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COMMENTS

THE WYOMING JUVENILE COURT ACT OF 1971

INTRODUCTION

A significant achievement of the Forty-first Legislature of Wyoming was the enactment of the Juvenile Court Act of 1971.¹ The impetus for the passage of the Act was probably the effect of United States Supreme Court decisions in the cases of *Kent v. United States*² and *In Re Gault*³ which extended the rights of due process and fair treatment to juveniles involved in juvenile court decisions. Prior to these decisions, juveniles in most jurisdictions were denied many procedural rights extended to adult offenders in criminal proceedings.⁴ These basic rights were denied juveniles on grounds that the child was being "treated" and "rehabilitated" and that procedures were clinical rather than punitive.⁵ "These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae*."⁶

The decision in *Kent* did not purport to rest upon a constitutional basis. The majority opinion stated: "The Juvenile Court Act and the decisions of the United States Court of Appeals for the District of Columbia provide an adequate basis for the decision of this case, and we go no further."⁷ However, the case "emphasized the necessity that 'the basic requirements of due process and fairness' be satisfied in such proceedings."⁸ The language of the case indicates a similar result under any statutory language. The decision in *Gault*

1. WYO. STAT. §§ 14-115.1 to .45 (Supp. 1971). A procedural "flow chart" is provided in Appendix A. Reference to it may aid understanding of this article.

2. 383 U.S. 541 (1965).

3. 387 U.S. 1 (1967).

4. *Kent v. United States*, 383 U.S. 541, 555 (1965).

5. *In Re Gault*, 387 U.S. 1, 15-16 (1967).

6. *Id.* at 16.

7. *Kent v. United States*, *supra* note 4, at 556.

8. *In Re Gault*, 387 U.S. 1, 12 (1967).

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dispels any notion that a child is not entitled to due process. The Court specifically held that the following rights must be afforded juveniles charged as delinquents:

- [1.] 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'. [This notice must be given to both the child and his parents or guardian and must be in writing.]⁹
- [2.] [T]he child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.¹⁰
- [3.] [T]he constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.¹¹
- [4.] [A]bsent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross examination in accordance with our law and constitutional requirements.¹²

The Court did not rule on the questions of the juveniles' right to a transcript of the trial or his right to appellate review. The opinion does, however, call attention to the unfortunate consequences of failing to provide a record, a right of appellate review and a statement of reasons for the decision by the judge. "The language reads like a warning shot, fired to gain the attention of state court judges and lawmakers. It will not go unheeded by the prudent."¹³ In recent decisions the Court has decided that "due process and fairness" require proof of delinquency beyond a reasonable doubt,¹⁴ but not a trial by jury.¹⁵

9. *Id.* at 33.

10. *Id.* at 41.

11. *Id.* at 55.

12. *Id.* at 57.

13. Paulsen, *The Constitutional Domestication of the Juvenile Court*, SUPREME COURT REVIEW 233, 237 (1967).

14. *In Re Winship*, 397 U.S. 358 (1970).

15. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

A reading of the Juvenile Court Act of 1951,¹⁶ which was repealed by the 1971 Act,¹⁷ reveals several provisions and omissions which required revision in view of the standards set forth in *Gault*. The parents or guardian were entitled only to notice that a petition had been filed, not to notice of its contents.¹⁸ The proceedings were to be recorded so as to provide a record for appeal only upon request by the child's parent or guardian and as the judge deemed fit and proper.¹⁹ No provision was made to inform the child or his parent or guardian of their right to counsel. No explicit provision was made for a juvenile's right to present evidence and cross examine witnesses, although the Court would summon any person whose presence was deemed necessary.²⁰

The 1971 Act was prepared by the Office of the Attorney General and several changes were made by the legislature. One of the most notable legislative changes was the striking of the General Purpose and Construction Clause.²¹ The clause essentially provided that the purpose of the act was to secure for each child coming before the court such care, guidance, supervision and control as necessary to serve the best interests of the child and the public and to develop him into a responsible citizen. The Act was to be liberally construed to this end.²² Similar clauses are contained in the model acts this writer reviewed²³ and in almost all juvenile court laws.²⁴ The potential importance of such clauses is exemplified by *Lewis v. State*²⁵ in which the Supreme Court of Nevada found

16. Ch. 125, §§ 1 to 19, [1951] Wyo. Sess. Laws 190-96 (repealed 1971).

17. Ch. 255, § 45, [1971] Wyo. Sess. Laws 641.

18. Ch. 125, § 8, [1951] Wyo. Sess. Laws 193 (repealed 1971).

19. Ch. 125, § 11, [1951] Wyo. Sess. Laws 193-94 (repealed 1971).

20. Ch. 125, § 8, [1951] Wyo. Sess. Laws 193 (repealed 1971).

21. DIGEST OF SENATE AND HOUSE JOURNALS OF THE FORTY-FIRST LEGISLATURE OF WYOMING, at 168 (1971).

22. S.F. 128, 41st State Legis. at 1-2 (1971).

23. THE UNIFORM JUVENILE COURT ACT, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1968). This Act, which will hereinafter be referred to as the UNIFORM ACT, was drafted by the National Conference of Commissioners on Uniform State Laws and was approved by the American Bar Association on August 7, 1968.

THE STANDARD JUVENILE COURT ACT, *NPPA Journal*, vol. 5. This Act, which will hereinafter be referred to as the STANDARD ACT, was drafted by the National Probation and Parole Association in cooperation with the National Council of Juvenile Court Judges and the U.S. Children's Bureau.

CHILDREN'S BUREAU (Pub. No. 472) *legislative guide for drafting FAMILY AND JUVENILE COURT ACTS*. This Act, which will hereinafter be referred to as the CHILDREN'S BUREAU ACT, was drafted by the U.S. Children's Bureau.

24. STANDARD ACT § 1, Comment at 329.

25. 478 P.2d 168 (Nev. 1970).

the standards they felt necessary to conform to the requirements of *Kent* in the general purpose clause of the Nevada Juvenile Court Act. An attempt to return the general purpose clause to the 1971 Wyoming Act by amendment failed.²⁶

The purpose of this article is to explore some of the provisions of Wyoming's Juvenile Court Act of 1971 in light of recent decisions by the Supreme Court of the United States, various state appellate courts and the provisions of several model juvenile codes with a view to revealing the various strengths and weaknesses in the Act.

Prior to any discussion of procedures under the Juvenile Court Act of 1971, it should be noted that Rule 51(b) of the Wyoming Rules of Criminal Procedure states:

In all cases involving juveniles, the juvenile court shall, in the exercise of its discretion, determine initially whether the proceedings shall be subject to the provisions of the Juvenile Court Act of 1951. In exercising this discretion, the court shall consider whether the behavior, conditions and environment relating to, or the conduct and acts of, the juvenile (1) concern the neglect, dependency or welfare of the juvenile, or (2) constitute violations or attempted violations of any state or local law.

Therefore, any proceedings in juvenile court may be conducted either under the 1971 Act or under the Rules of Criminal Procedure. Assuming the Rules of Criminal Procedure will be amended to refer to the 1971 Act, the Act does not provide an exclusive procedure.

DEFINITIONS

The Act provides, in a single section,²⁷ exhaustive definitions and descriptions of the terms peculiar to proceedings in the juvenile court. These definitions are substantially similar to those contained in the Standard and the Children's Bureau Acts.²⁸ Some additions have been made to conform to the needs peculiar to this state. The inclusion of comprehen-

26. DIGEST, *supra* note 21, at 174.

27. WYO. STAT. § 14-115.2 (Supp. 1971).

28. See STANDARD ACT § 2; CHILDREN'S BUREAU ACT § 2.

sive definitions in the Act serves to clarify the Act; the rights, duties and functions of the court, of agencies, and of the parent and child. Common definitions also serve to facilitate communication and understanding.²⁹ A knowledge of these definitions is essential to a complete understanding of the Act.

