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Cover Page Footnote

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JUVENILE DETENTION: PROTECTION, PREVENTION OR PUNISHMENT?

ELYCE ZENOFF FERSTER, EDITH NASH SNETHEN,** AND THOMAS F. COURTLESS****

MORE than 400,000 juveniles, approximately two-thirds of all those apprehended by the police, were placed in jails or detention homes in 1965.[1] This high rate of detention is contrary to the articulated philosophy of the juvenile court that usually a juvenile is to be released to his parents to await court action. It is also considerably in excess of the National Council on Crime and Delinquency (NCCD) recommendation that the detention rate "should not normally exceed ten per cent of the total number of juvenile offenders apprehended . . . ."[2] In fact, no supporters of a high detention rate are found in the literature.[3] Instead, one finds not only complaints about the detention rate but also objections to almost every aspect of juvenile detention.

The following statement, made forty years ago, is similar to comments made today:

> From the data here submitted it becomes evident that children are still commonly detained in jails all over the country; that there is an absence of adequate facilities for detention in many jurisdictions; that detention homes are sometimes little better than jails; that all too commonly, policies of intake and discharge of children are inadequate; that the wrong kind of children are detained; that children are confined for too long periods; in short, that which is technically known among social workers as "good casework standards" are too often lacking in the treatment of these children.[4]

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1. National Council on Crime and Delinquency [hereinafter cited as NCCD], Juvenile Detention, in Correction in the United States, 13 Crime and Delinq. 11, 15 (1967) [hereinafter cited as Juvenile Detention]; President's Comm'n on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 37 (1967) [hereinafter cited as Juv. Delinq. and Youth Crime].

2. NCCD, Standards and Guides for the Detention of Children and Youth 18 (2d ed. 1961) [hereinafter cited as Detention Standards].

3. See D. Freed & P. Wald, Bail in the United States: 1964 (1964); S. Norman & A. Barstis, The Controlled Use of Detention (1963); Dorsen & Rezneck, In re Gault and the Future of Juvenile Law, 1 Fam. L.Q., No. 4, at 1 (1967) [hereinafter cited as Dorsen & Rezneck]; Downey, State Responsibility for Child Detention Facilities, 14 Juv. Ct. Judges J., No. 4, at 3 (1964).

4. Detention Standards, supra note 2, at xxii.

The marked difference between juvenile detention practice and policy for so many years raises some serious questions: Is a high juvenile detention rate necessary because of the seriousness of the offense and/or the deviancy of the offender? Or are the practices simply a result of society's failure to implement a non-punitive system of juvenile justice? Is detention another example of juveniles receiving "the worst of both possible worlds"? In other words, is it detention policy or practice which needs to change?

This article, the second in a series[5] reporting the findings of a three-year study on "The Juvenile Offender and the Law," attempts to answer these questions.[6] It is based on an analysis of statutes and cases, a review of the literature including statistical and field reports, and a field study of "Affluent County"[7] conducted by the Juvenile Offender and the Law Project (hereinafter called the Juvenile Study).

I. DETENTION

Detention is usually defined as "the temporary care of children who require secure custody of their own or the community's protection in physically restricting facilities pending court disposition."[8]

Unfortunately, detention statistics, like statistics on arrests of juveniles, are both difficult to obtain and difficult to interpret.[9] Twenty-two jurisdictions do not keep any detention statistics at all.[10] Of the

5. The first article dealt with juvenile arrest, search and seizure, fingerprinting and police records. See Ferster & Courtless, The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender, 22 Vand. L. Rev. 567 (1969).

6. The study was financed by Public Health Service Grant MH-14500 from the National Institute of Mental Health.

7. Affluent County has the highest median family income of any county in the United States. An estimate for 1968 indicates that 34,000 families earned between $10,000 and $15,000 with an additional 47,600 families with incomes between $15,000 and $25,000 and 18,000 families earning over $25,000. These three groups of families comprised 78% of all families in the county. Department of Community Development, Population and Social Characteristics 2, 3 (1968).

8. W. Sheridan, Standards for Juvenile and Family Courts 23 (U.S. Children's Bur. Pub. No. 437, 1966) [hereinafter cited as Children's Bureau Standards]. Similar definitions are used by the NCCD in its Detention Standards, supra note 2, and Guides for the Detention of Children and Youth (1961) and the nine states which explicitly define the term by statute. Colo. Rev. Stat. Ann. § 22-1-3(12) (Supp. 1967); Idaho Code Ann. § 16-1802 (1969); Ill. Ann. Stat. ch. 37, § 701-9 (Smith-Hurd 1969); Iowa Code Ann. § 232.2(6) (1969); Md. Ann. Code art. 26, § 70-1(m) (Supp. 1969); Miss. Code Ann. § 7187-02(i) (Supp. 1968); S.D. Comp. Laws Ann. § 26-8-1(7) (Supp. 1969); Utah Code Ann. § 55-10-64(5) (Supp. 1969); Vt. Stat. Ann. tit. 33, § 632(5) (Supp. 1969).

9. Ferster & Courtless, supra note 5, at 569-73.

10. Juvenile Detention, supra note 1, at 33.

twenty-nine that do, most of the statistics are so incomplete[11] that it is almost impossible to assemble comparable statistical information on such items as rate of detention, length of detention, and disposition of juveniles after detention.

In spite of these difficulties enough information on detention rates has been obtained to show that there is a very large variation in the use of detention from one jurisdiction to another. For example, a recent study of detention in eleven counties in California showed that the detention rates among the counties ranged from 19% to 66%.[12] Substantial variations in detention rates have also been found by other studies.[13] Since there is little comparative detention information available, The Juvenile Study obtained detention information from ten communities. The Study indicated a considerable variation in detention rates from jurisdiction to jurisdiction.[14] Although it might be thought that this variation is due to a difference in the number of serious offenses under the various penal statutes, the California study found that this is not so.[15]

The Juvenile Study's analysis of statistics obtained from communities in eleven states found similar results.[16] As well as a large variation in detention rates between communities, the Study indicates the highest detention rates are not always related to the most serious offenses.[17] The "Affluent County" field study also confirms these results.[18]

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11. Id.

12. NCCD, Locking Them Up: A Study of Initial Juvenile Detention Decisions in Selected California Counties 118 (1968) [hereinafter cited as California Study]. The study analyzed detention practices in 11 California counties.

13. D. Freed & P. Wald, supra note 3, at 97. "In some places, all children referred to juvenile court are detained. In others, only two or three out of every 100 are held. A 50% ratio is not uncommon . . . ." See also Juvenile Detention, supra note 1, at 31; California Study at 120-21.

14. See App. A. The project wrote to detention facilities serving ten of the largest cities in the U.S. requesting detention statistics: Atlanta (Fulton County), Baltimore, Boston, Chicago (Cook County), District of Columbia, Los Angeles, New York City, Philadelphia, St. Louis, and Oklahoma City. Useful statistics were obtained from Baltimore (NCCD study), Chicago (Police Annual Report), District of Columbia (Receiving Home Annual Report), Los Angeles County (Probation Department Report), and New York. In addition Children's Bureau studies of four communities (Volusia County, Florida; Sangamon County, Illinois; Trumbull County, Ohio; Tarrant County, Texas) were obtained for contrasting population size and geographical differences.

15. California Study, supra note 12, at 120-21.

16. See App. B.

17. Id.

18. Only 5 (9.9%) of the detained juveniles were alleged to have committed dangerous offenses such as attempted robbery and assault.

A. *Purpose of Detention*

Although there is supposedly agreement about which children should be detained,[19] communities actually use different criteria or different interpretations of the same criteria.[20] The reasons for detaining a child are most often described as follows: Children who will run away during the period the court is studying their case or, children who must be held for another jurisdiction (*e.g.* runaways from institutions to which they were committed by a court);[21] Children who will commit an offense dangerous to themselves or the community before court disposition.

1. Runaways

All authorities state that a juvenile should be detained if such action is necessary to assure his presence in court.[22] They differ, however, in how they determine when a particular child might run away. The NCCD recommends that a child is to be detained only if it is "almost certain" that he will run away.[23] The child should be a runaway at the time of detention or have some history of absconding to justify detention under this standard.[24] None of the eight states, however, whose statutes authorize detention to assure presence in court, use the language recommended by the NCCD.[25] The wording ranges from authorizing detention if the child "may abscond"[26] to requiring a "substantial probability"[27] that he will not appear in court.[28]

Only one case, *People v. Poland*,[29] deals specifically with the issue. The detained juvenile was found "in need of supervision" because she violated

19. D. Freed & P. Wald, supra note 3, at 95-96.

20. Id. at 96.

21. Id.

22. NCCD Standard Fam. Ct. Act § 17, Comment (1959); NCCD Standard Juv. Ct. Act § 17, Comment (1968); Uniform Juv. Ct. Act § 14; Juv. Delinq. and Youth Crime, supra note 1, at 37; Detention Standards, supra note 2, at 15; S. Norman & A. Barstis, supra note 3, at 5; Downey, supra note 3, at 3.

23. Detention Standards, supra note 2, at 15.

24. Juvenile Detention, supra note 1, at 29.

25. California, Illinois, Maryland, Michigan, Mississippi, Nebraska, New York, North Dakota.

26. N.D. Cent. Code § 27-20-14 (Supp. 1969).

27. N.Y. Fam. Ct. Act § 739 (1963).

28. In the other six states, four allow detention if the minor is likely to flee the jurisdiction, Cal. Welfare & Inst'ns Code § 628(e) (West Supp. 1969); Ill. Ann. Stat. ch. 37, § 703-6(2) (Smith-Hurd 1969); Md. Ann. Code art. 26, § 70-11(2) (Supp. 1969); Neb. Rev. Stat. § 43-205.03 (1968); one is restricted to those who have run away, Mich. Stat. Ann. § 27.3178(598.15)(b) (1962); and the other allows detention if it is "necessary" to assure court attendance, Miss. Code Ann. § 7187-06 (Supp. 1968).

29. 44 Misc. 2d 968, 255 N.Y.S.2d 455 (1964).

her probation by late hours, truancy, and difficult behavior at home. She was placed in detention while the possibility of placement with family friends was evaluated. In a habeas corpus petition the court held that the past history of truancy and difficult behavior justified the Family Court's decision that there was a substantial probability that she would not appear at the scheduled hearing.[30] It is noteworthy that in this jurisdiction the only other grounds for detention is serious risk that the juvenile will commit a criminal act. Although it is necessary to know why a child is detained before high detention rates can be analyzed, most detention statistics do not report the number of children detained for the various reasons. In one of the jurisdictions, which does give such information, 35%[31] of the children detained were held because they were "potential runaways."[32] A second study[33] showed that 14% of the detained children were held because they were runaways,[34] and a third showed that 6% of them were detained on that ground.[35] In "Affluent County," 30% of the children detained during the period of the field study had run away from their homes or institutions.[36]

There is even less information about the number of children who do not appear in court. The one study found which contained information on this subject said that judges and court personnel in low detention counties reported that children "rarely" fail to appear in court.[37] "Affluent County" court records also indicate that only a small number of juveniles failed to appear at their court hearings.[38]

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30. Id. at 969, 255 N.Y.S.2d at 456.

31. See Marion County, Oregon Juvenile Court Center, Joseph B. Fleton Home, Annual Report, A Broken Promise 37 (1968) [hereinafter cited as Oregon Study].

32. The applicable statute states that the child shall be released to the custody of his parents except "[w]here it appears to the court that the welfare of the child or of others may be immediately endangered by the release of the child." Ore. Rev. Stat. § 419.573(3)(b) (Replacement 1967).

