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The Uniform Juvenile Court Act

David L. Wanner

THE UNIFORM JUVENILE COURT ACT

The National Conference of Commissioners on Uniform State Laws, on the 31st day of July, 1968, approved and adopted the Uniform Juvenile Court Act, and recommended that the Act be approved by the American Bar Association and that it be promulgated for enactment.[1] The American Bar Association followed that recommendation and adopted the Uniform Juvenile Court Act on August 7, 1968.[2] As of December 1, 1970, North Dakota was the only state which had implemented this uniform act.[3] However, Vermont adopted a statutory scheme similar to the Uniform Juvenile Court Act, that was enacted in 1967 to take effect July 1, 1968.[4] As such, Vermont's enactment came prior to the adoption of the Uniform Juvenile Court Act by the National Conference, and any discrepancies in the Vermont Act can be explained by the fact that Vermont had to rely on a preliminary draft rather than the uniform act as adopted.

The Uniform Juvenile Court Act provides a variety of rights for juveniles. One such provision is that an order of adjudication under the Act is non-criminal. This noncriminal adjudication requires that: "A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime."[5] Other sections of the Act establish a procedure for juvenile appeals,[6] and provide that, if a child is charged with a delinquent act, "Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him."[7]

The Uniform Juvenile Court Act provides for the use of a petition[8] and summons[9] which results in a statutory compliance with the Supreme Court decision, *In re Gault*,[10] that a juvenile is entitled to adequate and timely notice of the charges against him.[11] Another constitutional requirement in juvenile court proceedings set forth by

1. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 133-134 (1968).
2. 93 A.B.A. REP. 360-361 (1968).
3. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS 309 (1970); N.D. CENT. CODE §§ 27-20-01 to 27-20-59 (Supp. 1971).
4. VT. STAT. ANN. tit. 33, §§ 631-666 (Supp. 1971).
5. UNIFORM JUVENILE COURT ACT § 33(a).
6. UNIFORM JUVENILE COURT ACT § 59.
7. UNIFORM JUVENILE COURT ACT § 27(b).
8. UNIFORM JUVENILE COURT ACT §§ 19-21.
9. UNIFORM JUVENILE COURT ACT §§ 22-23.
10. *In re* Gault, 387 U.S. 1 (1967).
11. *Id.* at 33-34.

the Supreme Court in *Gault* was the right to confront and cross-examine witnesses.[12] The Act fulfills these requirements by providing that:

> A party is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine adverse witnesses.[13]

Kent v. United States[14] was the first Supreme Court case to consider procedural safeguards for juveniles. This case held that a valid waiver of jurisdiction by the Juvenile Court of the District of Columbia required "[A] hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and . . . a statement of reasons for the Juvenile Court's decision."[15] The opinion in *Kent* emphasized that the basic requirement of due process and fairness must be satisfied in juvenile proceedings, but the decision itself turned on the language of a federal statute.[16] The Uniform Juvenile Court Act establishes a procedure for waiver of jurisdiction by the juvenile court and transfer to other courts.[17] This procedure includes a full hearing on whether the transfer should be made,[18] a requirement of giving notice in writing,[19] and guidelines for the juvenile court to follow in the determination of whether jurisdiction should be transferred to another court.[20] The comment to the Act states that these provisions were an attempt to meet the constitutional requirements set out in *Kent*.[21]

These prior considerations lead to an examination of the stated purposes of the Uniform Juvenile Court Act. The prefatory note to the Act refers to the decisions in *Kent* and *Gault* as setting forth due process and constitutional requirements in juvenile proceedings.[22] It further states that the Uniform Juvenile Court Act was drawn to meet the mandates of these decisions and that:

> [T]he Act provides for judicial intervention when necessary. . . for the treatment and rehabilitation of delinquent and unruly children, . . . under defined rules of law and through fair and constitutional procedure.[23]

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12. *Id.* at 56-57.
13. UNIFORM JUVENILE COURT ACT § 27(a).
14. Kent v. United States, 383 U.S. 541 (1966).
15. *Id.* at 557.
16. D.C. CODE § 11-1553 (Supp. V, 1966).
17. UNIFORM JUVENILE COURT ACT § 34.
18. *Id.* at § 34(a)(2).
19. *Id.* at § 34(a)(3).
20. *Id.* at § 34(a)(4).
21. *Id.* at § 34, Comment.
22. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 246 (1968).
23. *Id.* at 246-247.