JURISDICTION OF THE JUVENILE COURT

The court has general jurisdiction in all matters and proceedings commenced therein or transferred to it by the district court:³⁰

- (a) concerning any child alleged to be delinquent, neglected or in need of supervision;³¹
- (b) concerning any minor alleged to have committed a delinquent act before attaining eighteen years of age;³²
- (c) concerning the parents, guardian or custodian of any child alleged to be delinquent, neglected or in need of supervision.³³

29. CHILDREN'S BUREAU ACT § 2, Comment at 5-6.

30. WYO. STAT. § 14-115.4 (Supp. 1971).

31. WYO. STAT. § 14-115.4(a) (Supp. 1971). § 14-115.2(m) "Delinquent child" means a child who has committed a delinquent act. § 14-115.2(l) "Delinquent act" means an act punishable as a criminal offense by the laws of this state or any political subdivision thereof. § 14-115.2(o) "Neglected child" means a child who has been physically abused or mistreated in a manner or to an extent which is unreasonable and in excess of ordinary parental or custodial authority; or who has been abandoned by his parents, guardian or custodian; or who is without proper care and control, or lacks subsistence, education as required by law, medical care of (or) [*sic*] treatment, or supervision necessary for his health and welfare because of the faults, habits, conduct, act or omissions of his parents, guardian or custodian; or whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; provided, however, no child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, shall, for that reason alone, be considered to be a neglected child. § 14-115.2(n) "Child in need of supervision" means any child who, being subject to compulsory school attendance, is habitually truant; or who has run away from home; or who habitually disobeys the reasonable and lawful demands of his parents, guardian, custodian, or other proper authority, and is ungovernable and beyond control.

32. WYO. STAT. § 14-115.4(b) (Supp. 1971). § 14-115.2(f) "Minor" means an individual who is under the age of twenty-one years.

33. WYO. STAT. § 14-115.4(c) (Supp. 1971). § 14-115.2(k) "Custodian" means a person, agency, organization or institution, other than a parent, having legal custody of a child by court order, or having actual physical custody and control of a child and acting in *loco parentis*.

Coincident with proceedings concerning a child alleged to be delinquent, neglected, or in need of supervision, the court shall have jurisdiction to determine questions concerning the right to legal custody of the child, or to order any party to the proceedings to perform such acts, duties and responsibilities as the court may deem necessary, or to refrain from such acts or conduct as the court may deem detrimental to the enforcement of any lawful order of disposition of the child made by the court pursuant to this act.³⁴

The Act has not gone as far in extending jurisdiction to the juvenile court as have the model acts.³⁵ These proposed acts extend to the court original jurisdiction to decide all questions of custody, termination of parent-child relationships, adoption and the commitment of mentally ill or retarded children. The Wyoming court has power to decide only those questions of custody and commitment for examination coincidental with proceedings arising under the Act.³⁶ Thus, the child must be alleged to be delinquent, neglected or in need of supervision before the juvenile court can decide questions of custody. Questions of adoption, termination of parent-child relationship and commitment of mentally ill or retarded children must be decided by the district court.³⁷

The court does have jurisdiction over the majority of situations recommended by one study to be included in juvenile court jurisdiction:³⁸

1. "Children who are alleged to have violated any Federal or State law, or ordinance of a municipality of the State."³⁹
2. "Children who are alleged to be beyond the control of their parents, guardian, or other lawful custodian

34. WYO. STAT. § 14-115.4 (Supp. 1971).

35. See STANDARD ACT § 8; CHILDREN'S BUREAU ACT § 7; UNIFORM ACT § 3.

36. WYO. STAT. § 14-115.20 (Supp. 1971).

37. See WYO. STAT. § 1-708 (Supp. 1971) adoption; WYO. STAT. § 14-53 (1957) termination of parent-child relationship; WYO. STAT. § 14-115.20 (Supp. 1971) commitment for mental illness or retardation.

38. CHILDREN'S BUREAU, PUB. NO. 437, STANDARDS FOR JUVENILE AND FAMILY COURTS 33 (1966). This publication is hereinafter referred to as STANDARDS.

39. WYO. STAT. § 14-115.2(m) (Supp. 1971). The Act does not provide for jurisdiction over a child alleged to have violated federal laws. This jurisdiction is probably provided in other acts to allow the juvenile court to take custody of the juvenile and deal with him under state law as provided in 18 U.S.C. § 5001.

to the point that their welfare, or that of others, is in danger."⁴⁰

3. "Children whose parents, guardian or custodian have allegedly neglected to provide them with the support or education, as provided by law, or medical care necessary to their well being, or who have been abandoned by their parents or custodian."⁴¹
4. "Children whose environment is injurious to their welfare."⁴²

It is submitted that a further extension of the jurisdiction of the juvenile court in Wyoming to conform to that recommended by the model acts is unnecessary. The sparse population of the state would seem to dictate against the need for such a specialized court. As the judges of the district court are the juvenile court judges,⁴³ it seems any further extensions of the jurisdiction of the juvenile court is not warranted. Cases brought in the district court will receive the same fair treatment as those originating in the juvenile court.

The juvenile court is not granted exclusive jurisdiction by the 1971 Wyoming Act. Its jurisdiction is concurrent with other courts having jurisdiction over like matters. Procedures provided by the Act are to be additional to or alternatives for other procedures provided for handling children. The Act does not repeal or affect by implication procedures for prosecuting criminal actions involving children, or deprive the district court of jurisdiction to decide questions involving children when such questions are the subject of or incidental to actions in the district court.⁴⁴

The provision for concurrent jurisdiction shows that the legislature definitely intended the 1971 Act to provide additional and alternative remedies to those already existing. A similar provision in the 1951 Act⁴⁵ was said to be declaratory of the legislative wish that the new procedure supplement and

40. WYO. STAT. §§ 14-115.2(n), 14-115.6(iii)-(iv) (Supp. 1971).

41. WYO. STAT. § 14-115.2(o) (Supp. 1971).

42. WYO. STAT. §§ 14-115.2(o), 14-115.6(iii) (Supp. 1971).

43. WYO. STAT. § 14-115.3 (Supp. 1971).

44. WYO. STAT. § 14-115.4 (Supp. 1971).

45. Ch. 125, § 3, [1951] Wyo. Sess. Laws 190-91 (repealed 1971).

not supplant prior existing procedures for the handling of juvenile offenders and dependents.⁴⁶

The provision for concurrent jurisdiction between the juvenile court and others has not been incorporated in the juvenile laws of most other states. The Standard, Uniform and Children's Bureau Acts all provide for exclusive original jurisdiction in the juvenile court as do the Acts of most states.⁴⁷

The concurrent jurisdiction may result from a provision in the Constitution of the State of Wyoming conferring original jurisdiction on the district courts of all causes both at law and in equity and in all criminal cases.⁴⁸ The Constitution also provides for legislative creation of juvenile courts and states that their jurisdiction shall be as the legislature may by law provide.⁴⁹ A thorough reading of the Act indicates that the legislature did not intend to confer a right upon juveniles to take advantage of the juvenile process, but rather placed in the judges of the state a discretionary power to allow them to do so. The Wyoming Supreme Court in *Strode v. Brorby*⁵⁰ stated that the provisions of the Juvenile Court Act are cumulative and do not in the first instance preclude prosecution under appropriate statutes and rules. Although in *Strode* the court was referring to the 1951 Act, the 1971 Act is similar and seems subject to being interpreted in the same manner.⁵¹

Similar statutes have been attacked in other jurisdictions. In an action attacking the district court's refusal to classify the defendant as a juvenile in order that proceedings be conducted under Iowa's Juvenile Court Act, which provided for concurrent jurisdiction, the Supreme Court of Iowa stated:

The fact that the acts of the juvenile might indicate he is delinquent and authorize the juvenile court to

46. Wunnicke, *The 1951 Juvenile Court Law of Wyoming*, 8 WYO. L. J. 173, 186 (1953).

47. STANDARD ACT § 8; UNIFORM ACT § 3; CHILDREN'S BUREAU ACT § 7. *E.g.*, HAWAII REV. STAT. § 571-11 (Supp. 1970); N. Y. JUDICIARY LAW § 115 (McKinney Supp. 1971).

48. WYO. CONST. art. 5, § 10.

49. WYO. CONST. art. 5, § 29.

50. 478 P.2d 608 (Wyo. 1970).

