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Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards Project

STANDARDS RELATING TO

Noncriminal Misbehavior

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

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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. Twenty volumes in the series have been approved by the House of Delegates of the American Bar Association.

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-

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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.

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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, 1978, and 1979 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.

In February 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. Of the five remaining volumes, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, and *The Juvenile Probation Function* were approved by the House in February

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1980, subject to the changes adopted by the executive committee. *Abuse and Neglect* and *Noncriminal Misbehavior* were held over for final consideration at a future 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 twenty volumes approved by the ABA House of Delegates, 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.

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An account of the history and accomplishment 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 I, which also includes the following volumes:

RIGHTS OF MINORS
JUVENILE DELINQUENCY AND SANCTIONS
ABUSE AND NEGLECT
YOUTH SERVICE AGENCIES
SCHOOLS AND EDUCATION
POLICE HANDLING OF JUVENILE PROBLEMS

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Introduction

The juvenile court's jurisdiction over children's noncriminal misbehavior has long been seen as a cornerstone of its mission. Indeed, assertions of state power over unruly children far antedate juvenile courts themselves. See, *e.g.*, Mass. Prov. Stats. 1699–1700, c.8 §§ 2-6, in *Mass. Colonial Laws* 27 (1887 ed.), by which the court was invested with criminal jurisdiction over "stubborn servants or children"; that penal jurisdiction was upheld in *Commonwealth v. Brasher*, 359 Mass. 550, 270 N.E.2d 389 (1970). See Katz & Schroeder, "Disobeying A Father's Voice: A Commentary on *Commonwealth v. Brasher*," 57 *Mass. L.Q.* 43 (1972); *cf.* Kleinfeld, "The Balance of Power Among Infants, Their Parents and the State," 4 *Fam. L.Q.* 319, 410 (1970), 5 *Fam. L.Q.* 63 (1971). The laws conferring court jurisdiction over unruly children have their roots in "early colonial concerns with the child's key role as a source of labor for the family economic unit"; some early statutes punished filial disobedience with death. Note, "Ungovernability: The Unjustifiable Jurisdiction," 83 *Yale L.J.* 1383, at note 5 (1974).

The jurisdiction over noncriminal misbehavior is both widespread and widely invoked. Every juvenile court law has some ground or grounds extending the court's power of intervention to cases involving antisocial but noncriminal behavior. Such cases probably comprise—though firm figures are not available—no less than one-third and perhaps close to one-half the workload of America's juvenile courts. See, *e.g.*, Klapmuts, "Children's Rights: The Legal Rights of Minors in Conflict with Law or Social Custom," 4 *Crime & Del. Lit.* 449, 470 (1972); Bazelon, "Beyond Control of the Juvenile Court," 21 *Juv. Ct. Judges J.* 42 (1970); President's Commission on Law Enforcement and Administration of Justice, Report of the Task Force on Juvenile Delinquency: *Delinquency and Youth Crime*, 4 (1967) (hereinafter cited as "Task Force Report"). In one county of better than 500,000 population, a thorough study in connection with a diversion program revealed that noncriminal misbehavior cases accounted for 40 percent of all minors detained and 72 percent of

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court-ordered out-of-home placements and commitments. Sacramento County (California) Probation Department/Center on Administration of Criminal Justice, University of California, Davis, *The Sacramento Diversion Project: A Preliminary Report* (1971) (hereinafter cited as Sacramento Probation Department).

These standards take the position that the present jurisdiction of the juvenile court over noncriminal misbehavior—the status offense jurisdiction—should be cut short and a system of voluntary referral to services provided outside the juvenile justice system adopted in its stead. As a general principle, the standards seek to eliminate coercive official intervention in unruly child cases. However, because of the particular problems presented by certain kinds of cases—youths who run away, who are in circumstances of immediate jeopardy, who are in need of alternative living arrangements when they and their parents cannot agree, and who evidence a need for emergency medical services—some carefully limited official intervention is preserved, though in all cases wardship as a result of the child's noncriminal behavior or circumstances is precluded. It is the purpose of this Introduction and the commentary to specific standards to explain why that result was reached, and how it may be implemented.

Court jurisdiction over behavior that is an offense only for persons who have not attained adult status pervades the American juvenile justice system. While the labels vary from state to state—Person/Child/Minor/Juvenile in Need of Supervision (commonly abbreviated PINS, CHINS, MINS, JINS); Beyond-Control Child; Ungovernable Child; Incorrigible Child; Unruly Child; Wayward Child; Miscreant Child—the jurisdictional thrust is essentially the same, allowing coercive intervention in cases of juvenile misbehavior that would not be criminal if committed by an adult. *Cf.* the statutory compilation in Appendix A; see also Dineen, *Juvenile Court Organization and Status Offenses: A Statutory Profile* 33-45 (National Center for Juvenile Justice, 1974).

Because the statutes conferring this jurisdiction are couched in terms of the child's condition rather than in terms of the commission of specific acts—for example, a child's being "habitually beyond the control of his parents," or being "an habitual truant"—cases brought under such statutes are frequently referred to as "status offenses." Though there are many variations among the states, the status offense jurisdiction typically and essentially comprehends a wide spectrum of behavior, such as disobedience to a parent or guardian or school authorities; being truant; running away from home; being sexually promiscuous or otherwise "endangering morals"; or acting

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in a manner "injurious to self or others." A majority of states include status offenders within the category of "delinquents." The remainder attempt in various ways to "break out" status offenses by creating a separate category in addition to the traditional classifications of neglect and delinquency, following the lead of California in 1961 and New York in 1962. Cal. Welf. & Inst'ns Code § 601 (West Supp. 1975); N.Y. Fam. Ct. Act. § 712; see Appendix A. As will be seen, however, the treatment has not followed the label, and status offenders are generally subjected to the same modes of disposition as are juveniles who violate the criminal law. Additionally, they likely bear the same burdens of stigma as do delinquents. Stiller & Elder, "PINS: A Concept in Need of Supervision," 12 *Am. Crim. L. Rev.* 33 (1974).

The juvenile court's jurisdiction over unruly children is bottomed on assumptions—most often implicit—that parents are reasonable persons seeking proper ends, that youthful independence is malign, that the social good requires judicial power to backstop parental command, that the juvenile justice system can identify noncriminal misbehavior that is predictive of future criminality, and that its coercive intervention will effectively remedy family-based problems and deter further offense. See Bazelon, *supra*; Glen, "Juvenile Court Reform: Procedural Process and Substantive Stasis," 1970 *Wis. L. Rev.* 431, 444 (1970); Fox, "Juvenile Justice Reform: An Historical Perspective," 22 *Stan. L. Rev.* 1187, 1192, 1233 (1970); Lemert, "The Juvenile Court—Quest and Realities," in "Task Force Report," *supra* at 91, 93.

On the available evidence, these assumptions and pretensions do not prove out; it simply cannot be established that the behavior encompassed by the status offense jurisdiction is accurately "protocriminal." See generally E. Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* 46-51 (1973); Bureau of Social Science Research Legal Action Support Project, *Research Memorandum on Status Offenders* 3, 22 (1973); "Task Force Report," *supra*. As the California legislature noted, "Not a single shred of evidence exists to indicate that any significant number of [beyond control children] have benefited [by juvenile court intervention]. In fact, what evidence does exist points to the contrary." Report of the California Assembly Interim Committee on Criminal Procedure, *Juvenile Court Processes* 7 (1971) (hereinafter cited as California Report).

Most defiance of parents and other forms of noncriminal misbehavior—troublesome though they are—represent a youthful push for independence and are both endemic and transitory. They are at

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worst "transitional deviance" that is outgrown. Rosenheim, "Notes on 'Helping' Juvenile Nuisances" 2 (unpublished manuscript, 1973); Rosenheim, "Youth Service Bureau: A Concept in Search of a Definition," 20 *Juv. Ct. Judges J.* 69 (1969). It is widely conceded that unruly child cases are usually the most intractable and difficult matters with which the juvenile court has to deal; perhaps this is in part so precisely because the court is not the place to deal with them. The judicial system is simply an inept instrument for resolving intrafamily conflicts, and dealing with these cases in it results in a vast and disproportionate draining of time and resources, to the detriment of cases of neglect or abuse or delinquency that are properly there and represent threats to safety which the court must address. Professor Erik Erickson has written:

> Youth after youth, bewildered by the incapacity to assume a role forced on him by the inexorable standardization of American adolescence, runs away in one form or another, dropping out of school, leaving jobs, staying out all night, or withdrawing into bizarre and inaccessible moods. Once "delinquent," his greatest need and often his only salvation is the refusal on the part of older friends, advisors and judiciary personnel to type him further by pat diagnoses and social judgments which ignore the special dynamic conditions of adolescence. E. Erickson, *Identity: Youth and Crisis* 132 (1968).

A study done of PINS cases in New York City revealed not only a wide range of conduct alleged to demonstrate a need for official intervention, but also the fact that the status offense jurisdiction was used in many cases of violation of the criminal law, supporting the conclusion that it masks cases that are properly delinquency (or neglect) cases and should be dealt with on that basis. "Short runaway" was the allegation in 51 percent of the cases; "refusal to obey" in 47 percent; truancy in 43 percent; late hours in 36 percent; possession of drugs in 23 percent; staying out overnight in 19 percent; undesirable boyfriends in 19 percent; and undesirable companions in 14 percent. Assault was alleged in 9 percent of the cases; larceny in 5 percent; possession of drugs for sale and possession of a dangerous weapon in 2 percent. Twenty-one percent of the cases involved "other" allegations, including refusal to bathe regularly; having an abortion against parental wishes; sleeping all day; refusal to do household chores; being "selfish and self-centered"; banging a door in reaction to a parental command; wanting to get married; suicide attempts; and "being an invertebrate (*sic*) liar." Note, "Ungovernability: The Unjustifiable Jurisdiction,"

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83 *Yale L.J.* 1383, 1387-88, at note 33, 1408 (1974). All studies encountered suggest that the range of family-centered problems is immense and that these allegations are typical of those in status offense cases elsewhere.

To address the operation of the status offense jurisdiction with some particularity, clearly the greatest vice is the treatment of non-criminal but ungovernable children in essentially the same way as youthful violators of the criminal law, with maximum impetus (and opportunity for tutelage) given the former to become the latter. See California Report, *supra* at 12-14. In the great majority of American jurisdictions, status offenders are subject to exactly the same dispositions as minors who commit crimes, including commitment to state training schools. Only a handful of states have followed New York in prohibiting the commitment of PINS to state schools that house delinquent youth. *In the Matter of Ellery C.*, 32 N.Y.2d 588, 300 N.E.2d 424, 347 N.Y.S.2d 51 (1973); *In re Lavette M.*, 35 N.Y.2d 136 (1974); *cf.* the recent ruling of the Supreme Court of Washington that "incorrigible dependents" should not be committed for "treatment or confinement" in the same immediate area of an institution where they may associate with youth committed for delinquency. *Blondheim v. State*, 84 Wash. 2d 874, 529 P.2d 1096 (1975). Even in the few states where intermixing is prohibited, status offenders are likely to be treated similarly to delinquents. See, *e.g.*, Institute of Judicial Administration, *The Ellery C. Decision: A Case Study of Judicial Regulation of Juvenile Status Offenders* (1975).

Very few states have prohibited the temporary detention of ungovernable youth with delinquents pending adjudication; in the remainder, they are held in the same secure institutions as serious law violators. See Appendix A.

A system that allows the same sanctions for parental defiance as for armed robbery—often with only the barest glance at the reasonableness of parental conduct—can only be seen as inept and unfair. Moreover, secure institutions housing youthful violators of the criminal law are necessarily geared to the custodial demands of the worst of their inmates, and the "treatment" for which the unruly child was committed is very often nonexistent. Some such institutions are both illegal and inhumane. See, *e.g.*, *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), *supp. opin.* 355 F. Supp. 458, *aff'd* 491 F.2d 352 (7th Cir. 1974); *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973); *Martarella v. Kelley*, 349 F. Supp. 575 (S.D.N.Y. 1972); *In the Matter of Ilone I.*, 64 Misc. 2d 878, 316 N.Y.S.2d 356 (N.Y. Fam. Ct. 1970); Note, "Persons in Need of Supervision: Is There a Constitutional Right to Treatment?" 39

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Brooklyn L. Rev. 624 (1973); Gough, "The Beyond-Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox," 16 *St. Louis U.L.J.* 182 (1971).

Accurate national data are simply not available, but the number of unruly children inducted into the juvenile justice system under ungovernability statutes, and subjected as a consequence of that induction to the same dispositions as youth whose behavior has been criminal, is substantial indeed. The National Council on Crime and Delinquency estimates that more than 66,000 youth are confined in state training schools or their equivalents, and that between 45 and 55 percent of them are status offenders. M. Rector, *PINS: An American Scandal* (National Council on Crime and Delinquency, 1974). In *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), *supp. opin.* 355 F. Supp. 458, *aff'd* 491 F.2d 352 (7th Cir. 1974), the court observed that nearly one-third of the inmates of the Indian Boys Training School—which it described as a medium security prison for boys twelve to eighteen years of age—had committed no criminal offense whatever, but were incarcerated for being truants or beyond parental control.

One study of probation officers' recommendations showed that juveniles referred for law violations had an eight times greater chance of having the probation officer recommend discharge or probation than did children referred for being ungovernable and "offending against parents." Cohn, "Criteria for the Probation Officer's Recommendations to the Juvenile Court Judge," 9 *Crime & Del.* 262 (1963). Roughly a dozen states have prohibitions against direct commitment of status offenders to state training schools. However, a number of these states appear to allow an unruly child to be so committed on a second status offense, on the rationale that the juvenile has then violated a court order and thus become a delinquent. Dineen, *supra* at 43.

Though the "labeling theory" of criminal causation—that a young person who has not committed a criminal act but is treated as and stigmatized as a delinquent is likely to become one—has been under recent attack, see, *e.g.*, Mahoney, "The Effect of Labeling on Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Soc. Rev.* 583 (1974), there is also some recent evidence to the contrary. A study of 222 inmates of the Indiana Boys Training School showed a "significant and linear decrease" in self-concept in the cases of boys not previously incarcerated. Conversely, minors showing an increase in self-concept had become increasingly involved in criminal behavior. The study found a correlation between incarceration and the internalization of delinquent values and self-concept. Put another

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way, it demonstrated that the minors had become what they were labeled to be. Culbertson, "The Effect of Institutionalization on the Delinquent Inmate's Self-Concept," 66 *J. Crim. L. & C.* 88 (1975). On common sense grounds, given the lack of conclusive empiric data, it seems likely that (1) coercive judicial intervention in unruly child cases produces some degree of labeling and stigmatization; and (2) whatever effect this has on the child's self-perception and future behavior will be adverse.

Even in cases where there is no order of institutional commitment, the juvenile court's status offense jurisdiction is not apt. A fourteen-year-old's being lazy, failing to do assigned chores, buying a sandwich at a place her mother had told her not to go to, and "being a disruptive influence" should not support secure interim custody, judicial intervention, or official probation supervision, sustained in *In re Walker*, 14 N.C. App. 356, 188 S.E.2d 731 (1972), *aff'd* 282 N.C. 28, 191 S.E.2d 702 (1972). These are significant consequences as, indeed, any juvenile court disposition is, *cf. Breed v. Jones*, 421 U.S. 519 (1975), and not only are they ineffective to resolve the problems presented by the unruly child, they are often imposed by a process that denies to the unruly youth before the court procedural rights that must be afforded to juveniles accused of delinquent acts. In some jurisdictions, status offenders may be denied the right to counsel. See, *e.g.*, *In re Spalding*, 273 Md. 690, 332 A.2d 246 (1975); *In re Walker*, 14 N.C. App. 356, 188 S.E.2d 731 (1972), *aff'd* 282 N.C. 28, 191 S.E.2d 702 (1972). It is the rule rather than the exception that the status of "being beyond control" is established by a preponderance of the evidence, rather than by the rigorous standard of proof beyond a reasonable doubt required by the U.S. Supreme Court in a delinquency adjudication. *In re Winship*, 397 U.S. 358 (1970). So far as our research reveals, only one-fourth of the states require adjudication of a need for supervision to be based upon proof beyond a reasonable doubt. Compare *In re E.*, 32 N.Y.S.2d 84 (1971), with *In re Henderson*, 199 N.W.2d 111 (Iowa 1972), and *In re Waters*, 13 Md. App. 95, 281 A.2d 560 (1971).

Moreover, it is likely that evidence may be admissible at a PINS hearing that would not be admissible in the trial of a delinquency petition, and some statutes expressly authorize this. See, *e.g.*, Cal. Welf. & Inst'ns Code § 701 (West Supp. 1975), providing that admissibility of evidence in a beyond-control case is governed by rules of evidence applicable to trial of a civil case, rather than rules of evidence applicable to trial of a criminal case that govern in case of delinquency. This, together with the lower standard of proof

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commonly required, may explain in part why criminal offenses sometimes are dealt with under the PINS or other unruly child rubric.

They may also be dealt with there because courts and their personnel believe a PINS adjudication to be less stigmatizing than an adjudication of delinquency. This reasoning seems perverse. It is probable that a greater stigmatizing effect will result from an adjudication of incorrigibility, based on a pattern of behavior, than from an adjudication of a single act. Moreover, proof of unruliness is, in the words of one judge, "easy to present and usually impossible to controvert successfully." M. Midonick and D. Besharov, *Children, Parents & the Courts: Juvenile Delinquency, Ungovernability and Neglect* 92 (1972).