33. California Study, supra note 12, at 122.

34. The statute in this jurisdiction authorizes detention if a minor is likely to flee the jurisdiction of the court. Cal. Welfare & Inst'ns Code § 628(e) (West Supp. 1969). It was not clear from the study if the children classified as "runaways" included children "likely to flee" or was limited to those who had already run away from home.

35. See D. Borden, Report of Youth Aid Division 35 (1967) [hereinafter cited as D.C. Study]. This unpublished 1967 study for the Committee on the Administration of Justice, analyzed the District of Columbia's policemen of the Juvenile System, the Youth Aid Division. All cases of police detention during one week were studied.

36. Affluent County, supra note 7.

37. Juvenile Detention, supra note 1, at 31. This study of juvenile detention was undertaken by the NCCD for the President's Commission on Law Enforcement and Administration of Justice.

38. Affluent County, supra note 7.

2. Danger to Community

The likelihood that a child's actions will be a danger to the community is almost as widely accepted a reason for detention actions as doubt about the child's appearance in court. Virtually all authorities approve of detaining a child because of danger to the community,[39] and twelve states specifically authorize detention for this reason by statute.[40] The danger referred to is the likelihood of the child's committing new offenses. The NCCD recommends that only children who are "almost certain" to commit dangerous offenses be detained.[41] None of the statutes uses the "almost certain" qualification nor do any of them define a dangerous offense.[42]

The first problem in interpreting these statutes is deciding what evidence is relevant to a determination that the child will commit another offense. A 1965 Alabama Work Conference on Juvenile Court Judges suggested that detention is proper when the child's attitude suggests that he would go home and immediately repeat the offense.[43] This criterion places maximum credence upon the child's appearance of repentance, a highly subjective factor.[44] The Advisory Council of Judges suggests that children with strained family relationships and serious problems are likely to get into further trouble and, consequently, should be detained.[45] This cri-

39. See Detention Standards, supra note 2, at 15; Children's Bureau Standards, supra note 8, at 62-63.

40. Alaska Stat. § 47.10.140(a) (1962); Cal. Welfare & Inst'ns Code § 628(d) (West Supp. 1969); Colo. Rev. Stat. Ann. § 22-2-2 (Supp. 1967); Ill. Ann. Stat. ch. 37, § 703-6(2) (Smith-Hurd 1969); Ind. Ann. Stat. § 9-3212 (Replacement 1956); Md. Ann. Code art. 26, § 70-11(a)(1) (Supp. 1969); Mich. Stat. Ann. § 27.3178(598.15)(c) (1962); Neb. Rev. Stat. § 43-205.03 (1968); N.Y. Fam. Ct. Act § 739(b) (1963); N.D. Cent. Code § 27-20-14 (Supp. 1969); Utah Code Ann. § 55-10-91(1) (Supp. 1969); Vt. Stat. Ann. tit. 33, § 643(a) (Supp. 1969). See also Uniform Juv. Ct. Act § 14; Model Rules for Juv. Cts. rule 17, Comment (1969).

41. Detention Standards, supra note 2, at 15. New York and Michigan isolate the danger the child presents to the public. Michigan sees it in "those whose offenses are so serious" whereas New York sees it as a "serious risk that he may do a (criminal) act."

42. The remaining standards are vague. Alaska specifies detention must "be necessary" to protect the community. Four states require the necessity to be "immediate," "urgent," or both. See California, Colorado, Illinois, and Nebraska. Maryland and North Dakota allow detention if "required" to protect the community; Vermont does if "reasonably required." Indiana permits release "without danger" to the public whereas Utah allows detention unless "unsafe to the public."

43. D. Ottman, Proceedings of the Ala. Work Conference for Juvenile Court Judges 21 (1965).

44. Adverse police reaction to provocative behavior has long been noted and warned against. See Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 552 (1957).

45. NCCD, Guides for Juv. Ct. Judges 46 (1963).

terion seems too vague to be helpful without definition of the terms "problems" and "strained family relationships."

In some communities, the juvenile who has been apprehended or adjudicated in the past, is judged to be likely to commit a new offense. A recent study found that children who have been detained previously and those who are on probation are more likely to be detained than those who have not.[46] Although prior delinquent behavior may seem to be the logical way to predict future offenses, it has not yet been verified by empirical data. The one empirical study which attempted to validate this hypothesis was carried out with adult criminals. It found that neither the seriousness of the crime charged nor the offender's past record provides a reliable basis to predict adult pre-trial behavior.[47] Unfortunately, there has been no similar study for juveniles.[48]

Even assuming the kinds of evidence which will justify a prediction that a juvenile is "likely" or "almost certain" to commit a dangerous offense are known, the term "dangerous" still needs to be defined. Detention statistics from most communities do not contain this information. However, one study found that if the juvenile was accused of rape, arson, or an offense with a gun, detention was automatic. Otherwise, the kind of offense was weighed with his age and the number and recency of prior police contacts.[49]

Another study said police tend to detain all juveniles who commit sexual offenses and acts which would be felonies if committed by adults.[50] If the investigating officer finds the child to have a "reliable" family, however, and there is little likelihood that he will not appear in court, there is less tendency to detain the child. The Juvenile Study collected and analyzed data on the offenses allegedly committed by detained juveniles in eleven communities in order to obtain some information on seriousness of offenses. If "dangerous" is defined as including only offenses against persons, then in only two localities were more than 10% of the juveniles detained because they were "dangerous."[51]

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46. California Study, supra note 12, at 162.

47. Report of the President's Comm'n on Crime in the District of Columbia, Minority Views of Patricia M. Wald, 930-36 (1966) [hereinafter cited as the D.C. Crime Commission Study].

48. Although the Glueck's have done numerous prediction studies of juveniles, they have not studied the activities of juveniles awaiting adjudication. See, e.g., S. & E. Glueck, Unraveling Juvenile Delinquency (1950).

49. D.C. Study, supra note 35, at 38.

50. U.S. Children's Bureau, A Study of Services for Delinquent Children in Trumbull County, Ohio, pt. III, at 31 (1967) [hereinafter cited as Trumbull County Study].

51. See App. B.

An attempt was made to find out the specific offenses with which the juveniles were charged because "offenses against the person" encompasses a variety of acts from simple assault to homicide. Unfortunately, the data were available for only five of the eleven communities. The results[52] indicate that under any reasonable definition of "dangerous," danger to the community is not the reason for holding the majority of the detained children in any of the five jurisdictions. In fact, if burglary is not included in the definition "dangerous offense," three-fourths of the detained children are held for some reason other than dangerousness.

In addition to authorizing detention for children who will run away before adjudication and those who will commit an offense dangerous to the community,[53] the NCCD also recommends that children "almost certain to commit an offense dangerous to themselves" be detained.[54] The only relevant statutory provisions are even more vague than the Council's statement. Typically they allow detention in order to protect the minor or the community.[55] Unfortunately, defining which acts committed by a juvenile are sufficiently dangerous to him to justify detention is even more difficult than defining those acts dangerous to the community.

Certain acts which would seem to fit the definition are specifically excluded by the Council. Thus, school truancy is not considered a reason to detain.[56]

Girls who stay out late at night and are suspected of being promiscuous and juveniles who are charged with alcohol and drug offenses are described as those who might commit acts dangerous to themselves prior to adjudication. The question is whether there is sufficient danger that they will seriously injure themselves to justify detention. The fact that these children are usually returned to the community even if they are adjudicated delinquent should be considered in any decision about detention.

Another difficult question is whether juveniles who have been apprehended for participation in civil rights protests need detention for their own protection. A Maryland court answered this question affirmatively. In *Ex Parte Cromwell*[57] the Maryland Court of Appeals justified detention of two fifteen year old juveniles who had participated in peaceful

52. See App. C.

53. See pp. 164-70.

54. Detention Standards, supra note 2, at 15.

55. Alaska Stat. § 47.10.140(a) (1962); Ind. Ann. Stat. § 9-3212 (Replacement 1956); Neb. Rev. Stat. § 43-205.03 (1968).

56. Detention Standards, supra note 2, at 17. The NCCD takes the position that "[t]ruancy is a school problem which should be handled in the school system through social services and special classes or schools when necessary." Id.

57. Ex Parte Cromwell, 232 Md. 305, 192 A.2d 775 (1963).

protests against segregation. The town was under virtual military occupation at the time and the court thought it would be reasonable to remove the children "from the scene of danger, where they would be safe from the physical injuries they might suffer if they remained at home and persisted in their past course of action."[58] The court also pointed out that the parents might be unfit because they were either indifferent to the children's activities or encouraged them.[59] It is of interest that the court in a subsequent decision in the same case reversed the adjudication of delinquency of these children because their conduct was "not so fundamentally wrong as to require permanent treatment, as distinguished from temporary custodial care."[60]

Although the Maryland court believed that detention of juvenile civil rights demonstrators is for their protection, there are others who think such detention is frequently used as a punishment. The Civil Rights Commission reports that many juvenile demonstrators were detained for long periods of time without bail or hearing.[61] A judge in one community explained that " '[i]f one is bad enough to keep locked up, they're not entitled to bail; and if they're not bad enough, there's no use to make them make bond.' "[62] In another community, one 14 year old girl demonstrator was detained in jail for 87 days without a hearing of the charges against her.[63]

In contrast with the many states whose statutes state specific reasons which justify detention, at least ten states merely authorize detention when release would be "inexpedient," "impracticable" or inadvisable."[64] Although it seems as if any alleged delinquent could be detained under this language, in *Baldwin v. Lewis*,[65] the court ordered a child released "unless there is a finding that because of the circumstances, including the gravity of the alleged crime, the nature of the juvenile's home life, and

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58. Id. at 309, 192 A.2d at 778.

59. Id. at 310, 192 A.2d at 778.

60. In the Matter of Cromwell, 232 Md. 409, 414, 194 A.2d 88, 90 (1963).

61. United States Comm'n on Civil Rights, Law Enforcement: A Report on Equal Protection in the South at 81 (1965). See also Starr, Southern Juvenile Courts, A Study of Irony, Civil Rights, and Judicial Practice, 13 Crime and Delinq. 289 (1967).

62. United States Comm'n on Civil Rights, Law Enforcement: A Report on Equal Protection in the South 81 (1965).

63. Id. at 82.

64. "Inexpedient": Ala. Code tit. 13, § 352(4) (1959). "Impracticable": D.C. Code Ann. § 16-2306(a) (1967); N.J. Rev. Stat. § 2A:4-32 (1952); Ohio Rev. Code Ann. § 2151.31 (Page 1968); R.I. Gen. Laws Ann. § 14-1-20 (1956). "Impracticable and undesirable": Mo. Ann. Stat. § 211.141(1) (1962); Wis. Stat. Ann. § 48.29(1) (1957); "Impracticable or inadvisable": Nev. Rev. Stat. § 62.170(1) (1967); Okla. Stat. Ann. tit. 10, § 1107(a) (Supp. 1969-70).