51. Compare WYO. STAT. § 14-101 (1957) with WYO. STAT. § 14-115.4 (Supp. 1971).

take charge of him as such, will not relieve him of the consequences of his crime or abridge the right of the grand jury or county attorney to charge him with the crime. Although a child who commits a felony may be found to be delinquent, he may also be guilty of a crime.⁵²

The court held that the district court did not abuse its discretion in refusing to refer the matter to the juvenile court. It is interesting to note that the Iowa Legislature amended the statute soon after this decision to provide that all proceedings involving juveniles must be immediately transferred to juvenile court if charged with a public offense not exempted from the juvenile statute.⁵³

The Supreme Court of Utah upheld a statute conferring concurrent jurisdiction on the juvenile and district courts in cases involving offenses which would be felonies if committed by an adult.⁵⁴ The defendant alleged the statute violated the fourteenth amendment because of the differences in quantum and quality of detention or punishment in the district and/or juvenile court. The court said that the options conferred by the statute indicated a "design to give a break to a deserving child that he did not have at common law or before the juvenile court legislation appeared."⁵⁵ They further stated that defense's argument would logically eliminate district court jurisdiction in *all* felony cases involving minors, and finally concluded that the argument was entirely unacceptable on any basis.

The Supreme Court of Nebraska has construed a Nebraska statute⁵⁶ conferring concurrent jurisdiction on the juvenile and other courts as allowing the county attorney to properly bring an action in either the juvenile or criminal courts.⁵⁷ In a Nebraska case argued before the United States Supreme Court, defense counsel, in an attempt to remove the case into district court where a jury trial was available, argued

52. *State v. Stueve*, 260 Iowa 1023, 150 N.W.2d 597, 600 (1967).

53. *Mallory v. Paradise*, 173 N.W.2d 264 (Iowa 1969).

54. UTAH CODE ANN. § 55-10-5(2) (1953).

55. *Mayne v. Turner*, 24 Utah 2d 195, 468 P.2d 369, 371 (1970).

56. NEB. REV. STAT. § 43-205.04 (Reissued 1968).

57. *State v. McCoy*, 145 Neb. 750, 18 N.W.2d 101 (1945); *Fugate v. Ronin*, 167 Neb. 70, 91 N.W.2d 240 (1958).

that his client was denied due process. The basis for the argument was that the prosecuting attorney had unreviewable discretion whether to proceed in juvenile court or in ordinary criminal proceedings.⁵⁸ The argument was dismissed because it was not made before the juvenile court, the district court did not decide the issue in habeas corpus proceedings, only passing reference was made to the issue on appeal to the Nebraska Supreme Court, and the Nebraska Supreme Court did not determine the issue.⁵⁹ The Court also noted the prosecutor's discretion was not the result of any explicit statutory provision but derived from Nebraska case law.⁶⁰ The case was reargued before the Nebraska Supreme Court which held that the statute was not invalid for permitting the county attorney to decide whether juveniles are to be tried in juvenile or criminal courts. The basis for the decision was that the discretion was not conferred by the Nebraska Juvenile Court Act but by prior case law.⁶¹ An appeal to the United States Supreme Court from that action was dismissed for want of a substantial federal question.⁶²

The Children's Bureau has recommended that no exceptions be made to the juvenile court's exclusive original jurisdiction because of the serious nature of an offense committed by a child.⁶³ To remove cases of serious offenses from the jurisdiction of the juvenile court is to deny the basic philosophy that rehabilitation and not punishment is the reason for having the court. "These children may be in particular need of the care, treatment, and help available through such a court."⁶⁴ However, exceptions for serious offenses are made in many states and have been upheld by the state courts against various constitutional attacks. The basis on which exceptions are upheld is that juveniles were accorded no special rights at common law, and if the legislature wishes to grant special privileges to children, it may do so on such terms and subject

58. *DeBacker v. Brainard*, 396 U.S. 28 (1969).

59. *Id.*

60. *Id.* at 32 n.6.

61. *DeBacker v. Sigler*, 185 Neb. 352, 175 N.W.2d 912 (1970).

62. *DeBacker v. Sigler*, 403 U.S. 926 (1971).

63. STANDARDS at 34.

64. *Id.*

to such limitations as it deems fit.⁶⁵ Although there seems to be no Constitutional objection to the concurrent jurisdiction conferred by the Wyoming Act, it is submitted that the legislature ought to confer exclusive original jurisdiction on the juvenile court. By so doing, the right to an initial hearing in juvenile court can be extended to the children of Wyoming. This right has been conferred by the model acts and the juvenile codes of our more progressive sister states. Any cases coming before the juvenile court which are not suitable for disposition under the Juvenile Court Act may then be transferred to the district court by the juvenile court for decision and disposition.⁶⁶

TAKING CHILD INTO CUSTODY BY A LAW ENFORCEMENT OFFICER

A child may be taken into custody by a law enforcement officer with a warrant or court order or:

1. when he has committed an act punishable as a criminal offense in the presence of the officer;⁶⁷
2. when there are reasonable grounds to believe he has committed a felonious act;⁶⁸
3. when there are reasonable grounds to believe he is abandoned or lost, sick or injured, or is endangered and immediate custody appears necessary for his protection;⁶⁹
4. when his conduct endangers himself or the person or property of others and custody appears necessary;⁷⁰
5. when there are reasonable grounds to believe he has run away.⁷¹

The 1951 Wyoming Act provided that any child could be taken into custody whose conduct or circumstances were such

65. *See, e.g.*, *Delaware v. Dowling*, 267 A.2d 592 (Del. 1970); *State v. Doyal*, 59 N.M. 454, 286 P.2d 306 (1955); *State v. Little*, 241 Or. 557, 407 P.2d 627 (1965).

66. WYO. STAT. § 14-115.38 (Supp. 1971).

67. WYO. STAT. § 14-115.6(a) (i) (Supp. 1971).

68. *Id.* at (ii).

69. *Id.* at (iii).

70. *Id.* at (iv).

71. *Id.* at (v).

as to bring him within the provision of that Act.⁷² The 1971 Act specifically sets out the circumstances which subject the child to arrest. This section is similar to that found in the Standard Act.⁷³ The 1951 Wyoming Act and the Standard Act both provide that such custody is not to be deemed an arrest.⁷⁴ The 1971 Act contains no such provision. The Children's Bureau Act has no provision for not deeming custody an arrest.⁷⁵ The drafters of that Act felt that not calling custody an arrest was a legal fiction since the child is held in involuntary custody.⁷⁶ Perhaps the best solution to the problem is provided by the Uniform Act. Under that Act, custody is not an arrest, except for the purpose of determining its validity under either the state or federal constitution.⁷⁷ A provision like that of the Uniform Act allows the child the advantages of arrest procedures during legal process. It also enables him to state on school and employment applications, armed forces enlistment forms and similar forms that he has not been arrested.⁷⁸

The grounds for taking into custody for violations of law under the Act are the same as those applied to adults in Wyoming.⁷⁹ The other provisions for taking into custody seem to be acceptable for reasons of protecting the welfare of the child and protecting property located within the state. However, some problems may occur when a juvenile is taken into

72. Ch. 125, § 5, [1951] Wyo. Sess. Laws 191-92 (repealed 1971).

73. STANDARD ACT § 16. The Standard Act does not provide for taking into custody a child appearing to be abandoned, lost or ill; or to protect the property of others. THE UNIFORM ACT § 13 and CHILDREN'S BUREAU ACT § 18 both provide for taking ill or injured children into custody. None of the model acts provide for taking into custody in order to protect the property of others.

74. Ch. 125, § 5 [1951] Wyo. Sess. Laws 191-92 (repealed 1971); STANDARD ACT § 16.

75. CHILDREN'S BUREAU ACT § 18.

76. *Id.* Comment at 20-21.

77. UNIFORM ACT § 13(b). The drafters of this Act felt this provision stated the law on the subject. *Id.* Comment at 257.

78. Ferster & Courtless, *Legislation, The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender*, 22 VAND. L. REV. 567, 584 (1969).

79. See WYO. STAT. § 7-155 (1957); *State v. George*, 32 Wyo. 223, 231 P. 683 (1924); *Whitely v. State*, 418 P.2d 164 (Wyo. 1966), *rev'd on other grounds*, 401 U.S. 560 (1971).

custody under a provision designed to protect his welfare and he is subsequently charged with a violation of law.⁸⁰

When a child is taken into custody for an alleged violation of the law, he should be given the same warnings and protections afforded adult offenders. The 1971 Wyoming Act specifically states he shall be informed of all rights afforded a criminal defendant at the initial hearing.⁸¹ These safeguards are especially important as he may be subject to criminal liability for his actions either through the original proceeding being brought in the district court or through transfer from the juvenile court to the district court. Whether or not a child taken into custody for protection of his own welfare should be given the same warnings and protections as adult offenders should depend on the possible consequences of his custody.⁸² Thus, where it appears the juvenile may be subject to criminal prosecution, he should be afforded all protections allowed adult offenders without regard for the reason he was taken into custody.

