A Guide to Pennsylvania Delinquency Law

Leonard Packel
A GUIDE TO PENNSYLVANIA DELINQUENCY LAW

Leonard Packel†

I. INTRODUCTION AND HISTORY

A. Introduction

The law of delinquency shares with the criminal law several common goals, among which are the prevention of antisocial conduct and the protection of individual liberty. However, criminal law and delinquency law have developed along different lines because of differing philosophical premises. While the criminal law seeks to prevent antisocial conduct primarily through the punishment and treatment of those who commit crime, it also attempts to preserve individual liberty through the use of traditional substantive and procedural safeguards such as the jury trial, the requirement of adequate notice, the privilege against self-incrimination, the right of confrontation of adverse witnesses, and the right to counsel. In contrast, the law of delinquency disavows punishment and emphasizes treatment and rehabilitation as the primary techniques for preventing juvenile crime. This alternative focus of juvenile law has led to a reduction in the emphasis placed upon the safeguards which are present in the criminal law.

There have always been members of the legal community, as well as the general community, who have not entirely accepted the treatment rationale of delinquency law. While some have disapproved of what they view as the development of excessive leniency towards juveniles, many others have objected to the absence of traditional safeguards in the belief that the presence of these safeguards is necessary for the protection of children.

Following a review of the historical development of delinquency law in Pennsylvania, this article will analyze the Juvenile Act of 1972, the present law of delinquency in Pennsylvania.

† Associate Professor, Villanova University School of Law. B.S., University of Pennsylvania, 1957; J.D., Harvard University, 1960. The material in this article was developed during the course of the Juvenile Justice Clinical Program at the Villanova University School of Law.

B. History

1. Nineteenth Century Delinquency Law

In the 19th century, the need for a separate system for the handling of delinquent children was first recognized. The result was the establishment of a separate group of institutions for the confinement of children. Previously children were tried in the criminal courts and, if convicted, they were confined in the same institutions as adults. Among these institutions were jails, almshouses, work houses and poor houses. Confinement in the houses for the poor involved the same stigma as confinement in jail. Some members of the community feared that subjecting children to confinement in institutions with adult offenders and paupers could only lead to the criminalization and pauperization of the children. The recognition of this danger and the steps taken to alleviate it marked the beginning of the law of delinquency.

The first step was the statutory creation in 1826 of the House of Refuge in Philadelphia, an institution exclusively for children. The House of Refuge (Refuge) was a private association authorized to provide a building and receive children who were adjudicated vagrants or were convicted of criminal offenses, if in the opinion of the courts, the minor judiciary, or the managers of poor houses, the children were proper subjects for the Refuge. Committed children were to be wards of the Refuge and could be retained until age 21, if male, and age 18, if female. The managers of the Refuge were authorized to employ the children or place them in apprenticeships. The purpose of this institution was to treat and rehabilitate the children, and to shield them from the punishment and oppression which characterized the adult penal institutions.

It was at this early stage that some of the principal characteristics of modern delinquency law first emerged. Contemporary reports indicate that the lower courts committed children charged with crimes to the Refuge instead of holding them for trial in the criminal courts.


3. See, e.g. Fox, supra note 2, at 1189; Rendlemen, supra note 2, at 213.

4. Act of March 23, 1826, ch. 5773, § 1, [1826] Pa. Laws 82. The Philadelphia House of Refuge was later moved to Delaware County where it is now known as the Glen Mills School. The first house of refuge was established in New York in 1825. See Fox, supra note 2, at 1189–91.


While the courts' intentions may have been benevolent, the effect was to deprive the committed children of their liberty without the procedural safeguards provided by a trial. However, since the criminal courts of that era were often reluctant to convict and sentence children anyway, the intentions may, in some cases, have been less than benevolent.\(^7\)

In 1835, the type of conduct for which children could be committed was expanded to include incorrigibility.\(^8\) The challenge to this amendment to the House of Refuge Act provided the first major test of the developing law of delinquency. In *Ex parte Crouse*,\(^9\) the Supreme Court of Pennsylvania considered the constitutionality of committing a child, without a jury trial, to the Refuge as an incorrigible. The court held that a jury trial was not required for such a commitment to the Refuge, reasoning that a commitment of this type was not punishment but was intended to benefit the child. The court declared that it was saving the child from "a course which must have ended in confirmed depravity," and that "not only [was] the restraint of her person lawful, but it would [have been] an act of extreme cruelty to release her from it."\(^10\) This authority of the state to intervene and confine a child for the child's own benefit was labeled "*parens patriae*".\(^11\)

In 1893 the Pennsylvania General Assembly enacted a bill permitting the courts and minor judiciary to commit children not only to the House of Refuge, but to any society incorporated for the protection or placement of children.\(^12\) Almost immediately thereafter the General Assembly passed another law which was a harbinger of future developments in delinquency law. This latter act\(^13\) (1893 Act) forbade the confinement of children under 16 in any cell or apartment with adults charged with or convicted of a crime, directed that children charged with crime receive a trial separate and apart from that of adults, and required the creation of a separate docket for children's cases.\(^14\) The significance of the 1893 Act was that, unlike the earlier legislation in which special treatment for children was discretionary, confinement apart from adults and separate trials were mandated. The

\(^7\) Id.
\(^8\) Act of April 10, 1835, No. 92, § 1, [1835] Pa. Laws 133.
\(^9\) 4 Whart. 9 (Pa. 1839).
\(^10\) Id. at 11.
\(^11\) Id. (emphasis added). *Crouse* was the first delinquency case in this country in which the phrase "*parens patriae*" was used. See Fox, *supra* note 2, at 1206; Rendleman, *supra* note 2, at 218.
\(^12\) Act of June 8, 1893, No. 301, § 1, [1893] Pa. Laws, 399 (codified at PA. STAT. ANN. tit. 11, § 27 (1965)).
\(^13\) Act of June 12, 1893, No. 328, §§ 1, 2, [1893] Pa. Laws 459 (repealed and superseded 1933).
\(^14\) Id.
1893 Act prompted a swift judicial response. Judge Yerkes of the Bucks County Court found it unconstitutional because it classified criminals by age and did not retain the previous trial by jury requirement. However, Judge Yerkes' opinion was not grounded in the denial of rights to children, but rather upon the belief that such treatment was excessively lenient. He stated:

It is quite probable that this Act became a law through inadvertence. It represents humanitarianism gone mad, and is so clumsily drawn that it is next to impossible to understand its clear meaning. It appears, however, to contemplate the separation of criminals of one class, as defined by the Act, from another class, even where the necessities of the administration of justice require their joint presence.

Some of the worst criminals known to the law are persons under sixteen years of age. Frequently they are found in the company of other criminals engaged in the perpetration of crimes to the highest grade, often displaying a capacity for leadership and a daring in advance of those in whose company they are caught.

2. The Juvenile Court Acts

Despite this judicial setback, the legislative effort to aid troubled juveniles continued. The next stage in the development of delinquency law was marked by the legislative establishment of a separate judicial system for delinquent children: the juvenile court.

The Pennsylvania General Assembly passed a Juvenile Court Act (1901 Act) in 1901 granting exclusive jurisdiction over all cases involving dependent or delinquent children to the lower court which are now designated as the courts of common pleas. The phrase "delinquent child" was defined to include any child under 16 years of age who violated any state law or ordinance. The cases of delinquent children were to be adjudicated in accordance with the provisions of the 1901 Act rather than the criminal law applicable to adults.

Under the 1901 Act, the judges were to designate one or more of their number to hear juvenile cases in a special courtroom with a separate docket, and this court was to be called the juvenile court. The 1901 Act provided for a summary trial, although any interested person could demand a jury trial. The court was directed to appoint a pro-

---

16. Id at 754.
bation officer and the Act permitted the juvenile court to place delinquent children on probation rather than committing them — a daring innovation for that era. The provision of the 1893 Act which prohibited confining children with adults was retained in an amended form,18 and the practice of making children wards of the receiving institutions until majority was continued.19

It was not long before the 1901 Act was subjected to close judicial scrutiny. Mansfield's Case20 involved an appeal by a 14-year-old boy who had been committed by the juvenile court for burglary and larceny. Those involved in the case viewed it as a major test of the 1901 Act. Although the Superior Court could have reversed on technical grounds, it considered virtually every aspect of the 1901 Act.21 The most significant portion of the opinion was that which reviewed the juvenile court's delinquency jurisdiction. The court found that the 1901 Act violated Pennsylvania's constitution because it granted special privileges and immunities, and that it potentially violated the equal protection clause of the fourteenth amendment of the United States Constitution in that it provided that persons under 16 years of age charged with criminal offenses were to be treated differently than persons over 16.22 The Mansfield court was particularly concerned that a child violating an ordinance could be committed until that child reached majority status while a person over 16 would receive only a small fine. In addition, the court found that the 1901 Act's provision for a summary trial, unless a jury trial was demanded, violated the right to a jury trial.23

Despite this temporary setback, the forces behind the juvenile court movement would not be denied; less than 3 months after the decision in Mansfield's Case the Juvenile Court Act of 1903 (1903 Act) was passed.24 The 1903 Act was strikingly similar to the 1901 Act, making only two changes of significance. First, the juvenile court no longer had exclusive jurisdiction over children charged with violations of the law, but rather the 1903 Act reverted to the pattern set by the House of Refuge Act: only those children deemed appropriate for such disposition were to be referred to the juvenile court. The second change was the elimination of the right to a jury trial.

18. See text accompanying notes 13–14 supra.
19. See text accompanying notes 4–5 supra.
21. Id. at 228–35. The court could have reversed on the ground that the petition filed with the juvenile court was not verified by affidavit as was required by the 1901 Act. Id. at 229.
22. Id. at 232–35.
23. Id.
The 1903 Act was promptly subjected to constitutional review in *Commonwealth v. Fisher.* While the Pennsylvania Supreme Court discussed the same issues that were considered in *Mansfield's Case,* the court found the 1903 Act constitutional. The court held that the 1903 Act created no special privileges or immunities and did not violate the equal protection clause of the United States Constitution. This conclusion was premised on the finding that children tried as delinquents were neither being tried for crimes nor punished, but rather were being treated as objects for rehabilitation by the state, therefore, it was not necessary to “try” them in the precise manner used for adults charged with crimes. The court treated the jury trial issue in the same manner; there was no need for a jury trial in a proceeding under the 1903 Act because

> [t]he act is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake, if the child's own good and the best interests of the state justify such salvation. Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it.

Thus, the Pennsylvania Supreme Court reaffirmed the principle that the doctrine of *parens patriae* must prevail over the traditional procedural safeguards of the criminal law. It is not surprising that the court relied heavily upon its earlier holding in *Ex parte Crouse.* However, it is unclear whether the determinative factor which favored the 1903 Act was that the juvenile court did not have exclusive jurisdiction over children charged with crime, but only jurisdiction in those cases deemed appropriate. Notwithstanding this possible equivocality, the *Fisher* decision was widely cited by those active in the juvenile court movement, and contributed greatly to the proliferation of juvenile courts throughout the country.

3. *The Juvenile Court Era*

Following the early struggle to establish its separate existence, the juvenile court’s powers were consolidated and supplemented by the judiciary and the legislature. In 1908, the Philadelphia juvenile court held that a magistrate could not discharge a child charged with delin-
The same court ruled that its authority over a delinquent child placed on probation did not terminate when the child reached 16, but continued until he or she was 21, unless the court ordered the child to be discharged earlier.

One year later, the 1903 Act was amended to permit the juvenile court to amend, change, or extend its disposition of a child until the child reached 21. In 1912, the Philadelphia juvenile court ruled that institutions to which children were committed could only give paroles, and not final discharges — the latter function solely being within the power of the court. The effect of the decisions and legislation was to make children who were on probation wards of the juvenile court. Institutionalized children were still wards of the institutions, as they had been in the 19th century delinquency legislation, but they were also subject to court orders.

By 1923, the notion of a separate juvenile court had gained such public acceptance that the 1903 Act was amended to grant exclusive jurisdiction to the juvenile court over cases involving dependent, neglected, or delinquent children. However, the juvenile court still could certify cases to the criminal courts if the interests of the state required prosecution. Thus, Pennsylvania had returned to the law of the 1901 Act, and Mansfield’s Case was a dead letter.

New juvenile court legislation (1933 Act) was passed in 1933 which incorporated the provisions of and amendments to the 1903 Act and some of the related judicial decisions. However, there was one change of major significance: “Delinquent child” was defined to include not only children who violated state laws and local ordinances, but also children who: 1) could not be controlled by their parents, due to waywardness or habitual disobedience, 2) were habitual truants, or 3) were children who habitually deported themselves so as to injure or endanger their own morals or health, or the morals or health of others. Additionally, in 1939, the age limitation of children subject

---

35. See notes 20-23 and accompanying text supra.
to the 1933 Act was raised from 16 to 18. The 1933 Act remained in effect until the passage of the Juvenile Act of 1972.

A simple review of the legislation and relevant case law fails to illustrate fully what actually had occurred within the juvenile courts. According to the advocates of the juvenile court system, the concept of parens patriae fostered the development of a unique socialized court aimed at individualized diagnosis and treatment, and in which traditional criminal safeguards were not permitted to interfere with the benevolent goal of protecting and revitalizing the life of the delinquent child. Although the procedures were not uniform among the states, or in some cases even among the counties within a state, it appears that the traditional substantive and procedural safeguards, including the right to adequate notice, the privilege against self-incrimination, and the right to confront and cross-examine witnesses, were not observed. It was a common practice for the juvenile court to review a child's history before making a finding on the facts, and there were no provisions for right to counsel.

However, the intended benevolence and innovation of the juvenile court was more than mere rhetoric. In the absence of statutory authority, there often developed pre-adjudicatory devices for diverting children from the courts to social agencies which were better equipped to handle the children's problems. Similarly, at the end of the proceedings — the disposition — there were creative programs designed to utilize probation and therapy, and commitment to foster homes and halfway houses rather than to institutions for the treatment of children.

These devices did not quiet those advocates of the traditional safeguards, and evidence of their activities appeared in Holmes Appeal. In that case, the Pennsylvania Supreme Court was faced with a direct attack upon the absence of these safeguards, specifically: the privilege against self-incrimination, the right to adequate notice, and the right to confront witnesses. In upholding the 1933 Act, the court once again adopted a parens patriae rationale, and this case constituted the

40. See Mennen, supra note 2, at 69.
42. See text accompanying notes 171-73, 400, and 427-28 infra.
44. In addition to a brief examination of the development of juvenile law in Pennsylvania, the court gave the following statement of the parens patriae rationale: The proceedings in [a juvenile court] are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. Their purpose is not penal but protective — aimed to check juvenile delinquency and to throw around a child, just
highest point of the development of this theory in Pennsylvania. In a
powerful dissent, Justice Musmanno observed that it was deceptive to
contend that an adjudication of delinquency involved no stigma or that
commitment to an industrial school was not punishment. He added:

The 14th Amendment to the Constitution of the United
States guarantees all citizens of the United States due process of
law. No state law can abrogate this guarantee. It needs no citation
of authority to establish that, included within due process of law,
are the right to face one's accuser, to summon witnesses in one's
defense, the immunity of self-incrimination, and to employ counsel.
. . . [T]here is nothing in the Juvenile Court Act which deprives
minors of the constitutional safeguards above indicated. . . . If
there is anything in the Juvenile Court Law which by fair inter-
pretation sanctions this unconscionable thing, I must say that such
an un-American proposition is unconstitutional and I would,
therefore, declare it null and void.

Justice Musmanno's dissent was an omen, as considerable pressure was
growing for a constitutional overhaul of particular procedures within
the juvenile court. This pressure culminated in a series of responses
from the United States Supreme Court.

4. The United States Supreme Court and the Law of Delinquency

In re Gaul was a typical juvenile case in which a child was
charged with making obscene phone calls. Notice to the child and his
family had been informal at best, and they had not been advised of
their right to counsel. The accusing witness had not been present and
the child apparently had been questioned by the juvenile court without
first being advised of his privilege to remain silent. On review, the
Supreme Court of the United States found that this procedure violated
the Constitution, holding that the due process clause of the fourteenth
amendment required that the child be accorded adequate notice, the
right to counsel, the privilege against self-incrimination, and the right
to confront and cross-examine witnesses, at least where commitment

starting, perhaps, on an evil course and deprived of proper parental care, the
strong arm of the State acting as parens patriae. The State is not seeking to
punish an offender but to salvage a boy who may be in danger of becoming one,
and to safeguard his adolescent life. Even though the child's delinquency may
result from the commission of a criminal act the State extends to such a child
the same care and training as to one merely neglected, destitute or physically
handicapped. No suggestion or taint of criminality attaches to any finding of
delinquency by a Juvenile Court.