Indeed, it may be that because of these factors, trials of PINS cases are rare, at least in some courts. The New York study indicated that in New York County 69 percent of the youths appearing on PINS petitions admitted all the allegations; 24 percent made partial admissions, i.e., to some of the allegations; and only 7 percent denied all allegations and went to trial. In Rockland County, 94 percent of the cases involved a full admission and 7 percent a partial admission; there were no denials in the sample studied. Note, "Ungovernability: The Unjustifiable Jurisdiction," *supra* at 1389, at note 50.

Parenthetically, it would appear that the existence of the status offense jurisdiction may be an important element in perpetuating plea bargaining in the juvenile court; it has been described as "a kid's way of copping a plea." Office of Children's Services, Judicial Conference of the State of New York, *The PINS Child: A Plethora of Problems* 17 (1973) (hereinafter cited as NY Judicial Conference).

A further problem is that the ungovernability statutes are almost invariably impermissibly vague in wording and overbroad in scope. Such language as that extending jurisdiction over a child "who is in danger, from any cause, of leading an idle, dissolute or immoral life," Cal. Welf. & Inst'ns Code § 601 (West Supp. 1975) [but note that this language has been stricken from the California statute by A.B. 432, signed by the governor 7/7/75, effective 1/1/76]; or who is "ungovernable," D.C. Code Ann. § 16-2301 (Supp. 1973); or who is "growing up in idleness and crime," see, *e.g.*, Wyo. Stat. Ann. § 14-41 (Supp. 1973), falls far short of the specificity that would allow a minor to determine what behavior fell within the prohibitions of the statute and what lay without. Given the overbreadth of these statutes, every child in the United States could theoretically be made out to be a status offender. How many children have not disobeyed their parents at least twice?

The last few years have seen sharply mounting attacks—in the

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literature, in the legislatures, and in the courts—on the statutes that confer the status offense jurisdiction for their vagueness and their overbreadth, as well as on the dispositions that attend their use. See, *e.g.*, Wald, "The Rights of Youth," 4 *Human Rights* 13, 21 (1974); Note, "Parens Patriae and Statutory Vagueness in the Juvenile Court," 82 *Yale L.J.* 745 (1973); McNulty, "The Right to Be Left Alone," 11 *Am. Crim. L. Rev.* 141 (1972); Comment, "Juvenile Statutes & Non-Criminal Delinquents: Applying the Void-for-Vagueness Doctrine," 4 *Seton Hall L. Rev.* 184 (1972); Comment, "Delinquent Child: A Legal Term Without Meaning," 21 *Baylor L. Rev.* 352 (1969).

It must be said that attacks on such statutes based on the void-for-vagueness doctrine, see *Connally v. General Construction Co.*, 269 U.S. 385 (1926), have largely thus far been turned back by the upper courts. See, *e.g.*, *In re E.M.G.*, No. J 1365-73 (D.C. Super. Ct. 1973), *rev'd sub nom.*, *District of Columbia v. B.J.R.*, 332 A.2d 58 (D.C. App. 1975), reversing a holding of the District of Columbia Superior Court that the District of Columbia statute conferring juvenile court jurisdiction over "habitually disobedient" and "ungovernable" children was unconstitutionally vague and denied due process of law. *Cf.* *In re Napier*, 532 P.2d 423 (Okla. Sup. Ct. 1975); and *E.S.G. v. State*, 447 S.W.2d 225 (Ct. Civ. App. Tex. 1969), *cert. denied* 398 U.S. 956 (1970), in which the majority held that the "relatively comprehensive word 'morals'" was sufficiently specific for the average person. It should be noted that in *District of Columbia v. B.J.R.*, 332 A.2d 58 (D.C. App. 1975), the court seemingly based its reversal chiefly upon findings that the statute was not vague *as applied to the minor in question* (a chronic runaway)—perhaps because she had had abundant opportunity through prior contact with the juvenile justice system to learn what conduct was prohibited—and that the doctrine of overbreadth did not avail to relieve *her*. As one commentator has observed, in rejecting the minor's right to question the *vagueness* on its face of a statute that clearly applied to her, the court largely confined its discussion to requirements for *overbreadth* attacks and thus left the general issue unresolved. The fact that a given minor is held to be unable to challenge a statute is not determinative of its validity. Note, "California Runaways," 26 *Hastings L.J.* 1013, 1034, at note 140 (1975). See also Note, "Parens Patriae and Statutory Vagueness in the Juvenile Court," *supra* at 748 (describing overbreadth as a discrete ground of invalidity which is subsumed by an attack for vagueness).

The Supreme Court of the United States has not closed with the issue, despite its striking down of a classic adult vagrancy (status)

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statute in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), on vagueness grounds, and its affirmance without opinion of a three-judge federal court's decision invalidating New York's youthful offender statute, which extended court jurisdiction (as a wayward minor) to one who was "morally depraved or . . . in danger of becoming morally depraved." *Gesicki v. Oswald*, 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd*, *Oswald v. Gesicki*, 406 U.S. 913 (1972). In *Mercado v. Rockefeller*, *cert. denied sub nom.*, *Mercado v. Carey*, 420 U.S. 925 (1974), the Supreme Court summarily dismissed for want of a substantial federal question a challenge on void-for-vagueness grounds to New York's PINS law, N.Y. Fam. Ct. Act § 712(b), and in *Gonzalez v. Mailliard*, No. 50424 (N.D. Cal. 1971), *vacated and remanded*, *Mailliard v. Gonzalez*, 416 U.S. 918 (1974), the court vacated and remanded a decision by a three-judge federal court striking down that portion of a California beyond-control statute, Cal. Welf. & Inst'ns Code § 601 (West Ann., Supp. 1975), that extended the juvenile court's jurisdiction to minors leading or in danger of leading an "idle, dissolute, lewd, or immoral life."

One cannot properly conclude, however, that juvenile status offense statutes have therefore been certified as constitutionally valid. In *Gonzalez*, the high court vacated and remanded for reconsideration of the lower court's grant of injunctive relief; the sparse memorandum decision suggests that the issuance of an injunction was deemed improvident. The Court's directions on remand, citing *Steffel v. Thompson*, 415 U.S. 452 (1974), and *Zwickler v. Koota*, 389 U.S. 241 (1967), indicate that the declaratory aspect of the lower court's opinion is still valid. One may surmise that the Court was moved by the factual mootness of the case at bar, the youngest petitioner in the case presumably having reached eighteen years of age and passed beyond the jurisdiction of the juvenile court when the Supreme Court's decision was handed down. One suspects that the Court recoiled from the prospect of facing innumerable challenges to the status offense laws of the various states, and to commitments made under them, that would result if the lower court were upheld on the merits. One suspects, also, that state courts have been moved by similar considerations. See, *e.g.*, *In re L.N.*, 109 N.J. Super. 278, 263 A.2d 150 (App. Div. N.J.), *aff'd*, 57 N.J. 165, 270 A.2d 409 (1970), *cert. denied sub nom.*, *Norman v. New Jersey*, 402 U.S. 1009 (1971).

In summary, federal courts at the level of the "firing line" have thus far generally concluded (in the comparatively few cases that have posed the question) that juvenile status offense statutes at issue before them were void because of vagueness, and deprived youth of due process of law. Upper courts seem to have concluded,

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at least by implication, that reformation of the status offense jurisdiction of the juvenile court must be a legislative rather than a judicial task, perhaps because the sheer volume of cases of children affected would swamp the courts.

The statutes conferring juvenile court jurisdiction over ungovernable youth are arguably infected with constitutional infirmity on yet another basis: infringement of the equal protection clause. Virtually without exception, the defined class—children—is underinclusive and hence suspect because the child is subject to sanction and the parent, who shares responsibility for the child's behavior, is untouched by the law. Sidman, "The Massachusetts Stubborn Child Law: Law and Order in the Home," 6 *Fam. L.Q.* 33, 49-56 (1972); see, *e.g.*, *State v. In Interest of S.M.G.*, 313 So. 2d 761 (Fla. Sup. Ct. 1975) (juvenile court lacks jurisdiction to order the parent of a delinquent child to participate in the child's rehabilitative program).

Finally, the Supreme Court of the U.S. has ruled that it is constitutionally impermissible to impose sanctions on a status in the case of an adult, *Robinson v. California*, 370 U.S. 660 (1972). Yet, as was discussed above, that is what the juvenile court's status offense jurisdiction does with respect to unruly children.

The jurisdiction over unruly children is thus a kind of moral thumbscrew by which we seek to demand of our communities' children a greater and more exacting adherence to desired norms than we are willing to impose upon ourselves. Infirmities of law aside, the jurisdiction in operation is otherwise maladroit in several major respects.

First, far more than in matters involving allegations of child abuse or delinquency, ungovernability cases present for resolution issues that are peculiarly ill-suited for, and unbenefited by, legal analysis and judicial fact finding. The judicial system can decide quite well whether or not a person committed a given act; it is "incapable, however, of effectively managing, except in a very gross sense, so delicate and complex a relationship as that between parent and child." J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interest of the Child* 8 (1973). The law is simply inept as a corrective of the kinds of family dysfunction that these cases most frequently involve, which are "of vastly greater duration, intimacy, complexity and (frequently) emotional intensity" than other cases in the justice system. Note, "Ungovernability: The Unjustifiable Jurisdiction," *supra* at 1402, at note 119. Using legal compulsion to restore (or provide) parent-child understanding and tolerance and to build up mechanisms for conflict resolution within the family unit is akin to doing surgery with a spade.

Further, allowing formalized coercive intervention (which is co-

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ercive only on one side—the child's) in unruly child cases undermines family autonomy, isolates the child, polarizes parents and children, encourages parents to abdicate their functions and roles to the court, may blunt the effectiveness of any ameliorative services that are provided, and cuts against the development of controls and means within the family for the resolution of conflicts. It thus may impede the child's maturation into an adult who possesses effective ways of handling and adjusting problems of interpersonal relationships because it misplaces the focus of service onto the child as a person with problems, rather than upon the family complex. *Cf.* V. Satir, *Conjoint Family Therapy* 2 (1967). Relinquishment by a parent of his or her child to court control is probably the ultimate rejection. As has been observed, "It is within the family that the child must learn to curb his desires and to accept rules that define the time, place and circumstances under which highly personal needs may be satisfied in socially acceptable ways." "Task Force Report," *supra* at 45.

The juvenile court's status offense jurisdiction may actually retard the range of services available to the unruly child and the family and their chances of getting effective help, in two different ways. First, many community agencies providing services may be leery of "court-associated" youth and be reluctant to take a youth who has been processed by the juvenile justice system. Second, the existence of the ungovernability jurisdiction in the juvenile court may have provided an unfortunate incentive to schools and other community resources to avoid developing mechanisms for handling family problems, which are basically not susceptible of forced solution. So long as the juvenile court must take and deal with the problems, they needn't; no matter that the judicial system is not the place for solution.

Finally, and at least as importantly, it is likely that the existence of the juvenile status offender jurisdiction furthers racial, sexual, and economic discrimination, particularly in urban centers. *Cf.* Paulsen, "Juvenile Courts, Family Courts and the Poor Man," 54 *Calif. L. Rev.* 694 (1966). Because very little national information is available and one must extrapolate from the few studies that have been done, it is difficult to estimate the degree to which this occurs; the literature is very thin on the ground. A study commissioned by the Juvenile Justice Standards Project of PINS cases in the New York City courts showed that a majority of the youth involved were nonwhite (assuming a definition, as the study did, of "white" as excluding Hispanic ethnicity): Black youths comprised 40 percent of the cases, white youths 31 percent, and Hispanic youths 28 per-

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cent. Note, "Ungovernability: The Unjustifiable Jurisdiction," *supra* at 1387, at note 27. Sixty-eight percent of the youths were over fourteen years of age, 44 percent over fifteen, and the cases predominantly involved girls (62 percent). *Id.* at note 26.

A study done for the New York Judicial Conference indicated a predominance of boys among PINS cases (57 percent). Black youths constituted 48 percent of the sample, Puerto Rican youths 25 percent, and white youths 24 percent. New York Judicial Conference, *supra* at 21-22. The study disclosed a sharp disparity between the levels of service afforded the three groups. Placement in a residential treatment center was recommended for 116 children in the sample; it was actually secured for twenty-eight. Black children for whom residential treatment was recommended were so placed in 10 percent of the cases, Puerto Rican children in 9 percent, and white children in 62.5 percent. *Id.* at 57.

A number of states have had different age levels for the assertion of ungovernability (and sometimes delinquent and neglect) jurisdiction as between boys and girls. Where challenged, these definitions of the susceptible class based on the gender of the child have quite uniformly been struck down as denying equal protection of the laws. See, *e.g.*, *People v. Ellis*, 57 Ill. 2d 127, 311 N.E.2d 98 (1974); *In the Matter of Patricia A.*, 31 N.Y.2d 83, 286 N.E.2d 432 (1972); *cf. Stanton v. Stanton*, 421 U.S. 7 (1975). It is probable, however, that the status offense jurisdiction is more often invoked for girls than for boys, as the New York study found; *accord*, Sacramento Probation Department, *supra* at Appendix A (59 percent of beyond-control cases were girls); American Justice Institute, *Research & Evaluation Study of the Santa Clara County (California) Pre-delinquent Diversion Program* 61 (1974) (2,646 out of 5,007 cases, or 52.8 percent, involved girls). As American society has traditionally been more concerned over the preservation of the sexual virtue of girls than of boys, so this concern is reflected in the invocation of the ungovernability jurisdiction. The Juvenile Justice Standards Project's New York City study found that although girls only accounted for 62 percent of the total PINS sample, they accounted for 100 percent of the cases involving allegations of prostitution, promiscuity, "cohabiting" and "general sex innuendo" (whatever that may mean, if anything). Note, "Ungovernability: The Unjustifiable Jurisdiction," *supra* at 1388-89, at note 41; see generally Green & Esselstyn, "The Beyond-Control Girl," 23 *Juv. Justice* 13 (Nov. 1972).

For these reasons, the juvenile court's status offense jurisdiction has been under increasing scrutiny for some time, with consequent

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and mounting pressure for its abridgement. In 1967, the President's Commission on Law Enforcement and Administration of Justice recommended that "serious consideration" should be given to completely eliminating from the juvenile court's jurisdiction conduct illegal only for children. "Task Force Report," *supra* at 27.

The National Council on Crime and Delinquency adopted a policy in 1974 that all status offenses—those acts of youthful misbehavior that would not be crimes if committed by adults—should be removed from court jurisdiction. NCCD, Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court (Policy Statement, October 22, 1974). This position conforms to its proposed Model Juvenile Court Statute, the commentary to which states: "This is the arch-instance by which courts confirm that children are not people; that they are the property of their parents and other custodians such as schools." NCCD, A Model Juvenile Court Statute 7 (draft submitted to the NCCD Council of Judges, October 1973). A similar position was taken by the California Assembly Committee on Criminal Procedure in 1971. A select committee of the same body later observed that

> The court functions in a world of definite alternatives; not situations that are ambivalent, changing and little understood. . . . Not only is the court not able to cope with the real, underlying problems of youth brought before it on [a status offense petition], it is hardly able to cope with the symptoms. Report of the California Assembly Select Committee on Juvenile Violence, *Juvenile Violence* 56-7 (1974).

Similar recommendations have been made by legislative committees in other states. See, *e.g.*, Report of the Virginia Advisory Legislative Council, 1 *Fam. L. Rep.* 2515-16 (June 10, 1975). It may be noted that the director of youth services in the Virginia Department of Corrections, speaking in support of the proposal, stated that the removal of status offenders from state institutions would cut the number of girls in state care by 80 percent and the number of boys by 50 percent. *Id.*

On the federal level, there have been two recent developments of considerable significance. In 1974, the Department of Health, Education and Welfare recommended the elimination of juvenile court jurisdiction over status offenses. Office of Youth Development, DHEW, *Model Acts for Family Courts and State-Local Children's Programs* 14-15 (1974). And in the same year, the Juvenile Justice and Delinquency Prevention Act of 1974 was enacted by the Congress and signed into law, providing in pertinent part that a state

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must, within two years from the date of submission of a plan for funding, treat "juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult" in shelter facilities and cease placing them in juvenile correctional or detention facilities. Juv. Justice & Del. Prev. Act of 1974, 88 Stat. 1109–43 (codified in widely scattered sections of Titles 18 & 42, U.S.C.A.), § 223 (a)(12). The act expresses the "clear legislative intent that states be offered the incentive to move toward minimizing contact between law enforcement personnel and noncriminal juvenile 'offenders,' especially runaways." Note, "California Runaways," *supra* at 1043.

As noted, these standards eliminate the general juvenile court jurisdiction over status offenses and noncriminal juvenile misbehavior. They recognize, however, that the problems presented by such youth are very real and very complex, and that a variety of innovative services, both crisis-oriented and longer term, will have to be established to offer help in resolving them. They adopt the general principle that, though there must be tightly drawn possibilities of limited coercive intervention—"coercive exposure," if you will—in situations where the youth is in immediate jeopardy, services to youth and their families for the amelioration and resolution of family problems should be community-based, voluntarily sought, and readily accessible. The standards permit limited coercive intervention in the provisions for limited custody, for dealing with runaway youth, for court approval of substitute residential placement, and for emergency medical services to minors in crisis. Even in these limited instances, the least detrimental alternative consonant with the youth's needs should always be employed.

