¹¹³

In re Gault specifically addressed parents’ rights to be made aware of an initial hearing or notification that their child is to be taken into custody, and held notice given at an initial hearing is not timely.¹¹⁴ The U.S. Supreme Court further addressed the issue of notification to parents stating, “Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must ‘set forth the alleged misconduct with particularity.’”¹¹⁵ The Court analyzed timeliness of notice to a juvenile’s parents as a requirement that must be met particularly when a “youth’s freedom and his parents’ right to his custody are at stake. . . .”¹¹⁶ D.D.’s freedom became an issue when he was taken into custody.¹¹⁷

The Natrona County District Court dismissed any argument about notification of pending charges against a juvenile by a municipal court “[s]ince there is no indication that the officer knew who the parents were or where they lived, this was the best [the officer] could do.”¹¹⁸ The court further explained that

¹⁰⁸ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 1 (Dec. 4, 2005).

¹⁰⁹ *Id.*

¹¹⁰ WYO. STAT. ANN. §14-2-205 (2007).

¹¹¹ *D.D.*, Criminal Action No. 16885-A at 7.

¹¹² *Id.* at 8.

¹¹³ WYO. STAT. ANN. § 14-6-201(c) et. seq. (2007).

¹¹⁴ *In re Gault*, 387 U.S. 1, 33-34 (1967).

¹¹⁵ *Id.* at 34.

¹¹⁶ *Id.*

¹¹⁷ Brief of Appellant at 7, *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A (Dec. 4, 2005).

¹¹⁸ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 7 (Dec. 4, 2005).

the officer satisfied any notice requirement when “the officer issuing the citation attempted to notify the parents when he noted on the citation that [D.D.] must appear with one parent.”¹¹⁹ This is directly contrary to the U.S. Supreme Court’s holding in *In re Gault*.¹²⁰ *In re Gault* stated:

Notice at [an initial hearing on the merits] is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child *and his parents* or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation.¹²¹

The requirement of notice in *In re Gault* is notice be given prior to a hearing.¹²² D.D.’s parents never received proper notice.¹²³ The Natrona County District Court in *D.D.* found notification of the parents after incarceration sufficient, and that he was only incarcerated for a few hours.¹²⁴ Adequate notice to satisfy due process requirements as described in *In re Gault* was not afforded D.D.’s parents.¹²⁵

Further due process rights of notice to a juvenile’s parents were examined in the Mississippi case *Sharpe, a Minor, et al. v. State*.¹²⁶ This case addressed due process rights and held that although a warrant may be issued, the parents should be notified.¹²⁷ Keeping in mind the limitations of comparing Wyoming State Statutes with those of another state, *Sharpe* provides a good example of how juveniles should be handled in accordance with the principles of notice set forth in *In re Gault*. *Sharpe* stated:

Usually a summons is issued to the child. Most statutes provide also for a *summons or notice to the parent or other custodian, requiring him to produce the child before the court at a time*

¹¹⁹ *Id.*

¹²⁰ *In re Gault*, 387 U.S. at 34.

¹²¹ *Id.* (emphasis added).

¹²² *Id.*

¹²³ See Lane, *supra* note 100.

¹²⁴ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 7-8 (Dec. 4, 2005).

¹²⁵ *In re Gault*, 387 U.S. at 34 (discussing the application of due process as a requirement of adequate notice in a criminal context) (internal citations omitted).

¹²⁶ *Sharpe, a Minor, et al. v. State*, 127 So. 2d 865 (Miss. 1961).

¹²⁷ *Id.* at 870.

specified therein. In some instances a warrant may be issued for the purpose of securing the child's presence before the court.¹²⁸

The Act is not explicit about notice to parents. It merely states that any person taking a child into custody shall, "as soon as possible notify the child's parent, guardian or custodian."¹²⁹ In the case of *D.D.*, notice could have been given well in advance of a bench warrant and arrest. The Act does not align with the constitutional due process right of notice for a parent discussed in *In re Gault*.¹³⁰

B. *The Right of a Juvenile to be in Juvenile Court*

According to the Natrona County District Court's decision letter in *D.D.*, no presumed elevated Constitutional right for a juvenile to be adjudicated in juvenile court exists.¹³¹ The "challenged statute is presumed constitutional and appellant carries the heavy burden of proving [it] unconstitutional by clear and exact proof beyond a reasonable doubt."¹³²

United States v. Bilbo addressed the origin of a juvenile action.¹³³ A juvenile action should not begin in adult court, but in juvenile court.¹³⁴ The process by which a juvenile encounters an adult court is through transfer, and although not binding on Wyoming courts, *Bilbo* supported the transfer of a minor to an adult court *so long as the decision for such a transfer is tempered in a way that affords a juvenile justice system to exist*.¹³⁵ Wyoming's Juvenile Justice System exists in statute, but no separate court deals solely with juveniles.

In *Bilbo*, the Texas Appellate Court found the guidelines for a juvenile to be transferred to an adult court were met.¹³⁶ *Bilbo* dealt with a federal jurisdictional matter so the factors of 18 U.S.C. §5032 were used in determining whether the juvenile should have been transferred.¹³⁷ The *Bilbo* court also acknowledged the

¹²⁸ *Id.* at 869 (emphasis added).

¹²⁹ WYO. STAT. ANN. § 14-6-206 (b) (2007).

¹³⁰ Compare *supra* note 124 with *supra* notes 120-122 and accompanying text (showing that the district court found notice to *D.D.* constitutional, but *In re Gault* has set an expectation for notice).

¹³¹ *D.D. v. City of Casper, Wyo., Seventh Judicial District Criminal Action No. 16885-A, 12* (Dec. 4, 2005).

¹³² *Id.* at 4.

¹³³ *U.S. v. Bilbo, 19 F.3d 912, 915* (5th Cir. 1994).

¹³⁴ *Id.*

¹³⁵ *Id.* at 916 (emphasis added).

¹³⁶ *Id.*

¹³⁷ *Id.* at 913. The factors considered were: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment

decision to transfer a juvenile to trial as an adult, at least on the federal level, was within the sound discretion of the trial court.¹³⁸ In Wyoming, the decision is not made by a judge or a trial court in reference to misdemeanors and status offenses, but by a prosecutor or the police officer issuing a ticket.¹³⁹ There is no standard guiding a prosecutor's decision about the court in which to adjudicate a juvenile.¹⁴⁰

The *D.D.* decision contends the Act does not apply, and all cases do not need to be issued from a juvenile court since this would be contrary to "the plain provisions of the statutes allowing concurrent jurisdiction."¹⁴¹ The interpretation is a juvenile over the age of twelve has no right to be treated as a juvenile at any time, and that concurrent jurisdiction allows a prosecutor to decide whether a juvenile should be submitted to juvenile jurisdiction where rehabilitation is the key or charged as an adult contrary to the goals of the Act.¹⁴²

C. *The Right of Juveniles to Due Process*

The right to due process is a fundamental right under the U.S. Constitution where "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."¹⁴³ Accordingly, a child in juvenile court should be afforded certain rights collectively called due process rights.¹⁴⁴ The law is unclear on whether due process should extend to a child in a juvenile court, or whether being subject to adult courts satisfies due process protections, but *Kent* held that certain due process rights should be afforded to juveniles.¹⁴⁵ The Supreme Court in *Kent* stated a Juvenile Court Act:

[C]onfers upon the child a right to avail himself of that court's 'exclusive' jurisdiction. As the court of appeals has said, '[I]t is implicit in [the Juvenile Court] scheme that non-criminal

efforts and the juvenile's response to such efforts; [and] the availability of programs designed to treat the juvenile's behavioral problems. *Id.*

¹³⁸ *Id.* at 915.

