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A STUDY AND EVALUATION OF THE JUVENILE COURT—ITS PROCEDURE AND FACILITIES IN NORTH DAKOTA

HON. RAY R. FRIEDERICH*

When Justice Fortas of the United States Supreme Court wrote in the *Kent Case*:¹

There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children

he triggered a bombshell in the juvenile court world which in turn has set off a pyrotechnic display among judges of juvenile courts, legal scholars and social-minded citizens which would make the fireworks on D-Day at Normandy look like a commando raid. Prior to this decision the juvenile court, in the minds of most judges and legal scholars, was the very exemplification of judicial excellence. If juvenile delinquency were not such a national concern and the juvenile court not such an indispensable part of our judicial system, the sanctimonious and pontificating statements by judges and legal writers concerning the *Kent* decision would be amusing.

In the chronology of events it will be remembered that before the judiciary could recover from even the initial shock of the *Kent* case there came a second blow in the report of the *President's Commission on Law Enforcement and Administration of Justice*.² The *Kent* case made it crystal clear that proceedings in juvenile court were *legal proceedings* and that the theory of any legal proceeding is based upon the concept of due process, a concept which in the juvenile court's zealotry to "do good" was sometimes overlooked. In the *President's Crime Commission Report*, the colossal task facing the juvenile court and its unsatisfactory performance

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1. *Kent v. United States*, 383 U.S. 541, 556 (1966).

2. REPORT OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967) (hereinafter referred to as *President's Crime Commission Report*).

was pointed out. As though this were not enough to jar the most apathetic and complacent of juvenile judges, there followed close on the heels of the *Kent* case and the *President's Crime Commission Report* an even greater shock in the United States Supreme Court decision, *In re Gault*.³ The decision in this case proceeded to reiterate the principles outlined in the *Kent* case. Not only did it restate much of what was found inadequate with the juvenile court in the *President's Crime Commission Report*, but quoted at length from it, and then proceeded to state in forceful language that the traditional Constitutional safeguards, with few exceptions, which had heretofore been deemed mandatory only in adult criminal cases, would have to be applied to that portion of a juvenile court proceeding which concerned itself with the determination of whether juvenile court jurisdiction did or did not attach.

With such an onslaught it is not surprising that those more directly responsible for the juvenile court in North Dakota were both complimented and comforted by the conclusions reached by Professor James P. White when he wrote in an earlier issue of the *North Dakota Law Review*:⁴

The ultimate effect of the *Gault* decision on the operation of the Juvenile Court system in North Dakota is not one which does violence to the operation of the juvenile court within its North Dakota framework. It is one of a number of decisions in both federal and state courts which have forecast changes in the operation of the juvenile court. The court has not ceased to exist nor have its functions been drastically changed or diminished. Rather *Gault*, like others involving the operation of juvenile courts, is one of achieving both the due process concept of fundamental fairness and continuing the traditional *parens patriae* concept of serving the best interest of the juvenile. This then must continue to be the goal and aspiration of the juvenile court.

Perhaps one of the reasons for Professor White's conclusions is the fact that judicial annals in North Dakota contain at least one case which is something of a parallel to *Gault*. Over 40 years before the *Gault* decision the North Dakota Supreme Court, speaking through Judge Johnson in *Ex parte Solberg*,⁵ exhibited an understanding of juvenile court philosophy and outlined procedural prerequisites which even by today's standards are exemplary. Undoubtedly this case has served as a guide for juvenile courts in this state since its rendition.

3. 387 U.S. 1 (1967).

4. White, *The Juvenile and the Court: A Continuing Dialogue*, 44 N.D. L. Rev. 211 (1968).

5. 52 N.D. 518, 203 N.W. 898 (1925).

In passing upon an application for a writ of habeas corpus in behalf of a juvenile committed to the State Training School in the absence of a formal petition, notice to both parents and findings and conclusions of law by the juvenile judge, the Court said:

It is inconceivable that the legislature intended to give any tribunal the power to separate parent and child, without first giving the parent notice and an opportunity to be heard.⁶

Shortly after the *Solberg* case our Court again had occasion to review the adequacies (or inadequacies) of juvenile court procedure in the case of *State v. Schelin*.⁷ In this case a commitment to the State Training School was challenged on the grounds that the informal hearing before the juvenile commissioner in which the district judge participated to a limited extent was not substantial compliance with the statutory requirements for such a hearing. The Court said:

