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# THE 1951 JUVENILE COURT LAW OF WYOMING

BROOKE WUNNICKE\*

## *Introduction*

The concept of a juvenile court is an indicium of a mature jurisprudence, and its component parts are many and diverse. Special court procedures for juvenile dependents and offenders embody jural traditions, case precedents, legal technicalities, social sciences and popular mores. A complete analysis of any juvenile court procedure would, therefore, be necessarily discursive and complex, with its ramifications being beyond the proper scope of a professional law journal. For this reason, the ensuing article is deliberately restricted within the boundaries of legalism.

The 1951 Juvenile Court Law of Wyoming constitutes a significant addition to the administration of justice in our state. It is a synthesis of the periodic efforts to improve the official processing of juvenile dependents and delinquents which have marked Wyoming's legislative record since the first territorial session in 1869. Analysis and evaluation of this law's import require heed to these factors:

- (1) Understanding of the theory of jurisprudence which undergirds specialized procedures for juvenile courts;
- (2) Knowledge of the history of the juvenile court movement generally in the United States;
- (3) Reference to all precedent Wyoming statutes concerned with juvenile delinquents and dependent minors, for these constitute the matrix from which the present statute was derived;
- (4) Specific examination of the fundamental provisions of the juvenile court law, to ascertain their purpose and validity.

## *Theory of Jurisprudence*

It is no anomaly to commence a practical analysis of the juvenile court law by reference to the basic theory of jurisprudence which underlies it. Rules without rationale, preclude effective administration of any law; *a fortiori* does this principle apply to the field of juvenile courts, for there flexible interpretations are intrinsic.

The jurisdiction of juvenile courts, extending to both dependent and delinquent children, stems from the great branch of equity jurisprudence, and the concept is neither new nor radical. In the early English case of *In re Spence*, 2 Ph. 247, Lord Chancellor Cottenham said:

"I have no doubt about the jurisdiction. The cases in which the court interferes on behalf of infants are not confined to those in

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which there is property. . . . This court interferes for the protection of infants, *qua* infants, by virtue of the prerogative which belongs to the Crown as *parens patriae* and the exercise of which is delegated to the great seal."

And more than a century ago the English Chancery Court again enunciated the same doctrine:<sup>1</sup>

"The power of the court of chancery to interfere with and control not only the estates but the persons of all minors within the limits of its jurisdiction, is of very ancient origin and cannot now be questioned. This is a power which must necessarily exist somewhere in every well-regulated society, and more especially in a republican government."

This principle of jurisdiction was early inculcated into American jurisprudence by the United States Supreme Court, the first enunciation thereof being by Chief Justice Gibson in *Ex Parte Crouse*:<sup>2</sup>

"May not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right the business of education belongs to it. . . . The right of parental control is a natural, but not an inalienable one."

Many indeed have been the enunciations by legal educators and courts of the philosophical justifications for special procedures in the handling of juvenile offenders. An oft-quoted statement is that of Dean Roscoe Pound:<sup>3</sup>

"The fundamental idea of the Juvenile Court Law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime. . . . It proposes a plan whereby he may be treated, not as a criminal, or legally charged with crime, but as a ward of the state, to receive practically the care, custody, and discipline that are accorded the neglected and dependent child, and which, as the act states, 'shall approximate as nearly as may be that which should be given by its parents.'"

In the first case upholding the constitutionality of juvenile court procedure, the Pennsylvania Supreme Court declared:<sup>4</sup>

"The action is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake, if the child's own good and the best interests of the state justify such a salvation. Whether the child deserves to be saved by the state is no more a question for the jury than whether the father, if able to save it, ought to save it.

1. 3 Gilman 435 (1846).

2. 4 Whart. 9 (1838).

3. "The Juvenile Court and the Law", Year Book of the National Probation and Parole Association, (1944).

4. Commonwealth v. Fisher, 213 Pa. 48 (1908).

The act is but an exercise by the state of its supreme power over the welfare of its children. . . .

"The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child. The severity in either case must necessarily be tempered to meet the necessities of the particular situation. There is no probability, in the proper administration of the law, of the child's liberty being unduly invaded. *Every statute which is designed to give protection, care and training to children, as a needed substitute for parental authority, and performance of parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated.*" (italics by author.)

That the same theory is adhered to by the modern judiciary is amply substantiated in recent decisions. Thus, the Children's Court of New York recently declared:<sup>5</sup>

"To protect our child life, which in the last analysis is our future, the City and State should provide for the placement (I do not like the term 'commitment' when children are involved) of delinquent and neglected children in wholesome surroundings not unlike real homes, and provide training and other care required for their rehabilitation to the end that the delinquent is protected against himself and children with whom he may come in contact and influence them on to delinquency; and that the neglected child may have at least a modicum of security. That is a primary governmental responsibility, a duty. The care of our children is the basis of our future. The child delinquent will be the delinquent citizen. Government is as effective as the intelligence of the citizenry commands, as bad as the citizenry tolerates."

And, the Supreme Court of Montana, in a decision rendered on December 2, 1953, stated:<sup>6</sup>

"The early criminal law did not differentiate between the adult and the minor who had reached the age of criminal responsibility. The fundamental thought in our early criminal jurisprudence was not reformation of the criminals, but punishment; and this applied to children as well as to adults. Today, however, the child is taken in hand by the state, not as an enemy, but as a protector, as the ultimate guardian, because either the unwillingness or the inability of the natural parents to guide him toward good citizenship has compelled the intervention of the public authorities."

The foregoing cursory review of the prevalent judicial attitude toward specialized procedures for juveniles reveals that the basic legal philosophy, rather than any technical provisions, is the significant difference between juvenile court and criminal court. The application of this proposition to

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5. In re Bender, Domestic Relations Court of City of New York, Children's Court Division, Bronx County, 123 N.Y.S.2d 37 (1953).
  6. State ex rel Bresnahan v. District Court of 8th Judicial District, in and for Cascade County et al. No. 9349 (Mont. 1953).

Wyoming's 1951 Juvenile Court Law is essential to its understanding by the laity and its utility to the legal profession.

An excellent summary of the theory of jurisprudence upon which juvenile court statutes are predicated is afforded by the Michigan Supreme Court in an early case in this field:<sup>7</sup>

"Legislation is rarely in advance of, most often follows at a conservative distance after, the community conviction of the desirability of necessity for legislation, and it may be assumed that the statute in question here is a reflection of sentiment amounting to a demand for legislation of such character. . . . The facts, and even the vagaries, of physiology and psychology, the age, sex, and mental and physical health of the individual members of the community, are factors in any system of jurisprudence. That the state should be, and is, profoundly interested in the moral and physical conditions of infant citizens, goes without saying. The law recognizes, as the physical and the social senses recognize, the requirements of nurture and of education, mental and moral. Infancy imports wardship. It implies control, direction, restraint, supervision. Depending, as it may and does, upon the natural and usual sentiments attending parentage and family, society is conscious, and has from earliest times been conscious, of the fact that conditions may be such that these dependencies are without support, and that the state itself must in some cases be parent to children of the state. From the earliest times the law, while regarding the natural rights of parents and deciding between estranged parents with equal natural rights, according to rules more or less certain, has always in the last analysis of the particular case, set the welfare of the child, and the interest of the community in the welfare of the child, above every other consideration."

#### *History of Juvenile Court Procedure: In General*<sup>8</sup>

Since there have been published many books, monographs and articles which present detailed histories of juvenile courts, it will suffice here to mention summarily a few historic milestones. In the middle of the nineteenth century, the innovation in several eastern states of private hearings in children's cases and special reform schools for children marked the first recognition of the need for specialized procedures to fulfill the ancient judicial tradition of affording special protection to children. In the year 1899, the first juvenile court laws were enacted in Illinois and Colorado, and the first juvenile courts were established thereunder in Chicago and Denver. The other states of the Union rapidly adopted similar legislation, until in 1951, the State of Wyoming became the last state to enact a special juvenile court law—fifty-two years after the inception of the first juvenile court. Specialized court procedures for juveniles were extended to the

7. *Hunt v. Wayne Circuit Judges*, 105 N.W. 531, 3 L.R.A. (N.S.) 564 (Mich. 1906).
8. Source of Material: S. P. Breckenridge, "Social Work and the Courts", University of Chicago Press (1934); Pauline Young, "Social Treatment in Probation and Delinquency", McGraw-Hill, New York (1937); and Maxine Virtue, "Study of the Basic Structure for Children's Services in Michigan", American Judicature Society, Ann Arbor (1953).

federal courts with the passage of The Federal Juvenile Delinquency Act in 1938.

