Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards

STANDARDS RELATING TO

Interim Status: The Release, Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition

Recommended by the
IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1979

Allen F. Breed, *Chairman of Drafting Committee III*
Daniel J. Freed, *Reporter*
Timothy P. Terrell, *Reporter*

DRAFTING COMMITTEE III—TREATMENT AND CORRECTIONS

Allen F. Breed, Chairman
Lindsay Arthur
Maria Rivera de Buchanan
Lawrence A. Carpenter
Marjorie M. Childs
Larry Dye
Mitchell I. Ginsberg
Jerome M. Goldsmith
Nicholas Hobbs
Norma H. Johnson
Robert Johnson
William Wayne Justice
Dale McCollum
Sheldon Messinger
Jerome Miller
Sister Mary Paul
David Rothenberg
Joseph Rowan
Lawrence H. Schwartz
Aaron Shirley
Percy H. Steele, Jr.
L. Alex Swan
Robert E. Switzer
Andrew von Hirsch
Theartrice Williams

This document was prepared for the Juvenile Justice Standards Project of the Institute of Judicial Administration and the American Bar Association. The project is supported by grants prepared under Grant Numbers 71-NI-99-0014; 72-NI-99-0032; 74-NI-99-0043; and 75-NI-99-0101 from the National Institute of Criminal Justice and Law Enforcement, and 76-JN-99-0018; 78-JN-AX-0002; and 79-JN-AX-0025 from the National Institute of Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice, the American Bar Endowment, the Andrew W. Mellon Foundation, the Vincent Astor Foundation, and the Herman Goldman Foundation. The views expressed in this draft do not represent positions taken by the funding sources. Votes on the standards were unanimous in most but not all cases. Specific objections by individual members of the IJA-ABA Joint Commission have been noted in formal dissents printed in the volumes concerned.

Preface

The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.

The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*
Hon. William S. Fort, *Vice Chairman*
Prof. Charles Z. Smith, *Vice Chairman*
Dr. Eli Bower
Allen Breed
William T. Gossett, Esq.
Robert W. Meserve, Esq.
Milton G. Rector
Daniel L. Skoler, Esq.
Hon. William S. White
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

Misbehavior—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of the series of standards and commentary prepared under the supervision of Drafting Committee III, which also includes the following volumes:

DISPOSITIONS
DISPOSITIONAL PROCEDURES
ARCHITECTURE OF FACILITIES
CORRECTIONS ADMINISTRATION

Acknowledgment

To Larry

From the outset of the project until his untimely death in September 1974, Larry Schultz was our colleague and co-author in the evolution of this volume. He was a pleasure to work with, the kind of collaborator and critic who makes a joint enterprise grow and vibrate and test itself with every new exchange. With warmth and affection we dedicate the volume to his memory.

Dan Freed
Tim Terrell

Addendum of Revisions in the 1977 Tentative Draft

As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA–ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standard 3.1 was amended by inserting the word "generally" as a clarification, to heighten the meaning of the second sentence of the standard. Thus the first sentence is a statement of the general policy against restraints on the freedom of accused juveniles and the second sentence is a specific instruction to prefer unconditional release in each case.

2. Standard 3.3 was amended by adding a new section, E., which makes further interrogation or investigation an enumerated prohibited purpose of interim control or detention.

3. Standard 4.3 was amended by creating the alternative of stating on the record the evidence and authorized purpose on which a decision other than release is based.

4. Standard 5.3 F. was amended by changing the time limit for release or transportation to a facility to two to four hours and bracketing that time frame.

Commentary was revised to express the executive committee's continued preference for a two-hour time limit, describing the amendment as a recognition of the possible impracticality of the more rigorous standard for some communities.

5. Standard 5.6 was amended by bracketing "less than one year," thereby making it possible to apply mandatory release under that standard to felony charges. The standard was amended further by substituting "evidence as defined in the standard" for "clear and convincing evidence." "First or second degree murder" was changed to "a class one juvenile offense involving violence" for cases in which the seriousness of the offense can be a sufficient ground for continued custody. Finally, the factor of being under the jurisdiction of the court while in interim release, on probation, or on parole (the "one-bite rule") was eliminated.

Commentary was revised accordingly.

6. Standard 6.1 was amended to conform to *Corrections Administration* Standard 2.1 with respect to providing for a statewide agency while recognizing the role of local agencies in situations in which geographic or political considerations place certain administrative responsibilities within the jurisdiction of local government.

7. Standard 6.6 A. 1. was amended in the same manner as Standard 5.6, described in item 5 above, with respect to exceptions to the mandatory release provisions, by changing a charge of first or second degree murder to a class one juvenile offense and eliminating the "one-bite rule."

Commentary was revised accordingly. The General Introduction also was revised to reflect the changes in Standard 6.6 A. 1.

8. Standard 7.7 was amended to authorize continued custody of the court when justified under the standards despite improper detention by the intake or arresting officer.

9. Standard 7.8 was amended by bracketing sixty days and changing the provision recommending a new judge at the trial from one "other than the one who refused to release the juvenile from detention" to one "other than the one who presided at the detention hearing."

10. Standard 7.9 A. was amended by adding a requirement that at the expiration of the time for execution of the dispositional order, the judge must execute the order forthwith, or explain on the record the reasons for the delay, or release the minor.

11. Standard 7.10 was amended by bracketing all time limits and adding a provision permitting extension of the time for execution of a disposition if requested by the juvenile in order to obtain a better placement.

Commentary was revised to note that since the extension would be for the juvenile's benefit, it should be at the juvenile's option.

12. Standard 8.1 was amended by distinguishing between the nonwaivable right to separate counsel for a child and the right of the

parents to request court-appointed counsel in cases of conflict of interest between juveniles and their parents. This provision gives parents the choice of knowingly waiving their right to counsel.

13. Standard 8.3 was amended by deleting a provision that the adequacy of an appointed attorney's efforts to avoid or relax the conditions of detention should be an important component of the fee set by the court, because the fee should be based on the attorney's performance of *all* obligations to the client.

14. Standard 10.5 was amended by changing the maximum population of a detention facility from twelve juveniles to twelve to twenty and bracketing "twelve to twenty," to conform to *Architecture of Facilities* Standard 6.3. The standard was amended further by adding the phrase "in any calendar year" to the specified maximum time during which a mandatory ceiling on detained juveniles may be exceeded temporarily.

Commentary was revised by adding a cross-reference to *Architecture of Facilities* Standard 6.3.

15. Standard 10.8 was amended to add additional factors of staff qualification and training and staffing patterns and deployment of staff resources to the enumerated factors to consider in an inventory of secure detention facilities, since they are indicative of the quality of custodial care and supervision in the facilities.

16. Standard 11.1 A. was amended by bracketing "executive" to indicate continued preference for executive control of interim status administration, accompanied by a recognition of the possibility that some jurisdictions may choose judicial control of intake, investigation, and probation functions.

Commentary was revised accordingly.

17. Commentary to Standard 3.2 B. was revised to indicate that the provision for detention to reduce the likelihood that the juvenile may inflict serious bodily harm encompasses serious crimes against property which involve a substantial risk of serious bodily harm, such as arson or bombing.

18. Commentary to Standard 4.5 A. 1. c. was revised to note that tests of competency to stand trial may be given only after providing adequate notice and opportunity to be heard.

19. Commentary to Standard 5.3 C. was revised to include a cross-reference to *Pretrial Court Proceedings* Standards 5.1 and 6.1 and to expand the discussion of nonwaivability of the right to counsel, as distinguished from the right to have counsel present, and of the limited admissibility of statements made to intake officers.

20. Commentary to Standard 5.4 was revised to provide that juveniles may be held in designated facilities in communities which do

not have separate juvenile detention facilities if arrangements are made to insure that juveniles will not come into contact with adult detainees.

21. Commentary to Standard 10.7 was revised to expand discussion of the detained juveniles' rights, particularly with respect to attorney conferences, telephone access, and restrictions on mail searches for contraband. A cross-reference to the rights of confined juveniles in the *Corrections Administration* volume was added.

22. Commentary to Standard 11.1 A. was revised by referring to the controversy concerning the relative merits of programs administered by public agencies and those provided by contracting with private nonprofit organizations.

Contents

General Introduction

The detention of juveniles prior to adjudication or disposition of their cases represents one of the most serious problems in the administration of juvenile justice. The problem is characterized by the very large number of juveniles incarcerated during this stage annually,[1] the harsh conditions under which they are held,[2] the high costs of such detention,[3] and the harmful after-effects detention produces.[4]

[1] The extent of juvenile detention has been documented and analyzed in a variety of ways by commentators. Estimates of the number of juveniles detained annually (in secure and nonsecure facilities) range as high as one million. *See* R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 4-5, 64 (National Assessment of Juvenile Corrections 1974); H. Mattick and R. Sweet, "Illinois Jails: Challenge and Opportunity for the 1970's" (University of Chicago Law School 1969); Minnesota Department of Corrections, "Characteristics of Institutional Populations 1969-1972" (1972); NCCD, "Juvenile Detention" in "Corrections in the United States," 13 *Crime & Delinq.* 1, 11, 15, 36 (1967); Department of Justice, Law Enforcement Assistance Administration, "National Jail Census, 1970" (1971); LEAA, "Children in Custody" 1, 4 (1974); D. Pappenfort, D. Kilpatrick, and Kuby, "Detention Facilities," Vol. 7 (University of Chicago, School of Social Service Administration 1970); California Department of Youth Authority, "Hidden Closets: A Study of Detention Practices in California" 19-28 (1975) (hereinafter cited as "Hidden Closets").

[2] The conditions and characteristics of juvenile detention facilities are extensively documented in Sarri, *supra*, n. 1 at 35-63. *See also* Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972); Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972); Creek v. Stone, 379 F.2d 106 (D.C. Cir. 1967); Baker v. Hamilton, 345 F. Supp. 345, 353 (W.D. Ky. 1972); Zeman v. Lincoln, 6 Cl. Rev. 282 (Wayne County, Mich. Cir. Ct. 1972); Thomas v. Frank, 7 Cl. Rev. 109 (E.D. Ark. 1973); In re Yolo County Juvenile Hall, 6 Cl. Rev. 766 (Cal. Sup. Ct. 1972); In re Baltimore Detention Center, 5 Cl. Rev. 550 (Balt. City Ct. 1971); Patterson v. Hopkins, 5 Cl. Rev. 478 (N.D. Miss. 1971); People ex rel. Guggenheim v. Mucci, 32 N.Y.2d 307, 344 N.Y.S.2d 944, 298 N.E.2d 109 (1973); In the Matter of Savoy, Juvenile Case No. J-4808-70 (D.C. Super. Ct. January 11, 1973).

[3] The costs of detention have been noted by many. *See, e.g., D. Freed & P. Wald, Bail in the United States: 1964*, at 107-8; President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* 121 (1967); J. Downey, "State Responsibility for Juvenile Detention Care" 7 (Minnesota Department of Corrections 1970). Cost reductions resulting from

These difficulties are caused or compounded by profound defects in the system of juvenile justice itself: in the inadequacy of the information and the decision-making process that leads to detention; in the delays between arrest and ultimate disposition; and in the lack of visibility and accountability that pervades the process.

In contrast to the pretrial stage, much greater care and sensitivity is usually devoted to the postadjudicative disposition, its facilities, and its alternatives to incarceration. The result, paradoxically, is considerably less detention under better conditions once the juvenile justice system ceases to presume that the juvenile is innocent.[5]

The basis of reform in this area should be a new focus on the im-

---

alternative programs have likewise been examined. *See, e.g.*, Hannergreen, "The Role of Juvenile Detention in a Changing Juvenile Justice System," 24 *Juv. Justice* 46 (1973); Whitlatch, "Practical Aspects of Reducing Detention Home Population," 24 *Juv. Justice* 17 (1973).

[4] While it is difficult to measure the psychological effects of detention on juveniles, it appears to be universally accepted that the effect is harmful. See NCCD, "Standards and Guides for the Detention of Children and Youth" 3 (1961); R. Garff, "Handbook for New Juvenile Court Judges" 21 (National Council of Juvenile Court Judges 1972); *D. Anderson, E. Thomas, and C. Sorenson, The Child's View of Detention* (1970); Komisaruk, "Psychiatric Issues in the Incarceration of Juveniles," 21 *Juv. Ct. J.* 117 (1971). Some systematic studies of detention, however, have found that psychological effects may not be as great as many have assumed. O'Connor, "The Impact of Initial Detention Upon Male Delinquents," 18 *Soc. Prob.* 194, 198 (1970); Coates, Miller, and Ohlin, "Juvenile Detention and Its Consequences" 12 (unpublished paper on file with the Juvenile Justice Standards Project, Institute of Judicial Administration 1974). But the latter study quite clearly shows that detention adversely affects the ways in which the juvenile is treated by the system following such detention:

> . . . the symbol of where one is detained has a lasting impact which carries over to where one is initially placed. Detention in a custody unit restricts the youngsters' range of placement opportunities. This must underscore the importance of the original decisions concerning the question of whether to detain and where to detain. It seems that we cannot make this point too strongly. We have shown that where one is detained is, at least for those youth without a prior commitment, related to the commitment decision. And we have shown quite conclusively that where one is detained is related to initial program placement. *Id.* at 22.

A similar observation is made in Edwards, "The Rights of Children," 37 *Fed. Prob.* 34, 37 (1973).

[5] Several studies have indicated that far more juveniles are detained prior to adjudication than are incarcerated afterwards. See NCCD, "Juvenile Detention" in "Correction in the United States," 13 *Crime & Delinq.* 1, 11, 15, 36 (1967) (of 409,218 juveniles detained in 1965, only 242,275 were either committed after disposition to a facility or placed on probation); Ferster, Snethen, and Courtless, "Juvenile Detention: Protection, Prevention, or Punishment?" 38 *Fordham L. Rev.*

portance and integrity of pretrial decision making, and on the development of an informed, speedy, and responsible process. Standards must be formulated and rules imposed to limit the process, to the extent possible, to performing the historic function of bail in the criminal process—ensuring the presence of the accused at future court proceedings. The standards also need to recognize and regulate candidly the function that bail in the adult criminal process plays in fact, but declines to acknowledge in law—that some arrested persons are too obviously guilty and apparently too dangerous to others to be released by any reasonable judicial officer.

This volume proceeds on the premise that the danger of too much detention before trial or disposition currently outweighs the danger—both for juveniles and society—of too much release. As a result, the standards here seek to curtail severely—but not eliminate—the discretion to detain that presently characterizes the system. Reducing

---

161 (1969) (in the jurisdictions examined, few of the detainees were ultimately removed from the community following disposition: Mass., 25.9 percent; Ill., 22 percent; Ohio, 19.5 percent; Texas, 9.7 percent; "Affluent County," 25 percent).

The paradox noted in the text has been observed by one court:

> Traditionally, individuals accused of violations of law—whether they be defendants in adult criminal proceedings or respondents in proceedings technically denominated delinquency—have, curiously enough, fared far worse in matters of detention and treatment than those already adjudged guilty or "involved." Those convicted of offenses are normally assigned to institutions that are reasonably spacious, where there are ongoing programs of education and recreation, and where, at least on a relative basis, a reasonable number of counselors and other professionals are present to assist with problems and to help on the road to rehabilitation. On the other hand, those merely accused of wrongdoing are typically detained in structures that are little more than cages, with scarcely any programs, professional help, or space for anything but sleeping, eating, and an occasional walk in a narrow prison yard. To anyone looking at this situation without the blinders of the knowledge of "how things have always been" this must seem like an odd reversal of how things should be. Perhaps at a time when service of a sentence meant the rock pile of hard labor there was an advantage to the idleness of the pretrial prison. But now, when a primary aim of institutions for the adjudicated delinquent or the sentenced offender is rehabilitation, and when the programs designed to accomplish this process have become relatively humane—inadequate though they may sometimes be—the accused who is merely awaiting his trial, and who in the meantime rests securely on his presumption of innocence, is usually held under conditions far more barbaric than those prevailing at institutions for individuals whose guilt has already been adjudicated by a court or jury. While the historical and theoretical reasons for this anomaly are not difficult to understand, the situation still makes no sense. In the Matter of Savoy, Juvenile Case No. J-4808-70, at 30-31 (D.C. Super. Ct. January 11, 1973) (C.J. Greene).

such discretion is to be accomplished by three methods: narrowing the criteria for permissible detention; reducing permissible delay in the system; and increasing accountability for and review of decisions that curtail interim liberty. The volume incorporates these features in a step-by-step description of the pretrial and predisposition process. Basic principles and general procedural standards are followed by individual sets of standards applicable to each agency and official responsible for the sequential stages of contact with the juvenile.

I. Definitional issues.

Two key definitional issues should be settled at the outset:

A. Pretrial release vs. interim status.

The juveniles who comprise the potential detention population addressed in this volume come from three separate stages of the juvenile justice process: preadjudication (before trial), predisposition (after conviction but before sentence), and preimplementation of the dispositional decision (until the sentence is put into effect).[6] The volume thus governs processes beyond the pretrial stage to which the ABA, Standards for Criminal Justice, *Pretrial Release* (1968) (hereinafter cited as ABA Standards, *Pretrial Release*) were directed. The term "pretrial" detainee is, accordingly, inaccurate to describe the many juveniles in detention whose cases have already been adjudicated, but whose disposition is either undecided or unimplemented. As a substitute, the term "interim" is used herein to refer to the entire portion of the juvenile process from the point of arrest until the carrying out of a dispositional placement, *i.e.*, to all decisions relating to release, control, and detention made during this period.[7]

B. Criminal vs. noncriminal offenses.

Only arrests on charges that would constitute violations of the criminal law if committed by adults are included within this volume.[8] Juveniles taken into custody for conduct or status that would not be an adult crime, such as running away or incorrigibility, or who are in custody in a dual situation, such as a runaway arrested for burglary, are not part of the group addressed directly by these standards.

The implications of this limited applicability are important. Various studies have indicated that about half of all juveniles held in interim detention are charged with "juvenile" or noncriminal offenses.[9]

[6] *See* commentary to Standard 2.1.

[7] *See* Standard 2.1.

[8] Standard 1.1.

[9] Ferster, et al., *supra* n. 5 at 195: Institute of Government, University of Georgia, "Regional Youth Development Center Study" 112–113 (1972); *D. Beale*

These standards are therefore directly applicable only to the remaining half of the population of detention centers across the country. This does not, however, reduce the significance of this volume. On the contrary, the standards set out herein should become the foundation for standards dealing with juveniles held for noncriminal conduct. Indeed, standards applied to such juveniles, who by definition present less of a risk to society, should restrict the use of detention even more than the standards in this volume.

II. Reform themes.

A. Restrictive detention criteria.

Restricted use of detention for juveniles is at odds with the traditions of juvenile justice. The juvenile court has historically been called upon to respond to all types of juvenile behavior—criminal and noncriminal alike—that parents could not handle. The extremely broad discretion vested in courts that stand as *parens patriae* has resulted in detention criteria and practices that permit incarceration to "protect" the misbehaving as well as the runaway or neglected juvenile. This is one explanation for the contrast between the restrictive detention criteria proposed in this volume and the broad, discretionary criteria of previous model codes and statutes. It is not a complete explanation, however, for some codes apply very broad criteria to juvenile criminal offenders alone.

Earlier codes and standards did not exhibit the sharp clash between the concepts of *parens patriae* and due process that has begun to characterize developments in juvenile justice.[10] These codes empha-

---

& Schneider, Juvenile Justice in New Jersey 33 (1973); "Hidden Closets" 41 (1975). One commentator has made the following observations:

> In most major cities, the nerve center of the juvenile justice system is the temporary center for juveniles. In Cook County, Illinois, this institution is the Arthur J. Audy Home for Children. Although it is supposed to provide only temporary shelter for children awaiting trial on delinquency charges, as a matter of fact most children there either have committed very serious criminal offenses such as murder or armed robbery or are simply runaway or "neglected." A boy or girl who has committed a run-of-the-mill offense is normally allowed to go home if his parents will accept him, so the Audy Home houses children caught at both ends of the Juvenile Court net—the very bad and those whose parents do not want them. *P. Murphy, Our Kindly Parent—The State: The Juvenile Justice System and How it Works* 108 (1974).

[10] *See* Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy in the Institution* 253 (Pappenfort, Kilpatrick, & Roberts eds. 1973); *E. Schur, Radical Nonintervention: Rethinking the Delinquency Problem* (1973); Wald, "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119 (*Rosenheim* ed. 1976); Kent v. U.S., 383 U.S. 541 (1966);

sized the supremacy of the former, although detailed procedures to reduce the use of detention began to evolve in the 1950s. Typically, however, the codes used general and imprecise phrases to grant broad discretion to detain. The "Standard Juvenile Court Act," published in 1959 by the National Probation and Parole Association (NPPA), predecessor of the National Council on Crime and Delinquency (NCCD) (hereinafter cited as "Standard Act"), permitted detention if the child's "immediate welfare" or "the protection of the community requires that he be detained." Section 16. This standard was tightened somewhat in 1961 when NCCD published its "Standards and Guides for the Detention of Children and Youth," separating the consideration of criminal and noncriminal behavior by making eligible for "secure" facilities (the only ones defined as "detention") only those juveniles "apprehended for delinquency" who (1) "are almost certain to run away;" (2) "are almost certain to commit an offense dangerous to themselves or to the community;" or (3) "must be held for another jurisdiction." Section 17.

"The Legislative Guide for Drafting Family and Juvenile Court Acts," published in 1969 by the Children's Bureau of the Department of Health, Education and Welfare (hereinafter cited as "Legislative Guide"), permits detention (1) "to protect the person or property of others or of the child," (2) to protect the child if he lacks anyone "able to provide supervision and care for him," and (3) "to secure his presence" in court. Section 20(a). The criteria incorporated in Section 14 of the "Uniform Juvenile Court Act," drafted by the National Conference of Commissioners on State Laws in 1968 and approved by the American Bar Association the same year (hereinafter cited as "Uniform Act"), are substantially the same as those in the "Legislative Guide."

In its 1973 report, "Corrections," the National Advisory Commission on Criminal Justice Standards and Goals also distinguished between "detention" and other forms of "nonsecure residential care," and further recommended that noncriminal behavior be eliminated from the jurisdiction of the juvenile court. But in defining criteria for the detention decision, no attempt was made to identify the characteristics of the juvenile or the alleged crime which might be relevant to that decision. To discourage unnecessary detention, Standards 8.2 and 16.9 simply recommended that detention (1) "be considered as a last resort where no other reasonable alternative is

---

In re Gault, 387 U.S.1 (1967); In re Winship, 397 U.S. 358 (1970). *But see* Long v. Powell, 388 F. Supp. 422, 429 (N.D. Ga. 1975) (depriving juvenile of rights he or she would receive as an adult is a denial of equal protection where no benefit received by juvenile).

available," and (2) that it "be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings."

The criteria for detention found in state statutes are hardly ever more specific than those recommended in the model codes, and are sometimes more vague. Juvenile court rules adopted in Minnesota referred to "the immediate welfare of the child" and to his "protection" without further elaboration, as justifying detention.[11] A Nevada statute, although containing some specific criteria, permitted detention if release was "impracticable or inadvisable."[12] Detention was permitted in New Jersey "if the nature of the offense requires" it.[13] The statutes of every state contain some sort of catch-all phrase which, by creating discretion, opens wide the door to detention.[14]

Some recent studies have exhibited a trend toward detention criteria that would effectively limit discretion to detain. The 1973 report, "Courts," published by the National Advisory Commission on Criminal Justice Standards and Goals recommends criteria that in some respects resemble guidelines in the present volume. These recommendations are not an official standard, however, but appear in the commentary to Standard 14.2 on "Intake, Detention, and Shelter Care in Delinquency Cases":

[11] Minn. Stat. Ann. Juv. Ct. R. of P. Rule 7-1(1) (1969 Supp.).

[12] Nev. Rev. Stat. § 62.170(2) (1973).

[13] N.J. Stat. Ann. § 2A: 4-32 (1954).

[14] Ferster, et al., *supra* n. 5 at 164-167. Another interesting method for limiting detention to all but the most compelling circumstances is described in the court order dated December 19, 1972, issued by Judge Tom Dillon of the Fulton County (Atlanta, Georgia) Juvenile Court. The full text of that order is included as Appendix A to the volume. The order sets a rigid maximum on the number of juveniles who may be held in the detention center, and then permits detention on the basis of a priority system. Thus, only the most serious cases are likely to result in detention because of the limited space available in the detention center.

This method could pose disadvantages. It would be unfortunate if the order were interpreted to permit detention in low priority situations if space were available in the detention center, even though other alternatives exist. Unless the detention facility were consistently filled to capacity with serious cases, detention of juveniles who would not otherwise be detained would be a possibility. The focus ought to be on whether detention is justified in each instance, rather than on whether the facility is overcrowded.

A second implication of the order is that juveniles falling within a high priority situation *should* be detained. There is no apparent pressure to search for alternatives to incarceration for these juveniles, and detention might, under this scheme, become automatic. Unless high priority categories are narrowly circumscribed, unnecessary detention may remain commonplace.

> Prehearing detention should not be authorized unless the child is an escapee from either an institution for delinquent children or a penal institution; is alleged to be delinquent by reason of having committed an offense against a person that resulted in the victim requiring medical attention for his injuries; or has been found delinquent three or more times within the last year or at least five times within the past 2 years.[15]

Ferster and Courtless[16] suggest criteria which are similarly specific, but more comprehensive. Separate criteria are outlined for secure and nonsecure (shelter care) detention. Each set is based almost entirely on concrete and readily identifiable facts about the juvenile. Automatic secure detention is recommended for the following juveniles:

1. Out-of-state runaways.
2. Escapees from institutions for delinquents or criminals.
3. Children accused of offenses against persons when the victim required medical attention for his injuries.
4. Juveniles accused of felonies who have more than one prior court referral for running away.
5. Those accused of selling addictive drugs.[17]

Discretionary detention would also be permitted for juveniles accused of crime who "have had three prior delinquency adjudications or five or more adjudications within the last two years."[18]

The 1975 report by California's Department of Youth Authority, "Hidden Closets: A Study of Detention Practices in California," is the latest example of the trend toward narrow detention guidelines. The study's advisory committee suggests three detention criteria, each of which is set out below in full text:

Yet, despite these theoretical criticisms, the Judge's order has had significant success:

> The most amazing fact about Judge Dillon's order has been the success it has achieved. . . . In 1972, the last year before the order went into effect, the total number of child days in the Child Treatment Center was 52,339. The average daily population was 142. In 1973, total child days were 30,217, a 57 per cent drop. The first six months of 1973 look even better, with an average daily population of 73. Collins, "One Solution to Overcrowded Detention Homes," 25 *Juv. Justice* 45, 49 (1974).

The author notes that in 1974, the Summit County Juvenile Court Center in Akron, Ohio, began a similar practice, with similar success. *Id.*

[15] "Courts" 297.

[16] "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3 (1972).

[17] *Id.* at 31. The full text of the authors' suggested detention criteria is included as Appendix B to this volume.

[18] *Id.*

> [1] Detention to Guarantee Minor's Appearance
>
> No minor shall be detained to ensure his court appearance unless he has previously failed to appear, and there is no parent, guardian, or responsible adult willing and able to assume responsibility for the minor's presence.[19]

This formulation, like that of Ferster and Courtless and the National Advisory Commission, defines "likelihood of flight" not simply as a guess about the future but as involving a finding that the juvenile fled the jurisdiction on a previous occasion.

> [2] Detention for Minor's Own Protection
>
> If protection of the child is the sole issue in cases where a petition has been filed under Section 602, Welfare and Institutions Code, secure detention may not be used unless the child's release presents an urgent or immediate danger to the minor's physical safety.[20]

The emphasis on immediacy and the *physical* safety of the juvenile marks an important advance over broader definitions in other model codes. The "Hidden Closets" advisory committee reasoned as follows:

> Too often a minor's detention is justified on the basis that he will get into further trouble if he is released, and therefore detention is somehow "protecting" him from his own irresponsibility. This is a totally unacceptable reason for detention. Consideration of this factor would certainly be valid at the dispositional hearing, but there is no justification for denying liberty prior to trial on the basis that "maybe" the child will get into further difficulty and compound his unfortunate circumstances.[21]

This rationale is persuasive, and supports Standards 5.7 and 6.7 in this volume on protective custody and detention.