From the various provisions of the Juvenile Court Law, to which reference has been made, it seems clear the legislature never contemplated that the juvenile commissioner should have any authority to change permanently the natural guardianship of a child, or to make anything more than a temporary order affecting its custody or control, and it is equally clear that these acts do not disclose any legislative intention that orders of such moment should be made by a judge of the district court who is also the judge of the juvenile court, except at the end of a hearing. This, of course, means a hearing conducted in accordance with *due process of law where the interested parties shall be permitted to hear the evidence against them and be given an opportunity to refute it*.⁸

That the informalities for which the juvenile court in recent years has been censured nationally was never sanctioned in North Dakota at the expense of constitutional prerequisites is evident when the Court concluded in the *Schelin* case by saying:

The record shows such a clear departure from the orderly proceedings outlined in the governing statutes and such a complete lack of a hearing in accordance with due process of law that the judgement of commitment cannot be allowed to stand.⁹

It is interesting to note that not only was our Court concerned

6. *Id.* at 524, 203 N.W. at 900.

7. 59 N.D. 386, 230 N.W. 9 (1930).

8. *State v. Schelin*, 59 N.D. 386, 391, 230 N.W. 9, 11 (1930) (*emphasis added*).

9. *Id.* at 391, 230 N.W. at 11.

about compliance with the statute, but it left no doubt that it is a basic jurisdictional prerequisite that even before the juvenile court hearing, a summons and petition must be issued, the juvenile judge must endorse on the petition a directive that it be filed, and this summons and petition must be served upon the juvenile and his parents. In view of these historic decisions there is justification for the statement that the *Gault* case would never have reached the Supreme Court in North Dakota.

Notwithstanding either the earlier North Dakota Supreme Court decisions or the expression of confidence by Professor White, the juvenile court was not considered beyond improvement or its results completely satisfactory. Even before the *Gault* or the *Kent* cases a committee of the Judicial Council was examining the North Dakota Juvenile Code, and questioning the suitability of the facilities which the state provided for dispositional alternatives where juvenile court jurisdiction was being exercised. Mr. Justice Fortas was not referring to conditions unfamiliar to juvenile judges in North Dakota when he wrote in the *Kent* case:

There is much evidence that some juvenile courts, including that of the District of Columbia, lack personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation.¹⁰

Fortunately the juvenile court has traditionally enjoyed friends and willing helpers from outside of judicial circles. Its very inception came about because Chicago Women's Clubs, many of its members who were mothers, were appalled by the procedures and penalties imposed by a court system which made no distinction between adult and juvenile offenders.

More recent concern by a non-judicial group is expressed by the National Congress of Parents and Teachers. Initially this came about as the result of an experimental program sponsored jointly by the National Congress of Parents and Teachers and the National Association of Juvenile Court Judges. Conferences were planned on a regional level and were first held in Florida and Pennsylvania. A subsequent regional conference in Milwaukee was attended by the President of the North Dakota Congress of Parents and Teachers. Juvenile court judges and representatives of the PTA were brought together in order that an insight might be given into the juvenile court which might otherwise not be possible. These regional conferences were expanded, and the invitation to juvenile judges of this state came from the North Dakota Congress of Parents

10. *Kent v. United States*, *supra* note 1 at 555, 556.

and Teachers for a similar conference in North Dakota. Judges were the first to admit that an organization made up of parents and teachers would be an ideal group to gain for the juvenile court the community support which it so desperately needs. The North Dakota conference was held in January of 1967 at the Industrial School in Mandan. Financed to a large extent like other conferences throughout the nation, from funds of the Sears Roebuck Foundation and with additional financial help from the North Dakota Bar Association, it afforded the participants an opportunity to hear the problems of the juvenile court directly from juvenile judges. They saw a moot juvenile court hearing, toured the Industrial School, talked to institutional staff from both private and state institutions, along with juvenile commissioners and social workers. The juvenile judges explained and the PTA representatives agreed that if the philosophy and the avowed purposes of the juvenile court were in fact fulfilled as they were originally intended, there would be no cause for criticism and no crisis within this segment of our judicial system. Just why this philosophy and this purpose was not in fact fulfilled could be blamed on many causes, but it was unanimously agreed that simply because it was not fulfilled was no reason to discard a laudable idea.