It is interesting to note that the development of the juvenile court movement has not been confined to the United States, but has been international. Thus, Great Britain and Canada established juvenile courts in 1908; Switzerland in 1910; Belgium and Hungary in 1913; India in 1920; Holland and Japan in 1922; Germany and Brazil in 1923; and subsequently by many other countries, including Spain, South Africa, and New Zealand. Soviet Russia abolished its juvenile court system in 1932.

The basic constitutionality of the juvenile court type of legislation has been well-established throughout the years. At the outset, the juvenile court laws were attacked on the grounds that they deprived a child of the right to jury trial; denied the right of appeal; imposed unequal penalties; deprived children of equal protection of the laws; and infringed upon the right not to be tried except upon presentment or indictment. Although specific attacks and individual judicial opinions varied, the fundamental theory upon which juvenile court laws have been upheld is that there can be no conflict between the Bill of Rights and juvenile court procedure, because the latter is civil and reformatory rather than penal in nature.

#### *History of Juvenile Court Procedure: Wyoming.*

The legislative assembly of the Territory of Wyoming at its first session in 1869, in accordance with the standards of that era, did not demarcate between adult and juvenile offenders, with the single exception of jail detention. Chapter 17, Sec. 14, Laws of Wyoming, 1869,<sup>9</sup> provided:

"Juvenile prisoners shall, whenever practicable, be kept in apartments separate from elder prisoners; and the visits of parents and friends who desire to exert a moral influence over them, shall, at all reasonable times, be permitted."

However, Ch. 35, Sec. 4, S.L. 1876, provided as follows: "An infant under the age of ten years shall not be found guilty of any crime or misdemeanor."

The next legislation with respect to juvenile delinquents was enacted in 1884,<sup>10</sup> and authorized the "judge of the probate court" to commit any child, under the age of sixteen years, "convicted" of any offense, "except homicide, arson or rape," or found to be "disobedient and uncontrollable," to a "house of refuge" for education and training, or to be indentured. In 1888 the law was amended by substituting the words "a vagrant, or so incorrigible and vicious," for the words "disobedient and uncontrollable," and by changing the applicable age limit to the span between ten and sixteen years of age.<sup>11</sup> The only case in which the Wyoming Supreme Court

9. C. L. 1876 c. 66 sec. 13; Wyo. Rev. Stat., 1887, sec. 1378; Wyo. Rev. Stat. 1899, sec. 1052; Wyo. Comp. Stat., 1910, sec. 1096.

10. Wyo. (Terr.) Laws, 1884, c. 53; Wyo. Rev. Stat., 1887 secs., 2332-35 inclusive.

11. Wyo. (Terr.) Laws, 1884, c. 54; Wyo. Rev. Stat., 1899, secs. 4930-34; Wyo. Comp. Stat., 1910, secs. 3127-3131. (sec. 3127 now appears as sec. 58-601, Wyo. Comp. Stat., 1945).

had occasion to construe this statute was in *Kelsey v. Carroll, Sheriff*,<sup>12</sup> which involved a single issue of jurisdiction. The court ordered that the petitioner, fourteen years of age, be discharged from her unlawful custody, because the order of commitment failed to show the jurisdictional facts as to the age and legal residence of the child. The opinion quotes the district court's order in part, from which the following interesting extract is taken:

"The court hearing the evidence of both the state and the defendants, and being fully advised that said minor child, Margaret Kelsey, was incorrigible and vicious and that she was surrounded by immoral and vicious influences . . . and whereas, a due regard for the morals and welfare of said minor child requires that said Margaret Kelsey be committed to a reform or industrial school. . . ."

In referring to the statute (Wyo. Comp. Stat. 1910 sec. 3128) under which the petitioner was proceeded against and committed, the Supreme Court stated:

"The statute also provides as to such a proceeding that it shall conform as nearly as practicable to the course of procedure provided for by law for the trial of criminal cases in the District Court; but that the trial shall be before the court and not before a jury, and it is made the duty of the county and prosecuting attorney to prepare and prosecute such cases in behalf of the same."

Although the statutory label of "vicious" and the prescribed use of criminal procedure could not but stigmatize the youthful offender, nonetheless the order's reference to "a due regard for the morals and welfare of said minor" indicates that the judiciary desired to take cognizance of a different standard by which to judge the young law violator.

In 1890 the first statute pertaining to dependent children was enacted.<sup>13</sup> It was limited in its application to "any minor child" whose parents had been convicted of an assault or assault and battery upon him, or to any minor child who was orphaned or deserted with no legal guardian responsible for him. In such instance, the child was eligible for adoption by "any proper and fit person," or could be committed to the care and custody of the board of county commissioners. In 1895 the state legislature passed a law entitled "An Act to prevent and punish wrongs to children,"<sup>14</sup> but only children under the age of fourteen years came within its purview. This law was partially duplicatory of the 1890 statute, for it also provided for the disposition of abandoned children as well as of children subjected to gross abuse by their parents or other custodians; the court being em-

12. 22 Wyo. 85, 138 Pac. 867 (1913).

13. Wyo. Sess. Laws, 1890-91, c. 20, secs. 10 & 11; Wyo. Rev. Stat., 1899, secs. 2302 & 2303; Wyo. Comp. Stat., 1910, secs. 3114 & 3115; Wyo. Comp. Stat., 1920, secs. 3875 & 3876; Wyo. Rev. Stat., 1931, secs. 20-113 & 20-114; Wyo. Comp. Stat., 1945, secs. 58-113 & 58-114.

14. Wyo. Sess. Laws, 1895, c. 46; Wyo. Rev. Stat., 1899, sec. 2301; Wyo. Comp. Stat., 1910, sec. 3113; Wyo. Comp. Stat., 1920, sec. 3874; Wyo. Rev. Stat., 1931, sec. 20-112; Wyo. Comp. Stat., 1945, sec. 58-108.

powered to appoint a guardian, after due notice had been given to persons having custody of the child.

In 1899 a statute was passed concerning juvenile dependents which was notable for its unwieldy procedure: "Not less than ten persons who are heads of families" were required to support a (verified) petition to the court alleging that a child was deserted, destitute, or in the control of "vicious or immoral" parents, guardians or custodians, and asking that a guardian be appointed for the child.<sup>15</sup> Due provision was made for service of notice on parent or guardian, either personally or by publication; and, in the latter event, the person so notified had one year within which to apply for modification of the order. The court was authorized, if it were satisfied "that it is for the best interests of such child," to appoint a guardian or place the child with any Wyoming society actively engaged in securing homes for destitute children. This statute was amended in 1903 with an abrupt reduction in the number of persons required to support the petition from ten to one.<sup>16</sup>

In 1907 the legislature turned its attention to delinquent children under the age of fourteen years, and provided for the court to commit the custody of children to some society, upon its consent thereto, in the state for placement in "family homes," until the child reached majority; and, if such family home placement proved unsuccessful, then a rehearing could be had and the child then committed to "reform school," within the discretion of the court.<sup>17</sup> It was specifically provided that the state would bear no financial liability for this type of private placement.<sup>18</sup> The 1907 session also enacted special parole and pardon statutes for juvenile delinquents committed to out-of-state institutions,<sup>19</sup> wherein the governor was granted the power of pardon and parole, and if the latter choice were made, the delinquent was paroled to the governor pending his good conduct; if he committed a breach of parole, the governor could order his return to the institution whence he came. With the statutory establishment of the Wyoming Industrial Institute in 1911, the foregoing provisions became obsolete, and were ultimately repealed.<sup>20</sup>

In 1915 the legislature defined delinquency and dependency, as well as prescribed certain minimum standards for child-caring agencies and institutions for dependent and delinquent children.<sup>21</sup> These statutes remain unchanged on the statute books at the present time, except that the

15. Wyo. Sess. Laws, 1899, c. 25 sec. 1; Wyo. Rev. Stat., 1899, secs. 4935-4940; Wyo. Comp. Stat. 1910, secs. 3117-3122; Wyo. Comp. Stat., 1920, secs. 3884-3889.