¹³⁹ See discussion *infra* Part III.E.

¹⁴⁰ *Id.*

¹⁴¹ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 7 (Dec. 4, 2005).

¹⁴² *Id.* at 4 (citing *Misenheimer v. State*, P.3d 273, 276 (Wyo. 2001)).

¹⁴³ U.S. CONST. amend. XIV, §1.

¹⁴⁴ National Council of Juvenile and Family Court Judges (NCJFCJ), *Juvenile Delinquency Guidelines; Improving Court Practice in Juvenile Delinquency Cases*, at 12 (Spring 2005) (referring to *In re Gault*).

¹⁴⁵ *Kent v. U.S.*, 383 U.S. 541, 560-61 (1966).

treatment is to be the rule—and the adult criminal treatment, the exception which must be governed by the particular factors of individual cases.¹⁴⁶

Kent addressed exclusive jurisdiction of a juvenile court rather than concurrent jurisdiction; however, it stressed that juveniles should have an opportunity to first be subjected to the jurisdiction of juvenile court systems.¹⁴⁷ The opposite is true in Wyoming.¹⁴⁸ More frequently a juvenile begins and ends in an adult court, with the minority of cases originating in juvenile courts.¹⁴⁹ In Wyoming, the goal of the Act is consistent with the ruling in *Kent*.¹⁵⁰ The Wyoming Juvenile Justice Act states in pertinent part:

(c) This act shall be construed to effectuate the following public purposes:

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

(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.

¹⁴⁶ *Id.* (citing *Harling v. U.S.*, 295 F.2d 161, 164-65 (1961)).

¹⁴⁷ *Id.*

¹⁴⁸ See discussion *supra* Part III.B.

¹⁴⁹ *Id.*

¹⁵⁰ Compare *Kent*, 383 U.S. at 560-61, with WYO. STAT. ANN. § 14-6-201(c)(vi) (2007) (the goal of the Act is consistent with the decision in *Kent* that adult court should be the minority and that a minor should be afforded the right to juvenile court first).

(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.¹⁵¹

Wyoming Statute Annotated § 14-16-201 (c)(ii)(A) would have applied in *D.D.* in a juvenile court, but the municipal court never examined these factors.¹⁵² Wyoming Statute Annotated § 14-16-201 (c)(ii)(C) of the Act would also have been applicable had the information regarding *D.D.*'s background been heard by the court.¹⁵³ Treatment or rehabilitation may have been more effective than a fine and community service. The adult court in which *D.D.* was tried used a punitive remedy rather than a rehabilitative approach.¹⁵⁴

The next portion of the statute stresses care should be provided with the least restrictive and most appropriate interventions.¹⁵⁵ While *D.D.*'s outcome may not have been restrictive, the various factors delineated for consideration in the Act were not measured in determining the most appropriate intervention since *D.D.* was never given the opportunity to go through a juvenile court proceeding.¹⁵⁶ Flexibility and innovation are encouraged in dealing with juveniles to reduce the

¹⁵¹ WYO. STAT. ANN. §14-6-201 (2007).

¹⁵² *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 8 (Dec. 4, 2005).

¹⁵³ *Id.* The district court found *D.D.*'s personal history to be of questionable relevance. *Id.*

¹⁵⁴ *Id.* at 11. The district court found that minor crimes were not worthy of Juvenile Court Adjudication. *Id.*

¹⁵⁵ WYO. STAT. ANN. § 14-6-201 (c) (iii) (2007).

¹⁵⁶ *D.D.*, Criminal Action No. 16885-A at 2.

commission of unlawful acts by children.¹⁵⁷ A fine and community service is neither flexible nor innovative. Had D.D. struggled with learning disabilities, behavioral impairments, or other problems, the problems could have been addressed as part of the rehabilitative process in a juvenile court.¹⁵⁸ The Act recognizes these factors as important when dealing with juvenile delinquency cases.¹⁵⁹ The Natrona County District Court disregarded them by stating that D.D.'s personal history was of questionable relevance, was not part of the record, and would not be considered in the appellate decision.¹⁶⁰

The goals of the Act are effectively undercut by the broad granting of concurrent jurisdiction as the majority of juveniles in many Wyoming counties are never given the opportunity to be subject to the Juvenile Justice Act statutes.¹⁶¹ Wyoming effectively makes juvenile justice the exception and adult criminal treatment the rule.¹⁶² Case law nationwide does not stop here, however, as there is further support that the Act be viewed as a priority for minors, and adult criminal justice systems as the secondary venue for juvenile offenders.¹⁶³ Closer to home, the Tenth Circuit Court of Appeals recognized the importance of a juvenile's right to be adjudicated in a juvenile court and how critical the decision to permit adult prosecution of a juvenile.¹⁶⁴ The Tenth Circuit pointed to the authority of juvenile courts, not the prosecutor, in transferring or certifying a case involving a juvenile to adult courts.¹⁶⁵ In *Kelley v. Kaiser*, the Tenth Circuit found the conviction of a juvenile tried in an adult court need not be set aside if the juvenile would have ended up in adult court anyway.¹⁶⁶

Additional case law stresses the importance of treating juvenile and adult court proceedings differently.¹⁶⁷ "These strict safeguards, however, are wholly inappropriate for the flexible and informal procedures of the Juvenile Court which are essential to its *parens patriae* function."¹⁶⁸ "To avoid impairment of this

¹⁵⁷ WYO. STAT. ANN. §14-6-201(c)(iv) (2007).

¹⁵⁸ *Id.* at § 14-6-20-201(c)(ii)(A) .

¹⁵⁹ *Id.*

¹⁶⁰ *D.D.*, Criminal Action No. 16885-A at 8.

¹⁶¹ See WYSAC, *supra* note 12, at 12.

¹⁶² *Id.*

¹⁶³ See *Kent*, 383 U.S. at 560-61; *Green v. Reynolds*, 57 F.3d 956, 960 (10th Cir. 1995); *Kelley v. Kaiser*, 992 F.2d 1509, 1511 (10th Cir. 1993).

¹⁶⁴ *Green*, 57 F.3d at 960.

¹⁶⁵ *Kelley*, 992 F.2d at 1511.

¹⁶⁶ *Id.*

¹⁶⁷ *Harling v. U.S.*, 295 F.2d 161, 164 (D.C. Cir. 1961) (citing *U.S. v. Dickerson*, 271 F.2d 487, 491 (D.C. Cir. 1959)). See also BLACK'S LAW DICTIONARY 868 (8th ed. 2004) (definition of *parens patriae*, "The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves.").