Out of this conference came the conclusion that before any constructive suggestions for an improved state program for the care and treatment of children in conflict with the law could be made, it would first be necessary to evaluate the facilities, procedures, and existing treatment programs now in existence by a responsible and competent agency. Perhaps not entirely by coincidence, the principal speaker at the Mandan Conference was Philip G. Green, Director of the Division of Juvenile Delinquency Service, Children's Bureau, Department of Health, Education & Welfare. Personnel from the Division of Juvenile Delinquency Service were offered by Mr. Green to make such a study, provided it was requested by the proper authority and local cooperation could be assured. The conclusions of the Mandan conference were converted into more formal action by the Judicial Council which shortly thereafter by resolution asked the Chief Justice of the North Dakota Supreme Court and the Governor to request such a study by specialists of the Division. The scope of the study was to include:

1. A review of the present state statutes relating to juvenile procedures with suggested modifications or amendments thereto;
2. An evaluation of our juvenile court procedures, probation services and training school programs;

3. A determination of need for detention and other temporary care of delinquent children.

The study¹¹ was undertaken in September of 1967 pursuant to the request of the Governor and the Chief Justice, and was completed in September of 1968. It was based upon extensive field work which involved observation of program operation, numerous interviews with staff at all levels, a review of social records, statistics, and legislation.

Such a study would necessarily include an examination of the existing juvenile court statutes, an evaluation of court procedures, probation services, programs of the State Industrial School and the existence of temporary detention facilities. Based upon these observations and the standards which are currently considered as minimal for a satisfactory juvenile court program, certain general and specific recommendations are contained in the report.

It will be the purpose of this article to review in capsule form the major findings and recommendations of the study with the ardent hope that it will stimulate the reader to the point of reading and digesting the entire report. The report contains concise and discriminative language which in many instances is incapable of being condensed without danger of losing the precise meaning or intent. The indented material that follows is taken verbatim from the report. The material that appears as text is a paraphrase of the report. Every effort has been made by this writer to relate the findings, conclusions, and recommendations of the study as objectively as possible. Under no circumstances is it intended that the report, or this abstract, reflects the thinking of the Judicial Council, the special Judicial Council committee appointed to assist in the study or any member of the Council or the committee.

Part I of the study contains three major findings and recommendations which in the opinion of this writer would mean very little, in fact might be misleading, if the rationale for such findings and recommendations could not be given, and for the further reason that specific findings and recommendations for which the rationale will be given make the major findings and recommendations obvious. In other respects the reference and the sequence in this article will follow the original report in order to make a cross reference by the reader easier.

11. U.S. DEPT. OF HEALTH, EDUCATION & WELFARE, SOCIAL AND REHABILITATION SERVICE, CHILDREN'S BUREAU, A STUDY OF SERVICES FOR THE CONTROL AND TREATMENT OF JUVENILE DELINQUENCY IN THE STATE OF NORTH DAKOTA (1968).

PART II
ORGANIZATION AND STRUCTURE OF SERVICES
FOR DELINQUENT CHILDREN

RECOMMENDATION:

1. A designated department of State government should be given the responsibility and needed funding for the provision and administration of facilities and services to delinquent children.

RATIONALE:

The trend in state administrative structures for services to children and youth has been directed toward consolidation. In twenty-two states in this country services have been consolidated into a separate department or division of a department providing other welfare services. One-third of all the states have actually completed reorganization of delinquency services.

The development of a program for delinquent children in a department other than welfare would mean the maintenance of two separate and complete, although in many respects, similar programs. Obviously, some duplication and competition would be inevitable even with considerable top-level coordination.

If the program for delinquent children is placed in the North Dakota Department of Welfare, duplication could be eliminated.

The job of providing services for delinquent children in some low populated states, such as North Dakota, may not justify the services of a full-time worker in a given area. Placing services for children in a department already carrying broad social service responsibilities would result in better coverage since local Welfare Department workers (including Area Social Service Centers) could be used to perform certain welfare (social-psychological) services for delinquent children.

The North Dakota Public Welfare Board through County Welfare Departments and Area Social Service Centers are now called upon to prepare predisposition studies in a number of jurisdictions.

RECOMMENDATION:

1. Upon a recommendation by the Juvenile Court that a child is in need of placement for care and treatment, legal custody should be given to the department. Department officials would be responsible for selecting that type of care needed to rehabilitate the child. Length of stay would be determined by the department. Periodic progress reports, at least every six months, should be

sent to the court. A revision of the juvenile court law defining legal custody and commitment will be necessary.

RATIONALE:

Custody to a State agency rather than a specific facility would permit more flexibility in the use of all other State services and facilities.