16. Wyo. Sess. Laws, 1903, c. 106.

17. Wyo. Sess. Laws, 1907, c. 60, secs. 1-3.

18. Wyo. Sess. Laws, 1907, c. 60, sec. 4.

19. Wyo. Sess. Laws, 1907, c. 64.

20. Wyo. Sess. Laws, 1931, c. 73, sec. 179.

21. Wyo. Sess. Laws, 1915, c. 99, secs. 1, 2 & 3; Wyo. Comp. Stat., 1920, secs. 3889, 3900, 3901; Wyo. Rev. Stat., 1931, secs. 20-706, 707, 708; Wyo. Comp. Stat., 1945, secs. 58-606, 607 & 608.



age limit for delinquents was raised to twenty-one years in 1919.<sup>22</sup> An interesting sidelight on the public interest in juvenile protection is revealed by the passage in 1919 of a statute creating a commissioner of child and animal protection, who was appointed by the governor to serve a two year term at an annual salary of \$2,500.00, and whose duties included enforcement of the "laws for the prevention of wrongs to children."<sup>23</sup> This law was repealed in 1929,<sup>24</sup> and the commissioner's duties were allocated between the State Board of Charities and Reform and the State Veterinarian respectively.

In 1921 a law was enacted providing that all juvenile delinquents under the age of twenty-one years shall have a mental examination prior to commitment to any state institution for either temporary or permanent care, the travel expense of the examiners to be borne by the county in which the delinquent resides.<sup>25</sup> This act, which is still in effect and unamended, is symptomatic of the public concern with causes of delinquency in order that constructive disposition may be made of the child. In 1927 the legislature amended earlier provision relating to contributing to the delinquency of minors by broadening the scope of the offense to include any person who causes or encourages a child under the age of eighteen years "to violate any law of this state," and imposing a more stringent penalty than provided in the earlier law.<sup>26</sup> This amendment is not only a legislative confirmation of the social fact that children should not be held to the same degree of accountability for their acts as are adults, but evinces a desire to fix responsibility upon the real wrongdoer in certain cases of juvenile offenses: the adult who deliberately misguides a child.

Dependent children received the attention of the legislative session of 1933, which authorized the State Board of Charities and Reform to establish the State Home for Dependent Children at Casper;<sup>27</sup> and repealed earlier laws which had placed dependent children under the care and control of the State Board of Child and Animal Protection,<sup>28</sup> and then with the State Board of Charities and Reform to provide for their care in the former asylum for the deaf, dumb and blind at Cheyenne.<sup>29</sup>

The year 1935 marked the creation by the legislature of the State department of Public Welfare "for the purpose of promoting the public welfare of the people of the State of Wyoming in juvenile, relief, welfare and social security matters and measures. . . ."<sup>30</sup> The same Act provided that each County Department of Public Welfare shall

22. Wyo. Sess. Laws, 1919, c. 119, sec. 2.

23. Wyo. Sess. Laws, 1919, c. 32; Wyo. Comp. Stat., 1920, c. 240, secs. 3843-3846.

24. Wyo. Sess. Laws, 1929, c. 114.

25. Wyo. Sess. Laws, 1921, c. 159; Wyo. Rev. Stat., 1931, sec. 20-602; Wyo. Comp. Stat., 1945, sec. 58-617.

26. Wyo. Sess. Laws, 1927, c. 93; Wyo. Rev. Stat., sec. 20-102; Wyo. Comp., 1945, sec. 58-102.

27. Wyo. Sess. Laws, 1933, c. 117.

28. Wyo. Sess. Laws, 1919, c. 107.

29. Wyo. Sess. Laws, 1929, c. 135.

30. Wyo. Sess. Laws, 1933, c. 64, sec. 1.

"endeavor, in order that the children of the county may have suitable home and family life, to provide care for needy children in other private families when proper care cannot be provided in their own homes, and render such assistance as is needed to the children of its county to enable them to take full advantage of the laws in behalf of dependent, neglected, delinquent, and defective children and be responsible for assisting in the enforcement of all laws designed for protection of children or for the restriction of child labor or the promotion of wholesome recreation;"<sup>31</sup>

In December, 1939, the plan for the establishment of a Division of Children's Services in the State Department of Public Welfare was approved by the United States Children's Bureau; and federal funds for its creation and operation were secured under the authority of Title V, Part III, Federal Social Security Act. The Division of Children's Services commenced its work in September, 1940, and its program of services and trained personnel was to prove an essential component of the juvenile court structure subsequently established in the state.

The next significant addition to the body of legislation pertaining to children occurred in 1945 with the passage of amendments to Sections 20-103, 20-107, and 20-702, Wyoming Revised Statutes, 1931. The most important of these was the amendment to Section 20-702, relating to court procedure for "incorrigible and vicious" juveniles, and which formerly provided in part:

"The proceeding provided for by this section shall conform as nearly as practicable to the course of procedure provided for by law for the trial of criminal cases in the district courts; but the trial of such juvenile delinquents shall be before the court and not before a jury, and it shall be the duty of the county and prosecuting attorneys of the respective counties to prepare and prosecute such cases in behalf of the state."

This wording had remained unchanged since its original enactment in 1888,<sup>32</sup> more than a decade prior to the establishment of the first juvenile courts in America; and the requirement for substantial conformity to regular criminal procedure in juvenile cases was indeed contrary to the public attitude prevalent for many years before its amendment in 1945. Moreover, the requirement for criminal procedure combined with a denial of jury trial was a curious anomaly at best. The 1945 amendment to this language provided as follows:<sup>33</sup>

"Any proceedings under the provisions of this section shall not be criminal proceedings, but they shall be entitled 'In the Interest of \_\_\_\_\_, a Minor Child,' and said proceedings may be docketed and filed as probate proceedings or separately docketed and filed as the court may direct. Hearings may be held privately and informally by the court and not before a jury, and the child

31. *Ibid.*, sec. 11.

32. Wyo. (Terr.) Laws, 1888, c. 57, sec. 2.

33. Wyo. Sess. Laws, 1945, c. 121, sec. 3.

shall have the right to counsel. The court may at any time alter, suspend or rescind any order entered in such proceedings, excepting an order committing said child to a reform or industrial school. No preliminary hearing shall be had before said hearing by the juvenile court. When any such child is committed, the child so committed shall be educated, trained and treated and indentured or discharged in the same manner as provided in the first section of this Article."

This provision prescribed a genuinely improved method for the court processing of juvenile offenders: it repealed the language pertaining to criminal law—i.e. The State "against" a child—and substituted "in the interest of" the child; it permitted private and informal hearings and abolished the preliminary hearing; and gave the child a right to counsel. However, any contention that this provision obviated the necessity for subsequent juvenile court legislation does not bear reasonable scrutiny. The 1945 amendment neither purports to be nor is a juvenile court law, as is exemplified in many ways. For example, grounds for jurisdiction are incompletely defined; hearing procedures are permissive only and sketchily outlined; and no usage whatsoever is made of the social techniques which are an inherent feature of an effective juvenile court. The amendment is really an anachronism in an archaic statute; it is preceded by a reference to "vicious" children and followed by authorization to "indenture" a child who has been committed. This amended provision was the helpful precursor of, not the substitute for, a juvenile court law in the State of Wyoming.

It is worthy of comment that the 1945 legislative session also evidenced interest in the problem of juvenile detention, and enacted a law authorizing the board of county commissioners of any county to purchase, build, or rent a detention home to be used exclusively for the confinement of delinquent children under twenty-one years of age.<sup>34</sup> The statute is enabling rather than mandatory, and this flexibility may well enhance its utility in the future.

By 1947 the widespread interest of the people of Wyoming in securing a juvenile court law was reflected by the passage of Senate Joint Resolution No. 7, which resolved that a constitutional amendment authorizing the legislature to establish juvenile courts be submitted to the electors.<sup>35</sup> The amendment was duly ratified by vote of the people on November 2, 1948, the vote being 65,651 favorable to 16,002 opposed—an affirmation of four to one. The amendment reads as follows:<sup>36</sup>

"The Legislature may by general law provide for such Juvenile Delinquency and Domestic Relations Courts as may be needed, and for the number, qualifications and election of Judges of such Courts. Appeals shall lie in such cases and pursuant to such

34. Wyo. Sess. Laws, 1945, c. 90.

35. Wyo. Sess. Laws, 1947, page 260.

36. Wyo. State Const., Article V, sec. 29.

regulations as may be prescribed by law. Such Courts shall have such jurisdiction as the Legislature may by law provide."