A provision for taking a child into custody by a probation officer, social worker or person responsible for supervision of the child under certain circumstances was deleted from the 1971 Wyoming Act by the legislature.⁸³ In view of the problems which may arise when children are taken into custody by police, this deletion by the legislature seems wise.

No child shall be fingerprinted by any law enforcement agency unless a complaint or petition has been filed in a court of adult jurisdiction. However, if latent fingerprints are found during the investigation of an offense and there are reasonable grounds to believe that they are those of a child against whom a petition has been filed alleging the commission of a delinquent act, a law enforcement officer may fingerprint the child for purposes of comparison. If the comparison is negative, all copies of the fingerprints shall be destroyed.

80. See, e.g., *In Re James L. _____, Jr.*, 25 Ohio Op. 2d 369, 194 N.E.2d 797 (Juv. Ct. Cuyohoga Co. 1963); *In Re Garland*, 160 So. 2d 340 (La. Ct. App. 1964); *People v. Kjar*, 46 Cal. Rptr. 440 (1965). For an excellent summary of these cases and the problems of taking children into custody see Ferster & Courtless, *supra* note 78, at 583-89.

81. WYO. STAT. § 14-115.7 (Supp. 1971).

82. Ferster & Courtless, *supra* note 78, at 589.

83. DIGEST, *supra* note 21, at 169.

If the comparison is positive, all copies of the fingerprints shall be delivered to the juvenile court for disposition as the court may direct. Fingerprints of a child found to have committed an act which would be a felony if committed by an adult may be retained in a local file at the discretion of the court.⁸⁴

The 1951 Act contained no provision regarding fingerprinting of alleged juvenile offenders. The controversy about fingerprinting juveniles focuses on the maintenance of files and persons having access to these files rather than on the act of fingerprinting.⁸⁵ Fingerprinting regulations must be designed to provide maximum community protection while preventing indiscriminate, unnecessary fingerprinting and abuse in the use of prints which may have a detrimental effect on the individual later in life.⁸⁶ The 1971 Wyoming Act seems to achieve this goal by allowing fingerprinting when necessary for police investigation and providing for destruction or court supervision of the fingerprint records to prevent abuses in their use.

DETENTION AND SHELTER CARE OF CHILDREN

A child taken into custody shall not be held in detention (physically restraining facilities) or shelter care (physically unrestraining facilities) without a court order unless required:⁸⁷

- (a) to protect the child's person;⁸⁸
- (b) to protect the person or property of others;⁸⁹
- (c) to prevent the child from absconding or being removed from the jurisdiction of the court;⁹⁰
- (d) because there is no responsible adult to provide supervision and care and return him to the court.⁹¹

84. WYO. STAT. § 14-115.41 (Supp. 1971).

85. Ferstler & Courtless, *supra* note 78, at 598.

86. STANDARDS at 51.

87. WYO. STAT. § 14-115.7(a) (Supp. 1971).

88. WYO. STAT. § 14-115.7(a) (i) (Supp. 1971).

89. WYO. STAT. § 14-115.7(a) (ii) (Supp. 1971).

90. WYO. STAT. § 14-115.7(a) (iii) (Supp. 1971).

91. WYO. STAT. § 14-115.7(a) (iv) (Supp. 1971).

The parent, guardian or custodian of any child taken into custody shall be notified without delay. Unless further detention is necessary under the above provision or a court order, the child shall be released to a responsible adult upon his written promise to present the child before the court.⁹²

This provision is similar to those of the Uniform and Children's Bureau Acts.⁹³ It provides explicit standards by which to decide whether further detention or shelter care is necessary. Under the 1951 Wyoming Act any determination to hold the child was to be made by the court.⁹⁴ The 1971 Act allows law enforcement personnel to make the initial determination of whether or not detention or shelter care is necessary pending further action. This is a realistic provision as law enforcement officers are probably the ones who make the decision in actual practice. The determination to detain by police is subject to immediate review by the county attorney, who must be notified immediately. The police must give the county attorney a brief written statement of the facts resulting in custody and reasons for the child not being released as soon as possible after placing the child in detention or shelter care. The county attorney shall immediately review the need for detention or shelter care and may order the child released unless detention has been ordered by the court.⁹⁵ This review provides further protection against any abuses of discretion by the arresting officers.

If detention or shelter care is deemed necessary by the person who took the child into custody, the child shall be delivered without unnecessary delay to the court or to the detention or shelter care facility designated by the court. Children alleged to be neglected may be housed, fed and protected at the county jail but shall not be locked up. Children alleged to be delinquent or in need of supervision may be detained in the county jail if kept separate and apart from adult prisoners and adequate supervision is provided to assure his safety and welfare. The jails are to be used only in the absence of other

92. WYO. STAT. § 14-115.7(b) (Supp. 1971).

93. UNIFORM ACT § 14; CHILDREN'S BUREAU ACT § 20.

94. Ch. 125, §§ 5(b), (c) [1951] Wyo. Sess. Laws 191-92 (repealed 1971).

95. WYO. STAT. § 14-115.9 (Supp. 1971).

suitable facilities.⁹⁶ This provision allowing the use of county jail facilities is a necessary one in view of the lack of adequate facilities in many areas of the state.

The Act makes no explicit provision for police interrogation of the allegedly delinquent child prior to delivery to court or place of detention. It is submitted that any interrogation during this period be limited to that necessary to decide if further detention or shelter care is warranted. The Uniform and Children's Bureau Acts both recommend this procedure.⁹⁷ Evidence gathered prior to taking the child before the court has been recently held inadmissible in Georgia,⁹⁸ Michigan,⁹⁹ Florida¹⁰⁰ and the Second Circuit.¹⁰¹ Although the statutes involved in those cases provided that the alleged delinquent had to be brought before the court immediately, a similar interpretation may be given the words "without unnecessary delay" contained in the 1971 Wyoming Act.¹⁰²

The validity of a confession by a juvenile seems to depend on the circumstances of the case.¹⁰³ The Wyoming Supreme Court has stated that age is a circumstance to be considered in determining whether a minor's statements are fully and voluntarily made.¹⁰⁴ The court said the fact that the defendant was only seventeen years of age did not render the confession inadmissible. They also indicated evidence showing lack of intelligence or understanding on the part of the defendant was necessary to destroy the admissibility of a minor's confession.¹⁰⁵ Factors considered in determining admissibility

96. WYO. STAT. § 14-115.8 (Supp. 1971).

97. UNIFORM ACT § 15 and Comment at 258; CHILDREN'S BUREAU ACT § 21(a).

98. Daniels v. State, 226 Ga. 269, 174 S.E.2d 422 (1970).

99. People v. Wolff, 23 Mich. App. 550, 179 N.W.2d 206 (1970).

100. *In Re A. J. A.*, 248 So. 2d 690 (Fla. App. 1971).

101. United States v. Binet, 442 F.2d 296 (2d Cir. 1971).

102. Mallory v. United States, 354 U.S. 449 (1957).

103. *Compare*, United States v. Shelly, 305 F. Supp. 55 (E.D. N.Y. 1969); People v. Johnson, 74 Cal. Rptr. 889, 450 P.2d 265 (1969); Freeman v. Wilcox, 119 Ga. App. 325, 167 S.E.2d 163 (1969); McClintock v. State, 253 N.E.2d 233 (Ind. 1969); *In Re Nelson*, 58 Misc. 2d 748, 296 N.Y.S.2d 472 (1969); Commonwealth v. Taper, 434 Pa. 71, 253 A.2d 90 (1969); State v. Davis, 3 Wash. App. 684, 477 P.2d 44 (1970); all holding confessions of juveniles not admissible with, Hallihan v. State, 226 So. 2d 412 (Fla. App. 1969); People v. Pierre, 114 Ill. App. 2d 283, 253 N.E.2d 706 (1969); McLeod v. State, 229 So. 2d 557 (Miss. 1970); State v. Raiford, 488 P.2d 295 (Ore. App. 1971); Commonwealth v. Darden, 441 Pa. 41, 27 A.2d 257 (1970); all holding juvenile confessions admissible.