> [3] Detention for Protection of Others
>
> Pretrial detention of minors whose detention is a matter of immediate and urgent necessity for the protection of the person or property of another shall be limited to those charged with an offense which could be a felony if committed by an adult and the circumstances surrounding the offense charged involved physical harm or substantial threat of physical harm to another.[22]

The "Hidden Closets" commentary to this recommendation states:

[19] "Hidden Closets" 60.
[20] *Id.*
[21] *Id.* at 60-61. *See also* the commentary to Standard 3.3.
[22] *Id.* at 63.

> Law enforcement officers, probation intake workers, and judges and referees have free rein to decide when a child is considered "dangerous" to the public. There are few written guidelines; there are no restraints. *Any* child, regardless of his age, offense, or history of past behavior, may be considered "dangerous" under present laws.
>
> Worse, there is no accountability. A decision-maker may actually believe a youth to be "dangerous" and order him detained, but he is not required to identify this as his reason for detention. He is only required to certify that "continued detention is a matter of immediate and urgent necessity for the protection of the child or the person or property of another." His real reason for detention may be cloaked by the "protection of the child" issue.
>
> None but the most naive would suggest that our present diagnostic tools are so sharp that we can predict with accuracy who will or will not commit an offense within a two-week time span, the period of time normally required to conduct an investigation for the adjudication hearing.[23]

The detention criteria developed in the present volume are similarly narrow and specific. In a number of respects they are more restrictive than in any of the codes and commentaries referred to above. General terms that confer broad discretion to detain have been replaced by standards that specify the relevant facts a decision maker must find in order to impose detention. The standards undertake to define the best interests of the juvenile and society, and to gear those definitions to the varying time and resources available to successive decision makers in the process.

For example, the arresting officer is required by Standard 5.6 to release all juveniles charged with offenses that would be misdemeanors if charged against an adult, except when the juvenile is in a fugitive status, or in physical or medical emergency situations. Severe limitations on the discretion to detain apply both to the juvenile facility intake official, who makes the initial decision to detain, and to the juvenile court. A strong presumption against detention is applicable in every case. This is implemented by barring interim detention unless the case involves an alleged criminal offense that would be a felony for an adult and, if proven, is likely to result in the commitment of the juvenile to a security institution *and* the juvenile falls into one of three categories specified in Standard 6.6 A. 1.: a. the crime charged is a class one juvenile offense involving violence; b. the juvenile is a fugitive from an institution; or c. the juvenile has com-

[23] *Id.* at 61-62. Others have noted that "dangerousness" is indeed difficult to predict. Ariessohn and Gonion, "Reducing the Juvenile Detention Rate," 24 *Juv. Justice* 28, 32 (1973).

piled a demonstrable recent record of willful failure to appear at juvenile proceedings.

If none of these criteria is satisfied, the intake official and court may guard against an interim status risk only by means of conditions, supervision, or control short of detention. On the other hand, if the requirements of Standard 6.6 are met, detention may be ordered only upon a hearing that confers necessary rights and finds probable cause as provided in Standard 7.6, and exhausts the less restrictive alternatives of Standard 6.6 C.

The limited detention criteria contained in Standard 6.6 will no doubt generate an unavoidable but constructive tension with other standards in the volume. While on one hand this standard seeks to reduce detention to the point where only juveniles with very serious potential for interim flight or violence could be detained, other standards (*e.g.*, 3.4, 6.6 C. 3 and 10.3) simultaneously and somewhat inconsistently press for the use of nonsecure facilities whenever possible for persons who are detained. In other words, if properly and rigorously applied, Standard 6.6 tends to eliminate the need for nonsecure detention facilities for juveniles charged solely with criminal conduct. This does not mean, however, that nonsecure facilities would have no function in juvenile justice, for the extensive noncriminal jurisdiction of the juvenile court will continue the need for such facilities.

B. Reduced delay.

Delay in the processing, adjudication, and disposition of criminal and juvenile cases compounds the disadvantages of detention, increases the risks of nonappearance and antisocial conduct if the juvenile is released, and is harmful to the interests both of the accused and the community. A number of states and commentators have addressed these problems. Nineteen states require a judicial detention hearing within a limited time following arrest.[24] Each of the model codes sets limitations on the time a child may be detained (a) prior to an adequate petition being filed with the court, and (b) prior to a court order of detention. Each code states these requirements somewhat differently:

"Legislative Guide":

(a) Petition to be filed within twenty-four hours of admission to detention. § 23(a)(1).

[24] M. Levin & R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 30 (National Assessment of Juvenile Corrections 1974).

(b) Court detention hearing to be held within twenty-four hours after petition is filed. § 23 (a) (2).

"Uniform Act":

(a) Petition to be filed "promptly." § 17(b).

(b) Hearing to be held "promptly," at least within seventy-two hours after admission to detention. § 17(b).

"Standard Act":

(a) Petition to be filed within twenty-four hours after admission to detention. § 17.2.

(b) Court order to be issued within twenty-four hours after filing of petition. § 17.2.

"Model Rules":[25]

(a) Petition to be filed prior to detention hearing. Rule 16.

(b) Hearing to be held within forty-eight hours after admission to detention *or* on the next court day following admission. Rule 15.

The National Advisory Commission's "Corrections" volume limits detention prior to the first judicial hearing to "over-night." Standards 8.2 and 16.9.

Extending further into the interim process, eleven states have enacted time limits on detention prior to adjudicatory hearings.[26] However, there appear to be no limits applicable to the final stages of the process: disposition and placement. Difficulties both in determining a proper disposition, and in implementing that decision, frequently cause juveniles to remain in detention for extended periods.[27] The adjudicatory and dispositional delays are so extensive in New York City that one court ruled in 1970 that the facilities in which these juveniles are detained should be governed by the same "right to treatment" standards applicable to "long-term detainees" at correctional facilities. *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1970).

The difficulty with decisions of this kind is that they may push treatment programs into predisposition stages of the juvenile system and thereby tend to institutionalize and legitimate the unwarranted detention that already exists. Rather than impose treatment on delayed-disposition juveniles, a failure to complete the case within prescribed time limits should require release. The rationale for this conclusion has been succinctly stated by Patricia Wald:

[25] NCCD, "Model Rules for Juvenile Courts" (1969).
[26] Sarri, *supra* n. 1 at 33; Levin & Sarri, *supra* n. 24 at 31.
[27] Wald, *supra* n. 10 at 126.

> The curse of juvenile courts has always been their lack of appropriate disposition resources for the variety of problem children they handle. The availability of detention facilities for holding juveniles indefinitely in lieu of a proper final placement thus has proved a convenient device for avoiding reform. Therefore, postadjudication and postdisposition detention must be strictly limited. After detention of (at most) a few weeks, release or transfer to a permanent placement should be mandatory. If a juvenile justice system in fact has no resources to treat or rehabilitate, the dilemma ought to be faced in open court and the juvenile released, if no proper placement is possible. A juvenile judge should not be allowed to feed the illusion, by recommending a placement or committing to an agency, that something is actually going to happen if it is not. Deadlines and absolute bars to detention may seem arbitrary, yet it is striking how frequently detention personnel ask for such limitations, realizing that they cannot cope with an unending stream of detainees.[28]

To abbreviate detention during the entire interim process, and to limit the risks inherent in release, the standards in this volume require that all juvenile cases be processed at each stage within very brief, specified periods, each of them including weekends and holidays. The time limits are as follows:

1. arrest—release within two hours, or transportation to a juvenile facility (Standard 5.3);
2. intake—release or petition for detention to be filed within twenty-four hours (Standard 6.5);
3. hearing—if custody continues, hearing to be held within twenty-four hours of filing of petition (Standard 7.6);
4. review—detention decision to be reviewed by the court every seven days (Standard 7.9);
5. adjudication and disposition—cases dismissed with prejudice if:
   a. adjudication is not completed within thirty days of arrest if the juvenile is in a release status, and within fifteen days of arrest if the juvenile remains in detention for more than twenty-four hours following a court order of detention; or
   b. final disposition is not determined and carried out within thirty days of adjudication if the juvenile is released, and within fifteen days of adjudication if the juvenile remains in court ordered detention following adjudication. These latter time constraints may be extended or waived only in limited and specified circumstances (Standard 7.10);
6. appeal—decision within ninety days when juvenile held in detention (Standard 7.14).

[28] *Id.* at 126-27.

C. Increased visibility and accountability.

A lack of visibility and accountability characterizes the interim process.[29] Detention decisions are made without adequate standards, stated reasons, or prompt review, and detention institutions disclaim responsibility for the enforced security and idleness in which unadjudicated and unplaced juveniles are held.

To increase visibility and accountability, and thereby reduce unnecessary detention, a variety of techniques are incorporated in these standards. For example, every decision by the police, the intake official, and the court that results in detention must be accompanied by a written statement of the reasons justifying that action (Standard 4.3). A list of juvenile detainees, and the length of and reasons for their detention, is to be compiled and submitted to the court for review, and, without names, made public each week (Standard 7.9).

Organizational suggestions are also made to carry out the purposes of these standards. In contrast to the local approach widely used in the United States,[30] Standard 11.1 proposes establishment of a single statewide interim agency charged with the responsibility for consolidating or coordinating the personnel and facilities engaged in various phases of interim release, control, and detention. All intake officials would be employees of the agency (Standard 6.1), and the agency would be responsible, in conjunction with the juvenile court, for regular inspections of detention facilities and maintenance of proper conditions (Standard 11.2).

D. Other important reforms.

Several additional reforms are of sufficient importance and controversy to be noted in this summary:

1. The use of bail bonds is prohibited (Standard 4.7).

2. Twenty-four-hour, seven-day-a-week operation is required (Standards 6.2, 6.5, 7.6).

3. The use of adult jails for the interim detention of juveniles is prohibited (Standard 10.2).

4. A moratorium is imposed on the construction of new detention facilities (Standard 11.3).

5. Local and statewide quotas are required as ceilings on the number of juveniles that may be detained at any one time (Standard 10.5).

The process of drafting this volume has been sobered by the dra-

[29] "Hidden Closets" 61-62; Murphy, *supra* n. 9 at vii, viii, 15.

[30] Sarri, *supra* n. 1 at 40-41; *J. Downey, State Responsibility for Juvenile Detention Care* 1 (1970); Rosenheim, *supra* n. 10 at 281; *Freed & Wald, supra* n. 3 at 106-107; Levin & Sarri, *supra* n. 24 at 35-36.

matic and tragic spread of juvenile crime, in both volume and seriousness, over the past several years.[31] These developments place a special strain on efforts to improve and liberalize procedures that have produced or tolerated excessive detention. However, the extent and causes of the critical problem of juvenile crime cannot be solved by any volume of standards on the administration of juvenile justice. Attempts to reduce detention cannot, on the one hand, be abandoned in the face of public pressure for increased severity in the disposition of serious criminal cases. On the other hand, no volume of standards that proposes rules and procedures lacking a foundation in political and social reality is likely to gain respect. These standards attempt to strike a careful balance between these competing considerations.

[31] National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 247 (1973); *Freed & Wald*, *supra* n. 3 at 93.

Standards

PART I: INTRODUCTION

1.1 Scope and overview.

The standards in this volume set out in detail the decision making process that functions between arrest of a juvenile on criminal charges and final disposition of the case. By limiting the discretion of officials involved in that process, and by imposing affirmative duties on them to release juveniles or bear the burden of justification for not having done so, the standards seek to reduce the volume, duration, and severity of detention, and of other curtailment of liberty during the interim period.

1.2 Separate standards for different decision makers.

Separate rules should define the interim period authority and responsibility of police officers, intake officials, attorneys for the juvenile and the state, judges, and detention officials, to reflect differences in:

A. their respective roles in the interim decision making process;

B. the extent to which the discretion exercised by each is subject to control and review by others; and

C. the time, information, and resources available to each at the time of decision.

1.3 Guidelines for measuring progress.

To the extent that these standards require time-consuming or costly modifications in the law, practice, and facilities of a jurisdiction, they should be viewed as guidelines by which to measure the progress of the jurisdiction toward compliance with the stated goals. Detailed specifications are presented wherever possible, so that departures from them will be visible, and officials can be called to account for them.

PART II: DEFINITIONS

2.1 Interim period.

The interval between the arrest or summons of an accused juvenile charged with a criminal offense and the implementation of a final judicial disposition. The term "interim" is used as an adjective referring to this interval, *e.g.*, "interim status," "interim liberty," and "interim detention."

2.2 Arrest.

The taking of an accused juvenile into custody in conformity with the law governing the arrest of persons believed to have committed a crime.

2.3 Custody.

Any interval during which an accused juvenile is held by the arresting police authorities.

2.4 Status decision.

A decision made by an official that results in the interim release, control, or detention of an arrested juvenile. In the adult criminal process, it is often referred to as the bail decision.

2.5 Release.

The unconditional and unrestricted interim liberty of a juvenile, limited only by the juvenile's promise to appear at judicial proceedings as required. It is sometimes referred to as "release on own recognizance."

2.6 Control.

A restricted or regulated nondetention interim status, including release on conditions or under supervision.

2.7 Release on conditions.

The release of an accused juvenile under written requirements that specify the terms of interim liberty, such as living at home, reporting periodically to a court officer, or refraining from contact with named witnesses.

2.8 Release under supervision.

The release of an accused juvenile to an individual or organization that agrees in writing to assume the responsibility for directing,

managing, or overseeing the activities of the juvenile during the interim period.

2.9 Detention.

Placement during the interim period of an accused juvenile in a home or facility other than that of a parent, legal guardian, or relative, including facilities commonly called "detention," "shelter care," "training school," "receiving home," "group home," "foster care," and "temporary care."

2.10 Secure detention facility.

A facility characterized by physically restrictive construction and procedures that are intended to prevent an accused juvenile who is placed there from departing at will.

2.11 Nonsecure detention facility.

A detention facility that is open in nature and designed to allow maximum participation by the accused juvenile in the community and its resources. It is intended primarily to minimize psychological hardships on an accused juvenile offender who is held out-of-home, rather than to restrict the freedom of the juvenile. These facilities include, but are not limited to:

A. single family foster homes or temporary boarding homes;

B. group homes with a resident staff, which may or may not specialize in a particular problem area, such as drug abuse, alcohol abuse, etc.; and

C. facilities used for the housing of neglected or abused juveniles.

2.12 Regional detention facility.

A detention facility that serves a geographic area of sufficient population to require a maximum daily capacity for that facility of twelve juveniles.

2.13 Citation.

A written order issued by a law enforcement officer requiring a juvenile accused of violating the criminal law to appear in a designated court at a specified date and time. The form requires the signature either of the juvenile to whom it is issued, or of the parent to whom the juvenile is released.

2.14 Summons.

An order issued by a court requiring a juvenile against whom a

charge of criminal conduct has been filed to appear in a designated court at a specific date and time.

2.15 Treatment.

Any medical or psychiatric response to a diagnosis of a need for such response, including the systematic use of drugs, rules, programs, or other measures, for the purpose of either improving the juvenile's physical health or modifying on a long-range basis the accused juvenile's behavior or state of mind. "Treatment" includes, among other things, programs commonly described as "behavior modification," "group therapy," and "milieu therapy."

2.16 Testing.

The use of measures administered to the accused juvenile for the purpose of:

A. identifying medical or personal characteristics, the latter including such things as knowledge, abilities, aptitudes, qualifications, or emotional traits; and

B. determining the need for some form of treatment.

2.17 Parent.

Any of the following:

A. the juvenile's natural parents, stepparents, or adopted parents, unless their parental rights have been terminated;

B. if the juvenile is a ward of any person other than his or her parent, the guardian of the juvenile;

C. if the juvenile is in the custody of some person other than his or her parent whose knowledge of or participation in the proceedings would be appropriate, the juvenile's custodian; and

D. separated and divorced parents, even if deprived by judicial decree of the respondent juvenile's custody.

2.18 Final disposition.

The implementation of a court order of

A. release based upon a finding that the juvenile is not guilty of committing the offense charged; or

B. supervision, punishment, treatment, or correction based upon a finding that the juvenile is guilty of committing the offense charged.

2.19 Diversion.

The unconditional release of an accused juvenile, without adjudication of criminal charges, to a youth service agency or other program outside the juvenile justice system, accompanied by a formal

termination of all legal proceedings against the juvenile and erasure of all records concerning the case.

PART III: BASIC PRINCIPLES

3.1 Policy favoring release.

Restraints on the freedom of accused juveniles pending trial and disposition are generally contrary to public policy. The preferred course in each case should be unconditional release.

3.2 Permissible control or detention.

The imposition of interim control or detention on an accused juvenile may be considered for the purposes of:

A. protecting the jurisdiction and process of the court;

B. reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or

C. protecting the accused juvenile from imminent bodily harm upon his or her request.

However, these purposes should be exercised only under the circumstances and to the extent authorized by the procedures, requirements, and limitations detailed in Parts IV through X of these standards.

3.3 Prohibited control or detention.

Interim control or detention should not be imposed on an accused juvenile:

A. to punish, treat, or rehabilitate the juvenile;

B. to allow parents to avoid their legal responsibilities;

C. to satisfy demands by a victim, the police, or the community;

D. to permit more convenient administrative access to the juvenile;

E. to facilitate further interrogation or investigation; or

F. due to a lack of a more appropriate facility or status alternative.

3.4 Least intrusive alternative.

When an accused juvenile cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives.

3.5 Values.

Whenever the interim curtailment of an accused juvenile's freedom is permitted under these standards, the exercise of authority should reflect the following values:

A. respect for the privacy, dignity, and individuality of the accused juvenile and his or her family;

B. protection of the psychological and physical health of the juvenile;

C. tolerance of the diverse values and preferences among different groups and individuals;

D. ensurance of equality of treatment by race, class, ethnicity, and sex;

E. avoidance of regimentation and depersonalization of the juvenile;

F. avoidance of stigmatization of the juvenile; and

G. ensurance that the juvenile receives adequate legal assistance.

3.6 Availability of adequate resources.

The attainment of a fair and effective system of juvenile justice requires that every jurisdiction should, by legislation, court decision, appropriations, and methods of administration, provide services and facilities adequate to carry out the principles underlying these standards. Accordingly, the absence of funds cannot be a justification for resources or procedures that fall below the standards or unnecessarily infringe on individual liberty. Accused juveniles should be released or placed under less restrictive control whenever a form of detention or control otherwise appropriate is unavailable to the decision maker.

PART IV: GENERAL PROCEDURAL STANDARDS

4.1 Scope.

As an introduction to the standards in Parts V through IX, which create separate guidelines for each participant in the interim process, the procedures and prohibitions in Part IV are standards applicable to all interim decision makers.

4.2 Burden of proof.

The state should bear the burden at every stage of the proceedings of persuading the relevant decision maker with clear and convincing evidence that restraints on an accused juvenile's liberty are necessary, and that no less intrusive alternative will suffice.

4.3 Written reasons and review.

Whenever a decision is made at any stage of the proceedings to adopt an interim measure other than unconditional release, the de-

cision maker should concurrently state in writing or on the record with specificity the evidence relied upon for that conclusion, and the authorized purpose or purposes that justify that action. A decision or order to hold an accused juvenile in detention should be invalid if the reasons for it are not attached to it. The statement of reasons should become an integral part of the record, and should be subject to and available for review at each succeeding stage of the process.

4.4 Use of social history information.

Prior to adjudication, information gathered about the background of an accused juvenile for purposes of determining an interim status should be limited to that which is essential to a decision concerning unconditional release or the least intrusive alternative. Information so gathered should be disclosed only to the persons and to the extent necessary to reach, carry out, and review that decision, and should be available for no other purpose. If the juvenile is convicted, the information gathered in the preadjudication stage may be used in determining an appropriate disposition.

4.5 Limitations on treatment or testing.

A. Involuntary.

1. Prior to adjudication, an accused juvenile should not be involuntarily subjected to treatment or testing of any kind by the state or any private organization associated with the interim process except:

a. to test for the presence of a contagious or communicable disease that would present an unreasonable risk of infection to others in the same facility;

b. to provide emergency medical aid; or

c. to administer tests required by the court for determining competency to stand trial.

2. After adjudication, an accused juvenile may be subjected to involuntary, nonemergency testing only to the extent found necessary by a court, after a hearing, to aid in the determination of an appropriate final disposition.

B. Voluntary.

1. While in detention, an accused juvenile should be entitled to a prompt medical examination and to provision of appropriate nonemergency medical care, with the informed consent of the juvenile and a parent in accordance with subsection 2. below. Requirements of consent should be governed by the *Rights of Minors* volume.

2. Informed, written consent should be obtained before a juvenile may be required to participate in any program, designed to alter or modify behavior, that may have potentially harmful effects.

a. If the juvenile is under the age of sixteen, his or her consent and the consent of his or her parents both should be obtained.

b. If the juvenile is sixteen or older, only the juvenile's consent should be obtained.

c. Any such consent may be withdrawn at any time.

4.6 Violation of release conditions.

A willful violation by an accused juvenile of the conditions of release, or a willful failure to appear in court in response to a citation or summons, should be grounds for the issuance by the court of a summons based on that violation or failure to appear. A violation of conditions or a failure to appear should not constitute a criminal offense for which dispositional sanctions may be imposed, but should authorize the court to review, modify, or terminate the release conditions.

4.7 Prohibition against money bail.

The use of bail bonds in any form as an alternative interim status should be prohibited.

PART V: STANDARDS FOR THE POLICE

5.1 Policy favoring release.

Each police department should adopt policies and issue written rules and regulations requiring release of all accused juveniles at the arrest stage pursuant to Standard 5.6 A., and adherence to the guidelines specified in Standard 5.6 B. in discretionary situations. Citations should be employed to the greatest degree consistent with the policies of public safety and insuring appearance in court to release a juvenile on his or her own recognizance, or to a parent.

5.2 Special juvenile unit.

Each police department should establish a unit or have an officer specially trained in the handling of juvenile cases to effect arrests of juveniles when arrest is necessary, to make release decisions concerning juveniles, and to review immediately every case in which an arrest has been made by another member of the department who declines to

release the juvenile. All arrest warrants, summonses, and possible citations involving accused juveniles should be handled by this unit.

5.3 Duties.

The arresting officer should have the following duties in regard to the interim status of an accused juvenile:

A. Inform juvenile of rights. The officer should explain in clearly understandable language the warnings required by the constitution regarding the right to silence, the making of statements, and the right to the presence of an attorney. The officer should also inform every arrested juvenile who is not promptly released from custody of the right to have his or her parent contacted by the department. In any situation in which the accused does not understand English, or in which the accused is bilingual and English is not his or her principal language, the officer should provide the necessary information in the accused's native language, or provide an interpreter who will assure that the juvenile is informed of his or her rights.

B. Notification of parent. The arresting officer should make all reasonable efforts to contact a parent of the accused juvenile during the period between arrest and the presentation of the juvenile to any detention facility. The officer should inform the parent of the juvenile's right to the presence of counsel, appointed if necessary, and of the juvenile's right to remain silent.

C. Presence of attorney. The right to have an attorney present should be subject to knowing, intelligent waiver by the juvenile following consultation with counsel. If the police question any arrested juvenile concerning an alleged offense in the absence of an attorney for the juvenile, no information obtained thereby or as a result of the questioning should be admissible in any proceeding.

D. Recording of initial status decision. If the arresting officer does not release the juvenile within two hours, the reasons for the decision should be recorded in the arrest report and disclosed to the juvenile, counsel, and parent.

E. Notification of facility. Whenever an accused juvenile is taken into custody and not promptly released, the arresting officer should promptly inform the juvenile facility intake official of all relevant factors concerning the juvenile and the arrest, so that the official can explore interim status alternatives.

F. Transportation to facility. The police should, within [two to four hours] of the arrest, either release the juvenile or, upon notice to and concurrence by the intake official, take the juvenile without delay to the juvenile facility designated by the intake official. If the

intake official does not concur, that official should order the police to release the juvenile.

5.4 Holding in police detention facility prohibited.

The holding of an arrested juvenile in any police detention facility prior to release or transportation to a juvenile facility should be prohibited.

5.5 Interim status decision not made by police.

The observations and recommendations of the police concerning the appropriate interim status for the arrested juvenile should be solicited by the intake official, but should not be determinative of the juvenile's interim status.

5.6 Guidelines for status decision.

A. Mandatory release. Whenever the juvenile has been arrested for a crime which in the case of an adult would be punishable by a sentence of [less than one year], the arresting officer should, if charges are to be pressed, release the juvenile with a citation or to a parent, unless the juvenile is in need of emergency medical treatment (Standard 4.5 A. 1. b.), requests protective custody (Standard 5.7), or is known to be in a fugitive status.

B. Discretionary release. In all other situations, the arresting officer should release the juvenile unless the evidence as defined below demonstrates that continued custody is necessary. The seriousness of the alleged offense should not, except in cases of a class one juvenile offense involving a crime of violence, be sufficient grounds for continued custody. Such evidence should only consist of one or more of the following factors as to which reliable information is available to the arresting officer:

1. that the arrest was made while the juvenile was in a fugitive status;

2. that the juvenile has a recent record of willful failure to appear at juvenile proceedings.

5.7 Protective custody.

A. Notwithstanding the issuance of a citation, the arresting officer may take an accused juvenile to an appropriate facility designated by the intake official if the juvenile would be in immediate danger of serious bodily harm if released, and the juvenile requests such custody.

B. A decision to continue or relinquish protective custody shall be made by the intake official in accordance with Standard 6.7.

PART VI: STANDARDS FOR THE JUVENILE FACILITY INTAKE OFFICIAL

6.1 Under authority of statewide agency.

The juvenile facility intake official should be an employee of or subject to the authority of the statewide agency charged with responsibility for all aspects of nonjudicial interim status decisions, as that agency is described in Standards 11.1 and 11.2.

When, for political or geographic considerations, some agencies are within the jurisdiction of local government, the statewide department should be responsible for the setting and enforcement of standards and the provision of technical assistance, training, and fiscal subsidies.

6.2 Twenty-four-hour duty.

An intake official should be available twenty-four hours a day, seven days a week, to be responsible for juvenile custody referrals.

6.3 Location of official.

In order to facilitate prompt and effective interim decisions, and to reduce the unnecessary transportation and detention of arrested juveniles, the intake official should be located at the most accessible office and position in the interim process. This central office need not be a place of juvenile detention.

6.4 Responsibility for status decision.

Once an arrested juvenile has been brought to a juvenile facility, the responsibility for maintaining or changing interim status rests entirely with the intake official, subject to review by the juvenile court. Release by the facility should be mandatory in any situation in which the arresting officer was required to release the juvenile but failed to do so.

6.5 Procedural requirements.

A. Provide information. The intake official should:

1. inform the accused juvenile of his or her rights, as in Standard 5.3 A.;

2. inform the accused juvenile that his or her parent will be contacted immediately to aid in effecting release; and

3. explain the basis for detention, the interim status alternatives that are available, and the right to a prompt release hearing.

B. Notify parent. If the arresting officer has been unable to con-

tact a parent, the intake official should make every effort to effect such contact. If the official decides that the juvenile should be released, he or she may request a parent to come to the facility and accept release.

C. Notify attorney. Unless the accused juvenile already has a public or private attorney, the intake official should promptly call a public defender to represent the juvenile.

D. Reach status decision.

1. The intake official should determine whether the accused juvenile is to be released with or without conditions, or be held in detention.

2. If the juvenile is not released, the intake official should prepare a petition for a release hearing before a judge or referee, which should be filed with the court no later than the next court session, or within [twenty-four hours] after the juvenile's arrival at the intake facility, whichever is sooner. The petition should specify the charges on which the accused juvenile is to be prosecuted, the reasons why the accused was placed in detention, the reasons why release has not been accomplished, the alternatives to detention that have been explored, and the recommendations of the intake official concerning interim status.

3. If the court is not in session within the [twenty-four-hour] period, the intake official should contact the judge, by telephone or otherwise, and give notice of the contents of the petition.

E. Continue release investigation. If an accused juvenile remains in detention after the initial court hearing, the intake official should review in detail the circumstances of the arrest and the alternatives to continued detention. A report on these investigations, including any information that the juvenile's attorney may wish to have added, should be presented to the court at the status review hearing within seven days after the initial hearing.

F. Maintain records. A written record should be kept of the incidence, duration, and reasons for interim detention of juveniles. Such records should be retained by the intake official and staff, and should be available for inspection by the police, the prosecutor, the court, and defense counsel. The official should continuously monitor these records to ascertain the emergence of patterns that may reflect misuse of release standards and guidelines, the inadequacy of release alternatives, or the need to revise standards.