In 1949 the Wyoming Youth Council was created by a statute which charged it with the responsibility of studying the laws pertaining to children and recommending any needed revisions.<sup>37</sup> In response to the public mandate evidenced by the constitutional amendment, the Council presented to the 1951 legislature a proposed juvenile court law, which was enacted. The law has been and still is the subject of controversy. It is hoped that the ensuing analysis, by clarification, will dissipate criticism founded on misunderstanding; only time and usage can provide an accurate evaluation of its worth.

*Analysis of the Provisions of the 1951 Juvenile Court Law*<sup>38</sup>

The following analysis should be read with these facts being applied as constant factors:

(1) The Wyoming Youth Council, consisting of fourteen members, spent two years in the preparation of the juvenile court bill; and each provision contained therein was subjected to individual scrutiny and group discussion.

(2) The juvenile court statutes of the forty-seven sister states, the judicial decisions construing them, and the Standard Act of the National Probation and Parole Association (1949) were studied preparatory to drafting the bill; and the Legislative Committee of the Wyoming State Bar rendered active and valuable assistance.

(3) Although the Council's final draft contains certain similarities both to the Standard Act and to provisions in the laws of other states, it was specially designed to fit Wyoming's needs; it is not a borrowed law which has been superimposed upon our system of judicial administration.

**THE COURT.**<sup>39</sup> The District Courts are vested with the jurisdiction of the juvenile court, and the district judges thereof are designated to serve as juvenile court judges. Prior to agreeing upon this provision, the Council studied and rejected these several possibilities: a state juvenile court, centrally located, presided over by a juvenile court judge, and staffed with social and probation workers; a traveling state juvenile court, similarly staffed; a separate juvenile court for each judicial district; and four district juvenile courts. However, the Council concluded that separate and additional courts would be presently undesirable, because undue expense would be entailed; insolvable problems of travel and detention facilities would be involved; the state juvenile caseload, and the geographic distribution thereof, did not warrant their establishment; separate juvenile courts would be disproportionate to our general system of courts of record; and Wyo-

37. Wyo. Sess. Laws, 1949, c. ....; Wyo. Comp. Stat., 1949, secs. 18-2401-2406, 1953, Cum. Supp.

38. Wyo. Comp. Stat., 1945, sec. 1-701, 1953 Cum. Supp.

39. Ibid., sec. 1-702.

ming's district judges, upon the basis of past and present judicial reputation, are eminently capable of rendering distinguished service as juvenile court judges.

**JURISDICTION.**<sup>40</sup> It is a truism that the jurisdictional provision of a juvenile court law is one of its most vital parts, and that of the 1951 Law is no exception. It is one of the few sections which is "standard," for it is substantially similar to the jurisdiction provision of the Standard Act,<sup>41</sup> and has been enacted by many states, including California, Georgia, Michigan, Nevada, North Dakota, South Dakota. It reads in verbatim:

"The Court shall have jurisdiction in all proceedings instituted therein or transferred to it by order of the district court:

- a. Concerning any child living or found within the district:
  - (1) whose occupation, behavior, condition, environment, or associations are such as to injure or endanger his welfare or that of others; or, who is an habitual truant;
  - (2) who is abandoned by his parent or other custodian;
  - (3) who is beyond the control of his parent or other custodian;
  - (4) who is alleged to have violated or attempted to violate any State or local law, regardless of where the violation occurred;
  - (5) who lacks proper parental care or supervision by reason of the fault, habits, or immoral practices of the parent or other custodian.
- b. Concerning any person under 20 years of age living or found within the district who is alleged to have violated or attempted to violate any State or local law prior to having become eighteen years of age. Such a person shall be dealt with under the provisions of this article relating to children.
- c. To determine the custody or guardianship of the person of any child living within the district who is not a ward of another court.

Nothing contained in this article shall deprive the district court of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of causes pending in that court nor shall this Act in any way affect or limit the present powers of the district courts to proceed under any of the other statutes of the State."

This is a broad provision, with Subsection (a) describing rather than defining dependency, neglect and delinquency. This does not render the jurisdiction of the court any less definite, and is in accord with the basic juvenile court philosophy of dealing with the child as an individual. It is more practicable to describe the circumstances or conduct which will bring a child within the purview of the court than to attempt legalistic definitions whereunder a child is labeled or categorized. It should be noted that habitual truancy has been specifically stated as a jurisdictional ground,

40. Wyo. Comp. Stat., 1945, sec. 1-703, 1953 Cum. Supp.

41. Sec. 7, "A Standard Juvenile Court Act", Revised Edition, 1949, National Probation and Parole Association.

because such conduct has been well-proved to be a frequent forerunner of serious delinquencies which infringe the rights of others. The phrase "beyond control" has been preferred to the earlier Wyoming statutory language of "vicious or incorrigible," since the latter imposes an unnecessary stigma. Attention is also called to the fact that jurisdiction covers abandoned children, and hence this Act may be invoked in such cases in lieu of resort to the various and conflicting statutes relating to this problem.<sup>42</sup>

The constitutionality of including cases of all violations of law has long been established, one of the leading cases so holding being *Cinque v. Royd*,<sup>43</sup> in which the Supreme Court of Errors of Connecticut declared:

"The constitutional objections turn upon whether the act is one for the punishment of crime, and therefore subject in its form and in the manner of its administration to the constitutional guaranties in various particulars contained in the Bill of Rights, or whether it is concerned with the care and protection which every state as *parens patriae* in some measure affords to all inhabitants who from personal deficiencies or incapacities or conditions of life are in some degree abnormal, and hence in its scope, intent, and method of administration entirely of a civil nature.

"It is not necessary to repeat the extended summary of the act before made, or to refer specifically to any of its particular provisions, to demonstrate that the act was intended to constitute a court which should conduct a civil inquiry, to determine whether, in a greater or less degree some child should be taken under the direct care of the state and its officials to safeguard and foster his or her adolescent life, and not to conduct a criminal prosecution, nor to attach to the enforcement of the provisions of the act any sanction of a criminal nature. . . . Of course an act does not become one solely of a civil nature simply because it is called so, but its true nature is to be determined by the scope and nature of the provisions. If such courts are not of a criminal nature, then they are not unconstitutional because of the nature of their procedure depriving persons brought before them of certain constitutional guaranties in favor of persons accused of crime."

It would seem that the Wyoming law clearly meets the above-quoted test of a civil procedure; and hence, the inclusion of all law violations in the jurisdictional provision is violative of no constitutional right, because the child is not tried for a specific crime. This rationale is clearly and succinctly stated by the Supreme Court of Mississippi:<sup>44</sup>

"Under Section 5702 (b), the proceeding may be, in the first instance, before a judge or chancellor, and is not for the purpose of trying the delinquent, immoral, or incorrigible child for a specific crime, but evidence of the commission of a specific crime is received and may be considered, for the purpose

42. For example, Wyo. Comp. Stat., 1945, secs. 58-213, 58-501, 58-609 (4), all of which relate to procedures for the disposition of abandoned children.

43. 99 Conn. 70, 121 A. 678 at 682, 683 (1923).

44. \_\_\_\_\_ Miss. \_\_\_\_\_, 118 So. 184, 60 A.L.R. 1325 (1928).

of determining whether the child is in fact immoral, delinquent, or incorrigible, and the proceedings under this statute are civil and not criminal. It has no reference to enforcing the criminal law as such, but deals with the character of the child, and the environment in which it moves and lives, as the subject-matter of inquiry, and is established as any other fact in a civil suit."

Since the age jurisdiction of the Wyoming law is of "a person less than 18 years of age,"<sup>45</sup> some doubt may have arisen as to the validity of Section 1-703 (b), which vests the juvenile court with jurisdiction over a person under twenty years of age who violated any state or local law prior to having become eighteen years of age. A virtually identical section was reviewed by the Supreme Court of Montana in a recent case, and was upheld by a three to two decision.<sup>46</sup> Although two dissenting justices believed the provision to be contradictory and unfair in practice, the majority of the court supported the clear intent of the legislature.

