

1984

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Recommended Citation

Brinkerhoff, Jeffrey C. (1984) "Prosecution as a Juvenile or an Adult - Is the Discretion Vested in the District Attorney by Section 14-6-203(c) of the Wyoming Statutes Unconstitutional and Violation of the Proper Role of a Prosecutor," *Land & Water Law Review*: Vol. 19 : Iss. 1 , pp. 187 - 205.
Available at: https://scholarship.law.uwyo.edu/land_water/vol19/iss1/11

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PROSECUTION AS A JUVENILE OR AN ADULT? IS THE DISCRETION VESTED IN THE DISTRICT ATTORNEY BY SECTION 14-6-203(c) OF THE WYOMING STATUTES UNCONSTITUTIONAL AND VIOLATIVE OF THE PROPER ROLE OF A PROSECUTOR?

The recent Wyoming cases of *State v. Richard John Jahnke*¹ and *State v. Deborah Ann Jahnke*² have given rise to local and national controversy concerning the propriety of bringing criminal charges against a juvenile in district (adult) court.³ At the heart of this particular controversy is section 14-6-203(c) of the Wyoming Statutes and the power vested in the Wyoming district attorney to exercise unrestricted discretion⁴ in deciding whether to charge a juvenile in juvenile court or to bring criminal charges in district court. The decision to bring charges directly in district court deprives the juvenile of the initial protections afforded in the Juvenile Court System.⁵

This comment examines section 14-6-203(c) and discusses the constitutional and public policy questions raised by the power that section 14-6-203(c) vests in the district attorney. Primary focus is upon the contradictory roles the statute imposes upon the district attorney. The Wyoming Legislature is asked to again clearly define the policy of the people of the State of Wyoming and set forth specific guidelines defining when and under what specific circumstances district attorneys may bring criminal charges against a juvenile in district court, thereby freeing the district attorneys to perform their proper functions.

The Statute

Section 14-6-203(c) of the Wyoming Statutes clearly and unequivocally grants to the district attorney the power to exercise unrestricted discretion in deciding whether to charge a juvenile in juvenile or district court. The statute reads in relevant part:

1. Sixteen year old Richard John Jahnke was tried in District (Adult) Court and convicted of voluntary manslaughter in the shooting death of his father. Criminal Action Docket No. 16-297 (Laramie County District Court), Appeal Docket No. 83-70 (Wyoming Supreme Court).
2. In a separate trial, in District Court, seventeen year old Deborah Ann Jahnke was tried and convicted of aiding and abetting her brother, Richard, to commit voluntary manslaughter. Criminal Action Docket No. 16-298 (Laramie County District Court), Appeal Docket No. 83-121 (Wyoming Supreme Court).
3. See Wyoming State Tribune, August 29, 1983, at 1 col. 1. See also *It Made Terrible Sense*, Time, Dec. 12, 1982, at 34; Wyoming State Tribune, January 11, 1983, at 1, col. 1; Casper Star Tribune, Jan. 11, 1983, at 1, col. A; The Wyoming Eagle, January 11, 1983, at 3, col. 1; Rocky Mountain News, January 25, 1983, at 14, col. 1; The Washington Post, April 28, 1983, at A2, col. 1; Prendergast, *It's You or Me, Dad*, Rolling Stone, May 26, 1983, at 41.
4. WYO. STAT. § 14-6-203(c) (Supp. 1983).
5. Clearly, the most significant protections afforded by the Juvenile Court Act are the confidentiality assurances. Section 14-6-224 mandates that juvenile proceedings be closed to the public; section 14-6-239 mandates that all records of the proceeding be confidential; and section 14-6-241 provides a means for expungement of the juvenile's record. By facing charges directly in adult court, the juvenile has lost the substantial protection of confidentiality. Even if transferred to the juvenile court, the possible expungement of the record and treatment as a juvenile do not compensate for the "public record" created by initial adult proceedings.

All complaints alleging misconduct of a minor other than violation of a municipal ordinance, of W.S. 12-6-101 or a misdemeanor violation of the Uniform Act Regulating Traffic on Highways, must be referred to the district attorney who shall determine the appropriate action to be taken and *the appropriate court in which to prosecute the action.*⁶

The legislature has provided no guidelines whatsoever to assist the district attorney in making the "critically important"⁷ decision whether to deprive a juvenile of the protections of the Juvenile Court Act.⁸ Unlike Wyoming's Act, the Juvenile Court Acts of most of our sister states clearly limit the prosecutor's discretion by defining when a juvenile may be

6. WYO. STAT. § 14-6-203(c) (Supp. 1983) (emphasis added). WYO. STAT. § 14-6-203 (1977 & Supp. 1983) reads in full:

- (a) The court has general jurisdiction in all matters and proceedings commenced therein or transferred to it by order of the district court concerning:
 - (i) Any minor alleged to be delinquent, neglected or in need of supervision as defined in W.S. 14-6-201;
 - (ii) Any minor alleged to have committed a delinquent act before attaining the age of majority; and
 - (iii) The parents, guardian or custodian of any minor alleged to be delinquent, neglected or in need of supervision.
- (b) Coincident with proceedings concerning a minor alleged to be delinquent, neglected or in need of supervision, the court has jurisdiction to:
 - (i) Determine questions concerning the right to legal custody of the minor;
 - (ii) Order any party to the proceedings to perform any acts, duties and responsibilities the court deems necessary; or
 - (iii) Order any party to the proceedings to refrain from any act or conduct the court deems detrimental to the best interest and welfare of the minor or essential to the enforcement of any lawful order of disposition of the minor made by the court.
- (c) The jurisdiction of the juvenile court is not exclusive. If a minor is alleged to have violated a municipal ordinance, a complaint may be processed in the municipal court in the manner provided by general law or the complaint may be referred to the district attorney for disposition as provided in this subsection. All complaints alleging misconduct of a minor other than violation of a municipal ordinance, or W.S. 12-6-101 or a misdemeanor violation of the Uniform Act Regulating Traffic on Highways, must be referred to the district attorney who shall determine the appropriate action to be taken and the appropriate court in which to prosecute the action. All records made, received or kept by any municipal, county or state officer or employee evidencing any legal process resulting from allegations of a minor's misconduct other than violation of a municipal ordinance are confidential and subject to the provisions of this act (§§ 14-6-201 through 14-6-243). The existence of the records or contents thereof shall not be disclosed by any person unless disclosure results from an action brought or authorized by the district attorney in a court of public record.
- (d) Nothing contained in this act is construed to deprive the district court of jurisdiction to determine questions of custody, parental rights, guardianship or any other questions involving minors, when the questions are the subject of or incidental to suits or actions commenced in or transferred to the district court as provided by law.