Since a child's need for treatment does not remain fixed or constant, it is difficult to determine the specific nature of treatment or care required by an adjudication of delinquency. Because of changing needs it is difficult for the Court to make a determination of the services required at the time of commitment.

The state agency should be subject to certain checks and procedural safeguards. It could not place a child outside of the state without court approval and would be responsible for periodic reviews of all children under its care.

A review of court orders committing children to the North Dakota State Industrial School indicated lack of uniformity and in many instances an absence of a full understanding of the Industrial School's function.

PART III

JUVENILE COURT AND PROBATION SERVICE¹²

Method of Study:

1. A review of current literature and standards for services to delinquent children and youth;
2. A review of juvenile court statistics prepared annually by the Public Welfare Board; annual reports of the Public Welfare Board; and *Imperiled Youth*,¹³ a study of juvenile delinquency in 15 rural counties in North Dakota;
3. Observation and study visits to nine communities in the six judicial districts;
4. A study of the North Dakota juvenile court law;
5. Reading social and legal files including transcripts of court hearings;
6. Attendance at court hearings held by judges and juvenile commissioners;
7. Interviews with judges, juvenile commissioners, local and state welfare officials; and

12. Jay Olson, Consultant, Juvenile Probation Services, Children's Bureau, Dept. of Health, Education & Welfare.

13. M. HOADLEY & O. GARDEBRING, *IMPERILED YOUTH: A STUDY OF JUVENILE DELINQUENCY IN 15 RURAL COUNTIES IN NORTH DAKOTA* (1960).

8. Use of survey questionnaires for courts, personnel profile schedules for juvenile commissioners and welfare employees.

Use of Juvenile Court

RECOMMENDATIONS:

1. Most children referred to juvenile court are routinely scheduled for "unofficial" hearing before a juvenile commissioner. There is no basis in law for such hearings and they should be immediately discontinued.
2. A majority of all referrals to the Juvenile Court do not involve serious crimes nor do the youth pose a serious threat to the community. Provision for screening cases and utilizing resources other than the court for most children is strongly recommended.
3. Juvenile Court jurisdiction is much too broad. Most any form of misconduct can be termed delinquency. The jurisdiction of the court should be limited and provide for an alternate method of processing children committing non-criminal offenses.

RATIONALE:

The juvenile court is a court, not a clinic, social agency, or rehabilitation center. It is a court with rules and procedures defined in the state statutes.

The juvenile court jurisdiction could best be described as an "umbrella type" jurisdiction. It encompasses a full range of juvenile misconduct and stamps "delinquency" upon violations of the criminal code and impish and prankish acts characteristic of children. Since nearly any youth could be brought within the jurisdiction of the juvenile court, it could have the effect of categorizing children as "delinquent" or "criminal" which in turn might cause the individual to think of himself as delinquent and to pattern his behavior accordingly.

One of the most significant findings of this study was the excessive use of the juvenile court for misbehaving children in North Dakota. Only one percent of the youths were referred for serious crimes against the person (murder, manslaughter, rape, sex offenses, assault, and robbery). Ten and four-tenths per cent were serious crimes against property, the remainder were known to the court for misdemeanors and offenses applicable to juveniles only. In this latter category were over 2,000 cases or approximately 26 per cent of all referrals. Hearings originating by petition were held in approximately 25 per cent of the cases, the remainder being conducted by juvenile commissioners, without petition. There is no provision in the

North Dakota Century Code for hearings without petition. Without the filing of a petition, the Court has no authority to act, and on the basis of records and reviews there is nothing to suggest a need for more official hearings (with petition).

Juvenile Commissioners

FINDINGS AND RECOMMENDATIONS:

1. The broad statutory powers of juvenile commissioners are at variance with other state juvenile court laws and recognized standards. Some of the powers permit inconsistent and inappropriate functions. In practice, wide variances in the commissioner's role and function were observed throughout the state. The North Dakota Century Code should be revised limiting the role of the juvenile commissioner to that of a hearing officer.
2. There are no educational or experience requirements for juvenile commissioners. Juvenile commissioners should be members of the bar preferably with experience in the practice of law.

RATIONALE:

Juvenile commissioners are unique only to North Dakota. Their closest counterpart are referees or masters in other states.

The vast majority of juvenile commissioners have no legal training. It is deplorable that a person having no legal education or training should be vested with coercive powers affecting basic legal and constitutional rights, including the deprivation of liberty.