The last clause of the jurisdiction provision which will be specially considered here is Section 1-703 (c), which authorizes the juvenile court "to determine the custody or guardianship of the person of any child living within the district who is not a ward of another court." This identical wording was carefully construed by an Ohio court<sup>47</sup> upon a challenge that the juvenile court was not vested by law with jurisdiction to determine the right of custody of a minor child unless and until it has found the child to be either delinquent, dependent or neglected. The court rejected this contention on the ground that to so hold would be to "read and nullify the provision for certification of cases from the district court to the juvenile court out of the statute."<sup>48</sup> In the course of its opinion, the court stated:

"It should be kept in mind that the Legislature more than 40 years ago created the Juvenile Court. Its purpose was to provide a separate tribunal to take jurisdiction over the problems of child delinquency and neglect. Since that time, the jurisdiction of the Juvenile Court has been expanded to include supervision of child care under certain circumstances and many other juvenile problems. One of the great advantages of the Juvenile Court in dealing with children is the simplification of its procedure and its right to determine by rule the method of invoking its jurisdiction. In interpreting the Juvenile Court Act, it should be considered in the light of the broad purposes for which it was created."

**LEGISLATIVE INTENTION.** Section 1-704 of the Wyoming Juvenile Court Law is the single major amendment of the legislature to the Council's recommended draft, and is declaratory of the legislative wish that the new juvenile court procedure supplement and not supplant prior existing procedures for the handling of juvenile offenders and dependents. The section

45. Wyo. Comp. Stat., 1945, sec. 1-702 (b), 1953 Cum. Supp.

46. State ex rel. Bresnahan v. District Court of 8th Judicial District, in and for Cascade County et al. No. 9349, 263 P.2d 971 (Mont. 1953).

47. In re Lorok, \_\_\_\_\_ Ohio \_\_\_\_\_, 114 N.E.2d 65 (1952).

48. Cf. Wyo. Comp. Stat., 1945, sec. 1-703, 1953 Cum. Supp., which reads in part: "The Court shall have jurisdiction in all proceedings instituted therein or transferred to it by order of the district court. . . ." (Italics by author).

in its entirety was interpolated by the legislature, and the first sentence declares:

"Nothing herein contained shall be construed as repealing or altering the other procedures now provided by law for criminal cases involving a child nor cases brought under other statutes provided for disposing of vicious or incorrigible children as in such other statutes defined nor adoption proceedings, it being the legislative intention to make available the procedures herein provided in addition to the other methods and procedures by law provided for persons made subject to the procedures of this Act."

The second half of the section vests the decision to use the new or old procedure in any given case entirely within the discretion of the district court judge. In other words, usage of the juvenile court law is not mandatory, but discretionary, and this fact has engendered some confusion in the laity who were vitally interested in securing the new procedure. It can well be argued that to designate juvenile court procedure as merely supplemental to the old methods in effect vitiates its worth and effectiveness. On the other side, it can be said that until the law enforcement and professional personnel directly concerned with the usage of the law fully subscribe to the philosophy of a juvenile court, this section is probably a wise compromise. If it be a choice between revolution and evolution, then the latter is certainly to be preferred. It is a dispute which cannot be resolved by heated debate nor prompt amendment, but must be determined ultimately by time and experience.

**THE TAKING INTO CUSTODY AND DETENTION OF THE CHILD.**<sup>49</sup> The provision regulating the taking into custody and detention of the child strongly manifests the civil nature of the entire Act. Since this section is primarily concerned with the social welfare of the child, a detailed discussion of its contents would not be appropriate for the purposes of this article, and it may be summarized as follows:

- (1) Whenever a peace officer apprehends a child whose conduct or circumstances bring him within the jurisdiction of the Act, the taking into custody shall not be termed an arrest;
- (2) Parents of the child apprehended shall be notified as soon as possible, and written notice given within twenty-four hours to the judge or commissioner and county welfare worker that the child is in custody.
- (3) Whenever possible, the child shall be released to his home pending hearing upon written promise of his parent or guardian that the child will appear at the hearing.
- (4) If the child cannot or should not be released back to his home, then he shall be referred to the county welfare department for temporary placement.
- (5) In specified instances, a child may be placed in jail, segregated from adults, but may not be detained without written order of the judge, for more than three days.

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49. Wyo. Comp. Stat., 1945, sec. 1-705, 1953 Cum. Supp.



- (6) Hearings shall be held within three days from the time of being apprehended if the judge be available.
- (7) Peace officers' records of children shall be kept separate from adult records, and not be available for either public inspection nor newspaper use.

It is readily apparent that all of the above requirements are consonant with the judicially accepted theory that "the child is taken in hand by the state, not as an enemy, but as a protector, as the ultimate guardian, because either the unwillingness or the inability of the natural parents to guide him toward good citizenship has compelled the intervention of the public authorities."<sup>50</sup> It is indeed poor policy for society to countenance the indiscriminate jail detention of juvenile offenders, for it subjects youth to undesirable influences and makes the task of rehabilitation more difficult. Nor does the fact that it is detention in a local jail ameliorate the evil, but rather the reverse is true, as has been pointed out by a prison expert:<sup>51</sup>

"In point of fact, our local jails are the worst institutions in our whole penal and correctional system, except for the even more abominable chain gangs still found in a few Southern states. One must not forget that, of the 3078 jails inspected by the United States Bureau of Prisons, 211 were listed as entirely unfit for use and only 99 were given a rating of 60% or over."

That the State of Wyoming is no exception to the national situation is evidenced by the following jail ratings of the United States Jail Inspector applicable May 10, 1954: *three* jails approved for detention of federal juvenile prisoners;<sup>52</sup> *three* jails approved for detention of federal women prisoners;<sup>53</sup> *six* "contact" jails approved for federal prisoners;<sup>54</sup> *seven* jails approved for "restricted" use only—i.e. maximum forty-eight hour detention;<sup>55</sup> and *two* jails approved for restricted use with time limit—i.e. held only until the prisoner can be picked up.<sup>56</sup> In view of these facts, it can hardly be denied that until better detention facilities are available, Wyoming juvenile offenders should not be incarcerated pending hearing, except in cases of extreme necessity, and then for a maximum of three days. It is conceded that frequent and careless jailing of children is not prevalent throughout the state, but the practice is extant in certain localities; and so long as this situation obtains, usage of the new juvenile court laws with its regulatory language of Section 1-705 is the best preventive.

50. State ex rel. Bresnahan v. District Court of Eighth Judicial Dist., \_\_\_\_\_ Mont. \_\_\_\_\_ 263 P.2d 968 (1953).

51. Austin MacCormick, 9 Law and Contemp. Problems \_\_\_\_\_.

52. Casper, Kemmerer, and Laramie (girl prisoners only); all federal juvenile offenders in the state are taken to Englewood, Colorado, for detention pending hearing, the girls being detained in Laramie.

53. Casper, Kemmerer, and Laramie.

54. Casper, Cheyenne, Laramie, Lander, Rawlins, and Hot Springs County Jails.

55. Rock Springs City Jail, Converse, Niobrara, Park, Sheridan, Uinta, and Weston County Jails.

56. Sweetwater and Washakie County Jails.

PETITION.<sup>57</sup> When a child is taken into custody in a jurisdiction using the juvenile court procedure, a petition *may* be filed by the county attorney "or any interested person, including a law enforcement officer or the social investigator for the court." The statute specifies in detail the contents of the petition, which is entitled "In the Interest of \_\_\_\_\_, a child under eighteen years of age." There has been some criticism of this provision on the ground that it requires court processing and subsequent record for the child in every case, and thereby precludes "informal" adjustment by the county attorney. First, it should be pointed out that the statute is subject to the plausible construction that the filing of a petition is mandatory only when further action is contemplated. Second, and more important, if the child's conduct or circumstances are sufficiently serious to warrant intervention by legal authority, then the child's rights should be protected by regularized procedure. Moreover, to deviate from this principle tends toward improper socialization of the judicial system, for although law and social services complement each other, their functions should be kept separate. Substantiation for this view is found in the following statement:<sup>58</sup>

"'Unofficial handling' of cases is often recommended on the grounds that it permits even more flexible handling of a situation than can be found in the court room, or because it avoids the necessity of a court record. It is contrary to the whole philosophy of the (juvenile) court, however, and shows very little confidence in its procedures, to suggest that court action should be avoided where there is need for the services of the court at all. *Other agencies exist or should exist in the community to provide services to children and their families on a non-authoritative basis.*" (Italics by author).

The alleged problem of "record" is solved by the statutory authorization of the "deferred hearing procedure," described in detail, *infra*.