¹⁶⁸ *Harling*, 295 F.2d at 164.

function, the juvenile proceeding must be insulated from the adult proceeding.”¹⁶⁹ Wyoming does not insulate the majority of juvenile delinquents from adult proceedings; rather it freely exposes juveniles to adult courts.¹⁷⁰ The key to ensure juveniles a right to juvenile proceedings is to have them begin in juvenile court.¹⁷¹ Juveniles should have the right to juvenile adjudication unless transferred by a judge for adjudication in an adult court.¹⁷²

Though Wyoming stresses the importance of treating juveniles differently, there is no certainty a juvenile will have the opportunity to enter a juvenile court system because of concurrent jurisdiction.¹⁷³ The authority of the prosecuting attorney to decide in which court a juvenile should be tried was held constitutional by the Wyoming Supreme Court in 1984.¹⁷⁴ This holding undercuts the goals of rehabilitation set out in the Act.¹⁷⁵ Very few juvenile delinquency cases are ever brought before a juvenile court.¹⁷⁶ The statute 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.*¹⁷⁷

Authority for venue in Wyoming is ultimately up to the district attorney or a law enforcement officer issuing a ticket, and there is no authority for a judge to transfer a case from their adult court into a juvenile court unless the prosecuting

¹⁶⁹ *Id.* (citing U.S. v. Dickerson, 271 F.2d 487, 491 (D.C. Cir. 1959)).

¹⁷⁰ WYSAC, *supra* notes 12, at 12.

¹⁷¹ *Kent*, 383 U.S. 541, 560-61 (1966).

¹⁷² *See generally* WYSAC, *supra* note 12.

¹⁷³ *See* discussion Part III.C.

¹⁷⁴ *Jahnke v. State*, 692 P.2d 911, 929 (Wyo. 1984).

¹⁷⁵ WYO. STAT. ANN. § 14-6-201 et. seq. (2007) (the juvenile justice act and the goals set out in the statute).

¹⁷⁶ *See* WYSAC, *supra* note 12, at 11-12 and accompanying text.

¹⁷⁷ WYO. STAT. ANN. § 14-6-237(h) (2007) (emphasis added).

attorney is willing to file a petition under the Act.¹⁷⁸ A motion can be made, but the ultimate decision rests with the district attorney.¹⁷⁹ Statistically, this procedure rarely occurs in Wyoming, and the majority of all juvenile delinquent cases are heard in courts other than juvenile court.¹⁸⁰

The Natrona County District Court in *D.D.* stated the statute must be viewed in favor of constitutionality, and a statute violates equal protection if it encourages arbitrary and erratic arrests and convictions.¹⁸¹ The court's standard of review was, "where a statute or a governmental action affects a fundamental interest . . . [t]he court uses a strict scrutiny test to determine if statute or governmental action is necessary to achieve a compelling state interest."¹⁸² Juveniles should have a fundamental interest and right to be subject to juvenile court systems.¹⁸³ The law is silent on this issue so far as juvenile justice is concerned; however, the analysis above establishes that the right to juvenile adjudication is more than just an ordinary interest or right.¹⁸⁴

A juvenile's right to due process was set forth by the U.S. Supreme Court in *In re Gault*:

[W]ith respect to such waiver proceedings that while 'We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the *hearing must measure up to the essentials of due process and fair treatment.*' We reiterate this view, here in connection with a juvenile court adjudication of 'delinquency,' as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution.¹⁸⁵

The most elementary definition of due process can be found in Black's Law Dictionary: "The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ WYSAC, *supra* note 12, at 12.

¹⁸¹ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 4 (Dec. 4, 2005) (citing *Moe v. State*, 110 P.3d 1206, 1210 (Wyo. 2005)).

¹⁸² *D.D.*, Criminal Action No. 16885-A, at 4 (citing *Misenheimer v. State*, 27 P.3d 273, 276 (Wyo. 2001)).

¹⁸³ *In re Gault*, 387 U.S. 1, 30-31 (1967).

¹⁸⁴ *Id.* at 30.

¹⁸⁵ *Id.* (emphasis added).

case.”¹⁸⁶ United States case law requires juveniles have a right to juvenile courts to be assured their right to due process.¹⁸⁷ Wyoming case law is silent on this issue.

D. Concurrent Jurisdiction is Unconstitutional

It is unconstitutional for the Act to grant concurrent jurisdiction.¹⁸⁸ The Wyoming Juvenile Justice statute plainly state, “[e]xcept as provided in subsection (d) of this section, the juvenile court has concurrent jurisdiction in all cases, other than status offenses, in which a minor is alleged to have committed a criminal offense or to have violated a municipal ordinance.”¹⁸⁹ The exception to concurrent jurisdiction is, “[t]he juvenile court has exclusive jurisdiction in all cases, other than status offenses, in which a minor who has not attained the age of thirteen (13) years is alleged to have committed a felony or a misdemeanor punishable by imprisonment for more than six (6) months.”¹⁹⁰

Wyoming Juvenile Justice Statutes are inconsistent and confusing.¹⁹¹ Immediately following the sections granting juvenile courts exclusive jurisdiction over juveniles charged with a felony or misdemeanor punishable by up to six months in jail or those juveniles under the age of thirteen, the Act allows any other actions to be originally commenced in a non-juvenile court in spite of the fact a juvenile is involved in the proceedings.¹⁹² Although consistent with the idea of statutory concurrent jurisdiction, granting concurrent jurisdiction is not consistent with the goal of the Act.¹⁹³ When the majority of juveniles are tried in adult courts rather than under the juvenile justice statutes, concurrent jurisdiction is self-defeating since the majority of juveniles are not afforded the right to be treated as juveniles in the eyes of the court.¹⁹⁴

In *D.D.*, the Natrona County District Court erred by deciding the Juvenile Justice Act “allows detention to occur upon the issuance of *any* court order, and it

¹⁸⁶ BLACK’S LAW DICTIONARY 868 (8th ed. 2004).

¹⁸⁷ *Infra* note 252 (discussing the Wyoming rational basis test and the constitutionality of Wyoming’s Juvenile Justice Act). See generally *Johnson v. State Hearing Examiner’s Office*, 838 P.2d 158 (Wyo. 1992).

¹⁸⁸ *Johnson*, 838 P.2d at 160-61.

¹⁸⁹ WYO. STAT. ANN. §14-6-203(c) (2007).

¹⁹⁰ *Id.* at §14-6-203(d).

¹⁹¹ *Id.* at §§ 14-6-203(c)-(f).

¹⁹² *Id.* at §§ 14-6-203 (e),(f).

¹⁹³ The goal of the Act is “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.” WYO. STAT. ANN. § 14-6-201(c)(ii)(C) (2007) (emphasis added).