104. Mortimore v. State, 24 Wyo. 452, 161 P. 766, 769 (1916).

105. *Id.*

of juvenile's confessions in recent cases in other jurisdictions are age, length of commitment, presence of parents, presence of counsel, Miranda warnings, and the physical and mental condition of the child.¹⁰⁶

COMMENCING JUVENILE COURT HEARINGS

"Proceedings in juvenile court shall be commenced by filing a petition with the clerk of court."¹⁰⁷ Any complaint alleging a child to be delinquent, neglected or in need of supervision shall be referred to the county attorney. If, after investigation, the county attorney determines that judicial action is necessary to protect the best interests of the child or the public, he shall prepare and file a petition with the court.¹⁰⁸ A petition may be signed by an adult having knowledge of the alleged facts as well as an adult or the county attorney on information and belief.¹⁰⁹

"The petition shall set forth all jurisdictional facts, including but not necessarily limited to:"¹¹⁰

- (a) the child's name, date of birth and address;¹¹¹
- (b) the names and addresses of the child's parents, guardian or custodian and spouse, if any;¹¹²
- (c) whether the child is being held in detention or shelter care, if so, the name and address of the facility where he is being held and the time detention was commenced;¹¹³
- (d) a statement setting forth with particularity the facts which bring the child within the jurisdiction of the juvenile court. If the basis of the petition is a violation of the laws of the state or a political subdivision, the petition shall cite the law alleged to have been violated.¹¹⁴

106. See authorities cited *supra* note 103.

107. WYO. STAT. § 14-115.13 (Supp. 1971).

108. WYO. STAT. § 14-115.12 (Supp. 1971).

109. WYO. STAT. § 14-115.13 (Supp. 1971).

110. *Id.*

111. WYO. STAT. § 14-115.13(a) (Supp. 1971).

112. WYO. STAT. § 14-115.13(b) (Supp. 1971).

113. WYO. STAT. § 14-115.13(c) (Supp. 1971).

114. WYO. STAT. § 14-115.13(d) (Supp. 1971).

A petition will be filed with the juvenile court only when the county attorney determines that judicial action is necessary. This allows informal disposition of many matters prior to judicial intervention. The county attorney is authorized to request assistance from the county department of health and social services, the county sheriff and the county and state probation departments in making an investigation to determine if the matter should be referred to the court.¹¹⁵ This allows the county attorney to receive advice from persons trained in handling the various aspects of a case prior to making his determination. In those cases where informal disposition is not warranted, the child is protected by a regularized procedure in the juvenile court.

The provision requiring a statement of the facts which bring the child within the court's jurisdiction is more explicit than the comparable provision in the 1951 Act.¹¹⁶ Under the new Act, a violation of law must be specifically stated and include a citation of the statute, thus providing a definite notice to the child, his parents and the court of the seriousness of the alleged misconduct.

CONDUCT OF HEARINGS

The 1971 Wyoming Act provides the child and his parents, guardian or custodian some fundamental procedural rights. The Act provides:

1. The right of the child and his parents, guardian or custodian to be represented by counsel at every stage of the proceedings, including appeal. If they are unable to obtain counsel, the court will, upon request, appoint counsel to represent the child.¹¹⁷
2. A child alleged to be delinquent may remain silent and need not incriminate himself.¹¹⁸
3. A party to the proceedings is entitled to a copy of all charges made against him. He may confront and

115. WYO. STAT. § 14-115.12 (Supp. 1971).

116. Ch. 125, § 6 [1951] Wyo. Sess. Laws 192 (repealed 1971).

117. WYO. STAT. § 14-115.23 (Supp. 1971).

118. WYO. STAT. § 14-115.24(a) (Supp. 1971).

cross-examine adverse witnesses, introduce evidence, present witnesses and be heard on his own behalf. He may require the court to issue process to compel the appearance of witnesses or the production of evidence.¹¹⁹

4. A party against whom a petition has been filed or the county attorney may demand a trial by jury at an adjudicatory hearing.¹²⁰
5. Unless a jury trial is demanded, all hearings are to be conducted by the court without a jury in an informal but orderly manner. If the allegations in the petition are denied, adjudicatory and disposition hearings are to be recorded. The general public shall be excluded from hearings.¹²¹
6. Allegations of delinquency or need of supervision must be proved beyond a reasonable doubt. Neglect allegations need be proved only by a preponderance of the evidence.¹²²
7. A finding that the allegations are true is not deemed a conviction of guilt, but is a determination that judicial intervention is necessary for the best interest and welfare of the child and the public.¹²³

The right to counsel is one of the "fundamentals of due process and fairness" emphasized in *Kent*.¹²⁴ The right to be represented by counsel at an adjudicatory hearing was specifically required by the holding in *Gault*.¹²⁵ This provision fills a significant omission in the 1951 Act.

The right to remain silent is also required by the decision in *Gault*.¹²⁶ No similar provision was made in the 1951 Act.

119. WYO. STAT. § 14-115.24(b) (Supp. 1971).

120. WYO. STAT. § 14-115.24(c) (Supp. 1971).

121. WYO. STAT. § 14-115.25 (Supp. 1971).

122. WYO. STAT. § 14-115.26 (Supp. 1971).

123. WYO. STAT. §§ 14-115.26, 115.39 (Supp. 1971).

124. See text *supra* p. 237.

125. See text *supra* p. 238.

126. See text *supra* p. 238.

The rights to a copy of the charges and to confront and cross-examine adverse witnesses are also required by *Gault*.¹²⁷ The rights to introduce evidence and compel witnesses are a fundamental part of due process. No such provisions were made in the 1951 Act.

The provision for demand of a jury trial differs from the 1951 provision in that either the child or the county attorney may demand a jury trial.¹²⁸ Demand for a jury trial must be made within ten days after a party has been advised of his right to jury trial and a failure to so demand is deemed a waiver.¹²⁹ This is to be contrasted with the normal criminal practice where a waiver of this right must be expressly made and approved.¹³⁰

The Supreme Court of the United States recently held in *McKeiver v. Pennsylvania* "that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."¹³¹ The opinion reveals a concern on the part of the court that the implementation of a jury trial in the juvenile system would "put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding,"^{131a} and "would tend once again to place the juvenile squarely in the routine of the criminal process."¹³² However, the opinion further states: "If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege, and not its obligation."¹³³

Unless a jury of twelve is requested in writing by a party, the number of jurors in all proceedings except criminal cases shall be six.¹³⁴ All proceedings under the 1971 Juvenile Court Act are regarded as proceedings in equity.¹³⁵ Thus, it seems

127. See text *supra* p. 238.

128. See WYO. STAT. § 14-115.24(c) (Supp. 1971); Ch. 125, § 11(c) [1951] Wyo. Sess. Laws 194 (repealed 1971).

129. WYO. STAT. § 14-115.24(c) (Supp. 1971).

130. WYO. R. CRIM. P. 24(a).

131. 403 U.S. 545 (1971).

131(a). *Id.*

132. *Id.* at 547.

133. *Id.*

134. WYO. STAT. § 1-103.1 (Supp. 1971).

135. WYO. STAT. § 14-115.39 (Supp. 1971).

a party demanding a jury trial under the 1971 Wyoming Act has an option as to the number of jurors. The United States Supreme Court has recently held that a jury of twelve is not a necessity of trial by jury and a criminal defendant's sixth amendment rights are not violated when he is tried by a six-man jury.¹³⁶

The provisions for informal hearings and public exclusion are similar to those in the 1951 Act.¹³⁷ The United States Supreme Court indicated approval of this type of hearings in *McKeiver*. The provision for recording the hearings when the allegations are denied insures a record in the event of appeal.

There were no provisions in the 1951 Act regarding the degree of proof necessary in the proceedings. The requirement of "proof beyond a reasonable doubt" in cases involving delinquency or need of supervision is probably the result of the recent decision of the United States Supreme Court in the case of *In Re Winship*.¹³⁸ In this case the Court laid down the rule that "the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*."¹³⁹

INITIAL AND DETENTION OR SHELTER CARE HEARINGS

In all cases where a petition has been filed, an initial hearing before the juvenile court is provided. After a petition has been filed, the court must issue an order to appear directed to the child (if fourteen or older, or if alleged to be delinquent or in need of supervision), his parents, guardian or custodian and spouse if any; and any other persons deemed necessary and proper by the court. The order must set forth the name of the court, the title of the proceedings and the time and place of the initial hearing.¹⁴⁰ The purpose of the initial hearing is to determine if further judicial action is necessary.

136. *Williams v. Florida*, 400 U.S. 1010 (1970).