No uniformity exists in educational background, experience, or salary among juvenile commissioners in North Dakota.

Probation Services

There are three essential components of juvenile probation services. They are intake, (a screening and referral process) pre-dispositional study and probation supervision.

Intake

RECOMMENDATIONS:

1. The receipt and review of complaints by juvenile commissioners for the juvenile court is an inappropriate function for a hearing officer. Intake is a probation service performed by probation officers. All complaints referred to the court should be screened by probation officers performing intake service.
2. The definition of preliminary inquiry in the North Dakota

juvenile court law is at variance with the standard acts and encompasses more study than is needed or necessary at intake. Preliminary inquiry should be re-defined in the law.

RATIONALE:

Intake service begins upon referral of a case to juvenile court. The initial step is then a preliminary inquiry—a review or evaluation of the facts. Its major function is to determine at the outset if there is evidence to indicate that a child is prima facie within the jurisdiction of the court. Further, the information supplied by the complaint should be sufficient to support the allegations of the petition. When a decision is made to take official action, a petition should allege the nature of the child's conduct which brings him before the court.

Since the decisions at intake often involve individual rights, such decisions should be subject to review.

The preliminary investigation of the home and the environment of a child suggests a much deeper involvement in the case than may be necessary or justified. Preliminary investigation should include review of the information submitted by the complainant, and necessary interviews with the family. Its purpose is to determine whether or not there is a prima facie case.

Petitions should not be prepared by court officials. A court through its own staff should not be the investigator, petitioner, and tribunal, determining the validity of its own petition.

There is little evidence that screening or a referral process comes into effect in North Dakota where virtually all cases come to the juvenile commissioner prior to processing by the juvenile court. In 1966 three out of every four cases were handled without petition.

Pre-Disposition Study

RECOMMENDATIONS:

1. There is inadequate staff for the preparation of pre-disposition studies. The preparation of studies should be included in the duties of probation officers available to several areas of the state.
2. The limited number of clinicians in the Area Social Service Centers creates delay in the preparation of reports for the court. Additional clinical service is needed in the centers to serve the needs of the court.

RATIONALE:

The pre-dispositional study is a background study of a child and

his family intended as a guideline for judicial disposition. It is during this period of study that the probation officers should utilize community resources and make many collateral contacts.

It is exceedingly important that the probation officer have the ability to recognize the need for calling upon others when professional diagnosis or treatment services are needed. This is particularly true in the use of psychological and psychiatric services.

Probation Supervision

RECOMMENDATION:

1. The supervision of children placed on probation is absent in most jurisdictions and inadequate in others. Probation supervision should be included in the duties of probation officers employed by the state in sufficient numbers to serve all areas.

Traffic Cases

RECOMMENDATION:

1. The increase in waiver of juvenile traffic cases to the adult courts and absence of demonstrated need for juvenile court handling of most traffic violations suggests the need for a change in jurisdiction of juvenile traffic violators.

It is recommended that jurisdiction of all licensed traffic violators in North Dakota be vested in the same court. The juvenile court should retain jurisdiction of violations which are likely to need the specialized handling of the juvenile court, i. e., manslaughter, driving while drunk, or under the influence of narcotics and driving without or during suspension of a driver's license.

Statistics

RECOMMENDATIONS:

1. The four counties not reporting juvenile court statistics should participate in the State program.
2. The Division of Research and Statistics should conduct meetings with local officials to insure uniformity in the use of the statistical card.
3. Statistical comparisons with the previous year[s] would increase the usefulness of the annual statistical report.

Rules Of Court

RECOMMENDATION:

1. There are no written rules of court for the juvenile court of North Dakota. It is, therefore, recommended

that rules of court, for the juvenile court, be prepared by the State's highest court in cooperation with the judicial council. The rules should be available to all who have business with the court.

PART IV

DETENTION AND SHELTER CARE FOR DELINQUENT CHILDREN¹⁴

There are four major classifications of children who require temporary care:

1. Children who can safely be left with their parents or guardians pending court disposition.
2. Children who require temporary care outside of their homes pending court disposition but who do not require the secure custody of detention.
3. Children who require the secure custody of detention but only for a short period of time, 48 hours or less.
4. Children who need the secure custody of detention for the normal period of 5 to 15 days.

Detention care is defined as the temporary care of children who require secure custody for their own or for the community's protection, in physically restricting facilities pending court disposition.