It is the position of these standards that the dejudicialization of status offenses and reliance on voluntarily based services will make those services more appropriate to the needs of the youth and his or her family; it is both true and a truism that help that a person elects to receive and in which he or she willingly participates has a better likelihood of success than services imposed at the end of a writ. Removal of the status offense jurisdiction will, it is submitted, encourage more people to get more effective help; stimulate the creation and extension of a wider range of voluntary services than is presently available; end the corrosive effects of treating noncriminal youth as though they had committed crimes; and free up a substantial part of the resources of the juvenile justice system to deal with the cases of delinquency and of abused and neglected children that belong in it.

The critical question is, of course, will it work? And the short

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answer is, we will not know until we have tried it, but it is quite plain that what we are doing now with status offenders does not work. Two pilot programs underway in California offer both interest and some hope. Both are aimed at the diversion of the juvenile status offender from the judicial process, but each adopts a different model.

In the first program, that of Sacramento County, beyond-control youth are referred by law enforcement agencies or parents to the probation department in the usual way, and are then deflected from the usual procedures of intake and petition by referral to a team of probation officers specially trained in crisis intervention techniques and family counseling. For the purpose of the study, the project staff handle all beyond-control referrals on four days of the week with the regular intake unit handling the referrals on the other three days as a control group, with monthly rotation of days. All counseling sessions after the first one are voluntary. Normally the maximum number of sessions in a case is five, with sessions running between one and three hours, though there are no hard and fast limits. If return home is unfeasible, an attempt is made to find an alternative place for the youth to stay voluntarily while the problem is being worked out, and referrals (with follow-up) are made to other community resources as needed. Sacramento Probation Department, *supra* at 1–3.

After two years, the study revealed that 54.2 percent of the youth referred for status offenses and handled in the usual way had been re-referred within seven months for a new offense, either status or criminal. The beyond-control youth handled by the diversion program had a recidivism rate of 46 percent and only 22 percent were referred for criminal law violations, compared with nearly 30 percent of the youth handled by the usual intake process. The project group, the study concluded, showed a drop of 24.8 percent in the rate of repeated offenses. *Id.* at 4–7. While the recidivism rate for both groups was high, project cases did noticeably better than control group cases.

In terms of cost and resources freed for other purposes, the study showed that over the first two years of the program, the average beyond-control case consumed 23.7 person-hours from initial booking to informal settlement or adjudication (not counting any aftercare or informal service), while the cases of diverted youths required an average of 14.2 person-hours for conclusion. The study stressed the use of existing resources and developed no new ones especially for the project beyond the special training given the diversion team.

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Over the study's first two years, the cost of handling of a diverted case was $274.01, as compared to a cost of $561.63 for handling a control group case in the traditional fashion through informal settlement or adjudication. *Id.* at 13. In the first twelve months of operation the diversion project handled 977 cases and, of that group, only 3.7 percent required the filing of a petition and court handling, as opposed to 19.8 percent of the beyond-control referrals handled by the control group.

In the second pilot study, in Santa Clara County, a different process of diverting status offenders was adopted and the results are rather more clear-cut. Rather than involving the probation staff in the mechanics of diversion, in the belief that diversion before a youth got into the juvenile court system was preferable to induction and deflection out of it, that responsibility was placed on the law enforcement agencies. Each police department in the county (with a population of roughly 1,400,000 and twelve local law enforcement agencies) cooperated with the program and received a share of grant monies based on population and volume of cases for additional personnel and the development of local resources. Under this program, the police attempted to resolve the problem at the local level without referral to the probation department or the juvenile court. Youth and families were assisted by officers specially assigned to the program who arranged referrals to community agencies, developed alternative voluntary placements where necessary, and rendered other assistance as required. The program's goal in the first two years of operation was to reduce by two-thirds the number of youth referred to the juvenile court and probation department for beyond-control behavior. American Justice Institute, *Research & Evaluation Study of the Santa Clara County, California, Pre-Delinquent Diversion Program* (1974).

In fact, a reduction of 67.2 percent in the number of beyond-control referrals was achieved; some of the cases that were referred to the court may well have involved runaway minors found some distance from their homes, for whom arrangements to return could not swiftly be made. *Id.* at v. In the first year of the project 2,951 eligible youth were handled, and in the second year, 3,243; 52.8 percent of the cases handled in the first two years were girls. *Id.* at 9, 61. Each case represents a discrete incident to which the police responded.

Both in terms of the frequency of reinvolvement with the juvenile justice system and in terms of the severity of that reinvolvement, youth handled by this program showed a distinctly better track

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record than a one year sample of preproject youth. A total of 21 percent of all diverted youth became reinvolved on a new offense, while 48.5 percent of the preproject sample of status offenders handled by the usual processes, tracked for a one year period, committed a new offense. Of that sample, 22 percent had reentered the juvenile justice system for a *third* time within one year. *Id.* at v, 20-26.

It was found that 70.8 percent of the youths in a sample of cases handled by the diversion project made contact with the agencies recommended to them by the police, and 62.9 percent actually received services. A sample of parents, on the other hand, followed police recommendations in 51.2 percent of the cases and received help in 44 percent. Roughly 49 percent of the youths and parents indicated that the services were of some help; one-third of the parents, however, felt the services were of little help. *Id.* at vii, 46-52. Service agency and resource records indicated that the police initiated the contact in more than half the cases, while clients were the initiating party in 35.5 percent of the cases. *Id.* at 46. Twenty percent of a sample of parents felt the handling was too lenient and stated they thought the youth should have been booked into the juvenile hall; 73 percent of those parents said booking "would have impressed upon the child the seriousness of the predelinquent behavior." *Id.* at 50.

Perhaps most impressive, a countywide preprogram survey revealed that the county's law enforcement agencies used a total of fifteen community resources of various kinds, public and private, in attempts to obtain services for unruly children. During the first two years of the program, the number of community resources utilized by police in handling beyond-control cases had grown to 110, about equally divided between public and private resource agencies in frequency of use. *Id.* at 37. It is not known how many of these were in existence before the project began; it seems safe, however, to assume that some of the resources were created or developed because of the demand created by diversion and referral for help on a voluntary basis.

Without the diversion program, to handle the beyond-control referrals in the first two years of the project would have cost the probation department and the juvenile court not less than $1,785,319 and 51,645 work hours in delivering services. *Id.* at v, 57. With the program in operation, the cost of servicing beyond-control cases during this period was approximately $744,756 and consumed 23,930 work hours, a savings of approximately $1,040,563 and 27,715 work hours. The cost of providing police services during the

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two-year period was $346,401, with such project expenses as consultation by probation personnel, supplies, transportation, and research and evaluation making up the balance. *Id.* at 57.

These studies certainly provide no final answers. They do suggest, however, that abridgement of the status offense jurisdiction and reliance on services outside the juvenile justice system, for the most part voluntarily utilized, may be a feasible and realistic approach to the handling of noncriminal misbehavior. It appears not unlikely that as the juvenile court's possibility of intervention is removed, the responsiveness and efficacy of the resources in handling unruly youth and their families will increase, as will the satisfaction of the clients. It seems not unreasonable to suppose that some resources, at least, did not bring to bear the full measure of effort they might have given had the court not always been there as a last resort.

In particular, the studies appear to support the following points which underscore the feasibility of curtailing the juvenile court's status offense jurisdiction:

A. Runaway, beyond-parental-control and other forms of noncriminal misbehavior can be successfully dealt with outside the juvenile justice system.

B. Formalized detention in such cases can be avoided through counseling services and alternative residential placements that are nonsecure, temporary, and voluntary.

C. Youths involved in noncriminal misbehavior who are handled in this way, rather than by induction into the intake and adjudication processes, are likely to have fewer subsequent brushes with the law and to have a better general adjustment to life and its problems than those drawn into the juvenile justice system.

D. Though many resources that do not now exist will have to be created, and many of those extant will have to be strengthened and redirected, a start on handling noncriminal misbehavior cases outside the juvenile justice system can feasibly be made, in most cases, with resources now available. And at least to some notable extent, the services now lacking may be created when the demand is created.

One of the principal reasons for the present retention of the status offense jurisdiction is, one assumes, that it provides something of a base from which the court can respond to a youth's presented needs by directing appropriate orders to school authorities and other social agencies. It should be noted that elimination of that jurisdiction should not hinder the ability of courts to so respond. Enabling statutes and orders issued pursuant to the court's inherent powers can provide the basis of judicial leverage and assis

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tance without the need to sweep in the youth under the status offense jurisdiction. See, *e.g.*, N.Y. Fam. Ct. Act § 255; *Janet D. v. Carros*, Ct. C.P. (Allegheny Co.) No. 1079-73 (unreptd.), 6 *Juv. Ct. Dig.* 139 (Pa. 1974) (director of county child welfare services cited for contempt for failure to obtain care as directed for runaway girl); Carrigan, "Inherent Powers of the Courts," 24 *Juv. Justice* 38 (May 1973); *State ex rel. Weinstein v. St. Louis Co.*, 451 S.W.2d 99 (Mo. Sup. Ct., 1970); *State on inf. of Anderson v. St. Louis Co.*, 421 S.W.2d 249 (Mo. Sup. Ct., 1967).

It is a perversion of basic fairness and the system of justice when coercive jurisdiction over a child is the only way to reach a recalcitrant official in breach of his or her duty to the child.

These standards posit the elimination of the status offense jurisdiction of the juvenile court and the substitution of services outside the formal justice system, largely voluntarily based, on assumptions that (1) noncriminal misbehavior cases will benefit from the immediate intensive handling that this will allow, rather than the piecemeal investigation, adjudication, and referral that is now more the rule than the exception; (2) the majority of service and helping time should be at the onset of the problem, when the family confronts a crisis, rather than weeks or months later after attitudes and positions have hardened with the passage of time; and (3) such services will be of greater help if they are not coerced. Our experience with the divorce law has demonstrated that the legal system is too blunt an instrument to resolve the complexities of family dysfunction and that the legal system cannot by compulsion order personal relationships. *Cf.* Uniform Marriage and Divorce Act; *Report of the California Governor's Commission on the Family* (1966). When a sixteen-year-old girl must petition the juvenile court to declare her incorrigible as the only way out of a home she finds intolerable, the ineptitude of the present mechanisms for resolving the intrafamily conflicts that status offenses represent is apparent. See *In re Welfare of Snyder*, 85 Wash. 2d 182, 532 P.2d 278 (1975); *cf.* Wald, "The Rights of Youth," 4 *Human Rights* 13, 21 (1974).

Inevitably, some cases will be lost to help and some youth will go unassisted who might have been aided if the formal scheme of coercive intervention in cases of noncriminal misbehavior were kept. It is believed, however, that their numbers will be relatively few, and that the social costs of retaining the status offense jurisdiction as it now exists far outweigh the relatively small benefits. In the great majority of cases, it is to be expected that voluntarily based services will be accepted and will prove far more effective than wardship and court-ordered commitment.

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Many years ago, the British legal historian, Sir Henry Maine, wrote that the progress of civilized society was marked by the transition from status to contract. H. Maine, *Ancient Law* 182 (Pollock ed. 1906). It is time that American society took that transitional step in its response to family-based problems centered on the noncriminal misbehavior of children. By relying on noncoerced and extrajudicial services rather than court-imposed sanctions in status offense cases, these standards attempt to provide the basis for that step.

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Standards

PART I: GENERAL PRINCIPLES OF JUVENILE COURT JURISDICTION RELATING TO NONCRIMINAL MISBEHAVIOR

1.1 Noncriminal misbehavior generally.

A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.

PART II: JUVENILES IN CIRCUMSTANCES ENDANGERING SAFETY—LIMITED CUSTODY

2.1 Limited custody.

Any law enforcement officer who reasonably determines that a juvenile is in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety may, if the juvenile's physical safety requires such action, take the juvenile into limited custody subject to the limitations of this part. If the juvenile consents, the law enforcement officer should transport the juvenile to his or her home or other appropriate residence, or arrange for such transportation, pursuant to Standard 2.2. If the juvenile does not so consent, the law enforcement officer should transport the juvenile to a designated temporary nonsecure residential facility pursuant to Standard 2.3. In no event should limited custody extend more than six hours from the time of initial contact by the law enforcement officer.

2.2 Notice to parent; release, responsibility of persons taking juvenile from limited custody.

A. The officer taking a juvenile into limited custody should inform the juvenile of the reasons for such custody and should con-

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tact the juvenile's parent, custodian, relative, or other responsible person as soon as practicable. The officer or official should inform the parent, custodian, relative, or other responsible person of the reasons for taking the juvenile into limited custody and should, if the juvenile consents, release the juvenile to the parent, custodian, relative, or other responsible person as soon as practicable.

B. The officer so releasing a juvenile from limited custody should, if he or she believes further services may be needed, inform the juvenile and the person to whom the juvenile is released of the nature and location of appropriate services and should, if requested, assist in establishing contact between the family and the service agency.

C. Where a parent or custodian could not be reached and release was made to a relative or other responsible person, the officer should notify the parent or custodian as soon as practicable of the fact and circumstances of the limited custody, the release of the juvenile, and any information given respecting further services, unless there are compelling circumstances why the parent or custodian should not be so notified.

D. Where a juvenile is released from limited custody to a person other than a parent or custodian, such person should reasonably establish that he or she is willing and able to be responsible for the safety of the juvenile. Any such person so taking the juvenile from limited custody should sign a promise to safeguard the juvenile and to procure such medical or other services as may immediately be needed.

2.3 Inability to contact parents; use of temporary nonsecure residential facility; options open to the juvenile; time limits.

A. If the law enforcement officer is unable by all reasonable efforts to contact a parent, custodian, relative, or other responsible person; or if the person contacted lives at an unreasonable distance; or if the juvenile refuses to be taken to his or her home or other appropriate residence; or if the officer is otherwise unable despite all reasonable efforts to make arrangements for the safe release of the juvenile taken into limited custody, the law enforcement officer should take the juvenile to a designated temporary nonsecure residential facility licensed by the state for such purpose. The staff of such facility should promptly explain to the juvenile his or her legal rights and the options of service or other assistance available to the juvenile and should in no event hold the juvenile for a period longer than six hours from the time of the juvenile's initial contact with the law enforcement officer.

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B. If the juvenile taken into limited custody and taken to such facility refuses to return home, and the safe release of the juvenile cannot be effected within six hours from the time of the juvenile's initial contact with the law enforcement officer, the provisions of Part III of these standards should apply and the case should be handled pursuant thereto, whether the juvenile was initially absent from home with or without the consent of his or her parent or custodian.

2.4 Immunity for officer acting in good faith pursuant to standards.

A law enforcement officer acting reasonably and in good faith pursuant to these standards in releasing a juvenile to a person other than a parent or custodian of such juvenile shall be immune from civil or criminal liability for such action.

PART III: RUNAWAY JUVENILES

3.1 Use of limited custody where possible; nonsecure detention; time limits; notification of parent.

A. If a juvenile is found by a law enforcement officer to be absent from home without the consent of his or her parent or custodian, and it is impracticable to secure the juvenile's return by taking limited custody pursuant to Part II of these standards, the juvenile should be taken to a temporary nonsecure residential facility licensed by the state for such purpose.

B. As soon as practicable, the staff of the facility should reasonably attempt to notify the juvenile's parent or custodian of his or her whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement, unless there are compelling circumstances why the parent or custodian should not be notified.

C. Upon such juvenile's admission to the temporary facility, the staff of the facility should undertake to make arrangements for the juvenile's return home as soon as practicable. The juvenile may remain in the facility for a period not to exceed twenty-one days from his or her date of admission to the facility without the filing of a neglect petition, in order that arrangements may be made for the juvenile's return home or for alternative residential placement pursuant to Part V of these standards. If the juvenile and the parent or custodian agree, in writing, the juvenile may remain longer than twenty-one days in the temporary facility without the filing of a neglect petition. In any case, the staff of the temporary facility

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should seek to effect the juvenile's return home or alternative living arrangements agreeable to the juvenile and the parent or custodian as soon as practicable.

3.2 Return of juvenile upon agreement; refusal of return by juvenile or parent; petition for neglect; applicable standards of decision; transfer of juvenile; responsibilities of facility staff.

A. If, after his or her admission to a temporary nonsecure residential facility, a juvenile who is absent from home without permission and his or her parent or custodian agree to the juvenile's return home, the staff of the facility should arrange transportation for the juvenile, as soon as practicable, to the state and county of residence of the parent or custodian, at the latter's expense to the extent of his or her ability to pay.

B. If the juvenile refuses to return home and his or her parent resides in another county or state, and if no other living arrangements agreeable to the juvenile and the parent or custodian can be made, the staff of the facility should arrange transportation for the juvenile, as soon as practicable, to a temporary nonsecure residential facility licensed by the state for such purpose in the state and county of residence of the parent or custodian, at the expense of the latter to the extent of his or her ability to pay. If there is no such facility in the county of that residence, the nearest such facility to that residence should be used.