The text of the Uniform Juvenile Court Act provides that it shall be construed to effectuate the following purpose:

> [T]o provide a simple judicial procedure through which this Act is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced. . . .[24]

Numerous questions arise concerning the stated purpose of the Uniform Juvenile Court Act, however, five issues appear to dominate in the area of constitutional safeguards for juveniles: (1) Right to Counsel, (2) Waiver and Self Incrimination, (3) Double Jeopardy, (4) Standard of Proof, and (5) Jury Trial. In light of the stated purpose, this analysis will examine the Uniform Juvenile Court Act in relation to these five areas.

I. *Right to Counsel*

The question of a juvenile's right to counsel in a juvenile court proceeding has been approached in a variety of ways. The United States District Court for the District of Columbia held that when a child commits an act which would be a crime if committed by an adult, due process requires that the child be advised of his right to assistance of counsel in a juvenile court proceeding.[25] Another District of Columbia case, *McDaniel v. Shea*,[26] held that when a child's liberty is at stake, the right to counsel exists in juvenile court proceedings, and, in light of the juvenile court's denial of the mother's request that an attorney be appointed, the District Court erred in dismissing the habeas corpus petition.[27] A New York case, *In re Anonymous*,[28] determined that juvenile delinquency proceedings in Family Court, by statute, require advice to the juvenile of his right to counsel.[29] A California appellate court held that it is not enough to advise the minor of his right to counsel. Rather, the judge must personally ascertain at the outset of the hearing, from the minor and his parents, whether they desire counsel, and if the charge is of felony proportion, the judge must make it clear that counsel will be appointed if they can not afford one.[30] The Supreme Court of California vacated the judgment on the grounds that the trial judge had complied with the above requirements.[31]

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24. UNIFORM JUVENILE COURT ACT § 1(4).
25. *In re* Poff, 135 F. Supp. 224 (D.D.C. 1955).
26. McDaniel v. Shea, 278 F.2d 460 (D.C. Cir. 1960).
27. *Id.* at 463.
28. *In re* Anonymous, 37 Misc. 2d 827, 238 N.Y.S.2d 792 (Nassau County Fam. Ct. 1962).
29. *Id.* at 797.
30. *In re* Patterson, 22 Cal. Rptr. 807 (3rd Cal. App. 1962).
31. *In re* Patterson, 58 Cal. 2d 848, 377 P.2d 74, 27 Cal. Rptr. 10 (1962), *cert. denied*, 374 U.S. 838 (1963).

Other jurisdictions have taken an opposite approach regarding the right to counsel in juvenile court. The Florida District Court of Appeals held that the legislature did not intend that juveniles should have the right to engage counsel in juvenile court proceedings or have counsel provided, and, although the juvenile was to be committed to an institution for the period of his minority, no violation of due process existed because constitutional rights guaranteed to one accused of a crime do not apply in juvenile proceedings, since such proceedings are noncriminal.[32] In line with this reasoning, the Supreme Court of Ohio held that if a juvenile commits an act that would be a felony if committed by an adult, the juvenile is not entitled to representation by counsel, because juvenile proceedings are civil in nature and not criminal.[33]

The United States Supreme Court appeared to have resolved the problem by giving juveniles the right to counsel in juvenile proceedings.[34] The Supreme Court in *Gault* held that:

> [T]he Due Process clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's rights to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.[35]

The language of the *Gault* decision, however, refers to hearings to determine delinquency, which may result in curtailment of freedom by commitment to an institution. While the spirit of *Gault* would imply the existence of the right to counsel in all juvenile proceedings, it is arguable that the right to counsel may not exist in juvenile proceedings that are not dealing with delinquency[36] or which will not result in institutionalization. This reasoning was followed by the Supreme Court of New Mexico in *State v. Acuna.*[37] The court held that a juvenile did not have the right to counsel in a juvenile court hearing which was held for the purpose of determining whether the juvenile should be certified or transferred to district court for criminal proceedings. After the decision in *Gault*, a motion for rehearing was made. The New Mexico Supreme Court considered its decision in light of *Gault.*[38] The court concluded that nothing in *Gault* re-

32. In the Interest of T.W.P., 184 So.2d 507 (Fla. App. 1966).
33. Cope v. Campbell, 175 O.S. 475, 196 N.E.2d 457 (1964).
34. *In re* Gault, 387 U.S. 1 (1967).
35. *Id.* at 41.
36. UNIFORM JUVENILE COURT ACT § 2(3) defines a "delinquent child" as a child who has committed a delinquent act and is in need of treatment or rehabilitation.
37. State v. Acuna, 78 N.M. 119, 428 P.2d 658 (1967).
38. *Id.* at 659.

quired it to alter its conclusion because the juvenile proceeding in *Gault* was for the purpose of determining delinquency, while the juvenile hearing in *Acuna* was for the purpose of certification or transfer for criminal proceedings.[39] The denial of the motion for rehearing in *Acuna* is an illustration of how the right to counsel provision in *Gault* may be circumscribed by strict application of the factual situation.