137. See Ch. 125, § 11 [1951] Wyo. Sess. Laws 193-94 (repealed 1971).

138. 397 U.S. 358 (1970).

139. *Id.* at 368.

140. WYO. STAT. § 14-115.14 (Supp. 1971).

Whenever a child is placed in detention or shelter care without a court order, a petition must be promptly filed by the county attorney and presented to the court. An informal hearing must be held not later than seventy-two hours after custody commences to determine if further detention or shelter care is required pending subsequent court action. The child and his parents, guardian or custodian must be given reasonable notice stating the time, place and purpose of the hearing. Failure to give such notice is grounds for a rehearing if the child is not released.¹⁴¹ When a detention or shelter care hearing is held, a separate initial hearing is not required if the child and his parents, guardian or custodian were present.¹⁴²

At the commencement of either the initial or the detention or shelter care hearing, the court must advise the child and his parents, guardian or custodian of their rights under law and as provided in the 1971 Wyoming Act.¹⁴³ The parties are then given an opportunity to admit or deny the allegations. If admitted, the court may dispose of the case in accordance with the provisions for disposition. If denied, the court may, with consent of the parties, immediately proceed to hear evidence on the petition or it may set a later time for an adjudicatory or transfer hearing.¹⁴⁴ All relevant and material evidence helpful in determining the need for further detention or shelter care may be received by the court in a detention or shelter care hearing. The court may rely upon this evidence for whatever probative value it attributes thereto. The parties or their counsel must be given the opportunity to controvert written reports and cross-examine persons making the reports.¹⁴⁵ If a party feels his position prejudiced by this evidence, he may demand a trial by jury in order to get an independent verdict on the admissible evidence,¹⁴⁶ or he may request change of venue or judge.¹⁴⁷

141. WYO. STAT. § 14-115.10 (Supp. 1971).

142. WYO. STAT. § 14-115.27 (Supp. 1971).

143. *Id.*

144. WYO. STAT. §§ 14-115.10, 115.27 (Supp. 1971).

145. WYO. STAT. § 14-115.27 (Supp. 1971).

146. WYO. STAT. § 14-115.24(c) (Supp. 1971).

147. WYO. STAT. § 14-115.5 (Supp. 1971).

Both a preliminary and a detention hearing were available under the 1951 Act.¹⁴⁸ The provision for a detention or shelter care hearing in the 1971 Wyoming Act is very similar to that contained in the Children's Bureau Act.¹⁴⁹ A preliminary hearing gives the court an opportunity to become aware of the attitudes of the parties in addition to providing an informal atmosphere for the court to explain the possible implications of the child's actions to the parents. It also provides an excellent opportunity for early disposition of matters in which it is deemed appropriate. The provision for prompt filing of a petition "is based on the theory that if the situation is serious enough to detain the child, it will generally be found to be serious enough to require the signing of a petition."¹⁵⁰

The county attorney need not establish probable cause to believe the allegations in the petition are true at the initial appearance of the child before the court under the Wyoming Act.¹⁵¹ However, the United States District Court for the Eastern District of Wisconsin has held that probable cause must be established at a detention hearing.¹⁵² That court stated that a determination as to whether there is probable cause to believe (1) that an act which would be a felony if committed by an adult has been committed, and (2) that the juvenile in custody has in fact committed such act, are required to satisfy the constitutional requirements of due process.¹⁵³ Although the opinion was based on the Wisconsin statute,¹⁵⁴ the reasoning of the opinion seems applicable to Wyoming.

HEARING FOR TRANSFER BETWEEN JUVENILE AND DISTRICT COURTS

After a petition alleging a child has committed a delinquent act has been filed, the juvenile court may, in its discre-

148. See Ch. 125, § 11 [1951] Wyo. Sess. Laws 193-94 (repealed 1971) preliminary hearing; Ch. 125, § 5(c) [1951] Wyo. Sess. Laws 192 (repealed 1971) detention hearing.

149. See CHILDREN'S BUREAU ACT § 23.

150. CHILDREN'S BUREAU ACT, Comment at 26-27.

151. WYO. STAT. § 14-115.27 (Supp. 1971).

152. *Baldwin v. Lewis*, 300 F. Supp. 1220 (E.D. Wis. 1969), *rev'd on other grounds*, 442 F.2d 29 (7th Cir. 1971).

153. *Id.* at 1232.

154. WIS. STAT. § 48.29 (1967).

tion, order a transfer hearing to determine if the matter should be transferred to the district court for criminal prosecution. This may be done any time prior to an adjudicatory hearing. If at this hearing the court finds there are reasonable grounds to believe:

- (a) the child committed the delinquent act alleged; and
- (b) the child is not subject to commitment to an institution for the mentally ill or the mentally retarded; and
- (c) juvenile court procedures are inappropriate under the circumstances of the case;

the court shall order the matter transferred to the appropriate court for prosecution.¹⁵⁵

In any proceedings commenced in the district court which are within the concurrent jurisdiction of the juvenile court, the district court may on motion of any party or its own motion, order the proceedings transferred to the juvenile court. The district court must, after notice and hearing, find the matter is more properly suited for disposition under the provisions of the Juvenile Court Act.¹⁵⁶

The United States Supreme Court said in *Kent* that a determination of whether to transfer a child from the statutory structure of the juvenile court to the criminal processes of the district court is "critically important." It would seem that a decision by the district court whether or not to transfer to the juvenile court is equally "critically important." Because of the importance of these proceedings, the Supreme Court stated that transfer hearings may be informal, but must measure up to the essentials of due process and fair treatment. The Court further stated that an order waiving jurisdiction to the criminal court by the juvenile court must be accompanied by a statement of the reasons or considerations therefore. They concluded that the statement should demonstrate that the question has received the careful consideration of the court and set forth the basis for the order with sufficient

155. WYO. STAT. § 14-115.38 (Supp. 1971).

156. *Id.*

specificity to permit meaningful review. As indicated,¹⁵⁷ the 1971 Wyoming Act provides the child many rights designed to insure he receives a hearing which conforms to the essentials of due process and fair treatment. The Act also provides broad standards to guide the judge's determination of whether or not to transfer the matter to the district court.¹⁵⁸ The Act provides no standards on which the district court must base its decision to retain jurisdiction over a matter commenced therein other than that the matter is not better suited for disposition in juvenile court. It is submitted that the standards provided for the juvenile court should be made binding on the district courts also, as the requirements of the *Kent* decision would seem to apply equally to both courts.

Statutes conferring similar discretion on the district court judges have been upheld in other states. The Supreme Court of New Mexico has upheld a statute providing for prosecution of a person of any age for felonies in the district court.¹⁵⁹ The statute was attacked on the grounds that it was void for vagueness in failing to provide standards by which to determine whether a child was to be tried in district court or turned over to juvenile court. The court stated: "The considerations that might so move a judge are so multifarious, however, that to test the validity of legislation by an omission to list them would be almost equivalent to attempting to name all the advantages of being upright and good."¹⁶⁰

The Supreme Court of Utah upheld a district court decision to retain jurisdiction over a juvenile against an allegation that the court failed to properly consider the welfare of the child.¹⁶¹ The court stated that where the court has a discretionary statutory alternative, there is a presumption that the judges conclusion is clothed with propriety and bona fides which is destroyable only by clear evidence produced by the party attacking it.

157. See text *supra* pp. 254-55.

158. See text *supra* p. 260. For a comprehensive list of standards seemingly approved by the United States Supreme Court see *Kent*, Appendix at 566-67.

159. Ch. 4, § 7 (1917) N. M. LAWS _____ (repealed 1955); *State v. Doyal*, 59 N.M. 454, 286 P.2d 306 (1955). Although this is an older opinion, it was recently cited with approval in *State v. Stueve*, *supra* note 52.

160. *State v. Doyal*, *Id.* at 310.

161. *Mayne v. Turner*, *supra* note 55.