There were 474 admissions to detention in North Dakota in 1966 comprising 1,316 days of care or an average daily population of 3.6 children. Detention care, if exercised in facilities which do not meet standards, can be extremely harmful to children. Detention cannot be neutral. If it is not a positive experience in which the accepted objectives of detention are met, it will then obviously be a negative experience.

The study included a questionnaire on all 474 delinquent children who were held in detention during the calendar year 1966.

RECOMMENDATIONS:

The State agency responsible for juvenile delinquency services should:

1. Set forth written admission policies to assure the appropriate use of detention and shelter care of delinquent children.
2. Set up shelter care facilities for delinquent children who need temporary care pending court disposition, but who do not need the secure custody of detention, in the prin-

14. John J. Downey, Detention Consultant, Children's Bureau, Dept. of Health, Education & Welfare.

cial cities such as Fargo, Grand Forks, Minot, Bismarck, Williston, Devils Lake and Dickinson.

3. Set up local hold-over facilities that could provide care in secure custody for a period up to 48 hours in Fargo, Grand Forks, Devils Lake, Bismarck, Minot, Williston and Dickinson.
4. Arrange with a residential mental health facility for the temporary care and diagnostic study of the small number of children who need care in secure custody pending court disposition for a period longer than 48 hours. This group would represent an average daily population of between one or two children. Even the minimum size detention home that would meet standards would not be justified. The construction of a detention home at this time is not recommended.

The detention practices in North Dakota are explained with certain statistics tabulated in the original report on pages IV-6 through IV-15 and may be examined for additional details. Admission control policies for detention care are outlined on pages IV-16 through IV-18. There follows a suggested procedure for law enforcement and court officers and the indication for need of a 24-hour intake policy. The recommendations in this connection are found on pages IV-20 and IV-21.

Detention facilities cannot operate on a small scale. Examination of the existing detention home of the second floor of a building housing the Cass County Welfare Department in Fargo indicates that staff patterning is inadequate, there is a lack of program activities, and the physical plan is not suitable for detention for normal periods of 5 to 15 days.

Shelter Care (Open Type) Facilities For Delinquent Children

Included in the group of children who must be given temporary care outside of their home pending court disposition but who do not require the secure custody of detention are children:

1. Who would be in physical or moral danger.
2. Whose relationships to his own parents has been strained to the point of serious damage.
3. Who have been in foster care or institutional care prior to the delinquent act but not able to return to the foster home or institution.

Shelter foster home programs for delinquent children can be operated on a small scale. Special features of a shelter care facility are outlined on pages IV-24, IV-25 and IV-26 of the study.

Reference is made to the shelter facility in Minot which is presently being operated, but which has not been operated for a sufficiently long period of time to objectively evaluate. The report concludes that probably additional shelter facilities would be needed in Fargo, Grand Forks, Bismarck, Williston and Devils Lake. In Dickinson, Grafton and Jamestown arrangements with local welfare agencies for the use of temporary foster homes for the occasional delinquent child might meet the needs of shelter care.

Local Secure 48-Hour Holdover Facilities

RECOMMENDATION:

1. This type facility should be set up in Fargo, Grand Forks, Devils Lake, Bismarck, Minot, Williston and Dickinson.

RATIONALE:

Local 48-hour holdover facilities could have provided the care necessary in 330 of the 474 detention cases in North Dakota in 1966. Such a facility could probably have taken care of a substantial portion of the 40 other cases who were "returnees," but who stayed beyond two days in detention.

A 48-hour holdover facility could best be located in some type of institution giving 24-hour care to people, but in quarters separate from and out of sight and hearing of other people.

Since children would not be held in excess of 48 hours, there is no need for large muscle activity (recreation) and since the population is relatively small (1 to 3 children) and since they would be under constant supervision, many of the psychiatrically safe characteristics of a detention home are not necessary.

The type of children who would be held in a 48-hour facility would be as follows: 1. Out of town or out of state runaways; 2. Parole violators; 3. Children who initially appear to need the secure custody of detention, but who after 48 hours, could be transferred to a shelter facility for delinquent children; and 4. Probation violators and other children known to the court.

The detention home in Fargo previously described as not meeting standards would be adequate to serve as a local 48-hour holdover facility if "around the clock" supervision of children were provided. (The reader's attention is drawn to pages IV-33 through IV-36 for a statistical description of children who have received detention services in North Dakota in 1966.)