¹⁹⁴ See discussion *supra* Part III.D.

is not restricted to an order issued from juvenile court.”¹⁹⁵ Further error occurred when the Natrona County District Court concluded the plain reading of the statute results in concluding the word “‘court’ is an adjective modifying the word ‘order.’”¹⁹⁶ The Natrona County District Court ruled that if the court accepted the argument of the appellant, a juvenile could not be taken into custody without an order from a juvenile court, and “[e]ither an inferior court would have no means to compel attendance of a minor who was accused of a misdemeanor or all cases would have to be processed through juvenile court. The latter is contrary to the plain provisions of the statute allowing concurrent jurisdiction. . . .”¹⁹⁷ This statement is misleading. The juvenile justice system should be the primary court to deal with juveniles, and the adult court should be the exception.¹⁹⁸

Further, the Natrona County District Court misinterpreted the Act’s definition of “court.” Appellant’s Brief argued the Act’s definition of the word “court” meant, “the juvenile court established by Wyo. Stat. § 5-8-101.”¹⁹⁹ To adopt the plain meaning of a statute without viewing the statute in its entirety and taking judicial notice of the definition of the word “court” as prescribed by statute is erroneous.²⁰⁰ The statute contradicts itself by allowing concurrent jurisdiction and then defining the word “court” to mean juvenile court.²⁰¹ A child cannot be detained without a court order, but the statute does not specify which court.²⁰² The Act defines court as the juvenile court, but the district court interpreted the word court to mean any court.²⁰³ The district court was in error when it ruled contrary to this definition.²⁰⁴

The Tenth Circuit has reinforced the idea that transferring a juvenile from juvenile court to adult court is an extremely important decision, and any such transfer should not be taken lightly.²⁰⁵ The Tenth Circuit emphasized the importance of the transfer process when it stated, “there is no place in our system of law for reaching a result of such tremendous consequences without

¹⁹⁵ D.D. v. City of Casper, Wyo., Seventh Judicial District Criminal Action No. 16885-A, 7 (Dec. 4, 2005) (emphasis supplied).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Kent*, 383 U.S. 541, 556 (1966).

¹⁹⁹ WYO. STAT. ANN. § 14-6-201(a)(vii) (2007). *See also* Brief of Appellant at 7, D.D. v. City of Casper, Wyo., No. 16885-A (Wyo. 7th Jud. Dist. Ct. Dec. 4, 2006).

²⁰⁰ WYO. STAT. ANN. § 14-6-201 et. seq. (2007).

²⁰¹ *See id.*

²⁰² *Id.*

²⁰³ D.D., Criminal Action No. 16885-A at 7.

²⁰⁴ *Compare id. with* the definition of “court” under WYO. STAT. ANN. § 14-6-201(a)(vii) (2007).

²⁰⁵ *Green v. Reynolds*, 57 F.3d 956, 960 (10th Cir. 1995).

ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.²⁰⁶ Yet Wyoming’s current system does not allow juveniles the opportunity to first go before a juvenile court because of concurrent jurisdiction.²⁰⁷ Wyoming’s concurrent jurisdiction is counter-intuitive to the ideals set forth in the Act and the law established in the Tenth Circuit and the U.S. Supreme Court.²⁰⁸

The U.S. Supreme Court held in *In re Gault* that juveniles in hearings must be afforded due process and fair treatment.²⁰⁹ However, Wyoming, through concurrent jurisdiction, allows a prosecutor or police officer to make the decision of where a juvenile is adjudicated.²¹⁰ There is no check on the decision-making authority of the prosecutor.²¹¹

More disturbing in the case of *D.D.*, the citation issued by a police officer determined the court in which he was subjected.²¹² There was never an opportunity for him to be adjudicated in a juvenile court.²¹³ Had the decision been up to a judge, judicial review would have provided a safeguard to the decision-making process.²¹⁴ To allow a prosecutor or law enforcement officer to decide in which court a juvenile is adjudicated undercuts the idea of fair treatment of juveniles set forth by the U.S. Supreme Court.²¹⁵

The U.S. Supreme Court has held that prior to a transfer to an adult court a juvenile “must be granted a hearing which satisfies *due process* standards.”²¹⁶ The Natrona County Municipal Court violated *D.D.*’s due process rights when no hearing was held to determine whether he should have been tried as a juvenile or an adult.²¹⁷ On appeal, the Natrona County District Court found *D.D.* was

²⁰⁶ *Kent v. U.S.*, 383 U.S. 541, 554 (1966).

²⁰⁷ See discussion *supra* Part III.D.

²⁰⁸ Contrast *Kent*, 383 U.S. at 556 (the rights of a child to avail himself to a juvenile courts exclusive jurisdiction), *Green*, 57 F.3d at 960 (citing *Kent*, 383 U.S. at 554) and WYO. STAT. ANN. §14-6-201 (2007) (the goals of the Act) with discussion *infra* Part III.F.

²⁰⁹ *In re Gault*, 387 U.S. 1, 41 (1967).

²¹⁰ See discussion *Infra* Part III.E.

²¹¹ See discussion *Infra* Part III.E.

²¹² *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 2 (Dec. 4, 2005).

²¹³ *Supra* notes 92-102 and accompanying text (note at no time were juvenile court actions instituted).

²¹⁴ See discussion *infra* part III.E.

²¹⁵ See generally, Maggie Krell, *VIEWPOINTS ON PROPOSITION 21: Think Before You Transfer: An Assessment of the Automatic Transfer of Juveniles to the Criminal Court*, 5 UC DAVIS J. JUV. L. & POL’Y 39 (2000) (citing *Kent v. U.S.*, 383 U.S. 541 (1966) and *In re Gault*, 387 U.S. 1 (1967)).

²¹⁶ *In re Gault*, 387 U.S. at 41 (emphasis supplied).

²¹⁷ See discussion *supra* Part III.D.

granted all due process rights guaranteed him under both the Wyoming and U.S. Constitutions.²¹⁸ Additionally, “[t]he Court [found] *Gault* inapposite.”²¹⁹ Wyoming does not allow the U.S. Supreme Court to reign.²²⁰ The Act in Wyoming has not evolved to a point that it can stand up to U.S. Supreme Court due process scrutiny as there is no such hearing to certify many juveniles, and no requirement that a prosecutor justify the reasons for bringing a case involving a juvenile into municipal, circuit, or even district court.²²¹

Kent and *Gault* are cases in which the U.S. Supreme Court has ruled on juveniles and due process.²²² As a result, the cases should be applicable to a juvenile in a court system and are dispositive in determining whether or not due process has been preserved.²²³

Wyoming is different than many states in that the juvenile justice system has undergone few changes in the last quarter of a century.²²⁴ This is illustrated by the fact that the U.S. Supreme Court has ruled on the transfer of juveniles, yet Wyoming continues to allow concurrent jurisdiction in many cases.²²⁵ Even though there are many options in juvenile courts to focus on rehabilitation, Wyoming does not have the statutory framework to allow the juvenile justice system to function so that the tremendous consequence of being transferred can be considered.²²⁶

Little case law exists on municipal or circuit court juvenile misdemeanor appeals in Wyoming. At the risk of introducing logic, the reason juvenile justice has never risen to the attention of the Wyoming Supreme Court or the legislature may be that paying a \$160 dollar ticket is certainly cheaper than hiring an attorney to conduct an appeal. By remaining under the judicial radar, and without judicial activism and legislative action, this problem will not be addressed. Wyoming is behind every other state so far as juvenile justice is concerned, and will continue to stay that way as long as the majority of lawmakers and the judiciary are

²¹⁸ D.D. v. City of Casper, Wyo., Seventh Judicial District Criminal Action No. 16885-A, 1 (Dec. 4, 2005).

²¹⁹ *Id.* at 8–9.

²²⁰ Compare D.D., Criminal Action No. 16885-A at 8-9 with WYO. STAT. ANN. § 14-6-201 Et. seq. (2007).

²²¹ See discussion *supra* Part III.D.