65. 300 F. Supp. 1220 (E.D. Wis. 1969).

the juvenile's previous contacts with the court, the parents or guardian of the juvenile are incapable under the circumstances to care for him."[66]

B. *Children Who Should Not Be Detained*

The NCCD and other authorities attempt to describe children who should not be detained as well as those who need detention. Punishment, study, investigation, treatment and lack of a suitable home are not valid reasons for detention according to most authorities.[67] There are several objections to using detention for punishment.[68] One is that punishment is the court's function and should be administered only after all the facts are proven, not as an immediate reaction to the charge.[69] Another reason is that the child, his parents and the public are led to believe that the youngster's detention was, in fact, his correctional treatment and that he will straighten out after "a lecture from the judge and possibly a postcard type of probation . . . ."[70]

Some commentators have pointed out that using detention to punish can backfire. For example, a "probation officer" placed two boys in detention for a few days because they had numerous referrals for minor nuisance offenses. They were placed in detention to teach them a lesson. However, the boys "never had it so good." Apparently the facilities of the detention home, food, etc. surpassed the boys' own homes.[71] It is argued that jail detention would have been no better. Along with shelter and food, jail would provide the opportunity for "kids [to] exchange delinquency experiences with the big shots."[72] Further since the detention gets the juvenile out of school and allows him to "read comics," it often is an ineffective deterrent.[73]

Unfortunately, various studies show that detention is sometimes used to punish a child. For example, in certain Massachusetts counties, probation officers felt that giving the child a "taste of confinement could serve as a deterrent to further delinquency."[74] Similarly, a Texas county study

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66. Id. at 1233.

67. Juvenile Detention, supra note 1, at 17; accord, NCCD, Guides for Juv. Ct. Judges, supra note 45, at 45: "[I]t is not proper to deprive the child of his liberty before his case has been heard in court . . . ."

68. S. Norman & A. Barstis, supra note 3, at 14-15. In contrast see L. Lobel and M. Wylie, Juvenile Delinqency Can Be Stopped (1967) for an espousal of punitive detention.

69. S. Norman & A. Barstis, supra note 3, at 16.

70. Juvenile Detention, supra note 1, at 36.

71. S. Norman & A. Barstis, supra note 3, at 14.

72. Id. at 14-15.

73. Note, The Juvenile Offender, Some Problems and Possible Solutions, 53 Ky. L.J. 781, 782 (1965). However, the author favors punitive detention for weekends.

74. U.S. Children's Bureau, A Study of the Division of Youth Service and Youth Service

revealed that 39% of detainees were released after 3 to 4 days. Explaining this pattern, a probation officer stated that after these children spent a few days in jail, they didn't need anything more in the way of service from the court.[75]

The use of detention for punishment is not confined to probation officers. A recent law review article points out that when a juvenile hearing is continued in one Kentucky county, the juvenile is detained in the jail or detention home.[76] The article states that the "purpose of holding him over is . . . to teach him a lesson, or to show him what it is like in jail."[77]

Detention for purposes of punishment may also exist in communities where it is not so openly acknowledged. For example, The President's Task Force on Juvenile Delinquency and Youth Crime sees reason for inquiry when many cases in which detention was used are later dismissed without petition.[78] Such detention would breach the Children's Bureau Standards, which require a petition for a detained child to be filed.[79]

Detention of children solely for police or social investigation when they do not otherwise require secure custody is also condemned.[80] It is felt that detention ought not to be corrupted into a "convenience" either for social workers or the policemen. Nevertheless, children are detained for these reasons.[81]

Similarly, most authorities do not condone detention for diagnostic studies or for treatment if the child has not been adjudicated delinquent.[82]

Despite the prevailing opinion of authorities, some jurisdictions still detain children solely to study them. For example, Massachusetts allows detention for diagnostic study,[83] but the detention home, if at workload

Board Commonwealth of Massachusetts, pt. III, at 27 (1966) [hereinafter cited as Massachusetts Study].

75. U.S. Children's Bureau, A Report of a Five Day Study of Services to Delinquent Children in Tarrent County, Texas, pt. II, at 17 (1967) [hereinafter cited as Texas Study].

76. Note, supra note 73, at 782.

77. Id.

78. Juv. Delinq. and Youth Crime, supra note 1, at 36.

79. Children's Bureau Standards, supra note 8, at 61. NCCD Standards also require a petition to be filed. Detention Standards, supra note 2, at 21.

80. Detention Standards, supra note 2, at 16.

81. D. Freed & P. Wald, supra note 3, at 100.

82. Detention Standards, supra note 2, at 17; D. Freed & P. Wald, supra note 3, at 99. Children's Bureau Standards, supra note 8, at 62. Judges in Affluent County use community rather than detention facilities for this purpose whenever possible. One judge said he would prefer to send many more juveniles to community facilities rather than the state's 30-day diagnostic centers. The problem is the shortage of community facilities. Although it may seem obvious to the reader that it would be less expensive for the state to provide more out-patient facilities then to house and feed the juveniles for 30 days, unfortunately, this solution has not been adopted by many legislatures.

83. Mass. Ann. Laws ch. 119, § 68(a) (1965). See also Mich. Comp. Laws Ann. § 712A.15

capacity, may refuse to admit a child for that purpose.[84] One study found that detention for one or two months without adjudication, purely for studying a child, is not uncommon in Rhode Island.[85]

One suggestion is to use community based facilities for children who need study but not detention. If the child in detention needs these services he can be taken to them.[86]

Although an effort was made to distinguish juvenile and adult detention on the grounds that the former constitutes "treatment," this reasoning has been discredited as "semantic acrobatics."[87] Not only is "treatment" premature but the detention period is usually too limited in time for any effective treatment.[88] In fact, treatment has been rejected as a proper aim or function of a pre-hearing detention.

> Some probation departments and law enforcement agencies defend their detention practices on the grounds that detention is of therapeutic value to the child. Others frankly admit that children are detained because of the convenience in conducting investigations and administering psychological examinations. While detention may have a therapeutic effect in selected cases, in the Commission's view, it is neither the function of law enforcement agencies nor probation departments to use it for this purpose. In our opinion, this is clearly and unmistakably a judicial responsibility which must be arrived at after juvenile court jurisdiction has been established.[89]

The child who does not need secure custody but who cannot be left with his family poses the most difficult problem in the area of detention. For example, in one year more than 4,000 neglected and dependent children were incarcerated in the Cook County detention facility.[90] All authorities agree that dependent and neglected children do not need secure

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(d) (1968) which permits detention of children "for observation, study and treatment by qualified experts."

84. Massachusetts Study, supra note 74, at 39.

85. Dyson & Dyson, Family Courts in the United States (pt. 3), 9 J. Fam. L. 1, 19 (1969), citing Legislative Report on the Family Court of the State of Rhode Island, Fifth Annual Rep. 19 (1967) (274 children detained for study at R.I. Training School, Child Welfare Services, Ladd School of Rhode Island Medical Center, "without wayward or delinquent adjudication.")

86. Detention Standards, supra note 2, at 16-17.

87. D. Freed & P. Wald, supra note 3, at 95.

88. See NCCD, Guides for Juv. Ct. Judges, supra note 45, at 45-46 which accepts the estimates of one week to ten days for detention in a good facility. The Council suggests that the judge insure review by limiting the legal operation of a detention order to 7 days.

89. In re Macidon, 49 Cal. Rptr. 861, 867 (1966) (quoting Report of the Governor's Special Comm'n on Juv. Justice, pt. 1, at 42 (1960) (emphasis deleted).

90. NCCD, The Cook County Family (Juvenile) Court and Arthur J. Audy Home: An Appraisal and Recommendations for the Citizens Committee on the Family Court 198 (1963) [hereinafter cited as Cook County Study]. See also NCCD, Guides for Juv. Ct. Judges, supra note 45, at 42.

custody, but need "shelter care,"[91] *i.e.*, "temporary care of children in physically unrestricting facilities, usually pending return to their own homes . . . ."[92]

The Uniform Act,[93] the Model Rules,[94] and at least nine states now have statutory provisions for shelter care.[95] Nevertheless, many neglected and dependent children in these jurisdictions probably will be held in detention rather than shelter facilities because sufficient shelter facilities are not available. It is the lack of shelter facilities, not the lack of a statutory definition, which caused their detention in the past. In fact, five of these statutes do not limit the placement of neglected and dependent children to shelter facilities.[96]

The use of shelter care for some delinquents has also been suggested.[97] Some suggest that juveniles who are charged with status offenses may not need secure custody.[98] Others approve of shelter care for children charged with law violations.[99] The reasoning is that the child does not need secure custody, but must be removed from home because of strained parent-child relationships or because the parents are unable or unwilling to supervise him.[100]

Before "shelter care" is adopted as a panacea for any detention problems more thought needs to be given to both the purpose and the implementation of shelter care laws. If one of the purposes is to keep neglected and dependent children out of detention facilities, the law should specifically state that these children may not be placed in detention facil-

91. Detention Standards, supra note 2, at 2, 8.

92. Id. at 2.

93. Uniform Juv. Ct. Act §§ 2(6), 14.

94. Model Rules for Juv. Ct. rules 1.5, 12-18 (1969).

95. E.g., Ariz. Rev. Stat. Ann. § 8-226(c) (Supp. 1969); Cal. Welfare & Inst'ns Code § 506 (West 1966); Colo. Rev. Stat. Ann. § 22-2-3(1) (Supp. 1967); Hawaii Rev. Stat. § 571-33 (1968); Ill. Ann. Stat. ch. 37, § 703-3 (Smith-Hurd Supp. 1969); Md. Ann. Code art. 26, §§ 70-11, 70-12 (Supp. 1969); N.D. Cent. Code § 27-20-16(4) (Supp. 1969); Ore. Rev. Stat. § 419.575(1) (Replacement 1968); Utah Code Ann. § 55-10-91(1) (Supp. 1969). All references to statutes in this section are to the above provisions.

96. Colorado, Hawaii, Illinois, Oregon, Utah.

97. Detention Standards, supra note 2, at 2; D. Freed & P. Wald, supra note 3, at 109.

98. Jordan, The Responsibility of the Superintendent to Maintain the Function of Detention, 19 Juv. Ct. Judges J. 50 (1968).

99. See Eaton, Detention Facilities in Non-Metropolitan Counties, 17 Juv. Ct. Judges J. 9 (1966). The question of close custody is not determined "solely on the basis of the gravity of the misconduct charged. A self-confident runaway who sees no reason why he should not keep going may be more of a security risk than a juvenile burglar who, when apprehended, reverts to the status of a frightened and homesick small boy." Id. at 11-12.

100. NCCD, Guides for Juv. Ct. Judges, supra note 45, at 47-48. Some communities have successfully operated a variety of shelter facilities for these children. See L. Goter, R. Hamm & M. Osterberg, A Home Away From Home: Community Volunteers Empty the Jail (1968).

ities.[101] It must be remembered, however, that the presence of these children in detention facilities is due to the lack of shelter facilities. If the state is not yet willing to provide shelter facilities, a shelter care law is meaningless. This is precisely the situation in Oregon, where there is a statutory provision for shelter care "for those not needing secure custody," but no adequate shelter care facilities in any county in the state.[102]

Another problem concerns the extent of the use of shelter facilities by delinquents. Are they to be used by all status offenders or only some of them? If some status offenders or some law violators should be placed in shelter facilities, what criteria are to be used in making the determination between shelter and detention care?

There are many questions about detention that need to be answered before informed decisions may be made about shelter care. For example, does a child's past truancy coupled with current allegation of truancy prove that his parents are unwilling or unable to control him? To what extent are children now detained because parents are considered unwilling or unable to supervise them? In how many cases are these terms being used as synonyms for parental neglect? Is it possible that in some cases delinquency petitions are being filed where neglect petition would be more appropriate?[103] Is the wrong petition being filed because delinquency and neglect are confused or is it because it is easier to obtain an adjudication of delinquency than neglect?

There is no doubt that provisions for "shelter care" are in keeping with the juvenile court philosophy. But if there is a failure to clarify its purpose and to implement it, the literature for the next forty years is likely to contain articles trying to prove that either the policy or the procedures are incorrect.