C. If the parent or custodian refuses to permit the juvenile to return home, and no other living arrangement agreeable to the juvenile and the parent or custodian can be made, the staff of the facility housing the juvenile should notify the juvenile court to appoint legal counsel for the juvenile and should file a neglect petition in the juvenile court in the jurisdiction of the residence of the parent or custodian.

D. It should be the responsibility of the staff of the facility housing the juvenile to provide counseling and other services and to arrange for alternative residential placement for the juvenile, as may be required. In the event of a transfer of the juvenile pursuant to Standard 3.2 B., the responsibility should be that of the receiving facility.

PART IV: SERVICES RELATING TO JUVENILES IN FAMILY CONFLICT

4.1 Spectrum of services.

A broad spectrum of services should be provided which are rea-

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sonably designed to assist a juvenile in conflict with his or her family to resolve their conflicts.

4.2 Services to be voluntarily based.

Except as provided in these standards, such services should be offered on a voluntary basis, and the juvenile and the family should not be required to receive such services in cases involving the juvenile's unruly behavior which does not contravene the criminal law.

4.3 Crisis intervention and continuing service.

A. The spectrum of services provided should include both crisis intervention and continuing service components. All persons providing services or otherwise communicating with a juvenile and his or her family pursuant to these standards should take care to use language understood by the juvenile and the family.

1. Crisis intervention services consist of an interview or series of interviews with the juvenile or his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the juvenile or the family. Crisis intervention services should include the arrangement of temporary alternative nonsecure residential care, if required. Alternative residential care should be provided in a family or small group setting through the use of relative homes, foster homes, runaway shelters, group homes, and similar resources.

a. Crisis intervention services should include, but not be limited to, the provision of or referral to services for suicide prevention, psychiatric or other medical care, psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and the family.

2. Continuing services should include, but not be limited to, psychiatric or other medical care, psychological, welfare, legal, educational or other social services, and the arrangement of alternative residential placement pursuant to Part V of these standards, if required, as appropriate to the needs of the juvenile and the family.

4.4 Accessibility and responsiveness of services; hot lines and walk-in centers.

It is the intent of these standards that services should be provided in a variety of ways that maximize accessibility and responsiveness to the needs of juveniles, families, and the community. It is de-

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sirable that the means by which such services are provided include, but not be limited to, the following:

A. Publicized crisis switchboards (hot lines) for juveniles and for parents staffed on a twenty-four hour basis with personnel who have language skills appropriate to the needs of the community served. Conversations on such switchboards should be confidential and should be neither monitored nor recorded.

B. Publicized walk-in service centers which should accept self-referrals by juveniles and their families, as well as referrals from law enforcement and other community agencies and groups. Such centers should be run with minimum formality and will in most cases provide essentially short-term assistance, acting as brokerage centers for referral to more long-term and specialized services. It is desirable that such centers utilize multidisciplinary staffs, both regularly employed and volunteer, including paraprofessionals and persons from the community area served. In larger cities, such centers should be located in various neighborhood areas.

PART V: ALTERNATIVE RESIDENTIAL PLACEMENTS FOR JUVENILES IN FAMILY CONFLICT

5.1 Setting of alternative residential placement; placement on agreement or court approval if disagreement.

As specified in Standard 4.3 A. 2., the services rendered to a juvenile in conflict with his or her family who has violated no criminal law should include in appropriate cases and upon the agreement of the juvenile and his or her parent or custodian, the arrangement of alternative residential placement in a relative home, foster or group home, or other suitable family setting. No alternative residential placement should be arranged over the objection of a juvenile or of his or her parent or custodian, except that if they cannot agree as to an alternative residential placement and a juvenile not emancipated refuses to return home, the juvenile court may approve an alternative residential placement upon motion pursuant to this part.

5.2 Prohibition against placement in secure facility.

In no event should alternative residential placement for a juvenile in conflict with his or her family, who has violated no criminal law, be arranged in a secure detention facility or in a secure institution used for the detention or treatment of juveniles accused of crimes or adjudged delinquent.

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5.3 Provision of services during placement.

During any alternative residential placement, there should be provided to the juvenile and to his or her family such services as may be appropriate to the particular case, to the end that the juvenile may be reunited with the family as soon as practicable.

5.4 Duration of placement on agreement and on court approval if disagreement; motion to approve placement; restricted juvenile court jurisdiction; approval if juvenile not imperiled; definition of "imperiled"; requirements of review.

A. If a juvenile who is in conflict with his or her family but who has violated no criminal law, and his or her parent or guardian agree to an arrangement for alternative residential placement, such placement may continue as long as there is agreement.

B. If such juvenile and his or her parent or custodian cannot agree to an arrangement for alternative residential placement in the first instance, or cannot agree to the continuation of such placement, the juvenile or his or her parent or custodian, or a person properly acting at the juvenile's request, should file with the juvenile court a motion to approve alternative residential placement. The filing of a motion to approve such placement should not be dependent upon the court's having obtained any prior jurisdiction over the juvenile or his or her parent or custodian, and confers upon the court a special jurisdiction to approve or disapprove alternative residential placement or its continuation. The juvenile court should promptly appoint legal counsel for the juvenile, whether or not the juvenile is the moving party, schedule a hearing date, and notify the juvenile and his or her parent or custodian of the hearing date, the legal consequences of an approval or disapproval of alternative residential placement, the right of both parties to present evidence at the hearing, and the right of the parent or custodian to be represented by legal counsel at the hearing.

C. The hearing should be upon the motion and no petition should be filed in the case unless other factors are present indicating child neglect, child abuse, or the juvenile's violation of the criminal law. In such case, the matter should be handled upon the proper jurisdictional ground. In ruling on a motion to approve alternative residential placement, the court should approve or disapprove the placement and should make no other order extending court jurisdiction over the juvenile except as provided herein.

1. At the hearing on the motion to approve alternative residential placement, unless the court finds upon a preponderance of the evidence that the placement where the juvenile resides or

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wishes to reside imperils or would imperil the juvenile, the court should approve the placement.

2. Before disapproving a placement in which the juvenile resides or wishes to reside, the court should find upon a preponderance of the evidence that the placement imperils or would imperil the juvenile, and that it is probable that his or her conditions of living will be improved by available alternative residential placements. Before disapproving a placement, the court should give such reasonable opportunity for correction of its defects as may be appropriate under the circumstances of the particular case.

3. If the court finds, upon a preponderance of the evidence, that the placement where the juvenile resides imperils him or her, notwithstanding the provisions of Standard 5.4 C. 2. respecting the opportunity to correct the placement's defects, the court should take such steps as may be required to remove the juvenile therefrom until the correction is made or an alternative residential placement is approved, including but not restricted to an order directing a law enforcement officer to take limited custody of the juvenile pursuant to these standards. In that event, the matter should be handled as provided by Parts II and III of these standards, as may be appropriate to the particular case. The court may direct that another alternative residential placement be arranged, subject to the agreement of the juvenile and his or her parent or custodian or the approval of the court, but the court in hearing a motion to approve an alternative residential placement or reviewing an order of approval should not be empowered to order the juvenile to return to the home of his or her parent or custodian over the juvenile's objection.

D. For the purposes of this Part, a placement is deemed to imperil a juvenile when it fails to provide physical protection, adequate shelter, or adequate nutrition; or seriously and unconscionably obstructs the juvenile's medical care, education, or physical and emotional development, as determined according to the needs of the juvenile in the particular case; or exposes the juvenile to unconscionable exploitation.

E. Upon approving an alternative residential placement pursuant to this Part, the court should schedule the matter on the calendar for review in six months, advise the parties of the date thereof, appoint legal counsel to represent the juvenile at the review hearing, and notify the parties of their rights to present evidence at the review hearing and of the right of the parent or custodian to be represented by legal counsel. At each review hearing, the juvenile court should approve or disapprove the continuation of the alternative residential

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placement according to the same standards and limitations as governed the initial approval; should determine that such interim services as may be appropriate have been offered the juvenile and his or her family, pursuant to Standard 5.3 of this Part; and should again set the matter on the calendar for further review in six months, notifying the parties as before.

PART VI: STANDARDS RELATING TO EMERGENCY SERVICES FOR JUVENILES IN CRISIS

6.1 Temporary custody of juvenile if suicidal, seriously assaultive or destructive, or otherwise similarly evidences need for emergency care.

When any juvenile, as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care, any law enforcement officer, member of the attending staff of an evaluation psychiatric or medical facility designated by the county (state, city, etc.) or other professional person designated by the county (state, city, etc.) may upon reasonable cause take, or cause to be taken, such juvenile into emergency custody and take him or her to a psychiatric or medical facility designated by the county (state, city, etc.) and approved by the state department of health (or other appropriate agency) as a facility for emergency evaluation and emergency treatment.

6.2 Admission to emergency facility for evaluation and treatment; notification of parent, guardian, or custodian.

A. As soon as practicable after taking a juvenile not known to be emancipated into emergency custody under this Part, the officer, member of the attending staff, or other authorized professional person should notify the juvenile's parent or custodian of the fact of the juvenile's custody, physical and mental condition, and the location of the facility for emergency evaluation and treatment to which the juvenile is to be or has been taken.

B. Such facility should require an application in writing stating the circumstances under which the juvenile's condition was called to the attention of the officer, member of the attending staff or other authorized professional person, and stating why that person believes as a matter of personal observation that the juvenile is suicidal, seriously assaultive or seriously destructive toward others, or other-

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wise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care.

6.3 Requirement and definition of services: informed consent.

A. Each juvenile admitted to a psychiatric or medical facility for emergency evaluation and possible emergency treatment under this Part should receive an evaluation as soon after admission as practicable and should be offered such treatment and care, including but not limited to crisis intervention services, as the juvenile's condition requires for the full period that he or she is held. As soon as practicable, the professional person in charge of the facility, or such person's designee, should inform the juvenile's parent, guardian, or custodian of the results of the evaluation and the findings of the psychiatric or medical staff regarding the need for treatment.

B. Crisis intervention services consist of an immediate interview or series of interviews with the juvenile and his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the juvenile or the family. Crisis intervention services should include, but should not be limited to, suicide prevention, psychiatric and other medical, psychological, welfare, legal, or other social services, as appropriate to the needs of the juvenile and the family.

C. The juvenile's informed consent should be obtained prior to the giving of any treatment unless he or she is, in the professional judgment of the attending physician and his or her psychiatric or medical superior, incapable of making a rational judgment about the need for treatment. When the juvenile's condition does not permit his or her informed consent, the informed consent of the juvenile's parent, or, if the juvenile is emancipated, his or her next of kin alone should suffice; provided, however, that in no case should consent be required before treatment required to save a juvenile's life. No extraordinary or experimental medications or physical procedures should be administered without the informed consent of the juvenile, his or her condition permitting; his or her parent or custodian, or next of kin if the juvenile is emancipated; and the juvenile court, upon a motion to approve treatment or other appropriate proceeding.

6.4 Release without admission to facility.

If, upon receiving an application for the admission of a juvenile to a psychiatric or medical facility for emergency evaluation and possible treatment pursuant to Standard 6.1, the professional person

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in charge of the facility, or such person's designee, determines after appropriate evaluation that the juvenile can be treated without being detained, the juvenile should be released and the juvenile and his or her family should be provided evaluation, crisis intervention services, or other inpatient or outpatient treatment on a voluntary basis, as the particular case may require.

6.5 Emergency placement not to exceed seventy-two hours.

A. If, after receiving an application for the admission of a juvenile to a psychiatric or medical facility for emergency evaluation and possible treatment, the professional person in charge of the facility, or such person's designee, determines after evaluation that the juvenile requires further emergency evaluation or treatment which cannot be done on an outpatient basis, the juvenile may be admitted to the psychiatric or medical facility and detained for a period not to exceed seventy-two hours.

B. A juvenile so admitted to the psychiatric or medical facility for emergency evaluation and possible treatment should be released before seventy-two hours have elapsed if, in the judgment of the professional person in charge of the facility, or such person's designee, the juvenile no longer requires emergency evaluation or treatment and is no longer suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical care. As the particular case may require, outpatient services should be provided to the juvenile and the family on a voluntary basis.

6.6 Referral after seventy-two hours for further care.

If, after the seventy-two hour period specified in Standard 6.5 has elapsed and after emergency evaluation and treatment appropriate to the juvenile's condition have been supplied, the professional person in charge of the medical facility for emergency evaluation and treatment, or such person's designee, determines that the juvenile is still suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for medical care by reason of a mental or emotional disorder, such person should refer the juvenile for further care pursuant to the appropriate mental health commitment law.

6.7 Right to seek voluntary care.

Nothing in these standards should be construed as limiting in any way the right otherwise given by law of any juvenile, or of the parent, guardian, or custodian of any juvenile, to make voluntary

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application at any time to any public or private agency or practitioner for medical or mental health services, on an inpatient or outpatient basis, whether by direct application in person or by referral from any private or public agency or practitioner.*

*Commissioner Patricia M. Wald registers her interpretation that this standard in no way suggests that parents, over juveniles' objections, may "volunteer" children into mental hospitals without the opportunity for a due process hearing. See *Bartley v. Kremens,* 402 F. Supp. 1039 (E.D. Pa. 1975).

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*Standards with Commentary**

PART I: GENERAL PRINCIPLES OF JUVENILE COURT JURISDICTION RELATING TO NONCRIMINAL MISBEHAVIOR

1.1 Noncriminal misbehavior generally.

A juvenile's acts of misbehavior, ungovernability, or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.

Commentary

As indicated in the Introduction to these standards, it is their intent to remove from juvenile court jurisdiction cases of unruly or ungovernable children whose behavior does not violate the criminal law. This standard is intended to subsume all noncriminal misbehavior now embraced by the status offense jurisdiction, such as disobedience to the orders of a parent or custodian; truancy; disobedience to the orders of school authorities; absence from home without the permission of a parent or custodian; sexual misconduct; acting in a manner allegedly injurious to the minor or others; or possession of tobacco, alcohol, or other drugs. (To the extent that the latter violates the criminal law, it should be dealt with under the delinquency jurisdiction.)

Disobedience to parent or custodian. State intervention has proven a poor buttress of parental authority and family harmony in handling the problems of rebellious children. As American society moves toward granting young persons greater rights at an earlier age, it is increasingly less adroit in giving the weight of legal authority to what is frequently rigid and arbitrary parentage. See Wald, "The

*On July 21, 1976, *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), cited herein, was reversed on technical grounds by the Fifth Circuit Court of Appeals, *Morales et. al. v. Turman et. al.*, 535 F.2d 864.

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Rights of Youth," 4 *Human Rights* 13 (1974); M. Paulsen and C. Whitebread, *Juvenile Law & Procedure* 44 (1974); J. Holt, *Escape from Childhood* 45-53 (1974). Furthermore, there appears to be no evidence that "the viability of the family will be jeopardized by more freedom for the children," or that the present possibilities of judicial intervention as a parent surrogate, under the status offense jurisdiction, help to restore harmony to the dysfunctional family or benefit the child. Wald, *supra* at 24.

As discussed in the Introduction, to apply to behavior that is not criminal, no matter how vexing, the same sanctions that obtain in cases of behavior that is criminal is fundamentally perverse. There is evidence that children develop the capacity and perception for intricate moral judgments much earlier than is commonly supposed. *Cf.* "Summary of Symposium on Moral Development and Juvenile Justice" (prepared for IJA-ABA Joint Commission on Juvenile Justice Standards, October 13-15, 1974); see Konopka, "Formation of Values in the Developing Person," 43 *Am. J. Orthopsychiatry* 86 (1973); Kleinfeld, "The Balance of Power Among Infants, Their Parents & The State," 5 *Fam. L.Q.* 64, 69, at note 29 (1971); J. Piaget, *The Moral Judgment of the Child* (Gabain transl., 1965). A young person who is incarcerated for parental defiance in the same place and program as a youth who has committed five armed robberies is not likely to perceive as fair the legal process that put him or her there, or internalize its values or, through normal developmental processes, come to see delinquent behavior as inconsistent with, and adverse to, his or her self-concept. In short, justice will not be seen to be done.

Judicial intervention in beyond-parental-control cases would appear to encourage parents to resign their parental roles to the court. The studies discussed in the Introduction suggest that parents of ungovernable children regard the juvenile court and detention facilities as there to provide the "control" they cannot; they also demonstrate that the court has been visibly unsuccessful as a surrogate parent in such cases.