7. In *Kent v. United States*, 383 U.S. 541, 553 (1966), the United States Supreme Court recognized that the decision to deprive a juvenile of the protections of the Juvenile Court Act was "critically important".

8. In the 1978 revision of Title 14, the legislature omitted former section 14-8-101, which had provided that the provisions of this article may be cited as the "Juvenile Court Act of 1971". See editor's note to Article 2 (preceding WYO. STAT. § 14-6-201 (1977)). Nevertheless, this author will refer to the provisions of sections 14-6-201 to -243 as simply "The Juvenile Court Act".

charged with a crime in adult court.⁹ That Wyoming's Act is out of step is not surprising when one considers that Wyoming was the last state to adopt a Juvenile Court Act.¹⁰

Not only does the present Juvenile Court Act¹¹ fail to set forth guidelines defining when juveniles may be charged as adults, the Act fails to give the juvenile court *exclusive* original jurisdiction.¹² Instead, section 14-6-203(c) provides that the juvenile court has concurrent jurisdiction¹³ with other courts over like matters. The district attorney is, therefore, free to bring charges directly in the district court and effectively deny the juvenile initial consideration under the juvenile court system. Under section 14-6-203(c) of the Wyoming Statutes, it is the prosecutor, not the court, who has the sole discretion to determine whether to charge a juvenile as an adult, and this power is not limited by any guidelines or standards.¹⁴ Such power raises serious questions when substantial interests of children are at stake.

THE PROSECUTOR'S ROLE — TWO HATS ARE NOT BETTER THAN ONE

It is, of course, axiomatic that a prosecutor has wide discretion to file charges, to decide which charges to file, and to dismiss charges once brought.¹⁵ Yet, even this wide discretion is not unlimited. The United States Supreme Court has noted:

In our system, so long as the prosecutor has probable cause . . . the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion. (Footnote omitted). *Within limits set by the legislature's constitutionally valid definition of chargeable offenses 'the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation' so long as 'the selection was (not) deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification'.*¹⁶

Acting, therefore, strictly within the traditionally defined grant of discretionary power, the prosecutor is limited by statutory guidelines and

9. U.S. Dept. of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics - 1981*, 156-157 (1982). Wyoming was listed as the only state where a prosecutor makes the initial decision to charge a juvenile in Juvenile or Adult Court. *Id.* at 157.

10. Wunnicke, *The 1951 Juvenile Court Law of Wyoming*, 8 Wyo. L.J. 173, 186 (1953). The "original" Act of 1951 was repealed with the enactment of the Juvenile Court Act of 1971, which was in response to the United States Supreme Court decisions of *Kent* and *In re Gault*, 387 U.S. 1 (1966), which extended the rights of due process and fair treatment to Juvenile Court proceedings.

11. *See supra* note 8.

12. *See supra* note 6 for the Juvenile Court Act.

13. *Id.* The concurrent jurisdiction may result from a provision in the Wyoming Constitution conferring original jurisdiction on the district courts of all causes both at law and in equity and in all criminal cases. WYO. CONST. art. V., §10.

14. *See supra* note 6.

15. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1977). *See also Newman v. United States*, 382 F.2d 479, 480 (D.C. Cir. 1967).

16. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1977) (citing *Oyler v. Boles*, 368 U.S. 448, 556 (1961)) (emphasis added).

the proscription against arbitrariness. Even if one were to consider the discretion vested in the district attorney by section 14-6-203(c) of the Wyoming Statutes as within the traditionally defined discretion, such power is suspect because no statutory guidelines whatsoever are set forth and the prosecutor can act arbitrarily. However, the traditionally recognized discretion of the prosecutor to file charges simply does not include, absent statutorily defined and constitutionally adequate guidelines, the discretion to charge a juvenile directly in adult criminal court. This conclusion can be reached despite the *Cox v. United States*¹⁷ line of cases upholding the prosecutor's discretion to charge a juvenile as an adult in adult court without a hearing. As discussed below,¹⁸ these holdings can be distinguished by the underlying statutory guidelines limiting the prosecutor's discretion¹⁹ and by the means available to the court in *Cox* to treat the juvenile as a juvenile even though tried in an adult court.²⁰ The decisions did not address a prosecutor's unrestricted discretion to charge a juvenile as section 14-6-203(c) of the Wyoming Statutes permits and the courts, therefore, did not meet this issue squarely.

In *Cox* and its progeny, the courts failed to recognize the obvious contradictory roles that the unrestricted discretion to charge a juvenile as an adult imposes upon a prosecutor.

Parens Patriae

Prior to the progressive reform movement of the turn of the century, the legal system treated most children as adults.²¹ Appalled that children were being treated as adults, sentenced as adults, and mixed in prisons with hardened adult prisoners,²² the early reformers sought a way to revise the legal system to prevent such harsh treatment of children.²³ As a result, the juvenile court movement was born and swept across the country.²⁴ Operating in "equitable principles rather than the traditional tenants of the criminal law,"²⁵ the juvenile court was to supplant the role of parent where the real parent had failed and direct the juvenile to social workers and child protective institutions.²⁶ The juvenile court assumed great power and as a consequence certain traditional legal rights of juveniles, such as the right to a jury trial, were necessarily abridged.²⁷ To support such a complete revision of legal institutions and rights, the progressives turned to the legal concept of *parens patriae*.²⁸ The state assumed the role of a "superparent, overseeing each parent-child relationship, ready to intervene at the early indication of failure."²⁹

17. 473 F.2d 334 (4th Cir. 1973), *cert. denied*, 414 U.S. 869 (1973).

18. *See infra* notes 73-84 and accompanying text.

19. *See infra* note 84 and accompanying text.

20. *See infra* notes 80-81 and accompanying text.

21. Comment, *The Institutional Transfer Statute: Three Challenges to the Imprisonment of Juvenile Offenders*, 17 LAND & WATER L. REV. 643, 655-57 (1982) (citing L. EMPHEY, D. ROTHAM & T. HIRSHI, *JUVENILE JUSTICE: THE PROGRESSIVE LEGACY AND CURRENT REFORMS*, 3-69 and 183-212 (L. Emphay ed. 1979)).