The Uniform Juvenile Court Act provides a solution to the question of a juvenile's right to counsel. The Act provides that:

> [A] party is entitled to representation by legal counsel at all stages of any proceeding under this Act and if as a needy person he is unable to employ counsel, to have the court provide counsel for him.[40]

The comment to the Act states that due process requires the appointment of counsel for needy children charged with delinquency,[41] but the text itself goes much further than this. A party is entitled to representation by counsel in all stages of any proceeding, which logically would include not only delinquency hearings but also unruly child and deprived child hearings, regardless of the fact that the dispositions and curtailment of the child's freedom vary under each of the above categories.[42] The Act also provides for separate counsel if the interests of two or more parties conflict.[43] In particular, this provision would allow for the child and parent to each have his own counsel in a hearing to establish whether or not a child is deprived. In view of the preceding provisions of the Uniform Juvenile Court Act, it is apparent that a juvenile's constitutional right to counsel would be satisfied by the Act.

II. *Waiver and Self Incrimination*

The extent of a juvenile's right against self incrimination in juvenile court proceedings has been given numerous interpretations by different courts. One view has been to focus on the due process aspects of confessions, rather than the extent of a juvenile's privilege against self incrimination. These courts have excluded confessions or admissions by juveniles because the circumstances surrounding the taking of the confession amounted to a violation of due process.[44]

The United States Court of Appeals for the District of Columbia has focused on the waiver of jurisdiction by the juvenile court, and

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39. *Id.* at 660-661.
40. UNIFORM JUVENILE COURT ACT § 26(a).
41. *Id.* at § 26, Comment.
42. UNIFORM JUVENILE COURT ACT §§ 30-32.
43. UNIFORM JUVENILE COURT ACT § 26(a).
44. Gallegos v. Colo., 370 U.S. 49 (1962); *In re* W., 19 N.Y.2d 55, 224 N.E.2d 102, 277 N.Y.S.2d 675 (1966).

has held that when a juvenile makes his confession prior to the waiver of jurisdiction, the confession can not be used against him in a subsequent criminal trial.[45] The Supreme Court of Oregon took an opposite view and held that a voluntary statement by a juvenile obtained while under juvenile jurisdiction was admissible in a criminal prosecution.[46] The court said:

> It can not be said that a juvenile can not waive constitutional rights as a matter of law. It may be more difficult to prove because of his age, but it is a factual matter to be decided by the trial judge in each case.[47]

A Pennsylvania case held that in a juvenile delinquency proceeding there is no right against self incrimination.[48] The court said:

> Juvenile Courts *are not criminal courts,* the constitutional right granted to persons accused of *crime* are not applicable to children brought before them. . . .[49]

The United States Supreme Court has conclusively decided the question of self incrimination by holding that the constitutional privilege against self incrimination is as applicable in the case of juveniles as it is with respect to adults.[50] The Uniform Juvenile Court Act fully complies with this constitutional requirement by providing that a child charged with a delinquent act need not be a witness against or otherwise incriminate himself.[51] The Act also protects against invalid confessions by providing that: "[Statements] which would be constitutionally inadmissible in a criminal proceeding, shall not be used against him."[52] Apparently, the drafters of the Uniform Juvenile Court Act included the safeguards in the area of self incrimination in order that the Act would satisfy the constitutional requirements as set out by the Court in *Gault.*[53]

III. *Double Jeopardy*

The traditional view of juvenile delinquency proceedings has been that the proceedings are both noncriminal and non-penal in nature. Under this view there is a serious question of whether the constitutional protection against double jeopardy can ever be invoked in regard to a juvenile delinquency proceeding. The Texas Court of

45. Edwards v. United States, 330 F.2d 849 (D.C. Cir. 1964); Harling v. United States, 295 F.2d 161 (D.C. Cir. 1961).
46. State v. Gullings, 244 Ore. 173, 416 P.2d 311 (1966).
47. *Id.* at 315.
48. *In re* Holmes, 379 Pa. 599, 109 A.2d 523 (1954).
49. *Id.* at 525.
50. *In re* Gault, 387 U.S. 1, 55 (1967).
51. UNIFORM JUVENILE COURT ACT § 27(b).
52. *Id.*
53. *See* UNIFORM JUVENILE COURT ACT § 27, Comment.