Moreover, the family problems encountered in the exercise of the status offense jurisdiction range from seemingly trivial matters to complicated and many-faceted dilemmas that virtually defy solution. All represent, to a greater or lesser degree, failures of communication within the family unit that are likely to be worsened by judicial intervention and that in most cases will be better served by noncoerced assistance. Many status offense cases are in reality cases of neglect, abuse, or delinquency and should be dealt with on that ground. The line is often exceedingly thin and decisions to invoke the status offense jurisdiction in a particular case may be based on

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such fragile considerations as having no evidence to proceed on another ground (but thinking that the youth's situation requires that *something* be done, however unlikely of success); or for convenience (*e.g.*, that the youth in question presents an age and level of independence with which the dependent shelter is unsuited to deal). A recent Washington case, *In re Welfare of Snyder*, well illustrates the jurisdictional confusion and dispositional infelicity that attend the status offense jurisdiction. In that case, the father admitted a sixteen-year-old girl to juvenile hall for failure to obey and the girl filed a petition alleging she was a dependent child. Almost exactly five months later the director of intake filed a petition alleging incorrigibility. A hearing to determine temporary custody was held some twelve days later, the court essentially limiting proceedings to the arguments of opposing counsel, and the youth was committed to foster placement. By this time the girl had evidently joined in the incorrigibility petition and asked the court to find her incorrigible because her home situation was intolerable. The court did so. The parents, on appeal, contended she was *not* incorrigible as a matter of law because the only evidence to support the finding of incorrigibility was the daughter's own statements, which she should not have been allowed to make! The Washington Supreme Court upheld the finding and disposition. *In re Welfare of Snyder*, 85 Wash. 2d 182, 532 P.2d 278 (1975). Had resort to the court not been possible and had there been available the sorts of crisis intervention services and voluntary alternative residential placements or mechanisms for emancipation of older youth, the minor, her family, and the community in which they lived would have been spared the invidious spectacle which the record presents. It is perfectly true that "hard cases make bad law." In respect of status offense cases, it is not beyond the mark to conclude that they are all hard.

The standards take the position that conduct that infringes the criminal law should be dealt with under the procedures for handling youth crime. Cases of parental defiance that evince neither culpable parental neglect or abuse (which should of course also be dealt with under that jurisdictional rubric) nor criminal conduct on the part of the youth should not have the possibility of resulting in coercive judicial intervention, but should be channeled to services outside the justice system.

With respect to a juvenile whose custodian is the court or other social institution by reason of prior court action, it is submitted that the same principles should apply. A youth's behavior in defiance of the custodian's directions that does not otherwise contravene the criminal law should not be handled as a case of delinquency. (For example, some proposals provide that runaway minors who lack

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parental permission to be absent from home should, upon apprehension, be placed in temporary nonsecure residential care facilities upon their written promise not to run away, and upon being advised that their abscondment may result in the issuance of a warrant of arrest and secure custody because they have violated the juvenile criminal code. See, *e.g.*, A.B. 2385 [authored by the Committee on Criminal Justice, California Assembly], California Legislature 1975–76 Reg. Sess. § 805, as amended 6/27/75. These standards do not adopt that position.)

Truancy. School attendance is properly the business of the schools, not the courts. Judicial coercion can at best (and that very seldom, short of twenty-four hour confinement) dragoon the physical presence of the youth's body, with strong indications that the "heart and mind" will not only not follow, but will be strongly repelled. Truancy represents a highly complex set of problems. The failure of a child to attend school may stem from parental disinterest or other neglect; from disability; from a fear of violence, at or enroute to school; from a defeat of motivation for learning by wooden and insensitive school programs that utterly fail to respond to the child's needs; and from a host of other factors.

The typical American response to failure to attend school has long been for the school to suspend the child for nonattendance and to refer the problem to the juvenile court in order that the latter may compel attendance. It could hardly be more disserving. The ultimate sanction for failing to obey the court's order, in most jurisdictions, is commitment to the same system of state facilities charged with the maintenance and treatment of the most violent and depredatory youthful offenders. See, *e.g.*, *Nelson v. Heyne*, 355 F. Supp. 451 (N.D. Ind. 1972), *supp. opin.* 355 F. Supp. 458, *aff'd* 491 F.2d 352 (7th Cir. 1974); *In the Matter of Mario*, 317 N.Y.S.2d 659 (Fam. Ct. 1971); but *cf. In re Shinn*, 195 Cal. App. 2d 683, 16 Cal. Rptr. 165 (1961), *State ex rel Pulakis v. Superior Ct. of Washington*, 14 Wash. 2d 507, 128 P.2d 649 (1942).

Whatever the causes of truancy, in the aggregate or in the particular case, the existence of the truancy jurisdiction in the juvenile court cuts against the school's assumption of its own responsibilities and the improvement of its programs. As long as that jurisdiction remains, the schools have a ready dumping ground for their problem children. As with the other areas of noncriminal misbehavior, the problems of school attendance are best met by noncoercive services based outside the juvenile justice system. The court's forcing a child back into school is likely to have malignant consequences for all. As one court observed: "Forcing [the student] into classical school-

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rooms introduces a disruptive element which is not good for the school, the teachers, the other students, and likewise is not good for [him]." *In re Peters*, 14 N.C. App. 426, 430–31, 188 S.E.2d 619, 621–22, *aff'd* 288 N.C. 28, 191 S.E.2d 702 (1972).

Through enabling statutes and the use of the court's inherent powers, the juvenile court should lose none of its duty to make children's institutions work, or its ability to direct orders to parents, school officials, and other persons to require particular action and services in appropriate cases, if the truancy jurisdiction is excised. See, *e.g.*, N.Y. Family Ct. Act § 225; *State ex rel Weinstein v. St. Louis Co.*, 451 S.W.2d 99 (Mo. Sup. Ct. 1970); *State on Inf. of Anderson*, 421 S.W.2d 249 (Mo. Sup. Ct. 1967).

Providing for the removal of juvenile court intervention in truancy cases in no sense denigrates the importance of a decent education, nor the devastating impact of a child's not having one. It reflects, rather, the conviction that coercive judicial intervention has not proven demonstrably effective in securing that education, and in many cases has worked positive mischief by treating truant youth in the same way as if they had committed criminal acts.

Finally, withdrawal of the court's truancy jurisdiction is not antagonistic (though at first glance it may seem logically impure) to maintaining a requirement of compulsory education. A variety of other means and sanctions may be invoked to promote attendance, such as proper educational counseling suited to the child's circumstances and needs; realistic alternative and special programs of education; "escort" services to school provided by the school or by community groups or agencies; and various programs involving the parents.

Disobedience to school authorities. As in the case of the truancy jurisdiction in the juvenile court, the existence of the "school insubordination" jurisdiction encourages the off-loading of problems that ought to be handled by the schools, and dampens the school's responsibility and ability to develop means of doing so.

In the case of violent or threatening behavior or other conduct that significantly disrupts the school and endangers or disturbs others, the responsible youths can and should be handled under the appropriate laws relating to juvenile crimes. If the behavior does not rise to that level of gravity, it should not be susceptible of being dealt with by the juvenile court.

Absence from home without permission of a parent or custodian. Juveniles absent from home without parental or custodial consent, whether for a short period or for an extended time, should be dealt

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with according to the standards relating to limited custody (Part II, *infra*) or to runaway youths (Part III, *infra*), as may be appropriate to the particular case.

Sexual misconduct. In virtually every case, the status offense statutes of the several states extend the jurisdiction of the juvenile court on the basis of ungovernability to youthful sexual promiscuity, which is essentially to say whenever any sexual activity is shown. The available evidence indicates that in the great number of cases the "morals jurisdiction" is more invoked with respect to girls rather than boys. See, *e.g.*, *E.S.G. v. State*, 447 S.W.2d 225 (Tex. Civ. App. 1969), *cert. denied*, 398 U.S. 956 (1970); Note, "Ungovernability: The Unjustifiable Jurisdiction," 83 *Yale L.J.* 1383, 1388-89 (1974) (study of New York PINS cases commissioned by Juvenile Justice Standards Project showed that girls comprised 100 percent of the minors petitioned as PINS for sexual promiscuity, prostitution, cohabiting and "general sex innuendo" [*sic*], *Id.* at note 41).

Constitutional issues of due process and equal protection aside, in cases of sexual misconduct as in cases of other noncriminal misbehavior, judicial intervention rarely reaches root causes and too often exacerbates problems rather than having its intended effect. Adolescent sexual activity is of grave concern to parents, and it is perfectly true that in many cases the youth will need help. It is submitted, however, that the juvenile justice system is neither the place to get it nor to be referred for it. While the aphorism is that morality cannot be legislated, the equal reality is that it cannot be worked even upon the young by adjudication and judicial decree—even if there were general agreement as to what it was. One person's deviance is another person's pluralism. See generally H. Packer, *The Limits of the Criminal Sanction* (1968).

If the sexual behavior is such as to threaten harm to another, it should be dealt with as a violation of the applicable criminal law. If it is not, and is not proscribed by the criminal code, it should not be the subject of juvenile court handling unless it evidences child abuse or neglect, in which case it should be dealt with under the abuse and neglect jurisdiction. Some cases involving sexual behavior may require the coerced removal of a youth by law enforcement or other officials from a situation of high risk, which should be accomplished pursuant to the standards governing the exertion of limited custody over children in immediate jeopardy (Part II, *infra*).

Acting in a manner allegedly injurious to self or others. It is recognized that some children will be found to be in need of immediate help and treatment. Most of these problems are essentially

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medical—drug or alcohol intoxication and severe mental disturbance are perhaps the most obvious. The status offense jursidiction is frequently used at present to cover such cases because the law provides no firmer ground for court intervention and possible mental health commitment. See, *e.g.*, Office of Children's Services, Judicial Conference of the State of New York, *The PINS Child: A Plethora of Problems* 48-50 (1973) (eighteen children, or 7 percent, of a sample of 254 PINS cases were diagnosed as schizophrenic; fifty-five, or 22 percent, were diagnosed as having a "personality disorder").

These standards envision procedures for the provision of help in crises of this sort that do not entail the assertion of the juvenile court ungovernability jurisdiction over the affected youth. *Cf.* Standards Relating to Emergency Services for Juveniles in Crisis (Part VI, *infra*).

Possession of tobacco, alcohol, or other drugs. To the extent that such possession is sought to be controlled in a given jurisdiction, interdiction should be by the laws governing juvenile crime and violations should be handled under the delinquency jurisdiction. It is not thereby intended to preclude resort to emergency services for juveniles in crisis (Part VI, *infra*) when the case should require it.

It should be recognized that the particular focus of societal concern about one form of youthful misbehavior or another will vary, depending upon the particular local community. However, all of the components of behavior that make up the present status offense jurisdiction are prevalent, and concern over them all transcends minority community, urban-rural, and affluence lines.

It is not the intention of this standard to preclude judicial approval or review of alternative residential placement conducted pursuant to Part V of these standards; proceedings for mental health commitment of a juvenile; or any proceedings in child neglect, child abuse, or delinquency.

PART II: JUVENILES IN CIRCUMSTANCES ENDANGERING SAFETY—LIMITED CUSTODY

2.1 Limited custody.

Any law enforcement officer who reasonably determines that a juvenile is in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety may, if the juvenile's physical safety requires such action, take the juvenile into limited custody subject to the limitations of this part. If the juve-

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nile consents, the law enforcement officer should transport the juvenile to his or her home or other appropriate residence, or arrange for such transportation, pursuant to Standard 2.2. If the juvenile does not so consent, the law enforcement officer should transport the juvenile to a designated temporary nonsecure residential facility pursuant to Standard 2.3. In no event should limited custody extend more than six hours from the time of initial contact by the law enforcement officer.

Commentary

It is the purpose of this Part to provide authority by which law enforcement officers may remove a child from circumstances that jeopardize the child, though the juvenile has committed no crime. Realistically, there must be some means of dealing with the twelve-year-old who is prowling the subways at midnight or is otherwise in circumstances of immediate jeopardy. At present, that is frequently accomplished by invoking the ungovernable child jurisdiction. This Part seeks to structure the limited coercive intervention that, it is believed, is realistically necessary, while at the same time sufficiently circumscribing that intervention and its consequences to prevent the status offense jurisdiction from re-creating itself.

In all instances, the least restrictive course of action consistent with the juvenile's immediate safety should be followed; ethnic stereotypes should be avoided in determining whether or not danger exists.

2.2 Notice to parent; release; responsibility of persons taking juvenile from limited custody.

A. The officer taking a juvenile into limited custody should inform the juvenile of the reasons for such custody and should contact the juvenile's parent, custodian, relative, or other responsible person as soon as practicable. The officer or official should inform the parent, custodian, relative, or other responsible person of the reasons for taking the juvenile into limited custody and should, if the juvenile consents, release the juvenile to the parent, custodian, relative, or other responsible person as soon as practicable.

B. The officer so releasing a juvenile from limited custody should, if he or she believes further services may be needed, inform the juvenile and the person to whom the juvenile is released of the nature and location of appropriate services and should, if requested, assist in establishing contact between the family and the service agency.

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C. Where a parent or custodian could not be reached and release was made to a relative or other responsible person, the officer should notify the parent or custodian as soon as practicable of the fact and circumstances of the limited custody, the release of the juvenile, and any information given respecting further services, unless there are compelling circumstances why the parent or custodian should not be so notified.

D. Where a juvenile is released from limited custody to a person other than a parent or custodian, such person should reasonably establish that he or she is willing and able to be responsible for the safety of the juvenile. Any such person so taking the juvenile from limited custody should sign a promise to safeguard the juvenile and to procure such medical or other services as may immediately be needed.

Commentary

As used in these standards, "parent" refers both to natural and to adoptive parents. "Custodian" refers to any person other than a parent having legal or de facto responsibility for the minor's ongoing care by reason of parental consent, express or implied, or pursuant to court order.

Not infrequently, a parent or custodian cannot readily be reached, but a relative or other responsible person, such as a neighbor or family friend, can. It is the intention of Standard 2.2 A. to reduce the need for temporary detention by maximizing the possibilities of release. No release should be made to a person, including a parent, with whom the juvenile is unwilling to go. Normally, attempts should be made to reach the juvenile's parent or custodian before others, if that can practicably be done and subject to the qualification of Standard 2.2 C.

Standard 2.2 B. seeks to underscore both the service role of the law enforcement officer and the fact that services will be offered in appropriate cases but not coerced. *Cf.* Services Relating to Juveniles in Family Conflict, Part IV *infra.*

Standard 2.2 C. is based on the belief that a parent or custodian has a right to knowledge of significant events affecting a child. Among other purposes, it is also designed to avoid the situation where, when the juvenile has been involved in some misbehavior, the parent never finds out (or claims ignorance), and at some later time the matter is escalated. As a general principle, it is desirable that family members be involved early on in a problem situation and any consent service.

Because there may be certain rare instances where notification

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of the parent would obstruct the release—for example, where it is possible to release a child to a relative but the child does not wish to have an alcoholic parent notified and it appears probable that a neglect petition will be filed—the duty to notify is qualified. Only compelling circumstances will justify a failure to notify promptly, and in any such case it may be desirable to require the officer in charge of the case to file a brief report with the court or other appropriate body setting forth the circumstances and reasons for the official's decision not to notify. Because of difference in local structure and the need for the standards to be adapted to different local conditions, they specify neither the requirement of filing a report nor the person with whom it should be filed. The decision as to whether or not compelling circumstances exist has been left to the sound judgment of the officer in charge of the case; the range and complexity of circumstances that may be encountered make it infeasible to set more precise guidelines. To put the locus of decision elsewhere than with the officer handling the case (or perhaps his or her superior) would protract the detention and hinder quick release.

2.3 Inability to contact parents; use of temporary nonsecure residential facility; options open to the juvenile; time limits.

A. If the law enforcement officer is unable by all reasonable efforts to contact a parent, custodian, relative, or other responsible person; or if the person contacted lives at an unreasonable distance; or if the juvenile refuses to be taken to his or her home or other appropriate residence; or if the officer is otherwise unable despite all reasonable efforts to make arrangements for the safe release of the juvenile taken into limited custody, the law enforcement officer should take the juvenile to a designated temporary nonsecure residential facility licensed by the state for such purpose. The staff of such facility should promptly explain to the juvenile his or her legal rights and the options of service or other assistance available to the juvenile and should in no event hold the juvenile for a period longer than six hours from the time of the juvenile's initial contact with the law enforcement officer.

B. If the juvenile taken into limited custody and taken to such facility refuses to return home, and the safe release of the juvenile cannot be effected within six hours from the time of the juvenile's initial contact with the law enforcement officer, the provisions of Part III of these standards should apply and the case should be handled pursuant thereto, whether the juvenile was initially absent from home with or without the consent of his or her parent or custodian.

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Commentary

If the parent or custodian of a juvenile taken into limited custody refuses to permit the child to return home, and no other living arrangements agreeable to the juvenile and the parent or custodian can be made within six hours from the time the juvenile was initially contacted by the law enforcement officer, legal counsel should be appointed for the juvenile and the matter handled as a case of neglect. The same would obtain if the parent or custodian could not be contacted, were unable to take the youth because of illness, and the like. As elsewhere in these standards, this scheme of handling assumes a neglect jurisdiction that speaks to the immediate needs of the child rather than to any parental fault.

If the juvenile refuses to return home, even though he or she originally left home with parental or custodial consent, the juvenile is effectively a runaway and should be so handled, pursuant to Part III of these standards.

It is to be emphasized that the youth should not be taken to a temporary nonsecure residential facility unless that is a last resort and there is simply no acceptable way to effect the minor's safe release. The staff of the facility should hold an initial interview with the juvenile to explain his or her legal rights and the options available to the juvenile, but unless there is evidence of neglect sufficient to warrant the filing of a neglect petition, or the minor refuses to return home, the facility should not detain the minor beyond the initial interview, which should be held as promptly as may be practicable and in any case should not extend beyond six hours from the time of the juvenile's initial contact with the law enforcement officer.

2.4 Immunity for officer acting in good faith pursuant to standards.

A law enforcement officer acting reasonably and in good faith pursuant to these standards in releasing a juvenile to a person other than a parent or custodian of such juvenile shall be immune from civil or criminal liability for such action.