22. *In re Gault*, 387 U.S. 1, 15-16 (1967).

23. Comment, *supra* note 21, at 656-57.

24. *Id.*

25. *Id.* at 657.

26. *Id.* at 656-57.

27. *Id.* at 657.

28. *Id.*

29. *Id.*

The doctrine of *parens patriae* has since been predominant throughout the history of the juvenile justice system.³⁰ "Under this philosophy, the juvenile court was created to help the child not punish him; rehabilitation not retribution was the key. . . ." ³¹ "The central figure in this plan was the judge, who was seen as a kindly, patient man, truly concerned with children"³² and who "was to play an important role in the reform of the child."³³ The judge as a fatherly figure was thought to command respect and be capable of showing the child what he had done wrong and yet still treat him with compassion.³⁴ While the goal of the juvenile court under the doctrine of *parens patriae* was to reform the child while still protecting society, it was recognized that not all children could be rehabilitated.³⁵ Juvenile courts began to waive jurisdiction over certain offenders to criminal court. "Thus waiver became an exception to the doctrine of *parens patriae*."³⁶

There is no express reference to *parens patriae* in Wyoming's current Juvenile Court Act.³⁷ Without reference to such a purpose, one might question whether the doctrine is still the basis for Wyoming's present Act. That question can only be answered in the affirmative. With the passage of the 1971 Act, the legislature struck the general purpose and construction clause.³⁸ The clause had provided that each child coming before the juvenile court was to receive the supervision and control necessary to serve to best interests of the child and the public and to develop the juvenile into a responsible citizen. The Act was to be liberally construed to achieve those ends.³⁹

Referring to the omitted clause, one commentator suggested that the Forty-First Legislature may not have fully subscribed "to the theory that the welfare of the child is the basic concern."⁴⁰ However, the omitted clause should not be interpreted as evidence of the demise of *parens patriae* in the Wyoming Act. Rather, it can be easily interpreted as evidence of the legislature's concern for the public welfare and a "statement" that the welfare of the child was not the only concern.⁴¹ Still, only the legislature itself can explain why the clause was omitted and what, if any significance the omission has. Nevertheless, the very existence of a Juvenile Court Act in Wyoming with its provisions for special treatment and special protection of children indicates that the doctrine of *parens patriae* is a vital and basic

29. *Id.*

30. Note, *Waiver in Indiana - A Conflict With the Goals of the Juvenile Justice System*, 53 IND. L.J. 601, 601 (citing Platt, *The Rise of the Child-Saving Movement: A Study in Social Policy and Correctional Reform*, 381 ANNALS 21 (1969)).

31. *Id.*

32. Note, *supra* note 30, at 601, 601 (citing Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909)).

33. *Id.*

34. *Id.*

35. Note, *supra* note 30, at 601.

36. *Id.*

37. See WYO. STAT. §§ 14-6-201 to -243 (1977 & Supp. 1983).

38. Comment, *The Wyoming Juvenile Court Act of 1971*, 8 LAND AND WATER L. REV. 237, 239 (1973).

39. *Id.*

40. *Id.*

41. See WYO. STAT. §§ 14-6-201 to -243 (1977 & Supp. 1983).

premise of the Act.⁴² The doctrine has been and continues to be the very fiber through which the juvenile court's power is exercised.

The fundamental problem with section 14-6-203(c) of the Wyoming Statutes is that the district attorney makes the initial and "critically important"⁴³ decision whether to prosecute a juvenile in juvenile court or as an adult. This power to substantially affect the interests of the child in this manner goes to the very heart of the doctrine of *parens patriae*. Such power was intended to be exercised by a neutral judge.⁴⁴ The power to don the hat of *parens patriae* with its role of seriously and judiciously considering the best interests of the child conflicts with the prosecutor's traditional and proper function.

The Proper Role

At first blush, the historically broad discretion enjoyed by prosecutors would seem to encompass the power to exercise unrestricted discretion to charge a juvenile as an adult. A careful analysis, however, reveals the contradictory roles such power imposes upon the prosecutor. It has long held that a prosecutor must have discretion to bring charges free from the court's interference:

The concept of separation of powers underlies the courts' concern that the prosecutorial function be relatively untrammelled. This is especially true of the incipient stages of a prosecution. . . . 'The choice of *whom to prosecute* and the strategy of prosecution are generally matters left wholly to the government's control.' [citations omitted]⁴⁵

The American Bar Association standards defining the prosecutor's function provide that:

- (a) The office of prosecutor is charged with responsibility for prosecution in its jurisdiction.
- (b) The prosecutor is both an administrator of justice and an advocate. The prosecutor must exercise sound discretion in the performance of his or her function.
- (c) The duty of the prosecutor is to seek justice, not merely to convict. . . .⁴⁶

The commentary to the above standards provides further that:

Although the prosecutor operates within the adversary system, it is fundamental that the prosecutor's obligation is to protect the innocent as well as to convict the guilty, to guard the rights of the accused as well as to enforce the rights of the public. Thus, the prosecutor has sometimes been described as a 'minister of justice' or as occupying a quasi-judicial position. . . .⁴⁷

42. *Id.*

43. *Kent v. United States*, 383 U.S. 541, 553 (1966).

44. *See supra* notes 31-36 and accompanying text.

45. *United States v. Torquato*, 602 F.2d 564, 569 (3rd Cir. 1979) (emphasis added).

46. STANDARDS FOR CRIMINAL JUSTICE, THE PROSECUTION FUNCTION §3.6 (1979).

47. *Id.* at §3.7.