²²² *Id.*

²²³ *Id.*

²²⁴ Burman, *supra* note 61, at 671-72 (citing Edward J. Latessa et al., *Beyond Correctional Quackery-Professionalism and the Possibility of Effective Treatment*, 66 SEP. FED. PROB. 43, 44 (September 2002) (describing changes in juvenile justice system being implemented)).

²²⁵ WYO. STAT. ANN. § 14-6-203(d) (2006).

²²⁶ No separate juvenile court exists in Wyoming which is just devoted to juvenile matters in Wyoming, rather adult district courts transform into juvenile courts when the need arises.

content to fall short of national expectations.²²⁷ The articulated goal of the Act, that rehabilitation should be of utmost importance, is correct.²²⁸ Yet as long as concurrent jurisdiction is statutorily allowed, the goal will never be met.

E. Unconstitutionality of Prosecutors' Absolute Discretion Concerning Juveniles and Law Enforcement Officers' Role in Determining Juveniles' Court of Adjudication

A prosecutor is a member of the executive branch of government while also serving as an officer of the court.²²⁹ As a member of the executive branch, prosecutors have the authority to decide whether or not to file charges and prosecute a case.²³⁰ Wyoming's system has expanded the prosecutor's choice of whether or not to prosecute a crime to include deciding where a juvenile should be adjudicated.²³¹ This unchecked power to determine in which court a juvenile should be adjudicated prohibits access to the opportunities afforded in juvenile court.²³² A prosecutor need not justify why a juvenile is subjected to adult court and there is no ceremony for a transfer from juvenile court to adult court because a transfer is not required.

The Wyoming Constitution provides for separation of powers.²³³ The Wyoming Supreme Court upheld the constitutionality of prosecutor discretion to decide in which court a juvenile should be adjudicated in 1984.²³⁴ This provision goes against the due process ideals of the U.S. Supreme Court's decision in *Kent*.²³⁵ In fact, the determination should be made by a judge and the legislature should mandate this change in Wyoming statutes.²³⁶ A prosecutor's role as part of the executive branch is to "take care that the laws be faithfully executed."²³⁷ The execution of the law is very different than determining in which court a juvenile matter should be heard.²³⁸ It remains the obligation of the court to assure due

²²⁷ Sheen, *supra* note 59, at 484-85.

²²⁸ WYO. STAT. ANN. § 14-2-201 (c)(ii)(C) (2007) ("to provide treatment, training, rehabilitation . . .")

²²⁹ *Petition of Padget*, 678 P.2d 870, 871 (Wyo. 1984) (citing *People v. Dist. Court in and for County of Larimer*, 527 P.2d 50, 52 (1974)).

²³⁰ *Petition of Padget*, 678 P.2d 870, 871 (Wyo. 1984) (citing *People v. Dist. Court in and for County of Larimer*, 527 P.2d 50, 52 (1974)).

²³¹ See discussion *supra* Part III.E.

²³² WYSAC, *supra* note 12, at 13.

²³³ WYO. CONST. Art. 2, § 1.

²³⁴ *Jahnke v. State*, 692 P.2d 911, 929 (Wyo. 1984).

²³⁵ See *supra* notes 163-176 and accompanying text.

²³⁶ See discussion *supra* Part III.E.

²³⁷ *Petition of Padget*, 678 P.2d at 871 (citing WYO. CONST. Art. 4, §4) (addressing the duties of the executive branch).

²³⁸ Contrast *id.* with *infra* notes 242-246 and accompanying text.

process of law and the constitution are upheld.²³⁹ The Wyoming Constitution states the Supreme Court shall have “general superintending control over all inferior courts, under such rules and regulations as may be prescribed by law.”²⁴⁰ Accordingly, the Wyoming Supreme Court has a duty to protect the integrity of the various courts and prohibit dealing lightly with proceedings in the lower courts.²⁴¹

The Wyoming Supreme Court has the liberty to decide a case where the ends of justice require scrutiny on a right as fundamental as constitutional due process.²⁴² It must also recognize a constitutional right to due process.²⁴³ For justice to be served, juveniles should be entitled to a transfer hearing consistent with due process and fairness.²⁴⁴ Yet, this power over the court system in choosing the jurisdiction of juveniles as articulated in the Wyoming Constitution is handed to the executive branch by the legislature.²⁴⁵ The legislature laid out an intricate system for addressing juvenile delinquency with a focus of establishing a juvenile court that is geared toward rehabilitation.²⁴⁶ The only opportunity for a juvenile over the age of twelve charged with a misdemeanor to go through juvenile court is if a prosecutor, a member of the executive branch, chooses to file a petition there.²⁴⁷ When an officer issues a citation to a minor, this determination is made by a law enforcement officer and no opportunity exists to be adjudicated in a juvenile court.²⁴⁸

F. A Non-Reviewable System and the Wyoming Rational Basis Test

In *D.D.*, the Natrona County District Court applied the federal rational basis standard in establishing that juvenile justice statutes are constitutional and do not violate equal protection.²⁴⁹ However, more pertinent authority is found in Wyoming case law in *Johnson v. State Hearing Examiner's Office*. *Johnson* discussed the constitutionality of alcohol offenses and the ability of the legislature to pass laws taking away the drivers' licenses of minors when they are caught with alcohol.²⁵⁰

²³⁹ *Petition of Padget*, 678 P.2d 870, 871 (Wyo. 1984).

²⁴⁰ WYO. CONST. Art. 5, § 2.

²⁴¹ *Allen v. Allen*, 550 P.2d 1137, 1142 (Wyo. 1976).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Green v. Reynolds*, 57 F.3d 956, 960-61 (10th Cir. 1995).

²⁴⁵ WYO. CONST. Art. 5, § 29.

²⁴⁶ WYO. STAT. ANN. §§ 16-4-201 et. Seq. (2007).

²⁴⁷ *Id.* at §§ 16-4-201 to -252 (2007).

²⁴⁸ See for example the citation issued to *D.D.* as addressed *supra* note 92 (citing *D.D.* with petit larceny).

²⁴⁹ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 11 (Dec. 4, 2005).

²⁵⁰ *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992).

It held a higher scrutiny level than the federal rational basis standard should be applied when examining due process for juveniles.²⁵¹ In *Johnson*, the court first recognized that the Wyoming statute divided juveniles into three separate groups for purposes of punishment.²⁵² Similarly, the Act also divides juveniles into separate groups when determining which court has what type of jurisdiction in a delinquency case.²⁵³ The Wyoming Rational Basis Test established in *Johnson* should have been the authority to which the Natrona County District Court looked in making its determination in *D.D.*²⁵⁴

The Act grants protection to all juveniles convicted of a felony or misdemeanor if they are under the age of thirteen, yet other juveniles are not afforded the same equality.²⁵⁵ In *Johnson*, the court found the age differences of juveniles indicating separate treatment could be held to constitutional scrutiny in light of Wyoming's Constitution.²⁵⁶ In *D.D.*, the Natrona County District Court stated children are all similarly situated within the context of Wyo. Stat. § 14-3-105 because they fall within the definition of child.²⁵⁷ However, the Natrona County District Court also found enough differences in the way the statute treated juveniles to require a constitutional analysis of the level of scrutiny to determine if there was unequal

²⁵¹ *Id.* The Wyoming Rational Basis Test established in *Johnson* allows a higher level of scrutiny than that required by the federal constitution. It effectively puts a higher burden on constitutional scrutiny than that of Federal rational basis, and allows for a stricter scrutiny when there is a class of people that are being discriminated against. In effect The Wyoming Rational Base test allows strict scrutiny of constitutional rights when there is a legislatively defined class that may not fit within the definition for a suspect class under federal law. The prongs of the Wyoming Rational Basis Test are: 1) What class is harmed by the legislation and has that group been subjected to a "tradition of disfavor" by our laws?; 2) What is the public purpose that is being served by the law?; 3) What is the characteristic of the disadvantaged class that justifies the disparate treatment?; and 4) How are the characteristics used to distinguish people for such disparate treatment relevant to the purpose that the challenged laws purportedly intend to serve? See generally *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992).