Commentary

It is the purpose of this standard to provide immunity from such actions as child stealing and tortious interference with familial relations. While the likelihood of such suits may be remote, and no reported cases on similar facts have been found, the reporter has been informed of several threats to sue police officers on these grounds; it seems as well to immunize against vexatious litigation of this sort.

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PART III: RUNAWAY JUVENILES

3.1 Use of limited custody where possible; nonsecure detention; time limits; notification of parent.

A. If a juvenile is found by a law enforcement officer to be absent from home without the consent of his or her parent or custodian, and it is impracticable to secure the juvenile's return by taking limited custody pursuant to Part II of these standards, the juvenile should be taken to a temporary nonsecure residential facility licensed by the state for such purpose.

B. As soon as practicable, the staff of the facility shall reasonably attempt to notify the juvenile's parent or custodian of his or her whereabouts, physical and emotional condition, and the circumstances surrounding his or her placement, unless there are compelling circumstances why the parent or custodian should not be notified.

C. Upon such juvenile's admission to the temporary facility, the staff of the facility should undertake to make arrangements for the juvenile's return home as soon as practicable. The juvenile may remain in the facility for a period not to exceed twenty-one days from his or her date of admission to the facility without the filing of a neglect petition, in order that arrangements may be made for the juvenile's return home or for alternative residential placement pursuant to Part V of these standards. If the juvenile and the parent or custodian agree, in writing, the juvenile may remain longer than twenty-one days in the temporary facility without the filing of a neglect petition. In any case, the staff of the temporary facility should seek to effect the juvenile's return home or alternative living arrangements agreeable to the juvenile and the parent or custodian as soon as practicable.

Commentary

Nationally, juvenile court control over runaway youth—excepting those who have fled from court-ordered placements—is almost invariably imposed by reliance upon the ungovernability and status offense statutes. The problem is an increasing one. In 1968, FBI statistics reported more than 100,000 arrests of youth for running away; in 1972, more than 260,000. FBI *Uniform Crime Reports*, 1968, 1972, cited in *Hearing on the Runaway Child Before the California Senate Select Committee on Children & Youth*, *Reg. Sess.* 10, 111 (1973-74). It is widely agreed that such figures in no way reflect the true dimensions of the problem; informal estimates

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for 1973 and 1974 run to better than 1 million runaways each year. *Id.* at 112. In 1970, the last year for which figures were separately reported, there were 25,012 admissions to California juvenile halls as runaway youths. State of California, Department of Youth Authority, *Annual Report: 1970*, at 100.

The status offense laws of the several states commonly do not define runaways in terms of a specific period of time away from home, though specific law enforcement departments, youth corrections agencies, and juvenile courts may have particular rules of thumb. Because of the linkage between the standards in this Part and those in Part II relating to limited custody requiring the least detrimental course of action and return as swiftly as practicable in each case, no temporal definition is adopted here.

It appears that short runaways are quite common and frequently result in parents' seeking judicial intervention. "Short runaway" was the single most frequently alleged ground of noncriminal misbehavior in a study of New York PINS cases commissioned by the project, involving 51 percent of the cases. Note, "Ungovernability: The Unjustifiable Jurisdiction," 83 *Yale L.J.* 1383, 1408 (App. A) (1974). A study made of 1,664 cases received in the first three and one half months of the DHEW-funded National Runaway Switchboard (now located in Chicago at 800-621-4000, from Illinois 800-972-6004, originally in Houston, Texas) indicated that 35 percent had been away from home less than five days, and 52.8 percent had been away less than ten days. Palmer, "A Profile of Runaway Youth," *Youth Rep.*, March 1975, at 5, 6 (DHEW, 1975). Better than 73 percent of the youth had run away one, two, or three times before, suggesting that although a majority of runaway youth do not stay away for extended periods of time, they are likely to leave again if the family situation has not significantly changed. Nearly 64 percent of the youth were reported as being in their home state when they called. Seventeen and one-half percent of the calls were from potential or prerunaways. *Id.* at 6. Three and one-half percent were from "kick-outs," youth who had left home because they were forced to. *Cf.* Cornfield, "Emancipation by Eviction: The Problem of the Domestic Push-Out," 1 *Fam. L. Rep.* 4021 (1975). Sixty-four percent of the young people calling were girls; the callers' average age was 16.5 years. Palmer, *supra* at 5-7.

The available evidence—though it must be said that the surface of the runaway problem is only just beginning to be scratched by research—indicates that runaway youth are no more likely to violate the criminal law than youth who remain at home. *Cf.* generally "Hearings On Runaway Youth Before the Subcommittee to Investi-

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gate Juvenile Delinquency of the Senate Committee on the Judiciary," 92d Cong., 1 Sess. (1972) (hereinafter cited as U.S. Senate Hearings); Shellow *et al.*, "Suburban Runaways of the 1960's," 32 "Monographs of the Society of Research in Child Development" (1967), reprinted in "U.S. Senate Hearings," *supra* at 201. Like other forms of noncriminal misbehavior, running away from home should not be treated as, nor subjected to the same sanctions as, behavior that violates the criminal law. The family may be in greater disharmony in the cases of runaways than in perhaps any other single class of status offense behavior, and juvenile court intervention is perhaps least likely to be helpful. This is at least partly because the juvenile justice system affords precious few resources short of secure confinement for children with histories of flight. Yet, there is some evidence that these cases are especially susceptible to family and communication therapy. See generally Suddick, "Runaways: A Review of the Literature," 24 *Juv. Justice* 47 (1973).

From whatever perspective the act of running away is viewed, it "cannot be seen solely as a negative, unbalanced, and impulsive response." Note, "California Runaways," 26 *Hastings L.J.* 1013, 1016 (1975) (an excellent and comprehensive analysis of the "law and practice" of dealing with runaways). Indeed, in some cases it may be the most rational, mature, and adaptive response to an intolerable situation, "a sign of health seeking surface." L. Ambrosino, *Runaways* (1971), quoted in "U.S. Senate Hearings," *supra* at 238.

On the federal level, the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109-43 (hereinafter cited as Act) which contains as Title III the Runaway Youth Act of 1974, 42 U.S.C.A. §§ 5701-2, 5711-13, 5715-16, 5731-32, 5751 (Supp. 1975), makes clear the congressional intent that runaway youth should not be subjected to juvenile court jurisdiction and treated within the juvenile justice system. The Act states it to be the finding of the Congress that "the problem of locating, detaining, and returning runaway children should not be the responsibility of already overburdened police departments and juvenile justice authorities." Act § 302(4), 42 U.S.C.A. § 5701. It posits instead locally controlled runaway houses to provide temporary shelter and counseling. To receive federal funding, the runaway house must be located in an area that is "demonstrably frequented by or easily accessible to" runaway youth; must have a maximum capacity of no more than twenty youth, with an appropriate children-to-staff ratio to assure adequate supervision and treatment; and "shall develop adequate plans for contacting the child's parents or relatives [if required by state law] and assuring the safe return of the child

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according to the best interests of the child. . . ." Act § 312, 42 U.S.C.A. § 5711, 5712.

The standards in this Part are intended to conform to the requirements of the Runaway Youth Act if a particular community or state decides to meet them. They require that housing be nonsecure; in keeping with the Act, the responsibility for parental notification, child and parent counseling, and arrangements for return is placed upon the house staff. It is the intent of these standards that a "temporary nonsecure residential facility" shall be a "runaway house" meeting the requirements of the Act when size and staffing requirements are implemented by the state or local authority. It is not their intention that the requirement of state licensing be equated with state control. The purpose of the licensing provision is to assure minimum standards of cleanliness, lack of secure plant, and decent care, not to require—or even thrust toward—state control of the day-to-day operations. Local control of the facility is highly desirable.

The standards provide, in conformity with the provisions for limited custody in Part II, that prompt notice should be given the juvenile's parent or custodian unless compelling circumstances to the contrary are present (such as the casework staff's conclusion that the juvenile has run away from home because of parental abuse, and that if the parents are told against the juvenile's wishes he or she will abscond again). The adoption of a scheme of voluntary handling and the restriction to six hours of the state's power to detain a minor involuntarily, as in the provisions for limited custody, do not derogate the parent's right to know what is happening to and with the child.

It is not the intention of these standards that juveniles who have parental permission to be away from home should be subject to the provisions of this Part. Though the parental permission may have been unwisely given, the standards should be read as calling for permission in fact, and only that. If the parent or custodian has been derelict in giving consent, appropriate action should be taken under the neglect jurisdiction. It should not be permissible to view the requirement of "parental consent" in terms of the consent a "wise parent" *ought* to have given or withheld. *Cf. Marr v. Super. Ct.*, 114 Cal. App. 2d 527, 250 P.2d 739 (1952) ("parental control" in ungovernability statute held to mean such control as parents ordinarily exercise toward proper care and support; child "physically absent" from parental control held to be beyond-control despite notarized letter of permission from parents); see Comment, "California's Predelinquency Statute: A Case Study and Suggested Al-

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ternatives," 60 *Calif. L. Rev.* 1163 (1972).

It is the purpose of this Part to provide maximum opportunity for voluntary return or agreement to alternative living arrangements made pursuant to Part V of these standards.

3.2 Return of juvenile upon agreement; refusal of return by juvenile or parent; petition for neglect; applicable standards of decision; transfer of juvenile; responsibilities of facility staff.

A. If, after his or her admission to a temporary nonsecure residential facility, a juvenile who is absent from home without permission and his or her parent or custodian agree to the juvenile's return home, the staff of the facility should arrange transportation for the juvenile, as soon as practicable, to the state and county of residence of the parent or custodian, at the latter's expense to the extent of his or her ability to pay.

B. If the juvenile refuses to return home and his or her parent resides in another county or state, and if no other living arrangements agreeable to the juvenile and the parent or custodian can be made, the staff of the facility should arrange transportation for the juvenile, as soon as practicable, to a temporary nonsecure residential facility licensed by the state for such purpose in the state and county of residence of the parent or custodian, at the expense of the latter to the extent of his or her ability to pay. If there is no such facility in the county of that residence, the nearest such facility to that residence should be used.

C. If the parent or custodian refuses to permit the juvenile to return home, and no other living arrangement agreeable to the juvenile and the parent or custodian can be made, the staff of the facility housing the juvenile should notify the juvenile court to appoint legal counsel for the juvenile and should file a neglect petition in the juvenile court in the jurisdiction of the residence of the parent or custodian.

D. It should be the responsibility of the staff of the facility housing the juvenile to provide counseling and other services and to arrange for alternative residential placement for the juvenile, as may be required. In the event of a transfer of the juvenile pursuant to Standard 3.2 B., the responsibility should be that of the receiving facility.

Commentary

In general, these standards adopt the notion that parents, legal or de facto, should be responsible for the care of a juvenile until ma-

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jority (eighteen years), unless the child is emancipated or parental rights are terminated in a proper judicial proceeding. In keeping with that notion of parental-custodial responsibility, the standards impose the financial burden of a juvenile's return upon the parent or custodian, to the extent he or she is able to pay; the latter provision is intended to allow partial payment based on ability to pay, rather than the all or nothing standard of indigency. If the parent or custodian is indigent, it is recommended that the costs of the juvenile's return, or alternative care if return is infeasible, be borne by the jurisdiction of parental/custodial residence. This will more fairly spread the costs and avoid the imposition of undue costs on jurisdictions that are "runaway targets."

Consonant with these notions of parental-custodial responsibility, the standards invoke the neglect jurisdiction if the child is not allowed to return home. It should be clear, however, that this presupposes a definition of neglect that addresses the child's situation and need for services, rather than parental fault as the determinant.

Additionally, the standards take the view that if agreement between parent and child cannot be reached, the residential facility and the court, if involved, should be those in or closest to the parent or custodian's residence, to minimize the problems of transitory actions and to facilitate ease of access to casework services for all parties. However, nothing in these standards should be construed to preclude alternative residential placement arranged in some other area or state, if that appears to be appropriate to the particular case.

As nearly as may be determined, the evidence available suggests that runaway youth do seek out noncoercive runaway shelters, and that the great majority of runaways may be expected to avail themselves of such facilities. The DHEW-sponsored switchboard study indicated that many runaways had as a principal fear the possibility that they might be forced home against their will. It also found that 68.2 percent of all its runaway calls involved having a message delivered to the youth's parents, which suggests that runaways are not, in most cases, so hostile or so headstrong as to wish to cut all ties with their families. Palmer, "A Profile of Runaway Youth," *Youth Rep.*, March 1975, at 5, 6–7 (DHEW, 1975).

It is the purpose of these standards to preclude resort to the Interstate Compact as a means for returning runaways who have committed no criminal offense. Experience with the Interstate Compact has shown that its processes are lengthy and expensive, necessarily involving the assumption of juvenile court jurisdiction in each case, followed by commitment to the Compact administrator of the sending state who arranges with his counterpart in the re-

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ceiving state for the juvenile's return. In the interim, the juvenile is most often housed with delinquent youth; since the state youth authority or youth commission is usually the Interstate Compact administrator, use of the Compact may mean that the runaway juvenile will be housed with delinquent youth committed to state custody. See, *e.g.*, *In Interest of Storm*, 223 N.W.2d 170 (Iowa 1974) for use of the Compact in a runaway case.

This Part should not be deemed controlling if the juvenile is the subject of a petition alleging violation of the criminal law, even though he or she is absent from home without parental consent.

Finally, it is inevitable that there will be some hard cases where the juvenile refuses to go home, and refuses to agree to any acceptable alternative living arrangements or refuses to stay in the temporary facility. These standards do not provide coercive sanctions to keep the juvenile there, on the conviction that the existence of such sanctions will inevitably lead back to a status offense jurisdiction. It is clearly the intent of the Congress that the immediate needs of runaway youth who have violated no criminal law should be dealt with "in a manner which is outside the law enforcement structure and the juvenile justice system." Juv. Justice & Del. Prevention Act of 1974, § 311, 42 U.S.C.A. § 5711 (Supp. 1975). Moreover, it is reasonable to expect that the vast majority of runaway youth will be amenable to acceptable alternative living arrangements if they are not ordered to accept them and are not ordered to return home. Some juveniles will simply flee, and keep fleeing. Some will commit crimes while in flight. If they do, they will be subject to and should be dealt with under the delinquency jurisdiction. As with the rest of the status offense jurisdiction, it is submitted that the social costs of retaining it to provide for secure detention or other sanctions in what is expected to be a relatively small number of cases, are too great.

PART IV: SERVICES RELATING TO JUVENILES IN FAMILY CONFLICT

4.1 Spectrum of services.

A broad spectrum of services should be provided which are reasonably designed to assist a juvenile in conflict with his or her family to resolve their conflicts.

4.2 Services to be voluntarily based.

Except as provided in these standards, such services should be offered on a voluntary basis, and the juvenile and the family should

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not be required to receive such services in cases involving the juvenile's unruly behavior which does not contravene the criminal law.

Commentary

These standards provide for limited coercive exposure to services in cases of limited custody (*supra*, Part II), runaway juveniles (*supra*, Part III), in certain cases of court approval of alternative residential placement (*infra*, Part V), and in the provision of emergency medical services (*infra*, Part VI).

This Part recognizes that in cases other than those involving only noncriminal misbehavior—*i.e.*, cases of neglect or abuse, or violation of the criminal law—receipt of services may be required. Given the need for local flexibility, the structure and details of how the services described in this Part should be provided are not specified in these standards.

4.3 Crisis intervention and continuing service.

A. The spectrum of services provided should include both crisis intervention and continuing service components. All persons providing services or otherwise communicating with a juvenile and his or her family pursuant to these standards should take care to use language understood by the juvenile and the family.

1. Crisis intervention services consist of an interview or series of interviews with the juvenile or his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the juvenile or the family. Crisis intervention services should include the arrangement of temporary alternative nonsecure residential care, if required. Alternative residential care should be provided in a family or small group setting through the use of relative homes, foster homes, runaway shelters, group homes, and similar resources.

a. Crisis intervention services should include, but not be limited to, the provision of or referral to services for suicide prevention, psychiatric or other medical care, psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and the family.

2. Continuing services should include, but not be limited to, psychiatric or other medical care, psychological, welfare, legal, educational, or other social services, and the arrangement of alternative residential placement pursuant to Part V of these stan-

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dards, if required, as appropriate to the needs of the juvenile and the family.

Commentary

Though there is a great regional variation in their effectiveness, and though they frequently suffer from poor organization and ineffective distribution, many resources now exist to help children and their families. Many more need to be developed, and many of those that exist must be greatly strengthened or radically changed. However, in many instances, services now exist that could provide appropriate voluntarily based help to the juvenile in conflict with his or her family, if properly used on that basis without judicial compulsion.

Crisis intervention counseling available on a twenty-four hour basis, escort services in aid of a problem of nonattendance at school, or providing child advocacy in respect to a school problem are examples of services not widely available at present that might properly be rendered in a case of noncriminal misbehavior.

4.4 Accessibility and responsiveness of services; hot lines and walk-in centers.

It is the intent of these standards that services should be provided in a variety of ways that maximize accessibility and responsiveness to the needs of juveniles, families, and the community. It is desirable that the means by which such services are provided include, but not be limited to, the following:

A. Publicized crisis switchboards (hot lines) for juveniles and for parents staffed on a twenty-four hour basis with personnel who have language skills appropriate to the needs of the community served. Conversations on such switchboards should be confidential and should be neither monitored nor recorded.