II. Detention Procedures

To find out who is making detention decisions which do not conform to juvenile court philosophy and why they are doing so, the procedures for these decisions must be examined. Detention decisions are made at three

101. E.g., Arizona, California, and Maryland. North Dakota prohibits mixing allegedly delinquent with allegedly unruly children. Maryland will do so after January 1, 1972, to allow for construction of adequate facilities. New York does not allow any detention of children alleged to be persons in need of supervision. "There is no such urgency" warranting taking a child into custody on the ground he appears to be a person in need of supervision. New York Fam. Ct. Act § 721, Committee Comment (1963).

102. Comment, In re Gault: Juvenile Justice—A Proposal for Reform, 47 Ore. L. Rev. 166, 174 (1968).

103. See N.Y. Fam. Ct. Act § 739, Committee Comment (1963). "If the court is concerned that the respondent will not have a suitable place to stay until the return date, it should consider whether a neglect petition should be filed." Id.

different levels by people with different professional backgrounds and duties.

A. *Police*

The initial decision to detain or release a juvenile is made by the police.[104] The police can: (1) release; (2) release accompanied by an official report describing the encounter with the juvenile; (3) officially "reprimand" with release to parent or guardian; (4) refer to other agencies when it is believed that some rehabilitative program should be set up after more investigation; (5) supervise when it is felt that an officer and parent can assist a child cooperatively; (6) refer to the juvenile court without detention; and, (7) refer to the juvenile court with detention.[105]

Most statutory references to the police suggest a preference for release. A typical provision directs the officer to release the child to the custody of his parents or other responsible adult upon his promise to return the child to court for a hearing.[106] However, the policeman's duty to release is far from mandatory. The statutes often provide that he need not release the juvenile if such action would be "undesirable,"[107] "impracticable,"[108]

104. Juvenile Detention, supra note 1, at 29.

105. Piliavin & Briar, Police Encounters with Juveniles, 70 Am. J. Sociol. 206, 208 (1964).

106. See Cal. Welfare & Inst'ns Code § 626(b) (West 1966) which allows release without a promise; Colo. Rev. Stat. Ann. § 22-2-3(4) (Supp. 1967); Del. Code Ann. tit. 10, § 975(a)(1) (Supp. 1968); D.C. Code Encycl. Ann. § 16-2306(a) (1966); Fla. Stat. Ann. § 39.03(2) (1961); Hawaii Rev. Stat. § 571-31 (1968); Idaho Code Ann. § 16-1811.1(c) (Supp. 1969); Ind. Ann. Stat. § 9-3212 (Supp. 1968); Iowa Code Ann. § 232.16 (1969); Ky. Rev. Stat. § 208.110(3) (1962); Md. Ann. Code art. 26, § 70-10(a) (Supp. 1969); Mass. Ann. Laws Ann. ch. 119, § 67 (1965); Mich. Comp. Laws Ann. § 712A.14 (1968); Minn. Stat. Ann. § 260.171(1) (Supp. 1969); Miss. Code Ann. § 7187-06 (Supp. 1968); Mo. Rev. Stat. § 211.141(1) (1959); Nev. Rev. Stat. § 62.170 (1967); Mont. Rev. Codes Ann. § 10-603.1(2) (Supp. 1969); N.J. Stat. Ann. § 2A:4-32 (1952); N.M. Stat. Ann. § 13-8-42 (1953); N.Y. Fam. Ct. Act § 724(b)(i) (Supp. 1969); N.C. Gen. Stat. § 110-27 (1966); N.D. Cent. Code § 27-20-15(1)(a) (Supp. 1969); Ohio Rev. Code Ann. § 2151.31 (Page 1968); P.R. Laws Ann. tit. 34, App. I, Rule 3.2 (Supp. 1968); S.C. Code Ann. § 15-1095.17(a) (Supp. 1968); S.D. Comp. Laws Ann. § 26-8-39 (1967); Tex. Rev. Civ. Stat. art. 2338-1, § 11 (1964); Utah Code Ann. § 55-10-90 (Supp. 1969); Wyo. Stat. Ann. § 14-102(b) (1957). See also Uniform Juv. Ct. Act § 15(a)(1); NCCD Standard Fam. Ct. Act § 16 (1959) and NCCD Standard Juv. Ct. Act § 16 (1968), which allow the officer to request a written promise if he thinks it desirable. Some statutes direct that the officer "in determining which disposition of the minor he will make . . . shall prefer the alternative which least restricts the minor's freedom and movement." See Cal. Welfare & Inst'ns Code § 626(b) (West 1966) and Neb. Rev. Stat. § 43-205.02(3) (1968). References to statutory provisions in this section are, unless otherwise indicated, to the above provisions.

107. See Missouri.

108. See the District of Columbia, Florida, Indiana, Missouri, Nevada, and New Jersey.

or not in the best interests of the child or community.[109] Only a few statutes, such as Georgia's, express a preference for detaining rather than releasing a juvenile.[110]

Despite this statutory preference for release, police often detain rather than release a child. A 1964 study reported that although detention rates vary widely, it was not uncommon for over 50% of children referred to court to be detained.[111] Recent studies show similar results. For example, one study of several counties revealed that 66% of those referred to court were detained,[112] while a study of a community in another state showed a detention rate of 62%.[113]

Most jurisdictions have some statutory limitations on police detention. The most severe one is a requirement that the police take the child before a juvenile court "immediately," forthwith, or "without delay."[114]

In jurisdictions with these statutory limitations, the police do not have the authority to detain, but can only recommend detention to the judge or the probation officer. In practice, however, the police make detention decisions even in these jurisdictions. For example, in California, a jurisdiction with this limitation on police detention, a recent study of several counties showed that "police officers make the initial detention decision with the endorsement of both the judge and the probation department."[115]

Equally startling to the study team was "police belief that law enforcement agencies are responsible for, and in fact, [are] determining local detention policies. If police respondents perceived this issue correctly, then law enforcement agencies are doing the work of the courts and probation departments."[116]

Despite the fact that California police do not have the power to detain, the statutory procedure "has not been sufficient to relieve California of the ignoble distinction of having one of the highest detention rates in the country."[117] The reasons for the high detention rate and perhaps the prominent police involvement in them are described in a recent article.

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109. See Idaho, Minnesota, South Dakota, Utah and Virginia.

110. Ga. Code Ann. § 24-2416 (Supp. 1968): "It shall be the [duty] of the officer taking the juvenile offender into custody to place him in such detention home . . . ."

111. For release and detention figures taken from Detroit, Indianapolis, San Diego and Washington D.C. police reports, see D. Freed & P. Wald, supra note 3, at 97.

112. California Study, supra note 12, at 66.

113. Seattle Police Department, Annual Report for 1967 at 24.

114. See California, Florida, and Vermont, Vt. Stat. Ann. tit. 33, § 640 (Supp. 1969).

115. California Study, supra note 12, at 40.

116. Id. at 62.

117. Boches, Juvenile Justice In California: A Re-Evaluation, 19 Hastings L.J. 47, 73 (1967).

> Most minors are arrested at night or on the weekends. The Attorney General has ruled that the obligation to immediately investigate is satisfied if the probation officer begins the investigation at 8 a.m. on the next judicial day. . . .
> The probation officer can detain the minor for 48 hours, *non judicial days excepted,* without filing a petition, and the detention hearing is not held until the following day. As a practical matter this may stretch the period of detention to 6 days.[118]

Other statutory schemes for limiting police authorized detention, such as requiring a court order for detention,[119] notifying the judge or intake that a juvenile is in detention,[120] filing of a petition alleging delinquency within a specified time,[121] and/or requiring court review of the decision

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118. Id. at 73-74.

119. See pp. 180-86 infra on Judicial Review. Those jurisdictions requiring a court order or authorization for detention are: Alabama, Ala. Code tit. 13, § 352(4) (1958); Connecticut, Conn. Gen. Stat. Rev. § 17-63 (1960); District of Columbia, D.C. Code Encycl. Ann. § 16-2306(b) (1967); Florida, Fla. Stat. Ann. § 39.03(3) (1961); Georgia, Ga. Code Ann. § 24-2416 (Supp. 1968); Idaho, Idaho Code Ann. § 16-1811(4) (Supp. 1969); Iowa, Iowa Code Ann. § 232.17 (1969); Kentucky, Ky. Rev. Stat. § 208.110(4) (1962); Mississippi, Miss. Code Ann. § 7187-06 (Supp. 1968); Missouri, Mo. Rev. Stat. § 211.141(2) (1959); Nebraska, Neb. Rev. Stat. § 43.206.04 (1968); New Mexico, N.M. Stat. Ann. § 13-8-43(2) (Replacement 1968); Oregon, Ore. Rev. Stat. § 419.577(3) (1968); Pennsylvania, Pa. Stat. Ann. tit. 11, § 248 (1965); Puerto Rico, P.R. Laws Ann. tit. 34, § 2007(b) (Supp. 1968); South Carolina, S.C. Code Ann. § 15-1095.17(b) (Supp. 1968); Vermont, Vt. Stat. Ann. tit. 33, § 641(a) (Supp. 1969); Washington, Wash. Rev. Code Ann. § 13.04.053 (Supp. 1968); Wisconsin, Wis. Stat. § 48.29 (1963); NCCD Standard Fam. Ct. Act § 17(1) (1959); NCCD Standard Juv. Ct. Act § 17(1) (1968). All references to detention statutes in this section are to the statutory provisions cited in this footnote.

120. See Alaska Stat. § 47.10.140(b) (1962); D.C. Code Encycl. Ann. § 16-2306(a) (1966); Fla. Stat. Ann. § 39.03 (1961); Hawaii Rev. Stat. § 571-32 (1968); Iowa Code Ann. § 232.17 (1969); Mass. Ann. Laws ch. 119, § 67 (1965); Minn. Stat. Ann. § 260.171(2) (Supp. 1969); Miss. Code Ann. § 7187-06 (Supp. 1968); Mont. Rev. Codes Ann. § 10-608.1(4) (Supp. 1969); Nev. Rev. Stat. § 62.170(1) (1967); N.H. Rev. Stat. Ann. § 169:6 (Replacement 1964); N.J. Rev. Stat. § 2A:4-32 (1952); N.M. Stat. Ann. § 13-8-43 (Replacement 1968); Ore. Rev. Stat. § 419.577(1)(b) (1968); R.I. Gen. Laws Ann. § 14-1-20 (1956); S.D. Comp. Laws Ann. § 26-8-19.4 (Supp. 1969); Utah Code Ann. § 55-10-90 (Supp. 1969); Wash. Rev. Code Ann. § 13.04.120 (1962); Wyo. Stat. Ann. § 14-102 (1957)

121. Within 48 hours excluding non-court days see Cal. Welf. & Inst'ns Code § 631 (West 1966); Colo. Rev. Stat. Ann. § 22-2-3(3) (Supp. 1967); Iowa Code Ann. § 232.17 (1969); Neb. Rev. Stat. § 43-205.04 (1968); S.D. Comp. Laws Ann. § 26-8-23.1 (Supp. 1969). Within 24 hours see Idaho Code Ann. § 16-1811(4) (Supp. 1969). Within 72 hours see Wash. Rev. Code Ann. § 13.04.053 (Supp. 1968). The Uniform Juv. Ct. Act § 17(b) merely requires the petition to be made "promptly." The typical period is 48 hours excluding the non-court days, long enough to allow short-term punitive detention. The success of this limitation has been noted in one city where the court requires a petition to be filed within 48 hours of detention. The embarrassment of commencing cases that cannot be successfully prosecuted is considered an effective sanction against unnecessary detention. See Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv. L. Rev. 775, 792 (1966) [hereinafter cited as Harvard Study].

to detain within a specified number of days[122] have also proved ineffective.