PART V

NORTH DAKOTA INDUSTRIAL SCHOOL¹⁵

A substantial portion of the study is devoted to an examination of the North Dakota Industrial School based primarily on observation and information gained from the staff of the institution, case records, newspaper clippings and official reports were also studied.

Standards contained in the Children's Bureau publication, "Institutions Serving Delinquent Children-Guides and Goals," were standards by which the program at the North Dakota Industrial School were gauged. The consultant observed such activities on the Industrial School campus as canteen night and a halloween party, a bingo party, several building meetings, a Sunday Protestant worship service and ate at least one meal in each of the cottages. The North Dakota State Penitentiary was visited in order to obtain a perspective of the institutions where the offenders are confined. Access to the Industrial School manuals and publications as well as a complete questionnaire by the institution staff were available to the consultant.

The North Dakota Industrial School, opened in the early 1900's, is one of the few co-education institutions serving delinquent youth in the United States. Youths between the ages of 12 and 20 can be committed to the institution. Generally one-fourth to one-third of the population consists of girls. It has a capacity of 160 youths and at the time the institution was being studied had 117 youngsters in residence.

Location of the institution is considered excellent. A tree lined roadway divides the campus into two areas, the west campus containing the two girls' living units and other buildings, while the boys' cottages, administration and other academic buildings are located on the east side.

There are 83 full-time staff positions in addition to part-time medical and dental staff. There is also psychiatric, psychological and some social work service available through the State Psychiatric psychological and some social work service available through the State Psychiatric Clinic.

RECOMMENDATIONS:

1. The institution's capacity should not be built beyond its present size. The accepted and recommended size of such a program is 150. When an institution grows beyond that size, it becomes progressively less capable of doing an ef-

15. Kenneth Carpenter, Chief, Technical Aid Branch, Children's Bureau, Dept. of Health, Education & Welfare.

fective training and treatment job with the youth in its charge.

2. Consideration should be given to establishing small group homes in the community for older delinquent children as an alternative to expansion of the training school or construction of new facilities.

The section on the Industrial School is further subdivided into specific areas upon which emphasis was placed. These included the following:

1. Admission, diagnostic and care planning procedures;
2. Clinical services;
3. Cottage staff and program;
4. Education;
5. Religious program;
6. Recreation;
7. Food service;
8. Health and medical services;
9. Programming for the hyperaggressive and youthful offender group.

Specific recommendations are made in some of these areas which in the interests of brevity will not be set out verbatim as has been done in earlier parts of this abstract. While the clinical services and educational program of the school are considered to be reasonably adequate, recommendations are made for more professionally trained social workers and counselors as well as additional supervisory staff. It was recommended that perhaps the cottage programs could be strengthened by merging them with the clinical program, resulting in a closer and a more flexible program to meet the responsibilities of each of these separate efforts. A full-time recreation director is recommended for the institution and a more balanced recreation program would be considered beneficial.

Of particular interest and significance to this writer is the programming for the "hyperaggressive and youthful offender group," consisting of the 16 through 21 age group. It is this writer's opinion that there is perhaps no part of the study which will be scrutinized more closely by the 1969 Legislature than the subsection dealing with this age group. Legislative concern for this group is indicated by the fact that the 1967 Legislature, directed by House Concurrent Resolution "T-1", requested that a study be conducted by the Legislative Research Committee and that its recommendations concerning these offenders be made to the 1969 Legislature. It may be generally stated that problems in the rehabilitation of delinquent youth have increased in intensity in recent years. This is partly true be-

cause delinquent children admitted to institutions are more disturbed and more difficult to control than they have been in years past. It follows from this that there are juveniles in the age group of 16 to 18 who, because of their personality and stage of social and emotional development, will benefit little if at all from institutional programs designed for the treatment of adolescents. The comingling of the older age group with the adolescent frequently has a harmful effect upon this younger age group, and affords little or no constructive benefit for the older offender.

That a more consistent program is necessary in North Dakota for the youthful offender can be readily seen when the age group of the three institutions where this group is confined is considered. The average age at the Industrial School is 16.9 years. At the time of the study there were 16 youths in the Industrial School that were 18 years of age and older. The breakdown of this category was as follows:

AGES	BOYS	GIRLS
21	0	0
20	0	1
19	1	2
18	10	2

At the same time, there were 40 inmates at the Penitentiary and the State Farm that were 21 years of age or younger. That breakdown was as follows:

AGES	PENITENTIARY	STATE FARM
21	11 (1 woman)	3
20	6	1
19	9 (1 woman)	4
18	0	3
17	2	0
16	1	0

Some attention is given to the practice authorized under North Dakota law whereby juvenile court jurisdiction over offenders 16 years of age or older may be waived, thereby permitting such cases to be transferred to the district court for trial in the same manner as adult offenders. The continuation of this practice is considered advisable.