Criminal Appeals held that where a juvenile was determined to be a delinquent in juvenile court and was subsequently convicted in a criminal court, it did not involve double jeopardy.[54] Judge McDonald, speaking for the Court, said:

> It is my view that the Juvenile Act and all hearings thereunder are civil and not criminal in nature. It necessarily follows that I do not believe that jeopardy attaches in juvenile courts as they are without jurisdiction of felony offenses.[55]

A number of other jurisdictions have followed this approach and held that a determination of delinquency in juvenile court followed by a conviction in criminal court does not involve double jeopardy, because juvenile proceedings are civil rather than criminal and no jeopardy attaches.[56]

Other jurisdictions have also held that proceedings in juvenile court do not place a child in jeopardy, reasoning that double jeopardy exists when a person is tried and punished twice for the same offense. They have further concluded that the juvenile court has no power to punish children. Rather, it seeks only to correct and rehabilitate. Lacking the power to punish, juvenile courts do not place a child in jeopardy, and there can be no double jeopardy for a later criminal conviction.[57] The question of double jeopardy in juvenile court proceedings came before the United States Court of Appeals for the District of Columbia, but that court declined to decide whether jeopardy could ever attach to a disposition made by a juvenile court.[58] Rather, the court held that no jeopardy attached in the juvenile proceeding in question because it was only a preliminary hearing with no adjudication involved.[59]

The United States Supreme Court in *Gault* did not make a determination as to whether or not jeopardy attaches to adjudication of delinquency in juvenile courts. However, an application of the reasoning in *Gault* would appear to require the result that jeopardy does attach in juvenile delinquency proceedings. The court reasoned that:

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54. *Ex parte* Martinez, 386 S.W.2d 280 (Tex. Cr. App. 1964).

55. *Id.* at 281.

56. People v. Silverstein, 121 Cal. App. 2d 140, 262 P.2d 656 (1953); State v. Smith, 75 N.D. 29, 25 N.W.2d 270 (1946); *In re* Santillanes, 47 N.M. 140, 138 P.2d 503 (1943); Dearing v. State, 151 Tex. Cr. R. 6, 204 S.W.2d 983 (1947). *See also* Hultin v. State, 171 Tex. Cr. R. 425, 351 S.W.2d 248 (1961); Martinez v State, 171 Tex. Cr. R. 443, 350 S.W.2d 929 (1961); *but see* Garza v. State, 369 S.W.2d 36 (Tex. Cr. App. 1963), which held that adjudication of juvenile delinquency in juvenile court and subsequent trial for murder in criminal court was a violation of fundamental fairness and a denial of due process.

57. Moquin v. State, 216 Md. 524, 140 A.2d 914 (Md. App. 1958); *In re* Smith, 114 N.Y.S.2d 673 (Dom. Rel. Ct. 1952).

58. United States v. Dickerson, 271 F.2d 487 (D.C. Cir. 1959).

59. *Id.* at 490, 491.

> A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.[60]

In its consideration of the question of self incrimination, the Court used arguments that could also apply to the issue of double jeopardy. The Court said:

> It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to "criminal" involvement. In the first place, juvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal." . . . To hold otherwise would be to disregard substance because of the feeble enticement of the "civil" label-of-convenience which has been attached to juvenile proceedings.[61]

The above reasoning of *Gault*, although not itself directed towards the issue of double jeopardy, would appear to have invalidated the arguments used in other jurisdictions, that jeopardy does not attach in juvenile delinquency proceedings because the juvenile court has no power to punish or that the court is civil rather than criminal in nature. However, it is still unclear how the *Gault* decision will be applied in affecting the outcome of double jeopardy questions arising from juvenile delinquency proceedings.

The Uniform Juvenile Court Act provides a solution to the problem of double jeopardy which might arise by adjudication of delinquency in juvenile court and subsequent conviction in criminal court. Although the Act does not direct itself to the question of whether or not jeopardy applies in juvenile delinquency proceedings, it protects the juvenile against double jeopardy through its jurisdictional and procedural requirements. Initially, the Act provides that the juvenile court has exclusive original jurisdiction of the proceedings governed by the Act.[62] Another section provides the procedure by which the juvenile court having jurisdiction can waive such jurisdiction and transfer the offense for prosecution in the appropriate court.[63] The Act provides that:

> The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts. . . .[64]

It further provides that:

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60. *In re* Gault, 387 U.S. 1, 36 (1967).
61. *Id.* at 49-50.
62. UNIFORM JUVENILE COURT ACT § 3(a).
63. UNIFORM JUVENILE COURT ACT § 34(a).
64. *Id.* at § 34(b).