6.6 Guidelines for status decision.

A. Mandatory release. The intake official should release the accused juvenile unless the juvenile:

1. is charged with a crime of violence which in the case of an adult would be punishable by a sentence of one year or more, and which if proven is likely to result in commitment to a security institution, *and* one or more of the following additional factors is present:

a. the crime charged is a class one juvenile offense;

b. the juvenile is an escapee from an institution or other placement facility to which he or she was sentenced under a previous adjudication of criminal conduct;

c. the juvenile has a demonstrable recent record of willful failure to appear at juvenile proceedings, on the basis of which the official finds that no measure short of detention can be imposed to reasonably ensure appearance; or

2. has been verified to be a fugitive from another jurisdiction, an official of which has formally requested that the juvenile be placed in detention.

B. Mandatory detention. A juvenile who is excluded from mandatory release under subsection A. should not, *pro tanto*, be automatically detained. No category of alleged conduct or background in and of itself should justify a failure to exercise discretion to release.

C. Discretionary situations.

1. Release vs. detention. In every situation in which the release of an arrested juvenile is not mandatory, the intake official should first consider and determine whether the juvenile qualifies for an available diversion program, or whether any form of control short of detention is available to reasonably reduce the risk of flight or misconduct. If no such measure will suffice, the official should explicitly state in writing the reasons for rejecting each of these forms of release.

2. Unconditional vs. conditional or supervised release. In order to minimize the imposition of release conditions on persons who would appear in court without them, and present no substantial risk in the interim, each jurisdiction should develop guidelines for the use of various forms of release based upon the resources and programs available, and analysis of the effectiveness of each form of release.

3. Secure vs. nonsecure detention. Whenever an intake official determines that detention is the appropriate interim status, secure detention may be selected only if clear and convincing evidence indicates the probability of serious physical injury to others, or serious probability of flight to avoid appearance in court. Absent such evidence, the accused should be placed in an appropriate form of nonsecure detention, with a foster home to be preferred over other alternatives.

6.7 Protective detention.

A. Placement in a nonsecure detention facility solely for the protection of an accused juvenile should be permitted only upon the voluntary written request of the juvenile in circumstances that present an immediate threat of serious bodily harm to the juvenile if released.

B. In reaching this decision, or in reviewing a protective custody decision made by the arresting officer, the intake official should first consider all less restrictive alternatives and all reasonably ascertainable factors relevant to the likelihood and immediacy of serious bodily harm resulting from interim release or control.

PART VII: STANDARDS FOR THE JUVENILE COURT

7.1 Authority to issue summons in lieu of arrest warrant.

Judges should be authorized to issue a summons (which may be served by certified mail or in person) rather than an arrest warrant in every case in which a complaint, information, indictment, or petition is filed or returned against an accused juvenile not already in custody.

7.2 Policy favoring summons over warrant.

In the absence of reasonable grounds indicating that, if an accused juvenile is not promptly taken into custody, he or she will flee to avoid prosecution, the court should prefer the issuance of a summons over the issuance of an arrest warrant.

7.3 Application for summons or warrant.

Whenever an application for a summons or warrant is presented, the court should require all available information relevant to an interim status decision, the reasons why a summons or warrant should be issued, and information concerning the juvenile's schooling or employment that might be affected by service of a summons or warrant at particular times of the day.

7.4 Arrest warrant to specify initial interim status.

A. Every warrant issued by a court for the arrest of a juvenile should specify an interim status for the juvenile. The court may order the arresting officer to release the juvenile with a citation, or to place the juvenile in any other interim status permissible under these standards.

B. The warrant should indicate on its face the interim status designated. If any form of detention is ordered, the warrant should indi-

cate the place to which the accused juvenile should be taken, if other than directly to court. In each such case, the court should simultaneously file a written statement indicating the reasons why no measure short of detention would suffice.

7.5 Service of summons or warrant.

In the absence of compelling circumstances that prompt the issuing court to specify to the contrary, a summons or warrant should not be served on an accused juvenile while in school or at a place of employment.

7.6 Release hearing.

A. Timing. An accused juvenile taken into custody should, unless sooner released, be accorded a hearing in court within [twenty-four hours] of the filing of the petition for a release hearing required by Standard 6.5 D. 2.

B. Notice. Actual notice of the detention review hearing should be given to the accused juvenile, the parents, and their attorneys, immediately upon an intake official's decision that the juvenile will not be released prior to the hearing.

C. Rights. An attorney for the accused juvenile should be present at the hearing in addition to the juvenile's parents, if they attend. There should be a strong presumption against the validity of a waiver of any constitutional or statutory right of the juvenile, and no waiver should be valid unless made in writing by the juvenile and his or her counsel.

D. Information. At the review hearing, information relevant to the interim status of an accused juvenile, other than information bearing on the nature and circumstances of the offense charged and the weight of the evidence against the accused juvenile, need not conform to the rules pertaining to the admissibility of evidence in a court of law.

E. Disclosure. The juvenile and the attorney should have full access to all information and records upon which a judge relies in refusing to release the juvenile from detention, or in imposing conditions of supervision.

F. Probable cause. At the time of the initial detention hearing, the burden should be on the state to demonstrate that there is probable cause to believe that the juvenile committed the offense charged.

G. Notice of right to appeal. Whenever a court orders detention, or denies release upon review of an order of detention, it should simultaneously inform the juvenile, orally and in writing, of his or

her rights to an automatic seven-day review under Standard 7.9 and to immediate appellate review under Standard 7.12.

7.7. Guidelines for status decisions.

A. Release alternatives. The court may release the juvenile on his or her own recognizance, on conditions, under supervision, including release on a temporary, non-overnight basis to the attorney if so requested for the purpose of preparing the case, or into a diversion program.

B. Mandatory release. Release by the court should be mandatory when the state fails to establish probable cause to believe the juvenile committed the offense charged or in any situation in which the arresting officer or intake official was required to release the juvenile but failed to do so, unless the court is in possession of additional information which justifies detention under these standards.

C. Discretionary situations. In all other cases, the court should review all factors that officials earlier in the process were required by these standards to have considered. The court should review with particularity the adequacy of the reasons for detention recorded by the police and the intake official.

D. Written reasons. A written statement of the findings of facts and reasons why no measure short of detention would suffice should be made part of the order and filed immediately after the hearing by any judge who declines to release an accused juvenile from detention. An order continuing the juvenile in detention should be construed as authorizing nonsecure detention only, unless it contains an express direction to the contrary, supported by reasons. If the court orders release under a form of control to which the juvenile objects, the court should upon request by the attorney for the juvenile, record the facts and reasons why unconditional release was denied.

7.8 Judicial participation.

A. Every juvenile court judge should visit each secure facility under the jurisdiction of that court at least once every [sixty days].

B. Whenever feasible, a judge other than the one who presided at the detention hearing should preside at the trial.

7.9 Continuing detention review.

A. The court should hold a detention review hearing at or before the end of each seven-day period in which a juvenile remains in interim detention. At the first detention review hearing after the expiration of the time prescribed for execution of the dispositional order, the judge must execute such order forthwith, or fully explain on the record the reasons for the delay, or release the juvenile.

B. A list of all juveniles held in any form of interim detention, together with the length of such detention and the reasons for detention, should be prepared by the intake official and presented weekly to the presiding judge. Such reports, with names deleted, should simultaneously be made public to describe the number, duration, and reasons for interim detention of juveniles.

7.10. Speedy trial.

To curtail detention and reduce the risks of release and control, all juvenile offense cases should be governed by the following timetable:

A. Each case should proceed to trial:

1. within [fifteen days] of arrest or the filing of charges, whichever occurs first, if the accused juvenile has been held in detention by order of a court for more than [twenty-four hours]; or

2. within [thirty days] in all other cases.

B. In any case in which the juvenile is convicted of a criminal offense, a disposition should be carried out:

1. within [fifteen days] of conviction if the juvenile is held in detention by order of a court following conviction; or

2. within [thirty days] of conviction in all other cases.

The time prescribed for carrying out the disposition may be extended at the request of the juvenile, if necessary in order to secure a better placement.

C. The limits stated in A. and B. may be extended not more than [sixty days] if the juvenile is released, and not more than [thirty days] if the juvenile is in detention, when:

1. the prosecution certifies that a witness or other evidence necessary to the state's case will not be available, despite the prosecution's best efforts, during the original time limits;

2. any proceeding concerning waiver of the juvenile court's jurisdiction is pending;

3. a motion for change of venue made by either the prosecution or the juvenile is pending; or

4. a request for extradition is pending.

D. The limits stated in A. and B. may also be extended for specified periods authorized by the court when:

1. the juvenile is a fugitive from court proceedings; or

2. deferred adjudication or disposition for a specific period has been agreed to in writing by the juvenile and his or her attorney.

E. The limits in A. and B. may be phased in during a period not to exceed [twelve months] from the effective date of adoption of these standards, in order to enable a court to obtain the necessary resources to adjudicate cases on the merits. During such period, the maximum

limit for detention cases should be [thirty days] from arrest to trial and [thirty days] from trial to final disposition.

F. In any case in which trial or disposition fails to meet these standards, the charges should be dismissed with prejudice.

7.11 Relaxation of interim status.

An intake official may at any time relax the conditions of a juvenile's interim status if, under rules prescribed by the court or under a specific court order, circumstances no longer justify continuing the restrictions initially imposed. Written notice of any such modification should be filed with the appropriate court. More stringent measures may not be imposed without prior notice to the court and counsel for the juvenile.

7.12 Appellate review of detention decision.

The attorney for the juvenile may at any time, upon notice to the prosecutor, appeal and be entitled to an immediate hearing within [twenty-four hours] on notice or motion from a court order imposing detention or denying release from detention. A copy of the order and written statement of reasons should accompany such appeal, and decisions on appeal should be filed at the conclusion of the hearing.

7.13 Status during appeal.

Upon the filing of an appeal of judgment and disposition, the release of the appellant, with or without conditions, should issue in every case unless the court orders otherwise. An order of interim detention should be permitted only where the disposition imposed, or most likely to be imposed, includes some form of secure incarceration *and* the court finds one or more of the following on the record:

A. that the juvenile would flee the jurisdiction or not appear before any court for further proceedings during the pendency of the appeal; or

B. that there is a substantial probability that the juvenile would engage in serious violence prior to the resolution of his or her appeal.

7.14 Speedy appeal.

A. The appeal of judgment and disposition filed by a juvenile held in interim detention for more than ten days pursuant to an order under Standard 7.13 should be resolved within ninety days of the date of such order, unless deferred consideration and resolution of the appeal has been agreed to in writing by the juvenile and his or her attorney.

B. Failure to meet this time limitation should result in release of the juvenile.

PART VIII: STANDARDS FOR THE DEFENSE ATTORNEY

8.1 Conflicts of interest.

The potential for conflict of interest between an accused juvenile and his or her parents should be clearly recognized and acknowledged. In every case, doubt as to a conflict should be resolved by the appointment of separate counsel for the child and by advising parents of their right to counsel and, if they are unable to afford counsel, of their right to have the court appoint such counsel. All parties should be informed by the initial attorney that he or she is counsel for the juvenile, and that in the event of disagreement between a parent or guardian and the juvenile, the attorney is required to serve exclusively the interests of the accused juvenile.

8.2 Duties.

It should be the duty of counsel for an accused juvenile to explore promptly the least restrictive form of release, the alternatives to detention, and the opportunities for detention review, at every stage of the proceedings where such an inquiry would be relevant.

8.3 Visit detention facility.

Whenever an accused juvenile is held in some form of detention, the attorney should periodically visit the juvenile, at no less than seven day intervals, and review personally his or her well-being, the conditions of the facility, and opportunities to relax the conditions of detention or to secure release. A report on each such visit should be retained in the attorney's permanent file of the case.

PART IX: STANDARDS FOR THE PROSECUTOR

9.1 Duties.

The prosecutor should review the charges, evidence, and the background of the juvenile prior to the initial court hearing in every case in which an accused juvenile is held in detention. On the basis of such review, the prosecutor should move at the initial hearing to dismiss the charges if prosecution is not warranted, to reduce charges to the extent excessive, and to eliminate detention or unduly restrictive control to the extent necessary to bring the juvenile's interim status into compliance with these standards.

9.2 Policy of encouraging release.

It should be the policy of prosecutors to encourage the police and other interim decision makers to release accused juveniles with a cita-

tion or without forms of control. Special efforts should be made to enter into stipulations to this effect in order to avoid unnecessary detention inquiries and to promote efficiency in the administration of justice.

9.3 Visit detention facilities.

Each prosecutor should, in the same manner required of judges under Standard 7.8 and defense counsel under Standard 8.3, visit at least once every [sixty days] each secure detention facility in which accused juveniles prosecuted by his or her office are lodged.

PART X: STANDARDS FOR JUVENILE DETENTION FACILITIES

10.1 Applicability to waiver of juvenile court jurisdiction.

When jurisdiction of the juvenile court is waived, and the juvenile is detained pursuant to adult pretrial procedures, the juvenile should be detained in a juvenile facility and in accordance with the standards in this part.

10.2 Use of adult jails prohibited.

The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited.

10.3 Policy favoring nonsecure alternatives.

A sufficiently wide range of nonsecure detention and nondetention alternatives should be available to decision makers so that the least restrictive interim status appropriate to an accused juvenile may be selected. The range of facilities available should be reviewed by all concerned agencies annually to ensure that juveniles are not being held in more restrictive facilities because less restrictive facilities are unavailable. A policy should be adopted in each state favoring the abandonment or reduction in size of secure facilities as less restrictive alternatives become available.

10.4 Mixing accused juvenile offenders with other juveniles.

A. In nonsecure facilities. The simultaneous housing in a nonsecure detention facility of juveniles charged with criminal offenses and juveniles held for other reasons should not be prohibited.

B. In secure facilities. Juveniles not charged with crime should not be held in any secure detention facility for accused juvenile offenders.

10.5 Population limits.

A. Individual facilities. The population of an interim detention facility during any twenty-four-hour period should not exceed [twelve to twenty] juveniles. This maximum may be exceeded only in unusual, emergency circumstances, with a written report presented immediately to each juvenile court judge and to the statewide agency described in Part XI.

B. Statewide. A primary goal of each assessment effort should be to establish, within one year, a quota of beds available in all facilities within the state for the holding of accused juveniles in secure detention. The quota should be reduced annually thereafter, as alternative forms of control are developed. The quota should be binding on the statewide agency as a mandatory ceiling on the number of accused juveniles who may be held in detention at any one time; provided that it may be exceeded temporarily for a period not to exceed sixty days in any calendar year if the agency certifies to the governor of the state and to the legislature, and makes available to the public, in a written report, that unusual emergency circumstances exist that require a specific new quota to be set for a limited period. The certification should state the cause of the temporary increase in the quota and the steps to be taken to reduce the population to the original quota.

10.6 Education.

All accused juveniles held in interim detention should be afforded access to the educational institution they normally attend, or to equivalent tutorial or other programs adequate to their needs, including an educational program for "exceptional children."

10.7 Rights of juveniles in detention.

Each juvenile held in interim detention should have the following rights, among others:

A. Privacy. A right to individual privacy should be honored in each institution. Because different children will desire different settings, and will often change their minds, substantial allowance should be made for individual choice, and for private as well as community areas, with due regard for the safety of others.

B. Attorneys. A private area within each facility should be available for conferences between the juvenile and his or her attorney at any time between 9 a.m. and 9 p.m. daily.

C. Visitors. Private areas within each facility should be available as contact visiting areas. The period for visiting, although subject to reasonable regulation by the facility staff, should cover at least eight

hours every day of the week, and should conform to school regulations when the juvenile is attending school outside the facility. All regulations concerning visitors and visiting hours should be subject to review by the juvenile court.

D. Telephone. Each juvenile in detention should have ready access to a telephone between 9 a.m. and 9 p.m. daily. Calls may be limited in duration, but not in content nor as to parties who may be contacted, except as otherwise specifically directed by the court. Local calls should be permitted at the expense of the institution, but should under no circumstances be monitored. Long distance calls in reasonable number may be made to a parent or attorney at the expense of the institution, and to others, collect.

E. Restrictions on force. Reasonable force should only be used to restrain a juvenile who demonstrates by observed behavior that he or she is a danger to himself or herself or to others, or who attempts to escape. All circumstances concerning any use of force or unusual restrictions, including the circumstances that gave rise to such use, should be reported immediately to the juvenile facility administrator and the juvenile's attorney and parent.

F. Mail. Mail from or to an accused juvenile should not be opened by authorities. If reasonable grounds exist to believe that mail may contain contraband, it should be examined only in the presence of the juvenile.

10.8 Detention inventory.

The statewide interim agency should during its first year and annually thereafter, conduct an inventory of secure detention facilities to ascertain the extent of, reasons for, and alternatives to the secure detention of accused juveniles. The inventory should include:

A. the places of secure detention;
B. the daily population and turnover;
C. annual admissions;
D. range of duration of secure detention;
E. annual juvenile days of secure detention;
F. costs of secure detention;
G. trial status of those in secure detention;
H. reasons for termination of secure detention;
I. disposition of secure detention cases;
J. correlation of secure detention to post-adjudication disposition;
K. qualifications and training of staff;
L. staffing patterns and deployment of staff resources.

The results of the inventory should be published annually. The agency should conduct a similar inventory of nonsecure detention

facilities, beginning in the agency's second year. The inventory should draw attention to the differences in the use of detention by locality, and by characteristics of the detention population.

PART XI: GENERAL ADMINISTRATIVE STANDARDS

11.1 Centralized interim status administration in a statewide agency.

A. To facilitate the creation of an adequate interim decision making process, with the resources necessary to implement it and an information system to monitor it, the responsibility for all aspects of nonjudicial interim status decisions involving accused juvenile offenders should be centralized in a single statewide agency. This centralization should include both personnel and facility administration. The agency should be part of the [executive] branch of the state government, although contracting with private nonprofit organizations should be permitted initially. All detention facility personnel, and all public employees involved in release, control, and supervision programs for accused juveniles should be employed by or otherwise responsible to this agency. The statewide agency should have responsibility for the coordination and review of all release and control of, and detention programs for, accused juveniles.

B. Each juvenile court and local police department should have available to it representatives of the agency and facilities developed by the agency.

C. The juvenile facility intake officials described in Part VI of these standards should be the local representatives of the statewide agency. They should be empowered to make or recommend the pretrial release, control, and detention decisions authorized by these standards, and to relax the restrictions imposed on a juvenile in accordance with Standard 7.11.

11.2 General administrative standards: planning, funding, and inspection.

A. The statewide agency in each state, in consultation with the court and representatives of law enforcement and attorneys for the defense, should develop a statewide plan for the governance of local and regional facilities for accused juveniles, and for the necessary transportation between courts and facilities.

B. The agency, in cooperation with the administrators of other youth services and public welfare, should develop a statewide program for the provision of nonsecure detention facilities for accused juveniles, in accordance with the *Architecture of Facilities* volume.

C. To ensure that the standards are being met, representatives of the statewide agency should periodically and at least semiannually conduct unannounced inspections of all juvenile facilities in the state and file with the agency written reports within thirty days of each such inspection. Such reports should be periodically compiled and submitted to the legislature and the public. Current reports on any particular institution should be available on reasonable request. Whenever, on the basis of such reports, the agency or any court finds that a facility fails to meet promulgated standards, further detention of juveniles therein should be the subject of a warning. Copies of such warnings should be served upon the person in charge of the detention facility. Unless corrected and approved within sixty days after notification and publication of the warning, a facility that has been warned should thereafter be prohibited from housing any juvenile until such time as the warning is removed.

11.3 Construction moratorium.

An indefinite moratorium should be imposed on the construction or expansion of any facility for the detention of accused juveniles. No funds for any such purpose should be considered until an inventory of existing facilities has been completed and assessed, and until all reasonable release and control alternatives have been implemented and evaluated. Because a moratorium may have the effect of continuing substandard conditions in existing facilities, and of increasing the cost of eventual construction, its imposition should be accompanied by:

A. establishment of a timetable for completing the required inventory, program development, and evaluations;

B. public acknowledgment by all organizations in the juvenile justice system that alleviation of the volume, duration, and conditions of juvenile detention is their joint responsibility; and

C. specification, in periodic reports to the courts, governor, legislature, bar, and public of the plans and progress of the reassessment and reform effort.

11.4 Policy favoring experimentation.

The standards for each type of interim status, particularly including secure and nonsecure detention facilities, should not remain static. As experience develops, the statewide agency's standards governing the nature and use of these alternatives and facilities should be elevated. Experimentation under published criteria should be encouraged, and innovative techniques from other jurisdictions continuously examined.

Standards with Commentary

PART I: INTRODUCTION

1.1 Scope and overview.

The standards in this volume set out in detail the decision making process that functions between arrest of a juvenile on criminal charges and final disposition of the case. By limiting the discretion of officials involved in that process, and by imposing affirmative duties on them to release juveniles or bear the burden of justification for not having done so, the standards seek to reduce the volume, duration, and severity of detention, and of other curtailment of liberty during the interim period.

Commentary

Because these standards apply only to juveniles arrested for conduct that would be criminal if committed by an adult, the different considerations that might be relevant to cases arising under the noncriminal jurisdiction of the juvenile court, such as persons in need of supervision (PINS) or truants, are not discussed here. The effect of this limited scope of the volume is discussed in the General Introduction, *supra*.

1.2 Separate standards for different decision makers.

Separate rules should define the interim period authority and responsibility of police officers, intake officials, attorneys for the juvenile and the state, judges, and detention officials, to reflect differences in:

A. their respective roles in the interim decision making process;

B. the extent to which the discretion exercised by each is subject to control and review by others; and

C. the time, information, and resources available to each at the time of decision.

Commentary

The separate guidelines are set forth as follows: the police (Standards 5.1–5.7); the juvenile facility intake official (Standards 6.1–6.7 and 7.11); the juvenile court (Standards 7.1–7.10); the appeals court (Standards 7.12–7.14); the attorneys for the juvenile (Standards 8.1–8.3) and for the state (Standards 9.1–9.3); and detention officials (Standards 10.1–10.8).

1.3 Guidelines for measuring progress.

To the extent that these standards require time-consuming or costly modifications in the law, practice, and facilities of a jurisdiction, they should be viewed as guidelines by which to measure the progress of the jurisdiction toward compliance with the stated goals. Detailed specifications are presented wherever possible, so that departures from them will be visible, and officials can be called to account for them.

Commentary

The volume is designed not as an academic exercise, but to develop practical suggestions for improving the juvenile justice system. The functional organization of the volume, by focusing on each successive stage of decisionmaking, enables a jurisdiction to compare in detail its own procedures and policies with the requirements of these standards.

PART II: DEFINITIONS

2.1 Interim period.

The interval between the arrest or summons of an accused juvenile charged with a criminal offense and the implementation of a final judicial disposition. The term "interim" is used as an adjective reference to this interval, *e.g.*, "interim status," "interim liberty," and "interim detention."

Commentary

As noted in the General Introduction, juveniles held in detention facilities fall into three groups: A. awaiting adjudication; B. adjudicated delinquent but awaiting a determination of a proper disposition; and C. awaiting implementation of that disposition. Department of Justice, "National Jail Census—1970" (1971) (66 percent of juveniles held in jails were awaiting trial); Ferster, Snethen,

and Courtless, "Juvenile Detention: Protection, Prevention, or Punishment?" 38 *Fordham L. Rev.* 161 (1969); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972). In order to avoid the inaccuracy involved in using the term "pretrial" to describe the second and third categories, the term "interim" is adopted to denote the entire interval between arrest and ultimate placement, if convicted, in a correctional facility.

2.2 Arrest.

The taking of an accused juvenile into custody in conformity with the law governing the arrest of persons believed to have committed a crime.

Commentary

The arrest of a juvenile is treated in this volume the same as the arrest of an adult. This concept "is consistent with the extension of *Gault*'s rationale into the investigatory stages of juvenile proceedings." Davis, "Juvenile Rights During the Pre-Judicial Process," 21 *Prac. Law.* 23, 25 (1975). It is supported by numerous decisions involving search and seizure in juvenile cases. See Davis, *supra* at 27-28; S. Davis, *Rights of Juveniles: The Juvenile Justice System* (1974). Some statutes take a middle ground and provide that "the taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of this State or of the United States." Ga. Code Ann. § 24A-1301(b) (Supp. 1975). See also Tenn. Code Ann. § 37-213 (Spec. Supp. 1974). Since this volume is limited to juveniles accused of crime, there is no reason to avoid describing an arrest in normal terminology.

2.3 Custody.

Any interval during which an accused juvenile is held by the arresting police authorities.

Commentary

Although the term custody usually refers to various kinds of restrictive authority (*e.g.*, police custody, parental custody, custody facility), its definition in this volume is limited to the period of police authority. The use of a facility to restrict the interim liberty of a juvenile subsequent to the police stage is referred to as "detention" (Standard 2.9), and the use of measures short of detention is "control" (Standard 2.6). Thus, all holding facilities are *detention* facilities, and a juvenile may be released to the *control* of a third party supervisor.

2.4 Status decision.

A decision made by an official that results in the interim release, control, or detention of an arrested juvenile. In the adult criminal process, it is often referred to as the bail decision.

Commentary

The decision whether to release or detain cannot properly be described as a "release decision" or a "detention decision" until after the fact. The term "status" therefore refers to any of the possible results under these standards—release, control, or detention.

2.5 Release.

The unconditional and unrestricted interim liberty of a juvenile, limited only by the juvenile's promise to appear at judicial proceedings as required. It is sometimes referred to as "release on own recognizance."

Commentary

The term "release" often refers to any nondetention status. In this volume, however, the middle ground between release and detention has been identified as a separate status—"control." Therefore, "release" is unlimited freedom, subject only to the duty to appear as required.

2.6 Control.

A restricted or regulated nondetention interim status, including release on conditions or under supervision.

Commentary

"Control" is the middle ground between unfettered release and some form of detention. It refers to the imposition of official restrictions or conditions and not to general supervision by the juvenile's parents. Thus, release to the juvenile's parents is properly referred to as "release," whereas release coupled with a curfew imposed by the juvenile court is "control."

Control is divided generally into release on conditions (Standard 2.7) and release under supervision (Standard 2.8).

2.7 Release on conditions.

The release of an accused juvenile under written requirements that specify the terms of interim liberty, such as living at home, reporting periodically to a court officer, or refraining from contact with named witnesses.

2.8 Release under supervision.

The release of an accused juvenile to an individual or organization that agrees in writing to assume the responsibility for directing, managing, or overseeing the activities of the juvenile during the interim period.

2.9 Detention.

Placement during the interim period of an accused juvenile in a home or facility other than that of a parent, legal guardian, or relative, including facilities commonly called "detention," "shelter care," "training school," "receiving home," "group home," "foster care," and "temporary care."

Commentary

The definition of detention in this standard includes every facility used by the state to house juveniles during the interim period. Whether it gives the appearance of the worst sort of jail, or a comfortable and pleasant home, the facility is classified as "detention" if it is not the juvenile's usual place of abode. See Wald, "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119, 120 (Rosenheim ed. 1976) (". . .many shelters are as secure, and as dreadful, as detention facilities"); "Hidden Closets" 10.

Facilities referred to as "shelter care" have been intended primarily, if not exclusively, for juveniles accused of noncriminal conduct. National Council of Juvenile Court Judges, "Handbook for New Juvenile Court Judges," 23 *Juv. Ct. J.* 1, 21 (1972); Wald, *supra.* When a juvenile is a runaway, the state may indeed be "sheltering" him or her, but for the juvenile accused of criminal conduct the very term "shelter care" implies the familiar tendency in juvenile justice to substitute "care" for due process. At minimum, due process for alleged criminal offenders requires that the limited purpose of the interim decision-making process be recognized: not whether the state can provide better temporary care than the juvenile might receive at home, but which interim status will provide the least intensive measure to insure the integrity of the court process. Thus, when alleged offenders are held following arrest, they are not being "sheltered" for their benefit, but detained for the benefit of the state or society. Under these circumstances, the procedures and requirements associated with detention (written reasons, the search for alternatives, time limits, etc.) apply regardless of the nature of the facility.

2.10 Secure detention facility.

A facility characterized by physically restrictive construction and procedures that are intended to prevent an accused juvenile who is placed there from departing at will.

Commentary

This definition of secure detention was used by the court in *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972). It generally tracks the definitions of "detention" used in other model codes. See "Legislative Guide" § 2(f); NCCD, "Standards and Guides for the Detention of Children and Youth" 1, 7 (1961); U.S. Children's Bureau, "Standards for Juvenile and Family Courts" (1966); NPPA, "Standard Juvenile Court Act" § 2(h) (1959); NCCD, "Model Rules for Juvenile Courts" Rules 1–4 (1969); National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 248 (1973); Colorado Council of Juvenile Court Judges, "Standards of Juvenile Justice" § 3.1(a) (1974).