A shallow reading of this ABA standard could lead one to suppose that a prosecutor has wide enough discretion in his "quasi-judicial" role to exercise sole discretion in charging juveniles as adults. Further inquiry, however, dispels that notion and clearly defines the proper role of a prosecutor. First, one must note that what the ABA standards address is the discretion the prosecutor has in deciding whether to bring charges, not whether to charge a juvenile in adult court.⁴⁸ More instructive is standard 1.3(d) of the *National Prosecutor Standards*, which provides: "the prosecutor should at all times be zealous in the desire to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion. . . ."⁴⁹ Courts have also long recognized that the office of district attorney "is to be held and administered wholly in the interests of the people at large and with an eye single to their welfare."⁵⁰

Clearly, under section 14-6-203(c), the Wyoming district attorney cannot, in his exercise of discretion, consider the best interests of the child and still act in the best interests of the state. The two roles are simply inconsistent. It is not surprising then that Wyoming stands virtually alone in permitting the district attorney such unfettered discretion in charging juveniles as adults.⁵¹

The goal of a prosecutor "is to achieve a balance between the role of advocate and that of seeker of justice."⁵² Under section 14-6-203(c), the district attorney is permitted to wear two hats: the prosecutor's hat and the judicial hat of *parens patriae*. But the hats cannot fit one over the other and still achieve a "balance" between the roles. The roles are inherently contradictory. A comprehensive study of Wyoming's juvenile justice system was recently conducted by the Columbia Research Center on behalf of the Attorney General's Planning Committee on Criminal Administration and The Wyoming Council for Children and Youth.⁵³ Referring to Wyoming's prosecuting attorneys, the report concluded: "the county attorney's mandate to represent the interests of the State may conflict with his obligation to serve the 'best interests of the child'. The county attorney cannot be an impartial, neutral decisionmaker while serving two conflicting mandates."⁵⁴ The report recommended that the county attorney "cease to function as the principal gatekeeper of the juvenile justice system and that this function be shifted toward a more impartial magistrate. . . ."⁵⁵

48. *Id.* at §§3.53-.55.

49. NATIONAL PROSECUTOR STANDARDS, §1.3(d) (National District Attorneys Association 1977).

50. Attorney General v. Tufts, 239 Mass. 458, 489, 132 N.E. 322, 326 (1921).

51. See *supra* note 9.

52. Comment, *Representing the People of Illinois: Prosecutorial Power and Its Limitations*, 27 DE PAUL L. REV. 625, 650 (1977-78).

53. COLUMBIA RESEARCH CENTER, *The Wyoming Juvenile Justice System—An Evaluation* (July 24, 1981) (unpublished report to the Wyoming Attorney General's Planning Committee in Criminal Administration and the Wyoming Council for Children and Youth).

54. *Id.* at 248.

55. *Id.* at 249.

CONSTITUTIONAL ANALYSIS

1. *Background*

The progressive reform movement of the turn of the century resulted in a juvenile court movement throughout America.⁵⁶ This movement caused the United States Supreme Court to state in retrospect: "The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals."⁵⁷

Juvenile courts were created and given "extraordinary powers to intervene in the life of the child not to punish violations of criminal laws but to rehabilitate the child and keep order."⁵⁸ Under the evolving juvenile court system, the state took in the role of parent with "arbitrary and undisputed powers of discipline and control,"⁵⁹ which resulted in the abridgment of traditional legal rights.⁶⁰ The constitutional analysis in this comment addresses the narrow issue of a prosecutor's unrestricted discretion to charge a juvenile as an adult in light of recent Supreme Court holdings.

Kent—An Awakening

In the 1966 case of *Kent v. United States*,⁶¹ the United States Supreme Court for the first time reviewed a case arising out of the juvenile justice system.⁶² Between *Kent* and the 1967 case of *In re Gault*,⁶³ the Supreme Court "changed the course of juvenile law almost as radically as the popular movement of 65 years before."⁶⁴

The Supreme Court in *Kent* specifically addressed the procedures required for the decision to transfer a youth from juvenile court into adult court. The Court held that before a juvenile court can waive jurisdiction to adult court, the "essentials of due process and fair treatment" must be observed.⁶⁵ *Kent* is important not only because it established due process procedures, but because it suggested substantive criteria in which the waiver decision should be based.⁶⁶

In *Kent*, a 16-year old was charge with housebreaking, robbery, and rape. The District of Columbia's waiver statute required "full investigation" by the court, but the juvenile court judge, without notice, waived jurisdiction to adult court. The United States Supreme Court noted that the waiver decision is a "critically important"⁶⁷ stage and held that due process requires that a juvenile be afforded certain rights, including the

56. Comment, *supra* note 21, at 660.

57. *In re Gault*, 387 U.S. 1, 15 (1967).

58. Comment, *supra* note 21, at 656-57.

59. *Id.* at 657.

60. *Id.*

61. 383 U.S. 541 (1966).

62. Paulson, *Kent v. United States: The Constitutional Context of Juvenile Cases*, 1966 SUP. CT. REV. 167 (1966).

63. 387 U.S. 1 (1966).

64. Comment, *supra* note 21, at 660.

65. 383 U.S. at 562.

66. Comment, *Wisconsin's New Juvenile Waiver Statute: When Should We Wave Goodbye to Juvenile Court Protections*, 1979 WIS. L. REV. 190, 194 (1979).

67. 383 U.S. at 556.

right to a hearing prior to the entry of a waiver order and a written statement of the reasons for waiver.⁶⁸ *Kent* was decided on procedural grounds, and the Court explicitly declined to reach the question of substantive criteria for waiver.⁶⁹ However, in an appendix to the opinion, the Court listed the standards used by the Juvenile Court of the District of Columbia for waiver decisions and impliedly endorsed them. These "determinative factors" are listed in abbreviated form as follows:

- (1) whether the community required protection given the seriousness of the offense;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
- (3) whether the offense was against a person or against property;
- (4) the prosecutive merit of the complaint; *i.e.*, whether there was enough evidence upon which a grand jury might be expected to return an indictment;
- (5) the desirability of one trial if there were adult co-offenders;
- (6) the sophistication and maturity of the juvenile;
- (7) the previous history of the juvenile; and,
- (8) the prospects for public protection and the likelihood of reasonable rehabilitation of the juvenile by the use of facilities and services available.⁷⁰

These standards have served as guidelines for the United States Congress and many of our sister states and are reflected in their respective statutory schemes governing the transfer of juvenile jurisdiction to adult court.⁷¹

Notwithstanding the wide acceptance of the *Kent* determinative factors, a statutory provision that permits prosecutorial discretion in originally assigning juvenile cases to adult court bypasses the constitutional safeguards of the waiver procedure and limits *Kent*.⁷² Wyoming's statutory scheme circumvents the *Kent* criteria by giving the district attorney power to charge a juvenile directly in adult court and thus avoid the waiver hearing.

Prosecutorial Discretion and the Constitution

That a prosecuting attorney has broad discretion to determine when and if any charges shall be brought against a person has been long established: "Few subjects are less adapted to judicial review than the exercise by the Executive of his discretion in deciding whether to institute criminal proceedings, or what precise charge shall be made, or whether to dismiss a proceeding once brought."⁷³

68. *Id.* at 557-61.