Id. at 603-04, 109 A.2d at 525.
45. Id. at 611-12, 109 A.2d at 528-29 (Musmanno, J., dissenting).
46. Id. at 625-26, 109 A.2d at 535 (Musmanno, J., dissenting).
47. 387 U.S. 1 (1967).
to an institution was a possible consequence of the proceedings. Parens patriae was no longer considered acceptable as the controlling rationale for denying children fundamental safeguards accorded in the criminal prosecutions of adults. The Court carefully indicated that it was not compelling states to adopt the complete panoply of safeguards customary to criminal proceedings, and further indicated that its opinion considered neither the pre-judicial nor the dispositional stage of a juvenile case, but dealt only with the adjudicatory stage. Further, the Court specifically declined to rule on the right to a transcript and appellate review, and noted that it was expressing no opinion on several other issues which had been discussed by the court below.

In 1970 the United States Supreme Court ruled on the issue of burden of proof in the case of In re Winship. The Court held that where a child is subject to confinement for proscribed conduct, that conduct must be proven beyond a reasonable doubt.

Finally, in 1971 the Supreme Court held in McKeiver v. Pennsylvania that a jury trial was not required in the adjudicative stage of a juvenile proceeding. The Court was not willing to disregard completely the notion of a benevolent procedure aimed at aiding the child rather than punishing him. The parens patriae doctrine was down, but not yet counted out.

C. The Juvenile Act of 1972

In the fall of 1967, the Pennsylvania General Assembly resolved:

[t]hat the Joint State Government Commission be directed to study the recent Supreme Court decision concerning juvenile courts [In re Gault] and to study our system so that the procedure which will be applied in Pennsylvania will be in conformity with the court's ruling.

48. Id. at 31–57.
49. Id. at 13.
50. Id. at 58. The issues upon which the Court declined to express an opinion included the applicability of constitutional standards to juvenile arrests, the admission of hearsay evidence in juvenile hearings, and the correct burden of proof to be used in juvenile hearings. Id.
52. Id. at 361–68.
53. 403 U.S. 528 (1971).
54. The Court noted that the applicable due process standard in juvenile proceedings was fundamental fairness, citing the Gault and Winship decisions. The Court reasoned that fundamental fairness involved primarily accurate factfinding procedures, and concluded that a jury trial was not essential for accurate factfinding. Id. at 543. The McKeiver decision was reached notwithstanding judicial notice of the “disappointments, failures, and shortcomings” present in the juvenile court procedure. Id. at 545–50.
55. PA. S. CON. RES. No. 132 (1967).
In 1970 this Commission submitted the Proposed Juvenile Act\(^5\) (Proposed Act) which generally adopted the structure of the Uniform Juvenile Court Act (Uniform Act).\(^6\) The Proposed Act was amended and revised in the General Assembly, but retained the same essential provisions when it was passed as the Juvenile Act of 1972\(^5\) (1972 Act).

The remainder of this article is directed towards an analysis of the 1972 Act. At the outset, it should be noted that the three most significant changes made by the 1972 Act are: 1) it limits the delinquency jurisdiction of the Pennsylvania courts; 2) it codifies much of the pre-adjudicatory practice which had developed over the years in the absence of statutory authorization; and 3) it adopts many of the traditional safeguards discussed by the Supreme Court in the Gault case while retaining the full spectrum of dispositional alternatives which have characterized delinquency law. Although there is no reason to believe that the 1972 Act will be the last chapter in the development of Pennsylvania delinquency law, it is submitted that this Act, like its predecessors, is responsive to the goals of the juvenile law as they are perceived by the community at this time.

II. JURISDICTION, APPLICATION OF THE ACT, TRANSFER FOR CRIMINAL PROSECUTION, AND VENUE

A. Jurisdiction

The 1972 Act makes no provision for a separate juvenile court. As a result, jurisdiction over juvenile matters lies with the courts of common pleas, pursuant to article V, section 5 of the Pennsylvania constitution.\(^6\) Thus, while it is still customary to refer to the “Juvenile Court,” it must be recognized that the phrase does not refer to a special court, but only to the court of common pleas when it is trying a juvenile case.


\(^{57}\) Uniform Juvenile Court Act.


\(^{59}\) Pa. Const. art. V, § 5. Article V, section five grants the courts of common pleas unlimited original jurisdiction in all cases except as may otherwise be provided by law. The schedule to article V provides that jurisdiction of juvenile matters in Philadelphia and Allegheny Counties is to be exercised by the family court division of the court of common pleas. Pa. Const. art. V, schedule § 16(q)(ii), § 17(b)(ii).

There exists a tendency in the Pennsylvania courts to refer to “the jurisdiction” of the juvenile court. See, e.g., Commonwealth v. Pyle, ....... Pa. ....... , 342 A.2d 101, 103 (1975); In re Gillen, ....... Pa. Super. ....... , 344 A.2d 706, 707 (1975). Since there are no juvenile courts in Pennsylvania, but only courts of common pleas hearing juvenile cases, it is technically inaccurate to refer to “the jurisdiction” of the juvenile courts. It would be more accurate to refer to those cases to which the 1972 Act applies.
B. Application of the Act

The delinquency provisions of the 1972 Act most frequently apply in two situations: 1) when a child has been charged with the commission of a delinquent act, and 2) when the transfer provisions of section 7 of the 1972 Act require the transfer of a child’s case from a criminal proceeding to a juvenile hearing. A “child” is defined as a person who is: 1) under the age of 18, or 2) under the age of 21 and has committed an act of delinquency before he reached 18. The following subsections will explore the scope of the definition of a delinquent act and the situations in which a section 7 transfer will apply.

1. Delinquent Act

The 1972 Act defines a “delinquent act” as:

(i) an act designated a crime under the law of this State, or of another state if the act occurred in that state, or under Federal law, or under local ordinances; or (ii) a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian committed by a child who is ungovernable. ‘Delinquent act’ shall not include the crime of murder nor shall it include summary offenses unless the child fails to pay a fine levied thereunder, in which event notice of such fact shall be certified to the court.

As the above definition indicates, a delinquent act includes both acts of habitual disobedience by an ungovernable child and crimes.

a. Crimes

A primary purpose of the 1972 Act is: “Consistent with the public interest, to remove from children committing delinquent acts the consequences of criminal behavior . . . .” This is accomplished by including virtually all crimes within the definition of delinquent acts. The inclusion of crimes committed in other states or under Federal law ensures that children residing in Pennsylvania may receive the benefits

of the 1972 Act rather than being subjected to a trial in another state or in a federal court.

The exclusion of murder from the definition of a delinquent act reflects a legislative judgment that such a charge is too serious to be tried under the aegis of the 1972 Act.\(^6\)

Summary offenses are also excluded from the definition of delinquent act in the 1972 Act.\(^6\) Pennsylvania appears to be the only state in which summary offenses are not included within the meaning of delinquent conduct, although the tendency in other states is to exclude summary motor vehicle offenses from the operation of juvenile legislation.\(^6\)

The exemption of summary offenses is interesting both historically and substantively. The early laws concerning delinquency in Pennsylvania were designed to remove juvenile offenders from the process of the criminal justice system,\(^6\) thus preventing the confinement of children in jails with adult offenders, which would have resulted had they been charged with, or convicted of, summary offenses in this earlier period.\(^6\)

Since, as the author has observed, confinement pending trial and imprisonment for conviction of summary offenses is relatively rare today, this exclusion probably reflects a legislative decision that it would serve little purpose to extend the protection of the 1972 Act to these offenses when weighed against the burden which this large number of cases might impose on the courts of common pleas.

Should a child charged with a summary offense fail to pay an imposed fine, that child becomes subject to the 1972 Act, and the case must be certified to a juvenile court.\(^7\) The Act is silent as to what occurs subsequent to certification, although the language of the Act seems to indicate that the summary offense then becomes a delinquent act subject to trial in the juvenile court. However, the courts have not considered certification in this manner; rather, they have treated such

---

65. But see text accompanying notes 89–100 infra.

66. See text accompanying note 63 supra. In Philadelphia, however, summary cases are still being tried as juvenile cases. For a possible justification, see Klein, A Practical Look at the New Juvenile Act, 12 Duquesne L. Rev. 186, 198 (1973). Summary offenses are tried before the minor judiciary and generally only provide for a fine. Commitment is only involved when the offender fails to pay the fine. See, e.g., Pa. Stat. Ann. tit. 18, § 6308(a) (1973), wherein the purchase of an alcoholic beverage by a person under the age of 21 is defined as a summary offense.

67. See, e.g., Uniform Juvenile Court Act, § 2(12), and the notes thereto.

68. See text accompanying notes 2–42 supra.

69. See text accompanying note 2 supra.

70. See text accompanying note 63 supra.
cases merely as hearings to determine whether there is any justification for the failure to pay the fine.\textsuperscript{71}

It appears that summary offenses must be tried initially by the juvenile court where a single incident of crime gives rise to charges which are misdemeanors or felonies as well as summary offenses. In \textit{Commonwealth v. Campana},\textsuperscript{72} the Supreme Court of Pennsylvania held that in an adult proceeding, summary charges must be tried in common pleas court contemporaneously with felonies or misdemeanors arising from the same transaction or episode. If the summary offenses are tried first, a trial for the more serious charge is barred.\textsuperscript{73} It would seem that this rationale applies to cases involving children and that, therefore, summary offenses should be referred to the court which will hear the more serious charges, the juvenile court.

b. \textit{Ungovernability}

The law of delinquency has, almost from its inception, included noncriminal conduct within the definition of a delinquent act.\textsuperscript{74} However, the class of noncriminal conduct which renders a child "ungovernable" is, for purposes of the 1972 Act, arguably more limited than it has been in the past. For example, the 1933 Act defined delinquency so as to include conduct such as waywardness, habitual disobedience, truancy, and behavior in a manner injurious to or endangering the morals, health, or general welfare of the juvenile or others.\textsuperscript{76} In contrast, the provision of the 1972 Act appears narrower, and, in practice, is generally applied only to runaway children and promiscuous girls. Although truants are classified by the 1972 Act as deprived rather than delinquent,\textsuperscript{77} in certain circumstances truancy may still constitute a delinquent act within the definition of the 1972 Act. Such a situation arose in \textit{In re Garner},\textsuperscript{78} in which the Superior Court of Pennsylvania

\textsuperscript{71} Some judges contend that this practice results in the court acting as a glorified collection agency, particularly since most children are without resources, and therefore are probably not subject to commitment for their failure to pay the fines. For a discussion of the constitutional ramifications of imprisoning an indigent unable to pay a fine, see Tate v. Short, 401 U.S. 395 (1971); Williams v. Illinois, 399 U.S. 235 (1970).

\textsuperscript{72} 452 Pa. 233, 304 A.2d 432, vacated and remanded, 414 U.S. 808 (1973).

\textsuperscript{73} 452 Pa. at 252-55, 304 A.2d at 441-42.

\textsuperscript{74} See text accompanying note 88 supra.

\textsuperscript{75} Act of June 3, 1933, No. 312, [1933] Pa. Laws 1449 (repealed 1972); Act of June 2, 1933, No. 311, [1933] Pa. Laws 1433 (repealed 1972). There were two Juvenile Court Acts, the later Act applying only to Allegheny County. They were virtually identical and are treated as one act for the purposes of this article.

\textsuperscript{76} Act of June 2, 1933, No. 311, § 1, [1933] Pa. Laws 1433 (repealed 1972).


affirmed a finding of ungovernability based upon a child’s failure to obey her parent’s lawful command to attend school.\textsuperscript{79}

Since the ungovernability provision of the 1972 Act is considerably more limited than past provisions, the 1972 Act is thereby less vulnerable to constitutional attack on the grounds of vagueness\textsuperscript{80} or that it permits punishment premised upon a child’s status.\textsuperscript{81} Additionally, there are two features of the 1972 Act which tend to ameliorate the harm that could arise from an overzealous attempt to enforce the juvenile court’s jurisdiction with respect to conduct which is essentially noncriminal. First, section 8(a) of the Act\textsuperscript{82} requires the probation officer, or designated officer of the court to refer a child charged with ungovernability to a private or public agency prior to a petition being filed in juvenile court. Second, section 26 of the Act\textsuperscript{83} appears to prohibit the commitment of a child adjudged delinquent by reason of ungovernability.\textsuperscript{84}

2. \textit{Section Seven Transfers}

Since all crimes except murder and summary offenses are within the 1972 Act’s express definition of delinquent conduct, a child is likely to be charged with a crime in an adult criminal proceeding only through mistake or deceit on the part of the child. In anticipation of such a possibility, the 1972 Act provided for its application to children charged with crime.\textsuperscript{85} Section 7 of the Act provides in part:

\begin{quote}
If it appears to the court in a criminal proceeding other than murder, that the defendant is a child, this act shall immediately become applicable, and the judge shall forthwith halt further criminal proceedings, and, where appropriate, transfer the case to the Family Court Division or to a judge of the court assigned to conduct juvenile hearings . . . . If it appears to the court in a criminal proceeding charging murder, that the defendant is a child, the case may similarly be transferred and the provisions of this act applied.\textsuperscript{86}
\end{quote}

\textsuperscript{79} Id. at 484, 326 A.2d at 585. In \textit{Garner} the child was adjudicated both delinquent, because of her habitual disobedience, and deprived, because of her habitual truancy. \textit{Id}.
\textsuperscript{81} See \textit{e.g.}, Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971).
\textsuperscript{83} \textit{Id.} § 50-323 (Supp. 1975-76).
\textsuperscript{84} \textit{See} text accompanying note 436 \textit{infra}.
\textsuperscript{85} \textit{See} text accompanying notes 60-63 \textit{supra}.
\textsuperscript{86} \textit{Pa. Stat. Ann.} tit. 11, § 50-303 (Supp. 1975-76). In Allegheny and Philadelphia Counties there are separate family court divisions of the courts of common pleas. In these two counties it is logical to have the case reassigned. However, in most counties in Pennsylvania, the common pleas judge can hear both criminal and juvenile cases, and there is no logical reason to reassign a case. Common sense
Children sometimes lie about their age if they have a record in the juvenile court. Can the court consider the deliberate misstatement of age a waiver of rights under the Act or a request for transfer for criminal prosecution under section 28(c) of the Act? While under the 1933 Act a child was not entitled to postconviction relief if he or she misstated his or her age, it is uncertain whether the same rule would be followed under the 1972 Act. Obviously, counsel in a criminal proceeding will have some difficult questions to resolve when he learns that his client is a child. Will the client fare better in a criminal trial or in a juvenile hearing? Which is likely to be more severe, the criminal sentence or the juvenile disposition? Will the child be harmed by admitting that he or she lied about his or her age? Not the least of these are the ethical questions. Can the client's confidence be revealed — can his deceit be perpetuated?

While the 1972 Act's definition of delinquent conduct clearly excludes murder, in practice the Act may be applicable to children charged with this crime. Although a child charged with murder is subject to the action of a grand jury and a criminal trial, section 7 of the 1972 Act gives the criminal court the authority to transfer the action to the appropriate juvenile court for a hearing in accordance with the provisions of the Act, rather than proceed with a criminal trial. This provision of the 1972 Act codifies the prior Pennsylvania procedure for children charged with murder. An example of this past practice appears in Gaskins Case, where, after a preliminary hearing, the county court in Philadelphia refused to certify the case to the court of common pleas for a criminal trial, and itself adjudicated the child delinquent. On appeal by the Commonwealth, the Pennsylvania Supreme Court reversed, ordering the child be held for the action of a

would dictate that the common pleas judge merely treat the case as a juvenile case by directing an immediate filing of a petition alleging delinquency, dismissing the jury, if any, and disposing of the case as though it had been a juvenile proceeding from the outset. Such treatment would be administratively sound at any stage of the criminal proceedings. This procedure would have the advantage of obviating the delay and confusion which results from a transfer of the case to another judge.

87. PA. STAT. ANN. tit. 11, § 50-325(c) (Supp. 1975-76). See also Klein, supra note 66 at 203-04.

88. Commonwealth v. Harris, 223 Pa. Super. 11, 297 A.2d 154 (1972). Although the appellant in Harris was under 16 at the time of the offense, he told the court that he was 19. The court denied his petition for postconviction relief, holding that the 1933 Act did not deprive the criminal court of jurisdiction if the juvenile was under the age of 16 at the time the alleged offense was committed. It was determined that the 1933 Act only imposed a duty to transfer such proceedings to the juvenile court if the defendant's true age was ascertained during the pendency of the criminal charge. Id. at 11-12, 297 A.2d at 154.

89. See text accompanying note 63 supra.


91. 430 Pa. 298, 244 A.2d 662 (1968).
grand jury and a criminal trial. However, the court also held that the court of common pleas, sitting as the criminal court in this context, had the power to transfer the case back to the county court, sitting as the juvenile court, if it was in the "best interests of both the child and society that the criminal prosecution should not be pursued." As a result, unless a murder case is transferred to a juvenile court, the juvenile court serves only as a committing magistrate for a child charged with murder: if a prima facie case is established, the child must be held for the action of the grand jury and a criminal trial.