2.11 Nonsecure detention facility.

A detention facility that is open in nature and designed to allow maximum participation by the accused juvenile in the community and its resources. It is intended primarily to minimize psychological hardships on an accused juvenile offender who is held out-of-home, rather than to restrict the freedom of the juvenile. These facilities include, but are not limited to:

A. single family foster homes or temporary boarding homes;

B. group homes with a resident staff, which may or may not specialize in a particular problem area, such as drug abuse, alcohol abuse, etc.; and

C. facilities used for the housing of neglected or abused juveniles.

Commentary

The nonsecure facilities of these standards are the "shelter care" facilities of other codes. See, *e.g.*, National Conference of Commissioners on State Laws, "Uniform Juvenile Court Act" § 2(g) (1968); NCCD, "Model Rules for Juvenile Courts" Rule 1–5 (1969); and the commentary to Standard 2.10. See also President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* 119 (1967) hereinafter cited as *Task Force Report: Corrections;* "Hidden Closets" 66.

If a primary concern of the interim process is to reduce the use of secure detention facilities, there is no justification for automatic exclusion of other state facilities, such as homes for neglected and abused juveniles. There is no compelling reason to prohibit the mixing of alleged delinquent and nondelinquent juveniles in nonsecure facilities, and indeed such a mixing arrangement may be preferable in many cases. See *Task Force Report: Corrections* 119; Rosenheim,

"Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy and the Institution* 253, 276 (Pappenfort, et al. eds. 1973). Standard 10.4 *infra* specifically permits such mixing.

2.12 Regional detention facility.

A detention facility that serves a geographic area of sufficient population to require a maximum daily capacity for that facility of twelve juveniles.

Commentary

Regional detention refers simply to a pooling of resources necessary to adequately fund the detention facilities required by these standards. See Standards 3.6 and 11.2. "Regional" may mean one thing in populous areas and quite another in rural communities. For example, where a state's juvenile court system has been arranged by divisions of county size or smaller, regional detention would signify a facility serving more than one of these divisions. Where the jurisdiction of one juvenile court extends over several counties, one or more regional facilities may be needed within that one jurisdiction.

2.13 Citation.

A written order issued by a law enforcement officer requiring a juvenile accused of violating the criminal law to appear in a designated court at a specified date and time. The form requires the signature either of the juvenile to whom it is issued, or of the parent to whom the juvenile is released.

Commentary

Procedures for the release of alleged criminal offenders at the time of arrest have been in use for some time, and have shown success. See Berger, "Police Field Citations in New Haven," 1972 *Wis. L. Rev.* 382 (1972); Feeney, "Citation in Lieu of Arrest: The New California Law," 25 *Vand. L. Rev.* 367 (1972). The definition of "citation" reflects these procedures. Standard 5.6 requires the use of the citation if continued police custody is prohibited by these standards. The definition used here is similar to the definition contained in ABA Standards, *Pretrial Release* § 1.4(a).

2.14 Summons.

An order issued by a court requiring a juvenile against whom a charge of criminal conduct has been filed to appear in a designated court at a specific date and time.

Commentary

The summons is the functional judicial equivalent of the citation. Both avoid the imposition of custody or detention. Standard 7.2 requires the use of summons wherever possible. The definition used here is almost identical to that contained in ABA Standards, *Pretrial Release*, § 1.4(b).

2.15 Treatment.

Any medical or psychiatric response to a diagnosis of a need for such response, including the systematic use of drugs, rules, programs, or other measures, for the purpose of either improving the juvenile's physical health or modifying on a long-range basis the accused juvenile's behavior or state of mind. "Treatment" includes, among other things, programs commonly described as "behavior modification," "group therapy," and "milieu therapy."

Commentary

Treatment can be either physical or mental. The definition used here is designed to include all forms and variations thereof. The definition obviously does not, however, include *every* rule or procedure a program or facility may have since it includes reference to "diagnosis" and "long-range" behavior modification.

2.16 Testing.

The use of measures administered to the accused juvenile for the purpose of:

A. identifying medical or personal characteristics, the latter including such things as knowledge, abilities, aptitudes, qualifications, or emotional traits; and

B. determining the need for some form of treatment.

Commentary

The context of testing, just as treatment, can be either medical or psychiatric. This definition is meant to include any form or type of test.

2.17 Parent.

Any of the following:

A. the juvenile's natural parents, stepparents, or adopted parents, unless their parental rights have been terminated;

B. if the juvenile is a ward of any person other than his or her parent, the guardian of the juvenile;

C. if the juvenile is in the custody of some person other than his or her parent whose knowledge of or participation in the proceedings would be appropriate, the juvenile's custodian; and

D. separated and divorced parents, even if deprived by judicial decree of the respondent juvenile's custody.

Commentary

This definition was adopted by the joint commission in its *Pretrial Court Proceedings* volume. See Standard 6.6 of that volume, and the accompanying commentary.

2.18 Final disposition.

The implementation of a court order of

A. release based upon a finding that the juvenile is not guilty of committing the offense charged; or

B. supervision, punishment, treatment, or correction based upon a finding that the juvenile is guilty of committing the offense charged.

Commentary

"Final disposition" is not the determination of guilt, innocence, or the need for treatment, but the implementation of that decision. Until the final order is carried out, the interim period continues and these standards apply.

2.19 Diversion.

The unconditional release of an accused juvenile, without adjudication of criminal charges, to a youth service agency or other program outside the juvenile justice system, accompanied by a formal termination of all legal proceedings against the juvenile and erasure of all records concerning the case.

Commentary

This volume adopts a literal definition of "diversion from the criminal process": unconditional dismissal of charges and referral of the juvenile to a youth service agency outside the criminal process with no strings attached. This definition avoids the problems that in recent years have beset the development in the adult system of all

types of pretrial diversion and intervention programs. These programs, while seeking to lower court caseloads, costs, and stigmatization, have maintained costly supervision over accused persons prior to trial or conviction before making a decision, weeks or months later, whether or not to prosecute. The complexity and troublesome issues that characterize adult diversion are described in an evergrowing literature. *E.g.*, J. Mullen, *The Dilemma of Diversion* (1975); R. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution* (1974); Note, "Pretrial Diversion from the Criminal Process," 83 *Yale L.J.* 827 (1974); Zimring, "Measuring the Impact of Pretrial Diversion From the Criminal Justice System," 41 *U. Chi. L. Rev.* 224 (1974); Freed, Statement on Proposed Federal Legislation Regarding Pretrial Diversion (H.R. 9007, S. 798), Hearings Before the Subcommittee on Courts, Civil Liberties, and Administration of Justice, House Committee on the Judiciary, February 12, 1974.

Since the juvenile justice process itself developed as a diversion from full scale adult criminal prosecution, and since these standards contemplate a far speedier trial and disposition process than characterizes the adult system today, there seems little value in incorporating conditional forms of diversion to complicate the release and trial process for juveniles. See *The Juvenile Probation Function: Intake and Predisposition Investigative Services* volume for further elaboration of this position.

PART III: BASIC PRINCIPLES

3.1 Policy favoring release.

Restraints on the freedom of accused juveniles pending trial and disposition are generally contrary to public policy. The preferred course in each case should be unconditional release.

Commentary

This standard is a reflection of Standard 1.1, Policy Favoring Release, in the ABA Standards, *Pretrial Release*. A general public policy in favor of release is evidenced by many model codes and state statutes. See Ferster, Snethen, and Courtless, "Juvenile Detention: Protection, Prevention or Punishment?" 38 *Fordham L. Rev.* 161 (1969). See also *Kinney v. Lenon*, 425 F.2d 209 (9th Cir. 1970).

3.2 Permissible control or detention.

The imposition of interim control or detention on an accused juvenile may be considered for the purposes of:

A. protecting the jurisdiction and process of the court;

B. reducing the likelihood that the juvenile may inflict serious bodily harm on others during the interim period; or

C. protecting the accused juvenile from imminent bodily harm upon his or her request.

However, these purposes should be exercised only under the circumstances and to the extent authorized by the procedures, requirements, and limitations detailed in Parts IV through X of these standards.

Commentary

This listing of three purposes that may justify interim restrictions (*i.e.*, preventing flight, harm by the juvenile, and harm to the juvenile) is only a reference to later standards that specify the circumstances and procedures under which detention or control may actually be invoked. Standard 3.2 neither adds to nor detracts from these substantive standards.

Model codes and statutes have typically employed a single listing of permissible criteria for detention. See, *e.g.*, U.S. Children's Bureau, "Legislative Guide for Drafting Family and Juvenile Court Acts" § 20(a) (1969); National Conference of Common State Laws, "Uniform Juvenile Court Act" § 14 (1968); NPPA, "Standard Juvenile Court Act" (1959); NCCD, "Standards and Guides for the Detention of Children and Youth" 15 (1961); Colo. Children's Code § § 22-2-2(2), 22-2-2(4) (1973); Ill. Juv. Ct. § § 703-2(1), 703-4 (1972); Conn. Juv. Ct. R., Rule 7 (1975); Ga. Code Ann. § 24A-1401 (1974 Supp.). This volume prefers the technique of separate standards for separate decision makers, out of recognition of the different responsibilities each performs and the additional information which becomes available as the process progresses.

Standard 3.2 B., which authorizes detention for the prevention of serious bodily harm by the juvenile, also applies to serious crimes against property, such as arson or bombing, which involve a substantial risk of serious bodily harm.

3.3 Prohibited control or detention.

Interim control or detention should not be imposed on an accused juvenile:

A. to punish, treat, or rehabilitate the juvenile;

B. to allow parents to avoid their legal responsibilities;

C. to satisfy demands by a victim, the police, or the community;

D. to permit more convenient administrative access to the juvenile;

E. to facilitate further interrogation or investigation; or
F. due to a lack of a more appropriate facility or status alternative.

Commentary

This standard is the converse of 3.2 and is designed to enumerate abuses of detention—past and present—that henceforth need to be expressly forbidden.

The fact that interim restrictions have been employed in undesirable and illegal ways has been documented by various commentators. Margaret Rosenheim focuses on three misuses of detention: (A) where more appropriate facilities are unavailable or not used; (B) for the administrative convenience of officials who require or desire access to the juvenile; and (C) as punishment. Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy and the Institution* 253, 266-269 (Pappenfort, et al. eds. 1973). See also J. Downey, *State Responsibility for Juvenile Detention Care* 3 (1970); S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* 7 (1968); Metropolitan Social Services Department, Louisville and Jefferson County, Kentucky, "Analysis of Detention" 25 (1972). A recent study in Massachusetts found that the primary factor determining whether or not a juvenile would be placed in secure detention was the availability of nonsecure alternatives. Coates, Miller, and Ohlin, "Juvenile Detention and Its Consequences" 8, 10, 11 (unpublished paper on file with the Juvenile Justice Standards Project, Institute of Judicial Administration 1975). Similar findings were made by the National Assessment of Juvenile Corrections. R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 21, 61-62 (1974). See also Pawlek, "The Administration of Juvenile Justice," cited in Sarri, *supra* at 10.

Forerunners of a standard enumerating prohibited purposes may be found in NCCD, "Standards and Guides for the Detention of Children and Youth" 16 (1961), and Illinois Department of Corrections, "Standards and Guides for Juvenile Detention Centers" 14 (1971). See also S. Norman, "Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation and Courts" 2 (unpublished paper on file with the Juvenile Justice Standards Project 1971); Colorado Council of Juvenile Court Judges, "Standards of Juvenile Justice" § 3.2(c) (1974); California Continuing Education of the Bar, "California Juvenile Court Practice" § 41 (1968).

For materials supporting the prohibition against treating or rehabilitating juveniles in detention, see *Cudnick v. Kreiger*, 392 F. Supp. 305, 311 (N.D. Ohio 1974); *In re New Jersey in Interest*

of H.C., 256 A.2d 322 (Pa. Juv. & Dom. 1969); S. Norman and Bartis, *The Controlled Use of Detention* 14-15 (1963); Tappan, "Treatment Without Trial," 24 *Soc. Forces* 306 (1946); National Juvenile Law Center, "Law and Tactics in Juvenile Cases" 188 (1974). Judge Walter G. Whitlatch of the Juvenile Court of Cuyahoga County, Cleveland, Ohio, observed:

> Many judges sincerely believe that detention has therapeutic value and that confinement serves as a deterrent to further delinquency. The writer of this article, prior to the commencement of our program [to reduce the detention home population], used detention in certain limited instances for this purpose. Prompted by the desire to lessen detention home population, the use of detention by the writer for treatment was gradually completely abandoned. It is our conclusion that we lost nothing by giving up this dispositional alternative. On the contrary we conclude that there is no value in detention as a deterrent to delinquency. The child who will be deterred by a stay in detention is the same child who is affected positively by his court appearances before the judge. In other words, the impact of the court as an institution representing the law will have the effect sought by detention if the child is amenable to treatment and supervision in his own home. "Practical Aspects of Reducing Detention Home Population," 24 *Juv. Justice* 17, 22 (1973).

See also Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy and the Institution* 293 (Pappenfort, et al. eds. 1973); Edwards, "The Rights of Children," 37 *Fed. Prob.* 34, 37 (1973); Hughes, "Humanizing the Detention Setting," 35 *Fed. Prob.* 21, 26 (1971); Norman, "Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation and Court" 3 (unpublished paper on file with the Juvenile Justice Standards Project, Institute of Judicial Administration, 1971).

Not all authorities, however, would agree with this standard. The National Council on Crime and Delinquency, for example, proceeding on the assumption that the accused juvenile in detention is probably guilty, has urged that treatment begin before trial. Its "Standards and Guides for the Detention of Children and Youth" 36 (1961) have suggested:

> Instead of being merely a "waiting period," detention should begin the process of rehabilitation and lay the groundwork for later treatment. Above all, the detained youngster should feel in the staff a warm acceptance of himself and rejection only of his antisocial behavior. The staff's belief in the child must be belief in his best characteristics and, on the basis of this belief, in his capacity for change. Although the detention home is not a training school, staff attitudes can and should begin the training process.

The philosophy of the NCCD "Standards" is shared by the Illinois Department of Corrections in its "Standards and Guides for Juvenile Detention Centers" 4, 17, 18 (1971):

> The philosophy of the Juvenile Detention Center is based on a short term program, focusing on a determination of the needs of the individual and recommending a program that can be effective for treatment and rehabilitation while in secure custody.
>
> . . . . . .
>
> Modern concepts of rehabilitation demand that treatment begin at the time a minor is taken into custody and placed in detention. . . .
>
> . . . . . .
>
> Behavior modification, or reality based counseling as a form of operant conditioning, is encouraged as a means of emotional control and group conformity.

Of 174 detention homes studied in N. Reuterman, *A National Survey of Juvenile Detention Facilities* 9 (1971), over 25 percent indicated that their primary purpose was rehabilitative. In the Wood County (West Virginia) Juvenile Detention Home Guidelines, the following analysis of the "value of detention" appears:

> To the child, detention provides immediate protection against his own uncontrolled actions; protection from parents and others who would reject him along with his behavior; things to do which challenge his interest; group guidance which counteracts the ill effects of confining him with other delinquents; individual guidance which helps him use the detention experience to understand himself better so that he can come to grips with his problems; contact with persons in authority who are as concerned with his well-being as with his living within the law, thus introducing him to a new concept of authority. *Id.* at 1-2.

One of the most interesting examples of the tendency to use interim detention for purposes prohibited by these standards is contained in Texas Woman's University Institute Proceedings, "Juvenile Detention and Community Responsibility" 15-21 (1968). During a workshop on detention practices, participants representing all facets of the juvenile justice system were asked whether they would detain the juvenile involved in illustrative situations presented, and why. In three of the situations, the juvenile was involved solely in criminal conduct, but guilt had not yet been adjudicated. In each of these cases, the group voted to detain, not because the juvenile was an apparent flight risk or posed a serious threat to the community, but for the purposes of "diagnostic study, special education, complete social study." Sherwood Norman, the Director of Youth Correctional Services, National Council on Crime and Delinquency, who was the con-

sultant and principal lecturer at the workshop, noted in conclusion concerning the group discussions of each situation that "[e]xcept for one reference to delayed court dockets, it is surprising that no moderator mentioned the protection of the child's legal rights." *Id.* at 31.

The confusion surrounding the proper function of interim detention—whether it should be imposed with an assumption of innocence or an assumption of guilt, and whether the need for custody or the need for rehabilitation should be the focus—pervades much of the literature in the field. Some publications recommend limited detention criteria and simultaneously cite with approval the treatment philosophy of detention quoted from the NCCD "Standards" above. See Rosenheim, *supra* at 259-60; Sarri, *supra* at 37; Downey, *supra* at 4.

The countervailing practical considerations have been particularly well summarized by Chief Judge Harold H. Greene of the Superior Court of the District of Columbia:

> In theory, society should perhaps not detain one who is merely accused of wrongdoing in a place where there is an ongoing program of rehabilitation, because, in theory, it is not known that he needs to be rehabilitated since he has not been adjudged of having violated the law. However, the law cannot indefinitely sustain itself on theory alone. A confrontation with practicalities may sometimes be helpful. It seems to this Court that to hold one who is awaiting his trial in a relatively spacious institution where he can have the opportunity of participating in potentially useful programs, is far less "punishment" in any practical sense of that term than the enforced idleness in the typical pretrial prison, whether it be labelled Receiving Home for Children or District of Columbia Jail. *In re Savoy*, Juvenile Case No. J-4808-70 (January 11, 1973), at 31.

He concludes the analysis in a footnote:

> If at his trial that individual is ultimately exonerated, he will have lost less by his enforced stay in an institution where rehabilitation is the purpose and aim than he would have lost had he spent the same period of time in the narrow confinement of an institution specifically designed for pretrial holds. If his trial results in an adjudication of a law violation and an order for detention, he will by virtue of his detention in a rehabilitation institution be by that time that much further along the road to ultimate usefulness to society than he would have been otherwise.

Patricia Wald has voiced a similar view, suggesting a "crisis intervention" model to focus resources of the system on the juvenile's

initial contact with the police or court officials. Her model would grant officials early in the juvenile process more latitude, and impose more responsibility on them, for removing the juvenile from the flow of the system:

> The crisis intervention model admittedly continues a "treatment" orientation of the juvenile process. This orientation is currently under attack by juvenile court revisionists who, on the basis of past failures to treat and abuses of juveniles' civil rights in the name of "treatment," would prefer to move the process more closely to the adult criminal model. They want finite sentences to be served in secure settings or in the community on a punishment rationale; no obligation to offer juveniles special rehabilitative help; no pretense of individualization of disposition. If such an approach were adopted, it would focus pretrial programs primarily on due process rights to release or bail, rather than on individual help for any crisis.
>
> While I recognize that the system has indeed been guilty in the past of sins of overreaching and unnecessary intrusions into family life, I am not yet convinced that it is preferable to abandon any attempts to assist juveniles, especially at the beginning of the process, when it may be possible to avoid adjudication. The problem of monitoring help so that it does not become tyranny will always be with us, but punishment oriented personnel and systems seem to offer the same potential for abuse of juveniles as do insensitive helping personnel and systems—without much benefit in exchange for the risk. "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119, 134-35 (Rosenheim ed. 1976).

These compelling statements support a standard which, on one hand, acknowledges the presumption of innocence and forbids punishment or treatment as a *purpose* in imposing detention, and at the same time encourages the availability of help and assistance to juveniles who, for purposes permitted in Standard 3.2, are denied their pretrial liberty.

3.4 Least intrusive alternative.

Whenever an accused juvenile cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives.

Commentary

A requirement for the "least restrictive alternative" has been imposed on the adult criminal justice system by several courts. See

Hamilton v. Love, 328 F. Supp. 1182, 1192 (E.D. Ark. 1971); Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153, 169-71 (1973). In light of Supreme Court decisions in recent years that have introduced rigorous standards of due process to many aspects of juvenile justice, *e.g.*, *Kent v. U.S.*, 383 U.S. 541 (1966); *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970), it seems inevitable that a least intrusive alternative standard will also be extended to juveniles. The National Advisory Commission on Criminal Justice Standards and Goals, "Courts" 297 (1973), recommends that "prehearing placement" involve "the least infringement on the juvenile's liberty."

3.5 Values.

Whenever the interim curtailment of an accused juvenile's freedom is permitted under these standards, the exercise of authority should reflect the following values:

A. respect for the privacy, dignity, and individuality of the accused juvenile and his or her family;

B. protection of the psychological and physical health of the juvenile;

C. tolerance of the diverse values and preferences among different groups and individuals;

D. ensurance of equality of treatment by race, class, ethnicity, and sex;

E. avoidance of regimentation and depersonalization of the juvenile;

F. avoidance of stigmatization of the juvenile; and

G. ensurance that the juvenile receives adequate legal assistance.

Commentary

The values listed in this standard have been derived from a variety of sources. *E.g.*, R. Sarri, "Under Lock and Key: Juveniles in Jail and Detention" 72-73 (1973); NCCD, "Standards and Guides for the Detention of Children and Youth" 36 (1961); J. Downey, *State Responsibility for Juvenile Detention Cases* 4 (1970); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972); National Council of Juvenile Court Judges, "Handbook for New Juvenile Court Judges" 21 (1972); Illinois Department of Corrections, "Standards and Guides for Juvenile Detention Centers" 5, 14, 16 (1971).

This standard should be read in conjunction with Part X, *infra*, concerning juvenile detention facilities.

3.6 Availability of adequate resources.

The attainment of a fair and effective system of juvenile justice requires that every jurisdiction should, by legislation, court decision, appropriations, and methods of administration, provide services and facilities adequate to carry out the principles underlying these standards. Accordingly, the absence of funds cannot be a justification for resources or procedures that fall below the standards or unnecessarily infringe on individual liberty. Accused juveniles should be released or placed under less restrictive control whenever a form of detention or control otherwise appropriate is unavailable to the decision maker.

Commentary

When the conditions of state-imposed confinement are challenged, the defense of inadequate resources is without merit. Both the courts and commentators have vigorously rejected such arguments. *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974); *Detainees of the Brooklyn House of Detention for Men v. Malcolm*, 520 F.2d 392 (2d Cir. 1975); *Martarella v. Kelley*, 349 F. Supp. 575, 601 (S.D.N.Y. 1972); *Wyatt v. Stickney*, 344 F. Supp. 373, 377 (M.D. Ala. 1972), *aff'd*, 503 F.2d 1305, 1314-15 (5th Cir. 1974); *In re Baltimore Detention Center*, 5 Clearinghouse Rev. 550 (Balt. City Ct. 1971); *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676, 687 (D. Mass. 1973); *Hamilton v. Love*, 382 F. Supp. 1182, 1197 (E.D. Ark. 1971); *Brenneman v. Madigan*, 343 F. Supp. 128, 139 (N.D. Cal. 1972); *Welch v. Likins*, 373 F. Supp. 487, 499 (D. Minn. 1974); *Taylor v. Sterrett*, 344 F. Supp. 411, 422 (N.D. Tex. 1972); *Holt v. Sarver*, 309 F. Supp. 362, 385 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971); *Rozecki v. Gaughan*, 459 F.2d 6 (1st Cir. 1972); *Hamilton v. Landrieu*, 351 F. Supp. 549 (E.D. La. 1972); *Conklin v. Hancock*, 334 F. Supp. 1119, 1122 (D.N.H. 1971); *Rhem v. Malcolm*, 371 F. Supp. 594 (S.D.N.Y. 1974); Wald, "Pretrial Detention of Juveniles" in *Pursuing Justice for the Child* 119, 126 (Rosenheim ed. 1976); R. Sarri, "Under Lock and Key: Juveniles in Jail and Detention" 67-68 (1973); Kaufman, "Book Review," 86 *Harv. L. Rev.* 637, 639 (1973).

Standard 3.6 requires the affirmative participation of legislators, administrators, and courts. Although not free from controversy, there is support for the view that courts possess the inherent power to order the expenditure of funds to raise facilities to constitutional standards. See *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 373, 377-78 (M.D. Ala. 1972), *aff'd*, 503

F.2d 1305 (5th Cir. 1974), and the remaining cases cited above. But *cf. Burnham v. Dept. of Public Health of Georgia*, 349 F. Supp. 1335 (N.D. Ga. 1972), and *Woods v. Burton*, 503 P.2d 1079, 1082 (Wash. App. 1972) (court has power only to prohibit use of non-complying facilities). Several courts have held that the judiciary has the power to compel the allocation of sufficient funds to insure an adequate level of judicial operations. *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971); *State ex rel. Weinstein v. St. Louis County*, 451 S.W.2d 99 (Mo. 1970); *Carlson v. State ex rel. Stodola*, 220 N.E.2d 532 (Ind. 1966); *State ex rel. Gentry v. Becker*, 174 S.W.2d 181 (Mo. 1943); *Knox County Council v. State ex rel. McCormick*, 29 N.E.2d 405 (Ind. 1940); *Schmelzel v. Board of Commissioners*, 100 P. 106 (Idaho 1909); *State ex rel. Kitzmeyer v. Davis*, 68 P. 689 (Nev. 1902); 59 ALR 3d 569. See also Carrigan, "Inherent Powers of the Courts," 24 *Juv. Justice* 38 (1973). In *State v. St. Louis County*, *supra* at 102, the Missouri Supreme Court held that a juvenile court had inherent power "to select and appoint employees reasonably necessary to carry out its functions of care, discipline, detention, and protection of juveniles who come within its jurisdiction," and to fix the compensation of such employees.

Standard 3.6 further recognizes and requires the exercise by interim officials of the duty to release juveniles held inappropriately.

PART IV: GENERAL PROCEDURAL STANDARDS

4.1 Scope.

As an introduction to the standards in Parts V through IX, which create separate guidelines for each participant in the interim process, the procedures and prohibitions in Part IV are standards applicable to all interim decision makers.

4.2 Burden of proof.

The state should bear the burden at every stage of the proceedings of persuading the relevant decision maker with clear and convincing evidence that restraints on an accused juvenile's liberty are necessary, and that no less intrusive alternative will suffice.

Commentary

While it is widely acknowledged that the state should bear the burden of proving the need to deny pretrial liberty, statutes usually do not identify the standard of proof that must be met. Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring:*

Social Policy and the Institution 280 (Pappenfort, et al. eds. 1973). Standard 4.2 imposes a requirement for "clear and convincing evidence," which falls somewhat short of the requirement that the offense be proved "beyond a reasonable doubt"—*In re Winship*, 397 U.S. 358 (1970)—but goes beyond the "probable cause" requirement in Standard 7.6 F.

4.3 Written reasons and review.

Whenever a decision is made at any stage of the proceedings to adopt an interim measure other than unconditional release, the decision maker should concurrently state in writing or on the record with specificity the evidence relied upon for that conclusion, and the authorized purpose or purposes that justify that action. A decision or order to hold an accused juvenile in detention should be invalid if the reasons for it are not attached to it. The statement of reasons should become an integral part of the record, and should be subject to and available for review at each succeeding stage of the process.

Commentary

In order to hold interim officials accountable for decisions denying pretrial liberty, a statement of reasons must be provided to the accused and to later reviewing authorities. This principal is incorporated in the federal adult criminal system by the Bail Reform Act of 1966, 18 U.S.C. § 3146(d), and in the English system, § 18 (8), Criminal Justice Act 1967. See also Sumner, "Locking Them Up," 17 *Crime & Delinq.* 168, 170 (1971); *Baldwin v. Lewis*, 300 F. Supp. 1220, 1232-33 (E.D. Wis. 1969), *rev'd on other grounds*, 442 F.2d 29 (7th Cir. 1971); *Doe v. State*, 487 P.2d 47, 53 (Alaska 1971); S. Norman, *Guides For the Use of Juvenile Detention and Shelter Care for Police, Probation and Court* 8 (1971); Metropolitan Social Services Department, Louisville and Jefferson County, Kentucky, "Analysis of Detention" 24-25 (1972).

4.4 Use of social history information.

Prior to adjudication, information gathered about the background of an accused juvenile for purposes of determining an interim status should be limited to that which is essential to a decision concerning unconditional release or the least intrusive alternative. Information so gathered should be disclosed only to the persons and to the extent necessary to reach, carry out, and review that decision, and should be available for no other purpose. If the juvenile is convicted, the

information gathered in the preadjudication stage may be used in determining an appropriate disposition.