Because the police department is the only agency which is available 24 hours a day, seven days a week,[123] it is frequently called on to detain juveniles. Although juveniles can be detained at any time,[124] procedures for release must fit into the more relaxed eight hour day, five days a week schedules of courts and probation departments.[125]

Several suggestions have been made to alleviate this problem: 1. An intake officer should be on duty after regular court hours.[126] 2. A juvenile should not be detained for a period of longer than 24 hours without the filing of a petition. This rule should operate continuously irrespective of Sundays or holidays.[127] 3. Police should be required to furnish a complete report at the time of detention, describing the reasons for their recommendations.[128]

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122. Although many statutes require a court order for detention, the extent of actual judicial review contemplated by such provisions is uncertain. Only Idaho seems to require the child actually to be brought before the court within 24 hours when the court must hand down its order. This encourages the court to independently assess the need for detention, rather than to perfunctorily approve a police officer's report.

123. Juv. Delinq. and Youth Crime, supra note 1, at 13.

124. That a higher proportion of juveniles are detained after court hours has long been suspected. Recent California statistics confirm this pattern in nine out of eleven counties studied. In three counties virtually all children apprehended after work hours are automatically detained. California Study, supra note 12, at 71-72.

125. For example, in one county where petitions are routinely filed before detention, when a child is apprehended after 3:00 p.m., the required paper work cannot be completed in time to take children to the detention home that day. These children are held in special juvenile quarters, until the next day when they are transferred to the detention home. Nat'l Council of Juv. Ct. Judges, Study of Peoria County, Illinois 6 (1965).

In one Ohio county, it is reported that police can "cool" a child by apprehending and detaining him after court hours, thereby avoiding court intake screening until the next court day. Trumbull County Study, supra note 50, at 31.

126. Sheridan suggests that in larger communities, intake staff coverage regarding need for detention should be provided at least until midnight, after which consultation should be available by telephone. Sheridan, Juvenile Court Intake, 2 J. Fam. Law 139, 152 (1962).

One smaller community has succeeded in vastly reducing its detention rate by limiting detention authorization on weekends and after 5:00 p.m. to the county Probation Director whose phone number is listed with law enforcement officials. See Panel Discussion: "State Responsibility for Regional Detention: A Means of Getting Out of Jails," 19 Juv. Ct. Judges J. 67 (1968) (Statement by Carl J. Constantino). See also S. Norman & A. Barstis, supra note 3, at 8.

127. The Children's Bureau requires the petition to be filed within 24 hours, not exempting weekends or holidays. See Children's Bureau Standards, supra note 8, at 61.

128. Many jurisdictions now require such a report. See Colo. Rev. Stat. Ann. § 22-2-2(4) (Supp. 1967); D.C. Code Encycl. Ann. § 16-2306 (1966); Ga. Code Ann. § 24-2416 (Supp. 1968); Hawaii Rev. Stat. § 571-32 (1968); Ky. Rev. Stat. § 208.110(4) (1962); Miss. Code Ann. § 7187-06 (Supp. 1969); Mont. Rev. Codes Ann. § 10-608.1(4) (Supp. 1969); N.M.

B. *Intake*

The second decision about detention is made by the intake officer when he releases a child to his family or continues the detention initiated by the police.[129] The worker is supposed to obtain information about the juvenile from the court, school, and social records.[130] In addition, he is supposed to conduct interviews with the parents and the child. The intake worker might release some of the children detained by the police on the basis of this information. However, if they release a great number of children who were detained by the police, they must be using different criteria.[131]

For example, one nationwide study found that of all children detained overnight or longer, 43% were eventually released by intake.[132] In Affluent County, about 33% of the detained children were released by intake, while a 1966 study in the District of Columbia found an even greater difference between the views of police and intake workers. The report stated:

> Although the police and intake workers rely on the same detention criteria, about 75 percent of all first offenders and a substantial percentage of all juveniles detained by the police are released within a week by the intake workers before they ever appear in court. In some cases overnight detention may be unavoidable because parents cannot be located; in others the detention decision reveals a basic difference of views between police and intake worker.[133]

Overuse of detention facilities has been attributed to others besides the police.[134] For example, one Massachusetts study found that probation officers in certain counties "used detention for treatment purposes. They

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Stat. Ann. § 13-8-43 (Replacement 1968); N.D. Cent. Code § 27-20-15(1)(b) (Supp. 1969); Ohio Rev. Code Ann. § 2151.31 (Page 1968); S.C. Code Ann. § 15-1095.17(b) (Supp. 1968); Utah Code Ann. § 55-10-90 (Supp. 1969); Uniform Juv. Ct. Act § 15(a)(2); Model Rules for Juv. Cts. rule 12. Detention Standards, supra note 2, at 24-25 suggests a copy of the report should go to the probation department immediately.

129. For example, in Baltimore, Maryland, where except for "very serious" cases children detained by police are not brought into court since detention is controlled by an agreement between probation and police, each evening a probation officer visits the local detention quarters and releases children he feels should be returned to their parents. S. Norman, Precourt Detention of Children in Baltimore: A NCCD Study 18 (1963).

Probation decision-making is sometimes precluded. For example, in Massachusetts the arresting officer may insist that the child be detained pending arraignment. See Mass. Ann. Laws ch. 119, § 67 (1965). See also Massachusetts Study, supra note 74, at 17.

130. Detention Standards, supra note 2, at 27.

131. Id.

132. D. Freed & P. Wald, supra note 3, at 100.

133. D.C. Crime Commission Study, supra note 47, at 667.

134. See California Study, supra note 12, at 79; D. Freed & P. Wald, supra note 3, at 99.

felt that giving the child a 'taste of confinement' could serve as a deterrent to further delinquency."[135]

A study of a Texas county also illustrated the view of some probation officers that detention is desirable as a punishment. When questioned about the fact that 39% of detained juveniles were released after three to four days without any further action by the juvenile justice system, a probation officer explained that after these children had spent a few days in jail, "they didn't need anything more" in the way of service from the court.[136]

Intake officers are also influenced by the views of their judges. Unfortunately, some judges' views reflect neither the criteria expressed in the statutes nor those advocated by recognized experts in the area. For example, intake workers in one community reported that the judge wanted all narcotic offenders detained.[137] Workers in other communities in the same state also reported that some judges instructed them to detain all recidivists while others said they were supposed to detain all alleged felons.[138]

It is necessary to have written guides for detaining juveniles if the decision to detain or release is ever going to be based on anything besides geographical accident. Such guides are needed at the police, intake, and judicial levels of decision. A community cannot be expected to achieve justice for alleged juvenile offenders if the criteria for detention depend on whether the decision maker is a policeman, an intake worker, or a judge. This chaotic state of affairs is compounded further by criteria variation from police officer to police officer, intake worker to intake worker, and judge to judge.

C. *Judicial Review*

In many jurisdictions, a third decision on detention is made by the juvenile court judge. Most commentators consider mandatory detention hearings as a constitutional requirement or a practical necessity to control detention effectively.[139] Only twelve juvenile codes specifically provide for such hearings.[140] Eight of these require that the hearings be held within

135. Massachusetts Study, supra note 74, at 26.

136. Texas Study, supra note 75, at 146. See also Cook County Study, supra note 90.

137. California Study, supra note 12, at 35.

138. Id.

139. Dorsen & Rezneck, supra note 3, at 36; Juv. Delinq. and Youth Crime, supra note 1, at 37; modifications of these positions: Children's Bur., Standards for Juv. and Fam. Cts. Modifications of Positions Taken 3 (1968); D. Freed & P. Wald, supra note 3, at 104.

140. Detention Hearings by statute or rule: Alaska Stat. § 47.10.140(c) (1962); Alaska Rules of Ct. Proc. and Administration, Rules of Juv. Proc. 7(b) (1968); Cal. Welfare & Inst'ns Code § 632 (West 1966); Colo. Rev. Stat. Ann. § 22-2-3(3) (Supp. 1967); Hawaii Rev. Stat. § 571-32(a) (1968); Ill. Ann. Stat. ch. 37, § 703-5 (Smith-Hurd Supp. 1969); Md. Ann.

24, 48, or 72 hours, one makes no provision, and Utah and South Dakota merely provide for a prompt hearing, a virtually meaningless requirement.[141] One Utah study reported that the juvenile is not brought before the court immediately because it would interfere with the court's schedule and detention home program.[142] There are other jurisdictions which hold mandatory hearings, but without statutory authority.[143]

Assistance of counsel is necessary if detention hearings are to be meaningful.[144] While only a few states provide for the right to court appointed counsel by statute,[145] some other courts make such appointments, even

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Code art. 26, § 70-13(b) (Supp. 1969); Minn. Stat. Ann. Foll. Ch. 260, Rule 7-3 (Supp. 1969); N.Y. Fam. Ct. Act § 729 (1963). The hearing contemplates a preliminary inquiry into jurisdiction as well as determination of detention. N.D. Cent. Code § 27-20-17(2) (Supp. 1969); S.D. Comp. Laws Ann. § 26-8-23.1 (Supp. 1969); Utah Code Ann. § 55-10-91(1) (Supp. 1969); Vt. Stat. Ann. tit. 33, § 643(a) (Supp. 1969).

Idaho and Indiana provide for detention hearings only on request. Idaho Code Ann. § 16-1811(c)(5) (Supp. 1969); Ind. Ann. Stat. § 9-3212 (Supp. 1968). Indiana allows the child or "any person in his behalf" to make the request, but requires it to be in writing. Idaho does not require the request to be made by any specific person or in any specific form, but since written notice of the hearing is given only to parents or guardians, they are the only ones in a position to request the hearing.

Denying a hearing as a right has been condemned. If the request is left to the child, he is often bewildered, inarticulate or too young to understand. Parents, often the only interested parties, may be psychologically unable to affirmatively request a hearing, "[y]et at a mandatory detention hearing, such parents, aided by counsel, may be found able to care for the child pending adjudication, and thus the child can be released." Model Rules for Juv. Cts. rule 13, Comment.

The Standard Acts allow only the parents to request a detention hearing, precluding any possibility of release to another's custody for a child whose parents do not want him, or cannot be found. NCCD Standard Fam. Ct. Act § 17(1) (1959); NCCD Standard Juv. Ct. Act § 17(1) (1968).

Minnesota, in addition to its elaborate provision for formal mandatory detention hearings allow parents to request a summary detention hearing within the first 24 hours. See Minn. Stat. Ann. Foll. Ch. 260, Rule 7-2(1) (Supp. 1969).

All statutory references in this section are to the above provisions.

141. Those with time limits are Alaska, California, Colorado, Illinois, Minnesota, New York, North Dakota, Utah and Vermont. Without provision is Maryland.

142. Harvard Study, supra note 121, at 792.

143. For example, since May 1968 the District of Columbia requires the child to be brought before a judge for a detention hearing within 24 hours of his apprehension. 19 Juv. Ct. Judges J. 44 (1968). In Philadelphia, Pennsylvania, detention hearings are held within 72 hours of initial detention and within 48 hours if the juvenile denies delinquency. Harvard Study, supra note 121, at 792. In Baltimore, Maryland detention hearings are held within 24 hours and the court sits daily and on Saturdays. D. Freed & P. Wald, supra note 3, at 103-04.