The 1972 Act does not establish the procedure or criteria to be utilized by the court in determining whether a murder case should be transferred for trial as a delinquent act. The Supreme Court of Pennsylvania considered this serious deficiency in Commonwealth v. Pyle, which involved a 17-year-old child charged with murder. A rule to show cause why the case should not be transferred for hearing under the 1972 Act was filed by counsel for the child. The lower court held a hearing on this issue and discharged the rule to show cause and the case, therefore, was conducted as a criminal case. On appeal from the judgment of sentence the Supreme Court of Pennsylvania concluded that the lower court was correct in holding a hearing on the issue of transfer. The court also affirmed the action of the lower court in applying the criteria set out in section 28(a) of the 1972 Act although those criteria are, on their face, applicable only in cases where the transfer is to be from a judge hearing juvenile cases to a judge hearing criminal cases. In addition, the court held that the burden is on the child charged with murder to demonstrate that he meets the criteria necessary to justify the transfer of the murder case to a juvenile court.

The question also arises as to the stage of the criminal proceedings at which the criminal court may decide that a murder defendant is a "child" subject to transfer of the case to a juvenile court. Under section 7 of the 1972 Act this transfer may take place even after the child's conviction of a crime less than murder. However, the more important question remains as to whether a child's case may be transferred subsequent to his conviction for murder.

92. Id. at 310, 244 A.2d at 669.
93. Id.
96. Id. at ——, 342 A.2d at 103.
97. Id. at ——, 342 A.2d at 105-06.
98. Id. at ——, 342 A.2d at 104-05.
99. Id. at ——, 342 A.2d at 106.
C. Transfer for Criminal Prosecution

While the application of the 1972 Act is mandatory, some persons who fall within the definition of a "delinquent child" may be excluded from its operation in certain circumstances. Section 28(a) of the Act provides in part:

After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, of this state, the court before hearing the petition on its merits may rule that this act is not applicable and that the offense should be prosecuted, and transfer the offense, where appropriate, to the trial or criminal division or to a judge of the court assigned to conduct criminal proceedings, for prosecution of the offense...

This exclusionary process is called "transfer" under the Act, and section 28 provides both the procedure and the criteria to be used in determining whether a case shall be transferred.

1. Transfer Procedure

In Kent v. United States, the United States Supreme Court established that procedural due process requirements must be met by a court when it transfers a case from juvenile to criminal court. In Kent, the Court considered the provisions of the District of Columbia Juvenile Court Act concerning transfer of a child from juvenile to criminal court. The child in Kent was transferred for a criminal trial without a hearing. The Court held that such a transfer without a hearing was not permitted "by the statute read in the context of constitutional principles relating to due process and the assistance of counsel," and indicated that the question of jurisdiction was of great significance to the child; potentially it meant the difference between receiving a death sentence and being committed until the age of 21.

The drafters of the 1972 Act were cognizant of the procedural due process requirements imposed by Kent, and accordingly drafted a procedure...
vision requiring a hearing for such a proceeding. However, the effectiveness of this hearing is neutralized by the 1972 Act's mandate that written notice of the hearing and its purpose be given only 3 days in advance. It is submitted that this notice provision may run afoul of the Kent due process requirements, since 3 days may not be sufficient time to prepare for the complex issues that may arise in this type of hearing.

In order to avoid any questions of double jeopardy, the Act requires that the transfer hearing be held prior to the hearing on the merits. In the transfer proceeding, the juvenile court may consider probation and institutional reports, which counsel has a right to inspect. Counsel should handle the reports in the same manner that he or she treats the reports at disposition.

The child may request transfer for trial under section 28(c) of the Act, in which case the court may order that the Act not apply to the child's case. While the author has never heard of such a request being made, it is difficult to imagine what criteria the court could use to justify a denial of such a request.

Unlike its predecessor, the 1972 Act does not forbid the use, at criminal trial, of statements made during the transfer hearing. The 1933 Act had proscribed the use as evidence of "the disposition of a child or any evidence given in a juvenile court . . . in any case or

114. Pa. Stat. Ann. tit. 11, § 50-325(c) (Supp. 1975-76). It should be noted, however, that such a request may be honored only when the specific criteria set forth in section 28(a) are met. See notes 126-28 and accompanying text infra.
115. Section 28(d) of the Proposed Act provided that transfer upon request of the child was mandatory. Proposed Act § 28(d).
116. In contrast to the 1972 Act, the Uniform Juvenile Court Act prohibits the use at a criminal trial of statements made by the child at the transfer hearing. Uniform Juvenile Court Act § 34(d).
proceeding in any other court.”117 While the corresponding section in the present Act provides that “the disposition of a child under this act may not be used against him in any proceeding in any court other than at subsequent juvenile hearing,”118 it does not forbid the use of evidence adduced in the course of such disposition. This situation presents a dilemma for counsel, as the child may be his own best witness at the transfer hearing, especially if he or she is admitting guilt and demonstrating contrition. However, without the exclusionary safeguard provided by the 1933 Act, the child’s testimony may prove harmful in the subsequent criminal trial.

The 1972 Act specifies no procedure to be followed after the court makes a decision not to transfer. Due to this lack of guidelines, questions arise as to whether the court can immediately continue with the adjudicatory hearing, or even whether the same judge may hear the case on the merits in such a situation. It would appear that the judge is obligated to withdraw upon request of counsel where prejudicial information has been received which would be inadmissible during the adjudicatory hearing.119

If transfer is ordered, counsel may be faced with several immediate concerns. If the child is being detained, a request should be made to the transferring judge to set bail, as presumably a child has the same right to bail as an adult. In many cases, the court is willing to release the child to his or her own recognizance or to the custody of his or her parents.

The interests of the child also require consideration of the remedies available to the court’s transfer order because section 28(f) of the Act120 characterizes the transfer decision as interlocutory. This characterization raises two questions, which are yet to be resolved: first, whether the propriety of the transfer can be raised by application or request for extraordinary relief from the court sitting to hear criminal cases,121 and second, if no such application is made to the court, whether the right to raise the matter on appeal after conviction is

119. Cf. Breed v. Jones, 95 S. Ct. 1779 (1975); Commonwealth v. Goodman, 454 Pa. 358, 311 A.2d 652 (1973). In Goodman, the Pennsylvania Supreme Court held that, upon request, a judge who had conducted a pretrial suppression hearing in a narcotics case should disqualify himself from presiding at the subsequent trial when the testimony adduced at the suppression hearing was highly inflammatory and not germane to the indictment. Id. at 361-62, 311 A.2d at 654.
121. Cf. PA. R. CRIM. P. 323(j) which provides that a pretrial decision on the suppression of evidence may not be reviewed by the trial court.
If the only remedy lies by appeal from a criminal conviction, the remedy may not materialize until several years after the decision in the juvenile hearing. The Commonwealth may have no recourse at all if the court refuses to transfer, since the transfer is not appealable and an appeal after a finding on the merits is probably barred by the double jeopardy clause of the constitution.  

Section 28(b) provides that a transfer terminates the applicability of the Act. It is unlikely that this section bars the judge hearing the criminal case from making a section 7 transfer of the case back to the juvenile court, at least where the child is found not guilty of serious criminal charges, but is determined to be guilty of only relatively minor offenses.

2. Criteria for Transfer

Under section 28 of the Act, a case is eligible for transfer to a criminal court only if the child was at least 14 years of age at the time of the alleged conduct. The conduct charged must be a criminal offense, and the juvenile court must find that a prima facie case has been established. In addition, the court must find:

[T]here are reasonable grounds to believe that: (i) the child is not amenable to treatment, supervision or rehabilitation as a juvenile through available facilities, in determining this the court may consider age, mental capacity, maturity, previous record and probation or institutional reports; and (ii) the child is not commitible to an institution for the mentally retarded or mentally ill, and (iii) the interests of the community require that the child be placed under legal restraint or discipline or that the offense is one which would carry a sentence of more than three years if committed as an adult.

Subparts (i) and (iii) indicate that a child who has committed serious crimes may be excluded from the benefits of the Act when

---

122. See Commonwealth v. Agie, 449 Pa. 187, 296 A.2d 741 (1972), in which the court noted the practice of Pennsylvania courts to hold issues not raised in the court below as waived, so that they may not be raised upon appeal to the Pennsylvania Supreme Court. Id. at 189, 296 A.2d at 741.
123. See Fain v. Duff, 488 F.2d 218 (5th Cir. 1973), which involved the placement of a 16-year-old boy with state juvenile authorities after he was adjudicated delinquent following the commission of a rape. The court held that the state's subsequent attempt to bring the juvenile to trial on the same charge of rape violated the double jeopardy clause. Id. at 225. See note 111 and accompanying text supra.
125. See note 86 and accompanying text supra.
127. Id. § 50-325(a), (a) (4).
128. Id. § 50-325(a) (4). It appears that the Commonwealth has the burden of establishing that the transfer criteria have been met. See Commonwealth v. Pyle, Pa. __, 342 A.2d 101, 106 n.12 (1975).
there exists reason to believe there will be no positive response to treatment and the child presents a danger to the community. Since under the Act a child can be committed for up to 3 years to a state correctional institution,129 these criteria may constitute simply an indirect device for permitting the juvenile court to transfer to criminal court if the judge sitting in the juvenile court believes that the child should be sentenced for longer than a three-year period. As a practical matter, however, children often receive lighter sentences for their first criminal offense than they would receive if they were treated under the Act, especially if the juvenile probation officer feels antagonistic as a result of his past failures with the child.

Subpart (ii) of section 28(a)(4) reflects the disposition given the defendant in Kent v. United States by the District of Columbia Circuit upon remand from the United States Supreme Court.130 The child in Kent, a psychotic, was charged with three capital offenses. The District of Columbia circuit held that the parens patriae philosophy of the District of Columbia’s Juvenile Court Act131 required the juvenile court to do what was best for the child’s care and rehabilitation consistent with providing for the adequate protection of the community.132 In Kent, that approach required that the child be committed to a mental hospital by the juvenile court rather than be transferred for criminal trial. While the 1972 Act in section 28 adopts the Kent result, the author has observed cases where transfers to criminal trials were made without the undertaking of any psychiatric examination of the child.

D. Venue

Generally, a criminal case must be tried in the county where the offense occurred.133 Where delinquency is charged, the case may be commenced in either the county where the alleged delinquent act occurred or the county of the child’s residence.134 Since treatment is generally the concern of the place of residence, the inclusion of the county of residence for venue purposes indicates the parens patriae foundation of the 1972 Act. Section 10 also furthers this principle by permitting the transfer of a pending proceeding to the county of residence.135 Such a change of venue prior to the adjudicatory hearing

130. 401 F.2d 408 (D.C. Cir. 1968).
132. 401 F.2d at 411.
might handicap either the Commonwealth or the child in the securing of witnesses. This is apparently the reason why the Act only authorizes the change of venue “after the adjudicatory hearing.” However, some courts are changing venue prior to the adjudicatory hearing despite the language of the Act. Usually such changes are consensual, but in the absence of consent the court may lack authority to change venue prior to adjudication.

III. THE PREADJUDICATORY STAGE

A. Institution of Juvenile Cases

1. Arrest

Most juvenile proceedings originate with an arrest, although the 1972 Act does not speak of arrest as such. Section 11 of the Act refers to “taking into custody”, a euphemism designed to eliminate the stigma associated with the term arrest. This phrasing is employed despite the fact that section 11(2) of the Act permits the child to be taken into custody “[p]ursuant to the laws of arrest.” This language operates to incorporate by reference the Pennsylvania criminal laws of arrest, which are set forth in Rules 51 and 101 of the Pennsylvania Rules of Criminal Procedure. Under the Act, however, a police officer’s power to take a child into custody is not limited by the laws of arrest. For example, a law enforcement officer or duly authorized officer of the court may take a child into custody “if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary...” Also, custody may be taken of a child believed to have run away from home, although there is no apparent authority permitting a child to be taken into custody for other acts of ungovernability.
2. Institution of Cases Other Than by Arrest

Cases instituted by means other than arrest may arise in several different ways. For example, a case may be instituted by the issuance of a summons or warrant, the provisions for which are contained in the Pennsylvania Rules of Criminal Procedure.144 These rules, however, are not entirely consistent with the provisions of the 1972 Act.145 For example, rule 102146 permits a summons or warrant to be issued by an "issuing authority," which includes the minor judiciary,147 while section 18 of the 1972 Act148 permits only the court of common pleas to issue a summons or warrant. Therefore, it is arguable that members of the minor judiciary may not issue a warrant in a situation involving a juvenile. Rule 102 permits a summons or warrant to be issued only after the filing of a complaint, and since there is no complaint in a juvenile proceeding, a summons or warrant may be issued only after a petition has been filed.149 Finally, the criteria set forth in section 18(c) of the Act150 for determining whether a summons or warrant shall issue differ from the criteria provided in rule 102.151

144. See Pa. R. Crim. P. 102, 110-12.
147. See Pa. R. Crim. P. 3(i) which defines "issuing authority" as "any public official having the power and authority of an alderman, justice of the peace, magistrate or district justice."
151. Section 18(c) of the 1972 Act permits a court to issue a warrant of arrest if it appears from affidavit [sic] filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the court notwithstanding the service of the summons . . . .


Rule 102(b) of the Pennsylvania Rules of Criminal Procedure mandates the issue of a warrant of arrest only in the following circumstances:

1. the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or
2. the summons has been returned undelivered; or
3. a summons has been served and disobeyed by a defendant; or
4. the identity of the defendant is unknown; or
5. the offense charged is punishable by a sentence to imprisonment of more than three years.

Pa. R. Crim. P. 102(b).

In addition, rule 102(c) requires that a warrant of arrest be issued when "a defendant is charged with more than one offense and one of such offenses is punishable by a sentence to imprisonment for more than three years . . . ." Id. 102(c).

A juvenile case may also be informally initiated where the police "invite" a child to come to the police station to discuss an offense brought to their attention by a complainant. This method is not dealt with by the 1972 Act or the general criminal law, and its use varies from county to county in Pennsylvania as illustrated by the following comparison. In Delaware County, use of this particular procedure is relatively common. It is only after the child has refused the "invitation" or has come to the police station but the matter remains unresolved by the police that a petition will be prepared and a summons or warrant issued by the court. In Philadelphia County, the police will generally not "invite" a child to appear upon their receipt of a complaint. Unless the charge constitutes a felony, in which case the police may arrest the child, the police will usually refer the matter to the probation staff of the court who will invite the child to come in for an intake hearing. Here, as in Delaware County, a petition will not be prepared and a summons or warrant will not usually be issued by the court until after the child has declined the invitation to appear, or the probation staff has tried and been unable to resolve the matter.

For the attorney handling a juvenile case, the manner by which the case is instituted is significant in two respects: First, the circumstances surrounding the taking into custody are important in determining the admissibility of evidence and statements. Second, the nature of the case's origin may also determine the role that the attorney will play at the police adjustment stage and at intake.

B. Police Adjustment of Juvenile Cases and the Role of Counsel

One of the most significant characteristics of the juvenile justice system is adjustment of cases by the police. Essentially, police adjustment can be defined as the disposition of a case by the police without referral to the courts. While the police have a certain measure of discretion in charging adults, the discretion exercised in the adjustment of juvenile cases far surpasses the discretion exercised in adult cases. This practice reflects the belief that children can be inspired toward reformation by the administration of a strong official warning and that a certain amount of "horseplay" is an acceptable part of growing up.

153. For a discussion of the intake hearing, see text accompanying notes 167-80 infra.
154. See text accompanying notes 247-318 infra.
155. See text accompanying notes 156-80 infra.
One comprehensive study of this aspect of the juvenile justice system was conducted in Allegheny County,\textsuperscript{157} the results of which indicated a substantial variation among municipalities in the number of juvenile cases referred to the court by police. In one municipality, only 8.6 percent of the cases were referred to court, while in another municipality 71.2 percent of all cases were referred to court.\textsuperscript{158} Nationwide statistics indicate that adjustment occurs in 45 to 50 percent of all police contacts with children.\textsuperscript{159} Standard texts on police administration recognize and condone the practice of police adjustment as a legitimate and useful device in the administration of juvenile justice.\textsuperscript{160}

Usually this stage of the process is relatively informal, involving only an interview conducted by a juvenile aid division officer, or in smaller police departments, the arresting officer, and attended by the complainant, the child, the parents, and sometimes witnesses.

Little, if anything, has been written about the role of counsel in station house adjustment. Few lawyers enter the picture at this stage of a juvenile case, particularly when cases are instituted by arrest. This would seem to follow since few children have established a relationship with counsel which would enable them to obtain representation at the station house. When the child is invited to appear, it is more probable that representation can be arranged.

It is essential for the attorney, in order to fully protect the child’s interests, to conduct a comprehensive interview prior to the appearance at the station house. If possible, investigation of the facts should also be made. It is further advisable to attempt to contact the victim of the offense in advance, since there always exists the possibility that he or she might prove to be cooperative or even receptive to an offer of restitution.

Every effort should be made by counsel to ensure that the child will present a neat appearance and a cooperative demeanor. Due to the importance placed by the police on a good family relationship, the parents, if available and willing to accompany the child, should be fully prepared for the appearance.\textsuperscript{161} If restitution is a possible issue, it should be explored with the parents and the child.