Although this section of the 1971 Wyoming Act confers a great deal of discretion in the county attorneys and judges of the state without any definite standards to guide them, it is submitted that conscientious regard for the rights of the accused and the public will prevent cases which result in injustices so great that the statute may be attacked. A study of the factors listed in the Appendix to the *Kent* opinion may be a helpful guide in exercising this discretion.¹⁶²

ADJUDICATORY HEARING

Unless a jury trial is demanded, all hearings are to be conducted by the court without a jury, in an informal but orderly manner. If the allegations in the petition are denied, the hearing must be recorded. Only the parties, their counsel, jurors, witnesses and such persons as the court finds have a proper interest in the proceedings or the work of the court may be admitted to the hearing. If necessary in the best interests of the child, he may be temporarily excluded from the hearing except when evidence is being received in support of the allegations against him.¹⁶³ Only competent, relevant and material evidence is admissible to determine the truth of the allegations in the petition. If the court finds the allegations are not established, it must dismiss the petition and order the child released. If the court finds that the child committed the alleged acts or is neglected, it must issue a decree to that effect, stating therein its findings as to the jurisdictional facts upon which the decree is based.¹⁶⁴

The provisions relating to the conduct of the adjudicatory hearing in the 1971 Wyoming Act are more extensive and explicit than were those in the 1951 Act.¹⁶⁵ The provision differs somewhat from those contained in the Children's Bureau and Uniform Acts in that a finding that the child is in need of care or rehabilitation is additionally necessary under those Acts.¹⁶⁶ This finding is in addition to a finding that

162. See *supra* note 158.

163. WYO. STAT. § 14-115.25 (Supp. 1971).

164. WYO. STAT. § 14-115.27 (Supp. 1971).

165. Compare, Ch. 125, § 11 (1951) Wyo. Sess. Laws 193-94 (repealed 1971) with Wyo. Stat. § 14-115.27 (Supp. 1971).

166. See CHILDREN'S BUREAU ACT § 32; UNIFORM ACT § 29.

the child committed a delinquent act. However, the Children's Bureau Act does provide that finding that the child committed a felonious act is sufficient in the absence of contrary evidence to sustain a finding he is in need of care or rehabilitation.¹⁶⁷ Under the 1971 Wyoming Act, it seems a comparable determination is made at the initial hearing which determines if further judicial action is necessary.

DISPOSITION HEARING

After a decree has been entered, the court may proceed immediately or at a postponed hearing to make proper disposition of the child. All material and relevant evidence helpful in determining the proper disposition of the child may be received by the court.¹⁶⁸ A report on a predisposition study, which the court must order made after the filing of a petition, may be considered at this time. This report is made by a qualified person or agency designated by the court. It covers the social history, environment and present conditions of the child and family and other matters relevant to a proper disposition of the case.¹⁶⁹ The parties or counsel may examine and controvert written reports received in evidence and may cross-examine persons making the reports.¹⁷⁰

DISPOSITIONS ALLOWED UNDER THE ACT

When a child has been adjudged delinquent, neglected or in need of supervision, the court has broad discretion in making dispositions. The dispositions are to be guided by what is best suited to the protection and physical, mental and moral welfare of the child consistent with the public interest.¹⁷¹ The following dispositions are authorized:

(a) neglect cases:

1. permit the child to remain with his parents, guardian, or custodian without protective supervi-

167. CHILDREN'S BUREAU ACT § 32(c).

168. WYO. STAT. § 14-115.27 (Supp. 1971).

169. WYO. STAT. § 14-115.28 (Supp. 1971).

170. WYO. STAT. § 14-115.27 (Supp. 1971).

171. WYO. STAT. § 14-115.30 (Supp. 1971).

sion, subject to terms and conditions prescribed by the court;¹⁷²

2. place the child in protective supervision;¹⁷³
3. transfer legal custody to an adult the court finds qualified, with or without supervision, subject to terms and conditions prescribed by the court;¹⁷⁴
4. transfer temporary legal custody to a private child care facility;¹⁷⁵
5. transfer temporary legal custody to a state or local public agency, but unless also found delinquent or in need of supervision, he shall not be committed to the Wyoming Industrial Institute or the Wyoming Girls' School.¹⁷⁶

(b) delinquency or need of supervision cases:

1. any disposition authorized for neglect, except he shall be placed on probation rather than under protective supervision;¹⁷⁷
2. commitment to confinement in county jail or other protective facility for not more than ten days segregated from adult prisoners;¹⁷⁸
3. commitment to the Wyoming Industrial Institute or Wyoming Girls' School for an indefinite time;¹⁷⁹
4. commitment to the Wyoming State Hospital for short term confinement and treatment for drug addiction or abuse, alcoholism, or for specialized juvenile treatment and rehabilitation programs.¹⁸⁰

172. WYO. STAT. § 14-115.30(a)(i) (Supp. 1971).

173. WYO. STAT. § 14-115.30(a)(ii) (Supp. 1971).

174. WYO. STAT. § 14-115.30(a)(iii) (Supp. 1971).

175. WYO. STAT. § 14-115.30(a)(iv) (Supp. 1971).

176. WYO. STAT. §§ 14-115.30(a)(v), .30(c) (Supp. 1971).

177. WYO. STAT. § 14-115.30(b)(i) (Supp. 1971).

178. WYO. STAT. § 14-115.30(b)(ii) (Supp. 1971).

179. WYO. STAT. § 14-115.30(b)(iii) (Supp. 1971).

180. WYO. STAT. § 14-115.30(b)(iv) (Supp. 1971).

The court may impose the following terms or conditions on any order of disposition:

1. restitution for damages;¹⁸¹
2. fine, within limits of law for particular violation;¹⁸²
3. a work program;¹⁸³
4. mental and/or physical medical attention;¹⁸⁴
5. restrict or restrain driving privileges.¹⁸⁵

This section is quite similar to those contained in the model acts, although not nearly as exhaustive as that contained in the Standard Act.¹⁸⁶ It has been said "whenever possible, children should be permitted to remain in their own homes with [supervisory social] service provided through probation or protective supervision."¹⁸⁷ The Act provides for this and gives a broad guideline for weighing the interests of the child and the public in its application. In this manner the interests of both may be protected.

The Standard and Children's Bureau Acts specifically prohibit the transfer of a delinquent child to a penal institution for adult offenders.¹⁸⁸ The drafters of the Standard Act state that

[S]uch a transfer is a repudiation of the entire concept of special children's proceedings, which embraces not only special court procedure but the idea that specialized training facilities for children should be available and should be used for all children adjudicated by the court.¹⁸⁹

They argue that since the court is not empowered to make such a disposition, the institution receiving custody should not be allowed to do so. They further contend that a disruption so serious to the institution's program that transfer is essential

181. WYO. STAT. § 14-115.30(d) (i) (Supp. 1971).

182. WYO. STAT. § 14-115.30(d) (ii) (Supp. 1971).

183. WYO. STAT. § 14-115.30(d) (iii) (Supp. 1971).

184. WYO. STAT. § 14-115.30(d) (iv) (Supp. 1971).

185. WYO. STAT. § 14-155.30(d) (v) (Supp. 1971).

186. STANDARD ACT § 24; CHILDREN'S BUREAU ACT § 34; UNIFORM ACT §§ 30, 31, 32.

187. STANDARDS at 81.

188. STANDARD ACT § 24; CHILDREN'S BUREAU ACT § 34.

189. STANDARD ACT, Comment at 376.

will almost always result in a violation of law over which the criminal court will have jurisdiction. A new proceeding may be commenced on the basis of that behavior or conduct and commitment to an adult institution may be made in accord with the transfer provisions of the applicable juvenile court act.¹⁹⁰

The Wyoming Statutes provide for transfer from the Industrial Institute to the penitentiary of "any apparently incorrigible prisoner whose presence in the institute appears to be seriously detrimental to the well being of the institute";¹⁹¹ the determination to be made by the State Board of Charities and Reform. Provisions of this sort are exactly what the drafters of the Standard Act were referring to and recommending against.

A good solution to the problem of disposition has been proposed by the Children's Bureau. When the youngster is in need of public care, particularly care provided for by the State, the commitment should be to the State department responsible for the administration of the State's program for the care and treatment of delinquent children rather than to a specific institution or facility.¹⁹² This provides individual treatment according to the needs of the child. As these needs shift, the method of treatment may be changed. Diverse treatment according to needs should result in maximum rehabilitation, which should be the object of all juvenile court acts. Under the 1971 Wyoming Juvenile Court Act, the commitment is to the Institute rather than the State Board of Charities and Reforms.¹⁹³ However, individualized treatment may be obtained within the Institute.¹⁹⁴

In addition to the dispositions discussed, the court may at any time after a petition has been filed alleging a child to be delinquent or in need of supervision and prior to adjudica-

190. *Id.* Comment at 377.