144. Dyson & Dyson, supra note 85, at 18.

145. Cal. Welfare & Inst'ns Code § 627.5 (West Supp. 1969); N.Y. Fam. Ct. Act § 728(a) (1963); N.D. Cent. Code § 27-20-17(2) (Supp. 1969). In Wisconsin, whose statute is silent concerning the right to counsel at detention hearings, a federal court judge has held that the constitutional right to counsel is extended to detention hearings by In re Gault, 387 U.S. 1

though they are not required.[146] The lawyer has many tasks at the detention hearing. He should inquire into the court's jurisdiction and the evidence supporting the request for detention. He may also suggest alternatives to detention if the child requires care outside the home. Finally, he should offer advice, not only in respect to issues at stake in the detention hearing, but also in other matters which might influence the outcome of the case,[147] *i.e.*, guidance during the detention interrogation.[148]

Given these multiple duties, it is obvious that a lawyer needs some time to prepare for a detention hearing. Initial notification of right to counsel at the detention hearing itself clearly provides no preparation time. Although the New York law provides that the court shall advise a child of the right to counsel and requires the judge to adjourn the hearing so the child can send for his parents and counsel, it is silent on the subject of time for preparation.[149]

California's provision which allows a one day continuance for preparation has been criticized as too short.[150] Unfortunately, allowing a longer postponement will lengthen the detention period as well as the preparation time.

The Model Rules require that the intake officer of a shelter or detention facility notify the child and his parents of his right to court-appointed counsel.[151] This procedure insures notice of the right to counsel before the hearing, however, only if intake personnel are on duty at nights

(1967). Baldwin v. Lewis, 300 F. Supp. 1220, 1232 (E.D. Wis. 1969). S.D. Comp. Laws. Ann. § 26-8-21 (1967), § 26-8-22.1 (Supp 1969), provides for notification of right to counsel at the child's first appearance in court.

146. E.g., the District of Columbia. See letter from Morris Miller, Chief Judge, The Juvenile Court of the District of Columbia to Elyce Z. Ferster, October 13, 1969. The project observed such appointments being made in the Juvenile Court of Affluent County.

147. Rosenheim and Skoler, The Lawyer's Role at Intake and Detention Stages of Juvenile Court Proceedings, 11 Crime and Delinq. 167, 170 (1965).

148. See In re Dennis, 20 App. Div. 2d 86, 244 N.Y.S.2d 798 (1963), where "the most serious irregularity" in the case was the detention of the boy by the police for four days, during which time he confessed after questioning, and was prohibited from seeing his relatives or a lawyer.

The Model Rules for Juvenile Courts, although prohibiting interrogation of the child in a detention facility by law enforcement officers without an attorney present, allow interrogation by a staff member of the facility and a probation officer. See Model Rules for Juv. Cts. rule 14 (1969). However, questioning by these persons can be damaging. See Leach v. State, 428 S.W.2d 817 (Tex. Ct. Civ. App. 1968), where the conviction was reversed because, inter alia, a probation officer obtained information by questioning the 12 year old juvenile during her two month detention, before a lawyer had been appointed.

149. N.Y. Fam. Ct. Act § 728(a) (1963).

150. Boches, supra note 117, at 78-79.

151. Model Rules for Juv. Cts. rule 13.

and on weekends. Since they are not available at these times in many jurisdictions, the police should be required to notify the juvenile and his parents of the right to counsel at the time the police decide to detain him.

The extent to which detention hearings will control unwarranted detention depends not only on the presence of counsel, but also on such factors as the criteria on which the decision to detain is based, the evidence which may be admitted at the hearing, and the scope of the hearing. Illinois is the only state whose law requires that a determination of probable cause be made at the detention hearing.[152]

The Model Rules, and jurisdictions with similar provisions, limit the scope of the detention hearing to determining the necessity for detention.[153] One such statute provides that "the sole purpose" of the detention hearing is to determine "to the satisfaction of court" that the child's continued detention would be "to his best interests . . . or that public safety and protection reasonably require such detention."[154] However, two recent federal court decisions held that juveniles detained on suspicion of criminal conduct are entitled to a judicial determination of probable cause under the United States Constitution.

Baldwin v. Lewis[155] questioned the validity of the detention of a seventeen-year-old boy suspected of setting a fire to a high school auditorium. On April 22, 1969, about three weeks after the fire, Richard Lee was taken into custody by the Milwaukee police and delivered to the Children's Court Detention Center. The detention decision was reviewed by a court intake worker the next day and by the Children's Court on April 25. Richard was ordered detained because " '[t]he child is almost certain to commit an offense dangerous to himself or the community before the court disposition . . . .' "[156]

On April 28, in a habeas corpus hearing on Richard's detention, the Circuit Court of Milwaukee County found that:

> [T]he State was not obliged to show that there was probable cause to believe that a crime had been committed and, further, that there was no obligation to show probable cause to believe that the petitioner had committed an act which would have been a crime had he been an adult, because the Wisconsin Statutes do not contain such a requirement.[157]

152. Ill. Ann. Stat. ch. 37, § 703-6 (Smith-Hurd Supp. 1969).

153. See Alaska, Rules of Ct. Proc. and Administration, Rules of Juv. Proc. 7(c) (Supp. 1966), which supercedes the statutory provision for a probable cause determination in Alaska Stat. § 47.10.140(c-d) (1962); Cal. Welfare & Inst'ns Code § 635 (West 1966); Colo. Rev. Stat. Ann. § 22-2-3(3) (Supp. 1967); Utah Code Ann. § 55-10-91 (Supp. 1969); Vt. Stat. Ann. tit. 33, § 643(a) (Supp. 1969).

154. Vt. Stat. Ann. tit. 33, § 643(a) (Supp. 1969).

155. 300 F. Supp. 1220 (E. D. Wis. 1969).

156. Id. at 1224.

157. Id. at 1226. See Wis. Stat. Ann. § 48.29 (1957).

The federal district court disagreed. It found a detention hearing to be a proceeding which may result in the deprivation of liberty for an indeterminate period of time. Therefore, under a reasonable interpretation of the Supreme Court's decision in *In re Gault*,[158] a detention hearing must satisfy all requirements of due process under the fourteenth amendment.[159] The court also said that detention prior to trial without a finding of probable cause denies the juvenile the fundamental fairness which the 14th amendment is designed to protect.[160]

Under Wisconsin law, detention of an adult, without a determination of probable cause, for a period longer than is necessary to determine whether he should be released, violates the fourteenth amendment.[161] The *Baldwin* case holds that *Gault* requires that the same standard be applied to a detained juvenile.[162]

In the other Federal case, *Cooley v. Stone*,[163] a sixteen-year-old boy suspected of burglary was detained in the District of Columbia. A judicial inquiry into probable cause was requested by Cooley's counsel at both the detention hearing[164] and the initial hearing.[165] The request was denied at both hearings. Habeas corpus was sought and obtained in the United States District Court for the District of Columbia:

"No person can be lawfully held in penal custody by the state without a prompt judicial determination of probable cause. The Fourth Amendment so provides and this constitutional mandate applies to juveniles as well as adults."[166]

The U.S. court of appeals affirmed the judgment saying that a judicial determination of probable cause is required by both the fourth and fifth amendments to the United States Constitution.[167]

The principal difference between these two federal cases is that *Cooley* says that probable cause must be determined no later than the initial hearing, which is a week or two after detention in the District of Columbia.[168] The *Baldwin* case requires that a determination of probable cause be

158. 387 U.S. 1 (1967).
159. 300 F. Supp. at 1232.
160. Id.
161. Phillips v. State, 29 Wis. 2d 521, 139 N.W.2d 41 (1966).
162. 300 F. Supp. at 1232.
163. 414 F.2d 1213 (D.C. Cir. 1969)
164. The initial hearing, analogous to the arraignment in adult criminal cases, is held pursuant to internal court rule in the District of Columbia. Id.
165. Id.
166. Id. (quoting the district court decision).
167. Id. at 1214.
168. If a Legal Aid Agency attorney or a private attorney represented the juvenile at the detention hearing and remains in the case, the Judge, at the detention hearing, fixes a date for the initial hearing within a week or two. Letter from Morris Miller, supra note 146.

made as soon as possible to determine whether the child should be released.[169] Therefore, a probable cause hearing would take place earlier under *Baldwin* than *Cooley* because the decision about detention would not require more than two or three days. If other courts follow the *Baldwin* and *Cooley* decisions, the emphasis on detention will be reduced but not eliminated.

The criteria and procedures used at the hearings, to determine whether a child should be detained, will affect the number of children subsequently detained. The criteria presently used by many states is so vague that it is subject to a considerable amount of interpretation. Provisions which allow detention when release would be "inexpedient," "impracticable," or "undesirable,"[170] or when detention is required to protect the person or property of the child or of others,[171] make it possible to detain virtually every child. There are problems not only in predicting whether the child will commit a dangerous act, but also in trying to define the term "dangerous act."[172]

The degree of proof needed to detain a child is frequently uncertain. The decision is easy when a juvenile has run away from home or not appeared at a court hearing in the past. But, in the absence of such a history, what evidence should be required to show that he may not appear in court?

Other problems concern detention hearing procedures. At present the scope and conduct of these hearings varies widely. The most comprehensive and precise procedure for conducting detention hearings is that set out in the Minnesota rules, which calls for a formal adversary proceeding, including oral arguments, legal representation for both sides, and the right to cross-examination. Confrontation is not provided, however, because hearsay evidence is admissable.[173] California is the only state in which the juvenile has a right both to confrontation and cross-examination of witnesses.[174] More typical is the North Dakota provision which provides for an "informal hearing."[175]

The recently decided *Baldwin* case casts doubt on the constitutionality of informal hearings. In *Baldwin*, the court said a juvenile court judge cannot base his conclusions and order "upon facts or documents which

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169. See text accompanying notes 160 and 161 supra.

170. See note 64 and accompanying text.

171. See notes 40, 41, and 55 supra.

172. See pp. 167-68 supra.

173. Minn. Stat. Ann. Foll. Ch. 260, Rule 7-3(3)(b-c) (Supp. 1969).

174. Cal. Welfare & Inst'ns Code § 702.5 (West Supp. 1969).

175. N.D. Cent. Code § 27-20-17(2) (Supp. 1969). The Uniform Juv. Ct. Act § 17(b) provides for an "informal" hearing.

are never identified, made part of the record, or made available to counsel for inspection."[176]

It has been argued that detention hearings, especially if conducted under *Gault* rules, will put an extra burden on the court and may increase the length of detention while the child is waiting for a hearing.[177] Hearings, however, are likely to decrease detention because the decision to release the child is made at that time. Otherwise the child languishes in detention waiting for disposition.[178]

The belief that detention hearings will prolong detention assumes that the courts will hold a large number of hearings. This is a reasonable expectation only if the present high detention rate continues. However, if the criteria for detention and the evidence required to support it are clarified by decision, the number of children detained by police and intake officers will be sharply reduced. Also, it is important to remember that detention, a temporary institutionalization, is a serious intervention in a child's life. For that reason, the due process clause requires a full hearing in a detention proceeding.[179]

III. Length and Place of Detention

A large number of children are detained longer than one would expect from the phrase "temporary detention." Only a few states effectively limit the period of detention by requiring the fact finding hearing to be held within a specified period of time after detention.[180] A few others merely give priority to detained juveniles when scheduling adjudicatory hearings.[181] Some states limit how long the court may detain a child but they also allow the court to renew its order.[182]

176. 300 F. Supp. at 1232.

177. Welch, Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum, 50 Minn. L. Rev. 653, 692 (1966).

178. NCCD Standard Juv. Ct. Act § 17, Comment (1968); Standard Fam. Ct. Act § 17, Comment (1959).

179. 300 F. Supp. at 1232.