\textsuperscript{157} N. Goldman, The Differential Selection of Juvenile Offenders for Court Appearance (1963).
\textsuperscript{158} Id. at 86.
\textsuperscript{159} President’s Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 12 (1967).
\textsuperscript{161} See generally Comment, The Attorney-Parent Relationship in the Juvenile Court, 12 St. Louis L.J. 603 (1968).
In order to effectively represent a child at the station house, the attorney should know as much as possible about both the official guidelines and the unofficial criteria which the police employ in determining whether to adjust a case. One commentator has isolated a number of factors which influence a police officer's decision to adjust a case. These factors include:

A. The policeman's attitudes toward the juvenile court.
B. The impact of special individual experiences in the court, or with different racial groups, or with parents of offenders, or with specific offenses, on an individual policeman.
C. Apprehension about criticism by the court.
D. Publicity given to certain offenses either in the neighborhood or elsewhere may cause the police to feel that these are too "hot" to handle unofficially and must be referred to the court.
E. The necessity for maintaining respect for police authority in the community.

G. Pressure by political groups or other special interest groups.
H. The policeman's attitude toward specific offenses.
I. The police officer's impression of the family situation, the degree of family interest in and control of the offender, and the reaction of the parents to the problem of the child's offense.
J. The attitude and personality of the boy.

L. The degree of criminal sophistication shown in the offense.

In some communities, the police adjustment stage of a juvenile case may be somewhat more formal than the process outlined above. Sometimes the procedure employed is very similar to a formal hearing.

162. A typical set of official guidelines would include the following criteria:
   a. The seriousness of the offense.
   b. Prior offenses and court contacts.
   c. Willingness of parents and child to cooperate with community agencies.
   d. Success or failure of prior referrals of child and parents to community agencies.
   e. Availability of community agencies for referral and, if such agencies are available, whether or not services can be obtained only through probation or court referral.
   f. Admission or denial by the child.
   g. Sufficiency of the evidence.
   h. Desires of the complainant.

164. Id. (emphasis omitted).
complete with the taking of testimony and the imposing of sanctions. For example, the police might impose "probation" or a curfew, or order restitution by the child. However, the 1972 Act does not authorize any of these devices, and counsel should be alert to the possible abuse as well as advantage of this practice for the child-client.

Attempts at station house adjustment are not entirely free from peril. Counsel should be cautious before permitting the child to waive his fifth amendment rights. This is important if the attorney believes that the police are more likely than not to refer the matter to court, and particularly so in view of the possibility of a later adjustment at intake. Perhaps in most cases the most prudent practice is for the attorney to instruct the parents and child to communicate with the police only through the attorney.

Finally, even if adjustment is not a likely possibility, the station house presents a valuable opportunity for discovery which may not present itself again.

C. Intake and the Role of Counsel

Intake is a procedure unique to the juvenile justice system. Structurally, it is a screening device used to separate cases requiring judicial action from cases which may be handled in another manner. In Pennsylvania criminal procedure, as in most other states, the preliminary hearing and the grand jury act as screening devices in adult prosecutions. Intake differs substantially from these devices both in procedure and philosophy. First, intake is usually conducted by a probation officer, not a judicial officer. Second, the preliminary hearing and the grand jury inquiry focus primarily on whether the prosecution has established a prima facie case. At the intake proceedings the probation officer may not only screen out a case because a prima facie case has not been established, but also because the probation officer believes that the child need not go to court or that he or she can be more profitably treated by another agency.

assistance in the matter. In addition, the probation officer may refer the case when the charge of delinquency is based on criminal conduct. This process is referred to as "informal adjustment" in the Act. If the probation officer informally adjusts a case, no petition will be filed, and the adjudicatory stage will not be reached. While the language of section 8 of the Act suggests that informal adjustment may take place only if there is a referral to some social agency, many cases are informally adjusted without such a referral. In these cases, the probation officer merely determines that filing a petition is not appropriate or necessary, and the case is terminated.

Intake generally occurs within a day or two after arrest, and an effort generally is made to have all interested parties present, including the victim of the offense and the parents of the child. Often the police officer involved in the case is not present, and in this situation the intake officer relies upon a copy of the police report. The general guidelines and unofficial criteria which intake officers use in making their determination may vary slightly from county to county, but they are very similar to those guidelines utilized by the police in making their determination with regard to adjustment. However, the intake officer is usually trained in, or oriented toward, the concepts of social work, and as a result, is likely to be more responsive to a treatment-oriented approach by counsel.

Representation at intake is far from universal and not all intake officers relish the presence of counsel. While the use of traditional criminal trial tactics may prove counterproductive to the child's cause, an approach geared to the special character of the intake hearing can prove to be an extremely valuable service for the client.
The child and the child's parents should be prepared for the proceeding in a manner similar to that used in briefing them for the police interview. Since intake usually occurs a day or two after arrest, there is usually a better opportunity for preparing and grooming the child and the parents. However, there is one significant legal distinction between intake and the police interview or interrogation. Section 8(d) of the 1972 Act provides:

An incriminating statement made by a participant [in the intake process] to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant over objection in any criminal proceeding or hearing under this act. Thus, the child's fifth amendment privilege against self-incrimination is protected at intake, though it is not at the police interview.

Despite this language in the Act, counsel should still exercise caution. If the child makes an admission, the probation officer cannot help but remember this fact, and it may tend to influence his or her recommendation at the disposition stage, particularly if the child has vigorously denied guilt at an adjudicatory hearing. It should also be noted that the 1972 Act only prohibits the use of statements "against the declarant." Thus, a statement by the parent, for example, that there has been an admission to him or her by the child could possibly be used against the child, and it is conceivable that the parent could be called as a witness against the child. On balance, when there is a realistic chance of adjustment, the child can be advised to speak about the incident with considerably less risk than if he or she speaks at a police station where there is no bar to the subsequent use of a statement.

Because the intake officer is concerned with treatment, the possibility of agency referral should be considered by the attorney. This is particularly relevant in drug abuse cases. In many communities, there...
are drug rehabilitation programs available, and if the child can avail himself of them, the intake officer is likely to be cooperative. The same consideration applies to available mental health programs or family counseling. The chance for settling the matter by the payment of restitution may also be explored at the intake proceeding, as well as the possibility of changing the charge from delinquency to deprivation. Finally, as is the case in the police station, the opportunity for discovery should not be overlooked.

D. Detention

Juvenile detention presents a number of thorny legal, social and practical problems.¹⁸¹ The resolution of these problems will be aided by viewing detention in four distinct stages: 1) from arrest until release or transfer to a detention facility; 2) from entry into detention facility until the detention hearing; 3) detention hearing; and 4) detention after the detention hearing.

1. From Arrest Until Release or Transfer to a Detention Facility

Since there is no freedom to leave, a child is detained as a practical matter from the moment he or she is arrested or taken into custody. Section 13(a) of the 1972 Act¹⁸² provides:

A person taking a child into custody, with all reasonable speed and without taking the child elsewhere, shall:

1) Notify the parent, guardian or other custodian of the child's apprehension and his whereabouts;

2) Release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 12; or

3) Bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this subsection shall conform to the procedures and conditions prescribed by this act and rules of court.¹⁸³

¹⁸³. Id.
If “taking into custody” has the same meaning as arrest, then the Act is rarely adhered to. A child is not normally taken to his or her home or to a detention or shelter care facility after apprehension, except when the policeman does not intend to charge the child. Instead, the child is normally taken “elsewhere” — to the police station.

At the station house, the police usually question the child to obtain identification and to gather the information necessary to notify the parent, guardian or custodian. This interrogation is authorized by section 13(a)(3). The parents will be contacted, and police adjustment may take place. In most instances the matter is either adjusted or the child is released to the parents with instructions to appear for intake.

In some cases the child may be interrogated at the police station concerning the facts of the alleged offense or subjected to identification procedures. This practice does not appear to be authorized by the language of section 13. However, in the case of In re Anderson, the sole reported case in which this situation was reviewed, the Superior Court of Pennsylvania explicitly held that under the 1972 Act children may lawfully be taken to the station house rather than directly to a detention facility when the attendant delay is not unreasonable, and that evidence secured as a result of the interrogation of the child at the station house is admissible at the adjudicatory hearing.

If counsel has the opportunity to appear at the station house, he should explore the possibility of adjusting the case, assisting the child in any interrogation, and representing the child with regard to identification procedures the police seek to use. If there is a possibility of the police turning a child over to a detention or shelter care facility rather than to the parents, the 1972 Act provides:

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for

184. Id. § 50-310(a)(3).
185. See text accompanying notes 156-66 supra.
186. See Pa. Stat. Ann. tit. 11, § 50-310 (Supp. 1975-76). The drafters of the Proposed Act did not believe the language of this section authorized any police questioning beyond that necessary to satisfy the purposes of section 13. Proposed Act, supra note 52, § 13, Comment. This would seem to rule out interrogation concerning the facts of the alleged offense.
188. Id. at 442, 313 A.2d at 261. The court in Anderson did not discuss the drafters’ intention of precluding interrogation by the police. See note 186 supra.
him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this act.\(^{189}\)

Unlike the bail decision, several factors beyond the likelihood of appearance at trial may be considered in the detention decision. The above-quoted section clearly permits preventive detention, and the use of detention as a form of pretrial punishment is not novel.\(^{190}\)

The detention decision is not made by a judicial officer as is the bail decision in a criminal case. The detention decision will be made by a police officer alone or in consultation with the probation officer attached to the detention facility. In Philadelphia County, the probation personnel at the detention facility make the final determination as to whether a child will be detained. In other counties, probation personnel may not be available at all times, or they may normally defer to the judgment of the police. Apart from those situations in which there is no parent to whom the child can be released, or when the parents refuse to take custody of the child, the decision to release or detain is likely to be governed by factors similar to those set out in the section on police adjustment,\(^{191}\) and counsel, in his or her efforts toward adjustment, similarly can influence the detention decision.

2. From Entry into the Detention Facility Until the Detention Hearing

Subsequent to being transferred to the detention or shelter care facility, the child can still be released prior to appearance in court, as the detention facility personnel are required by section 15(a) of the Act\(^{192}\) to release the child if it appears to them that detention is not warranted.

Section 14 of the Act\(^ {193}\) designates the appropriate facilities for the detention of children.\(^ {194}\) Although adult facilities are disfavored, they

---

190. See Ferster, Snethen & Courtless, supra note 175, at 170. The authors offer several examples of detention being used as punishment, including a study undertaken in one Texas county which indicated that 39 percent of the juvenile detainees were released after 3 or 4 days. One probation officer, submitting an explanation of this recurring pattern, stated that, after these children spent a few days in jail, they didn't need anything more in the way of service from the court. Id. at 171, citing U.S. CHILDREN'S BUREAU, A REPORT OF A FIVE DAY STUDY OF SERVICES TO DELINQUENT CHILDREN IN TARRENT COUNTY, TEXAS, pt. 2, at 17 (1967).
191. See text accompanying notes 156-66 supra.
193. Id. § 50-311.
194. Id. Those facilities specifically approved by section 14 include licensed foster homes, homes approved by the court, facilities operated "by a licensed child welfare agency or one approved by the court," and other detention camps or homes designed for the care of delinquent children which are approved by the Pennsylvania Department of Public Welfare. Id.
are not expressly prohibited for periods of less than 5 days.\textsuperscript{195} It is unlikely that counsel will be able to affect the choice of facility since there are usually only one or two facilities available.

The detention period can be utilized by counsel to locate absent parents, to persuade parents to take custody of the child if they have refused theretofore, to make other arrangements with family or friends to take custody of the child, and to marshal evidence for the detention hearing.

3. The Detention Hearing

A child held in detention must be promptly brought before a court to determine whether further detention or shelter care is necessary.\textsuperscript{196} This hearing must take place no later than 72 hours after the child is placed in detention.\textsuperscript{197} In practice, the hearing is usually held the day after arrest, except in situations where the weekend intervenes. The author has been informed that in some counties a detention hearing is not held unless counsel so requests,\textsuperscript{198} and this practice appears to contravene the express language of the 1972 Act.\textsuperscript{199}

The detention hearing can be a crucial stage in the proceedings because it can affect more than simply the issue of detention. The detention hearing marks the district attorney's first appearance in the proceedings and therefore the case may receive a final disposition, plea bargains may be made, or a consent decree may be arranged.

The detention hearing can be analogized to a combination of a preliminary arraignment and a preliminary hearing in adult criminal proceedings,\textsuperscript{200} although there is no authority in Pennsylvania requiring probable cause to be established at the detention hearing.\textsuperscript{201} In Philadelphia no witnesses are called, and the police report is read instead of

\textsuperscript{195} Id. See text accompanying notes 211–12 infra.


\textsuperscript{197} Id.

\textsuperscript{198} This information was furnished to the author by several practicing attorneys in Chester County, Pennsylvania.

\textsuperscript{199} The 1972 Act provides, in pertinent part:

An informal detention hearing shall be held promptly by the court or the master and not later than seventy-two hours after he is placed in detention to determine whether his detention or shelter care is required under section 12. Juvenile Court Act of 1972 § 15(b), Pa. Stat. Ann. tit. 11, § 50–312(b) (Supp. 1975–76).

\textsuperscript{200} See Pa. R. Crim. P. 140, 141.

\textsuperscript{201} But see Cooley v. Stone, 414 F.2d 1213 (D.C. Cir. 1969); Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969); Doe v. State, 487 P.2d 47 (Alaska 1971). A prompt determination of probable cause is constitutionally required after arrest on criminal charges, and this requirement is most likely applicable to juvenile proceedings. See Gerstein v. Pugh, 420 U.S. 103 (1975).
taking live testimony. It is questionable, however, whether this procedure satisfies the requirement of an “informal detention hearing.”

The criteria affecting the detention decision resemble those discussed in other sections of this article, but the author has observed that often judges are reluctant to detain children who are attending school regularly or who are steadily employed.

As previously noted, the 1972 Act permits both detention for the protection of the child and preventive detention. It was unsettled whether the former Pennsylvania statutory scheme authorized preventive detention, and although the language of the Act permits this use, it remains to be seen whether the appellate courts will uphold preventive detention.

4. Detention After the Detention Hearing

Should the court continue to detain the child after the detention hearing, section 18(a) of the 1972 Act provides for release if an adjudicatory hearing is not held within 10 days after the filing of the petition, the charging document in juvenile law. However, section 15(a) of the Act only requires that the petition be filed promptly. A more logical provision would require that the adjudicatory hearing be held not more than 10 days after the detention hearing, or no later than 10 days after the child was placed in detention. The author has observed that the courts have read the language of the Act as though it contained one or the other of these suggestions. Although this provision for an expeditious hearing had been expected to cause serious problems, such has not been the case. In practice, courts have extended the 10-day period when the hearing was delayed at the child’s request, and on occasion, the courts have refused to release the child when the hearing was delayed at the request of the Commonwealth. However such cases generally have become moot before the appellate courts have had a chance to review them.


203. See text accompanying notes 156-66 supra.

204. See text accompanying notes 189-90 supra.

205. See Klein, supra note 66, at 193.


207. See text accompanying notes 230-41 infra.

208. Id. § 50-312(a).

209. See Klein, supra note 66, at 193-94.

The place at which the child is detained after the detention hearing is regulated by section 14(a) of the Act, as is the place of detention prior to the detention hearing. This provision appears to be a fertile source of provocative litigation, as some counties provide no separate facilities for children, or even where they do, some children may still be housed with adults. Children considered to present a high risk of escape or a threat to other children are sometimes confined in a county jail rather than in a juvenile detention facility. In some of these instances, counsel have successfully convinced the court in habeas corpus proceedings to transfer the child to the juvenile detention facility.

If detention extends beyond the adjudicatory hearing or if for some reason the adjudicatory hearing is delayed, counsel should be alert to the possibility of a change in circumstances in the home or elsewhere which might persuade the court to release the child. The 1972 Act does not provide specifically for such a contingency except where the parent does not appear or waives appearance at the detention hearing, but there is no reason why the court could not reconsider the need for detention.

The longest delays often occur while a social study is being prepared subsequent to adjudication. While the Act requires that priority be given to those cases in which the child is in detention, there still may be a substantial delay between the court’s order of placement in a juvenile institution and the moment at which the child is actually placed in the institution. Many juvenile courts permit the child to be released from detention pending the social study or placement, if counsel can present justification.

IV. THE ADJUDICATORY STAGE

A. Counsel

The Supreme Court of the United States in In re Gault established that counsel is constitutionally required in a juvenile case where there exists a possibility of commitment. In accordance with this requirement, section 20 of the 1972 Act provides that

a party is entitled to representation by legal counsel at all stages of any proceedings under this act and if he is without financial

211. PA. STAT. ANN. tit. 11, § 50-311(a) (Supp. 1975-76).
212. Unfortunately, there are at present no reported cases in this area. The information was provided to the author by a number of attorneys within Montgomery, Delaware and Chester Counties.
214. See text accompanying notes 366-75 infra.
215. Id. § 23(e), PA. STAT. ANN. tit. 11, § 50-320(e) (Supp. 1975-76).
216. 387 U.S. 1 (1967).
217. Id. at 41.
Since the Act proceedings are commenced by the filing of the petition, one might conclude that the right to counsel does not arise until the petition has been filed. However, it is clear that a child has a constitutionally mandated right to counsel at a custodial interrogation, a lineup, and possibly at intake. Since intake generally takes place prior to the filing of a petition, the right to counsel would not attach under the Act, and in practice, counsel is not generally provided at intake. In Coleman v. Alabama, the United States Supreme Court held that counsel was constitutionally required at a preliminary hearing in a criminal case since it was deemed a "critical" stage of the proceedings. The Court reasoned that counsel, if present, might be able to prevent an improper or erroneous prosecution. It can be argued that intake in a juvenile case is also a critical stage since at this proceeding counsel can similarly prevent the case from reaching the adjudicatory stage. In a case appropriate for informal adjustment, but which has slipped through intake, it would be worthwhile for counsel to discuss with the district attorney or the court the possibility of referral back to intake.