69. *Id.* at 554.

70. *Id.* at 566-67.

71. See 18 U.S.C. § 5032 (1976); COLO. REV. STAT. § 19-3-108 (1973); MONT. CODE ANN. § 41-5-206 (1981); S.D. CODIFIED LAWS ANN. § 26-11-4 (1976 & Supp. 1982); IDAHO CODE § 16-1806 (1977 & Supp. 1983); UTAH CODE ANN. § 78-3a-25 (1977 & Supp. 1981); NEB. REV. STAT. § 43-202.01 (1978).

72. Vitello, *Constitutional Safeguards for Juvenile Transfer Procedure: The Ten Years Since Kent v. United States*, 26 DEPAUL L. REV. 23, 47-51 (1976-77).

73. *Newman v. United States*, 382 F.2d 479, 480 (D.C. Cir. 1967).

The district attorney's power to determine whether charges shall be brought is not challenged, and section 14-6-203(c) of the Wyoming Statutes grants this discretion to the district attorney who "shall determine the appropriate *action* to be taken."⁷⁴ However, by granting the district attorney the power to determine "the appropriate *court* in which to prosecute the action,"⁷⁵ the legislature has allowed the prosecutor to circumvent the essentials of due process and fair treatment mandated by *Kent*.

A case widely cited for the proposition that a prosecuting attorney does have the constitutional power to proceed against a juvenile as an adult without a hearing is *Cox v. United States*.⁷⁶ The Fourth Circuit Court of Appeals held that the attorney general had the power to proceed against a juvenile as an adult without a *Kent*-type hearing even though a hearing is required when a judge waives juvenile court jurisdiction.⁷⁷ For several reasons, however, *Cox* cannot be said to support the constitutionality of Wyoming's system. First, the court in *Cox* recognized that the reasonableness of the legislative allocation of power to the attorney general was "reinforced by the provisions of the Youth Correction Act,"⁷⁸ which "provides special treatment and rehabilitative measures for youths sentenced under it."⁷⁹ This provision is not available in the Wyoming juvenile scheme. The court in *Cox* recognized that a juvenile convicted as an adult could still benefit from many of the advantages he would have received had he been initially treated as a juvenile by virtue of the Federal Youth Corrections Act.⁸⁰ The court stated: "To that extent, a decision of the Attorney General to proceed against a youth as an adult is not final, for special treatment as a youthful offender who may earn clearance of his criminal record remains an available and preferred sentencing alternative."⁸¹

The court then pointed out that the attorney general had expressly requested a sentence under the Youth Corrections Act.⁸² Therefore, although a then in force provision of the Act⁸³ gave the attorney general sole discretion to decide whether to proceed against a juvenile as an adult, the court retained the power to ultimately treat him, nevertheless, as a juvenile. Under the Wyoming statutory scheme, the juvenile, once tried as an adult, is sentenced as one since the Wyoming statutory scheme has no counterpart to the federal Youth Corrections Act. *Cox*, therefore, may not support a defense of Wyoming's present system.

More importantly, in 1974, just after the *Cox* line of cases began asserting that the prosecutor's "unrestricted" discretion was constitutionally permissible, the United States Congress amended the Youth Corrections

74. See *supra* note 6 and accompanying text (emphasis added).

75. WYO. STAT. § 14-6-203(c) (Supp. 1983) (emphasis added).

76. 473 F.2d 334 (4th Cir. 1973), *cert. denied*, 414 U.S. 869 (1973).

77. *Id.*

78. 18 U.S.C. §§ 5005-5026 (1976).

79. *Cox v. United States*, 473 F.2d 334, 336 (4th Cir. 1973), *cert. denied*, 414 U.S. 869 (1973).

80. *Id.*

81. *Id.*

82. *Id.*

83. 18 U.S.C. § 5032 (1976).

Act⁸⁴ to remove that discretion from the attorney general and place it in the court, leaving it to the court to make a decision to try the juvenile as an adult after a hearing on the subject.

Statutory Guidelines and Prosecutorial Discretion

Most jurisdictions have recognized the need for ascertainable standards in the selection of juvenile or district court jurisdiction. In *People Ex Rel. Carey v. Chraska*,⁸⁵ the Illinois Supreme Court upheld the prosecutor's discretion to charge a juvenile as an adult, but predicated that holding on the "ample guidelines limiting the prosecutor's ability" to petition for transfer to adult court.⁸⁶

Similarly, the Colorado Supreme Court has upheld the district attorney's power to exercise his discretion in charging a juvenile in adult court. However, this holding was also predicated on the availability of "adequate standards" limiting the district attorney's discretion. The court held:

While the legislature may not delegate its power to make a law, it may delegate the power to determine, *under adequate standards*, some fact or state of things triggering the law's application. *The relevant inquiry, therefore, is whether the statute, read as a whole, provides adequate standards.* [Citations omitted]⁸⁷

The court then upheld the statute as constitutional based on the very specific guidelines.

The Colorado statutory scheme clearly restricts the district attorney's discretion to specific circumstances in section 19-1-104(b) of the Colorado Statutes.⁸⁸ It is within these guidelines that the prosecutor has "sole" discretion. While Wyoming's Juvenile Court Act bears some resemblance to the Colorado Act, these guidelines are strikingly absent in Wyoming's system.⁸⁹

84. See 18 U.S.C. § 5032 (1976). The *Kent* "determinative factors" are evident here.

85. 83 Ill. 2d 67, 413 N.E.2d 1269, 1275 (1980).

86. *Id.* (emphasis added).

87. *People v. Moreley*, 193 Colo. 456, 566 P.2d 331, 333 (1977) (emphasis added).

88. COLO. REV. STAT. § 19-1-104(4)(b) (1973) reads:

- (b) A child may be charged with the commission of a felony only after the hearing as provided in paragraph (a) of this subsection (4), or when the child is:
- (I) Alleged to have committed a crime of violence defined by section 18-1-105, C.R.S. 1973, as a class 1 felony, and is fourteen years of age or older; or
 - (II) Alleged to have committed a crime of violence defined by section 18-1-105, C.R.S. 1973, as a class 2 or a class 3 felony or a nonclassified felony punishable by a maximum punishment of life imprisonment or death, except those felonies defined by section 18-3-403(1)(e), C.R.S. 1973, and is sixteen years of age or older, and the child has been adjudicated a delinquent child within the previous two years and the act for which the child was adjudicated a delinquent would have constituted a felony if committed by an adult; or
 - (III) Alleged to have committed any felony subsequent to any other felony which is the subject of proceedings under section 19-3-108 resulting in waiver of jurisdiction by any juvenile court in this state.