²⁵² *Johnson*, 838 P.2d at 160-61 (treating those of different ages differently in punishment when caught underage with alcohol).

²⁵³ The Wyoming Juvenile Justice Statute states, "Juvenile court has exclusive jurisdiction in all cases, other than status offenses, in which a minor who has not attained the age of thirteen (13) years is alleged to have committed a felony or a misdemeanor punishable by imprisonment for more than six (6) months." The statute then continues, "Except as provided in subsection (d) of this section, the juvenile court has concurrent jurisdiction in all cases, other than status offenses, in which a minor is alleged to have committed a criminal offense or to have violated a municipal ordinance." WYO. STAT. ANN. § 14-6-203(c), (d) (2006). This statute obviously divides juveniles into at least two classes that are subject to disparate treatment.

²⁵⁴ See discussion *supra* Part III.F.

²⁵⁵ *Supra* notes 178-180 and accompanying text.

²⁵⁶ *Johnson*, 838 P.2d at 164-70.

²⁵⁷ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 10 (Dec. 4, 2005); WYO. STAT. ANN. § 14-6-201(a)(iii) (2007) (defines a child as an individual under the age of majority).

treatment thus a violation of D.D.'s right to equal protection.²⁵⁸ The Natrona County District Court commented that age was not a protected class and cited a 2001 Wyoming Supreme Court Case, *Misenheimer v. State*.²⁵⁹ *Misenheimer* cites a U.S. Supreme Court Case, *Massachusetts Board of Retirement v. Murgia*, to conclude that age was not considered a class for purposes of elevating the level of scrutiny to strict scrutiny.²⁶⁰ Alternatively, *Johnson* addressed statutes that created unfair age classifications and disparate treatment and is the more applicable case to address the constitutional question in *D.D.*

After relying upon *Misenheimer*, the Natrona County District Court continued its analysis to determine if Wyo. Stat. Ann. § 14-6-203 was rationally related to a legitimate state objective.²⁶¹ The Wyoming Rational Basis Test provides for higher constitutional scrutiny.²⁶² According to *Johnson*, a statute that uses age to separate groups that are treated disparately allows heightened scrutiny.²⁶³ Strict scrutiny is not needed to establish an argument that the Act is unconstitutional; rather using the Wyoming Rational Basis Test articulated in *Johnson* does so.²⁶⁴

The *Johnson* decision established state laws must first be examined in light of their corresponding state constitution because federal constitutional questions should be avoided when legitimately possible.²⁶⁵ Further, state constitutions "may be more protective of individual liberties" than federal protections.²⁶⁶ *Johnson* then addressed the equality of all members of the human race.²⁶⁷ *Johnson* recognized that while the federal equal protection test of strict scrutiny is designed to protect against the distinction of race and color referred to in the Fifteenth Amendment,

²⁵⁸ *D.D.*, Criminal Action No. 16885-A at 10-11.

²⁵⁹ *Id.* at 11 (citing *Misenheimer v. State*, 27 P.3d 273, 282 (citing Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 314-15 (1976))).

²⁶⁰ Mass. Board of Retirement v. Murgia, 427 U.S. 307, 314-15 (1976). *Misenheimer* is a case involving indecent acts with a minor, and does not analyze statutes differentiating arbitrary age groups. *Id.*

²⁶¹ *D.D.*, Criminal Action No. 16885-A at 11.

²⁶² *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 164 (Wyo. 1992).

²⁶³ *Id.* at 160 (discussing that the statute concerning alcohol and driver's license suspension was invalid as it offended the protections guaranteed within the state Bill of Rights included in the Wyoming Constitution).

²⁶⁴ *Id.* at 166-67.

²⁶⁵ *Id.* at 164 (citing *Employment Sec. Com'n of Wyo. v. W. Gas Processors, Ltd.*, 786 P.2d 866, 873 (Wyo. 1990)).

²⁶⁶ *Johnson*, 838 P.2d at 164 (citing *Cheyenne Airport Bd. v. Rogers*, 707 P.2d 717, 726 (Wyo. 1985) (internal citations omitted)).

²⁶⁷ WYO. CONST. Art. 1, § 2. ("In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.") *see generally* *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158 (Wyo. 1992).

the test fails to protect equally against distinctions that are not specifically referred to in the Fifteenth Amendment.²⁶⁸ The *Johnson* court made the distinction that the Wyoming Constitution requires laws affecting rights and privileges be without distinction of race, color, sex or “any circumstance or condition whatsoever other than individual incompetency.”²⁶⁹

Additionally, the court pointed to *Sanchez v. State* to address the constitutional language, finding the language should be read “so that each word or phrase has meaning and no part is superfluous.”²⁷⁰ Case law in Wyoming establishes that the Wyoming Constitution is “construed to protect people against legal discrimination more robustly than does the federal constitution” in equal protection cases.²⁷¹ Further, the state constitution, even at the lowest traditional scrutiny level, empowers courts to scrutinize classification legislation more carefully than a court can under federal doctrine.²⁷² In other words, Wyoming appellate courts can look at the constitutionality of classification legislation even more carefully than what is allowed under the federal minimum scrutiny test.²⁷³ The Natrona County District Court in *D.D.* did not use this higher level of scrutiny in its analysis.

The finding in *D.D.* is consistent with the idea that the person attacking the constitutionality of a statute has the burden to prove that statute unconstitutional.²⁷⁴ In *D.D.*, the Natrona County District Court departed from that reasoning and discounted the different groups established by the juvenile justice statute when it stated, “[t]here is no inherent right to be prosecuted as a juvenile; it is a privilege granted by the legislature, and the legislature can restrict or qualify the privilege as it sees fit as long as no arbitrary or discriminatory classification is implicated.”²⁷⁵ The Natrona County District Court held that *D.D.* and other juveniles under the jurisdiction of juvenile court are similarly situated within the context of Wyo. Stat. §14-3-105 because they come within the definition of “child.”²⁷⁶ This reference to the definition of “child” is found in the statute prohibiting immoral or indecent acts with a child and has no relevance to the Act’s disparate treatment

²⁶⁸ *Johnson*, 838 P.2d at 164-65 (citing *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432 (1985)).

²⁶⁹ *Johnson*, 838 P.2d at 164-65; WYO. CONST. Art. 1, § 3.

²⁷⁰ *Johnson*, 838 P.2d at 165 (quoting *Sanchez v. State*, 751 P.2d 1300, 1305 (Wyo. 1988)).

²⁷¹ *Johnson*, 838 P.2d at 165.