The experience of the author has indicated that Pennsylvania courts are reluctant to find a waiver of the right to counsel at any hearing under the 1972 Act. It has been suggested that this sound policy be extended so that neither the child nor the parents be permitted to waive the child's right to counsel. In some instances, nonindigent parents of the child may hesitate to retain counsel for a variety of reasons. In such situations, if the court is persuaded that a conflict exists between the parent and child, or that the parents' refusal to pro-

220. See text accompanying notes 251-300 infra.
221. See text accompanying notes 312-18 infra.
222. Delaware County is an exception. Under the unusual intake procedure in that county, the petition is filed prior to intake, and counsel is, therefore, required and provided.
224. Id. at 9-10.
225. Id. at 9.
226. See Popkin, Lippert & Keiter, Another Look at the Role of Due Process in Juvenile Court, 6 Family L.Q. 233, 244 (1972).
228. For example, the parent may be hostile to the child's interest, or he may feel that an attorney will disturb his relationship with the child.
vide counsel renders the child an "indigent," section 20 of the Act requires the appointment of counsel.229

B. The Petition and Notice

The notice provisions are probably the weakest aspect of the 1972 Act. In *Gault*, the United States Supreme Court held that "[n]otice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity'."230 The notice provisions of the 1972 Act do not adequately comply with the *Gault* due process standard. Section 18, which contains the notice provisions, establishes neither a time for service of a summons nor the time to elapse between service of a summons and a hearing.231 However, in view of the due process notice requirement of *Gault*, it is extremely unlikely that the courts will affirm an adjudication of delinquency if counsel can establish that he has not had adequate time from receipt of the notice of hearing to prepare his case.

The 1972 Act also fails to provide adequately for the content of the notice in that it does not require the petition, which is the charging document, to set forth the alleged misconduct with particularity. Section 17 of the Act requires only that the petition plainly set forth, "[t]he facts which bring the child within the jurisdiction of the court and this act."232

Two basic purposes are served by the requirement that the alleged misconduct be set forth with particularity: first, to advise counsel of the offense charged so that a satisfactory defense may be prepared; and, second, to adequately state the crime charged so that the juvenile court will be able to ascertain whether it has the requisite jurisdiction.233 The Pennsylvania Crimes Code234 establishes gradations of offenses, and as a result, the same act may constitute a felony, misdemeanor, or summary offense depending on such facts as the value of the stolen

---

231. PA. STAT. ANN. tit. 11, § 50-315 (Supp. 1975-76). It should be noted, however, that section 28(a)(3) of the Act requires that notice must be given 3 days in advance of a transfer hearing. Id. § 50-325(a) (3).
232. Id. § 50-314.
233. There are other purposes for the "particularity" requirement, such as ensuring that the crime being tried is the same crime charged by the grand jury, preventing a subsequent trial for the same offense, and providing an appellate court with a sufficiently definite set of facts against which to measure the proof. See Russell v. United States, 369 U.S. 749 (1962).
item\textsuperscript{235} or the amount of damage done.\textsuperscript{236} Thus, in some cases if the elements of the alleged offense are not carefully set out and a citation provided, counsel will not be able to prepare a defense and the court will be unable to determine whether the 1972 Act is applicable since the Act is not normally applicable to summary offenses.\textsuperscript{237} The notice provisions of the Act do not guarantee that either of these two purposes of the particularity requirement will be satisfied, and in practice, many petitions appear to be defective. It would be helpful if the petitions would conform to the following requirements for indictments or informations, as set out in the Pennsylvania Rules of Criminal Procedure:

1) The date of the offense;

2) A plain concise statement of the essential elements of the offense;

3) Official or customary citation of the statute and section which the defendant is alleged to have violated.\textsuperscript{238}

The 1972 Act also fails to provide a procedure by which a faulty petition may be attacked, but it would appear that the appropriate formal technique would be an application to quash the petition.\textsuperscript{239} In many cases, the district attorney would probably be willing to amend the petition upon an informal request. If the defect is not raised until the time of the hearing, it is likely that the court in most cases would follow rule 220 of the Pennsylvania Rules of Criminal Procedure and permit amendment, provided that the petition as amended does not charge an additional or different offense.\textsuperscript{240} If amendment is permitted, a continuance should be granted in the event of any element of surprise or injustice to the child.\textsuperscript{241}

C. Discovery

The potential for informal discovery at the station house and at intake has been discussed previously.\textsuperscript{242} An opportunity for discovery
may be lost where counsel is not available to the child prior to the filing of the petition; however, this loss may not be detrimental since often the police and witnesses will speak to counsel or an investigator and advantage can be taken of these opportunities after all.\textsuperscript{243} It is the author's experience that in juvenile cases the district attorney's office is usually willing to grant informal discovery of the information in its possession. Most district attorneys recognize, quite correctly, that, because of the different theoretical basis of the juvenile law, their prosecutorial role in the juvenile area differs from their role in the adult criminal area.

Parenthetically, discovery can also be a collateral goal of plea negotiations or requests for a more specific petition.

The 1972 Act provides no formal discovery procedure. Under the Pennsylvania Rules of Criminal Procedure, however, a criminal defendant may only have a copy of his written confession or statement, and no other discovery may be ordered except upon proof by the defendant "of exceptional circumstances and compelling reasons."\textsuperscript{244} It remains to be seen whether the courts will apply these rules to juvenile cases.

Section 38 of the Act provides that inspection of law enforcement records and files concerning a child is permitted by "[c]ounsel for a party to the proceeding."\textsuperscript{245} Although there are no cases interpreting this provision, it is possible that the courts will apply this more liberal standard of discovery rather than the stricter test of the criminal rules.

It is important to note that probation reports, and court files and records are available to counsel in transfer proceedings and disposition hearings.\textsuperscript{246}

D. Suppression of Evidence

The 1972 Act does not expressly provide for suppression hearings, as do the Pennsylvania Rules of Criminal Procedure,\textsuperscript{247} which results in a substantial procedural variation among the counties in Pennsylvania as to the format and scope of this type of proceeding in juvenile cases. In Philadelphia County, it is customary for counsel to file written motions to suppress evidence. In Delaware County, the district attorney does not insist on a written motion, but prefers to be notified in advance of the adjudicatory hearing that such a motion will be made.

\textsuperscript{243} See generally A. AMSTERDAM, B. SEGAL & M. MILLER, TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES § 91 et seq. (1967).
\textsuperscript{244} PA. R. CRIM. P. 310.
\textsuperscript{245} PA. STAT. ANN. tit. 11, § 50-335(2) (Supp. 1975-76).
\textsuperscript{246} Juvenile Act of 1972 §§ 23(d), 37, PA. STAT. ANN. tit. 11, §§ 50-320(d), 334 (Supp. 1975-76).
\textsuperscript{247} PA. R. CRIM. P. 323, 324.
Superior Court of Pennsylvania recently held that it is not necessary to file a pretrial motion to suppress evidence in a juvenile case. In most counties a motion to suppress is heard immediately prior to the adjudicatory hearing. If the evidence ultimately is suppressed, there is the possibility that the judge might be prejudiced by having heard the evidence. In such a case, counsel should request that the adjudicatory hearing be transferred to another judge.

With regard to the evidence which may be suppressible, section 21(b) of the Act provides:

An extrajudicial statement, if obtained in the course of violation of this act or which could be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him.

This suppressible evidence will be discussed under three headings: confessions, evidence illegally seized or obtained, and identification evidence.

1. Confessions

The admissibility of confessions is a constantly recurring issue in the criminal law. The Supreme Court of the United States, in *Miranda v. Arizona* established that an adult’s confession will only be admissible if he was warned of his right to remain silent, that anything said may be used against him, that he has a right to the presence of an attorney, and that if he could not afford an attorney, one would be appointed prior to questioning if so desired. In order for a waiver of these rights to be effective under *Miranda*, the waiver must have been voluntarily, knowingly, and intelligently made.

The *Miranda* standard applies to juvenile cases and section 21(b) of the Act recognizes this by barring confessions “which could be constitutionally inadmissible in a criminal proceeding.”

Except for the *Miranda* standard, the admissibility of children’s confessions is currently an extremely unclear area of the law in Pennsylvania. Almost all of the case law in this area has involved homicides, and there has only been one reported juvenile appellate case dealing

---

250. The term “confessions”, as used in this article, represents the general category of extra-judicial statements.
252. *Id.* at 472.
253. *Id.* at 444.
with facts which occurred after the 1972 Act was enacted.\textsuperscript{256} Therefore, the following discussion can only suggest the outlines of the law dealing with the admissibility of children's confessions.

The Pennsylvania Supreme Court has held that the voluntariness of a child's confession cannot be judged by the more exacting standards of maturity,\textsuperscript{257} and that the circumstances attending the confession must be scrutinized with special care.\textsuperscript{258} This approach has been labeled the "totality of the circumstances test,"\textsuperscript{259} and aside from the indication of greater leniency toward children, it does not differ significantly from the test applied to adults.

Logically, one factor should be of greater significance than others in viewing the totality of the circumstances surrounding a child's confession — the presence of the parents to assist the child in the interrogation. However, in several cases where children were interrogated without their parents, and in one case where the parent was denied permission to participate in the interrogation, the confessions were held admissible by Pennsylvania courts.\textsuperscript{260} On the other hand, in three recent cases some members of the Pennsylvania Supreme Court have placed great emphasis on the role of the parent. In \textit{Commonwealth v. Jones},\textsuperscript{261} the conviction of a 15-year-old boy was reversed. The majority opinion, with four concurring opinions, stressed the father's absence from the interrogation room as a factor in determining that the totality of the circumstances did not support a conclusion that the confession was voluntary.\textsuperscript{262} In \textit{Commonwealth v. Roane},\textsuperscript{263} the conviction of a 16-year-old boy was reversed. The boy's mother was initially denied admission to the interrogation room but when she gained access thereto, the \textit{Miranda} warnings were given and although she tried to dissuade her son from confessing, he gave a statement in her presence. The court by a four to three margin held the confession inadmissible.\textsuperscript{264} Three members of the court joined in the opinion which

\textsuperscript{262} \textit{Id.} at \textit{-----}, 328 A.2d 828 (1974).
\textsuperscript{263} \textit{Id. at} \textit{-----}, 328 A.2d at 831.
\textsuperscript{264} \textit{Id. at} \textit{-----}, 329 A.2d 286 (1974).
stated that the Commonwealth has a heavy burden to meet in establishing voluntariness when a parent refuses to consent to a child's confession.265 The court held that the burden was not met since the mother had not been given an opportunity to discuss the matter privately with her son.266 In Commonwealth v. Starkes,267 the confession of a 14-year-old was held inadmissible although the child's mother met with him privately and encouraged him to make a true statement. The opinion, representing the view of only three members of the court, stated that the confession could not be deemed voluntary since the mother was not informed of the child's Miranda rights.268

This seeming inconsistency in the decisions of the Pennsylvania Supreme Court may be partially explained by the slightly differing circumstances involved in each case. However, this inconsistency is inherent in a subjective standard based on the "totality of the circumstances." Some of the Pennsylvania Supreme Court justices have indicated that they would prefer a more objective standard be adopted to test the voluntariness of a juvenile's confession. Justice Roberts has taken the position that no confession of a 16-year-old is voluntary unless there was adult guidance.269 Justices Nix and Manderino have agreed with Justice Robert's view, at least for a child of 14 years of age.270 This objective standard had never received the support of a majority of the court until it decided Commonwealth v. McCutchen,271 the most recent reported case on this issue. In McCutchen, the Pennsylvania Supreme Court held the confession of a 15-year-old boy inadmissible because it was given in the absence of his parent.272 It remains to be seen whether McCutchen will establish a rule that confessions of 15-year-olds are inadmissible per se if a parent is not present, and if so, whether the rule will be applied to children older than 15.

The Pennsylvania Supreme Court has further indicated that Miranda warnings and voluntariness are not the sole determinants of the admissibility of a confession. In Commonwealth v. Tingle,273 the court held the confession of an adult inadmissible because it resulted from a delay of 21 hours in bringing the defendant to a preliminary

265. Id. at _, 329 A.2d at 288.
266. Id. at _, 329 A.2d at 289.
268. Id. at ___, 335 A.2d at 703. See Commonwealth v. Webster, __ Pa. ___, A.2d ___ (1975).
272. Id. at ___, 343 A.2d at 670.
arraignment. This conclusion was not predicated upon a violation of constitutional standards, but rather upon a violation of the Pennsylvania Rules of Criminal Procedure4 which require that a defendant be brought before an issuing authority without unreasonable delay.276 This standard necessitates a judicial definition of “unreasonable delay” and the determination of whether the confession “resulted from” the unreasonable delay.

In Commonwealth v. Johnson,278 a divided Pennsylvania Supreme Court held that a delay of 3 hours and 25 minutes between arrest and confession was unreasonable.277 The court determined that even this short delay was improper since, in the absence of any justification for the delay being offered by the prosecution, it must be concluded that the delay had been designed to obtain the confession. The court emphasized that the defendant had initially denied involvement in the crime; had he cooperated initially, the court indicated that it might have considered the delay reasonable.278 In fact, the same court less than 2 months later, in Commonwealth v. Michael Wilson,279 held a confession given 4 hours after an arrest admissible, the delay being justified by an oral inculpatory statement given shortly after the arrest.280

The Pennsylvania Supreme Court in Commonwealth v. Grant Wilson,281 stated that a confession will be deemed to “result from” the unreasonable delay unless there is strong evidence to the contrary.282 In Grant Wilson, the fact that a child’s mother urged him to make a statement was held not sufficient to rebut the inference that the confession resulted from the delay.283 But in Michael Wilson the confession was deemed not to result from the delay since there was originally an inculpatory statement.284

Still another factor which has been considered in determining the admissibility of a child’s confession is the legality of the arrest. In the recent case, Commonwealth v. Jackson,285 the Pennsylvania Su-

274. Id. at 246, 301 A.2d at 703.
277. Id. at ___, 327 A.2d at 619.
278. ___.
280. Id. at ___, 329 A.2d at 886.
281. ___.
283. ___ Pa. at ___, 327 A.2d at 622.
284. ___ Pa. at ___, 329 A.2d at 885–86.
It is uncertain what would serve as a sufficiently unrelated cause. The possibilities include: a second valid arrest or grounds for one; a confrontation with an accomplice who implicates the defendant; or the defendant's sense of remorse.

It also remains to be seen whether the 1972 Act, and particularly the language in section 21(b) of the Act, which denies admissibility to confessions "obtained in the course of a violation of this act," will have any impact. Thus far, there has been only one case decided under the Act to serve as a guide: Anderson Appeal. In Anderson, the child was taken to a police station at 9:00 p.m. as a suspect in a shooting. At the station, he was given the Miranda warnings and was questioned for about 15 minutes until 10:00 p.m., at which time he confessed. Unsuccessful attempts were made to contact the child's mother during this period. At about 11:00 or 11:30 p.m. he signed a typed copy of his statement and was taken to a detention facility. The court held the confession admissible, concluding that the 2½ hour delay in taking the child to the detention facility was not an "unreasonable delay." The court implicitly condoned the interrogation of a child, and failed to discuss the parents' absence. Additionally, the superior court favorably cited the following language of the lower court:

It is readily acknowledged by this court that any confession or other incriminating statement that is not obtained in conform-

---

286. Id. at ___, 331 A.2d at 192 n.5, citing Pennsylvania ex rel. Craig v. Maroney, 348 F.2d 22, 29 (3d Cir. 1965). In In re Stoutzenberger, ___ Pa. Super. ___, 344 A.2d 668 (1975), the Superior Court of Pennsylvania applied the Jackson rule to a juvenile case. 344 A.2d at 671.
287. Id. at ___, 331 A.2d at 192 n.5.
293. Id. at 442, 313 A.2d at 261. As previously noted, the Anderson court expressly held that it was permissible to take a child to a police station rather than directly to a detention facility as section 13(a)(3) of the Act requires. Id. See Juvenile Act of 1972 § 13(a)(3), Pa. Stat. Ann. tit. 11, § 50-310(a)(3) (Supp. 1975-76); text accompanying notes 276-84 supra.
294. The drafters of the Proposed Act indicated that police interrogation of a child should not be condoned. Proposed Act, § 13, Comment.
ance with the constitutional principles of due process, must assuredly be declared inadmissible and, therefore, suppressed. However, it is the opinion of this court that the provisions of the new Juvenile Act relied upon by the defense in arguing the inadmissibility of the confession, are not a separate and supplementary set of guidelines to be followed by the court in seeing to it that justice prevails in the instance of juveniles. Rather, they represent a codification of those standards of justice and fairness, and guarantees of fundamental rights based upon pertinent constitutional principles of due process, which already, have been enunciated in existing case law.