89. See also *Woodward v. Wainwright*, 556 F.2d 781 (5th Cir. 1977), *cert. denied*, 434 U.S. 1088, (1978); *United States v. Bland*, 472 F.2d 1329 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 909, 1973); and *State v. Cain*, 381 So.2d 1361 (Fla. 1980).

No guidelines or standards whatsoever are set forth in section 14-6-203(c) of the Wyoming Statutes, and the Wyoming statutory scheme is, therefore, virtually alone in permitting unrestricted prosecutorial discretion to charge a juvenile as an adult.

Presently, in Wyoming, if the prosecutor charges a juvenile in juvenile court, the court may transfer the matter to district court for criminal proceedings if after a hearing the court determines that: (i) the juvenile committed the delinquent act; (ii) the child is not subject to commitment in a mental institution; and (iii) juvenile court procedures are inappropriate under the circumstances of the case.⁹⁰

In *Kent*, the United States Supreme Court set forth "determinative factors which will be considered by the Judge in deciding whether the Juvenile Court's jurisdiction over such offenses will be involved. . . ."⁹¹ Although the *Kent* standards are not specifically enumerated in section 14-6-237 of the Wyoming Statutes, the Wyoming Supreme Court has recognized the *Kent* influence.⁹²

Presently, the Wyoming district attorney can circumvent the due process guidelines that a juvenile court or district court must comply with in transfer hearings. The United States Congress and most state legislatures have seen fit to deny prosecutors this "loophole" by placing the decision to determine the jurisdiction of the court in the hands of the courts and not the executive branch.

2. Constitutional Analysis

Procedural Due Process

In *Kent*, the Supreme Court held that a juvenile court could not transfer jurisdiction to criminal court without a hearing satisfying the "essentials of due process and fair treatment."⁹³ This holding, however, did not create a substantive right to be treated as a juvenile. The statutory scheme under review in *Kent* provided that the juvenile court had "*original and exclusive*" jurisdiction over juveniles and, therefore, the juvenile was endowed by statute with certain special rights and immunities.⁹⁴ Since the District of Columbia had created a substantial right by statute, the Supreme Court read the statute "in the context of constitutional principles relating to due process . . ."⁹⁵ and held that the juvenile could not be deprived of the right without a hearing.⁹⁶

Section 14-6-203(c) of the Wyoming Statutes vests not exclusive but concurrent jurisdiction in the juvenile court, and the district attorney is expressly given unrestricted discretion to charge a juvenile in adult court.⁹⁷

90. WYO. STAT. § 14-6-237 (1977).

91. 383 U.S. at 566-67. See *supra* note 29 and accompanying text for the "determinative factors".

92. *Mullin v. State*, 505 P.2d 305, 309 (Wyo. 1973).

93. 383 U.S. at 562.

94. *Id.* at 556 (emphasis added).

95. *Id.* at 557.

96. *Id.* at 554.

97. See *supra* note 6.

right to be treated in court as a juvenile. However, that the statute itself does not create the right does not necessarily mean that no right exists.

The Wyoming Constitution, like the Federal Constitution, provides that no liberty or property interest can be taken from a citizen without due process of law.⁹⁸ Although it's clear from *Kent* that under the United States Constitution there is no substantive right apart from a statutory grant to be treated in court as a juvenile, the individual states are free to interpret their constitutions broadly enough to include such a right. The Wyoming Constitution provides that the "penal code shall be framed on the humane principles of reformation and prevention."⁹⁹ One must ask whether a statutory provision permitting a district attorney to arbitrarily deny a juvenile the substantial protections of the Juvenile Court Act is consistent with the concept of reformation based on humane principles mandated by the Wyoming Constitution.

Equal Protection

The power to arbitrarily deprive a juvenile of substantial interests raises questions of equal protection. Section 14-6-203(c) permits the district attorney to create two classes of juveniles without any guidelines or restrictions whatsoever - one class treated as juveniles in juvenile court and another class treated as adults in criminal court. Again, one must question whether the discretion vested in one person to arbitrarily deny a juvenile substantial interests and protections is consistent with the Wyoming Constitution and its promise of equal protection of the law.¹⁰⁰

The Tenth Circuit Court of Appeals has noted in a Wyoming case that in juvenile proceedings the state acts in *parens patriae* and "has the inescapable duty to vouchsafe due process."¹⁰¹ Other courts have held that the discretion of a juvenile court to transfer jurisdiction to adult court "may not be exercised arbitrarily."¹⁰² However, no Wyoming caselaw directly in point exists, and the constitutionality of section 14-6-203(c) remains an open question.¹⁰³

Fair Treatment

Apart from the question of the facial constitutionality of section 14-6-203(c) is the issue of the effect the district attorney's discretion can have upon juveniles. Since the district attorney is not subject to any guidelines or standards and can act arbitrarily, section 14-6-203(c) permits juveniles to be treated unequally and unfairly. In *Kent*, the Supreme Court recognized that it was unfair for a juvenile court judge to transfer jurisdiction to adult court without a hearing in which certain "determinative factors" governing the youth's transfer were considered.¹⁰⁴

98. WYO. CONST. art. 1, § 6.

99. WYO. CONST. art. 1, § 15.

100. WYO. CONST. art. 1, § 2.

101. *Heryford v. Parker*, 396 F.2d 393, 396 (10th Cir. 1968).

102. *People in Interest of L.V.A.*, 248 N.W.2d 864, 868 (S.D. 1976).

103. Appellant, Deborah Ann Jahnke, raised this issue on appeal in Wyoming Supreme Court Appeal Docket No. 83-121.

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

The Wyoming district attorney is empowered by section 14-6-203(c) to determine whether or not such a hearing is initially held. By charging a juvenile directly in district court, the district attorney can circumvent the standards governing transfer of juvenile matters to district court. Once in the district court, the *Kent* "determinative factors" are considered by a Wyoming court only if the juvenile moves for a transfer and argues the *Kent* standards in the motion hearing. The burden of proof is thereby shifted to the juvenile. Without the juvenile's motion to transfer to juvenile court, the issue of the propriety of the juvenile's treatment as an adult might never be raised.