191. WYO. STAT. § 9-407 (1957).

192. STANDARDS at 83.

193. WYO. STAT. § 14-115.30(b) (iii) (Supp. 1971).

194. WYO. STAT. §§ 9-408, 409 (1957).

tion issue a consent decree.¹⁹⁵ If this is done, further proceedings are held in abeyance and the child is placed under the supervision of a court designated person or agency, subject to terms, conditions and stipulations agreed to by the parties for a six month period. If the child fulfills the terms and conditions and no new petition is filed for misconduct during the period, the charges are dropped. If he does not fulfill the terms or gets into other trouble, the original petition may be reinstated at the county attorney's discretion. Both the child and the county attorney must consent to the entering of a consent decree.¹⁹⁶

TERMINATION OF ORDERS OF DISPOSITION

An order of disposition committing a child to the Wyoming Industrial Institute or the Wyoming Girls' School shall remain in force until the child is released by the State Board of Charities and Reform or other authority as provided by law. Any other order of disposition shall remain in force for an indeterminate period, to be terminated by the court whenever it appears the purpose of the order has been achieved and it is in the best interest of the child that he be discharged from the further jurisdiction of the court. All orders are to terminate when the child reaches twenty-one years of age if not sooner terminated.¹⁹⁷

The model acts all limit the time the order may remain in force. The Standard Act provides three years, the Uniform Act two and the Children's Bureau Act one.¹⁹⁸ The reason for this is to provide protection for the child and a check on the agency through periodic judicial review. These limitations are subject to renewal as required for the agency to accomplish its purpose. A similar provision is probably not necessary in Wyoming where the small number of cases would make it seem unlikely a child would get lost in the process.

195. WYO. STAT. § 14-115.29 (Supp. 1971).

196. *Id.*

197. WYO. STAT. § 14-115.32 (Supp. 1971).

198. STANDARD ACT § 24; UNIFORM ACT § 36; CHILDREN'S BUREAU ACT § 37.

OTHER PROVISIONS

Some other provisions of the 1971 Wyoming Act are:

1. Proceedings may be commenced in the county where the child is living or present at commencement of proceedings, or where the misconduct occurred. A change of judge or venue may be had as in a civil action in district court.¹⁹⁹
2. The detention or shelter care hearing may be heard by a district court commissioner in the absence or incapacity of the judge.²⁰⁰
3. The court may appoint a guardian ad litem for a child who is a party to proceedings if he has no parents, guardian or custodian appearing on his behalf or if their interests are adverse to the best interests of the child.²⁰¹
4. On application of any party to the proceedings or on its own motion the court may make an order of protection in support of the decree and order of disposition, restraining or otherwise controlling the conduct of any party to the proceedings found to have encouraged, caused or contributed to the acts or conditions which brought the child within the provisions of the act.²⁰²
5. Appeal may be had by any party, including the state, from any final order, judgment, or decree of the juvenile court to the Supreme Court.²⁰³
6. Court records and information prepared at request of the court shall not be open to public inspection.²⁰⁴

199. WYO. STAT. § 14-115.5 (Supp. 1971).

200. WYO. STAT. § 14-115.11 (Supp. 1971).

201. WYO. STAT. § 14-115.17 (Supp. 1971).

202. WYO. STAT. § 14-115.31 (Supp. 1971).

203. WYO. STAT. § 14-115.34 (Supp. 1971). The Wyoming Supreme Court recently held that a county attorney may not appeal proceedings brought against a minor under the juvenile court act of 1971, when the proceedings are based upon a violation of law alleged to have been committed prior to the enactment of the 1971 law. The Court did not consider or pass upon any questions of double jeopardy. *In Re Jones*, 500 P.2d 690 (Wyo. 1972).

204. WYO. STAT. § 14-115.40 (Supp. 1971).

7. Police records shall not be open to public inspection and shall be maintained separate from adult records.²⁰⁵

CONCLUSION

Although Wyoming was slow to accept the concept of juvenile courts, being the last state to adopt a juvenile court act,²⁰⁶ the legislature has at last adopted an act which seems capable of serving for years in the future. The Act seems to be designed for the needs of Wyoming, whose problems are often different than those incurred in the more populous states.

Although there are indications that the legislature does not fully subscribe to the theory that the welfare of the child is the basic concern,²⁰⁷ the 1971 Act does provide the basic protections that have been declared applicable to children by the United States Supreme Court. It is submitted that the Act should be amended to provide the juvenile court with exclusive original jurisdiction over children who fall within the provisions of the Act. The Act should also provide standards binding on the district court when it makes a determination to retain jurisdiction over children's cases commenced therein. Most of the other problems presented are not a result of the Act, but are inherent in juvenile practice. In any event, the new Act is a significant advance from the 1951 Act and places Wyoming in a comparatively modern position regarding children.

Through a conscientious desire to do justice on the part of both the judges and the attorneys of the state, the rights of the public may be protected and the rehabilitation of the juvenile may be accomplished through the provisions of the Act. That is the purpose it should serve.

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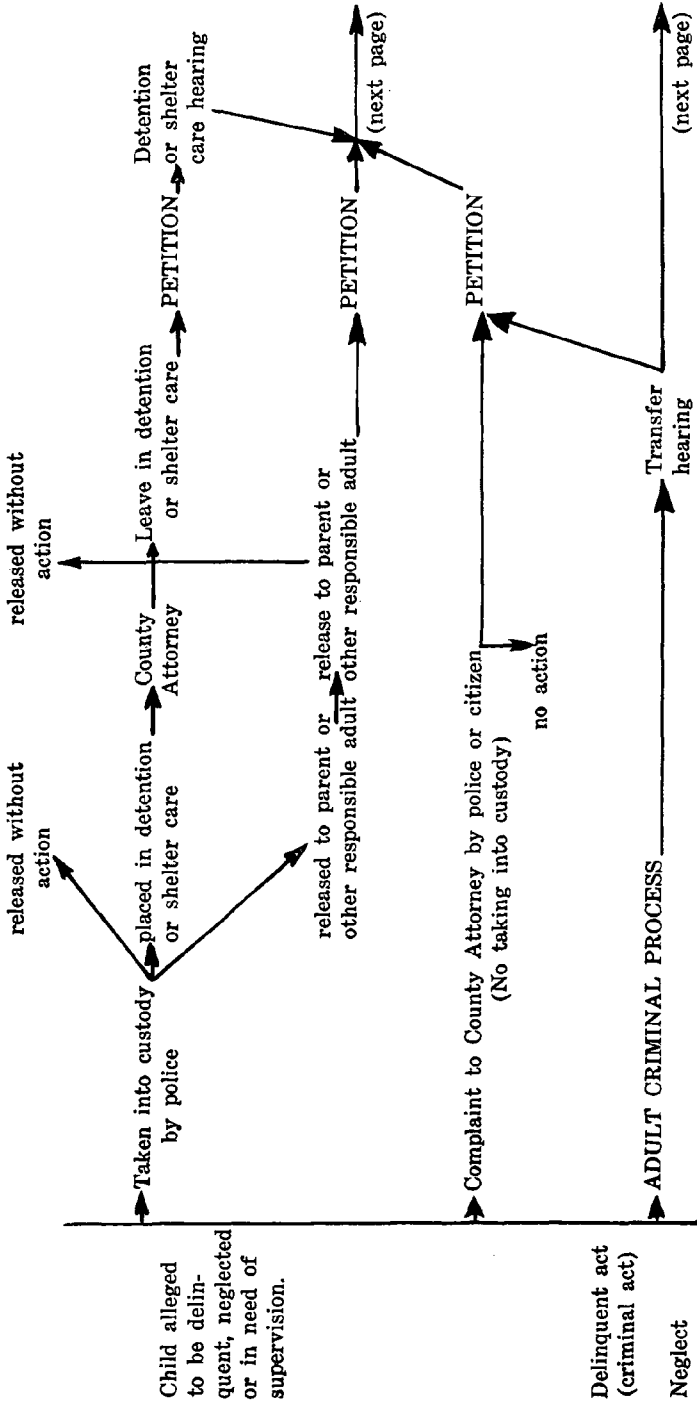
205. WYO. STAT. § 14-115.41 (Supp. 1971).

206. Wunnicke, *supra* note 46, at 176.

207. See text *supra* pp. 239-40.

Appendix A. (page 1)

Procedural Steps Under the Juvenile Court Act of 1971



Appendix A. (page 2)