Commentary

The gathering of information for an interim status decision must not go beyond the needs of the pretrial process, consistent with the presumption of innocence and the right to privacy. Additional information relevant to ultimate disposition may be compiled only if and after a determination of guilt. This rule is not, of course, intended to inhibit the collection of data needed for emergency purposes (Standard 4.5) or for research (Standard 10.8). See also Standard 7.6 E.

4.5 Limitations on treatment or testing.

A. Involuntary.

1. Prior to adjudication, an accused juvenile should not be involuntarily subjected to treatment or testing of any kind by the state or any private organization associated with the interim process except:

a. to test for the presence of a contagious or communicable disease that would present an unreasonable risk of infection to others in the same facility;

b. to provide emergency medical aid; or

c. to administer tests required by the court for determining competency to stand trial.

2. After adjudication, an accused juvenile may be subjected to involuntary, nonemergency testing only to the extent found necessary by a court, after a hearing, to aid in the determination of an appropriate final disposition.

B. Voluntary.

1. While in detention, an accused juvenile should be entitled to a prompt medical examination and to provision of appropriate nonemergency medical care, with the informed consent of the juvenile and a parent in accordance with subsection 2. below. Requirements of consent should be governed by the *Rights of Minors* volume.

2. Informed, written consent should be obtained before a juvenile may be required to participate in any program, designed to alter or modify behavior, that may have potentially harmful effects.

a. If the juvenile is under the age of sixteen, his or her consent and the consent of his or her parents both should be obtained.

b. If the juvenile is sixteen or older, only the juvenile's consent should be obtained.

c. Any such consent may be withdrawn at any time.

Commentary

The actions taken toward detainees must be reasonably related to the legitimate state interest in ensuring their appearance at trial. See *Cudnik v. Kreiger*, 392 F. Supp. 305, 310-312 (N.D. Ohio 1974); *Brenneman v. Madigan*, 343 F. Supp. 128 (N.D. Cal. 1972); *Rhem v. Malcolm*, 371 F. Supp. 594, 622 (S.D.N.Y. 1974); *Hamilton v. Love*, 328 F. Supp. 1182, 1191 (E.D. Ark. 1971); *Tyler v. Ciccone*, 299 F. Supp. 684 (W. D. Mo. 1969); *Inmates of Milwaukee County Jail v. Petersen*, 353 F. Supp. 1157, 1160, 1166-68 (E.D. Wis. 1973); *Collins v. Schoonfield*, 344 F. Supp. 257, 265 (D. Md. 1972); *Conklin v. Hancock*, 334 F. Supp. 1119, 1121 (D.N.H. 1971); *Davis v. Lindsay*, 312 F. Supp. 1134, 1139 (S.D.N.Y. 1970); *Dillard v. Pitchess*, 399 F. Supp. 1225, 1232-35 (C.D. Cal. 1975); *Tyrrell v. Taylor*, 394 F. Supp. 9, 19 (E.D. Pa. 1975); *People v. Von Diezelski*, 355 N.Y.S.2d 556, 562 (County Ct. 1974); *Powlowski v. Wullich*, 266 N.Y.S.2d 584, 539 (Sup. Ct. 1975); *Smith v. Sampson*, 349 F. Supp. 268 (D.N.H. 1972); *Seale v. Manson*, 326 F. Supp. 1375 (D. Conn. 1971); *Christman v. Skinner*, 323 N.Y.S.2d 767, 769, 67 Misc. 2d 232, 234 (Sup. Ct. 1971), *rev'd on other grounds*, 329 N.Y.S.2d 114 (App. Div. 1972). This concept has been specifically applied to juveniles. *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1371 (D.R.I. 1972). But *cf. Rigney v. Hendrick*, 355 F.2d 710, 715 (3d Cir. 1965). Therefore, Standard 4.5 A. permits involuntary treatment or testing only to the extent necessary for emergency purposes or competency examinations. See commentary to Standard 3.3. Such tests may be given only after providing the juvenile with adequate notice and an opportunity to be heard.

Once guilt has been established, subsection A. 2. permits involuntary testing to determine a proper disposition, if a hearing establishes the need for it.

In contrast, subsection B. provides for a full range of medical care for the juvenile with his or her consent and that of a parent. National Juvenile Law Center, "Law and Tactics in Juvenile Cases" 188 (1974). The concurrence of a parent guards against undue pressures for consent that might otherwise be applied to the juvenile.

Subsection B. 2. is taken directly from Standard 4.3 of the *Dispositions* volume of Juvenile Justice Standards. Reference is therefore made to the extensive commentary to that standard for a review of

authority on informed consent. In particular, see *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974); *United States ex rel. Wilson v. Coughlin*, 472 F.2d 100 (7th Cir. 1973); *Winters v. Miller*, 446 F.2d 65 (2d Cir. 1971); *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972); *In re Smith*, 295 A.2d 238 (Ct. Spec. App. Md. 1972); *Melville v. Sabbatino*, 313 A.2d 886 (Conn. Super. Ct. 1973).

In those situations in which consent is denied or cannot be obtained from the juvenile or parent, and emergency medical care is obviously needed to protect the health of the juvenile, subsection A. 1. b. permits treatment. When consent is denied, but the situation does not yet amount to an emergency, the court may order treatment. An example of such circumstances would be a diabetic juvenile who refuses treatment.

4.6 Violation of release conditions.

A willful violation by an accused juvenile of the conditions of release, or a willful failure to appear in court in response to a citation or summons, should be grounds for the issuance by the court of a summons based on that violation or failure to appear. A violation of conditions or a failure to appear should not constitute a criminal offense for which dispositional sanctions may be imposed, but should authorize the court to review, modify, or terminate the release conditions.

Commentary

This standard is in direct contrast to Standards 1.3 and 5.6 of the ABA Standards, *Pretrial Release*, which recommend that willful failures to appear and violations of conditions be made separate criminal offenses. There should be no need to proliferate criminal charges against a juvenile. Standard 4.6 permits a reassessment of the juvenile's interim status in these circumstances, but rearrest is not authorized unless the juvenile court first determines that a more restrictive interim status is necessary.

4.7 Prohibition against money bail.

The use of bail bonds in any form as an alternative interim status should be prohibited.

Commentary

Money bail is not often found in the pretrial process of juvenile justice. Courts either release or detain accused juveniles without regard to bondsmen or financial security. The question of whether money bail should be permitted in the juvenile process is a difficult one. It could lead to the same abuses and injustices which have come

under attack in the adult criminal justice system. See, *e.g.*, D. Freed and P. Wald, *Bail in the United States: 1964*, at 9-21 (1964); Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153, 154-55 (1973). This prospect has led commissions and others to recommend against the use of money bail. See President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 36 (1967); National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 259 (1973); Hill, "The Constitutional Controversy of a Juvenile's Right to Bail in Juvenile Preadjudication Proceedings," 1 *Hastings Const. L.Q.* 215, 228-29 (1974); Jones, "Pre-Hearing Detention of Youthful Offenders: No Place to Go," *Yale Rev. L. & Soc. Action* 28, 40 (Spring 1971). Release via money has also been condemned for its incompatibility with the general welfare function of the juvenile court. NPPA, "Standard Juvenile Court Act" § 17(6) (1959); Paulsen, "Fairness to the Juvenile Offender," 41 *Minn. L. Rev.* 547, 552 (1957); Note, "The Right to Bail and the Pre-'Trial' Detention of Juveniles Accused of 'Crime,'" 18 *Vand. L. Rev.* 2096, 2100 (1965); HEW, "Legislative Guide for Drafting Family and Juvenile Court Acts" 62-63 (1969); Davis, "Juvenile Rights During the Pre-Judicial Process," 21 *Prac. Law.* 23, 34 (1975); *Estes v. Hopp*, 438 P.2d 205 (Wash. 1968). Several courts have agreed, concluding that the procedures of the juvenile court provide an adequate substitute for bail. *Fulwood v. Stone*, 394 F.2d 939, 943 (D.C. Cir. 1967); *Baldwin v. Lewis*, 300 F. Supp. 1220, 1233 (E.D. Wis. 1969), *rev'd on other grounds* 442 F.2d 29 (7th Cir. 1971); *In re M.*, 89 Cal. Rptr. 33, 40, 473 P.2d 737 (1970); *Baker v. Smith*, 477 S.W.2d 149 (Ky. 1971). Some courts proceed on the theory that juvenile proceedings are civil rather than criminal, so that no right to, or need for, bail exists. *In re Pisello*, 293 N.E.2d 228 (Ind. App. 1973); *In re Castro*, 243 Cal. App. 2d 402, 52 Cal. Rptr. 469 (1966); *State ex rel. Peaks v. Allaman*, 115 N.E.2d 849 (Ohio App. 1952).

On the other hand, permitting the use of money bail as one of several pretrial options has been viewed as a potential liberalizing device to reduce the excessive rate of detention that characterizes juvenile justice. Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy for the Institution* 280 (Pappenfort, et al. eds. 1973); Boches, "Juvenile Justice in California: A Reevaluation," 19 *Hastings L.J.* 47 (1967); Note, "Juvenile Justice and Pre-Adjudication Detention," 1 UCLA-*Alaska L. Rev.* 154, 161 (1972). The fact that bail has been a traditional release mechanism for adults has led several courts and commentators to

conclude that it cannot be denied to juveniles accused of criminal conduct. *Trimble v. Stone*, 187 F. Supp. 483 (D.D.C. 1960); *State v. Franklin*, 12 So. 2d 211 (La. 1943); *Doe v. State*, 487 P.2d 47, 52-53 (Alaska 1971); Mora, "Juvenile Detention: A Constitutional Problem Affecting Local Government," 1 *Urban Law* 189 (1969); Dorsen and Rezneck, "*In re Gault* and the Future of Juvenile Law," 1 *Fam. L.Q.* 34-37 (1967); Comment, "Juvenile Right to Bail," 11 *J. of Fam. L.* 81 (1971). Several states have in fact granted a right to bail in juvenile proceedings by statute, although most have not. Ferster, Snethen, and Courtless, "Juvenile Detention: Protection, Prevention or Punishment?" 38 *Fordham L. Rev.* 161, 190-91 (1969); Note, "The Right to Bail and the Pre-'Trial' Detention of Juveniles Accused of 'Crime,'" 18 *Vand. L. Rev.* 2096, 2097 (1965); Davis, "Juvenile Rights During the Pre-Judicial Process," 21 *Prac. Law.* 23, 33-34 (1975).

Several alternative systems have been proposed to avoid an all-or-nothing choice on the issue of money bail. First, to prevent the abuses of the adult system, compensated sureties—*i.e.*, bondsmen, rather than money bail in general—could be prohibited. Cash deposits with the court, similar to the "ten percent" programs authorized in Illinois, the federal courts, and other jurisdictions, could replace the requirement for professional bondsmen. See Bowman, "The Illinois Ten Percent Bail Deposit Provision," 1965 *U. Ill. L.F.* 35, 37 (1965); Rice and Gallagher, "An Alternative to Professional Bail Bonding: A 10% Cash Deposit for Connecticut," 5 *Conn. L. Rev.* 143, 147 (1972); 18 U.S.C. § 3146(a); Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153, 158-59 (1973).

Second, juveniles might be permitted to post their own funds as collateral. Recommendations favoring this limited alternative have been based on the fact that many juveniles earn money and would be less inclined to flee if their own funds would thereby be lost. Wald, "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119, 124 (Rosenheim ed. 1976). While such a system would conflict with the prevailing rules concerning the voidability of the contracts of minors, as noted in *Doe v. State*, 487 P.2d 47, 52 (Alaska 1971), these rules are statutory and could be amended.

Finally, bail in one form or another might be permitted only where its use resulted in release. Imposing bail in an amount intended or effective to insure detention would be prohibited.

Standard 4.7 reflects the joint commission's conclusion that despite the advantages of alternative forms of money bail, all systems based on posting collateral or promising to pay money as a condition

of release should be prohibited in the juvenile system. Bail inherently discriminates against persons without sufficient funds. It may exacerbate family problems when parents are forced to post their funds in order to gain the release of a child. Its availability might reduce the pressure for more meaningful reform, and might—despite admonitions to the contrary—be used as a substitute for other forms of release. See National Advisory Commission on Criminal Justice Standards and Goals, "Corrections," *supra* at 259. The problems inherent in the use of money bail outweigh the benefits it might afford, and the other options provided by these standards seem adequate to reform the current system.

PART V: STANDARDS FOR THE POLICE

5.1 Policy favoring release.

Each police department should adopt policies and issue written rules and regulations requiring release of all accused juveniles at the arrest stage pursuant to Standard 5.6 A., and adherence to the guidelines specified in Standard 5.6 B. in discretionary situations. Citations should be employed to the greatest degree consistent with the policies of public safety and ensuring appearance in court to release a juvenile on his or her own recognizance, or to a parent.

Commentary

The suggestion that police departments promulgate written policies to govern the issue of custody after arrest has been made by several authors. *E.g.*, National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 249, 264 § 8.1(1); Ferster and Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3, 29 (1972); D. Freed and P. Wald, *Bail in the United States: 1964*, at 104; Colorado Council of Juvenile Court Judges, "Standards of Juvenile Justice" § 2.2(a)(1) (1974). The reference to "public safety" reflects Standard 2.3(a) of the ABA Standards, *Pretrial Release*, and should not be interpreted as limiting the specific provisions of Standard 5.6 below.

5.2 Special juvenile unit.

Each police department should establish a unit or have an officer specially trained in the handling of juvenile cases to effect arrests of juveniles when arrest is necessary, to make release decisions concerning juveniles, and to review immediately every case in which an arrest

has been made by another member of the department who declines to release the juvenile. All arrest warrants, summonses, and possible citations involving accused juveniles should be handled by this unit.

Commentary

The special considerations associated with the arrest of juveniles usually require particular expertise. Many police departments have already established an entire unit to specialize in juvenile matters and develop a working relationship with the juvenile court. Smaller departments should at a minimum designate a particular officer to become familiar with this area. See President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1973); Colorado Council of Juvenile Court Judges, "Standards of Juvenile Justice" § 2.2(a)(2) (1974).

5.3 Duties.

The arresting officer should have the following duties with regard to the interim status of an accused juvenile:

A. Inform juvenile of rights. The officer should explain in clearly understandable language the warnings required by the constitution regarding the right to silence, the making of statements, and the right to the presence of an attorney. The officer should also inform every arrested juvenile who is not promptly released from custody of the right to have his or her parent contacted by the department. In any situation in which the accused does not understand English, or in which the accused is bilingual and English is not his or her principal language, the officer should provide the necessary information in the accused's native language, or provide an interpreter who will assure that the juvenile is informed of his or her rights.

B. Notification of parent. The arresting officer should make all reasonable efforts to contact a parent of the accused juvenile during the period between arrest and the presentation of the juvenile to any detention facility. The officer should inform the parent of the juvenile's right to the presence of counsel, appointed if necessary, and of the juvenile's right to remain silent.

C. Presence of attorney. The right to have an attorney present should be subject to knowing, intelligent waiver by the juvenile following consultation with counsel. If the police question any arrested juvenile concerning an alleged offense in the absence of an attorney for the juvenile, no information obtained thereby or as a result of the questioning should be admissible in any proceeding.

D. Recording of initial status decision. If the arresting officer does not release the juvenile within two hours, the reasons for the decision should be recorded in the arrest report and disclosed to the juvenile, counsel, and parent.

E. Notification of facility. Whenever an accused juvenile is taken into custody and not promptly released, the arresting officer should promptly inform the juvenile facility intake official of all relevant factors concerning the juvenile and the arrest, so that the official can explore interim status alternatives.

F. Transportation to facility. The police should, within [two to four hours] of the arrest, either release the juvenile or, upon notice to and concurrence by the intake official, take the juvenile without delay to the juvenile facility designated by the intake official. If the intake official does not concur, that official should order the police to release the juvenile.

Commentary

The duties specified in A., B., and C. reflect the requirements of law, *e.g.*, *Miranda v. Arizona*, 384 U.S. 436 (1966) and *In re Gault*, 387 U.S. 1 (1967), and the special nature of a juvenile arrest. Compare this standard to Standard 8.1 of the National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 264 (1973):

> When police have taken custody of a minor and prior to disposition under Paragraph 2 above, the following guidelines should be observed:
>
> 1. Under the provisions of *Gault* and *Miranda*, police should first warn juveniles of their right to counsel and the right to remain silent while under custodial questioning.
>
> 2. The second act after apprehending a minor should be the notification of his parents.
>
> 3. Extrajudicial statements to police or court officers not made in the presence of parents or counsel should be inadmissible in court.
>
> 4. Juveniles should not be fingerprinted or photographed or otherwise routed through the usual adult booking process.
>
> 5. Juvenile records should be maintained physically separate from adult case records.

A report on the application of *Gault* appears in Ralston, "Intake: Informal Disposition or Adversary Proceeding?" 17 *Crime and Delinq.* 160 (1971).

Subsection B. specifies that the parents of the juvenile be notified. The commission rejected the suggestion that juveniles be given dis-

cretion to demand that their parents *not* be contacted. See *King v. State*, 281 So. 2d 612 (Fla. App. 1973).

Subsection C. recognizes the importance of having an attorney present during questioning, and not just a parent. See *Ezell v. State*, 489 P.2d 781 (Okla. Crim. App. 1971); *Lovell v. State*, 525 S.W.2d 511, 514 (Tex. App. 1975); *In re F. G.*, 511 S.W.2d 370 (Tex. App. 1974); *In re R. E. J.*, 511 S.W.2d 347 (Tex. App. 1974). See also *Gallegos v. Colorado*, 370 U.S. 49 (1962). It also reflects the general rule "that a juvenile is not presumed, for reason of age alone, to be incapable of waiving his rights without parental or legal guidance." Davis, "Juvenile Rights During the Pre-Judicial Process," 21 *Prac. Law.* 23, 36-39 (1975) (collecting cases which uphold waiver under carefully scrutinized circumstances). See also *In re J. F. T.*, 320 A.2d 322 (D.C. App. 1974) (no "per se" rule re confessions in absence of parent or counsel); *In Interest of M.C.*, 504 S.W.2d 641 (Mo. App. 1974) (burden is on the state with regard to voluntariness of confessions); *In re Betrand*, 303 A.2d 486 (Pa. 1973) ("perfunctory" recital of Miranda warnings insufficient); *Bridges v. State*, 299 N.E.2d 616 (Ind. 1973) (right to counsel must be explained to parents and juvenile at each stage of process); *In re F. G.*, *supra* (waiver must be in writing). See *Pretrial Court Proceedings* Standards 5.1 and 6.1, which provide in part that the juvenile's right to counsel attaches as soon as the juvenile is taken into custody, is the subject of a delinquency petition, or appears at an intake conference; that unless waived by counsel, statements made by the juvenile to an intake officer or social service worker are inadmissible; and that the juvenile's right to counsel may not be waived.

The requirement of a written record setting out the basis of the arresting officer's initial status decision is discussed in the commentary to Standard 4.3. It is similar to the requirement recommended for the adult criminal justice system. ABA Standards, *Pretrial Release* § 2.2(d) (1968).

Since the arresting officer will not make the status decision if custody continues (Standard 5.5), it is important that the officer notify immediately the person who *will* make the decision. Subsection E. requires the officer to inform the juvenile facility intake official of his or her decision to continue custody, so that the search for an alternative to detention may begin before the juvenile arrives at the facility. The intake official could obviate the need for such transportation if an alternative could be identified quickly.

Standard 5.3 F. reflects the commission's belief that two hours of police custody should provide enough time to notify parents, counsel, and the intake official, and reach an initial status decision under

Standard 5.6. See Metropolitan Social Services Department, Louisville and Jefferson County, Kentucky, "Analysis of Detention" 4 (1972) (approximately 60 percent of juveniles admitted to detention center arrive within two hours of arrest; over 85 percent within three hours of arrest). If the intake official thereafter disagrees with the police view respecting continued custody of the juvenile, the intake official's determination controls, and the juvenile is to be released with a citation under Standard 5.1. The only exception to this rule would come from the arresting officer's determination under Standard 5.7 of a need for protective custody.

The specific time limit in this standard is in contrast to the language of many statutory limitations on police custody in the United States. "The most severe one is a requirement that the police take the child before a juvenile court 'immediately,' 'forthwith,' or 'without delay.'" Ferster and Courtless, "Juvenile Detention in an Affluent Country," 6 *Fam. L.Q.* 3, 17 (1972).

The executive committee amended Standard 5.3 F. by changing two hours to two to four hours and bracketing the two-to-four-hour time limit. However, the executive committee reasserted its preference for the two-hour time limit, while recognizing that two hours might be impractical for some jurisdictions.

5.4 Holding in police detention facility prohibited.

The holding of an arrested juvenile in any police detention facility prior to release or transportation to a juvenile facility should be prohibited.

Commentary

The arrest of a juvenile is to be followed either by release or transportation to a juvenile facility. The intermediate step of holding juveniles in a police lock-up is prohibited.

However, in small communities which do not have special facilities designed for the detention of juveniles, the local juvenile court authorities should have the duty to designate facilities to be used for the purpose. Such designated facilities should not include premises in which the juvenile would come into contact with adult detainees charged with or awaiting sentencing for the commission of a crime.

At present, juveniles are held for varying lengths of time in police facilities. D. Freed and P. Wald, *Bail in the United States: 1964*, at 96–98; Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy for the Institution* 274–75 (Pappenfort, et al. eds. 1973); J. Downey, "Why Children Are in Jail and How

to Keep Them Out" 3, 4 (undated). Recommendations for direct transportation of arrested juveniles to juvenile facilities have been made by Downey, *supra* at 6; R. Sarri, "Under Lock and Key: Juveniles in Jail and Detention" 67 (1973); Rosenheim, *supra* at 271. But *cf.* "Designation of Facilities for the Questioning, Detention and 'Holding' of Children Under the Family Court Act," at 1 (report prepared by the Subcommittee on Detention and Placement for Children for the Subcommittee on Liaison with Public and Private Agencies of the Departmental Committees of the Appellate Divisions, First and Second Departments [New York], December 1972) ("... the Subcommittee concluded that the most practical and also the most desirable places for the questioning of alleged juvenile delinquents are certain areas within police station houses, when properly supervised").

5.5 Interim status decision not made by police.

The observations and recommendations of the police concerning the appropriate interim status for the arrested juvenile should be solicited by the intake official, but should not be determinative of the juvenile's interim status.

Commentary

It is important that the official directly involved in apprehending the juvenile and taking him or her into initial custody *not* have the authority to impose continued detention. Model codes emphasize that detention is not an appropriate police decision. NPPA, "Standard Juvenile Court Act" § 2(h) (1959); NCCD, "Standards and Guides for Detention of Children and Youth" (1961); National Advisory Commission of Criminal Justice Standards and Goals, "Corrections" 250, 259, 264 (1973). See also R. Sarri, *Under Lock and Key: Juveniles in Jail and Detention* 68 (1973); D. Freed and P. Wald, *Bail in the United States: 1964*, at 104. S. Norman, "Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation, and Courts" 9 (unpublished paper on file with the Juvenile Justice Standards Project, 1971). At the same time, since the arresting officer may have information highly relevant to the risks involved and the making of a wise status decision, his or her observations and recommendations should always be solicited and accorded respect by the intake official.

5.6 Guidelines for status decision.

A. Mandatory release. Whenever the juvenile has been arrested for a crime which in the case of an adult would be punishable by a sen-

tence of [less than one year], the arresting officer should, if charges are to be pressed, release the juvenile with a citation or to a parent, unless the juvenile is in need of emergency medical treatment (Standard 4.5 A. 1. b.), requests protective custody (Standard 5.7), or is known to be in a fugitive status.

B. Discretionary release. In all other situations, the arresting officer should release the juvenile unless the evidence as defined below demonstrates that continued custody is necessary. The seriousness of the alleged offense should not, except in cases of a class one juvenile offense involving a crime of violence, be sufficient grounds for continued custody. Such evidence should only consist of one or more of the following factors as to which reliable information is available to the arresting officer:

1. that the arrest was made while the juvenile was in a fugitive status;

2. that the juvenile has a recent record of willful failure to appear at juvenile proceedings.

Commentary

Current statutory provisions governing status decisions by the police often lack specificity and fail to separate criminal from noncriminal situations. Although oriented toward release, they tend to grant virtually unlimited discretion to continue custody:

> Most statutory references to the police suggest a preference for release. The Affluent County [Maryland] provision is typical. It 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. 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" or, as in Affluent County, "impracticable," or not in the best interests of the child or community. Only a few statutes, such as Georgia's, express a preference for detaining rather than releasing a juvenile. Ferster and Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3, 16–17 (1972).

The Georgia provision criticized above was replaced in 1971 with language favoring release. See Ga. Code Ann. § 24A-1401 (1974 Supp.). See also Note, "Juvenile Justice and Pre-Adjudication Detention," 1 *UCLA-Alaska L. Rev.* 154, 166 (1972) (Alaska Stat. § 47-10.140 [1962] permits a peace officer to detain a juvenile in a detention facility "if in his opinion it is necessary to do so to protect the minor or the community").

Standard 5.6 grants less discretion to the arresting officer to maintain custody of the juvenile. Detention is allowed only if the officer has information which, under the standards, permits him or her to transport the juvenile to a detention facility. If such information is lacking, there is no discretion to continue holding the juvenile.

The information that grants discretion to the police under Standard 5.6 is identical to the evidence that the intake officer may consider in reaching the interim status decision under Standard 6.6. Standard 5.6, therefore, exemplifies the sort of police-court coordination that should characterize the entire interim process:

> It has been suggested that juvenile courts, in consultation with the police, should formulate written guides to govern detention practices; police detention standards should be made to coincide with court standards so that a child will be detained initially only in situations where there is a firm expectation that the court will continue that detention. D. Freed and P. Wald, *Bail in the United States: 1964*, at 104.

See also Virginia Bureau of Juvenile Probation and Detention, "The Study of the Detention Needs of an Eleven County Jurisdiction Area in Northwestern Virginia" 32 (1971), which recommends "that probation, court, law enforcement and welfare departments should confer to improve communication, services, and mutual understanding in establishing uniform detention practices."

The term "fugitive status" in this standard refers generally to "escape" from a detention or correctional facility in any jurisdiction.

5.7 Protective Custody.

A. Notwithstanding the issuance of a citation, the arresting officer may take an accused juvenile to an appropriate facility designated by the intake official if the juvenile would be in immediate danger of serious bodily harm if released, and the juvenile requests such custody.

B. A decision to continue or relinquish protective custody should be made by the intake official in accordance with Standard 6.7.

Commentary

By limiting protective custody to situations of *immediate* danger of *serious bodily harm* to the juvenile, Standard 5.7 excludes consideration of generalities such as that the juvenile would be "unsafe" on the streets. *Bodily* harm is emphasized to prohibit custody based simply on the chance that the youth may "get into more trouble." "Hidden Closets" 60-61 (1975).

Discretion to use protective custody is further reduced by the requirement that the juvenile *request* protection. The juvenile may not obtain shelter under this standard simply by requesting it, however, for the arresting officer must still determine that a serious risk of immediate bodily injury is present.

Standard 5.7 reflects the same considerations that will govern the intake official under Standard 6.7.

PART VI: STANDARDS FOR THE JUVENILE FACILITY INTAKE OFFICIAL

6.1 Under authority of statewide agency.

The juvenile facility intake official should be an employee of or subject to the authority of the statewide agency charged with responsibility for all aspects of nonjudicial interim status decisions, as that agency is described in Standards 11.1 and 11.2.

When, for political or geographic considerations, some agencies are within the jurisdiction of local government, the statewide department should be responsible for the setting and enforcement of standards and the provision of technical assistance, training, and fiscal subsidies.

Commentary

In order for the statewide agency described in Part XI to have adequate information about the interim process, and effective control over compliance with these standards, each intake official involved in interim status decision making must be under its authority and direction.

Standard 6.1 was amended by adding a new second paragraph based on *Corrections Administration* Standard 2.1 to express a strong preference for a single statewide agency, while allowing for geographic, political, and other special circumstances which may require a different administrative structure in some jurisdictions.

6.2 Twenty-four-hour duty.

An intake official should be available twenty-four hours a day, seven days a week, to be responsible for juvenile custody referrals.

Commentary

Since juveniles are usually in school during normal working hours, and since much crime and many arrests occur outside of the con-

ventional five-day work week, it is important, in the interest of justice, that an intake official be available during the balance of each day and on weekends. Recommendations for twenty-four-hour and weekend intake duty are not uncommon. J. Downey, "Why Children Are in Jail and How to Keep Them Out" 6 (HEW undated); Wald, "Pretrial Detention of Juveniles," in *Pursuing Justice for the Child* 119, 121, 127 (Rosenheim ed. 1976); R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 71 (1974); Ferster and Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3, 29 (1972); "Hidden Closets" 5 (1975); Sheridan, "Juvenile Court Intake," 2 *J. Fam. L.* 139, 152 (1962); HEW, U.S. Children's Bureau, "Standards for Juvenile and Family Courts" 23 (1966).