Once a juvenile is initially charged as an adult, some of the protections afforded by juvenile proceedings (such as secrecy of the proceedings)¹⁰⁵ are forever compromised. The Supreme Court in *Kent* recognized that the question of whether or not a child would be deprived of the special protections and provisions of the Juvenile Court Act was "critically important."¹⁰⁶

The United States Supreme Court in *In re Gault*¹⁰⁷ held that the due process guarantees are applicable to juvenile proceedings when the juvenile's liberty is at stake. In *Kent*, the Court held that before a juvenile court can waive its jurisdiction, the essentials of due process and fair treatment must be met.¹⁰⁸ The Supreme Court has never diluted the force of these holdings. In *Kent*, the Court considered the consequences of a waiver of juvenile jurisdiction to district court without procedures that satisfy the essentials of due process: "there is no place in our system of law for reaching a result to such tremendous consequences without ceremony, without hearing . . . without a statement of reasons."¹⁰⁹ Yet, this is exactly what Wyoming's statute permits - the district attorney, without ceremony, without a hearing and without a statement of reasons, is able to forego the essentials of due process and shift the burden to the juvenile to assert in district court the right to due process and fair treatment which should have been observed by the state *before* proceeding against a juvenile in district court.

The United States Supreme Court has recognized limits to the prosecutor's discretion: "There is no doubt that the breadth of discretion that our country's legal system vests in prosecuting attorneys carries with it potential for both individual and institutional abuse. *And broad though that discretion may be, there are undoubtedly constitutional limits upon its exercise.*"¹¹⁰ It is incongruous that the Wyoming statutory scheme permits a district attorney to exercise unrestricted discretion to circumvent the essentials of due process and deprive juveniles of fair treatment.

105. WYO. STAT. § 14-6-224 (1977 & Supp. 1983) mandates secrecy of juvenile proceedings.

106. 383 U.S. at 553.

107. 387 U.S. 1 (1967).

108. 383 U.S. at 562.

109. *Id.* at 554.

110. *Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1977) (emphasis added).

WYOMING LEGISLATIVE ACTION AND JUDICIAL RESPONSE

Wyoming's Forty-Seventh Legislature during the 1983 session passed Original House Bill No. 87A as "Enrolled Act No. 112."¹¹¹ The Bill made significant changes in the Juvenile Court Act, but was vetoed by Governor Herschler in response to judicial criticism of the proposed Act.¹¹² The most significant change¹¹³ in the proposed Act and the one most strongly opposed by the district judges was the revision of section 14-6-203(c). The proposed section 14-6-203(c) provided for the *exclusive* jurisdiction of the Juvenile Court with specified exceptions.¹¹⁴

The change solved one problem but created another. With the *exclusive* jurisdiction in the Juvenile Court, the district attorney would no longer have the unrestricted discretion to initiate criminal charges against a juvenile directly in district court. Rather, a neutral judge would make the decision whether to transfer to another court for criminal prosecution after a hearing where the district attorney had the burden to show that, based on the *Kent* determinative factors, the juvenile should be prosecuted as an adult.¹¹⁵

Although proposed section 14-6-203(c) would have solved the discretion problem, it would have burdened the Juvenile Court, according to the district court judges,¹¹⁶ with too much jurisdiction. The proposed changes to section 14-6-203(c) were as follows:

- (c) The jurisdiction of the juvenile court is exclusive except as to:
 - (i) A criminal offense transferred to another court pursuant to W.S. 14-6-237; or
 - (ii) A criminal offense alleged to have been committed by a minor who has attained the age of thirteen (13) years which offense is neither a felony nor a high misdemeanor;
 - (iii) Cases in which a minor who has attained the age of seventeen (17) years is alleged to have committed first or second degree murder, first degree arson, first or second degree sexual assault, or kidnapping.¹¹⁷

The proposed changes clearly restricted the prosecutor's discretion by specifically defining when the juvenile could be charged directly in adult court.

111. House Enrolled Act No. 112, 47th Leg. (1983) (on file at Legislative Service Office).

112. Letter from Governor Herschler to Secretary of State, Thyra Thomson (March 14, 1983).

113. The proposed Juvenile Court Act made other significant changes which are beyond the scope of this comment.

114. House Enrolled Act No. 112, *supra* note 111, at 3. *See infra* note 117 and accompanying text for changes to section 14-6-203(c).

115. Proposed section 14-6-237 in House Enrolled Act. No. 112 incorporated the *Kent* determinative factors. *See supra* note 70 and accompanying text.

116. Letter, *supra* note 112, at 1-2.

117. House Enrolled Act No. 112, *supra* note 111, at 3. *See supra* note 6 to compare present section 14-6-203(c).

Many district judges throughout the State were critical of the Act, however, and specifically complained that proposed section 14-6-203(c)(ii) would mean that:

every child under 13, charged with crimes or offenses such as a curfew violation, dog at large, riding a bicycle on a sidewalk or any other crime or offense of a city ordinance, would have to appear before the Juvenile Court for hearing before the case could be transferred back to Municipal Court. The same would be true for all offenses that could be charged in a county court for which the possible penalty would be less than six months in jail or a possible \$750 fine.¹¹⁸

It should be noted that in Wyoming, the district court judges serve also as "judges of the juvenile court in the counties of their respective districts."¹¹⁹

Under the proposed changes to section 14-6-203(c), judges apparently "believe[d] they would be inundated in juveniles."¹²⁰ Certainly, proposed section 14-6-203(c)(ii) would require the juvenile court judges to hear complaints previously brought in other courts. The present section 14-6-203(c) provides that the jurisdiction of the juvenile court is not exclusive and that the district attorney is essentially free to bring charges against a juvenile in municipal court, county court, juvenile court or district court.¹²¹ Governor Herschler vetoed the proposed Act because he believed it would "create an impossible situation for the juvenile court judge considering the case loads that all of them are now facing."¹²²

The Governor then stated that "according to the District Court judges, the Juvenile Court Act that we now have appears to be working very satisfactorily and so why . . . change it?" But one must ask for whom was the juvenile court system created - the juvenile or the juvenile court judge? A system that allows a prosecutor to arbitrarily choose to treat a juvenile as an adult and deny the child the protections of the Juvenile Court Act may be convenient for the juvenile court judge and the prosecutor, but matters of convenience and concerns for crowded dockets do not justify denial of fair treatment. Nevertheless, the proposed section 14-6-203(c)(ii) would have burdened the juvenile courts with more hearings, and given the present structure of the juvenile court system in Wyoming, the veto may have been appropriate.