> No child, either before or after reaching 18 years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.[65]

These sections construed together provide that the juvenile court has exclusive original jurisdiction of delinquent acts, that no child can be prosecuted in any criminal court unless the juvenile court has transferred its jurisdiction over the offense to the appropriate criminal court, and that a transfer by the juvenile court terminates its jurisdiction over the child. Thus, under no circumstances can both the juvenile and criminal court have jurisdiction over the child, and the adjudication by either of these courts necessarily excludes adjudication by the other.

IV. *Standard of Proof*

The issue concerning standard of proof in juvenile proceedings is a very critical one in regard to providing fair treatment and constitutional rights to juveniles, if only for the frequency by which the "beyond-a-reasonable-doubt" standard of proof is not applied in juvenile delinquency proceedings. A study by the National Council on Crime and Delinquency has found that:

> Since delinquency proceedings are noncriminal in nature, the majority position holds that they should be governed by the preponderance of the evidence rule. The minority position holds that beyond a reasonable doubt should apply since personal liberty is at stake and the imposition of criminal sanctions may be the ultimate result.[66]

The Council suggests that the standard of proof in juvenile court should be "clear and convincing evidence."[67]

A number of cases in various jurisdictions have held that the "beyond-a-reasonable-doubt" standard is not required in juvenile delinquency adjudications—rather, "preponderance of the evidence" is the proper standard.[68] A contrary view was taken by the Supreme Court of Virginia which held that delinquency judgments required proof that leaves no reasonable doubt.[69]

Although the United States Supreme Court in *Gault* did not decide the question of standard of proof in juvenile delinquency ad-

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65. *Id.* at § 34(c).
66. W. SHERIDAN, STANDARD FOR JUVENILE AND FAMILY COURTS 72 (1966).
67. *Id.*; NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURTS 57 (1969).
68. *In re* Smith, 21 A.D.2d 737, 249 N.Y.S.2d 1016 (1964); *In re* Moon, 20 A.D.2d 622, 244 N.Y.S.2d 865 (1963); *In re* Anonymous, 37 Misc. 2d 827, 238 N.Y.S.2d 792 (Nassau County Fam. Ct. 1962).
69. Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444, 447 (1946).

judications, it did hold that the hearing must measure up to the essentials of due process and fair treatment.[70] The question then arises whether the constitutional rights in juvenile proceedings which were required by *Gault* also imply a constitutional requirement that a juvenile be found delinquent by the beyond a reasonable doubt standard. The District of Columbia Court of Appeals considered the question in light of the *Gault* decision[71] and held that the stricter criminal law concept of proof beyond a reasonable doubt is unnecessary and improper in a juvenile court proceeding.[72] A number of cases from other jurisdictions have decided that *Gault* did not require proof beyond a reasonable doubt and that preponderance of the evidence was the proper standard of proof in juvenile delinquency proceedings.[73]

Other courts considering the problem of standard of proof for determining juvenile delinquency, in light of *Gault*, have reached different conclusions. The United States Fourth Circuit Court of Appeals held that when a juvenile is subjected to possible institutional commitment the proceeding may be regarded as criminal, and proof must be established beyond a reasonable doubt.[74] A Supreme Court of Illinois case, *In re Urbasek*,[75] recognized that other courts had interpreted *Gault* differently, but the Illinois court looked to the spirit of *Gault* and said that it would require that:

> [A] finding of delinquency for misconduct, which would be criminal if charged against an adult, is valid only when the acts of delinquency are proved beyond a reasonable doubt to have been committed by the juvenile charged.[76]

The Uniform Juvenile Court Act attempted to solve the standard of proof problem by the use of two different standards. The first standard applies where the juvenile is alleged to be a delinquent or unruly child. The Act provides:

> If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent or unruly. . . .[77]