Judges and lawyers must also be on call when detention is threatened, or the rights and procedures detailed in Standards 6.5 and 7.6 will not work. See Wald, *supra;* Edwards, "The Rights of Children," 37 *Fed. Prob.* 34, 36 (1973).

6.3 Location of official.

In order to facilitate prompt and effective interim decisions, and to reduce the unnecessary transportation and detention of arrested juveniles, the intake official should be located at the most accessible office and position in the interim process. This central office need not be a place of juvenile detention.

Commentary

The intake official's primary function is to make interim status decisions, not administer a detention facility. The official should therefore be located at the place where he or she can most effectively assemble the information with which to reach those decisions and reduce the unnecessary transportation and detention of juveniles prior to that decision. The disadvantages of locating the intake official at the juvenile facility have been noted:

> It is important to recognize that the location of intake officials at both geographic and temporal remoteness from this first, preliminary policy judgment in favor of holding [the arresting officer's initial decision to continue custody] puts the detention personnel at a decided disadvantage in undertaking an uninhibited, *de novo* review. Yet recent statutes rely heavily on this type of review. Structurally, so to speak, detention intake personnel are poorly situated to contradict the original judgment of law enforcement officials. Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy and the Institution* 253, 271-72 (Pappenfort, et al. eds. 1973).

6.4 Responsibility for status decision.

Once an arrested juvenile has been brought to a juvenile facility, the responsibility for maintaining or changing interim status rests entirely with the intake official, subject to review by the juvenile court. Release by the facility should be mandatory in any situation in which the arresting officer was required to release the juvenile but failed to do so.

Commentary

Standard 6.4 is designed to ensure consistent application of Standard 5.5.

6.5 Procedural requirements.

A. Provide information. The intake official should:

1. inform the accused juvenile of his or her rights, as in Standard 5.3 A.;

2. inform the accused juvenile that his or her parent will be contacted immediately to aid in effecting release; and

3. explain the basis for detention, the interim status alternatives that are available, and the right to a prompt release hearing.

B. Notify parent. If the arresting officer has been unable to contact a parent, the intake official should make every effort to effect such contact. If the official decides that the juvenile should be released, he or she may request a parent to come to the facility and accept release.

C. Notify attorney. Unless the accused juvenile already has a public or private attorney, the intake official should promptly call a public defender to represent the juvenile.

D. Reach status decision.

1. The intake official should determine whether the accused juvenile is to be released with or without conditions, or be held in detention.

2. If the juvenile is not released, the intake official should prepare a petition for a release hearing before a judge or referee, which should be filed with the court no later than the next court session, or within [twenty-four hours] after the juvenile's arrival at the intake facility, whichever is sooner. The petition should specify the charges on which the accused juvenile is to be prosecuted, the reasons why the accused was placed in detention, the reasons why release has not been accomplished, the alternatives to detention that have been explored, and the recommendations of the intake official concerning interim status.

3. If the court is not in session within the [twenty-four-hour] period, the intake official should contact the judge, by telephone or otherwise, and give notice of the contents of the petition.

E. Continue release investigation. If an accused juvenile remains in detention after the initial court hearing, the intake official should review in detail the circumstances of the arrest and the alternatives to continued detention. A report on these investigations, including any information that the juvenile's attorney may wish to have added, should be presented to the court at the status review hearing within seven days after the initial hearing.

F. Maintain records. A written record should be kept of the incidence, duration, and reasons for interim detention of juveniles. Such records should be retained by the intake official and staff, and should be available for inspection by the police, the prosecutor, the court, and defense counsel. The official should continuously monitor these records to ascertain the emergence of patterns that may reflect misuse of release standards and guidelines, the inadequacy of release alternatives, or the need to revise standards.

Commentary

The basic outline and sequence of events presented in Standard 6.5 are similar to those found, *e.g.*, in Article V of the Rules of the Juvenile Court for the State of Connecticut (1968); HEW, "Legislative Guide for Drafting Family and Juvenile Court Acts" § 23 (1969); NPPA, "Standard Family Court Act" § 17 (1959); and Ga. Code Ann. § 24A-1402 (1974 Supp.).

There is some question as to whether a juvenile should have the right to preclude the arresting authorities from contacting his or her parents concerning the arrest when antagonism between parent and child is alleged. The commission believes, on balance, that arresting officers and intake officials should make every effort to contact the parents of an accused juvenile, and that only the court should be empowered to make a contrary decision.

The twenty-four-hour limit in subsection D. pertains to the filing of a petition for detention, not to the rendering by the court of a detention decision. If the juvenile is not released within that time, a detention hearing is required by Standard 7.6 to be held no later than twenty-four hours after the filing of the petition. The maximum time period between arrest and a detention decision by the court is therefore forty-eight hours.

On the issue of a legal right to a detention hearing, see the commentary to Standard 7.6.

The responsibility of the intake official with regard to the interim status of the juvenile does not cease with the petition or the detention hearing. In the event of detention, subsection E. requires the intake official to continue efforts to identify a less intrusive alternative.

The significance of the written record requirement in subsection F. is discussed in the commentary to Standard 4.3. The availability to the police of the court's decision and reasons is a particularly useful feature of these standards, since current secrecy practices preclude the police from knowing and understanding court outcomes in difficult cases and from conforming their own procedures to guidelines established by the courts.

6.6 Guidelines for status decision.

A. Mandatory release. The intake official should release the accused juvenile unless the juvenile:

1. is charged with a crime of violence which in the case of an adult would be punishable by a sentence of one year or more, and which if proven is likely to result in commitment to a security institution, *and* one or more of the following additional factors is present:

a. the crime charged is a class one juvenile offense;

b. the juvenile is an escapee from an institution or other placement facility to which he or she was sentenced under a previous adjudication of criminal conduct;

c. the juvenile has a demonstrable recent record of willful failure to appear at juvenile proceedings, on the basis of which the official finds that no measure short of detention can be imposed to reasonably ensure appearance; or

2. has been verified to be a fugitive from another jurisdiction, an official of which has formally requested that the juvenile be placed in detention.

B. Mandatory detention. A juvenile who is excluded from mandatory release under subsection A. is not, *pro tanto*, to be automatically detained. No category of alleged conduct in and of itself may justify a failure to exercise discretion to release.

C. Discretionary situations.

1. Release vs. detention. In every situation in which the release of an arrested juvenile is not mandatory, the intake official should first consider and determine whether the juvenile qualifies for an available diversion program, or whether any form of control short of detention is available to reasonably reduce the risk of flight or misconduct. If no such measure will suffice, the official should

explicitly state in writing the reasons for rejecting each of these forms of release.

2. Unconditional vs. conditional or supervised release. In order to minimize the imposition of release conditions on persons who would appear in court without them, and present no substantial risk in the interim, each jurisdiction should develop guidelines for the use of various forms of release based upon the resources and programs available, and analysis of the effectiveness of each form of release.

3. Secure vs. nonsecure detention. Whenever an intake official determines that detention is the appropriate interim status, secure detention may be selected only if clear and convincing evidence indicates the probability of serious physical injury to others, or serious probability of flight to avoid appearance in court. Absent such evidence, the accused should be placed in an appropriate form of nonsecure detention, with a foster home to be preferred over other alternatives.

Commentary

Standard 6.6 A. represents the heart of the *Interim Status* volume and one of the most controversial of its formulations. To some it undesirably authorizes preventive detention because it establishes a category of juveniles whose pretrial *release* is not mandatory. To others it undesirably interferes with community safety by forbidding the *detention* of persons not included within its specifications. On balance, the commission believes it presents a reasonable middle ground, characterized by a distinct preference for release, a permissible but minimal category of detainees, and a requirement of *candor* in identifying those who may be detained.

The categories are (a.) juveniles charged with a class one juvenile offense involving a crime of violence, (b.) escapees from post-trial placement facilities, and (c.) juveniles whose demonstrated record of flight makes it likely that they would fail to appear in court if released. In none of these categories is *detention* automatic; the rule instead is that persons not in these categories are automatically to be *released.* In order to detain those who are detainable under 6.6 A., the procedures of Standard 7.6 must be followed. There is, of course, one additional ground for detention, not stated in the standard, upon which courts possess inherent power to deny bail: "a substantial probability of danger to witnesses should the applicant be granted bail." *Carbo v. United States,* 82 Sup. Ct. 662 (Douglas, J. as Circuit

Justice, 1962) ("repeated threats of injury to the person and family of the government's principal witness").

The first of the stated exceptions to mandatory release, a charge of a class one juvenile offense involving a crime of violence, conforms to the rule and practice almost everywhere and permits judicial discretion, rather than a right to bail, to govern the release or detention of persons involved in the most serious offenses. The test in such cases, according to most state constitutions, is whether "the evidence is clear or the presumption great." In the federal system, bail in capital cases in 1789 depended on "the nature and circumstances of the offense, and of the evidence, and usages of law." See D. Freed and P. Wald, *Bail in the United States: 1964*, at 2-3. So long as the principles in Part III of these standards and the procedures in Standard 7.6 are followed, the commission believes that the traditional exception should remain.

The remaining three exceptions in Standard 6.6 A., *i.e.*, escape status, recent failure to appear, and fugitive status, all deal with flight, the principal risk to be avoided by the bail process. The requirement that the failure to appear record be "demonstrable" rather than in accord with the rules of evidence is consistent with Standard 7.6 D. See *Moss v. Weaver*, 525 F.2d 1258, 1260-61 (5th Cir. 1976).

Subsection B. emphasizes that the alleged criminal offense is never sufficient by itself to justify detention. See *In re M.*, 89 Cal. Rptr. 33, 473 P.2d 737, 747 (1970); *In re Macidon*, 49 Cal. Rptr. 861 (1966).

Subsection C. 1., outlawing mandatory detention, is simply the converse of subsection A.

Instead of attempting to formulate guidelines for the use of various forms of release and control, subsection C. 2. requires that the characteristics and needs of each jurisdiction determine the development of such guidelines. The one exception is that secure detention should be a last resort. Edwards, "The Rights of Children," 37 *Fed. Prob.* 34, 36 (1973); Metropolitan Social Services Department, Louisville and Jefferson County, Kentucky, "Analysis of Detention" 25 (1972). Subsection C. 3. permits secure detention to be imposed only when there is a serious threat of physical injury to others or avoidance of court processes. Unless compelling indications of those possibilities are present, nonsecure detention, and the least intrusive form thereof, is to be utilized.

A recent decision by the Court of Appeals of New York illustrates the inadequacy of procedures for the pretrial detention of juveniles which these standards would address. *People ex rel. Robert Wayburn, law guardian, on behalf of Charles L. v. Schupf*, 39 N.Y.2d

682 (1976). The court below had ruled unconstitutional a provision of the Family Court Act that permitted the preventive detention of juveniles before trial, based on "the likelihood of committing another crime," a ground that the lower court found to be prohibited for adults. The lower court (Brownstein, J. in the Supreme Court, Kings County, reviewing a proceeding in the Family Court of Kings County) believed that equal protection of the law was violated because there was no compelling state interest or rational basis "for prohibiting preventive detention for adults while allowing it for juveniles." *People v. Schupf*, 80 Misc. 2d 730 (1974).

The court of appeals reversed, upholding detention because "there is a compelling state interest to be served in differentiating between juveniles charged with delinquency and adults charged with crime with respect to preventive detention." Such a distinction was said to reflect two fundamental concerns—to protect the community *and* "to protect and shelter children who in consequence of grave antisocial behavior are demonstrably in need of special treatment and care." The court said it did not know whether Charles L. had been initially ordered detained to protect the public, or benefit the juvenile, or both, because the Act did not specify its purpose and "the record contains no recital by the family court judge of the purpose behind the detention of Charles L."

Several factual assertions and omissions did receive the court of appeals' attention: (1) that it did "not find significant the statistics . . . that in New York City . . . a larger percentage of youngsters charged in delinquency proceedings were held in pretrial detention than were ultimately placed in training schools." It must be apparent, the court said, "that there is a vastly different body of relevant data on which to make an informed determination as to the desirability of placement after the dispositional hearing . . . [and] caution and concern for both the juvenile and society may indicate the more conservative decision to detain at the very outset"; (2) that, although no empirical evidence whatever was adduced on this point, "our society may also conclude that there is a greater likelihood that a juvenile charged with delinquency, if released, will commit another criminal act than that an adult charged with crime will do so"; and (3) that although no alternatives to prevent further crime were presented, or facts respecting them found, the court could nevertheless "conclude that it cannot be said that a less burdensome means could be found to achieve that objective."

The distressing state of juvenile law reflected in the *Charles L.* case is unfortunate for a number of reasons. First, under (1), the court offered no explanation in law or in policy, in the interests either of

children or of society, why prior to trial "the more conservative decision to detain" is either legal or wise, *i.e.*, why the right to liberty of an unconvicted juvenile should be inferior to that of a juvenile found to be guilty. The court seemed in essence to be establishing a new rule to the effect that deficiencies in information at the outset of delinquency cases require judges to resolve doubts in favor of preferring pretrial detention over pretrial release. The legislature has made no such declaration of policy, and modern standards run the other way. The right to bail for adults and juveniles alike dictates a policy preference for release.

Second, under (2), the court cited no legislative finding to the effect that accused juveniles are more likely to commit crimes on release than are adults in a similar situation, and there are to our knowledge no empirical studies to support such a finding as a general rule. Attempts to predict future criminal behavior have been notoriously unsuccessful, whether at the bail stage, at sentencing, or at parole release. And even if prediction would be possible in some cases with some accused offenders, it would require a particularized finding about a specific individual, based on a factual inquiry about him or her rather than a court-made assumption about all juveniles.

Finally, under (3), the court upheld without any consideration of lesser alternatives to reduce the risk of crime, and without any findings by the court below, the conclusion that the *most* burdensome pretrial decision, the alternative most detrimental to the interests of the juvenile, *i.e.*, pretrial detention, was a perfectly appropriate ruling by a family court. This conclusion runs directly contrary to the emerging public policy, incorporated in this volume of standards, favoring the least burdensome and least detrimental alternative. Why the court of appeals strayed so far, and so unnecessarily, from that policy is left unexplained.

6.7 Protective detention.

A. Placement in a nonsecure detention facility solely for the protection of an accused juvenile should be permitted only upon the voluntary written request of the juvenile in circumstances that present an immediate threat of serious bodily harm to the juvenile if released.

B. In reaching this decision, or in reviewing a protective custody decision made by the arresting officer, the intake official should first consider all less restrictive alternatives, and all reasonably ascertainable factors relevant to the likelihood and immediacy of serious bodily harm resulting from interim release or control.

Commentary

Standard 6.7 presents the counterpart to Standard 5.7. It should be noted, however, that 6.7 permits only *nonsecure* detention for the protection of the juvenile:

> Most children who need protective custody for their own physical safety could get it in places other than a juvenile hall. . . . A youth fearing reprisal might better be "hidden out" in a remote foster home. After all, "reprisal" assaults are not unknown in juvenile hall. "Hidden Closets" 61.

PART VII: STANDARDS FOR THE JUVENILE COURT

7.1 Authority to issue summons in lieu of arrest warrant.

Judges should be authorized to issue a summons (which may be served by certified mail or in person) rather than an arrest warrant in every case in which a complaint, information, indictment, or petition is filed or returned against an accused juvenile not already in custody.

Commentary

This standard and Standard 7.2 are the judicial counterpart of the police citation favored in Standard 5.6 A. In circumstances in which a juvenile might appropriately be arrested pursuant to a warrant, the judge should be given the alternative to issue a summons to the juvenile. The summons would be identical in legal effect to an arrest warrant but would not require that the juvenile be formally taken into custody.

Standard 7.1 is similar to Standard 3.1 of the ABA Standards, *Pretrial Release*, its purpose being to reduce unnecessary detention from the first point of contact between law enforcement authorities and the accused individual. Service by certified mail is recommended by ABA Standard 3.4. Rule 4 of the Federal Rules of Criminal Procedure authorizes extensive use of the summons procedure.

7.2 Policy favoring summons over warrant.

In the absence of reasonable grounds indicating that, if an accused juvenile is not promptly taken into custody, he or she will flee to avoid prosecution, the court should prefer the issuance of a summons over the issuance of an arrest warrant.

Commentary

Standard 7.2 carries into the juvenile process the policy of Standard 3.2 of the ABA Standards, *Pretrial Release*. See also Rule 4 of the Federal Rules of Criminal Procedure.

7.3 Application for summons or warrant.

Whenever an application for a summons or warrant is presented, the court should require all available information relevant to an interim status decision, the reasons why a summons or warrant should be issued, and information concerning the juvenile's schooling or employment that might be affected by service of a summons or warrant at particular times of the day.

Commentary

Standard 7.3 is in accord with Standard 3.3 of the ABA Standards, *Pretrial Release*.

7.4 Arrest warrant to specify initial interim status.

A. Every warrant issued by a court for the arrest of a juvenile should specify an interim status for the juvenile. The court may order the arresting officer to release the juvenile with a citation, or to place the juvenile in any other interim status permissible under these standards.

B. The warrant should indicate on its face the interim status designated. If any form of detention is ordered, the warrant should indicate the place to which the accused juvenile should be taken, if other than directly to court. In each such case, the court should simultaneously file a written statement indicating the reasons why no measure short of detention would suffice.

Commentary

Standard 7.4 takes the three previous standards one step further. It requires that the interim status decision be specified in the warrant, and that the details and reasons for any detention be stated with specificity. Should additional information become available to the arresting officer indicating that the initial status designated by the court is inappropriate, that information should, of course, be made known to the court immediately.

7.5 Service of summons or warrant.

In the absence of compelling circumstances that prompt the issu-

ing court to specify to the contrary, a summons or warrant should not be served on an accused juvenile while in school or at a place of employment.

Commentary

Unless compelled to do otherwise, the court should direct that service or arrest be made at a time when the fewest ramifications to the juvenile will occur.

7.6 Release hearing.

A. Timing. An accused juvenile taken into custody should, unless sooner released, be accorded a hearing in court within [twenty-four hours] of the filing of the petition for a release hearing required by Standard 6.5 D. 2.

B. Notice. Actual notice of the detention review hearing should be given to the accused juvenile, the parents, and their attorneys, immediately upon an intake official's decision that the juvenile will not be released prior to the hearing.

C. Rights. An attorney for the accused juvenile should be present at the hearing in addition to the juvenile's parents, if they attend. There should be a strong presumption against the validity of a waiver of any constitutional or statutory right of the juvenile, and no waiver should be valid unless made in writing by the juvenile and his or her counsel.

D. Information. At the review hearing, information relevant to the interim status of an accused juvenile, other than information bearing on the nature and circumstances of the offense charged and the weight of the evidence against the accused juvenile, need not conform to the rules pertaining to the admissibility of evidence in a court of law.

E. Disclosure. The juvenile and the attorney should have full access to all information and records upon which a judge relies in refusing to release the juvenile from detention, or in imposing conditions or supervision.

F. Probable cause. At the time of the initial detention hearing, the burden should be on the state to demonstrate that there is probable cause to believe that the juvenile committed the offense charged.

G. Notice of right to appeal. Whenever a court orders detention, or denies release upon review of an order of detention, it should simultaneously inform the juvenile, orally and in writing, of his or her rights to an automatic seven-day review under Standard 7.9 and to immediate appellate review under Standard 7.12.

Commentary

Several courts have held that an incarcerated juvenile has a legal right to a detention hearing. *Baldwin v. Lewis*, 300 F. Supp. 1220, 1232 (E.D. Wis. 1969), rev'd on other grounds, 442 F.2d 29 (7th Cir. 1971); *Cooley v. Stone*, 414 F.2d 1213 (D.C. Cir. 1969); *In re Edwin R.*, 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y.C. Fam. Ct. 1969); *Moss v. Weaver*, 383 F. Supp. 130, 134 (S.D. Fla. 1974), *aff'd* 525 F.2d 1258 (5th Cir. 1976); *Doe v. State*, 487 P.2d 47, 53 (Alaska 1971); *Commonwealth ex rel. Sprowal v. Hendrick*, 265 A.2d 348 (Pa. 1970). See also National Juvenile Law Center, "Law and Tactics in Juvenile Cases" 171-174 (1974); General Introduction *supra* at n. 24. The procedures concerning notice, rights, information, disclosure, and probable cause, represent the minimum necessary to a fair and meaningful hearing. At least until recently, only a few states specifically provided court appointed counsel at these hearings. See Ferster and Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3, 22 (1972).

Subsection D., relating to the admissibility of evidence, conforms to the language of the federal Bail Reform Act, 18 U.S.C. § 3146(f), insofar as community tie information is concerned. But information bearing on the charge against the accused, and the weight of the evidence, is not automatically excluded from the rules of evidence since a stricter standard is deemed appropriate when pretrial detention might be based on the asserted guilt of the accused.

Several courts in recent years have held that a probable cause determination is required if the juvenile is at risk of being incarcerated before trial. *Baldwin, supra; Cooley, supra; Moss, supra; Black Bonnett v. State of South Dakota*, 357 F. Supp. 889 (D.S. Dak. 1973); *People ex rel Guggenheim v. Mucci*, 32 N.Y.2d 307; 344 N.Y.S.2d 944, 298 N.E.2d 109 (1973). See also "Law and Tactics in Juvenile Cases," *supra* at 174-176. The court in *Cooley* stated:

> No person can lawfully be 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. Such is the teaching of *Gault* and the teaching of *Kent*. 414 F.2d at 12.

That court's reading of the requirements of the fourth amendment anticipated the Supreme Court's recent decision in *Gerstein v. Pugh*, 420 U.S. 103 (1975). Nothing in the *Gerstein* opinion, which on its facts dealt with adult defendants, would suggest a constitutional distinction between adults and juveniles insofar as pretrial detention

is concerned. The United States Court of Appeals for the Fifth Circuit recently concurred:

> A finding of probable cause . . . is central to the Amendment's protections against official abuse of power. Pretrial detention is an onerous experience, especially for juveniles, and the Constitution is affronted when this burden is imposed without adequate assurance that the accused has in fact committed the alleged crime. *Moss v. Weaver*, 525 F.2d 1258, 1260 (5th Cir. 1976).

Subsection F. of Standard 7.6 thus requires that probable cause be established at the time of the initial detention hearing to justify any continued deprivation of liberty. Three states presently require a probable cause determination by statute. Guggenheim, "Pretrial Detention of Juveniles," *N.Y.L.J.* November 10, 1975.

7.7 Guidelines for status decisions.

A. Release alternatives. The court may release the juvenile on his or her own recognizance, on conditions, under supervision, including release on a temporary, non-overnight basis to the attorney if so requested for the purpose of preparing the case, or into a diversion program.

B. Mandatory release. Release by the court should be mandatory when the state fails to establish probable cause to believe the juvenile committed the offense charged or in any situation in which the arresting officer or intake official was required to release the juvenile but failed to do so, unless the court is in possession of additional information which justifies detention under these standards.

C. Discretionary situations. In all other cases, the court should review all factors that officials earlier in the process were required by these standards to have considered. The court should review with particularity the adequacy of the reasons for detention recorded by the police and the intake official.

D. Written reasons. A written statement of the findings of facts and reasons why no measure short of detention would suffice should be made part of the order and filed immediately after the hearing by any judge who declines to release an accused juvenile from detention. An order continuing the juvenile in detention should be construed as authorizing nonsecure detention only, unless it contains an express direction to the contrary, supported by reasons. If the court orders release under a form of control to which the juvenile objects, the court should upon request by the attorney for the juvenile, record the facts and reasons why unconditional release was denied.

Commentary

Under the framework developed in these standards, the juvenile court serves an important review function in addition to standing as an independent or *de novo* decision maker. The court must employ no less strict guidelines and requirements than those that governed the police and intake official at earlier stages, and must apply those standards to additional information that has become available concerning the juvenile. In addition, the court must make an independent probable cause determination after a hearing under Standard 7.6.

Subsection C. restates the prohibition against using the seriousness of the offense charged as the sole basis for detention. See Standard 6.6 B. and *In re M.*, 89 Cal. Rptr. 33, 473 P.2d 737, 745-748 (1970).

Subsection D. reiterates the requirement for written reasons that previously appeared in Standards 4.3, 5.3 D., and 6.5 F.

7.8 Judicial participation.

A. Every juvenile court judge should visit each secure facility under the jurisdiction of that court at least once every [sixty days].

B. Whenever feasible, a judge other than the one who presided at the detention hearing should preside at the trial.

Commentary

Inspections of detention facilities by judges are important not only to guard against the violation of juveniles' rights, but to discourage courts from unnecessarily detaining juveniles. See Berns, "Juvenile Detention: An Eyewitness Account," 4 *Colum. Human Rights L. Rev.* 303, 308 (1972). Judicial visits are, in addition to inspections, conducted by the statewide agency under Standard 11.2.

Subsection B. reflects the concern that information which led to a juvenile's detention before trial not be used to his or her prejudice at the trial itself. The requirement for different judges at detention and trial proceedings is a corollary of Standard 4.4, which generally limits the use of social history information. This issue is not free from controversy, for a more appropriate, less harsh, disposition following adjudication might come from the judge who has followed the case from the onset and knows a great deal about the juvenile, rather than one familiar only with the facts of the offense.

7.9 Continuing detention review.

A. The court should hold a detention review hearing at or before the end of each seven-day period in which a juvenile remains in in-

terim detention. At the first detention review hearing after the expiration of the time prescribed for execution of the dispositional order, the judge must execute such order forthwith, or fully explain on the record the reasons for the delay, or release the juvenile.

B. A list of all juveniles held in any form of interim detention, together with the length of such detention and the reasons for detention, should be prepared by the intake official and presented weekly to the presiding judge. Such reports, with names deleted, should simultaneously be made public to describe the number, duration, and reasons for interim detention of juveniles.

Commentary

The seven-day review requirement in subsection A. is based on the eight-day automatic review of detention which governs bail proceedings in English Magistrates' Courts. See also Standard 5.9 of the ABA Standards, *Pretrial Release*. This review can correct errors and make sense if the system functions adequately. See Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153 (1973).

Since 1966, the federal courts have required a biweekly detention inventory, with reasons, like that called for in subsection B. Rule 46(g), Federal Rules of Criminal Procedure. See D. Freed and P. Wald, *Bail in the United States: 1964*, at 102 (1964).

7.10 Speedy trial.

To curtail detention and reduce the risks of release and control, all juvenile offense cases should be governed by the following timetable:

A. Each case should proceed to trial:

1. within [fifteen days] of arrest or the filing of charges, whichever occurs first, if the accused juvenile has been held in detention by order of a court for more than [twenty-four hours]; or

2. within [thirty days] in all other cases.

B. In any case in which the juvenile is convicted of a criminal offense, a disposition should be carried out:

1. within [fifteen days] of conviction if the juvenile is held in detention by order of a court following conviction; or

2. within [thirty days] of conviction in all other cases.

The time prescribed for carrying out the disposition may be extended at the request of the juvenile, if necessary in order to secure a better placement.

C. The limits stated in A. and B. may be extended not more than [sixty days] if the juvenile is released, and not more than [thirty

days] if the juvenile is in detention, when:

1. the prosecution certifies that a witness or other evidence necessary to the state's case will not be available, despite the prosecution's best efforts, during the original time limits;

2. any proceeding concerning waiver of the juvenile court's jurisdiction is pending:

3. a motion for change of venue made by either the prosecutor or the juvenile is pending; or

4. a request for extradition is pending.

D. The limits stated in A. and B. may also be extended for specified periods authorized by the court when:

1. the juvenile is a fugitive from court proceedings; or

2. deferred adjudication or disposition for a specific period has been agreed to in writing by the juvenile and his or her attorney.

E. The limits in A. and B. may be phased in during a period not to exceed [twelve months] from the effective date of adoption of these standards, in order to enable a court to obtain the necessary resources to adjudicate cases on the merits. During such period, the maximum limit for detention cases should be [thirty days] from arrest to trial and [thirty days] from trial to final disposition.

F. In any case in which trial or disposition fails to meet these standards, the charges should be dismissed with prejudice.