However, if the juvenile court judges (district court judges) are truly concerned that such a proposal as section 14-6-203(c)(ii) would inundate them with juveniles, then perhaps it is time for the legislature to create a separate juvenile court apart from the district court judge - a court that hears juvenile cases exclusively. Another alternative is to permit the

118. Letter, *supra* note 112, at 1.

119. Wyo. STAT. § 14-6-202(a) (1977).

120. Letter, *supra* note 112, at 1-2.

121. *See supra* note 6.

122. Letter, *supra* note 112, at 2.

county courts to have concurrent juvenile¹²³ case jurisdiction over misdemeanor and lesser violations.

Juvenile courts were created to deal with juveniles, yet our present Juvenile Court Act would allow a prosecutor to treat them all as adults regardless of the seriousness of the offense or the apparent need for treatment as a juvenile. In proposed section 14-6-203(c), the legislature set forth guidelines defining when a juvenile could be charged directly in adult court.¹²⁴

The proposed guidelines reflected the national trend of limiting transfer of juveniles to adult court to situations where the juvenile has reached a specified minimum age and has been charged with certain enumerated serious crimes, typically violent crimes.¹²⁵ Preserved in the proposed statute was the prosecutor's opportunity to try any juvenile charged with a crime as an adult regardless of his age or the particular offense.¹²⁶ The prosecutor simply would be required to move for a transfer hearing and make a showing that prosecution in adult court is appropriate under the circumstances.¹²⁷

The changes to section 14-6-203(c) proposed by Enrolled Act No. 112 would have raised Wyoming's Juvenile Court Act to a level at par with our sister states. Under the proposed guidelines, no longer could a prosecutor arbitrarily use unrestrained power to deny a child the initial and critically important protections of the Juvenile Court Act. Yet, the proposed Act fell short of its mark by vesting exclusive jurisdiction in the juvenile courts with the potentially burdensome increased workload for the juvenile/district court judges.

It appears, however, that the problem of jurisdiction and caseloads can be solved by relieving the district court judges of all or part of their juvenile court jurisdiction and by creating a separate juvenile court or by vesting concurrent juvenile court jurisdiction in lower courts.

In *Kent*, the United States Supreme Court held that a juvenile court judge could not transfer jurisdiction to an adult court without a hearing comporting with the "essentials of due process and fair treatment." Yet, section 14-6-203(c) allows a Wyoming district attorney to ignore the Supreme Court's reasoning and thus arbitrarily deprives a child of initial consideration as a juvenile.

In Wyoming, once criminal judges are brought against a juvenile initially in adult court, the burden is on the child to move for transfer to juvenile court and show why he or she should be treated as a juvenile. That transfer hearing is an open hearing in adult court. The impact of such a procedure was recognized in testimony before the House Judiciary Committee

123. Of course, the same protections of the Juvenile Court Act, such as confidentiality, would necessarily attach to the county courts as well as the opportunity to transfer jurisdiction to "adult court" after the appropriate hearing.

124. See *supra* note 117 and accompanying text.

125. U.S. Dept. of Justice, Bureau of Justice Statistics, *supra* note 9, at 156-157.

126. See *supra* note 117 and accompanying text for proposed section 14-6-203(c)(i).

127. See *supra* note 111 and accompanying text.

regarding House Bill No. 87 (Enrolled Act No. 112): "The confidentiality afforded juveniles in juvenile court is totally and irretrievably lost when a prosecutor brings an action against a juvenile in adult court."¹²⁸ Referring to the Juvenile Court Act proposed in House Bill 87, the witness testified:

The essential element of this bill is to provide a legal presumption that *juveniles will be dealt with as juveniles, nothing more*. Simply that a juvenile will be handled by our legal system as a juvenile. If the state wishes to treat the juvenile as an adult, it may do so, but it should be the burden of the state to demonstrate to the court why this juvenile should be treated as an adult.¹²⁹

The Wyoming Legislature passed House Bill 87 under which juveniles would have been first considered juveniles. It is both natural and reasonable to treat a child as a child until compelling circumstances indicate that the juvenile should be treated as an adult.

Nevertheless, many juvenile court judges felt that the Act would have created burdensome juvenile caseloads.¹³⁰ The Governor echoed the judges' belief that the system was working fine and stated in his veto letter, "If it ain't broke, don't fix it."¹³¹ Although the juvenile court system may not be "broken in pieces," it's encouraging to note that the legislature has recognized the fatal flaw in the system. House Bill 87 very nearly repaired that flaw - lacking only a re-structuring of the juvenile court jurisdiction which would not unduly burden the district court judges. One can only hope that the legislature will keep trying.

CONCLUSION

In light of the U.S. Supreme Court holdings of *Kent* and *In re Gault*, section 14-6-203(c) of Wyoming's Juvenile Court Act is constitutionally questionable and patently unfair. The unrestricted discretion vested in the district attorney by section 14-6-203(c) permits the prosecutor to circumvent the Supreme Court's mandate for the "essentials of due process and fair treatment" by allowing him or her to deprive the child of the initial protections of the juvenile justice system and bring charges directly in adult court. The power vested in the district attorney to make the initial determination to charge the juvenile as an adult without first being subject to any guidelines or standards whatsoever imposes upon the prosecutor the contradictory duties of acting in the best interest of the state and, at the same time, consider the best interests of the juvenile.

The Wyoming Legislature came very close to solving these problems in proposed House Bill No. 87. A Juvenile Court Act that is fair to the juvenile

128. Testimony of David J. Roberts before the House Judiciary Committee, January 20, 1983 (testifying about House Bill No. 87, Juvenile Court Act). Mr. Roberts is Director of the Center for Criminal Justice Research in the Criminal Identification Division of the Attorney General's office. Mr. Roberts was not representing the Attorney General's office or any state office or division when he testified.

129. *Id.* (emphasis in original).

130. Letter, *supra* note 112, at 1-2.

131. *Id.*

and addresses the proper interests of both the juvenile and society is within reach. The legislature is encouraged to solve the jurisdiction problem raised by House Bill No. 87 and provide the people of Wyoming with a just and workable Juvenile Court Act.

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