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70. *In re* Gault, 387 U.S. 1, 30 (1967).
71. *In re* Wylie, 231 A.2d 81 (D.C. App. 1967).
72. *Id.* at 84.
73. *In re* M., 70 Cal. 2d 460, 450 P.2d 296, 75 Cal. Rptr. 1 (1969); *In re* Ellis, 253 A.2d 789 (D.C. App. 1969); State v. Arenas, 253 Ore. 215, 453 P.2d 915 (1969); State v. Santana, 444 S.W.2d 614 (Tex. 1969). *See also* DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968), in which the Supreme Court of Nebraska held the juvenile statute providing for no jury trial and proof of delinquency by preponderance to be unconstitutional in a 4-3 decision. But, the NEB. CONST. art. V, § 2, provides in part: "No legislative act shall be held unconstitutional except by the concurrence of five judges." Therefore, preponderance was, in effect, found to be the standard of proof for juvenile delinquency in Nebraska.
74. United States v. Constanzo, 395 F.2d 441 (4th Cir. 1968).
75. *In re* Urbasek, 38 Ill. 2d 535, 232 N.E.2d 716 (1967).
76. *Id.* at 719.
77. UNIFORM JUVENILE COURT ACT § 29(b).

The second standard is that of clear and convincing evidence, and applies in proceedings to determine whether the child is deprived.[78] After a juvenile has been found delinquent or unruly beyond a reasonable doubt, the juvenile court then uses the clear and convincing evidence standard to determine whether that child is in need of treatment or rehabilitation.[79] The Act notes that the beyond a reasonable doubt standard for juvenile delinquency proceedings was an attempt to comply with the *Gault* and *Urbasek* decisions.[80]

At the time the Uniform Juvenile Court Act was first enacted by North Dakota, the question of standard of proof for juvenile delinquency proceedings had not been finally determined. Since then, the United States Supreme Court has, indirectly, given its approval to the position taken by the Uniform Juvenile Court Act. The Supreme Court in 1970 held that the essentials of due process and fair treatment require that, during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult, proof must be established beyond a reasonable doubt.[81] The Supreme Court provided:

> [T]he constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of delinquency proceeding as are those constitutional safeguards applied in *Gault*. . . .[82]

V. *Jury Trial*

The right to a trial by jury in a juvenile proceeding has received limited support in the courts. An Oklahoma case, *Ex parte Lewis*,[83] held that a child has the right to a jury trial in juvenile delinquency proceedings, but that right is by virtue of statute only.[84] The Montana Supreme Court looked to the *Lewis* decision and held that where juveniles make a demand for jury trial, a jury trial must be provided.[85]

The prevailing view, at this time, is that there is no right to a jury trial in juvenile proceedings. An early Pennsylvania Supreme Court case held that a jury trial is not a constitutional right in juvenile proceedings.[86] This court said:

> Whether the child deserves to be saved by the state is no

78. UNIFORM JUVENILE COURT ACT § 29(c).
79. *Id.*
80. UNIFORM JUVENILE COURT ACT § 29, Comment.
81. *In re* Winship, 397 U.S. 358 (1970).
82. *Id.* at 368.
83. *Ex parte* Lewis, 85 Okl. Cr. 322, 188 P.2d 367 (1947).
84. *Id.* at 382.
85. Application of Banschbach, 323 P.2d 1112 (Mont. 1958).
86. Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905).

> more a question for a jury than whether the father, if able to save it, ought to save it.[87]

A more recent Pennsylvania case, *Commonwealth v. Johnson*,[88] also held that there is no right to jury trial in juvenile proceedings. The court stated that *Gault* did not intend "[T]o undermine the basic philosophy, idealism and purposes of the juvenile court."[89] Accordingly, the court rejected the juvenile's request for a jury trial. Case law in general, from other jurisdictions, is in support of the latter view.[90]

At the time of the promulgation of the Uniform Juvenile Court Act, neither the Federal Courts nor the United States Supreme Court had held that there was a constitutional right to a jury trial in juvenile proceedings. In *Nieves v. United States*,[91] the Federal District Court for the Southern District of New York allowed a jury trial for a juvenile who had allegedly committed acts in violation of the laws of the United States. The juvenile was allowed to determine whether his trial was to be in federal court or in a juvenile court, and he was entitled to a jury trial in either case. This case, however, was decided on the basis of the Federal Juvenile Delinquency Act and did not decide that a jury trial is a constitutional right in juvenile proceedings. One section of the Federal Statute provides that:

> [A juvenile] shall be proceeded against as a juvenile delinquent if he consents to such procedure, unless the Attorney General, in his discretion, has expressly directed otherwise.[92]

Another section provides:

> The proceeding shall be without a jury. The consent required to be given by the juvenile shall be given by him in writing. . . . Such consent shall be deemed a waiver of a trial by jury.[93]