Perhaps this view will prevail and the supreme court will determine that a child has no greater rights under the 1972 Act than if he or she were to be tried as an adult. This result would at least provide a measure of consistency. An argument can be made that the law governing a child's confession should be the same no matter whether there is eventual trial as an adult or as a juvenile. Contrariwise, it could also be argued that the express language of the Act generally gives greater protection to persons under 18 years of age than that accorded adults, and that the courts should not deprive children of these rights granted by legislation. This would give some meaning to the language of section 21(b) of the Act which denies admissibility to confessions "obtained in the course of a violation of the Act." If the Pennsylvania Supreme Court were to adopt this view, it would probably deny admissibility to confessions where the parent was not notified with all reasonable speed, as required by section 13(a)(1) of the Act, that the child had been taken into custody. There is a good possibility that the court will hold any confession inadmissible per se if the parent is not given an opportunity to confer with the child alone. This would involve only a slight extension of the court's holdings in Jones, Roane, and Starkes, and it is implicit in the requirement that the parent be notified. It is less likely that the court would forbid taking a child to a police station or place an absolute ban on the interrogation of a child.

2. Evidence Illegally Seized or Obtained

As previously noted, section 21(b) of the 1972 Act provides that "[e]vidence illegally seized or obtained shall not be received over

296. See text accompanying note 284 supra.
298. See notes 261-62 and accompanying text supra.
299. See notes 263-66 and accompanying text supra.
300. See notes 267-68 and accompanying text supra.
objection to establish the allegations made against [the child]." 301  Obviously, the crucial inquiry is whether the term "illegally" applies both to evidence seized in violation of the fourth amendment and to evidence seized in violation of the Act.

Although the United States Supreme Court has never addressed itself to the rights of children with respect to search and seizure, it can be reasonably anticipated that it would find their rights to be at least coterminous with those of adults. Following this rationale, the word "illegal", as used in the Act, would at least apply to conduct that would be deemed a violation of the fourth amendment rights of adults in similar situations. 302

There are several issues which have peculiar application to children. One is a search by school officials of the body of the student or of his or her possessions. Pennsylvania has recently adopted the rule adhered to by the majority of jurisdictions 303 that evidence obtained by school officials is not suppressible even if the search or seizure would have been illegal if conducted by the police. 304 The court reasoned that suppression is aimed at controlling police behavior and not the activities of nonpolice persons. 305 However, by utilizing the same reasoning, evidence seized by school officials at the request of, or in the presence of, police officers is suppressible if the search or seizure was in violation of the child's fourth amendment rights. 306

Another issue is presented by the search upon consent of the parent, of a child's room or possessions by the police. In the case of Commonwealth v. Hardy, 307 the Pennsylvania Supreme Court held that the consent of the parent validated the search. 308 However, the rule may be different where the area searched is set aside exclusively for the use of the child. 309

305. See id. at 382, 323 A.2d at 146 (1974); Annot., 49 ALR. 3d 978 (1973); Valente, Student Discipline in Public Schools Under the Constitution, 17 Vill. L. Rev. 1028, 1041 (1972).
308. Id. at 216, 223 A.2d at 723.
309. See People v. Nunn, 55 Ill. 2d 344, 304 N.E. 2d 81 (1973); cf. United States ex rel. Cabey v. Mazurkiewicz, 431 F.2d 839 (3d Cir. 1970). Nunn involved a mother's authorization of a warrantless search of the quarters that the 19-year-old son occupied in his mother's house. The Nunn court held that, since the fourth amendment protects people and not places, the evidence obtained during the search must be excluded. 55 Ill. 2d at 347, 304 N.E. 2d at 84. In Cabey, the sole key to the defendant's garage had been taken from him upon his arrest and had been given
Presumably, police are required to obtain a search warrant to search a juvenile’s effects if they would be required to do so for an adult. If so, from whom do they obtain the warrant, the court or a district justice? Do the benevolent aspects of the 1972 Act require that a judge sitting to hear juvenile cases be the one to issue the warrant? There is no case law dealing with these issues.

To date, there has been no case authority dealing with searches in violation of the Act. The language of the Act governing confessions expressly excludes confessions obtained in violation of constitutional guarantees and in violation of the Act. An example of the kind of issues which might arise in this vein with regard to searches and seizures is a consensual search of a child’s possessions prior to notifying the parents that their child is in custody. Is such a search “illegal” within the meaning of the Act? As was previously noted, the impact of the express language on confessions has not been finally resolved and the admissibility of evidence obtained in such searches likewise remains unsettled.

3. Identification Evidence

The United States Supreme Court has established that an adult accused of crime has a right to counsel at a police lineup and that evidence secured at an unnecessarily suggestive lineup is suppressible. While the 1972 Act does not specifically address these issues, these principles appear to be applicable to juvenile cases.

In Kirby v. Illinois, the United States Supreme Court stated a rule which created considerable confusion for the juvenile bar. In Kirby, the Court held that the right to counsel did not attach until formal prosecution had commenced, but it was not clear when that occurred in a juvenile case. In Commonwealth v. Richman, the Pennsylvania Supreme Court held that the right to counsel for an adult commences upon arrest, except for prompt on-the-scene identification.

to his wife. She consented to a search of the garage which revealed incriminating evidence. Noting that there was no evidence indicating that the defendant had ever given his wife the key before, the Cabey court held that she had no independent right to consent to a search and that, therefore, the evidence obtained from the search must be excluded. 431 F.2d at 843-44.

311. See notes 290-300 and accompanying text supra.
316. Id. at 688.
It is likely that this rule would be applicable to a juvenile case, thus establishing a child's right to counsel during a police identification procedure.

E. The Plea

The 1972 Act does not establish a procedure for entering a plea. Generally, the phrases guilty and not guilty are not used in juvenile practice, rather the words "admit" or "admission" and "deny" or "denial" are substituted. The absence of established procedure and language should not be taken, however, as an indication that the plea is insignificant.

If counsel concludes that an admission of a delinquent act is proper in view of the evidence and other circumstances, this matter should be fully discussed with the child and the child's parents. They should be advised that the child, in making an admission, is waiving certain rights. On the other hand, the child and parents should be advised that if the evidence is strong, these rights may be of little value compared to the advantages admission may offer. Many juvenile courts feel that an admission of culpability is the first step in a child's rehabilitation and will favorably consider this in the disposition of the child. Plea bargaining has recently made its appearance in the juvenile area and is an appropriate matter to discuss with the district attorney if the client so agrees. As in the criminal law, the prosecution has a tendency to overcharge. However, the district attorney is often willing to drop the additional charges in order to simplify the hearing.

There is yet another reason for the entry of an admission. If the district attorney has been previously advised that there will be an admission, often the victims of the offense will not be subpoenaed. This can be significant since, no matter how de minimis the offense may have been, its victims are sometimes in a mood for vengeance and their presence can have an adverse effect on a plea bargain or on the disposition.

If it is decided that an admission will be made, preparation for the hearing is important. Not all judges engage in the guilty plea colloquy attendant to adult criminal cases, but the child should be prepared to answer questions and understand their significance.

318. Id. at 171-72, 320 A.2d at 353.
320. Id. at § 206 et seq.
Since under the Act the disposition alternatives available to the court are somewhat limited by the verdict, counsel must ensure that the record is perfectly clear as to which offenses are admitted. This is important even if there is no plea bargain, as the judge will often be inclined to dismiss the disputed charges at the adjudicatory hearing if some charges are admitted.

F. The Adjudicatory Hearing

The most significant impact of the Gault decision and the 1972 Act has been upon the adjudicatory stage of a juvenile case. While a jury trial is not permitted, and there is no right to a public trial under the Act, the overall effect of Gault and the 1972 Act has been to convert the juvenile adjudicatory hearing into a reasonably accurate replica of an adult criminal trial.

1. Bifurcated Hearing

A significant characteristic of American criminal procedure is the general practice of separating the issues of criminal liability and sentence. This procedure, called bifurcation, operates to prevent the prosecution from offering evidence concerning the character and background of the accused until after the issue of criminal liability has been resolved.

Generally, bifurcation has not been used in American juvenile courts. Probation reports or social studies have customarily been introduced at the adjudicatory stage, and therefore could have operated to prejudice the juvenile court with regard to the child’s alleged commission of a delinquent act. However, the 1972 Act has provided for a bifurcated hearing by the operation of two of its sections. Section 23(b) of the Act provides that, before the court can hear evidence to determine if the child is in need of treatment, rehabilitation, or super-

322. See text accompanying note 433 infra.
326. For this and other reasons, a number of commentators have urged the use of a bifurcated hearing in the juvenile process. See President’s Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 35 (1967) [hereinafter cited as Task Force Report]; Glen, Bifurcated Hearings in the Juvenile Court, 16 CRIME & DELINQ. 255 (1970).
vision, the court must find beyond a reasonable doubt that the child committed the acts which gave rise to the allegations of delinquency.\footnote{327}{PA. STAT. ANN. tit. 11, § 50-320(b) (Supp. 1975-76).} Section 22(a) of the Act prohibits the preparation of a social report prior to an admission or adjudication that the child has committed a delinquent act.\footnote{328}{Id. § 50-319(a).}

2. Evidence

Prior to \textit{Gault}, the rules of evidence in juvenile cases were ambiguous. The district attorney rarely appeared, the witnesses were often questioned by the court or probation officer, and defense attorneys were seldom present. The therapeutic philosophy of delinquency law led the court to relaxation of the rules of evidence in favor of admitting virtually all matter which assisted in accurately diagnosing the child's needs. It was not unusual for the court to question the child at the adjudicatory stage, even though the child might not wish to testify.\footnote{329}{\textit{See Task Force Report, supra} note 326 at 28.} Since \textit{Gault}, the presence of defense counsel and the district attorney has led to a proceeding which more closely resembles a criminal trial, including the application of the customary rules of evidence. \textit{Gault} established that a child has the right to confront and cross-examine adverse witnesses, and to invoke the privilege against self-incrimination.\footnote{330}{387 U.S. at 55-56.} The establishment of both of these rights has significantly affected the adjudicatory hearing.

The impact of the right to confront and cross-examine witnesses is not limited to evidentiary considerations,\footnote{331}{For example, the right to confrontation includes the right to be present at every stage of the proceedings. \textit{See} \textit{Illinois} v. \textit{Allen}, 397 U.S. 337 (1970). This principle is partially recognized by the Act in section 19(d). \textit{PA. STAT. ANN. tit. 11, § 50-316(d) (Supp. 1975-76).} The right to confrontation may also be involved in lineups. \textit{See} \textit{United States} v. \textit{Wade}, 388 U.S. 218 (1967).} but the evidentiary matters are potentially present in almost every case. Prior to the Act, hearsay in the form of probation or social reports was often admitted in juvenile hearings.\footnote{332}{\textit{See text accompanying} note 326 \textit{supra}.} These reports are now specifically barred by the Act,\footnote{333}{Juvenile Act of 1972 § 22(a), \textit{PA. STAT. ANN. tit. 11, § 50-319(a) (Supp. 1975-76).}} but they would otherwise be prohibited by the right to confront and cross-examine witnesses.\footnote{334}{Juvenile Act of 1972 § 21(a), \textit{PA. STAT. ANN. tit. 11, § 50-318(a) (Supp. 1975-76).}} However, the status of other hearsay evidence is not as clear. It is difficult to distinguish evidence which is admissible as an exception to the hearsay rule from evidence
which is inadmissible because it violates the right to confrontation.\textsuperscript{335}
In Pennsylvania criminal cases, the rule has been stated thusly: "well-
recognized exceptions to the hearsay rule supported by circumstances
 guaranteeing sufficient 'indicia of reliability' do not raise confrontation
problems."\textsuperscript{336}

The right to confront and cross-examine witnesses has even been
held to exclude offending material which was not in evidence concerning
the defendant. In \textit{Bruton v. United States},\textsuperscript{337} an extrajudicial state-
ment of a codefendant was offered at trial, and the jury was instructed
not to consider the statement with regard to the defendant.\textsuperscript{338} In
\textit{Douglas v. Alabama},\textsuperscript{339} a witness' prior statement was read to him
at trial, but since he refused to answer the prosecutor's questions con-
cerning it, the statement was not admitted into evidence. In both cases,
the United States Supreme Court held that the right to confrontation
required the reversal of the convictions because of the prejudicial impact
of the statements on the jury.\textsuperscript{340} It is questionable whether these rulings
would apply in a nonjury context, such as a juvenile proceeding, where
the court is less likely to be swayed by inadmissible material.\textsuperscript{341}

Moreover, the right to confront and cross-examine witnesses,
involves the issue of the scope of cross-examination.\textsuperscript{342} In \textit{Davis v.
Alaska},\textsuperscript{343} the United States Supreme Court reversed a conviction be-
cause the defendant had not been permitted to cross-examine, for im-
peachment purposes, a prosecution witness concerning the witness' prior
juvenile record, even though juvenile records are not generally available
for public examination.\textsuperscript{344} It seems likely that this ruling can be applied
to juvenile cases, although prior to \textit{Davis}, the Supreme Court of Penn-

\begin{itemize}
\item \textsuperscript{335} See generally Griswold, \textit{The Dune Process Revolution and Confrontation}, 119 U. Pa. L. Rev. 711 (1971).
\item \textsuperscript{337} 391 U.S. 123 (1968).
\item \textsuperscript{338} Id. at 124-25.
\item \textsuperscript{339} 380 U.S. 415 (1965).
\item \textsuperscript{340} 391 U.S. at 126; 380 U.S. at 418-23.
\item \textsuperscript{342} See Juvenile Act of 1972 § 21(a), PA. STAT. ANN. tit. 11, § 50-318(a) (Supp. 1973-76) which expressly grants an alleged delinquent the right to cross-examine witnesses.
\item \textsuperscript{343} 415 U.S. 308 (1974).
\item \textsuperscript{344} Id. at 319-21.
\end{itemize}
sylvania held that a defense witness in a criminal case may not be cross-examined on his juvenile record.\textsuperscript{345}

The privilege against self-incrimination at the adjudicatory hearing is set out in section 21(b) of the Act,\textsuperscript{346} and it is recognized by all but a few juvenile judges.\textsuperscript{347}

Initially, the Act appeared to have added a rule of evidence to the juvenile law. Section 21(b) of the Act provides in part that "[a] confession validly made by a child out of court at a time when the child is under 18 years of age shall be insufficient to support an adjudication of delinquency unless it is corroborated by other evidence."\textsuperscript{348} However, the Superior Court of Pennsylvania recently held that this language merely incorporates the corpus delicti rule into juvenile law.\textsuperscript{349}

The Act offers no direct guidelines as to what extent other rules of evidence are applicable in juvenile proceedings. Section 23(d) of the Act provides:

In disposition hearings . . . all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition.\textsuperscript{350}

Does this imply that the normal criminal rules as to the competency of evidence apply to adjudicatory hearings? The answer would be clear had the drafters of the 1972 Act utilized the standard promulgated by the United States Department of Health, Education and Welfare, which requires that the finding be "based upon competent, material and relevant evidence."\textsuperscript{351} In the absence of any legislative guidelines, judges tend to treat evidentiary questions in juvenile proceedings in the same manner as they are treated in nonjury adult criminal proceedings.\textsuperscript{352}

\textsuperscript{347} It is the author's experience that several judges still call upon the child to give a statement even though counsel has not called the child to testify in his or her own defense.
\textsuperscript{349} See Anderson Appeal, 227 Pa. Super. 439, 313 A.2d 260 (1973). The corpus delicti rule provides that a criminal conviction may not be based on an extrajudicial confession or admission unless the confession or admission is corroborated by independent evidence establishing that a crime has been committed. See Commonwealth v. Ware, ___ Pa. ___, 329 A.2d 258 (1974).
\textsuperscript{351} U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, LEGISLATIVE GUIDE FOR DRAFTING FAMILY AND JUVENILE COURT ACTS § 32(c) (19__).
\textsuperscript{352} See C. McCormick, supra note 341, § 60.
3. **Demurrer**

The 1972 Act does not provide for a demurrer\(^3\) to the evidence at the close of the Commonwealth's case. However, the greater formality imposed on juvenile proceedings by the United States Supreme Court and the Act make the need for the demurrer apparent. In practice, it seems that the juvenile courts have adopted, without much comment, the demurrer device from Pennsylvania criminal procedure.\(^4\)

Although a demurrer will often be inappropriate for all of the charges, it may be suitable for some of them. If this is so, it is tactically advantageous to eliminate these charges at the demurrer stage. Occasionally the juvenile court, even though it has not sustained the demurrer, gives an indication of which parts of the Commonwealth's case it considers to be the weakest. Counsel may then direct the presentation of the child's defense accordingly.