SOCIAL INVESTIGATION.<sup>59</sup> One of the most significant innovations of the juvenile court law is the requirement that a social investigation be made concerning each child on whose behalf a petition has been filed, and a written report thereof submitted to the court. The importance of making available to the court the fullest possible knowledge concerning the delinquent child is clearly set forth in a leading case from the Court of Appeals of New York:<sup>60</sup>

"So much has been written, judicially and extrajudicially, about the sociological and legal aspects of juvenile delinquency, and about the public policy which underlies such statutes as the one in question, that a detailed discussion here would be trite. For

57. Wyo. Comp. Stats., 1945, sec. 1-706, 1953 Cum. Supp.

58. Standards for Specialized Courts prepared by the Children's Bureau, Department of Health, Education, and Welfare, in cooperation with the National Probation and Parole Association, Draft (not final recommendations), May 15, 1953.

59. Wyo. Comp. Stat., 1945, sec. 1-707, 1953 Cum. Supp.

60. *People v. Lewis*, 260 N.Y. 171, 183 N.E. 353 (1932).

the purposes of this case, the fundamental point is that the proceeding was not a criminal one. The state was not seeking to punish a malefactor. It was seeking to salvage a boy who was in danger of becoming one. *In words which have often been quoted, 'the problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the State to save him from a downward career.'* 23 Harvard Law Review, 104, 'The Juvenile Court,' by Julian W. Mack." (Italics by author).

The answers to the questions "*What is he, how has he become what he is, and what had best be done in his interest and in the interest of the State . . .*" can rarely be elicited in open court under the ordinary rules of evidence; and yet this personal information is of incalculable value to the court in making its decision for the most constructive disposition of the delinquent child. *A fortiori*, is this true in cases involving dependent children.

Although juvenile courts in metropolitan areas have their own staffs of social workers, this obviously was not feasible in Wyoming. Therefore, the duty of social investigation for the court was imposed upon the county welfare departments, whereby trained social workers in every county became available to the courts.

**NOTICE OF HEARING.**<sup>61</sup> The Wyoming juvenile court law makes careful provision for the service of notice upon the parent or guardian of a child concerning whom a petition has been filed. The notice is in the form of a court order, fixing the time and place of hearing upon the petition, and requiring the appearance of the person served. Personal service within three days from the date of filing the petition is required, but if the parent is non-resident or personal service cannot be had within the prescribed time, then service may be had by registered mail to the last known address; however, service by publication is not permissible. Similar statutory provisions have been uniformly construed by the courts to be jurisdictional, and hence it has been held thereunder that a parent cannot be deprived of the custody of a child in commitment proceedings for dependent, neglected or delinquent children, without notice and an opportunity to be heard.<sup>62</sup> The rationale for this rule was well stated by the Appellate Court of Indiana in a case wherein it upheld the removal of an abused child from parental custody, the record showing that the parents were personally served with notice of the hearing:<sup>63</sup>

"They (the courts) have said that the object of the act is not punishment, but reformation, discipline, and education, and to provide for the proper custody of children within certain age limits who on account of neglect of their parents or for other

61. Wyo. Comp. Stat., 1945, secs. 1-708, 1-709, 1-710, 1953 Cum. Supp.

62. See annotation in 76 A.L.R. 242, "Right of parent to notice and hearing before being deprived of custody of child", at page 247, (b) "Commitment of dependent, neglected or delinquent children."

63. Heber et al. v. Drake et al., 68 Ind. App. 448, 118 N.E. 864 (1918).

causes were in need of proper guardianship. While the courts have recognized this to be the primary purpose of the law, they have also consistently recognized the fundamental proposition that every parent is entitled to have the care and custody of his own child, and this right can only be taken from him when it is made to appear that some law of the state enacted for the child's welfare and the welfare of society has been disobeyed by him; that these questions are to be determined only after such parent has been given the opportunity of answering any charges which may be filed against him respecting such matters."

Attention is called to the last sentence in Section 1-708, which reads as follows: "If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may, by order, require that the officer serving the same shall at once take the child into custody." This provision for temporary removal from custody without prior notice in no way conflicts with the parental rights to notice, as in indicated by the following excerpt from an opinion of the Supreme Court of Idaho:<sup>64</sup>

"The plaintiff is proceeding under the impression that due process of law requires that the determination of the parent's rights to the custody of his child must precede any interference therewith. This view cannot be sustained. Our statute was enacted as a matter of protection to the child and for the welfare of the state. . . . It might in many cases be a matter of high importance that action be taken without delay. The legislature having determined that a summary proceeding was necessary, requiring the immediate taking of children into custody in the interest of their moral welfare and education and as a protection to the state, the parent or guardian of a child removed from his custody is not denied the due process of law if an adequate remedy is available by which he may afterwards have his rights presented to a proper tribunal and determined."

It is to be noted that provisional taking into official custody may precede statutory notice and hearing only if the parents are entitled to a subsequent full hearing, and this, of course, is provided for by the Wyoming statute. Some courts have even upheld temporary institutional commitments without notice and hearing, declaring the parents' legal rights to be protected by other remedies, including the right of habeas corpus.<sup>65</sup>

Section 1-709 authorizes the court to appoint a guardian for a child whose parents or other legal guardian cannot be located prior to hearing. Section 1-710 vests the juvenile court with power to enforce attendance at hearings of parents or guardians personally served by contempt proceedings or issuance of warrants.

**HEARINGS.**<sup>66</sup> The section relating to hearings, which is one of the most

64. *Allen v. Williams*, 31 Idaho 309, 171 Pac. 493 (1918).

65. See annotation in 60 A.L.R. 1342, "Constitutionality of statute which for reformatory purposes deprives parent of custody or control of child."

66. Wyo. Comp. Stat., 1945, sec. 1-711, 1953 Cum. Supp.

important features of the juvenile court law, specifies three distinctive methods for handling juvenile dependents and delinquents: (1) Informal hearing; (2) Deferred hearing; and (3) Regular hearing. When a petition has been filed, the court may hold a preliminary informal hearing to determine whether or not further action is necessary; or, the court may determine that a deferred hearing would be for the best interests of the child and society. The deferred hearing procedure operates in this manner: A petition is filed, but no further action is taken with respect thereto for a period of six months; during this time, the child shall be under the informal supervision of a probation officer or county welfare worker, as the court may direct; if the child's conduct has been satisfactory during the probationary period, the case is administratively closed, and if not satisfactory, then a regular hearing is held. The deferred hearing procedure is based upon the "Brooklyn Plan," which was initiated in the United District Court for Brooklyn, New York, in 1935; and in January, 1946, the Attorney General of the United States authorized all United States attorneys to use the procedure. The federal procedure, which entails an eighteen month supervisory period, has been described as follows:<sup>67</sup>

"Deferred prosecution provides a procedural method, in worthy cases, involving juvenile offenders, by which the prosecutor holds in abeyance for a definite period, contingent on good behavior, all legal process, where such action is not in conflict with the best interest of the United States, and thereafter the prosecutor either administratively closes the case upon the satisfactory completion of the definite term, or processes the original complaint forthwith where there is a subsequent delinquency."

Of the first two hundred cases supervised under this method by the Brooklyn court, only two violators had to be referred to the courts for further action. The advantages of a "deferred hearing" are that the youth offender with a favorable record during the probationary period has no record, no stigma of crime, and society has received protection equivalent to that offered by formal probation.

In the conduct of regular hearings, the court is regarded by the statute as exercising equity jurisdiction according to the general rules of civil procedure, and the use of the written report concerning the social investigation of the child is carefully restricted by the language that it "shall not be admissible as evidence to prove the fact or falsity of the matters alleged to bring the child within the jurisdiction of this article."<sup>68</sup> The proper application of the rules of evidence to juvenile court procedure is excellently summarized in a leading case from the New York Court of Appeals:<sup>69</sup>

67. Conrad P. Printzlien, Chief Probation Officer, United States District Court, Brooklyn, New York, 12 Federal Probation 17 (1948).

68. See *Tranum et al. v. George*, \_\_\_\_\_ Ark. \_\_\_\_\_, 201 S.W.2d 1015 (1947), a typical and sound holding that social reports are hearsay and inadmissible as evidence.

69. *People v. Lewis*, 260 N.Y. 171, 183 N.E. 563, 86 A.L.R. 1001 (1932).