The *Nieves* Court held that if the juvenile sought privileges accorded under juvenile proceedings, it would be deemed a waiver of jury trial, and this was an impermissible choice. The Federal Act was found unconstitutional to the extent that it required the juvenile defendant to waive jury trial in order to proceed under it, and his waiver of jury trial would not stand.[94]

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87. *Id.* at 200.
88. Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967).
89. *Id.* at 17.
90. Martin v. State, 213 Ark. 507, 211 S.W.2d 116 (1948); *Ex parte* Daedler, 194 Cal. 320, 228 P. 467 (1924); Shone v. State, 237 A.2d 412 (Me. 1968); State v. Brown, 50 Minn. 353, 52 N.W. 935 (1892). *See also, In re* Perham, 104 N.H. 276, 184 A.2d 449 (1962).
91. Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y. 1968).
92. 18 U.S.C. § 5032 (1964).
93. 18 U.S.C. § 5033 (1964).
94. Nieves v. United States, 280 F. Supp. 994, 1006 (S.D.N.Y. 1968).

The United States Supreme Court has been reluctant to decide questions involving the right to trial by jury. In *Duncan v. Louisiana*,[95] the Court held that a state can not deny a request for jury trial in a serious criminal case. In *Bloom v. Illinois*,[96] the Court extended the right to trial by jury to include trials for serious criminal contempts. An appeal from the Supreme Court of Nebraska, *DeBacker v. Brainard*,[97] placed the question of the constitutional right to a jury trial in juvenile proceedings before the United States Supreme Court. The Court dismissed the appeal without deciding the question. A previous Supreme Court decision, *DeStefano v. Woods*,[98] held that the Court would not reverse state convictions for failure to grant jury trials where the trials began prior to May 20, 1968, the date of the Court's decision in *Duncan* and *Bloom*. Since the juvenile court hearing in *DeBacker* was held on March 28, 1968, the Supreme Court dismissed the appeal.[99]

The Uniform Juvenile Court Act does not allow a trial by jury in juvenile proceedings. The Act provides:

> Hearings under this Act shall be conducted by the court without a jury, in an informal but orderly manner. . . .[100]

If this Uniform Act were adopted by all the states it would settle the controversy as to the constitutional right to jury trial in juvenile proceedings by denying jury trial in all such proceedings. This view, however, may not be the best or most beneficial one. When the Uniform Juvenile Court Act was first promulgated it was arguable that the juvenile should be given a choice or option of demanding a jury trial, which could be exercised with the aid of counsel. At that time, there was a strong possibility that the United States Supreme Court might decide that a jury trial in juvenile proceedings was a constitutional right. In *Kent*, the Court emphasized that juvenile proceedings must measure up to the essentials of due process and fair treatment.[101] The Court in *Gault* applied a number of constitutional safeguards to juvenile proceedings, restating the *Kent* requirement that the hearing measure up to the essentials of due process and fair treatment.[102] *Gault* also stated that a delinquent subject to loss of liberty is comparable in seriousness to a felony,[103] and the civil label-of-convenience attached to juvenile proceedings does not justi-

95. Duncan v. La., 391 U.S. 145 (1968).
96. Bloom v. Ill., 391 U.S. 194 (1968).
97. DeBacker v. Brainard, 396 U.S. 28 (1969).
98. DeStefano v. Woods, 392 U.S. 631, 635 (1968).
99. DeBacker v. Brainard, 396 U.S. 28, 30 (1969).
100. UNIFORM JUVENILE COURT ACT § 24(a).
101. Kent v. United States, 383 U.S. 541 (1966).
102. *In re* Gault, 387 U.S. 1, 30 (1967).
103. *Id.* at 36.

fy denial of constitutional rights.[104] Mr. Justice Black in *DeBacker v. Brainard*[105] stated in his dissenting opinion that there should be a constitutional right to a jury trial in delinquency proceedings. Mr. Justice Douglas, also dissenting in *DeBacker* stated that:

> I would reach the merits and hold that the Sixth and Fourteenth Amendments require a jury trial as a matter of right where the delinquency charged is an offense which, if the person were an adult, would be a crime triable by jury.[106]

In view of these developments in the area of juvenile law, at the time that the Uniform Juvenile Court Act was enacted, it seemed possible or even probable that the provision denying a right to jury trial in juvenile proceedings might be found unconstitutional by the United States Supreme Court in the near future.