²⁷² *Id.* (quoting Robert B. Keiter, *An Essay on Wyoming Constitutional Interpretation*, XXI LAND & WATER L. REV. 527, 553 (1986)).

²⁷³ *Johnson*, 838 P.2d at 165.

²⁷⁴ Compare *Johnson*, 838 P.2d at 165 (citing *Baskin v. State ex rel. Workers Compensation Div.*, 722 P.2d 151, 155 (Wyo. 1986)) with *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 10 (Dec. 4, 2005) (citing *Ellett v. State*, 883 P.2d 940, 944 (Wyo. 1994)).

²⁷⁵ *D.D.*, Criminal Action No. 16885-A at 10.

²⁷⁶ *Id.*

and different jurisdictional qualifications of the two groups of children identified in the Act.²⁷⁷

The Natrona County District Court in *D.D.* correctly asserted that substantial changes in the Act are best addressed through legislative action.²⁷⁸ Nevertheless, it remains the obligation of appellate courts to ensure that individuals' rights to equal protection and due process are not infringed upon by legislation.²⁷⁹ The Natrona County District Court cited *Hansen v. State*, a case closely on point, to emphasize that there is no constitutional right to be tried as an adult.²⁸⁰ However, the decision in *Hansen* was based upon the assumption that there was no arbitrary classification.²⁸¹ The Act and *D.D.* can be distinguished from *Hansen* since there exists an arbitrary age classification within the Act.²⁸² One key distinction in *Hansen*, a consolidated case involving two juveniles, is one of the juveniles was given the opportunity to have a hearing to determine whether he should be tried in adult court using the factors of Wyo. Stat. Ann. § 14-6-237, and the other had his original action commenced in a juvenile court.²⁸³

Additionally, both individuals in *Hansen* were accused of violent felony crimes and fell within the first group of the juvenile justice statutes that allows exclusive jurisdiction.²⁸⁴ In contrast, *D.D.* fell into the other classification in the juvenile justice statutes that allows concurrent jurisdiction, and he did not have a right to any type of transfer hearing or juvenile action.²⁸⁵ This is a critical difference when examining *D.D.* Because *Johnson* contained two age classifications that were given disparate treatment, it provides a more accurate rule to determine the constitutionality of the Wyoming juvenile justice statutes.²⁸⁶ The fact remains that the jurisdictional piece of the statute is inconsistent with the public purpose of the Act as stated in Wyo. Stat. Ann. §14-6-201(c).²⁸⁷

²⁷⁷ WYO. STAT. ANN. § 14-6-201(a)(iii) (2007).

²⁷⁸ *D.D.*, Criminal Action No. 16885-A at 14.

²⁷⁹ See discussion *supra* Part III.E.

²⁸⁰ *D.D.*, Criminal Action No. 16885-A at 12 (citing *Hansen v. State*, 904 P.2d 811, 818 (Wyo. 1995)).

²⁸¹ *Hansen*, 904 P.2d at 817-18 .

²⁸² *Infra* note 294 and accompanying text.

²⁸³ *Hansen*, 904 P.2d at 814-15.

²⁸⁴ WYO. STAT. ANN. § 14-6-203(d) (2007) ("the juvenile court has exclusive jurisdiction . . .").

²⁸⁵ *Id.* at § 14-6-203(c) ("the juvenile court has concurrent jurisdiction . . .").

²⁸⁶ *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 166 (Wyo. 1992).

²⁸⁷ WYO. STAT. ANN. § 14-6-201(c) (2007) states:

The Act is construed to effectuate the following public purposes (in part)(i): To provide for the best interests of the child and the protection of the public and public safety; (ii)(A)To promote the concept of punishment for criminal acts while recognizing and distinguishing the behavior of children who have been victimized

The *Johnson* court used a heightened minimum scrutiny test long articulated by Justice Stevens, and asked four questions when confronted with an equal protection issue.²⁸⁸ The Natrona County District Court in *D.D.* incorrectly answered the question of whether the jurisdiction laid out in the Act was rationally related to a legitimate state objective.²⁸⁹ The court then commented the state has a legitimate interest in assuring the reservation of state resources for treatment and physical evaluations for only those who need and will benefit from them.²⁹⁰ Thereafter, the court concluded the statute logically stands to reason that the differences in treatment between major crimes and minor crimes bear a rational relationship to the objective of conservation of public resources and a reasonable method of obtaining it.²⁹¹ The correct analysis would have applied the Wyoming Rational Basis Test and the court should have answered the questions asked in *Johnson*: 1) What class is harmed by the legislation and has that group been subjected to a “tradition of disfavor” by our laws?; 2) What is the public purpose that is being served by the law?; 3) What is the characteristic of the disadvantaged class that justifies the disparate treatment?; and 4) How are the characteristics used to distinguish people for such disparate treatment relevant to the purpose that the challenged laws purportedly intend to serve?²⁹²

The answer to the first question of what class is harmed by the legislation is the Act creates age groups with disparate treatment based on age. Juveniles over the age of thirteen charged with minor offenses are denied the same opportunities for treatment and rehabilitation as those under the age of thirteen who have been charged with a crime that may have a six month incarceration period. The Natrona County District Court found in *D.D.* the state had a legitimate interest to prevent individuals over the age of thirteen charged with minor offenses from accessing rehabilitative resources because of the need to reserve them for those who need and will benefit from them.²⁹³ This defies logic since a court would not know who needs services unless the factors that the Natrona County District Court found to be irrelevant were considered. The factors are not considered in adult proceedings, yet the Natrona County District Court ruled that the state has

or have disabilities, such as serious mental illness that requires treatment; (iii)(B) To remove. . . the taint of criminality from children committing certain unlawful acts;(ii)(C) and, 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 become functioning and contributing adults.

²⁸⁸ *Johnson*, 838 P.2d at 166-67.

²⁸⁹ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A, 11 (Dec. 4, 2005).

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Johnson*, 838 P.2d at 166-67.

²⁹³ *D.D.*, Criminal Action No. 16885-A at 11.

a legitimate interest in deciding who to help.²⁹⁴ These factors must be considered in juvenile court settings to establish where the resources should be used.²⁹⁵

Second, the governmental purpose served by the classification is unclear. The Act's purpose is extremely clear that rehabilitation is a goal, but allowing exclusive jurisdiction for juvenile adjudication to one group and not others is not addressed.²⁹⁶ The Natrona County District Court in *D.D.* found judicial efficiency was one reason for the classification.²⁹⁷

The third question in *Johnson* asks for identification of the characteristic of the group justifying disparate treatment.²⁹⁸ The analysis compared the disparate treatment of those between nineteen and twenty-one years of age with those who were older than twenty-one years of age.²⁹⁹ The argument asserted the difference revolved around the degree of independence each class possessed.³⁰⁰ The classification of a statute allowing a driver's license to be suspended based upon one group being more dependent was found to be no more than conjecture.³⁰¹ The Wyoming Supreme Court has found conjecture not enough for a statute to categorize individuals stating, "any claim that the restriction of the law bears a reasonable relation to a public interest must rest not on conjecture but must be supported by something of substance."³⁰²

Fourth, the Wyoming Supreme Court in *Johnson* dismissed the state's assumption that those younger than nineteen are less independent than those who are nineteen or twenty years old, and determined the state would still have to show the relevance of the characteristic to the restriction.³⁰³ By the same token, the assumption in *D.D.* was anyone under thirteen years of age is more susceptible to rehabilitation, hence exclusive jurisdiction is appropriate.³⁰⁴ Alternatively a

²⁹⁴ *Id.*

²⁹⁵ *Id.* The court found that the history of *D.D.* was of questionable relevance, yet in order to be considered the proceedings should be in a juvenile court setting where the history and factors for rehabilitation are considered. *Id.*

²⁹⁶ *Supra* notes 141-44 and accompanying text.