"The customary rules of evidence shown by long experience as essential to getting at the truth with reasonable certainty in civil trials must be adhered to. The finding of fact must rest on the *preponderance of evidence* adduced under those rules. Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Children's Courts than in any other court."

Although the hearings are governed by the rules for civil cases, evidence of the commission of a specific crime is admissible for the purposes of determining whether or not the child is in fact delinquent, because the juvenile court law "has no reference to enforcing the criminal law as such, but deals with the character of the child, and the environment in which it moves and lives, is the subject-matter of inquiry, and is established as any other fact in a civil suit."<sup>70</sup>

Since a new court procedure is a direct and intimate concern of the legal profession, the Youth Council conferred with the Legislative Committee of the Wyoming State Bar respecting its proposed draft, and cooperative effort resulted in the satisfactory resolution of almost every disagreement. However, the Committee was determinedly opposed to omitting the right to a jury trial, and contrary to the basic belief of the Council, the following sentence appears in the statute: "At the request of the child or his legal guardian, the child shall be entitled to have his case determined by a jury." It should be recalled that the legislature in defining court procedure for juveniles in 1884 provided "but the trial of such juvenile delinquents shall be before the court and not before a jury . . .",<sup>71</sup> and this remained in effect from 1884 until 1945. In 1945, this portion of the statute was amended to read, "Hearings may be held privately and informally by the court and not before a jury. . . ."<sup>72</sup> Since Wyoming had countenanced for 67 years the trial of juvenile offenders without a right to a jury, it is indeed difficult to reconcile to the view that to have dispensed with a jury trial under the juvenile court law would have been violative of constitutional rights. Moreover, the Wyoming constitution guarantees the right to trial by jury only in criminal cases,<sup>73</sup> and both the letter and spirit of the juvenile court law connotes its civil nature. Nor is the Wyoming statutory provision for private hearing contrary to the constitution, for nowhere in that document is there requirement for a public hearing. Even Section 10, Article X thereof, relating to criminal prosecutions, requires "a speedy trial by an impartial jury . . ." with no mention of public trial.

An examination of case authority warrants the categorical statement that statutes providing for the custody or commitment of delinquent chil-

70. *Bryan v. Brown*, 151 Miss. 398, 118 So. 184, 60 AL.R. 1325 (1928).

71. *Wyo. (Terr.) Laws*, 1884, c. 57, sec. 2.

72. *Wyo. Comp. Stat.*, 1945, sec. 58-602.

73. Article I, Section 9, "The right of trial by jury shall remain inviolate in criminal cases. . . ."

dren are not unconstitutional because they fail to provide for a jury trial, where the investigation is into the status and needs of the child, and the child is committed to a non-penal, reformatory institution.<sup>74</sup> The constitutionality of private hearings without a jury for juvenile offenders was upheld in the oft-cited federal case of *Ex parte Januszewski*,<sup>75</sup> the court declaring:

"It is urged that the Juvenile Act (of Ohio) is unconstitutional in that the petitioner was denied a trial by jury. Section 5, art. 1, of the state Constitution, declares that the right of trial by jury shall be inviolate, and section 10 of the same article provides that persons accused of crime shall have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, the like of which provision is found in the sixth amendment to the federal Constitution. The argument is unsound because it rests on the fallacy that the petitioner was tried for a crime. . . . The same conclusion was reached in regard to kindred laws in *State v. Brown*, 50 Minn. 353, 52 N.W. 935, 16 L.R.A. 691, 36 Am. St. Rep. 651; *Commonwealth v. Fisher*, 213 Pa. 48, 62 Atl. 198, 5 Ann. Cas. 92; *In re Sharp*, 15 Idaho, 120, 96 Pac. 563, 18 L.R.R. (N.S.) 886; *Mill v. Brown*, 31 Utah 473, 88 Pac. 609, 120 Am. St. Rep. 935; *Wisconsin Industrial School for Girls v. Clark County*, 103 Wis. 651, 179 N.W. 422."

It is, therefore, submitted that it would be entirely proper and desirable for the juvenile court law of Wyoming to be amended so as to repeal the right to jury trial.

In concluding this discussion of hearings under the juvenile court law, it should be emphasized that a trial, as such, is not contemplated under the spirit of or procedure prescribed by that law. The type of hearing intended is aptly described by a California court in these words:<sup>76</sup>

"From its very nature and because of necessary qualification for doing the work for which it is intended, the juvenile court is not designed as a trial court in the ordinary sense. Not only is its purpose more reformatory than punitive, but its method of operation is very different from that of a criminal court. Technicalities and formalities are largely done away with, and its simple procedure is designed to gain the confidence of those coming within its operations, and to enable the judge thereof to best guide and control its wards, with more consideration for their future development than for their past shortcomings. The circumstances attendant upon contested jury trials are not only out of place there, but might have an injurious effect, not only upon the methods, but upon the atmosphere and confidence that have been built up around the work of the juvenile court, and which are so largely responsible for its success."

74. See annotation in 67 A.L.R. 1082, "Constitutionality of statutes providing for custody or commitment of incorrigible children without a jury trial", which contains extensive citations in support of this rule.

75. 196 Fed. 123 (1911).

76. *People v. Superior Court*, 104 Cal. App. 276, 282, 285 Pac. 871, 874, and cited with approval in *In re Dargo*, ..... Cal. App. ...., 183 P.2d 282 (1947).

DECREE.<sup>77</sup> The statute gives broad discretion to the court with respect to making disposition of a child whom it has found to be dependent or delinquent. The court may order the child:

- (1) Placed under supervision in his own home;
- (2) Placed on officially supervised probation;
- (3) Placed in the custody of "a suitable person elsewhere who is willing and able to support the child" (e.g., a grandparent or other relative may be willing to assume the child's support and guidance);
- (4) Referred to the County Department of Public Welfare for placement in a foster home, the expense of support to be borne by the parent or guardian insofar as such person is able to pay.
- (5) Placed in a private institution (e.g., a church home or treatment clinic), and again the expense of support to be borne by the parent or guardian insofar as such person is able to pay.
- (6) Committed to the custody or guardianship of a public institution upon conditions determined by the court; provided,
  - (a) that no child can be committed to a reformatory institution for dependency or neglect.
  - (b) that a summary of the court's social information concerning the child must accompany the transmitted order for commitment as a guide for reformation of the child, and
  - (c) the institution, upon request from the court, shall give progress reports concerning the child.

The court is also empowered to order for the child a medical examination, medical and surgical care, and "other services," including psychiatric examinations and psychometric tests; and it can impose upon his parent or guardian the expense thereby incurred according to the ability to pay. Physical and mental examination and treatment are in accord with the principle that the state, through the court, acts as *parens patriae* in juvenile cases for the purpose of aiding the child, who has been deprived of suitable parental guidance, to achieve useful adulthood.

It not infrequently occurs that the court deems it desirable for the future well-being of the child to impose restrictions upon the adults morally responsible for him, and to this end the law provides:<sup>78</sup>

"In support of any order or decree, the court may require the parents or other person having the custody of the child, or any other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of this Act, to do or omit to do any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the child."

An adult's failure to comply with the lawful order of the court places him in contempt thereof, subject to a maximum penalty of a \$500.00 fine, or a thirty days' sentence in the county jail, or both.<sup>79</sup> The flexibility of the

77. Wyo. Comp. Stat., 1945, sec. 1-712, 1953 Cum. Supp.

78. Wyo. Comp. Stat., 1945, sec. 1-712(c), 1953 Cum. Supp.

79. Ibid., sec. 1-714.



provision authorizing the juvenile court to exert some control over the child's parents or other adult concerned can constitute a valuable assistance in securing the protection of dependent and rehabilitation of delinquent children.

The jurisdiction of the court does not terminate upon an adjudication of delinquency and order of commitment, but continues until the child attains his twenty-first year.<sup>80</sup> The validity of this clause has received judicial sanction in other jurisdictions,<sup>81</sup> as exemplified by the following excerpt from an opinion of the Supreme Court of Missouri construing a similar statute:<sup>82</sup>

“. . . the purpose of the power thus conferred was to enable the state, under proper circumstances, to take over the custody of delinquent children in order to secure their training and reformation. This power, salutary when properly exercised, as tending to promote good citizenship, is not dependent wholly upon the statute, but its origin may be traced to that equitable doctrine that 'equity acts upon the person,' and thus acting, it finds no more inviting field for its operation than in the protection of the personal rights of infants.”

