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The Juvenile Justice System: A Brief Overview

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able to obtain credit and the right to sign contracts or leases.

What does a teenager have to demonstrate to reach this emancipated status? First, the parents must either consent or acquiesce. Acquiesce here means only that the are not making an active effort to get the child back. Then the applicant must show the court that he can be self-supporting and exist as a functioning member of society.

For most teenagers this means getting a job, either part-time or full-time. Some choose to further their education and are eligible in their own right for financial aid. In some states, the emancipated child may be eligible for welfare benefits. (Indeed, if you were an unmarried pregnant girl of 16 who was asked to leave home, this is about all you would be able to do to support yourself.) The important factor is that a conscious decision to leave home is made with the help of the court and a social services agency.

The National Center for Youth Law,¹ which helped draft the California legislation, says it is receiving one inquiry a week about the process. California's law sets the minimum age as 14; most other states adopting an Emancipation of Minors Act set it at 16 when the compulsory school attendance requirement is no longer a factor.

Seven other states have enacted laws similar in import to the law in California, but Maryland has nothing comparable in this area for its juveniles. The closest provisions are contained in the Courts article §3-801, *et seq.*, that deal with a "child in need of assistance." In cases where parents are unwilling or unable to provide proper attention for their child, a complaint can be filed with the Juvenile Services intake officer for that jurisdiction requesting a preliminary inquiry. The inquiry may result in the court assuming control over the child. It is not clear if the child can make the request, and the Title does not address that issue. The one thing that is clear, however, is that according to an Attorney General Opinion² a runaway is not considered a delinquent and so may not be placed in a detention center upon returning home. A Maryland youth emancipation act will have to await another day and another legislature.

¹The National Center for Youth Law was formed in 1978 to assist Legal Service programs. It is the result of a merger of the National Juvenile Law Center and the Youth Law Center. Its address is 3701 Lindell Blvd., St. Louis, Mo. 63108. Phone (314) 533-8868.

²61 Op. Att'y. Gen. 523 (1976).

The Juvenile Justice System: A Brief Overview

by Brad Sures



It was not until 1899, in Chicago, Illinois, that the nation's first juvenile court was founded. Prior to that time, in the eyes of criminal law, youths reached maturity at age 14, and suspects as young as 6 were legally considered adults if the state could show they knew right from wrong. Thus, several cases are recorded of 12- and 13-year-olds tried for murder, and of 7- and 8-year-olds locked up in adult prisons.

This new and innovative concept of a juvenile court was the culmination of a widespread belief that children were too frequently being institutionalized in unhealthy and degrading almshouses and reform schools. Now, with a sympathetic judge acting as a surrogate parent, misguided adolescents would be treated with compassion and understanding.

It was also at about this same time that juvenile probation officers first appeared. They began as unpaid volunteers supplying the court with investigations of young offenders' backgrounds and supervising the child's living at the parents' home. Such supervision was considered an alternative to punishment in an institution.

The states, however, were slow in giving juvenile courts the resources necessary for them to be effective. As late as 1967, one-third of the juvenile courts in the country had no social workers or probation officers specifically available to them, and less than a dozen states offered such courts any psychiatric assistance.

Eventually, the juvenile court system began to break



down. The 1930's and 40's showed a steady increase in juvenile crime as well as an alarming increase in children running away. Though it was the juvenile court's purpose to provide an alternative to institutionalization, it became evident that they were insufficiently staffed to perform that function. Thus, with increased frequency, they referred delinquents to "reform" and "training" schools. These schools more closely resembled prisons, however, with emphasis on punitive discipline rather than on rehabilitation or education.

It was not until 1967 that the Supreme Court, recognizing the essentially punitive nature of reform schools, held that juvenile courts, before making a finding of delinquency, were required to observe the "essentials of due process and fair treatment." *In Re Gault*, 387 U.S. 1, (1967). The Court noted that the institutionalization of juveniles was not significantly succeeding in rehabilitating young delinquents and that the "schools" for juveniles were little more than institutions of confinement. Further, studies showed that a substantial number of adult criminals were at one time juvenile offenders who had inevitably returned to lives of crime.

To combat the growing disenchantment with the institution's handling of the problems of youths, two organizations, the Institute of Judicial Administration and the American Bar Association, sponsored the Juvenile Justice Standards Project, with the goal of reexamining the basic functions and operations of the juvenile justice system in the United States. In 1977, after more than six years of research and discussion, they produced twenty-three volumes of proposed standards and commentary that essentially state that the juvenile court should abandon its surrogate parent approach and bind itself to tightly worded rules of law. See IJA-ABA Juvenile Justice Standards Project (1977). The *Standards* generally break down the juvenile justice system into three categories: Youth Crime, Noncriminal Behavior, and Parental Abuse and Neglect.

Youth Crime. The term "delinquency" would be reserved exclusively for juveniles who have committed crimes. Youth crimes would only be those acts that would be crimes if committed by adults. The *Standards* recommend that juveniles accused of crime be afforded the same procedural protections as adults in guarding against conviction of the innocent, such protections far exceed the minimal due process presently accorded juveniles. The juvenile court judge would be free to act on a case-by-case basis. The judge would be free to act leniently where appropriate. Alternatively, where a heavier determinate sentence is deemed necessary, the judge would have discretion to deny a parole commission's recommendation to release the offender prematurely.

The *Standards* further recommend that legislatures increase many of the maximum prison sentences for juve-

niles who have committed serious crimes. And, in some cases, juvenile courts must be allowed to transfer some of the young criminals to the adult court to be tried as adults. (In Maryland, the adult court has original jurisdiction over children "14 years old or older who have allegedly done an act which, if committed by an adult, would be a crime punishable by death or life imprisonment . . ." MD. CTS. & JUD. PROC. CODE ANN. §3-804(d) (1980).)

Noncriminal Misbehavior. Noncriminal misbehavior (also known as status offenses) include acts such as disobeying parents, truancy and running away. Since the *Standards* permit incarceration only for conduct forbidden by adult criminal law, youths involved in status offenses would not be institutionalized. Further, under the *Standards*, status offense jurisdiction would no longer exist in juvenile courts. The *Standards* encourage classifying youths involved in noncriminal behavior as "Persons (or Children) in Need of Supervision" (PINS or CHINS), and feel that all services rendered to PINS children should be provided on a voluntary basis—preferably outside the judicial system. Examples of some of the services would be the operation of "crash pads" and "runaway houses" for youths who have left home to live for a time, voluntary psychiatric or medical care, and educational, vocational and legal counseling appropriate to the needs of the particular child. The key would be to make these services adequate, well-known and easily accessible.

Parental Abuse and Neglect. The *Standards* would require a finding of specific physical harm, clinically recognized psychiatric disturbance, or sexual abuse to the child as the parent's misconduct before a child could be removed from its home. This would do away with having the state intervene when a single mother has an overnight male visitor, and the like. The *Standards* note that unnecessary intervention often harms rather than helps the child, and conclude that it would be better for the state to leave the child with the family and supply voluntary social services to assist the family unit in the home.

The heart of the *Standards*, then, is the recognition that the child must have support in his general passage towards adulthood. And by granting the juvenile the full rights of an adult when his interests are jeopardized by state action, plus providing him with supportive structures when necessary, the *Standards* lend much in paving the way toward the accomplishment of such passage for troubled juveniles.