The United States Supreme Court in *McKeiver v. Pennsylvania*[107] reversed or ended the previous trend of extending procedural safeguards and constitutional rights in regard to jury trials for juveniles. A number of consolidated cases were before the Court, the question being whether a constitutional right to a jury trial existed in juvenile court proceedings. The majority attempted to ascertain the precise impact of the due process requirement[108] and concluded that jury trial was not a constitutional requirement in the juvenile court's adjudicatory stage. The Court held:

> If, in its wisdom, any State feels that jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation.[109]

In its opinion the majority cites the Uniform Juvenile Court Act as stopping short of providing jury trial in juvenile proceedings.[110]

The dissent, in which three justices joined, argued that if the state uses juvenile court procedures to prosecute for committing a criminal act and to order confinement until the child reaches twenty-one years of age, then he is entitled to the same procedural protections as an adult.[111] The majority, on the other hand, reasoned that a jury trial as a matter of right in juvenile court proceedings would bring with it into that system the delay, the formality, the clamor of the adversary system and, possibly, the public trial.[112] They

104. *Id.* at 50-51.
105. DeBacker v. Brainard, 396 U.S. 28, 33-34 (1969).
106. *Id.* at 35.
107. McKeiver v. Pa., 403 U.S. 528 (1971).
108. *Id.* at 541.
109. *Id.* at 547.
110. *Id.* at 549.
111. *Id.* at 559.
112. *Id.* at 550.

conclude that a jury trial is not appropriate in the juvenile setting, and that there is no constitutional right to jury trial in juvenile court proceedings.

Conclusion

A trend towards the granting of constitutional safeguards and rights in juvenile proceedings has been underway in recent years. The Uniform Juvenile Court Act has attempted to meet the mandate of these constitutional requirements by recognizing and enforcing the juvenile's constitutional and legal rights. The Act, at the present time, has satisfied all the constitutional requirements that have been set out by court decisions. Initially, the failure to provide for a jury trial in juvenile proceedings appeared to be a deficiency in the Act, which might have subsequently caused the Act to be found lacking in its stated purpose. Perhaps it might have been asking too much of a Uniform Act to require it to provide for a jury trial when, in effect, the Act would be required to make findings in advance of what the courts had been willing to do at the time that the Uniform Juvenile Court Act was written. In any event, the position of the Act in failing to provide for jury trial was vindicated by the Supreme Court in *McKeiver*. It might still be argued that a jury trial is a procedural safeguard that should be provided for juveniles even though not a constitutional requirement, but the Act presently complies with case law, and the provision in the Act could easily be amended if case law should change or if jury trial might someday be considered a necessary procedural safeguard in juvenile proceedings, although not a constitutional right.

Another view as to the focus of juvenile proceedings has been given by Judge Lindsay G. Arthur.[113] Judge Arthur recognizes the necessity of due process and fairness requirements in the adjudicatory process, but he feels that it is the area of disposition that is most important to the juvenile court. He states that:

> THE ESSENCE, the elemental distinction, of the Juvenile Court is the disposition: the individualized treatment, the proffer of help, the prospective rehabilitation as the only real protection for society.[114]

He continues to say:

> Improving the dispositional process is the one best means to improve the Court and its image and to meet its critics and its challengers.[115]

113. Arthur, *The Forgotten Focus*, 21 JUV. CT. J. 71 (1970).
114. *Id.*
115. *Id.* at 72.

The Hon. Eugene A. Burdick,[116] has served as a juvenile court judge under the Uniform Juvenile Court Act as enacted by North Dakota. Judge Burdick referred to the Informal Adjustment provision in the Act[117] and stated that he felt it was the most important provision in the Act.[118] It allows the juvenile supervisor, by agreement of the parties, to counsel, advise, and attempt to rehabilitate the juvenile without a hearing or adjudicatory procedure. In effect, this would provide a disposition and possible rehabilitation without involving the parties in questions of constitutional and legal rights that must be provided in adjudicatory proceedings. The constitutional safeguards and procedures contained in the Uniform Juvenile Court Act can serve as a necessary foundation to provide for fairness in juvenile proceedings and assure juveniles all the legal rights and privileges that are enjoyed by adults. However, after the basic foundation of constitutional safeguards has been laid, it is only in the areas of disposition and treatment of juveniles that a more final and lasting solution will be found.

DAVID L. WANNER

116. District Judge, Fifth Judicial District, Williston, North Dakota.
117. UNIFORM JUVENILE COURT ACT § 10.
118. Telephone Conversation with the Hon. Eugene A. Burdick, March 15, 1971.