However, this continuing jurisdiction has been interpreted to be a retention for the purposes of the proceedings in which the jurisdiction was obtained, and hence not a bar to criminal proceedings for offenses committed between the ages of eighteen and twenty-one years.

Where a similar “continuing jurisdiction” clause was attacked on the ground that it defeated the right of appeal, because the juvenile court could modify its judgment from term to term, the Supreme Court of Missouri, in an oft-quoted opinion, rejected the contention on two grounds: First, that the statute permitted appeals to be taken both from the final judgment of delinquency and from any modifications of such order, and second, on the theory that “the Legislature clearly expressed the intention that the juvenile court should exercise an equitable control and supervision over the custody, care, and training of delinquent children, throughout their minority, if need be, by making such orders from time to time as may seem conducive to the reformation of such children.”<sup>83</sup> In the same case it was contended that commitment for an indefinite term was a deprivation of liberty without due process of law, and subjected the child to cruel and unusual punishment; in overruling this argument, the court declared:<sup>84</sup>

“It should be remembered that a proceeding against a child alleged to be delinquent is an exercise of the state's power, as *parens patriae*, for the reformation of the child, and not for the punish-

80. *Ibid.*, sec. 712 (d)

81. See annotation, 76 A.L.R. 657, “Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender.”

82. *State ex rel. Menth v. Porterfield*, \_\_\_\_\_ Mo. \_\_\_\_\_, 264 S.W. 386 (1924).

83. *Ex parte Naccarat*, 328 Mo. 722, 41 S.W.2d 176, 76 A.L.R. 654.

84. *Ex parte Naccarat*, 328 Mo. 722, 41 S.W.2d 176, 76 A.L.R. 654.

ment of the child, as in a criminal proceeding, *and that the constitutional guaranties respecting a defendant in a criminal case do not apply in a delinquency case.*" (Italics by author).

There would seem to be no conflict between the statute vesting the juvenile court with continuing jurisdiction until the child attains the age of majority and the statutes<sup>85</sup> vesting authority in the State Board of Charities and Reform over persons committed to reform institutions.<sup>86</sup> The former clearly indicates the legislative intent that requisite court orders may be made periodically during the child's minority,<sup>87</sup> rather than terminating the court's jurisdiction immediately upon the entry of the commitment order, as was formerly the rule.

The final section of the provision relating to juvenile court decrees provides a re-affirmation of the non-criminal nature of the proceedings:<sup>88</sup>

"No adjudication by the court of the status of any child in any proceeding hereunder shall be deemed a conviction, nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from convictions, nor shall any child be found guilty or be deemed a criminal by reason of such adjudication."

MISCELLANEOUS PROVISIONS. The Wyoming juvenile court law concludes with a group of provisions which are integral to fair judicial procedure, and which are herewith presented in abbreviated form.

- (1) The court is directed, whenever practicable, to respect the religious faith of a child when he is placed with an individual other than a relative, or in a private institution.<sup>89</sup> It is believed that this represents a desirable adherence to the religious mores of American society.
- (2) It is specifically provided that neither court fees, witness fees, nor process costs shall be entailed in a juvenile court proceeding;<sup>90</sup> thereby removing what might otherwise be an administrative obstacle.
- (3) Court records are required to be maintained either separately or as part of the probate records, since the proceedings are non-penal. The court's records, including all social records received, are confidential, privileged, and only available to inspection upon written consent of the judge, thus ensuring protection against damaging publicity.<sup>91</sup> The constitutionality of this type of provision was upheld in *Kozler v. N.Y. Telephone Co.*,<sup>92</sup> the court sustaining the inadmissibility of prior juvenile court records in a subsequent proceeding, and stating:

85. Wyo. Comp. Stat., 1945, secs. 19-1302, 19-1308, 19-1403, and 19-1408.

86. See *Sullivan v. State Board of Charities and Corrections*, \_\_\_\_ Ky. \_\_\_\_, 236 S.W. 252 (1922), where two analogous statutes were reconciled on the alternative theories of the court and State Board releasing a child upon different grounds or of implied repeal.

87. *Petition of Morin et al.*, \_\_\_\_ N.H. \_\_\_\_, 68 A.2d 668 (1949).

88. Wyo. Comp. Stat., 1945, sec. 712 (d), 1953 Cum. Supp.

89. Wyo. Comp. Stat., 1945, sec. 1-713, 1953 Cum. Supp.

90. *Ibid.*, sec. 1-715.

91. *Ibid.*, sec. 1-716.

92. 93 N.J.L. 279, 108 A. 376 (1919).

"We see no reason why the legislature may not enact that it is against public policy to hold over a young person *in terrorem*, perhaps for life, a conviction for some youthful transgression."

- (4) Appeals may be taken from the juvenile court to the supreme court in the same manner as is by statute provided for appeals from the district court.<sup>93</sup> Some states (e.g., Michigan) do not permit an appeal from a juvenile court hearing, and others have held the right to review not essential to due process of law, but a matter of grace.<sup>94</sup> Although the Wyoming Supreme Court has held that the state constitution does not guarantee the right of appeal in all cases,<sup>95</sup> the electorate did not choose to curb the child's appellate rights. Hence, the constitutional amendment authorizing the establishment of juvenile courts provides: "Appeals shall lie in such cases and pursuant to such regulations as may be prescribed by law."<sup>96</sup>

#### CONCLUSION

In concluding this analysis of the Wyoming juvenile court law, these two asseverations should be made: First, the new procedure is not a panacea for the grim societal facts of juvenile dependency and delinquency; and Second, this article has not presumed to be inclusive of all the legal ramifications of the new law, for they are too varied and complex to be confined within the space of this journal. However, it is believed that both the law and its analysis herein have made it manifest that the purpose of juvenile court procedure is to better enable the state to protect and rehabilitate minor children, in order to enhance their opportunities to become worthy citizens. In the effort to fulfill this purpose, innovations have been made in court procedure; and statutes similar to that enacted in 1951 by the Wyoming legislature have been universally upheld over objections based upon constitutional grounds.<sup>97</sup>

The guiding principles for the interpretation and application of the juvenile court law are set forth with clarity in the statute itself:<sup>98</sup>

"This article shall be liberally construed to the end that each child coming within the jurisdiction of the court shall receive such care, guidance and control, preferably in his own home, as will

93. *Ibid.*, sec. 1-717.

94. *In re Santillanes*, 47 N.M. 140, 138 P.2d 503, 510 (1943).

95. *Mau v. Stoner*, 14 Wyo. 183, 194, 83 Pac. 218 (1905).

96. Wyo. Constitution, Article V, Sec. 29.

97. *Cinque v. Boyd*, 99 Conn. 70, 121 A. 678; *People v. Lewis*, 260 N.Y. 171, 183, N.E. 353, 86 A.L.R. 1001, certiorari denied, 289 U.S. 709, 53 S.Ct. 786, 77 L.Ed. 1464; *Commonwealth v. Fisher*, 213 Pa. 48, 62 A. 198, 5 Ann.Cas. 92; *Ex parte Januszewski*, C.C., 196 Fed. 123; *Lindsay v. Lindsay*, 257 Ill. 328, 100 N.E. 892, 45 L.R.A. (N.S.), 908, Ann. Cas. 1914A, 1222; *Wissenburg v. Bradley*, 209 Iowa 813; 229 N.W. 205, 67 A.L.R. 1075; *In re Gomez*, 113 Vt. 224, 32 A.2d 138. See also *Thomas v. United States*, 74 App. D.C. 167, 121 F.2d 905, 907; annotations 60 A.L.R. 1342; 67 A.L.R. 1082. For a relatively recent case upholding the constitutionality of a juvenile court law, see *In re Santillanes*, 47 N.M. 140, 138 P.2d 503, which contains an excellent review of case authorities.

98. Wyo. Comp. Stat., 1945, Sec. 1-718, 1953 Cum. Supp.

conduce to the child's welfare, and to the best interests of the State; and that when such child is removed from the control of his parents, the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them."

Noble though these objectives be, without human intervention they can be no more than mere words printed in a statute book. The achievement of these aims must depend directly upon the cooperative spirit and understanding interest of the law enforcement officers, county attorneys, judges, and the general citizenry. That the scope and design of the juvenile court law is idealistic imputes no scorn nor criticism, but rather proves their consonance with the tenets of American democracy.