B. Publicized walk-in service centers which should accept self-referrals by juveniles and their families, as well as referrals from law enforcement and other community agencies and groups. Such centers should be run with minimum formality and will in most cases provide essentially short-term assistance, acting as brokerage centers for referral to more long-term and specialized services. It is desirable that such centers utilize multidisciplinary staffs, both regularly employed and volunteer, including paraprofessionals and persons from the community area served. In larger cities, such centers should be located in various neighborhood areas.

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Commentary

It is the intent of these standards that the sources of assistive service be convenient, decentralized in most cases, locally controlled, and so set up and run that function does not become submerged in form. The services offered and the staffs that provide them should be aligned with the needs of the people served. A center serving an area with a significant proportion of Spanish- or Chinese-speaking families, for example, can hardly be effective if its staff speaks only English and must rely on outside interpreters.

In appropriate cases, such service centers should make maximum use of hot line and other services offered elsewhere, including national or regional hot lines for facilitating communication between runaway youth and their families, and the provision of help.

Services should be well publicized and stickers with telephone numbers and locations should be affixed to each public telephone and posted in schools, bus terminals, and other places likely to be frequented by young people.

PART V: ALTERNATIVE RESIDENTIAL PLACEMENTS FOR JUVENILES IN FAMILY CONFLICT

5.1 Setting of alternative residential placement; placement on agreement or court approval if disagreement.

As specified in Standard 4.3 A. 2., the services rendered to a juvenile in conflict with his or her family who has violated no criminal law should include in appropriate cases and upon the agreement of the juvenile and his or her parent or custodian, the arrangement of alternative residential placement in a relative home, foster or group home, or other suitable family setting. No alternative residential placement should be arranged over the objection of a juvenile or of his or her parent or custodian, except that if they cannot agree as to an alternative residential placement and a juvenile not emancipated refuses to return home, the juvenile court may approve an alternative residential placement, upon motion pursuant to this part.

5.2 Prohibition against placement in secure facility.

In no event should alternative residential placement for a juvenile in conflict with his or her family, who has violated no criminal law, be arranged in a secure detention facility or in a secure institution used for the detention or treatment of juveniles accused of crimes or adjudged delinquent.

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Commentary

Alternative residential placements should be made in nonsecure family or small group settings (*i.e.*, not more than twenty juveniles at the largest). These standards do not prohibit such alternative residential placements with juveniles adjudged delinquent because, in many cases, the imposition of such a requirement could restrict the sources of funds and deter the development of such placement resources. However, if the placement resource is one *primarily* used for the housing and treatment of delinquent juveniles, it should not be used for alternative residential placements made pursuant to this Part.

These standards assume that where the state intervenes in a juvenile's life, even in so limited a way as described here, the state has the correlative responsibility of sufficiently funding that intervention to make it effective.

5.3 Provision of services during placement.

During any alternative residential placement, there should be provided to the juvenile and to his or her family such services as may be appropriate to the particular case, to the end that the juvenile may be reunited with the family as soon as practicable.

Commentary

The place for most children is with their families. It is the intent of these standards that, in most cases, alternative residential placement will be used only as an interim measure while services are provided to abate the problem and enable the juvenile to return to his or her family. Because a frequent fault in social services has been the failure to sustain casework and other services directed toward the reintegration of the family once an out-of-home placement has been made, standard 5.3 gives the point specific address.

5.4 Duration of placement on agreement and on court approval if disagreement; motion to approve placement; restricted juvenile court jurisdiction; approval if juvenile not imperiled; definition of "imperiled"; requirement of review.

A. If a juvenile who is in conflict with his or her family but who has violated no criminal law, and his or her parent or guardian agrees to an arrangement for alternative residential placement, such placement may continue as long as there is agreement.

B. If such juvenile and his or her parent or custodian cannot agree to an arrangement for alternative residential placement in the first

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instance, or cannot agree to the continuation of such placement, the juvenile or his or her parent or custodian, or a person properly acting at the juvenile's request, should file with the juvenile court a motion to approve alternative residential placement. The filing of a motion to approve such placement should not be dependent upon the court's having obtained any prior jurisdiction over the juvenile or his or her parent or custodian, and confers upon the court a special jurisdiction to approve or disapprove alternative residential placement or its continuation. The juvenile court should promptly appoint legal counsel for the juvenile, whether or not the juvenile is the moving party, schedule a hearing date, and notify the juvenile and his or her parent or custodian of the hearing date, the legal consequences of an approval or disapproval of alternative residential placement, the right of both parties to present evidence at the hearing, and the right of the parent or custodian to be represented by legal counsel at the hearing.

C. The hearing should be upon the motion and no petition should be filed in the case unless other factors are present indicating child neglect, child abuse, or the juvenile's violation of the criminal law. In such case, the matter should be handled upon the proper jurisdictional ground. In ruling on a motion to approve alternative residential placement, the court should approve or disapprove the placement and should make no other order extending court jurisdiction over the juvenile except as provided herein.

1. At the hearing on the motion to approve alternative residential placement, unless the court finds upon a preponderance of the evidence that the placement where the juvenile resides or wishes to reside imperils or would imperil the juvenile, the court should approve the placement.

2. Before disapproving a placement in which the juvenile resides or wishes to reside, the court should find upon a preponderance of the evidence that the placement imperils or would imperil the juvenile, and that it is probable that his or her conditions of living will be improved by available alternative residential placements. Before disapproving a placement, the court should give such reasonable opportunity for correction of its defects as may be appropriate under the circumstances of the particular case.

3. If the court finds, upon a preponderance of the evidence, that the placement where the juvenile resides imperils him or her, notwithstanding the provisions of Standard 5.4 C. 2. respecting the opportunity to correct the placement's defects, the court should take such steps as may be required to remove the juvenile therefrom until the correction is made or an alternative residential placement is approved, including but not restricted to an order

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directing a law enforcement officer to take limited custody of the juvenile pursuant to these standards. In that event, the matter should be handled as provided by Parts II and III of these standards, as may be appropriate to the particular case. The court may direct that another alternative residential placement be arranged, subject to the agreement of the juvenile and his or her parent or custodian or the approval of the court, but the court in hearing a motion to approve an alternative residential placement or reviewing an order of approval should not be empowered to order the juvenile to return to the home of his or her parent or custodian over the juvenile's objection.

D. For the purposes of this Part, a placement is deemed to imperil a juvenile when it fails to provide physical protection, adequate shelter, or adequate nutrition; or seriously and unconscionably obstructs the juvenile's medical care, education, or physical and emotional development, as determined according to the needs of the juvenile in the particular case; or exposes the juvenile to unconscionable exploitation.

E. Upon approving an alternative residential placement pursuant to this Part, the court should schedule the matter on the calendar for review in six months, advise the parties of the date thereof, appoint legal counsel to represent the juvenile at the review hearing, and notify the parties of their rights to present evidence at the review hearing and of the right of the parent or custodian to be represented by legal counsel. At each review hearing, the juvenile court should approve or disapprove the continuation of the alternative residential placement according to the same standards and limitations as governed the initial approval; should determine that such interim services as may be appropriate have been offered the juvenile and his or her family, pursuant to Standard 5.3 of this Part; and should again set the matter on the calendar for further review in six months, notifying the parties as before.

Commentary

These standards attempt to establish a structure of service to juveniles who are involved in conflict with their families, but are not victims of neglect or abuse and are not involved in violation of the criminal law. They would prohibit institutionalization and for the most part substitute living arrangements for the juvenile that would not be made by court order but would be made only on voluntary agreement between the juvenile and his or her parent or custodian. It is

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envisioned that personnel rendering services as described in Part IV of these standards would be actively involved in locating and developing possibilities for alternative residence and in working with the juvenile and the family to arrive at an agreement concerning his or her living arrangements.

In some cases no agreement will be possible. The standards take the position that in such a case the juvenile court should have the obligation to approve or disapprove a proposed placement; to allow placement of a child by a social agency over parental objection without court scrutiny is to run a severe risk that basic rights will be trod on in the process.

It is not unlikely that a juvenile may run away to the home of a relative or friend whom the parent or custodian disapproves of or dislikes. To strike some balance between the present coercion of the status offense jurisdiction and a complete "hands off" attitude toward the juvenile, which is unrealistic and infeasible, there would be created in the juvenile court a special jurisdiction to approve an alternative residential placement triggered by the filing of an appropriate motion. The exercise of this jurisdiction will assure that the placement selected meets at least minimal requirements for the juvenile's safety and welfare. It is provided that the court cannot command the return of a juvenile to the family home over his or her objection, since compelled return is likely to exacerbate the problems and provoke a runaway again. These standards do not preclude parental resort to the usual mechanisms for the resolution of custody disputes between parents or third persons, nor do they preclude the use of habeas corpus. See, *e.g.*, *People ex rel. Edwards v. Livingston*, 42 Ill. 2d 201, 247 N.E.2d 417 (1969); *People ex rel. Pace v. Wood*, 50 Ill. App. 2d 63, 200 N.E.2d 125 (1964). While it may be desirable in many instances to consolidate within the family court actions between members of a family unit, these standards do not address problems of court structure or the question of which judicial forum should have cognizance of such actions. It must be noted, however, that if there is left a residuum of power beyond the ability to approve or disapprove a suggested alternative placement, according to a standard of whether or not it imperils the minor, that residuum can be expected to be used and the status offense jurisdiction will in effect be recreated.

A standard of "imperiled" has been adopted to underscore that the court should only disapprove alternative residential plans to which the juvenile agrees if they are seriously defective. This comports with tenets that a plan of service letting the youth have a

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say in what happens to him or her will far more likely result in the youth's developing mature and socially appropriate means of resolving conflicts than will coerced help, which in these sorts of cases is too often no help at all. It is also more likely to promote the restoration of family harmony, if that can be achieved, and it follows the concept that the court should properly be concerned only with securing the juvenile the least invasive alternative that will afford help.

It is submitted that this limited and special jurisdiction in the juvenile court to approve or disapprove alternative residential placements, pursuant to motion, will have the further salutory effects, in addition to assuring parties their rights, of helping to assure that the service mechanisms work, and of serving as a monitor of the functioning and effectiveness of family and youth agencies. When dysfunction is found, the court can correct it through appropriate orders made under enabling statutes or under its inherent powers. See, *e.g.*, N.Y. Fam. Ct. Act § 255; Carrigan, "Inherent Powers of the Courts," 24 *Juv. Justice* 38 (May 1973).

In keeping with that monitoring function and in order to afford maximum impetus toward reuniting the juvenile and the family, the standards provide for automatic review every six months so that the court can determine that the placement is not jeopardizing the juvenile, and so that there can be some review of what services have been given in the interim. It is the standards' intent that at the review hearing, the court should determine that appropriate interim services have been offered the juvenile and his or her family, pursuant to Standard 5.3. If they have not been provided, the court should take such steps as may be necessary to secure them.

The standards are intentionally silent with regard to requirements of licensure for alternative residential placements, which will vary from jurisdiction to jurisdiction and are best determined by local resources and practices. It should be emphasized, however, that in most communities a much more heterogeneous range of residential alternatives than is presently available will have to be developed. Licensing requirements should not be used to bar homes that, while they may not meet traditional middle class standards, would not jeopardize youths and might be better suited to their needs than placements traditionally available.

No person providing an alternative residential placement for a juvenile pursuant to this Part should on that ground alone be subjected to any criminal or civil liability for harboring, interference with familial relations, or similar crimes or torts.

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PART VI: STANDARDS RELATING TO EMERGENCY SERVICES FOR JUVENILES IN CRISIS

6.1 Temporary custody of juvenile if suicidal, seriously assaultive or destructive, or otherwise similarly evidences need for emergency care.

When any juvenile, as a result of mental or emotional disorder, or intoxication by alcohol or other drug, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care, any law enforcement officer, member of the attending staff of an evaluation psychiatric or medical facility designated by the county (state, city, etc.) or other professional person designated by the county (state, city, etc.) may upon reasonable cause take, or cause to be taken, such juvenile into emergency custody and take him or her to a psychiatric or medical facility designated by the county (state, city, etc.) and approved by the state department of health (or other appropriate agency) as a facility for emergency evaluation and emergency treatment.

Commentary

There will arise cases that cannot be dealt with under the provisions for limited custody (*supra*, Part II), in which a juvenile requires urgent medical treatment. Presently, the juvenile court's status offense jurisdiction is frequently used as the basis of intervention in such problems as suicide attempts, drug overdoses, and the like. This Part provides a form of emergency short-term civil commitment. It is modeled in part upon the California Mental Health Services Act, Cal. Welf. & Inst'ns Code § 5000 *et seq.*, §§ 5003–5200 (West Supp. 1975) and upon the Uniform Alcohol and Intoxication Treatment Act §§ 12-14. In using the term "mental disorder," these standards intend that it encompass, but not be restricted to, conditions arising from mental retardation or brain damage.

The standards do not require the commission of specific acts before intervention can be accomplished. A youth may be suicidal without actually having attempted it, for example, and imposing the requirement that an act be committed defeats the purpose of allowing crisis intervention. Similarly, a youth may give evidence of being seriously assaultive or seriously destructive (as by threatening serious assault or arson, or arming himself or herself with a deadly weapon)

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without actually committing an assault or battery or igniting a building. It is conceded that there are dangers to any "predictive intervention," but on balance it seems essential that there be properly limited means of emergency aid in these crisis cases, and to achieve that end some predictive and coercive intervention is necessary.

Whenever possible, officers charged with the responsibility of exerting emergency custody over youths pursuant to this Part should not be uniformed and should not use marked law enforcement vehicles for transport.

It is the intent of these standards that action should be taken pursuant to this Part whether or not the juvenile has committed a criminal offense, if he or she by reason of that behavior or for other reasons evidences an immediate need for emergency psychiatric or medical care. It is also contemplated that intervention under this Part does not necessarily preclude the filing of a petition in the juvenile court alleging a violation of the criminal law. While in many instances the condition calling for emergency care will afford a defense on the basis of the juvenile's lack of capacity, that should be determined at the appropriate hearing in the particular case and cannot properly be mandated by the standards.

6.2 Admission to emergency facility for evaluation and treatment; notification of parent, guardian, or custodian.

A. As soon as practicable after taking a juvenile not known to be emancipated into emergency custody under this Part, the officer, member of the attending staff, or other authorized professional person should notify the juvenile's parent or custodian of the fact of the juvenile's custody, physical and mental condition, and the location of the facility for emergency evaluation and treatment to which the juvenile is to be or has been taken.

B. Such facility should require an application in writing stating the circumstances under which the juvenile's condition was called to the attention of the officer, member of the attending staff, or other authorized professional person, and stating why that person believes as a matter of personal observation that the juvenile is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical evaluation and possible care.

Commentary

Some states presently recognize the right of certain youth to obtain medical treatment without the notification or consent of the

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parent or custodian (see, *e.g.*, Cal. Civ. Code § 34.6, West 1975), and juveniles' rights to such autonomy should be given much wider recognition. In virtually every jurisdiction, parental consent is not a prerequisite to the giving of life-saving medical care. *Cf.* Stevens, "Liabilities Engendered in Emergency Department Practice," 2 *J. Leg. Med.* 17, 21 (1974). Many of the cases in which action is taken under this Part, while evidencing a serious need for emergency care, will not technically involve conditions that are immediately "life-threatening." Hence, parental or custodial consent may be required for treatment, and should be required for any longer term treatment when the juvenile lacks the capacity to consent because of his or her condition.

Furthermore, unless the youth has been emancipated, parental responsibility carries with it the correlative right to know of significant jeopardy to the child; the cases in which emergency intervention would be appropriate are certainly ones in which the juvenile would be in significant jeopardy. For these reasons, the standards contain a requirement of parental-custodial notification.

6.3 Requirement and definition of services: informed consent.

A. Each juvenile admitted to a psychiatric or medical facility for emergency evaluation and possible emergency treatment under this Part should receive an evaluation as soon after admission as practicable and should be offered such treatment and care, including but not limited to crisis intervention services, as the juvenile's condition requires for the full period that he or she is held. As soon as practicable, the professional person in charge of the facility, or such person's designee, should inform the juvenile's parent, guardian, or custodian of the results of the evaluation and the findings of the psychiatric or medical staff regarding the need for treatment.

B. Crisis intervention services consist of an immediate interview or series of interviews with the juvenile and his or her family, as needed, conducted within a brief period of time by qualified professional persons, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the juvenile or the family. Crisis intervention services should include, but should not be limited to, suicide prevention, psychiatric and other medical, psychological, welfare, legal, or other social services, as appropriate to the needs of the juvenile and the family.

C. The juvenile's informed consent should be obtained prior to the giving of any treatment unless he or she is, in the professional judgment of the attending physician and his or her psychiatric or

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medical superior, incapable of making a rational judgment about the need for treatment. When the juvenile's condition does not permit his or her informed consent, the informed consent of the juvenile's parent, or, if the juvenile is emancipated, his or her next of kin alone should suffice; provided, however, that in no case should consent be required before treatment required to save a juvenile's life. No extraordinary or experimental medications or physical procedures should be administered without the informed consent of the juvenile, his or her condition permitting; his or her parent or custodian, or next of kin if the juvenile is emancipated; and the juvenile court, upon a motion to approve treatment or other appropriate proceeding.