Commentary

This standard combines key principles from two separate volumes of the ABA Standards for Criminal Justice: *Pretrial Release* and *Speedy Trial.* It recognizes that speedy disposition is essential both for the state and the accused. Hence, while priority in reaching trial and disposition is accorded the juvenile in detention, all juveniles—released and detained—are to be tried quickly for the purposes indicated in the standards. These principles are similar to those incorporated in the Federal Speedy Trial Act of 1974, 18 U.S.C. § 3161 *et seq.*

The limit of fifteen days in subsection A. does not begin until twenty-four hours after the court's initial detention decision in order to allow the system up to seventy-two hours from the time of arrest before the more stringent limit is imposed. This period should be adequate to permit all information concerning the cases of the most difficult juveniles to be gathered. If detention continues beyond that point, the system must minimize the burden on the detainee by proceeding with greater dispatch.

Requirements or suggestions for short time limits on adjudi-

cation in juvenile cases appear in the 1974 Federal Juvenile Delinquency Prevention statute, 18 U.S.C. § 5036 (thirty days from date detention was begun); R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 33, 69 (1974); Wald, "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119, 127 (Rosenheim ed. 1976). The court in *United States v. Furey*, 500 F.2d 338 (2nd Cir. 1974), recently ruled that a district court "plan" for speedy trials was applicable to juvenile as well as adult cases.

Some of the time-extending exceptions in this standard, and the standard's requirement for dismissal of cases in which the limits are not met, are contained in the federal speedy trial rules for juvenile cases, 18 U.S.C. § 5036. In contrast, Standard 5.10 of the ABA Standards, *Pretrial Release*, recommends that failure to meet accelerated trial rules result in release rather than dismissal of the case.

Standard 7.10 B. authorizes extension of the time in which the disposition should be carried out if the purpose is to secure a better placement for the juvenile. Since the extension is intended to benefit the juvenile, it should be granted only if requested by the juvenile.

7.11 Relaxation of interim status.

An intake official may at any time relax the conditions of a juvenile's interim status if, under rules prescribed by the court or under a specific court order, circumstances no longer justify continuing the restrictions initially imposed. Written notice of any such modification should be filed with the appropriate court. More stringent measures may not be imposed without prior notice to the court and counsel for the juvenile.

Commentary

A certain degree of flexibility must be built into any justice system if it is to function properly and effectively. If an interim status becomes inappropriate at some point, either because it is too intrusive or presents an unreasonable risk of flight or violence by the juvenile, the official who is responsible for maintaining oversight of the system as a whole should have the authority to alter that status. Since the intake official has responsibility for reviewing the status of the juvenile under Standard 6.5 E. and F., and for presenting information to the court for its review under Standard 7.9, he or she should have the authority to relax the interim status of a juvenile without specific prior court approval under general rules prescribed by the court. The converse ought not be true—the intake official's intention to impose a more restrictive status must be communicated to

the court and the juvenile's attorney in advance so that an effective challenge to that decision may be initiated.

The court itself, of course, may alter an interim status by specific court order.

7.12 Appellate review of detention decision.

The attorney for the juvenile may at any time, upon notice to the prosecutor, appeal and be entitled to an immediate hearing within [twenty-four hours] on notice or motion from a court order imposing detention or denying release from detention. A copy of the order and written statement of reasons should accompany such appeal, and decisions on appeal should be filed at the conclusion of the hearing.

Commentary

The imposition of detention before trial is of sufficient importance and potential prejudicial effect to require that an interlocutory appeal mechanism be available. Standard 7.12 establishes such a procedure and further requires that the appellate decision be rendered quickly. This procedure contrasts with very ineffective, and infrequently used, provisions of state law. See, *e.g.*, Ga. Code Ann. § 24A-3801 (1974 Supp.).

While this volume contains no equivalent standard governing appeals by the state from judicial decisions *not* to detain a juvenile, such appeals are of course appropriate, and no set time limit is here imposed. Should the appellate court order detention, however, a statement of its reasons under Standard 4.3 would be required.

7.13 Status during appeal.

Upon the filing of an appeal of judgment and disposition, the release of the appellant, with or without conditions, should issue in every case unless the court orders otherwise. An order of interim detention should be permitted only where the disposition imposed, or most likely to be imposed, includes some form of secure incarceration *and* the court finds one or more of the following on the record:

A. that the juvenile would flee the jurisdiction or not appear before any court for further proceedings during the pendency of the appeal; or

B. that there is a substantial probability that the juvenile would engage in serious violence prior to the resolution of his or her appeal.

Commentary

Following adjudication, the criteria for detention are softened to reflect the finding that the accused is guilty. The possibility of violence during a period of release may be more readily considered, but detention must also be based on the likelihood that the disposition will include incarceration. Any other rule would permit a wholly illogical use of detention.

The issue of whether the juvenile should be given credit for time served in detention, as recommended for adults in Standard 5.12 of the ABA Standards, *Pretrial Release*, has not been resolved here. Such credit A. is relatively meaningless in a jurisdiction which retains an indeterminate sentencing system, B. presupposes that detainees are in fact sentenced to incarceration, and C. overlooks the importance of providing some sort of compensation for persons detained before trial on grounds shown to be unnecessary or unfair by the trial and disposition of the case. Credit against sentence also tends to justify the pretrial "taste of jail" approach acknowledged by many judges as substituting for postconviction incarceration.

7.14 Speedy appeal.

A. The appeal of judgment and disposition filed by a juvenile held in interim detention for more than ten days pursuant to an order under Standard 7.13 should be resolved within ninety days of the date of such order, unless deferred consideration and resolution of the appeal has been agreed to in writing by the juvenile and his or her attorney.

B. Failure to meet this time limitation should result in release of the juvenile.

Commentary

As a necessary corollary to the speedy trial rules in Standard 7.10, a juvenile in detention should be given a more rapid resolution of his or her appeal by the appellate court. The system must develop the capacity to deal quickly with cases on appeal, or avoid imposing interim detention.

PART VIII: STANDARDS FOR THE DEFENSE ATTORNEY

8.1 Conflicts of interest.

The potential for conflict of interest between an accused juvenile and his or her parents should be clearly recognized and acknowl-

edged. In every case, doubt as to a conflict should be resolved by the appointment of separate counsel for the child and by advising parents of their right to counsel and, if they are unable to afford counsel, of their right to have the court appoint such counsel. All parties should be informed by the initial attorney that he or she is counsel for the juvenile, and that in the event of disagreement between a parent or guardian and the juvenile, the attorney is required to serve exclusively the interests of the accused juvenile.

Commentary

An effective right to counsel requires that the lawyer be concerned exclusively with the interests and desires of his or her juvenile client. This standard recognizes that an attorney provided by the juvenile's parents may on occasion not have that sort of single-minded concern. Some states already require the appointment of separate counsel for parents and child in juvenile proceedings when necessary. See, *e.g.*, Ga. Code Ann. § 24A-2001(a) (1974 Supp.).

8.2 Duties.

It should be the duty of counsel for an accused juvenile to explore promptly the least restrictive form of release, the alternatives to detention, and the opportunities for detention review, at every stage of the proceedings where such an inquiry would be relevant.

8.3 Visit detention facility.

Whenever an accused juvenile is held in some form of detention, the attorney should periodically visit the juvenile, at no less than seven day intervals, and review personally his or her well-being, the conditions of the facility, and opportunities to relax the conditions of detention or to secure release. A report on each such visit should be retained in the attorney's permanent file of the case.

Commentary

The duties outlined in Standards 8.2 and 8.3 are a logical and necessary, although often neglected, part of effective representation. The juvenile's counsel must be familiar with the interim decision making process, the detention facilities, and the alternatives to detention in the jurisdiction, so that he or she can actively seek to avoid the client's detention, or minimize its hardships.

PART IX: STANDARDS FOR THE PROSECUTOR

9.1 Duties.

The prosecutor should review the charges, evidence, and the background of the juvenile prior to the initial court hearing in every case in which an accused juvenile is held in detention. On the basis of such review, the prosecutor should move at the initial hearing to dismiss the charges if prosecution is not warranted, to reduce charges to the extent excessive, and to eliminate detention or unduly restrictive control to the extent necessary to bring the juvenile's interim status into compliance with these standards.

Commentary

Just as the police are given responsibility to avoid unnecessary custody under Standards 5.1 and 5.6, the prosecutor must shoulder a corresponding duty to see that the least intrusive interim alternative available is utilized. This duty was recognized in the adult criminal justice system in 1963 when Attorney General Robert F. Kennedy issued instructions to all United States Attorneys "to take the initiative in recommending the release of defendants on their own recognizance when they are satisfied that there is no substantial risk of the defendant's failure to appear at the specified time and place." D. Freed and P. Wald, *Bail in the United States: 1964*, at 56 (1964). In Rule 46(g) of the Federal Rules of Criminal Procedure, the Supreme Court has imposed a duty on the attorney for the government similar to those imposed on intake officials under Standard 6.5 E. of these standards.

9.2 Policy of encouraging release.

It should be the policy of prosecutors to encourage the police and other interim decision makers to release accused juveniles with a citation or without forms of control. Special efforts should be made to enter into stipulations to this effect in order to avoid unnecessary detention inquiries and to promote efficiency in the administration of justice.

Commentary

This standard is in conformity with Standard 4.3(f) of the ABA Standards, *Pretrial Release.*

9.3 Visit detention facilities.

Each prosecutor should, in the same manner required of judges under Standard 7.8 and defense counsel under Standard 8.3, visit at least once every [sixty days] each secure detention facility in which accused juveniles prosecuted by his or her office are lodged.

Commentary

It is important that each official intimately involved in the interim status process be familiar with the conditions of secure detention in the jurisdiction. The requirement imposed on prosecutors here reflects similar requirements placed on judges, defense counsel, and intake officials.

PART X: STANDARDS FOR JUVENILE DETENTION FACILITIES

10.1 Applicability to waiver of juvenile court jurisdiction.

When jurisdiction of the juvenile court is waived, and the juvenile is detained pursuant to adult pretrial procedures, the juvenile should be detained in a juvenile facility and in accordance with the standards in this part.

Commentary

Should the jurisdiction of the juvenile court be waived, the interim status *procedural* standards in this volume will have no application. A youth who is to be adjudicated as an adult will be handled in all remaining pre- and post-trial proceedings as an adult.

But any pretrial *detention* of juveniles who are to be handled by adult courts should continue to be governed by the rules applicable to all juveniles. The use of adult jails should continue to be prohibited (Standard 10.2), and placement in a juvenile detention facility should not subject the juvenile to rules different from those applied to the remainder of the facility's population.

10.2 Use of adult jails prohibited.

The interim detention of accused juveniles in any facility or part thereof also used to detain adults is prohibited.

Commentary

Large numbers of juveniles continue to be held prior to adjudication in adult jails, although juveniles are usually held in separate areas of the facility. See, *e.g.*, *Schaffer v. Green*, 496 P.2d 375 (Okla. App. 1972). Commentators who have studied these conditions have recommended that adult facilities be flatly outlawed for juveniles under any circumstances. See R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 4-16, 29-30, 67 (1974); LEAA, "Survey of Inmates of Local Jails 1972: Advance Report" (1974); H. Mattick and R. Sweet, "Illinois Jails: Challenge and Opportunity for the 1970's" (University of Chicago Law School 1969); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 87 (1967); LEAA, "National Jail Census 1970," at 10-15 (1971); D. Beale and Schneider, *Juvenile Justice in New Jersey* 13, 27-29 (1973); Wald, "Pretrial Detention for Juveniles," in *Pursuing Justice for the Child* 119, 128, 136 (Rosenheim ed. 1976). See also Note, "Juvenile and Preadjudication Detention," 1 *UCLA-Alaska L. Rev.* 154, 163, 169 (1972). However, as noted by Sarri, *supra* at 29, "only five states explicitly prohibit jailing under all circumstances although most statutes recommend against this practice." See also M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States" 32-34 (National Assessment of Juvenile Corrections 1974); 18 U.S.C. § 5035.

10.3 Policy favoring nonsecure alternatives.

A sufficiently wide range of nonsecure detention and nondetention alternatives should be available to decision makers so that the least restrictive interim status appropriate to an accused juvenile may be selected. The range of facilities available should be reviewed by all concerned agencies annually to ensure that juveniles are not being held in more restrictive facilities because less restrictive facilities are unavailable. A policy should be adopted in each state favoring the abandonment or reduction in size of secure facilities as less restrictive alternatives become available.

Commentary

Pretrial detention has been significantly reduced in those jurisdictions that have a wide range of release alternatives. Note, "Administration of Pretrial Release and Detention: A Proposal for Unification,"

83 *Yale L.J.* 153 (1973). In theory, the more options available to the decision maker, the more likely one of them will be recognized as appropriate for the individual defendant. Standard 10.3 requires the same approach for the juvenile justice system. Standard 11.4 correspondingly requires that new alternatives be continuously examined to create the widest possible range of alternatives.

10.4 Mixing accused juvenile offenders with other juveniles.

A. In nonsecure facilities. The simultaneous housing in a nonsecure detention facility of juveniles charged with criminal offenses and juveniles held for other reasons should not be prohibited.

B. In secure facilities. Juveniles not charged with crime should not be held in any secure detention facility for accused juvenile offenders.

Commentary

In order to avoid unnecessarily secure detention, this standard permits the alternative of *nonsecure* detention facilities that normally house juveniles not charged with crimes to be used also as interim facilities for criminal cases. For example, a house for runaways or a foster home for neglected children could be designated as the nonsecure detention facility for a particular juvenile charged with criminal conduct. See also Standard 2.11 and its accompanying commentary. But *cf.*, *Blondheim v. State*, 529 P.2d 1096 (Wash. 1975).

On the other hand, a facility that provides *secure* detention for juveniles charged with criminal conduct should not be used for any other purpose. There is no justification for placing other children in secure facilities.

10.5 Population limits.

A. Individual facilities. The population of an interim detention facility during any twenty-four-hour period should not exceed [twelve to twenty] juveniles. This maximum may be exceeded only in unusual, emergency circumstances, with a written report presented immediately to each juvenile court judge and to the statewide agency described in Part XI.

B. Statewide. A primary goal of each assessment effort should be to establish, within one year, a quota of beds available in all facilities within the state for the holding of accused juveniles in secure detention. The quota should be reduced annually thereafter, as alternative forms of control are developed. The quota should be binding on the statewide agency as a mandatory ceiling on the number of accused

juveniles who may be held in detention at any one time; provided that it may be exceeded temporarily for a period not to exceed sixty days in any calendar year if the agency certifies to the governor of the state and to the legislature, and makes available to the public, in a written report, that unusual emergency circumstances exist that require a specific new quota to be set for a limited period. The certification should state the cause of the temporary increase in the quota and the steps to be taken to reduce the population to the original quota.

Commentary

In order to insure adequate supervision and to reduce both the overall volume of detention and its miserable conditions, the population of individual detention facilities should be sharply limited. The designation of a maximum number should be the product of experience; the reference to twelve in this standard should be viewed with awareness that other commentators have suggested different ceilings. *E.g.*, J. Downey, *State Responsibility for Juvenile Detention Care* 7 (1970) (*average* daily population of twelve); National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 269 (1973) (Standard 8.3(2) and (3)—total population should not exceed thirty; separate "living areas" within the facility should not exceed ten to twelve). Most juveniles are currently held in much larger facilities. R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 43 (1974). See *Architecture of Facilities* Standard 6.3.

An annual *statewide* population limit should also be imposed, in order to reduce detention on a larger scale. A statewide maximum will not be meaningful or enforceable, however, unless detention is administered on a statewide basis, as required in Standards 11.1 and 11.2. A recent study of juvenile detention in California recommended a statewide goal for the reduction of detention of 75 percent. "Hidden Closets" 3 (1975). The study further recommended swift action against any juvenile facility that exceeded its rated capacity for even one day. *Id.* at 5.

10.6 Education.

All accused juveniles held in interim detention should be afforded access to the educational institution they normally attend, or to equivalent tutorial or other programs adequate to their needs, including an educational program for "exceptional children."

Commentary

The necessity for access to educational facilities for those held in detention has been stressed by several commentators. See, *e.g.*, R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 73 (1974); Illinois Department of Corrections, "Standards and Guides for Juvenile Detention Centers" 18 (1971).

10.7 Rights of juveniles in detention.

Each juvenile held in interim detention should have the following rights, among others:

A. Privacy. A right to individual privacy should be honored in each institution. Because different children will desire different settings, and will often change their minds, substantial allowance should be made for individual choice, and for private as well as community areas, with due regard for the safety of others.

B. Attorneys. A private area within each facility should be available for conferences between the juvenile and his or her attorney at any time between 9 a.m. and 9 p.m. daily.

C. Visitors. Private areas within each facility should be available as contact visiting areas. The period for visiting, although subject to reasonable regulation by the facility staff, should cover at least eight hours every day of the week, and should conform to school regulations when the juvenile is attending school outside the facility. All regulations concerning visitors and visiting hours should be subject to review by the juvenile court.

D. Telephone. Each juvenile in detention should have ready access to a telephone between 9 a.m. and 9 p.m. daily. Calls may be limited in duration, but not in content nor as to parties who may be contacted, except as otherwise specifically directed by the court. Local calls should be permitted at the expense of the institution, but should under no circumstances be monitored. Long distance calls in reasonable number may be made to a parent or attorney at the expense of the institution, and to others, collect.

E. Restrictions on force. Reasonable force should only be used to restrain a juvenile who demonstrates by observed behavior that he or she is a danger to himself or herself or to others, or who attempts to escape. All circumstances concerning any use of force or unusual restrictions, including the circumstances that gave rise to such use, should be reported immediately to the juvenile facility administrator and the juvenile's attorney and parent.

F. Mail. Mail from or to an accused juvenile should not be opened by authorities. If reasonable grounds exist to believe that mail may

contain contraband, it should be examined only in the presence of the juvenile.

Commentary

The rights listed here are the minimum rights associated with detention. See National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 256-263 (1973); *Morales v. Turman*, 383 F. Supp. 53, 68 (E.D. Tex. 1974); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972). Thus the hours specified in Standard 10.7 B. for conferences with attorneys are minimal rights and the area should be available at other hours if a special need arises. See also *Corrections Administration* standards for rights of juveniles in correctional facilities.

Standard 10.7 D. on telephone access does not preclude the administrator of the facility from establishing rules to prevent abuse of the right, provided that such rules are consistent with the intent of the standard to encourage and protect the juvenile in maintaining contact with the community outside the facility.

Similarly, Standard 10.7 F. does not bar minimal intrusion of the juvenile's right to privacy in mail communications if there is reasonable ground to suspect the presence of contraband, in which case the mail may be shaken or opened, but not read by the authorities.

10.8 Detention inventory.

The statewide interim agency should, during its first year and annually thereafter, conduct an inventory of secure detention facilities to ascertain the extent of, reasons for, and alternatives to the secure detention of accused juveniles. The inventory should include:

A. the places of secure detention;
B. the daily population and turnover;
C. annual admissions;
D. range of duration of secure detention;
E. annual juvenile days of secure detention;
F. costs of secure detention;
G. trial status of those in secure detention;
H. reasons for termination of secure detention;
I. disposition of secure detention cases;
J. correlation of secure detention to postadjudication disposition;
K. qualifications and training of staff;
L. staffing patterns and deployment of staff resources.

The results of the inventory should be published annually. The agency should conduct a similar inventory of nonsecure detention

facilities, beginning in the agency's second year. The inventory should draw attention to the differences in the use of detention by locality, and by characteristics of the detention population.

Commentary

> Accountability in detention decision making is urgently needed, and if it is to become a reality, more adequate information must be gathered and made available. Twenty-two states do not even bother to keep any detention statistics. And in other states that maintain statistics, our survey of courts indicates that their information is incomplete and seldom for use by court administrators. R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 72 (1974).

See also S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* 11 (1968). Standard 10.8 requires the kind of extensive, detailed inventory and investigation of detention facilities necessary to provide an accurate picture of the interim process and its use of alternatives to detention. The most comprehensive discussion of the issues in this area appears in Nejelski and LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 9 (1974).

PART XI: GENERAL ADMINISTRATIVE STANDARDS

11.1 Centralized interim status administration in a statewide agency.

A. To facilitate the creation of an adequate interim decision making process, with the resources necessary to implement it and an information system to monitor it, the responsibility for all aspects of nonjudicial interim status decisions involving accused juvenile offenders should be centralized in a single statewide agency. This centralization should include both personnel and facility administration. The agency should be part of the [executive] branch of the state government, although contracting with private nonprofit organizations should be permitted initially. All detention facility personnel, and all public employees involved in release, control, and supervision programs for accused juveniles should be employed by or otherwise responsible to this agency. The statewide agency should have responsibility for the coordination and review of all release and control of, and detention programs for, accused juveniles.

B. Each juvenile court and local police department should have

available to it representatives of the agency and facilities developed by the agency.

C. The juvenile facility intake officials described in Part VI of these standards should be the local representatives of the statewide agency. They should be empowered to make or recommend the pretrial release, control, and detention decisions authorized by these standards, and to relax the restrictions imposed on a juvenile in accordance with Standard 7.11.

Commentary

Although detention facilities are presently administered on a local basis (see General Introduction, *supra* at n. 30), recommendations for the statewide administration of juvenile facilities are common. See National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 262-263 (1973); J. Downey, *State Responsibility for Juvenile Detention Care* 10-16 (1970); S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* 11, 12 (1968); Wald, "Pretrial Detention of Juveniles," in *Pursuing Justice for the Child* 119, 129 (Rosenheim ed. 1976); J. Downey, "Detention Care in Minnesota" 49 (Minnesota Department of Corrections 1970); D. Freed and P. Wald, *Bail in the United States: 1964.* A discussion of the many advantages to statewide administration appears in Downey, *supra.* With particular reference to information needs, Nejelski and LaPook, "Monitoring the Juvenile Justice System," 12 *Am. Crim. L. Rev.* 9, 25 (1974), point out the suspicion with which internally conducted studies are often viewed. Thus, the requirement for statistical analysis in Standard 10.8 might better be handled by a private organization.

Standard 11.1 specifies the executive branch of the state government as the location of the statewide agency. However, in response to the urging of several organizations, the executive committee decided to bracket executive to indicate its continued preference for executive administration, accompanied by a recognition that in some jurisdictions circumstances may cause judicial control of intake and predispositional services.

The executive committee declined to modify the standard's expressed preference for a public agency over private nonprofit organizations, despite the controversial nature of that position. It cited the greater accountability of public agencies. While no empirical studies have compared the efficacy of executive vs. judicial administration, the commission deems the administration of detention facilities as generally more appropriate for an executive agency than for the judiciary.

Factors to be considered in determining whether to make a statewide interim status agency an independent administrative organization or part of the judiciary are discussed in Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153, 177-180 (1973). The advantages and disadvantages of each arrangement often depend upon the particular administrative and judicial structures and responsibilities in a given state. A list of the present administrative structure in each state is presented in National Advisory Commission on Criminal Standards and Goals, "Corrections," *supra* at 610-614.

11.2 General administrative standards: planning, funding, and inspection.

A. The statewide agency in each state, in consultation with the court and representatives of law enforcement and attorneys for the defense, should develop a statewide plan for the governance of local and regional facilities for accused juveniles, and for the necessary transportation between courts and facilities.

B. The agency, in cooperation with the administrators of other youth services and public welfare, should develop a statewide program for the provision of nonsecure detention facilities for accused juveniles, in accordance with the *Architecture of Facilities* volume.

C. To ensure that the standards are being met, representatives of the statewide agency should periodically and at least semiannually conduct unannounced inspections of all juvenile facilities in the state and file with the agency written reports within thirty days of each such inspection. Such reports should be periodically compiled and submitted to the legislature and the public. Current reports on any particular institution should be available on reasonable request. Whenever, on the basis of such reports, the agency or any court finds that a facility fails to meet promulgated standards, further detention of juveniles therein should be the subject of a warning. Copies of such warnings should be served upon the person in charge of the detention facility. Unless corrected and approved within sixty days after notification and publication of the warning, a facility that has been warned should thereafter be prohibited from housing any juvenile until such time as the warning is removed.

Commentary

This standard reflects materials cited in the commentary to Standard 11.1 which discuss the functions a statewide agency would logically and necessarily perform. The thirty-day warning letter

technique is used, for example, by the California Department of Youth Authority. See also Breed, "Policy Statement on 'Hidden Closets'" (unpublished paper on file with the Juvenile Justice Standards Project, August 1975).

The statewide agency described in Standards 11.1 and 11.2 is similar to the Florida and Massachusetts Departments of Youth Services. See Wald, "Pretrial Detention of Juveniles," in *Pursuing Justice for the Child* 119, 130 (Rosenheim ed. 1976).

Recommendations for development of regional detention facilities have been made by several commentators. See J. Downey, *State Responsibility for Juvenile Detention Care* 9–10 (1970); S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* 12 (1968); Illinois Department of Corrections, "Standards and Guides for Juvenile Detention Centers" 22 (1971); R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" 70 (1974); D. Freed and P. Wald, *Bail in the United States: 1964*, at 106 (1964); Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy and the Institution* 293 (Pappenfort, et al. eds. 1973); Virginia Bureau of Juvenile Probation and Detention, "The Study of the Detention Needs of an Eleven County Jurisdictional Area in Northeastern Virginia" 22, 29 (1971); Minnesota Department of Corrections, "A Comprehensive Plan for Regional Jailing and Juvenile Detention in Minnesota" 9 (1971); Downey, "Detention Care in Minnesota" i–ii, 47–48 (Minnesota Department of Corrections 1970). See also Va. Code Ann. § 16.1-198 (Repl. Vol. 1960).

11.3 Construction moratorium.

An indefinite moratorium should be imposed on the construction or expansion of any facility for the detention of accused juveniles. No funds for any such purpose should be considered until an inventory of existing facilities has been completed and assessed, and until all reasonable release and control alternatives have been implemented and evaluated. Because a moratorium may have the effect of continuing substandard conditions in existing facilities, and of increasing the cost of eventual construction, its imposition should be accompanied by:

A. establishment of a timetable for completing the required inventory, program development, and evaluations;

B. public acknowledgment by all organizations in the juvenile justice system that alleviation of the volume, duration, and conditions of juvenile detention is their joint responsibility; and

C. specification, in periodic reports to the courts, governor, legislature, bar, and public of the plans and progress of the reassessment and reform effort.

Commentary

An excellent presentation of the factors that support a moratorium on new construction of detention facilities appears in S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* (1968). See also National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" 260 (1973).

> Most correctional administrators agree that there are too many maximum security facilities for juveniles and adults alike on State and local levels. Many urge a halt to the building of massive concrete and steel institutions. The existing institutions in too many instances are monuments to the mistakes of the past and to an "edifice complex," the propensity for trying to solve social problems by building an enclosure to keep them out of sight and out of mind.

A construction moratorium has also been recommended recently in "Hidden Closets" 3. The director of the California Department of Youth Authority has, in light of this study, agreed to discourage local officials from initiating new, additional construction of juvenile halls. Breed, "Policy Statement on 'Hidden Closets'" (unpublished paper on file with the Juvenile Justice Standards Project, August 1975). See also D. Freed and P. Wald, *Bail in the United States: 1964*, at 107 (1964); Collins, "One Solution to Overcrowded Detention Homes," 25 *Juv. Justice* 45 (1974); Virginia Bureau of Juvenile Probation and Detention, "The Study of the Detention Needs of an Eleven County Jurisdiction Area in Northwestern Virginia" 9 (1971) ("The mere availability of a new detention home often stimulates its use").

11.4 Policy favoring experimentation.

The standards for each type of interim status, particularly including secure and nonsecure detention facilities, should not remain static. As experience develops, the statewide agency's standards governing the nature and use of these alternatives and facilities should be elevated. Experimentation under published criteria should be encouraged, and innovative techniques from other jurisdictions continuously examined.

Commentary

The assumption reflected in Standard 11.4 that the administration of the interim process will improve as time goes on is also reflected in other standards where details are avoided in order to encourage innovative developments. See, *e.g.*, Standards 6.6 C. 2. and 11.1.

Dissenting View

Statement of Commissioner Wilfred W. Nuernberger

I dissent to the volume on *Interim Status.*

Although it is not possible to go through the entire volume and dissent standard by standard, I would like to point out a couple of reasons for my dissent. The volume is based on the theory that a juvenile is entitled to "one bite" before he or she can be detained. Standard 5.6 provides that detention is possible only if one or more of the following factors is present:

1. that the arrest was made while the juvenile was in a fugitive status;
2. the juvenile has a recent record of willful failure to appear at juvenile proceedings;
3. *that the juvenile is charged with a crime of violence which, in the case of an adult, would be punishable by a sentence of one year or more, and is already under the jurisdiction of a juvenile court by way of interim release in a criminal case or probation or parole under a prior adjudication* [emphasis mine].