4. **Defenses**

Presumably all of the defenses available to an adult accused of crime are available to the juvenile in an adjudicatory hearing, with two possible exceptions — insanity and infancy.

With regard to the use of insanity as a defense in juvenile proceedings, the authorities are split. Some support the use of the insanity defense in the adjudicatory stage, while others have argued that such a defense should only be considered at disposition.\(^5\) Section 29 of the Act\(^6\) requires the court to proceed under the Pennsylvania Mental Health and Mental Retardation Act of 1966\(^7\) if the evidence indicates that the child may be subject to commitment or detention under the provisions of the latter act. However, this does not resolve the issue of insanity as a defense when the child is not subject to commitment at the time of the adjudicatory hearing.

Infancy as a defense in a juvenile case, raises problems similar to those raised by insanity. Should a child's lack of understanding be a complete defense or merely a factor to be considered in determining the

---

\(^3\) Essentially, a defendant's demurrer to the Commonwealth's evidence admits all of the facts which that evidence tends to prove and all inferences reasonably drawn therefrom, and asserts that this evidence and these inferences together do not constitute conduct proscribed by the applicable criminal law. If the court decides against the demurrer, the defendant (or child in an adjudicatory hearing under the 1972 Act) may present his or her evidence and the case proceeds as if the demurrer had not been made. *Pa. Stat. Ann.* tit. 19, § 481 (1964).


proper disposition. It seems that in most cases the juvenile courts avoid the theoretical issues and attempt to treat younger children in a manner befitting their lack of maturity. This may mean treating delinquent acts under the court's deprivation jurisdiction, or the application of the court's least punitive sanctions.

5. **Verdict**

In *In re Winship*, the United States Supreme Court held that in a juvenile proceeding, where a violation of the criminal law is alleged and there exists a possibility of institutional commitment, a finding of guilt must be supported by proof beyond a reasonable doubt as a matter of due process. Section 23(b) of the 1972 Act adopts this standard of proof for all conduct constituting delinquency.

To support an adjudication of delinquency and to bring the child within the jurisdiction of the juvenile court until age 21, the former juvenile acts in Pennsylvania required the court to find only that the child had committed any one of the acts alleged. The 1972 Act requires the court to be more specific. Under section 26 of the Act, at disposition, the court cannot initially commit the child for a period in excess of 3 years, or the maximum for the offense had it been committed by an adult, whichever period is shorter. This imposes a duty upon the juvenile court to state for the record the offense which the child is found to have committed. The author has observed that most courts recognize this obligation.

In addition to finding that the child committed the alleged acts, the juvenile court must find that the child is in need of treatment, supervision, or rehabilitation. Often judges merely make a finding of delinquency without separately determining the need for treatment, supervision, or rehabilitation. If this issue is considered at all, it is in the context of the disposition hearing.

V. **Disposition**

A. *The Social Study and Report*

The individualized treatment of juveniles is an important goal of juvenile law. The keystone of individualized treatment is the social

---

361. *Id.* at 368.
study and report which is prepared by the juvenile probation staff of the court and is analogous to the presentence report in criminal law. Prior to the 1972 Act, the social report was frequently prepared in advance of, and considered by the juvenile court during, the adjudicatory hearing. Under section 22(a) of the Act, the report cannot be prepared prior to an admission or adjudication that the child has committed a delinquent act. The Pennsylvania Juvenile Court Judges Commission has suggested eight areas of concern upon which the report should focus:

1. The significance of the offense, or offenses which brought the child to the attention of the juvenile court.
2. The child’s behavior pattern at home, the school and in the community.
3. The development of the child physically, intellectually, emotionally and socially with emphasis upon increasing our understanding of the child’s present behavior and possible future difficulties.
4. The attitudes of the family, school and community as they may effect the child’s chances for re-adjustment.
5. Psychological, psychiatric and medical evaluation where this kind of help seems indicated.
6. Employers and opportunity for employment.
7. An evaluation. Based on the information developed in the factual portion of the social study, the probation officer should evaluate the child in terms of his adjustment potential.
8. A recommendation. The probation officer should be prepared to recommend a disposition plan or should include this item in the social study, if requested by the juvenile court judges. The recommendation which is based on the facts developed in the social history should be definite and should be realistic from the standpoint of the child, his parents and the community.

368. Task Force Report, supra note 326, at 35.
370. Juvenile Court Handbook, supra note 366, at 48. The format for the social report in Delaware County is as follows:

1. Child’s name, birth, race, religion.
2. Parent’s name, birth, race, religion, marital status.
3. Same information for siblings of the parent [sic].
4. Address — child and family with whom he lives.
5. Present Complaint: name of police department and/or other agency or individual signing petition of offense against child; description of offense, date, child’s admission or denial. Others involved: list names of others
The impact of the social report cannot be overemphasized, as juvenile courts follow the report's recommendations in a substantial majority of the cases. Despite the significance of the social report, it remains a most uncertain area of juvenile law for counsel. How can counsel cope with the expertise, or apparent expertise, of the probation staff? Unfortunately, counsel often either uncritically yields to the report or only challenges it in the courtroom. While counsel has the right to examine and controvert reports and cross-examine the individuals who prepared the reports, this should not be the primary focus of counsel's efforts. Instead, the attention of counsel should be also involved in offense and referred to the court, where this information is significant to the court summary.

6. Previous record: with court; state briefly date, offense, disposition.
7. Family situation:
   a. significant events in the family's history
   b. names of employers, types of work involved and salaries earned by parents and other members of the family. Social security or other benefits received in case of deceased parents or unemployment. Relationships of people in the home.
8. Evaluation of the child
   a. frequency of contacts with the child
   b. estimate of child's ability to relate to probation officer and child's use of casework help
   c. evaluation of child's attitude towards family and willingness to use help offered by family members and/or professional help offered, i.e., psychiatrist
   d. where applicable [sic]: child's use of placement in the detention center, i.e.,
      1. relationship to peers
      2. relationship to detention staff
      3. use made of various programs conducted in detention center
9. Evaluation of parents
   a. frequency of contacts with them
   b. evaluation of their attitudes towards offense, child and the court
   c. evaluation of their feelings about probation, the department's plan and willingness to support plan
10. Health: general statement
11. School adjustment: name of school and grade attending as well as statement regarding academic and social adjustment. The names and sources of any testing done by the school should also be included.
12. Psychological and Psychiatric Studies date of testing; brief statement of findings where pertinent to use in summary attach report.
13. Contacts with other social agencies and use made of their services.
14. Remarks and Recommendation: to be included only on court summary submitted to the judge.


372. The social report does not present as great a problem in Philadelphia, since the public defender's office has its own social service staff which can prepare reports and make recommendations on behalf of the child.
directed to the preparation of the report. Since juvenile courts most often follow the recommendation of the probation officer, he or she becomes the finder of fact with respect to disposition, and counsel’s advocacy must therefore be directed toward persuading the probation officer to find in favor of the client.

The importance of the reports should be explained to the child and the child’s family, and they should be forcefully encouraged to cooperate with the probation officer.

If at all possible, counsel should accompany the child and parents to the probation office for at least the first visit. Counsel should also be cooperative and clearly state that he or she will be available to the probation officer for consultation should any such need arise.

Furthermore, counsel should take steps to supply as much of the information needed for the report as possible. If the child is employed, the employer should be contacted and advised of a possible future contact by the probation officer. If the employer has something favorable to say about the child, a letter should be obtained, and the original, or a copy, given to the probation officer. Clergymen, neighbors, workers for youth groups or training programs and other people who know the child should also be similarly contacted. The child should be asked for the names of teachers who may give favorable impressions, and letters should be obtained from them, or the probation officer should be requested to confer with them.

Counsel should advise the child to join and participate in youth groups, training programs, drug programs and the like, and should ensure that such participation is mentioned in the report. If there is a possibility of a recommendation of commitment, counsel should work with the probation officer to examine alternatives to commitment. If commitment is inevitable, counsel should explore with the probation officer the possibility of commitment to the institution which is the most desirable from the child’s viewpoint.

Both section 23(d)\textsuperscript{374} and section 37(2)\textsuperscript{375} of the 1972 Act permit counsel to examine the social report except for confidential sources. While neither section establishes when the report may be seen, counsel should attempt to examine the report prior to the disposition hearing since this allows counsel to supply correct information, should the report contain erroneous data, before the report is relied upon. If the information is not adequately substantiated, the probation officer can be requested to make a further investigation. If the child or the child’s family has given counsel information which conflicts with the report,

\textsuperscript{374} Id.

\textsuperscript{375} PA. STAT. ANN. tit. 11, § 50-334(2) (Supp. 1975-76).
an examination of the report prior to the disposition hearing will enable counsel to avoid embarrassment to the child, and to counsel, during the hearing. Counsel will also be better able to determine whether it will be necessary to call witnesses and to determine which areas will be focused upon at the hearing. In addition, counsel will be able to prepare the child and family for the recommended disposition.

B. Need for Treatment, Supervision or Rehabilitation

If the juvenile court finds that the child committed a delinquent act, it must hear evidence to determine whether the child needs treatment, supervision or rehabilitation. Section 23(b) of the Act provides that “[i]f the court finds that the child is not in need of treatment, supervision or rehabilitation, it shall dismiss the proceeding and discharge the child from any detention or other restriction theretofore ordered.”

Even prior to the statutory mandate for this practice, juvenile courts exercised their inherent authority to dismiss cases in situations where the charges had been proven. Additionally, some juvenile courts utilized a continuance procedure whereby the child was placed under supervision upon a finding that he or she had committed a delinquent act. If the child responded well to the program of supervision, the charges were dismissed. The Philadelphia juvenile courts have “determined” cases for years. This phrase, although nowhere defined, is used to indicate the situation in which a case is terminated without a disposition of the child. In effect, the Act’s requirement of a finding of need for treatment, supervision or rehabilitation is merely a statutory adaptation of the informal practice which formerly existed in the juvenile system.

Not all juvenile courts follow the mandate of section 23(b) of the 1972 Act. Several courts enter adjudications of delinquency based solely upon a finding that the child has committed a delinquent act. But, if a court decides to comply with the Act, it must decide what test to apply in determining if there exists a need for treatment, supervision or rehabilitation. Initially, the 1972 Act does not expressly allocate
the burden of proof on this issue. Must the Commonwealth show a need, or must the child prove a lack of need? Section 23(b) of the Act provides: "In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation." This language can be read as creating an inference or presumption of a need for treatment, supervision or rehabilitation. However, if the child is found to have engaged in conduct constituting only a misdemeanor, the juvenile court obviously will not be aided by this presumption or inference. Assuming that the Commonwealth has the burden of proof, there remains the question of which standard to apply: proof beyond a reasonable doubt, clear and convincing evidence, a preponderance of the evidence, or some other standard.

In the absence of express guidelines for these questions, the requirement of a finding of a need for treatment, supervision or rehabilitation is a dead letter. Juvenile courts will still dismiss or "determine" a case if they feel it is too insignificant to merit the court's attention, or they will use a consent decree if they feel that the child needs some form of supervision but does not require an adjudication of delinquency. It is unlikely that the juvenile courts will change their practice unless and until the appellate courts or the Pennsylvania legislature provide a clearer mandate and more definite guidelines.

C. Evidence

The rules of evidence have a different application in the disposition hearing than they do in the adjudicatory hearing. Section 23(d) of the 1972 Act provides that "all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition." This provision permits the juvenile court to consider the social report...
and psychiatric or psychological reports. Although there is a right under the Act to controvert the report and cross-examine the individual who made the report, this right may be meaningless if the maker of the report, as is usually the case, obtained the information contained therein from another person. For example, the probation officer may obtain information from school officials, and it would, therefore, be of little aid to cross-examine the probation officer to ascertain the accuracy of the school records. It is far more helpful to assess the accuracy of such information prior to the disposition hearing. Generally, the psychologist or psychiatrist who examines a child will not be present at the hearing and these types of reports are admissible under section 23(d) of the Act.

Although reports prepared by, or at the request of, the probation officer are admissible in evidence, reports and letters prepared on behalf of the child are not generally offered as a matter of practice. However, there appears no reason why such material would not be accepted in evidence under the provisions of the Act. Nevertheless, whenever it is possible, this type of evidence should be accompanied by the live testimony of its author. A live witness will almost always be more persuasive than an impersonal report, and oftentimes judges are favorably impressed by the fact that a witness took the time to appear.

D. Possible Disposition

Sections 24 and 25 of the 1972 Act list possible forms of disposition. However, the range of alternatives available for disposition is not limited by these sections. If the goal of disposition is individualized treatment for children, then it is desirable to have the widest possible range of alternatives, and the probation officer, counsel, and juvenile court should not hesitate to be creative in order to best satisfy the needs of the child.

1. Consent Decree

The consent decree as set out in section 8.1 of the Act, is a device for placing an allegedly delinquent child under the supervision of the probation department prior to, and as an alternative to, adjudication of delinquency.

---

385. Id.
386. Id.
387. Id. § 50-321.
388. Id. § 50-322.
389. Id. § 50-305. Its placement in the 1972 Act gives no indication that the consent decree is a type of disposition. However, for all practical purposes, it is a type of disposition alternative, although it usually precedes and precludes an adjudication of delinquency.
cation, thus avoiding the potential stigma attached to an adjudication of delinquency.\footnote{390}

While the consent decree is analogous to the Accelerated Rehabilitative Disposition provision in the Pennsylvania Rules of Criminal Procedure,\footnote{391} the provisions of the 1972 Act are not as carefully developed, and thus leave greater potential and need for appellate resolution of a number of issues.\footnote{392}

While section 8.1(a) of the Act provides that agreement of the district attorney is not mandatory,\footnote{393} it is always advisable to discuss a proposed consent decree with that office when possible. Some juvenile courts accord considerable weight to a district attorney’s refusal to agree, and the author has observed that almost all juvenile courts will grant a consent decree when it is proposed or approved by the district attorney.

A number of counties in Pennsylvania have adopted specific criteria to determine a child’s eligibility for a consent decree. One widely established criterion is that the child not have any prior adjudications or consent decrees. This criterion is relatively flexible, however, particularly if the case under consideration involves relatively inoffensive conduct, or if the prior case occurred several years before.

\footnote{390} There was no provision for a consent decree in the Uniform Act, the Proposed Act, or Pennsylvania’s earlier juvenile acts. However, prior to the 1972 Act, it was not unusual for a juvenile court to place a child under supervision for a specified period, and to dismiss the charges if the child performed satisfactorily under supervision. \textit{See Note, supra note 372, at 292. Section 8.1 was apparently derived from a statutory model prepared by the federal government. Compare Pa. Stat. Ann. tit. 11, § 50-305 (Supp. 1975-76) with U.S. Dep’t of Health, Education, and Welfare, Legislative Guide for Drafting Family and Juvenile Court Acts § 33 (1969).}

\footnote{391} Pa. R. Crim. P. 175 et seq.

\footnote{392} The following are examples of questions left unanswered by the 1972 Act: Does a child waive the statute of limitations or the right to a speedy trial by accepting a consent decree? Rule 178(3) requires a waiver of these rights in the criminal context. Pa. R. Crim. P. 178(3). What is the effect, if any, of a consent decree if the petition is reinstated as the result of the filing of a new petition, or as a result of the violation of the terms of the consent decree as provided in section 8.1(b) of the Act? Does the reinstated petition require a trial de novo of the charges contained therein, or does the child’s agreement to the consent decree serve as an admission to those charges? Rule 184(c) requires a trial de novo in the criminal context. Pa. R. Crim. P. 184(c). If there must be a trial de novo, may the statements the child made during the consent decree hearing be used at this trial? Rule 179(b) prohibits such use of statements made in the A.R.D. hearing. Pa. R. Crim. P. 179(b). May the testimony of the witnesses appearing at the consent decree hearing be read into the record at the subsequent trial, or must the witnesses appear again? Is the former testimony exception to the hearsay rule applicable as to these witnesses’ testimony at the consent decree hearing? Finally, the 1972 Act authorizes the district attorney, with the consultation of the probation department of the court, to reinstate a petition. Should judicial approval be required? Rule 184 requires judicial approval in the criminal context. Pa. R. Crim. P. 184.

2. Restitution

It is unclear whether a juvenile court has the power to require a delinquent child to make restitution to the victim or victims of the delinquent act, because the Pennsylvania legislation which creates this type of liability for the parents of a delinquent child expressly preserves the child's common law liability, and is otherwise silent. The few cases which have considered the power of the court in this regard seem to indicate that restitution may be ordered if it is imposed "wholly in the interest of the child, looking toward his reformation and not to make good the damages flowing from his illegal act." Despite this legal uncertainty, some juvenile courts routinely impose restitution, and counsel rarely resists such an order. Restitution as a rehabilitative device, if not unreasonably imposed, offers one distinct advantage in that it forcefully emphasizes to the child the personal nature of the harm caused by his or her conduct. However, the restitution device can be abused; if the amount is excessive, or if the child or child's family will be subjected to undue threats should they fail to make restitution, the resentment created is likely to neutralize any rehabilitative value.