180. See Cal. Welfare & Inst'ns Code §§ 638, 657 (West Supp. 1969) (hearing within fifteen days with continuances only on day to day basis at respondent's request); Ill. Ann. Stat. ch. 37, § 704-2 (Smith-Hurd Supp. 1969) (hearing within ten days, or later if necessary to serve the summons or give statutory notice); New York Fam. Ct. Act §§ 747, 748 (Supp. 1969) (hearing within three days of petition's filing, but less severe, yet meaningful restrictions on adjournment). One New York case condemned the granting of a motion to adjourn where the detained child's attorney had opposed it. People v. Poland, 44 Misc. 2d 769, 225 N.Y.S.2d 5 (Sup. Ct. 1964).

181. E.g., N.D. Cent. Code § 27-20-29(5) (Supp. 1969).

182. Alaska Rules of Ct. Proc. and Administration, Rules of Juv. Proc. 7(a) (Supp. 1966) limits the order to thirty days, allowing renewal upon written findings and approval of a superior court. Wash. Rev. Code Ann. § 13.04.053 (1968) allows thirty days detention under a court order, with no apparent limits on renewals.

Unfortunately, substantial numbers of children are detained for periods much longer than the two week period recommended by the NCCD.[183] Complete statistics on length of detention are difficult to obtain as are most detention statistics. However, some information on the subject was obtained by the NCCD in its survey for the President's Commission on Law Enforcement and the Administration of Justice. The survey found that in jails and detention homes, the period of detention ranged from 1 to 68 days.[184] Fifty percent of the children, as tabulated in their sample counties, stayed more than 16 days.[185]

NCCD concluded that the long stays result from the misconceptions shared by many judges "that these facilities are all-purpose institutions for: (a) meeting health or mental needs; (b) punishment or 'treatment' in lieu of a training school commitment; (c) retarded children until a state institution can receive them; (d) pregnant girls until they can be placed prior to delivery; (e) brain-injured children involved in delinquency; (f) protection from irate parents who might harm the child; (g) a material witness in an adult case; (h) giving the delinquent 'short sharp shock' treatment; (i) educational purposes ('[h]e'll have to go to school in detention'); (j) therapy; (k) 'ethical and moral' training; (l) lodging until an appropriate foster home or institution turns up."[186]

The Juvenile Study also obtained recent data on length of detention and found that large numbers of children are detained for longer than two weeks.[187] The most alarming figures were those for the District of Columbia.[188] This decision to detain a juvenile is a most significant one. He will be removed from his home, his friends and his school for a considerable period of time. Yet in 1965, approximately 88,000 children were held in jails throughout the United States.[189]

Jail has been described as the "weakest link of the entire correction system."[190] "Even when a competent sheriff maintains good internal discipline, proper segregation of inmates, and satisfactory housekeeping conditions, the usual absence of a rehabilitation program, detrimental to adult prisoners, is even worse for juveniles."[191]

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183. Detention Standards, supra note 2, at 30.

184. Juvenile Detention, supra note 1, at 34.

185. Id. at 35.

186. Id.

187. See App. D.

188. District of Columbia Receiving Home, Weekly Master Population Sheet 1 (Sept. 28, 1969). See App. E.

189. Juvenile Detention, supra note 1, at 14-15.

190. Eaton, Detention Facilities in Non-Metropolitan Counties, 17 Juv. Ct. Judges J. 9, 10 (1966).

191. Id.

Abuses in juvenile jail detentions were highlighted in a Washington newspaper account of disciplinary practices in a suburban jail, where juveniles were sent because of overcrowding in the regular juvenile detention facilities. At least one "misbehaving" juvenile had been placed in solitary confinement on a bread and water diet; a regime without parallel in other Washington, D.C. suburbs according to the newspaper account.[192] The story noted that solitary confinement is used in all jurisdictions for juveniles but without dietary restrictions.[193]

Jail "atrocities" are not confined to the Washington metropolitan area. A witness before a Senate Judiciary Subcommittee reported that in the Cook County jail juveniles fourteen years old or older were sexually molested, tortured, beaten, and murdered by other prisoners.[194] Other examples have been noted. Although there have been no court decisions on the suitability of a jail as a place of detention, two recent cases challenged the suitability of detention homes in the District of Columbia. Detention facilities, since they are intended to be used for very short periods, do not have, and are not intended to have, programs comparable to those in the facilities for adjudicated juveniles, nor can they realistically duplicate a home environment. The kind of care that they must provide has not been established as yet.

In the first case attacking the suitability of detention facilities, *Creek v. Stone*,[195] the juvenile alleged that the D.C. Receiving Home had no provision for the psychiatric assistance he needed. Despite his repeated requests, the juvenile court refused to hold a hearing regarding the suitability of the receiving home as a place of detention.[196] Although the appeal was dismissed as moot, the United States Court of Appeals for the District of Columbia pointed out that the juvenile code establishes a legal right to custody not inconsistent with the *parens patriae* premise of the law.[197] The court also said that when a juvenile court is presented with a substantial complaint that needed treatment is not provided, it should make an appropriate inquiry to insure that the statutory criteria as applied to juveniles is being met.[198]

Wilson v. Stone[199] also raised the question of the suitability of a detention facility. The juvenile alleged that the Receiving Home Annex did not have a proper education, recreation or therapy program. The court or-

192. Washington Post, Feb. 13, 1969, § F at 1, col. 2.
193. Id.
194. Washington Post, Mar. 7, 1969, § A at 11, col. 1.
195. 379 F.2d 106 (D.C. Cir. 1967).
196. Id. at 108.
197. Id. at 111.
198. Id.
199. No. 69-3250-J (D.C. Juv. Ct. Sept. 10, 1969).

dered the detention facility to conduct classes for the same number of hours per day as the public schools.[200] It is worth noting that although Wilson was detained for more than three months, waiting for a hearing because he could not be trusted in the community, the hearing resulted in his return to the community.[201]

IV. The Need For Detention

The *Wilson* case was not an isolated incident of a detained juvenile being returned to the community after his adjudication hearing. In fact, the NCCD study showed that of 409,218 children detained, approximately 167,000 were neither committed to an institution nor placed on probation.[202] Either the court found that these children were not delinquent when the hearing finally occurred or no delinquency petition was filed. Justification for detention in these cases seems completely lacking.

The Juvenile Study obtained statistics from five communities in order to get more detailed and recent statistics on the disposition of detained children. The results showed that the vast majority of detained children remained in the community after adjudication. In Massachusetts only 25.9% of all children held in detention homes were removed from the community.[203] In Sangamon County, Illinois,[204] Trumbull County, Ohio,[205] and Tarrant County, Texas,[206] only 22%, 19.5% and 9.7% of the detained population were removed from the community.

A more complete picture of dispositions of detained juveniles can be obtained by taking a comprehensive look at the detention picture in one jurisdiction.

Of the 284 juveniles in the "Affluent County" sample, 55 or 19.4% were detained. This rate of detention compares favorably with the "standard" rate established by the NCCD, as determined by the rate of police referrals to juvenile courts.[207]

Eighteen (32.7%) of the 55 children were released by the intake department of Affluent County Juvenile Court. An additional eleven, (20.0%) were released from detention following a detention hearing. Thus, the court decided that thirty-four (61.8%) juveniles detained by the police did not require continued detention.

200. Id.
201. Id.
202. Juvenile Detention, supra note 1, at 36.
203. Massachusetts Study, supra note 74.
204. U.S. Children's Bureau, A Study of Services for Delinquent Children in Sangamon County, Illinois. pt. III, at 5 (1967).
205. Trumbull County Study, supra note 50, pt. II, at 5.
206. Texas Study, supra note 75, pt. II, at 8.
207. Detention Standards, supra note 2, at 19.

More than three-fourths of the detained children remained in the community after court action on their case was completed. In fact, no petition at all was filed for one-fourth of the children.

The detention of 45 of these 55 children is, at best, highly questionable.

V. Bail

The numerous problems about the purpose, length and conditions of detention lead naturally to a consideration of extending the right to bail to juveniles.

Ten states grant juveniles the right to bail.[208] In only two of these jurisdictions is bail the sole means of release.[209] The others also provide for release to the parents or guardians on their promise to bring the child to court.[210] Five states specifically prohibit the use of bail in juvenile cases,[211] and the constitutionality of one of their statues is questionable. In *Smith v. McCravy*,[212] a Kentucky county court stated that *Gault* left little doubt that the Supreme Court intends to extend the Bill of Rights to all individuals, whether juvenile or adult, and held that the state statute denying bail to juveniles is unconstitutional.[213] The remaining jurisdictions either have no provisions on the subject or the pro-

208. Ark. Stat. Ann. § 45-227 (1947); Colo. Rev. Stat. Ann. § 22-8-6(3) (1963); Mass. Gen. Laws Ann. ch. 119, § 67 (1958); Mich. Comp. Laws Ann. § 712A.17 (1968); N.C. Gen. Stat. § 110-27 (1966); Okla. Stat. Ann. tit. 10, § 1112 (Supp. 1969); S.D. Comp. Laws Ann. & 26-8-21 (1967); W. Va. Code Ann. § 49-5-3 (1966). Two states imply a right to bail. Ind. Ann. Stat. § 9-2815 (1956); Wash. Rev. Code Ann. § 13.04.115 (1962). Ten states provide for discretionary release on bail. Conn. Gen. Stat. Ann. § 17-65 (1958); La. Rev. Stat. § 13:1577 (1968); Me. Rev. Stat. Ann. tit. 15, § 2608 (1965), as amended (Supp. 1969); Minn. Stat. Ann. § 260.171(3) (Supp. 1969) (after detention hearing); Neb. Rev. Stat. § 43-205.03 (1943); N.C. Gen. Stat. § 110-27 (1966); Tenn. Code Ann. § 37-251 (Supp. 1968); Utah Code Ann. tit. 33, § 55-10-91 (Supp. 1968); Va. Code Ann. § 16.1-197 (1) (Replacement 1960). Maryland now provides that "[t]he court may require security for the appearance of a child in form or amount the court determines necessary." Md. Ann. Code art. 26, § 70-11(c) (Supp. 1969). Except for Tennessee and Vermont, these statutes provide other means of release. None of these statutes confer a right to be released. Only where there is no other provision for release does the child benefit from the possibility of being admitted to bail. The six other statutes contain no standards for requiring bond rather than the promise of the parent. Discretionary bail benefits the juvenile only if he would be released on monetary bond where the court would have considered him a poor risk on his parent's promise.

209. Arkansas and West Virginia.

210. Colorado, Indiana, Massachusetts, Michigan, North Carolina, Oklahoma, South Dakota, and Washington.

211. Hawaii Rev. Stat. § 571-32(f) (1968); Ky. Rev. Stat. Ann. § 208.110 (1962); Ore. Rev. Stat. § 419.583 (1968); P.R. Laws Ann. tit. 34, § 2007(d) (Supp. 1968); Utah Code Ann. § 55-10-91 (Supp. 1967). Utah lifts the prohibition for children who live outside the state.

212. 1 Crim. L. Rep. 2153 (1967).