Mandatory release is required by Standard 6.6 unless the juvenile:

1. is charged with a crime of violence which in the case of an adult would be punishable by a sentence of one year or more, and which if proven is likely to result in commitment to a security institution, *and* one or more of the following additional factors is present:
   a. the crime charged is one of first or second degree murder;
   b. the juvenile is currently in an interim status under the jurisdiction of the court in a criminal case, or is on probation or parole under a prior adjudication, so that detention by revocation of interim release, probation, or parole may be appropriate;
   c. the juvenile is an escapee from an institution or other placement facility to which he or she was sentenced under a previous adjudication of criminal conduct;

d. the juvenile has a demonstrable recent record of willful failure to appear at juvenile proceedings, on the basis of which the official finds that no measure short of detention can be imposed to reasonably ensure appearance; or

2. has been verified to be a fugitive from another jurisdiction, an official of which has formally requested that the juvenile be placed in detention.

In my opinion, the authors of this volume have not considered practical application of the criteria. This volume would require that if the persons who have in recent years threatened the President of the United States, were under eighteen years of age, they could not be detained prior to trial nor could they even be required to post any bond.

This volume also requires that if the persons who have recently been charged with kidnapping the school children in Chowchilla, California, were under eighteen years of age, they could not be detained prior to trial nor could they even be required to post any bond. The volume would give less protection to the general public than what the bail bond presently gives where adults are involved.

What is basically wrong with this volume as well as other volumes is that the commission never defined a "standard." When it was suggested that such a definition was necessary and that a standard should at least have been tested someplace, the matter was not even discussed. Many of the standards have never been evaluated to determine if they are an improvement over present practices. Research and evaluation is necessary before states and local communities should be asked to adopt these suggestions as standards. A standard should be an established, proven measure of quantity or quality that can be advanced as a model that others should adopt. Although there are some suggestions that meet this test, in my opinion it is impossible to tell which of the sections are ideas and which of them are standards.

It is not possible for one individual to devote the time or money that it takes to go through each one of these standards to point out what is wrong with the standard. The work of the ABA-IJA Juvenile Justice Standards Project makes a contribution to juvenile justice in this country if the volumes could be presented as provocative ideas with a possibility of further discussion of those ideas with experimentation, research, and evaluation to produce something that would actually be standards.

Bibliography

BAR PUBLICATIONS, COMMISSION AND LEGISLATIVE REPORTS, MODEL LAWS

ABA Standards for Criminal Justice, *Pretrial Release* (1968).

ABA Standards for Criminal Justice, *Speedy Trial* (1968).

Colorado Council of Juvenile Court Judges, "Standards of Juvenile Justice," Standard 3.1(a) (1974).

Freed, Statement on Proposed Federal Legislation Regarding Pretrial Diversion (H.R. 9007, S. 798), Hearings Before the Subcommittee on Courts, Civil Liberties and Administration of Justice, House Committee on the Judiciary, February 12, 1974.

National Advisory Commission on Criminal Justice Standards and Goals, "Corrections" (1973).

National Advisory Commission on Criminal Justice Standards and Goals, "Courts" (1973).

National Conference of Commissioners on State Laws, "Uniform Juvenile Court Act" (1968).

National Council on Crime and Delinquency, "Juvenile Detention," in "Correction in the United States," 13 *Crime & Delinq.* 1 (1967).

National Council on Crime and Delinquency, "Model Rules for Juvenile Courts" (1969).

National Council on Crime and Delinquency, "Standards and Guides for the Detention of Children and Youth" (1961).

National Juvenile Law Center, "Law and Tactics in Juvenile Cases" (1974).

National Probation and Parole Association, "Standard Family Court Act" (1959).

National Probation and Parole Association, "Standard Juvenile Court Act" (1959).

President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (1967).

President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1967).

Subcommittee on Detention and Placement for Children for the Subcommittee on Liaison with Public and Private Agencies of the Departmental Committees of the Appellate Divisions, 1st and 2nd Departments (New York), "Designation of Facilities for the Questioning, Detention and 'Holding' of Children Under the Family Court Act" (1972).

U.S. Department of Justice, Law Enforcement Assistance Administration, "Children in Custody" (1974).
U.S. Department of Justice, Law Enforcement Assistance Administration, "National Jail Census, 1970" (1971).
U.S. Department of Justice, Law Enforcement Assistance Administration, "Survey of Inmates of Local Jails 1972: Advance Report" (1974).
U.S. Department of Health, Education and Welfare, Children's Bureau, "Legislative Guide for Drafting Family and Juvenile Court Acts" (1969).
U.S. Department of Health, Education and Welfare, Children's Bureau, "Standards for Juveniles and Family Courts" (1966).

BOOKS, MONOGRAPHS, AND REPORTS

D. Anderson, E. Thomas and C. Sorenson, "The Child's View of Detention" (Center for Children's Court Services, Western Michigan University, 1970).
D. Beale and Schneider, *Juvenile Justice in New Jersey* (1973).
California Continuing Education of the Bar, "California Juvenile Court Practice" § 41 (1968).
California Department of Youth Authority, "Hidden Closets: A Study of Detention Practices in California" (1975).
Coates, Miller, and Ohlin, "Juvenile Detention and Its Consequences" (unpublished paper on file with the Juvenile Justice Standards Project, Institute of Judicial Administration 1974).
S. Davis, *Rights of Juveniles: The Juvenile Justice System* (1974).
J. Downey, "Detention Care in Minnesota" (Minnesota Department of Corrections 1970).
J. Downey, *State Responsibility for Juvenile Detention Care* (1970).
J. Downey, "Why Children Are in Jail and How to Keep Them Out" (HEW, undated).
D. Freed and P. Wald, *Bail in the United States: 1964* (1964).
R. Garff, "Handbook for New Juvenile Court Judges" (National Council of Juvenile Court Judges 1972).
Illinois Department of Corrections, "Standards and Guides for Juvenile Detention Centers" (1971).
Institute of Government, University of Georgia, "Regional Youth Development Center Study" (1972).
M. Levin and R. Sarri, "Juvenile Delinquency: A Comparative Analysis of Legal Codes in the U.S." (National Assessment of Juvenile Corrections 1974).
H. Mattick and R. Sweet, "Illinois Jails: Challenge and Opportunity for the 1970's" (University of Chicago Law School 1969).
Metropolitan Social Services Department, Louisville and Jefferson County, Kentucky, "Analysis of Detention" (1972).
Minnesota Department of Correction, "A Comprehensive Plan for Regional Jailing and Juvenile Detention in Minnesota" (1971).
Minnesota Department of Correction, "Characteristics of Institutional Populations, 1969-1972" (1972).
Mullen, *The Dilemma of Diversion* (1975).

P. Murphy, *Our Kindly Parent: The State: The Juvenile Justice System and How It Works* (1974).

R. Nimmer, *Diversion: The Search for Alternative Forms of Prosecution* (1974).

S. Norman and Bartis, *The Controlled Use of Detention* (1963).

S. Norman, "Guides for the Use of Juvenile Detention and Shelter Care for Police, Probation and Courts" (unpublished paper on file with the Juvenile Justice Standards Project, Institute of Judicial Administration, 1971).

S. Norman, *Think Twice Before You Build or Enlarge a Detention Center* (1968).

D. M. Pappenfort, D. M. Kilpatrick, and Kuby, "Detention Facilities," Vol. 7 (University of Chicago, School of Social Service Administration, 1970).

N. Reuterman, *A National Survey of Juvenile Detention Facilities* (1971).

M. K. Rosenheim, "Detention Facilities and Temporary Shelters," in *Child Caring: Social Policy in the Institution* (Pappenfort, et al. eds. 1973).

R. Sarri, "Under Lock and Key: Juveniles in Jails and Detention" (National Assessment of Juvenile Corrections, 1974).

E. Schur, *Radical Nonintervention: Rethinking the Delinquency Problem* (1973).

Texas Woman's University Institute Proceedings, "Juvenile Detention and Community Responsibility" (1968).

Virginia Bureau of Juvenile Probation and Detention, "The Study of the Detention Needs of an Eleven-County Jurisdictional Area in Northwestern Virginia" (1971).

P. Wald, "Pretrial Detention of Juveniles" in *Pursuing Justice for the Child* (Rosenheim ed. 1976).

ARTICLES, NOTES, AND COMMENT

R. Ariessohn and G. Gonion, "Reducing the Juvenile Detention Rate," 24 *Juv. Justice* 28, 32 (1973).

M. Berger, "Police Field Citations in New Haven" 1972 *Wis. L. Rev.* 382 (1972).

A. Berns, "Juvenile Detention: An Eyewitness Account," *Colum. Human Rights L. Rev.* 303 (1972).

R. Boches, "Juvenile Justice in California: A Reevaluation," 19 *Hastings L.J.* 47 (1967).

C. Bowman, "The Illinois Ten Percent Bail Deposit Provision," 1965 *U. Ill. L.F.* 35 (1965).

J. Carrigan, "Inherent Powers of the Courts," 24 *Juv. Justice* 38 (1973).

G. Collins, "One Solution to Overcrowded Detention Homes," 24 *Juv. Justice* 45 (1974).

Comment, "Juvenile Powers of the Court," 24 *Juv. Justice* 38 (1973).

S. Davis, "Juvenile Rights During the Pre-Judicial Process," 21 *Prac. Law* 23 (1975).

L. Diamond, "The Psychiatric Prediction of Dangerousness," 123 *U. Pa. L. Rev.* 439 (1974).

N. Dorsen and D. Rezneck, "*In re Gault* and the Future of Juvenile Law," 1 *Fam. L.Q.* 34 (1967).

L. Edwards, "The Rights of Children," 37 *Fed. Prob.* 34 (1973).

F. Feeney, "Citations in Lieu of Arrest: The New California Law," 25 *Vand. L. Rev.* 367 (1972).

E. Ferster and T. Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3 (1972).

E. Ferster, E. Snethen, and T. Courtless, "Juvenile Detention: Protection, Prevention, or Punishment?" 38 *Fordham L. Rev.* 161 (1969).

M. Guggenheim, "Pretrial Detention of Juveniles," *N.Y.L.J.* (Nov. 1975).

Hannergreen, "The Role of Juvenile Detention in a Changing Juvenile Justice System" 24 *Juv. Justice* 46 (1973).

A. Hill, "The Constitution Controversy of a Juvenile's Right to Bail in Juvenile Preadjudication Proceedings," 1 *Hastings Const. L.Q.* 215 (1974).

T. Hughes, "Humanizing the Detention Setting," 35 *Fed. Prob.* 21 (1971).

P. Jones, "Pre-Hearing Detention of Youthful Offenders: No Place to Go," *Yale Rev. of L. & Soc. Action* 28 (1971).

I. Kaufman, "Book Review" 86 *Harv. L. Rev.* 637, 639 (1973).

R. Komisaruk, "Psychiatric Issues in the Incarceration of Juveniles," 21 *Juv. Ct. J.* 117 (1971).

S. Mora, "Juvenile Detention: A Constitutional Problem Affecting Local Government," 1 *Urban Law* 189 (1969).

P. Nejelski and J. LaPook, "Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?" 12 *Am. Crim. L. Rev.* 9 (1974).

Note, "Administration of Pretrial Release and Detention: A Proposal for Unification," 83 *Yale L.J.* 153 (1973).

Note, "Juvenile Justice and Pre-Adjudication Detention," 1 *UCLA-Alaska L. Rev.* 154 (1972).

Note, "Pretrial Diversion from the Criminal Process," 83 *Yale L.J.* 827 (1974).

Note, "The Right to Bail and the Pre-'Trial' Detention of Juveniles Accused of 'Crime'" 18 *Vand. L. Rev.* 2096 (1965).

Note, "Revocation of Conditional Liberty for the Commission of a Crime: Double Jeopardy and Self-Incrimination Limitations," 73 *Mich. L. Rev.* 525 (1976).

G. O'Connor, "The Impact of Initial Detention Upon Male Delinquents," 18 *Soc. Prob.* 194 (1970).

M. Paulsen, "Fairness to the Juvenile Offender," 41 *Minn. L. Rev.* 547 (1957).

W. Ralston, Jr., "Intake: Informal Disposition or Adversary Proceeding?" 17 *Crime & Delinq.* 160 (1971).

"Revolving Door Justice: Why Criminals Go Free," *U.S. News & World Report*, May 10, 1976.

P. Rice and M. Gallagher, "An Alternative to Professional Bail Bonding: A 10% Cash Deposit for Connecticut," 5 *Conn. L. Rev.* 143 (1972).

W. Sheridan, "Juvenile Court Intake," 2 *J. Family L.* 139 (1962).

H. Sumner, "Locking Them Up," 17 *Crime & Delinq.* 168 (1972).

P. Tappan, "Treatment Without Trial," 24 *Soc. Forces* 306 (1946).

E. Wenk, J. Robison, and G. Smith, "Can Violence Be Predicted?" 18 *Crime & Delinq.* 393 (1972).

W. Whitlatch, "Practical Aspects of Reducing Detention Home Population," 24 *Juv. Justice* 17 (1973).

F. Zimring, "Measuring the Impact of Pretrial Diversion from the Criminal Justice System" 41 *U. Chi. L. Rev.* 224 (1974).

CASES, STATUTES, AND CODES

Baker v. Hamilton, 345 F. Supp. 345 (W.D. Ky. 1972).

Baker v. Smith, 477 S.W.2d 149 (Ky. 1971).

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

Black Bonnett v. State of South Dakota, 357 F. Supp. 889 (D.S. Dak. 1973).

Blondheim v. State, 529 P.2d 1096 (Wash. 1975).

Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972).

Bridges v. State, 299 N.E.2d 616 (Ind. 1973).

Burnham v. Dept. of Public Health of Ga., 349 F. Supp. 1335 (N.D. Ga. 1972).

Carbo v. United States 82 S. Ct. 662 (1962).

Carlson v. State ex rel. Stodola, 220 N.E.2d 532 (Ind. 1966).

Christman v. Skinner, 323 N.Y.S.2d 767, 67 Misc. 2d 232 (Sup. Ct. 1971), *rev'd on other grounds*, 329 N.Y.S.2d 114 (App. Div. 1972).

Collins v. Schoonfield, 344 F. Supp. 257 (D. Md. 1972).

Commonwealth ex rel. Carroll v. Tate, 45, 274 A.2d 193 (Pa. 1971).

Commonwealth ex rel. Sprowal v. Hendrick, 435, 265 A.2d 348 (Pa. 1970).

Conklin v. Hancock, 334 F. Supp. 1119 (D.N.H. 1971).

Cooley v. Stone, 414 F.2d 1213 (D.C. Cir. 1969).

Creek v. Stone, 379 F.2d 106 (D.C. Cir. 1967).

Cudnik v. Kreiger, 392 F. Supp. 305 (N.D. Ohio 1974).

Davis v. Lindsay, 312 F. Supp. 1134 (S.D. N.Y. 1970).

Detainees of the Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392 (2d Cir. 1975).

Dillard v. Pitchess, 399 F. Supp. 1225 (C.D. Cal. 1975).

Doe v. State, 487 P.2d 47 (Alaska 1971).

Estes v. Hopp, 438 P.2d 205 (Wash. 1968).

Ezell v. State, 489 P.2d 781 (Okla. Crim. App. 1971).

Freeman v. Wilcox, 167 S.E.2d 163 (Ga. App. 1969).

Fulwood v. Stone, 394 F.2d 939 (D.C. Cir. 1967).

Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974).

Gallegos v. Colorado, 370 U.S. 49, 82 Sup. Ct. 1209, 8 L. Ed. 2d 325 (1962).

Gerstein v. Pugh, 420 U.S. 103, 95 Sup. Ct. 854, 43 L. Ed. 2d 54 (1975).

Hamilton v. Landrieu, 351 F. Supp. 549 (E.D. La. 1972).

Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark. 1971).

Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd* 442 F.2d 304 (8th Cir. 1971).

In Interest of M.C., 504 S.W.2d 641 (Mo. App. 1974).
Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972).
Inmates of Milwaukee County Jail v. Petersen, 353 F. Supp. 1157 (E.D. Wis. 1973).
Inmates of Suffolk County Jail v. Eisenstadt, 360 F. Supp. 676 (D. Mass. 1973).
In re Baltimore Detention Center, 5 Clearinghouse Rev. 550 (Balt. City Ct. 1971).
In re Betrand, 303 A.2d 486 (Pa. 1973).
In re Castro, 52 Cal. Rptr. 469 (1966).
In re Edwin R., 60 Misc. 2d 355, 303 N.Y.S.2d 406 (N.Y.C. Family Ct. 1969).
In re F.G., 511 S.W.2d 370 (Tex. App. 1974).
In re Gault, 387 U.S. 1 (1967), 87 Sup. Ct. 1428, 18 L. Ed. 2d 527.
In re J.F.T. 320 A.2d 322 (D.C. App. 1974).
In re M., 89 Cal. Rptr. 33, 473 P.2d 737 (1970).
In re Macidon, 49 Cal. Rptr. 861 (1966).
In re New Jersey in Interest of H.C., 256 A.2d 322 (Pa. Juv. & Dom. 1969).
In re Pisello, 293 N.E.2d 228 (Ind. App. 1973).
In re R.E.J., 511 S.W.2d 347 (Tex. App. 1974).
In re Savoy, Juvenile Case No. J-4808-70 (D.C. Super. Ct. January 11, 1973).
In re Smith, 295 A.2d 238 (Ct. Spec. App. Md. 1972).
In re Winship, 397 U.S. 358 (1970), 90 Sup. Ct. 1068, 25 L. Ed. 2d 368.
In re Yolo County Juvenile Hall, 6 Clearinghouse Rev. 766 (Colo. Super Ct. 1972).
Kent v. U.S., 383 U.S. 541 (1966), 86 Sup. Ct. 1045, 16 L. Ed. 2d 84.
King v. State, 281 So. 2d 612 (Fla. App. 1973).
Kinney v. Lenon, 425 F.2d 209 (9th Cir. 1970).
Knox County Council v. State ex rel. McCormick, 29 N.E.2d 405 (Ind. 1940).
Long v. Powell, 388 F. Supp. 422 (N.D. Ga. 1975).
Lovell v. State, 525 S.W.2d 511 (Tex. App. 1975).
Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972).
Melville v. Sabbatino, 313 A.2d 886 (Conn. Super Ct. 1973).
Miranda v. Arizona, 384 U.S. 436 (1966), 86 Sup. Ct. 1602, 16 L. Ed. 2d 694.
M.K.H. v. State, 218 S.E.2d 284 (Ga. App. 1975).
Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974).
Moss. v. Weaver, 383 F. Supp. 130 (S.D. Fla. 1974); *aff'd* 525 F.2d 1258 (5th Cir. 1976).
Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974).
Patterson v. Hopkins, 5 Clearinghouse Rev. 478 (N.D. Miss. 1971).
People ex rel. Robert Wayburn, law guardian, on behalf of Charles L. v. Schupf, 39 N.Y.2d 682 (1976).
People ex rel. Guggenheim v. Mucci, 32 N.Y.2d 307, 344 N.Y.S.2d 944, 298 N.E.2d 109 (1973).
People v. Von Diezelski, 355 N.Y.S.2d 556, 78 Misc. 2d 969 (County Ct. 1974).
Powlowski v. Wullich, 366 N.Y.S.2d 584, 81 Misc. 2d 895 (Sup. Ct. 1975).
Rhem v. Malcolm, 371 F. Supp. 594 (S.D.N.Y. 1974).
Rigney v. Hendrick, 355 F.2d 710 (3d Cir. 1965).
Rozecki v. Gaughan, 459 F.2d 6 (1st Cir. 1972).
Schaffer v. Green, 496 P.2d 375 (Okla. App. 1972).

Schmelzel v. Board of Commissioners, 100 P. 106 (Idaho 1909).
Seale v. Manson, 326 F. Supp. 1375 (D. Conn. 1971).
Smith v. Sampson, 349 F. Supp. 268 (D.N.H. 1972).
State ex rel. Gentry v. Becker, 174 S.W.2d 181 (Mo. 1943).
State ex rel. Kitzmeyer v. Davis, 68 P. 689 (Nev. 1902).
State ex rel. Peaks v. Allaman, 115 N.E.2d 849 (Ohio App. 1952).
State ex rel. Weinstein v. St. Louis County, 451 S.W.2d 99 (Mo. 1970).
State v. Franklin, 12 So. 2d 211 (La. 1943).
Taylor v. Sterrett, 344 F. Supp. 411 (N.D. Tex. 1972).
Thomas v. Frank, 7 Clearinghouse Rev. 109 (E.D. Ark. 1973).
T.K. v. State, 190 S.E.2d 588 (Ga. App. 1972).
Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960).
Tyler v. Ciccone, 299 F. Supp. 684 (W.D. Mo. 1969).
Tyrrell v. Taylor, 394 F. Supp. 9 (E.D. Pa. 1975).
United States v. Furey, 500 F.2d 338 (2nd Cir. 1974).
U.S. ex rel. Wilson v. Coughlin, 472 F.2d 100 (7th Cir. 1973).
U.S. v. Peters, 18 *Cr. L.* 2342 (D.C. Super. Ct. 1975).
Welch v. Likins, 373 F. Supp. 487 (D. Minn. 1974).
Winters v. Miller, 446 F.2d 65 (2d Cir. 1971).
Woods v. Burton, 503 P.2d 1079 (Wash. App. 1972).
Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd* 503 F.2d 1305 (5th Cir. 1974).
Zeman v. Lincoln, 6 Clearinghouse Rev. 282 (Wayne County, Mich. Cir. Ct. 1972).

State
Colo. Children's Code §§ 22-2-(2), (4) (1973).
Conn. Juv. Ct. R., Rule 7 (1975).
Ga. Code Ann. § § 24-A-1401, 1402, 2201, 3201 (1974 Supp.).
Ill. Ann. Stat. Juv. Ct. Act, ch. 37 §§ 703-2(1), 703-4 (1972).
N.J. Stat. Ann. § 4-32 (1954).
Nev. Rev. Stat. tit. 5 § 62.170(2) (1973).
Minn. Stat. Ann. Juv. Ct. R. of P., Rule 7-1(1) (1969 Supp.).
N.Y. Family Ct. Act § 739 (1962).
Tenn. Code Ann. § 37-213(b) (Supp. 1974).
Va. Code Ann. § 161-198 (Repl. Vol. 1960).

Federal
Bail Reform Act, 1966, 18 U.S.C. § 3146 et seq.
Federal Rules of Criminal Procedure, Rule 46(g).
Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. 5031 et seq.
Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq.

Appendix A

Order of Judge Tom Dillon, Fulton County (Atlanta, Georgia) Juvenile Court, December 19, 1972:

This Court having made inquiry and upon its own investigation makes the following findings of fact:

1. The Child Treatment Center of Fulton County (hereinafter referred to as the Child Treatment Center) is an institution owned and principally funded as to its operation by the citizens of Fulton County acting through their duly elected Board of Commissioners.
2. The Child Treatment Center has 72 rooms now available for males on the second floor of the Child Treatment Center and 72 rooms available for females on the third floor of the Child Treatment Center.
3. The Child Treatment Center has available to its population of detained juveniles programs of recreation, behavior modification, counselling, and psychological testing and treatment, it has a school operated by the Atlanta School Board to the benefit of detained juveniles.
4. That the male (but not the female) population of the Child Treatment Center is regularly in excess of the number for which the institution was constructed.
5. That certain of the children detained in the Child Treatment Center are emotionally disturbed, unsocialized, and immature for their age.
6. That when the male population of the Child Treatment Center is in excess of the number for which the institution was constructed and more than one male is assigned to a room, the environment becomes unsafe and the programs of discipline and treatment provided by the citizens of Fulton County and the City of Atlanta are ineffective.
7. That any parent or child has the right to expect that, when detained in the Child Treatment Center, a child will be kept in a wholesome and safe environment.

8. That 72 is the maximum number of detained male or female juveniles that can be treated in a safe environment in the Child Treatment Center.

This Court is mindful of the intent and the purpose of juvenile law in Georgia.

That each child coming within the jurisdiction of the Court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the best interests of the State, and when he is removed from the control of his parents, the Court shall secure for him care as nearly as possible equivalent to that which they should have given him (Code 24A-101).

This Court with jurisdiction of children to age seventeen (eighteen after July 1, 1973) is of the opinion that the Child Treatment Center and its functions are subject to control by this Court for effecting the purposes of the Juvenile Court Code.

WHEREFORE, IT IS THE JUDGMENT AND ORDER OF THIS COURT, that effective on the first day of January, 1973, there shall be established priorities of detention in the Child Treatment Center with application to all children there detained in order of priority as numbered hereinafter:

1. first priority: those charged or adjudicated as to an offense in the nature of a capital felony;
2. second priority: those charged or adjudicated as to an offense who are found to be dangerous to self or society whose custodian is not available or is unable to function as such (to include by definition a child found not amenable to treatment or rehabilitation after formal hearing);
3. third priority: those ordered confined by Order of Court after formal hearing (trial), or for contempt, not to exceed a detention time of twenty (20) days;
4. fourth priority: State boarders assigned by the Department of Human Resources;
5. fifth priority: those charged with an offense in the nature of a felony or a runaway who at the time charged were awaiting placement in a Youth Development Center or sentence for the same offense (subject to release on bond as provided by law);
6. sixth priority: those charged with an offense in the nature of a felony or a runaway while awaiting trial on the same charge (subject to release on bond as provided by law);
7. seventh priority: a child under final commitment to the State Department of Human Resources except as provided in categories 1 or 2 herein;

8. eighth priority: any child detained pursuant to the Juvenile Court Code of Georgia.

Upon this Court taking jurisdiction of seventeen year-old persons pursuant to law such shall be treated the same in all respects as other children, except that in the event the Child Treatment Center is fully occupied as to males or females, seventeen-year-old persons of such sex charged or adjudicated with a delinquent offense, and detained pursuant to the Code, shall be placed in the Fulton County Jail in a place of security separate from adults subject to release on bond as provided by law.

Upon the maximum available rooms for children (to be certified by the Director of the Child Treatment Center) being filled for males or females, as is provided herein, the Director of the Child Treatment Center is

ORDERED to immediately certify to the Court for release all children of such sex in detention having the lowest numbered priority as set forth herein to their custodian or to an Intake Officer of this Court for transportation at County expense to their custodian, or in unusual circumstances to bring the child before the Court for further consideration. Prior to any release of children under category 1., 2., 3., or 4., the Director of the Child Treatment Center shall present such children before the Court to consider further placement.

A child alleged or adjudicated unruly or deprived when detained shall be housed in a separate section of the Child Treatment Center from those alleged or adjudicated delinquent.

IT IS FURTHER ORDERED that no child shall be otherwise detained in the Child Treatment Center.

SIGNED, RENDERED, ORDERED AND ADJUDGED this 19th day of December, 1972.

/s/ Tom Dillon
Tom Dillon, Judge

Appendix B

Detention criteria suggested in Ferster and Courtless, "Juvenile Detention in an Affluent County," 6 *Fam. L.Q.* 3, 31 (1972):

I. *Detention Criteria* (Secure custody detention)
  A. Non-Detainable Children
    1. Children under twelve years of age.
    2. Children who appear to be so mentally ill as to constitute a danger to themselves or others.
    3. Children who have a physical illness or condition which requires medical care (*e.g.*, epilepsy, drug addiction).
  B. Detainable Children
    1. Automatic Detention
      a. Out-of-state runaways.
      b. Escapees from institutions for delinquents or criminals.
      c. Children accused of offenses against persons when the victim required medical attention for his injuries.
      d. Juveniles accused of felonies who have more than one prior court referral for running away.
      e. Those accused of selling addictive drugs.
    2. Non-automatic Detention
      Children accused of crimes and status offenses shall be detained only if:
      a. They have had three prior delinquency adjudications or five or more adjudications within the last two years.
      b. They have been referred for running away or being beyond parental care who have previously been in shelter care and while in a shelter facility ran away, assaulted other children or staff or destroyed property.
      c. They are past the mandatory school attendance age and have dropped out of or have been expelled from school, and are unemployed.

II. *Shelter Care Criteria*

1. Those who have had two or more prior status adjudications (*e.g.*, runaway, beyond control). These are indicative of potential family pathology.
2. Children referred to court for whom there is no responsible adult in the home to provide supervision.
3. Children who request detention (or refuse to go home).
4. Children under the mandatory school attendance age who have been expelled or suspended from school, and there is inadequate supervision in the home during school hours.