Commentary

These standards try to strike the terribly difficult balance among the need to respect a juvenile's privacy and autonomy, the need to respect the parent or custodian's rights, and the need not to impede or hamper unduly the furnishing of proper psychiatric or medical care. *Cf. Bartley v. Kremens*, 402 F. Supp. 1039 (E.D. Pa. 1975), at note 17.

When a juvenile is married or otherwise emancipated, the parent no longer retains the power to consent to treatment as a parent, and consequently the standard provides in such cases for consent from the next of kin.

These standards assume that electroconvulsive therapy is an extraordinary procedure (excluding however, cardiac electrostimulation).

6.4 Release without admission to facility.

If, upon receiving an application for the admission of a juvenile to a psychiatric or medical facility for emergency evaluation and possible treatment pursuant to Standard 6.1, the professional person in charge of the facility, or such person's designee, determines after appropriate evaluation that the juvenile can be treated without being detained, the juvenile should be released and the juvenile and his or her family should be provided evaluation, crisis intervention services, or other inpatient or outpatient treatment on a voluntary basis, as the particular case may require.

6.5 Emergency placement not to exceed seventy-two hours.

A. If, after receiving an application for the admission of a juvenile to a psychiatric or medical facility for emergency evaluation and

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possible treatment, the professional person in charge of the facility, or such person's designee, determines after evaluation that the juvenile requires further emergency evaluation or treatment which cannot be done on an outpatient basis, the juvenile may be admitted to the psychiatric or medical facility and detained for a period not to exceed seventy-two hours.

B. A juvenile so admitted to the psychiatric or medical facility for emergency evaluation and possible treatment should be released before seventy-two hours have elapsed if, in the judgment of the professional person in charge of the facility, or such person's designee, the juvenile no longer requires emergency evaluation or treatment and is no longer suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency psychiatric or medical care. As the particular case may require, outpatient services should be provided to the juvenile and the family on a voluntary basis.

6.6 Referral after seventy-two hours for further care.

If, after the seventy-two hour period specified in Standard 6.5 has elapsed and after emergency evaluation and treatment appropriate to the juvenile's condition have been supplied, the professional person in charge of the medical facility for emergency evaluation and treatment, or such person's designee, determines that the juvenile is still suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for medical care by reason of a mental or emotional disorder, such person should refer the juvenile for further care pursuant to the appropriate mental health commitment law.

Commentary

These standards take the position that a juvenile in need of emergency psychiatric or medical care may be held without a hearing being set for a period not to exceed seventy-two hours. If, at the expiration of that period, the juvenile is deemed to require further care, a hearing should promptly be held pursuant to the mental health commitment law of the particular jurisdiction. See generally *Bartley v. Kremens*, 402 F. Supp. 1039 (E.D. Pa. 1975); *cf. In re Michael E.*, 15 Cal. 3d 183, 123 Cal. Rptr. 103 (1975).

Intoxication by alcohol or other drug is provided as a basis for emergency admission in Standard 6.1, but it is not retained in this section because medical advice indicates that after a seventy-two hour period the intoxication would have passed off and any danger

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that remained would properly be attributable to an underlying mental or emotional disorder.

6.7 Right to seek voluntary care.

Nothing in these standards should be construed as limiting in any way the right otherwise given by law of any juvenile, or of the parent, guardian, or custodian of any juvenile, to make voluntary application at any time to any public or private agency or practitioner for medical or mental health services, on an inpatient or outpatient basis, whether by direct application in person or by referral from any private or public agency or practitioner.*

*Commissioner Patricia M. Wald registers her interpretation that this standard in no way suggests that parents, over juveniles' objections, may "volunteer" children into mental hospitals without the opportunity for a due process hearing. See *Bartley v. Kremens*, 402 F. Supp. 1039 (E. D. Pa. 1975).

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Dissenting View

Statement of Commissioner Justine Wise Polier

The *Noncriminal Misbehavior* standards reflect recent trends to remove from the juvenile justice system juveniles whose "misbehavior" would not constitute criminal actions if committed by adults. Few and limited exceptions are proposed for runaways and children in need of emergency services by reason of substantial and immediate danger.

The standards reflect the general acceptance of the viewpoint, in which I concur, that services voluntarily accepted by both children and families will prove more effective than when they are coerced by a court. They also express the expectation that when the jurisdiction of the courts is ended, services which can be secured on a voluntary basis will be extended and made more accessible and effective.

The pioneers of the juvenile court movement are now described as romantic and unrealistic in their expectations that communities would provide appropriate care and services to children, once such needs were made known. These standards are all too likely to reflect the same false optimism.

Unfortunately, the proposed standards, like other statements supporting diversion from the courts, place primary emphasis on "dejudicalization of status offenders." This purpose is not matched by positive plans or requirements for creating alternative, accessible, and appropriate services. The standards fail to confront the essential problem of who is to be responsible for the development of alternative services, for their funding, for setting standards, for monitoring, and for protecting the rights of children who are either excluded or denied appropriate services.

While I concur in the support for increasing alternative services that can be used voluntarily, the premature ending of juvenile court jurisdiction before there is a growth of such services will only lead to losing sight of children and families most in need of services.

Justine Wise Polier

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Bibliography

BAR PUBLICATIONS, COMMISSION AND LEGISLATIVE REPORTS, MODEL LAWS

A.B. 2385 (authored by Comm. on Criminal Justice, California Assembly), *Calif. Legis.* 1975-76 Reg. Sess.

"Hearings on Runaway Youth Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary," 92nd Cong., 1st Sess. (1972).

Office of Youth Devel., D.H.E.W., "Model Acts for Family Courts and State-Local Children's Programs" (1974).

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

Report of the California Assembly Interim Committee on Criminal Procedure, *Juvenile Justice Processes* (1971).

Report of the California Assembly Select Committee on Juvenile Violence, *Juvenile Violence* (1974).

Report of the California Governor's Commission on the Family (1966).

Report of the Virginia Advisory Legislative Council, 1 *Fam. L. Rptr.* 2515 (1975).

Uniform Alcoholism and Intoxication Treatment Act, 9 Uniform Laws Ann. 41 (1968).

Uniform Marriage and Divorce Act (Nat'l Conf. of Commissioners on Uniform State Laws) (final draft 1970).

BOOKS, MONOGRAPHS, AND REPORTS

L. Ambrosino, *Runaways* (1971).

American Justice Institute, "Research & Evaluation Study of the Santa Clara County (Calif.) Pre-Delinquent Diversion Program" (1974).

Bureau of Social Science Research, Legal Action Support Project, "Research Memorandum on Status Offenders" (1973).

Dineen, "Juvenile Court Organization and Status Offenses: A Statutory Profile" (Monograph, National Center for Juvenile Justice 1974).

E. Erickson, *Identity: Youth and Crisis* (1968).

Reproduced with permission. All rights reserved. Distribution of this reproduction without consent is not permitted.

J. Goldstein, Freud, and Solnit, *Beyond the Best Interests of the Child* (1973).
Holt, *Escape from Childhood* (1974).
Maine, *Ancient Law* (Pollock ed. 1906).
Mass. Prov. Stats. 1699-1700, C.8 §§ 2-6, in *Mass. Colonial Laws* 27 (1887 ed.).
Midonick and Besharov, *Children, Parents and the Courts: Juvenile Delinquency, Ungovernability and Neglect* (1972).
Nat'l Council on Crime and Delinq., "Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court" (Policy Statement, Oct. 22, 1974).
Office of Children's Services, Judicial Conference of the State of New York, *The PINS Child: A Plethora of Problems* (1973).
Packer, *The Limits of the Criminal Sanction* (1968).
Paulsen and Whitebread, *Juvenile Law and Procedure* (1974).
Piaget, *The Moral Judgment of the Child* (Gabain transl. 1965).
Rector, *PINS: An American Scandal* (N.C.C.D. publication 1974).
Rosenheim, Notes on "Helping" Juvenile Nuisances (unpublished manuscript 1973).
Sacramento Co. (Calif.) Probation Dept., Center on Admin. of Crim. Justice, Univ. of Calif. at Davis, *Preventing Delinquency Through Diversion . . . A Second-Year Report* (1973).
Sacramento Co. (Calif.) Probation Dept., Center on Admin. of Crim. Justice, Univ. of Calif. at Davis, *The Sacramento Diversion Project: A Preliminary Report* (1971).
Satir, *Conjoint Family Therapy* (1967).
Schur, *Radical Non-Intervention: Rethinking the Delinquency Problem* (1973).
Shellow *et al.*, "Suburban Runaways of the 1960's," *Monographs of the Society of Research in Child Development* (1967).
State of Calif., Dept of the Youth Authority, *Annual Report: 1970.*
Summary of Symposium on Moral Development and Juvenile Justice (prepared for I.J.A.-A.B.A. Joint Commission on Juvenile Justice Standards, Oct. 13-15, 1974).
Uniform Crime Reports, cited in Hearings on the Runaway Child Before the Calif. Senate Select Committee on Children & Youth, Reg. Sess. (1973-1974).

ARTICLES, NOTES, AND COMMENT

Bazelon, "Beyond Control of the Juvenile Court," 21 *Juv. Ct. Judges J.* 42 (1970).
Carrigan, "Inherent Powers of the Courts," 24 *Juv. Justice* 38 (May 1973).
Cohn, "Criteria for the Probation Officer's Recommendations to the Juvenile Court Judge," 9 *Crime & Delinq.* 262 (1963).
Comment, "California's Predelinquency Statute: A Case Study and Suggested Alternatives," 60 *Calif. L. Rev.* 1163 (1972).
Comment, "Delinquent Child: A Legal Term Without Meaning," 21 *Baylor L. Rev.* 352 (1969).
Comment, "Juvenile Statutes and Non-Criminal Delinquents: Applying the Void-for-Vagueness Doctrine," 4 *Seton Hall L. Rev.* 184 (1972).

Reproduced with permission. All rights reserved. Distribution of this reproduction without consent is not permitted.

Cornfield, "Emancipation by Eviction: The Problem of the Domestic Push-Out," 1 *Fam. L. Rptr.* 4021 (1975).

Culbertson, "The Effect of Institutionalization on the Delinquent Inmate's Self-Concept," 66 *J. Crim. L. & C.* 88 (1975).

Fox, "Juvenile Justice Reform: An Historical Perspective," 22 *Stan. L. Rev.* 1187 (1970).

Glen, "Juvenile Court Reform: Procedural Process and Substantive Stasis," 1970 *Wis. L. Rev.* 431 (1970).

Gough, "The Beyond-Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox," 16 *St. Louis U.L.J.* 182 (1971).

Green and Esselstyn, "The Beyond-Control Girl," 23 *Juv. Justice* 13 (Nov. 1972).

Katz and Schroeder, "Disobeying a Father's Voice: A Commentary on *Commonwealth v. Brasher*," 57 *Mass. L.Q* 43 (1972).

Klapmuts, "Children's Rights: The Legal Rights of Minors in Confict with Law or Custom," 4 *Crime & Delinq. Lit.* 449 (1972).

Kleinfeld, "The Balance of Power Among Infants, Their Parents and the State," 4 *Fam. L.Q.* 319 (1970), 4 *Fam. L.Q.* 410 (1970), 5 *Fam. L.Q.* 63 (1971).

Konopka, "Formation of Values in the Developing Person," 43 *Am. J. Orthopsychiatry* 86 (1973).

Lemert, "The Juvenile Court—Quest and Realities," in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 91 (1967).

Mahoney, "The Effect of Labeling on Youths in the Juvenile Justice System: A Review of the Evidence," 8 *Law & Soc. Rev.* 583 (1974).

McNulty, "The Right to be Left Alone," 11 *Am. Crim. L. Rev.* 141 (1972).

Note, "California Runaways," 26 *Hastings L.J.* 1013 (1975).

Note, "Parens Patriae and Statutory Vagueness in the Juvenile Court," 82 *Yale L.J.* 745 (1973).

Note, "Persons in Need of Supervision: Is There a Constitutional Right to Treatment," 39 *Brooklyn L. Rev.* 624 (1973).

Note, "Ungovernability: The Unjustifiable Jurisdiction," 83 *Yale L.J.* 1383 (1974).

Rosenheim, "Youth Service Bureau: A Concept in Search of a Definition," 20 *Juv. Ct. Judges J.* 69 (1969).

Sidman, "The Massachusetts Stubborn Child Law: Law and Order in the Home," 6 *Fam. L.Q.* 33 (1972).

Stevens, "Liabilities Engendered in Emergency Department Practice," 2 *J. Leg. Med.* 17 (1974).

Stiller and Elder, "PINS: A Concept in Need of Supervision," 12 *Am. Crim. L. Rev.* 33 (1974).

Suddick, "Runaways: A Review of the Literature," 24 *Juv. Justice* 47 (1973).

Wald, "The Rights of Youth," 4 *Human Rights* 13 (1974).

CASES, STATUTES, AND CODES

Bartley v. Kremens, 402 F. Supp. 1039 (E.D. Pa. 1975).

Blondheim v. State, 84 Wash. 2d 874, 529 P.2d 1096 (1975).

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Breed v. Jones, 421 U.S. 519 (1975).
Commonwealth v. Brasher, 359 Mass. 550, 270 N.E.2d 389 (1970).
Connally v. General Construction Co., 269 U.S. 385 (1926).
E.S.G. v. State, 447 S.W.2d 225 (Ct. Civ. App. Tex. 1969), *cert. denied*, 398 U.S. 956 (1970).
Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd*, 406 U.S. 913 (1972).
Gonzales v. Mailliard, No. 50424 (N.D. Cal. 1971), *vacated and remanded*, 416 U.S. 918 (1974).
In Interest of Storm, 223 N.W.2d 170 (Iowa 1974).
In the Matter of Ellery C., 32 N.Y.2d 588, 300 N.E.2d 424, 347 N.Y.S.2d 51 (1973).
In the Matter of Ilone I., 64 Misc. 2d 878, 316 N.Y.S.2d 356 (N.Y. Fam. Ct. 1970).
In the Matter of Mario, 317 N.Y.S.2d 659 (Fam. Ct. 1971).
In the Matter of Patricia A., 31 N.Y.2d 83, 286 N.E.2d 432 (1972).
In re E., 327 N.Y.S.2d 84 (1971).
In re E.M.G., No. J 1365-73 (D.C. Super. Ct. 1973), *rev'd sub nom. D.C. v. B.J.R.*, 332 F.2d 58, 1 Fam. L. Rptr. 2235 (D.C. Ct. App. No. 7651, 1975).
In re Henderson, 199 N.W.2d 111 (Iowa 1972).
In re L.N., 109 N.J. Super. 278, 263 A.2d 150 (App. Div. N.J.), *aff'd*, 57 N.J. 165, 270 A.2d 409 (1970), *cert. denied sub nom. Norman v. New Jersey*, 402 U.S. 1009 (1971).
In re Peters, 14 N.C. App. 426, 188 S.E.2d 169, *aff'd*, 288 N.C. 28, 191 S.E.2d 702 (1972).
In re Shinn, 195 Cal. App. 2d 683, 16 Cal. Rptr. 165 (1961).
In re Welfare of Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975).
In re Spalding, 273 Md. 690, 332 A.2d 246 (1975).
In re Walker, 14 N.C. App. 356, 188 S.E.2d 731 (1972), *aff'd* 282 N.C. 28, 191 S.E.2d 702 (1972).
In re Waters, 13 Md. App. 95, 281 A.2d 560 (1971).
In re Winship, 397 U.S. 358 (1970).
Janet D. v. Carros, Ct. C.P. (Allegheny Co.) No. 1079-73 (unrptd.), 6 *Juv. Ct. Dig.* 139 (Pa. 1974).
Marr v. Superior Court, 114 Cal. App. 2d 527, 250 P.2d 739 (1952).
Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972).
Mercado v. Rockefeller, cert. denied sub nom. Mercado v. Carey, 420 U.S. 925 (1974).
Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973).
Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972), *Supp. opin.* 355 F. Supp. 458, *aff'd* 491 F.2d 352 (7th Cir. 1974).
Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).
People v. Ellis, 57 Ill. 2d 127, 311 N.E.2d 98 (1974).
People ex rel. Edwards v. Livingston, 42 Ill. 2d 201, 247 N.E.2d 417 (1969).
People ex rel. Pace v. Wood, 50 Ill. App. 2d 63, 200 N.E.2d 125 (1964).
Robinson v. California, 370 U.S. 660 (1972).
Stanton v. Stanton, 421 U.S. 7 (1975).
State ex rel. Pulakis v. Superior Court, 14 Wash. 2d 507, 128 P.2d 649 (1942).

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State ex rel. Weinstein v. St. Louis Co., 451 S.W.2d 99 (Mo. Sup. Ct. 1970).
State on inf. of Anderson v. St. Louis Co., 421 S.W.2d 249 (Mo. Sup. Ct. 1967).
State v. In Interest of S.M.G., 313 So. 2d 761 (Fla. Sup. Ct. 1975).
Steffel v. Thompson, 415 U.S. 452 (1974).
Zwickler v. Koota, 389 U.S. 241 (1967).