In an appropriate case, counsel should not hesitate to discuss the possibility of restitution with the child and the child's family and subsequently to propose it to the juvenile court. Often the court will be inclined to avoid committing the child if it is persuaded that both the child and the victim of the delinquent conduct will benefit by an order of restitution and the placement of the child on probation.

3. Fines

Fines, like restitution, are not mentioned by the 1972 Act as a possible disposition, but, unlike restitution, they are rarely imposed in practice. There is authority supporting the proposition that a fine may not be imposed in a juvenile case, the theory being that the imposition of a fine would transform the matter into a criminal case. However, the juvenile court does have the power to enforce a fine imposed by the minor judiciary for a child's summary offense. Hence, an argument could be made that the court similarly has the authority to impose a fine.

398. See text accompanying note 63 supra.
in a juvenile case, especially when the fine is imposed not to punish, but to encourage the child's reformation.\textsuperscript{399}

4. \textit{Probation}

Probation is the primary device utilized by the juvenile court to achieve the goal of individualized treatment for delinquent children. In criminal law, probation can be defined as the suspension of sentence accompanied by the release of the offender subject to certain enumerated conditions.\textsuperscript{400} While in juvenile law there exists no sentence to be suspended, there does exist a possibility of commitment, and for this reason, juvenile probation can be analogized to adult probation.

Aside from the relatively insignificant provisions of sections 4\textsuperscript{401} and 25(2),\textsuperscript{402} the 1972 Act is silent on probation, and in several areas, this silence presents serious problems. For example, the issue arises as to the maximum permissible length of the probationary period. For an adult offender in Pennsylvania, probation may be imposed up to the maximum period of the sentence which could have been imposed upon conviction.\textsuperscript{403} Whether this principle applies to children, and whether the length of probation is limited by section 26 of the Act\textsuperscript{404} to the lesser of 3 years or the maximum which could have been imposed upon an adult are open questions. Further, the question may be posed if section 26 is applicable, may the juvenile court extend the probationary period as is permitted when a child is committed. Under the prior Pennsylvania juvenile acts, probation lasted until the child reached 21 years of age unless the court terminated probation earlier.\textsuperscript{405}

Section 25(2) of the Act authorizes the imposition of conditions and limitations on probation but does not indicate their permissible substance.\textsuperscript{406} Typical conditions which might be imposed include periodic reporting to the probation officer,\textsuperscript{407} keeping the officer informed of whereabouts,\textsuperscript{408} attending school,\textsuperscript{409} obtaining and keeping employment,\textsuperscript{410} abstaining from use or abuse of intoxicants,\textsuperscript{411} abstaining from

\begin{footnotes}
402. \textit{Id.} § 50-322(2).
403. \textit{Id.} tit. 19, § 1056 (1964); \textit{id.} tit. 61, § 331.25 (1964).
404. \textit{Id.} tit. 11, § 50-323.
408. \textit{Id.} at 244.
409. \textit{Id.}
410. \textit{Id.}
411. \textit{Id.} at 249.
\end{footnotes}
use of narcotics,\textsuperscript{412} keeping reasonable hours\textsuperscript{413} or obeying curfew laws, avoiding disreputable places or associates,\textsuperscript{414} and not violating the criminal laws. In certain situations, special conditions tailored for the individual child may be imposed. These include paying costs and fines or making restitution,\textsuperscript{415} participating in drug or alcohol abuse programs, obtaining medical or psychiatric care,\textsuperscript{416} attending religious services,\textsuperscript{417} and living with a particular person other than the child's parent. Ideally, the imposition of appropriate conditions for each child should be an effective device for furthering that child's rehabilitation, but practical, statutory, and constitutional problems are raised by the imposition of certain conditions. For example, the imposition of a fine or restitution as a condition of probation is arguably subject to the same limitations as when it is imposed as a direct form of disposition.\textsuperscript{418}

A requirement of church attendance may violate first amendment rights, as may some restrictions on speech or association.\textsuperscript{419} Probation conditions which are unduly vague or indefinite may also be subject to constitutional attack.\textsuperscript{420}

When a violation of probation is alleged, the juvenile court may order that the child be taken into custody and detained.\textsuperscript{421} The 1972 Act also authorizes the probation officer to take a child into custody when there exists reasonable cause to believe that the child has violated the conditions of probation.\textsuperscript{422}

The Act fails to provide for a procedure to determine whether the terms of probation have been violated. Arguably, a child charged with violation of probation should be afforded the same rights of procedural due process as is required for persons charged with violation of criminal probation,\textsuperscript{423} which presumably includes the right to counsel.\textsuperscript{424} It is

\textsuperscript{412} Id.
\textsuperscript{413} Id. at 250.
\textsuperscript{414} Id.
\textsuperscript{415} See text accompanying notes 394–99 supra.
\textsuperscript{416} D. Dressler, supra note 407, at 247.
\textsuperscript{417} Id. at 253.
\textsuperscript{418} See text accompanying notes 394–99 supra.
\textsuperscript{419} See Comment, Juvenile Probation: Restrictions, Rights and Rehabilitation, 16 St. Louis U.L.J. 276, 283 (1971).
\textsuperscript{420} Id. at 287. One commentator has stated:

If probation can be revoked for behavior which the probationer did not even know was prohibited, probation can hardly have a rehabilitative effect. Moreover, due process would seem to demand a modicum of specificity, giving the offender notice of the standards required of him;

\textit{Id.} (footnotes omitted).
\textsuperscript{422} Id.
\textsuperscript{423} See Gagnon v. Scarpelli, 411 U.S. 778 (1973) ; Gillard v. Cook, ___ Tenn. ___ , 528 S.W.2d 545 (1975).
\textsuperscript{424} See text accompanying notes 216–29 supra; Gillard v. Cook, ___ Tenn. ___ , 528 S.W.2d 545 (1975).
likely that there exists a right to a detention hearing within 72 hours if the child is detained.\textsuperscript{425} However, there are several equally serious issues which are as yet unresolved: Whether a petition charging a violation of probation must be filed? Whether a violation must be proven beyond a reasonable doubt, or whether some other standard should be applied?\textsuperscript{426} What type of disposition may the juvenile court fashion upon finding a violation?

Counsel often may believe that placing a child on probation terminates the need for the attorney-client relationship. However, it is submitted that a child will benefit considerably from the time spent by counsel in explaining the conditions of probation and the possible consequences of a violation.

5. \textit{Transfer of Custody}

The juvenile court may transfer custody of a delinquent child to a qualified person, agency, or private organization.\textsuperscript{427} Most frequently, transfers of custody are made to the relatives of the child. These transfers are often a condition of probation and are usually consensual, at least in the sense that the parents are willing to divest themselves of their legal right to custody of the child, or are willing to give up custody in order to avoid having the child committed. If the consent of the parent and child can be obtained, transfer of custody can be a useful device for removing a child from a community or emotional situation with which he or she cannot cope.

6. \textit{Group Homes}

There has been a recent increase in the number of group home facilities and day treatment facilities. Such facilities provide an alternative to commitment for children who do not present a danger to the community but who cannot, for one reason or another, adjust to their family homes. Such programs are often sponsored by religious organizations, or by community groups like the Y.M.C.A.

7. \textit{Mental Health Commitment}

In appropriate circumstances, commitment of the child to a mental health institution is a possible disposition alternative under section 29 of the Act.\textsuperscript{428}

\textsuperscript{425} See text accompanying notes 196–97 supra.

\textsuperscript{426} In Gillard v. Cook, --- Tenn. ---, 528 S.W.2d 545 (1975), the Tennessee Supreme Court required that the violation by a juvenile of his conditions of probation be proven by a preponderance of the evidence. \textit{Id.} at ---, 528 S.W.2d at 548–49.


8. Commitment

The 1972 Act has substantially changed the prior Pennsylvania law governing juvenile commitments. Under the earlier law commitments could extend until the child was 21 years of age, even though such a commitment in certain situations would institutionalize the child for a longer term than could have been imposed had the same offense been committed by an adult. This was characteristic of most state juvenile statutes and was one of the factors which was of great concern to the United States Supreme Court in Gault although the Court did not address this problem specifically therein. In In re Wilson, the Supreme Court of Pennsylvania cast doubt upon this early law of juvenile commitment. In Wilson a 16-year-old defendant, after he had admitted engaging in assault and battery, was declared a delinquent and committed for 5 years to Camp Hill, an institution for delinquents and young adult offenders. If he had been an adult, he could have only been sentenced to a maximum of 4 years. The Wilson court held that the imposition of a commitment longer than that which could have been imposed on an adult sentenced for the same conduct to the same institution was invalid as a denial of equal protection, unless it was clear that the longer commitment would result in the juvenile's receiving appropriate rehabilitative care. The decision, in effect, limited a juvenile commitment to the maximum sentence which could be imposed upon an adult convicted of the same offense.

Section 26 of the Act provides that commitment may not initially be for more than 3 years, or the maximum for the offense had it been committed by an adult, whichever is less. This represents a compromise between the Uniform Act, which provided for a 2-year maximum, and the practical effect of the Wilson decision. Section 26 permits the initial commitment to be extended, but since this provision has been infrequently used, if used at all, it remains to be seen whether it actually can be applied. The statutory limit upon the length of commitment is likely to be challenged in situations involving the commitment of a child charged with ungovernability under section

---

429. Act of June 3, 1933, No. 312, art. IV, § 411, [1933] Pa. Laws 1449 (repealed 1972); Act of June 2, 1933, No. 311, § 12, [1933] Pa. Laws 1433 (repealed 1972). The theory supporting this confinement until age 21 was that upon a finding of delinquency, the child became a ward of the institution and court until he or she reached majority. See text accompanying notes 32–33 supra.
430. 387 U.S. at 29.
432. Id. at 431, 264 A.2d at 617.
434. UNIFORM JUVENILE COURT ACT § 36.
2(2) (ii) of the Act, since ungovernability is not an adult offense. Thus the interesting issue is raised of whether a child can be committed at all for ungovernability since an adult could not be convicted at all for this offense.

Can the juvenile court commit a child for a period which is both less than the maximum imposable upon an adult and less than 3 years? For example, could the court commit a child for burglary for 1 year? The author is not aware of any juvenile court doing so, but there is nothing prohibiting the court from so doing.

One of the most appealing aspects of the 1972 Act is the requirement of biannual reviews and annual disposition hearings for committed children. These provisions were designed, and will operate, to prevent committed children from becoming victims of bureaucratic oversight. Although this requirement will force some of the busier juvenile courts to undertake an increased burden, it will also compel those courts to become more aware of the children and the operation of the institutions to which they are committed.

Can the juvenile court order the release of a committed child subsequent to a biannual review or annual disposition hearing? Although the 1972 Act does not expressly grant the court the authority to make such an order, such authority is assumed, as there would otherwise be no reason to conduct these inquiries. Can a court release a child or modify its commitment order at any time other than the 6 month or 1 year anniversary? This was authorized by the 1933 Act.

The 1972 Act does not expressly require that the district attorney be given notice of a proceeding to modify the juvenile court's order. However, under the 1933 Act the district attorney had a right to notice of and to appear at such a proceeding, and a right to contest and to appeal an order releasing a child. It would seem that the same rights exist under the present law, and therefore, the district attorney should be notified of any action to be taken by the court with respect to modifying the child's disposition.

436. *Id.* § 50–102(2) (ii).


Section 25 of the 1972 Act specifies the institutions to which a child may be committed. More specifically, section 25(4) permits commitment to a special facility for children operated by the Pennsylvania Department of Justice. Prior to the 1972 Act, delinquent males were, on occasion, committed to the State Correctional Institution at Camp Hill, and delinquent females to the State Correctional Institution at Muncy. Both of these institutions also house adult offenders. Since the adoption of the 1972 Act, commitments to these institutions have been tested in the courts under section 27 of the Act which prohibits the commitment of a child to an institution which is used primarily for the execution of adult criminal sentences except when no other appropriate facility exists. In the case of Commonwealth ex rel. Patton v. Parker the Pennsylvania Superior Court held that commitment of delinquent males to Camp Hill was lawful provided that the delinquents were kept apart from adult offenders at all times as is required by section 27 of the 1972 Act. In the case of In re Haas the Pennsylvania Superior Court held that commitment of female delinquents to Muncy was not lawful. The court distinguished this case from Parker on the ground that the situation at Camp Hill differed from that at Muncy in three aspects: 1) there was no other suitable facility available for male juveniles, 2) the joint use with adult offenders at Camp Hill was an “interim measure,” and 3) at Camp Hill the juvenile inmates could be kept separate from the adult inmates, and still “receive a full recreational, academic, and vocational rehabilitative program.”

There is authority supporting the proposition that committing juveniles to adult institutions violates their due process rights since, although they are punished as adults, they are denied the rights to which they would be entitled if they were tried as adults. However, this is a minority position and the weight of authority is currently to the contrary. Another matter of potentially great impact on juvenile
commitments is the argument that children may not merely be committed, but must receive rehabilitative treatment. This right-to-treatment argument has met with some success in other jurisdictions, either as a result of statutory construction, or interpretation of the eighth or fourteenth amendments to the United States Constitution.\textsuperscript{451}

Certain situations arise where commitment is inevitable. Unlike a criminal case where the options for commitment are limited to the county prison or to a state correctional institution, the juvenile commitment options are wide-ranging. The Pennsylvania Department of Public Welfare recently listed 24 separate institutions which receive delinquent children.\textsuperscript{462} They include state and county operated facilities and private institutions. They vary considerably in terms of treatment and educational opportunity, and in their resemblance to jails or boarding schools. Counsel cannot hope to become familiar with each of the institutions but nevertheless should discuss them with the probation officer. Attempts to contact the institutions and plan a satisfactory arrangement for the child will be well worth counsel's effort.

\textbf{VI. Post-Trial Motions and Appeal}

Prior to \textit{Gault}, the informal procedure and absence of counsel minimized the significance of post-trial and appellate procedures. The 1933 Act's provisions for rehearing and appeal are illustrative of the informality of most juvenile hearings under prior law.\textsuperscript{453} The 1933 Act permitted a petition for rehearing within 21 days after an order committing the child.\textsuperscript{454} A rehearing was mandatory if the child was committed or placed in an institution or home, and discretionary if the child was placed on probation.\textsuperscript{455} The testimony taken at the rehearing was required to be transcribed. Appeal followed the rehearing.

While the 1972 Act repealed the prior law, it does not provide for post-trial motions or appeal. In the absence of rules or rulings to the contrary, the courts are following the practice governing criminal cases.\textsuperscript{456} In criminal practice a post-trial motion for new trial or in arrest of judgment must be timely filed with the trial court in order to preserve the defendant's right to appeal.\textsuperscript{457} Issues not presented in

\begin{footnotesize}
\begin{enumerate}
\item Pennsylvania Dep't of Public Welfare Office of Children and Youth Bureau of Youth Services, Directory of Juvenile Institutions (unpublished list on file at the Villanova Law Review).\textsuperscript{452}
\item Act of June 2, 1933, No. 311, [1933] Pa. Laws 1433.\textsuperscript{453}
\item Id. § 15.\textsuperscript{454}
\item Commonwealth v. Croft, 445 Pa. 579, 285 A.2d 118 (1971).\textsuperscript{455}
\item Pa. R. CRIM. P. 1123.\textsuperscript{456}
\end{enumerate}
\end{footnotesize}
these motions are deemed to be waived for purposes of appeal. It is possible that the appellate courts will apply these doctrines to juvenile cases, although there are obvious problems involved in applying the concept of waiver of appeal rights to cases involving children, particularly since few judges advise children of their right to appeal as they must for adults.\textsuperscript{458}

Appeals presumably are governed by the Appellate Court Jurisdiction Act of 1970 (Appellate Court Act).\textsuperscript{459} Section 302\textsuperscript{460} of the Appellate Court Act provides that the superior court shall have exclusive jurisdiction of appeals from final orders of common pleas courts unless otherwise provided. Since there is no other provision, the superior court has exclusive jurisdiction over appeals in juvenile cases. Section 502\textsuperscript{461} of the Appellate Court Act requires that an appeal be filed within 30 days of the entry of the order in the case. The definition of the word "order" may present some complications for juvenile practice. Section 102(6)\textsuperscript{462} of the Appellate Court Act defines "order" to include, "judgment, decision, decree, sentence and adjudication." Taken literally, this language means that an appeal must be taken from the adjudication of delinquency rather than from the disposition.

In criminal practice appeal is taken after the sentence rather than after the verdict.\textsuperscript{463} This author hopes that the courts will not follow a literal interpretation of the Appellate Court Act but that they will instead follow the criminal practice and require that an appeal be taken from disposition rather than from adjudication.

\textsuperscript{458} PA. R. CRIM. P. 1123(c).

\textsuperscript{459} PA. STAT. ANN. tit. 17, §§ 211.101 et seq. (Supp. 1975–76).

\textsuperscript{460} Id. § 211.302.

\textsuperscript{461} Id. § 211.502.

\textsuperscript{462} Id. § 211.102(6).

\textsuperscript{463} See PA. R. CRIM. P. 1123, Comment.