213. Id.

visions imply there is no right to bail for juveniles.[214] The few court decisions on the subject conflict. For example, two Wisconsin county courts reached opposite conclusions[215] on the right to bail in decisions issuing one month apart in 1969.[216]

The two principal arguments against an absolute right to bail for juveniles are that juvenile court proceedings are "not criminal" in nature,[217] and that bail is an inappropriate release procedure for juveniles.[218] The first argument, that juvenile proceedings are "civil," has been significantly undercut by the Supreme Court decision *In re Gault*,[219] in which the Court said that "juvenile proceedings to determine 'delinquency,' which may lead to commitment to a state institution must be regarded as 'criminal' . . . ."[220]

Old rationales die hard. At least one post-*Gault* state court decision has denied bail to a juvenile on the ground that bail applied to "criminal" proceedings, and juvenile proceedings are not "criminal."[221]

Gault does not significantly affect the vitality of the second standard objection to bail for juveniles. The weight of expert opinion is that monetary bail is inappropriate for juveniles. The principal argument is that a child's freedom should not depend on his ability to pay for it.[222] Juveniles have neither property nor money of their own to use as collateral.[223]

A monetary bail system for juveniles, therefore, makes the juvenile's freedom depend on his families financial resources. Since many families of alleged juvenile delinquents have low or marginal income,[224] the result for many juveniles would be detention for poverty.

Bail is also said to be inappropriate for juveniles when the reason for

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214. E.g., Idaho Code Ann. § 16-1811 (Supp. 1969).

215. Wronski v. Frohmader, No. 349-590 (Milwaukee Co. Cir. Ct., July 5, 1967).

216. Mayberry v. Administrator (Milwaukee Co. Cir. Ct., Aug. 4, 1967).

217. See e.g., In re Castro, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469 (1966); Ex Parte Cromwell, 232 Md. 305, 192 A.2d 775 (1963); Estes v. Hopp, 73 Wash. 2d 263, 438 P.2d 205 (1968).

218. See Juv. Delinq. and Youth Crime, supra note 1, at 36; Ketcham, Guidelines from Gault: Revolutionary Requirements and Reappraisal, 53 Va. L. Rev. 1700, 1715 (1967); Children's Bureau Standards, supra note 8, at 63.

219. 387 U.S. 1 (1967).

220. Id. at 49. Although the court was not immediately concerned with pre-adjudicatory proceedings, the logic of this holding extends to detention proceedings leading to temporary institutionalization. See Skoler, Counsel in Juvenile Court Proceedings—A Total Criminal Justice Perspective, 8 J. Fam. L. 243, 259 (1968).

221. Estes v. Hopp, 73 Wash. 2d 263, 269, 438 P.2d 205, 208 (1968).

222. Juv. Delinq. and Youth Crime, supra note 1, at 36.

223. Ketcham, supra note 218, at 1715; see e.g., Fulwood v. Stone, 394 F.2d 939, 941 (D.C. Cir. 1967), where although the District Court upheld a constitutional right to bail, it set the bond too high for the juvenile to meet it.

224. Children's Bureau Standards, supra note 8, at 63.

detention is that release would be detrimental to the child's welfare.[225] The examples given to support this argument often involve situations where the parents are clearly unfit.[226] In any such case where release would be detrimental to the juvenile because of his parents' deficiencies, a neglect petition may be the proper remedy.[227]

These arguments have convinced at least three courts that their jurisdictions' statutory schemes were "more than an adequate substitute for bail."[228] One, the District of Columbia Court of Appeals, warned that the adequacy of its statutory scheme depended on the "faithful observance" of statutory principles allowing release on recognizance, favoring conservation of family ties, and guaranteeing " 'custody, care, and discipline as nearly . . . equivalent to that which should have been given him by his parents,' " in the case of detention.[229]

However, the present article shows that these statutory objectives plainly are not being met.[230] Perhaps this is why there is support for a bail system in addition to other means of release.[231]

VI. Conclusion

This article began as an inquiry into factors that cause the high rate of juvenile detention. The rate has been criticized by innumerable commentators, as has almost every other aspect of juvenile detention.

Very few communities, however, have adopted suggested solutions. One must assume that there are valid reasons why reforms have not been adopted.

225. "Release as of right plainly may interfere with the protection and care required in some cases . . . ." Juv. Delinq. and Youth Crime, supra note 1, at 36. See also Note, The Right to Bail and the Pre-"Trial" Detention of Juveniles Accused of "Crime," 18 Vand. L. Rev. 2096, 2097 (1965).

226. See Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 552 n.21 (1957), citing the case of a young girl who had sexual relations with a man in "her mother's bed at her home in New Orleans, with her mother's apparent consent and approval;" and the case of a fifteen year old who was abused by her stepfather.

227. See pp. 168-70 supra.

228. Fulwood v. Stone, 394 F.2d 939, 943 (D.C. Cir. 1967); In re Castro, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469 (1966). An earlier district court case in the District of Columbia held that the federal constitutional guarantee prevailed over a statute which was silent on the subject of bail for juveniles, since no statute is necessary to implement a constitutional provision. Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960). One commentator has disagreed that the California scheme is an adequate substitute for bail. See Boches, supra note 117, at 75.

229. 394 F.2d at 943 quoting the District of Columbia statute.

230. See pp. 186-89 supra.

231. See Note, supra note 225, at 2108. Eight statutes provide for a right to bail along with other release provisions. See text accompanying notes 208 & 209 supra.

One possibility is that the generally accepted policy of releasing most juveniles to their homes to await court action is wrong. If this is the case, the fact that the detention rate remains high is to be expected. On the other hand, if the policy is correct, it is most important to find out why the criticisms and recommendations are ignored time after time.

The available evidence clearly indicates that the policy is not wrong. Large numbers of juveniles are detained and then released to the community, either without any delinquency petition, or after the adjudication decision. Therefore, it seems unlikely that their detention was necessary.

It is possible, of course, that information not currently available would show that a larger number of persons need to be detained than the experts have stated. Such information might also show that disputed criteria are more justifiable than they seem at present.

Unfortunately, the absence of useful information occurs for the same reason as the high detention rates. The fact that twenty-two states do not even bother to keep any detention statistics documents the broad indifference to the problem. The statistics in other states are usually so incomplete that they are useless for planning personnel, facilities, or anything else. The absence of data, crucial for making any changes in the present detention system, is a major block to solving the problem.

The most important, but least available, data is the reason why each detained child has been held. Without this information, it is impossible to tell if the detention is unjustified under existing criteria.

How many children are being held in detention because they need shelter care, foster parents, or treatment in a mental hospital? Until the number of detained children who need this care is known and communicated to the public, there is little hope that the necessary facilities will be established.

The variation in detention practices between the police, the intake worker, and the judge shows an indifference to the plight of juveniles. It does not seem impossible for these departments of the judicial system to coordinate their work. Nor does it seem unreasonable to expect more judges to exercise the legal control that they have over detention. Some of them already do so.

The courts, of course, are to some extent limited by the facilities available to them. Public complaints about all the criminal acts committed by juveniles also puts pressure on judges to detain alleged delinquents. It is probably true that large numbers of juveniles who are alleged to have committed delinquent offenses, in fact, have done so. It is also true that the community feels that more attention should be paid

to protecting its rights and safety. It is doubtful, however, that present detention practices protect the community.

Indifference on the part of the public, the legislatures, the police and the juvenile court has created detention procedures and practices in many communities which do not protect the rights of the public or the juvenile and which also fail to meet the needs of neglected and dependent children. This state of affairs will continue until indifference is replaced by concerned supporters, creative solutions, and the funds to carry them out.

APPENDIX A

Rates of Detention in Selected Jurisdictions (1968)

Locality[a]	Percent of all Apprehended Juveniles Detained[b]	Percent of all Court Referrals Detained
A	11.0	Not Available
B	14.4	Not Available
C	18.0	Not Available
D	18.0	55.3
E	22.0	39.7
F	29.0	47.9
G	32.3	59.8
H	33.0	Not Available
I	Not Available	74.0

[a] See note 14 supra. In Trumbull County, Ohio, and Tarrant County, Texas, 1967 statistics were used because they were currently available. Because most of these cities were designated as not for general distribution, we have not identified the specific jurisdictions listed in the table.

[b] NCCD defines rate of detention as follows: "The rate of detaining is the total number of children detained for delinquency divided by the total number apprehended and booked for delinquent acts." Juvenile Detention, supra note 1, at 31 (1967). To the best of our knowledge this definition was followed by the communities shown in Table I. NCCD considers the apprehension base more useful than the court referral base. Id.

APPENDIX B

Percentage of Detention by Offense[a]

Offenses	A	B	C	D	E	F	G	H	I	J	K
Against Persons	24.9	8.8	17.6	8.1	N/A	5.2	1.6	1.0	3.0	6.1	3.0
Against Property	45.5	19.1	31.1	20.0	N/A	22.3	15.1	24.0	36.7	32.9	32.0
Conduct[b]	9.9	15.0	6.9	N/A	N/A	N/A	8.2	8.1	9.5	12.2	15.0
Status[c]	16.5	32.3	23.0	64.2	21.8	54.3	68.5	65.2	32.5	38.6	45.0
Traffic	N/A	0.4	0.8	N/A	N/A	N/A	N/A	1.0	1.7	1.4	3.0
All others	3.3	24.4	20.7	7.6	N/A	18.2	6.6	0.8	16.6	8.8	2.0

[a] The data were obtained in the same manner as the data for App. A. See note 14 supra. For App. B usable data were obtained from Baltimore, Chicago, District of Columbia, Los Angeles, New York City, and Seattle; statistics were also obtained from Marion County (Oregon), Sangamon County (Illinois), Tarrant County (Texas), Trumbull County (Ohio), and Volusia County (Florida).

[b] Some localities differentiate the category "conduct offenses" as not fitting within the crimes against persons or property categories. Examples of such conduct offenses include drunk and disorderly, escapee, disturbing the peace and mischief, among others.

[c] Status offenses are those classified as delinquencies only if committed by juveniles, and include truancy, running away, and ungovernableness.

APPENDIX C

Percentage of Detained Children Charged With Dangerous Offenses

Locality	Percent of All Detainees	
	Column I[a]	Column II[b]
C	25.2%	41.3%
D	18.6%	32.7%
F	6.7%	15.2%
G	1.6%	5.8%
H	1.2%	9.8%

[a] Homicide, aggravated assault, rape and other sex offenses, robbery, arson, and possession of dangerous weapons are defined as dangerous offenses in Column I.

[b] All of the above, plus burglary, are considered dangerous offenses in Column II.

APPENDIX D

Length of Stay in Detention

Location	Under 2 Weeks	2 Weeks to a Month	1-2 Months	Over 2 Months
Affluent County.[a]	70.9%	14.5%	9.9%	4.7%
State of Mass.[b]	57.3%	24.8%	12.8%	5.1%
Trumbull County, Ohio[c]	96.6%	3.4%	-0-	-0-
District of Columbia[d]	32.9%	20.6%	16.2%	30.3%
Sangamon County, Ill.[e]	94.9%	4.4%	0.7%	-0-

[a] The percentages for Affluent County are based on our field study. We selected random samples of juveniles handled formally and informally by Affluent County Juvenile Court during 1968 and the first five months of 1969. The samples consisted of 166 informal cases, and 126 formals. Of these 292 juveniles, 55 were detained, 19 of the informals and 36 of the formals.

[b] Massachusetts Study, supra note 74, pt. III, at 31-34.

[c] Trumbull County Study, supra note 50, pt. II, at 5.

[d] District of Columbia Receiving Home, Weekly Master Population Sheet 1 (Sept. 28, 1969).

[e] U.S. Children's Bureau, A Study of Services for Delinquent Children in Sangamon County, Illinois, pt. II, at 14 (1967). Sangamon County includes the city of Springfield, and had a population at the time of the study of 150,000.

APPENDIX E

Period of Detention in District of Columbia

Time Detained	No. of Children	% of All Detained
More than 2 weeks	157	67.1%
More than 6 weeks	83	35.4%
More than 10 weeks	59	25.2%
More than 14 weeks	39	16.7%
More than 18 weeks	18	7.7%
More than 20 weeks	12	5.1%