²⁹⁷ *D.D.*, Criminal Action No. 16885-A at 11.

²⁹⁸ *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158,166-67 (Wyo. 1992).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.* at 167 (quoting *Nehring v. Russell*, 582 P.2d 67, 76-77 (Wyo. 1978)). *Additionally*, BLACK'S LAW DICTIONARY defines "conjecture as", "[a] guess; supposition; surmise." BLACK'S LAW DICTIONARY 868 (8th ed. 2004).

³⁰³ *Johnson*, 838 P.2d at 167.

³⁰⁴ *D.D. v. City of Casper, Wyo.*, Seventh Judicial District Criminal Action No. 16885-A at 10-11 (Dec. 4, 2005) (accepting there was no protected class and that minor crimes do not merit juvenile treatment).

fourteen-year-old would not have the same rehabilitative nature. It appears state resources should not be used for fourteen to seventeen-year-olds to rehabilitate them into law abiding, contributing adults. The Natrona County District Court addressed this when it stated there is no need for juvenile treatment for minor crimes, and the state has a legitimate interest to assure state resources are only used for those that will benefit from them.³⁰⁵ There is no substance to this assertion; rather this decision is based on conjecture.

Nationwide studies conducted by the Department of Justice show that family arrangements and other factors contribute to higher offense rates for offender at seventeen years of age; therefore, it would be reasonable to allow juveniles thirteen and older juvenile court adjudication where all “factors” could be considered in utilizing a rehabilitative approach to reduce recidivism.³⁰⁶ The nationwide study revealed the high percentage of recidivism in juvenile offenders around the age of sixteen or seventeen.³⁰⁷ Perhaps mandatory adjudication in a juvenile court could turn the tide in this trend. Numerous statistics in the nationwide study bolster a conclusion that dealing with juveniles in a rehabilitative way may prevent future adult offenses.³⁰⁸ This outcome rests on substance rather than conjecture as required by *Johnson*.³⁰⁹

In light of statistical information and the discussion regarding juvenile treatment for thirteen to eighteen-year-olds, it is reasonable to infer a right exists to the environment a juvenile court provides. *Johnson* asserted that even if there is a legitimate assumption by the state to distinguish groups by age, the state is still required to show the relevance of these age specific distinctions.³¹⁰ The statute states only those juvenile delinquents under the age of thirteen have the right to exclusive jurisdiction by the juvenile court. Statistical data supports juveniles up to the age of eighteen benefitting from adjudication in the juvenile court system.³¹¹ The division between juveniles under the age of thirteen and those over thirteen is counter-productive and counter-intuitive. The differentiation does not comport with the goals of the Act.³¹² Using the *Johnson* minimum scrutiny analysis, the differentiation between groups does not pose a special threat to the government’s legitimate interest and therefore is unconstitutional.³¹³

³⁰⁵ *Id.* at 11.

³⁰⁶ Snyder & Sickmund, *supra* note 18 at 72.

³⁰⁷ *Id.* (discussing family background as one factor in Juvenile Offenders).

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 71.

³¹⁰ *Johnson v. State Hearing Examiner’s Office*, 838 P.2d 158, 167 (Wyo. 1992).

³¹¹ Snyder & Sickmund, *supra* note 18, at 72.

³¹² See WYO. STAT. ANN. § 14-6-201 et. seq. (2007).

³¹³ *Johnson*, 838 P.2d at 166-67.

The *Johnson* court found that the controlling statute violated equal protection.³¹⁴ Under the four-question analysis, there is strong support the age division in the Act violates equal protection and due process of those individuals who do not have the right to juvenile justice court unless a prosecutor chooses to adjudicate them in a juvenile justice system.

IV. CONCLUSION

Wyoming's Juvenile Justice Act is flawed and change is needed. Parents have a duty to appear with their child in a juvenile delinquency proceeding and are parties in a juvenile matter. In *D.D.*, the parents were not made aware that their child had committed a crime until he had been arrested on a bench warrant. This forced *D.D.*'s parents to violate the Wyoming Statute that states it is the responsibility of "one (1) or both parents to appear . . . when the minor is required to appear and is alleged to have committed a criminal offense or to have violated a municipal ordinance."³¹⁵ *In re Gault* provides the authority to assure this does not occur.

Juveniles have a right to juvenile adjudication. The appropriate means to command the appearance of a juvenile in adult court is through transfer from juvenile court to adult court. The discretion on whether or not to transfer a juvenile should rest with the judge, not a prosecutor or law enforcement officer.

Due process is a fundamental right that must be afforded to all juveniles in Wyoming as articulated by *Kent* and *In re Gault*. *D.D.* did not have an opportunity to benefit from the rehabilitative nature of juvenile court when the discretion was left to the police officer who required *D.D.* to appear in municipal court. Similarly, absolute discretion granted to prosecutors to determine the court of adjudication for juveniles is problematic. This discretion has been found constitutional by the Wyoming Supreme Court, but applying the Wyoming Rational Basis Test reveals that the present Act is unconstitutional and violates juveniles' rights to due process and equal protection.

Concurrent jurisdiction in the statute separates juveniles into two different groups, one of which is afforded the absolute right to be adjudicated in a juvenile court, and the other that is seldom afforded the rehabilitative nature of the Juvenile Justice Act Statutes. Concurrent jurisdiction is self-defeating and does not support the goals of the Act to treat juveniles in a rehabilitative way. The Tenth Circuit emphasized the importance of preventing a juvenile from adjudication in an adult court "without ceremony—without hearing, without effective assistance of

³¹⁴ *Id.* at 180-81 (discussing that the statute deprived plaintiffs of equal protection or due process in violation of the Wyoming Constitution); See WYO. CONST. Art. 1, § 2 "Equality of all." *Id.*

³¹⁵ WYO. STAT. ANN. § 14-2-205(A) (2007).

counsel, without a statement of reasons.” Concurrent jurisdiction allows absolute prosecutorial discretion. In some instances, officers choose the court where a juvenile will be adjudicated. This is unconstitutional and does not comply with the purposes of the Act.

The responsibility to correct these constitutional breaches may lie with the legislature, but Wyoming Courts should also acknowledge the unconstitutionality of the Act. With ninety-seven percent of juvenile offenders being adjudicated in adult courts, in Natrona County, it is apparent that Wyoming’s Juvenile Justice Act fails the majority of them. The *D.D.* decision is an example where the court system failed a juvenile, a failure that happens far too frequently. Wyoming’s Juvenile Justice Act is illegal and unconstitutional. The Wyoming Legislature and Wyoming Courts must closely examine Wyoming’s “Outlaw” Juvenile Justice Act when addressing youthful offenders, and make the necessary changes to ensure that juveniles’ rights are preserved.