Some alternatives are discussed in view of the relatively small number of youthful offenders in each of the three institutions previously mentioned. While the State Farm might lend itself to a program for the youthful offender, substantial changes would be necessary in existing facilities for such a program at this institution.

Particulary however, it should be noted that any attempt to operate simultaneous programs for the youthful offender and for the adolescent in the same facility is of questionable merit. The specific recommendations concerning the youthful offender are as follows:

1. The total institution milieu should be reviewed to assure that all youngsters in the program can benefit from some aspect of the setting. The Pine Cottage program should have sufficiently adequate staff and program to help those needing a temporary period of security and a greater degree of intensive treatment.
2. Greater use should be made of the North Dakota waiver provision for those 16 years of age and over who are unable to make use of the open setting of the Industrial School.
3. The State Farm program should be continued to serve the youthful offender group able to live in an open setting. The State Penitentiary should continue to provide a program for those in this age group who need a more secure setting.

PART VI

AFTERCARE SUPERVISION

The subject of aftercare is treated separately but has a direct relationship to the Industrial School. An institution is only one of several essentials to effective treatment of delinquent children. The study found the aftercare supervision in this state grossly inadequate. It found many communities without any aftercare services, or communities where probation officers with excessive probation case-loads attempted to provide aftercare services. Volunteer services by interested citizens or professional people in the community were resorted to in some cases. At the time of the study there were 97 children on aftercare, 50 of these were living in their own homes and 11 were with relatives. The balance were in foster homes, work homes, boarding schools, child caring institutions, college, job corps or were living independently.

RECOMMENDATIONS:

1. Bureau of Aftercare and Placement Services should be established in the state agency responsible for the administration of other state services for delinquent youth.
2. Such a bureau should be placed under the day-to-day direction of a professionally trained social worker - preferably one with experience with juvenile corrections.
3. Strategically located district offices should be established after a review of the geographic distribution of the case-load.

4. Aftercare workers should handle no more than 25 to 50 cases at any given time. Problems of geography and the nature of the cases may necessitate reduced caseloads.
5. A variety of placement programs should be available to youngsters returning to the community, including small group homes.

PART VII

STAFF DEVELOPMENT¹⁶

The role of staff development in any juvenile correctional program has a significant relationship to the successful treatment of delinquent children. It anticipates a pre-service, and in-service training, as well as educational leave and attendance at conferences and professional meetings. It is recommended that the in-service program be a continuous program, operating at several levels, under the supervision of a single agency in the executive branch of state government as previously recommended in the report. A minimum of one and one half full-time professional positions along with clerical staff would be needed for such a program. The two professional positions should be designated as Director and Assistant Director of Staff Development.

PART VIII

LEGISLATIVE COMMENT¹⁷

The recommendation here is that, in view of recent decisions of the United States Supreme Court and the recommendations contained in the *President's Crime Commission Report* a critical look might well be taken at the appropriate statutes of the North Dakota Century Code relating to delinquency. Substitution of the existing statutes in this State with the Uniform Juvenile Court Act might be given consideration. Not only would the prerequisites set out by the United States Supreme Court be met by the enactment of the Uniform Act, but the implementation of many of the recommendations of the study would be accomplished at the same time. Distinction should be made between delinquent children and unmanageable children; a "delinquent child" being one who has committed a delinquent act and in need of supervision, while an "unmanageable child" is one habitually truant, disobedient, ungovernable, or who has committed an offense which is applicable to children only, and who is in need of supervision or rehabilitative

16. James Phipps, Chief, Training Branch, Children's Bureau, Dept. of Health, Education & Welfare.

17. Alice Freer, Program Analyst, Children's Bureau, Dept. of Health, Education & Welfare.

care. The role of the juvenile commissioners should be clearly defined and adequate provisions made for re-hearings before a juvenile judge whenever such a right is exercised by the child or his parents.

CONCLUSION

There is no pretense that the finding and recommendations of this study, even if implemented in its entirety, would be a panacea to the juvenile problems of this state. Nonetheless this writer is impressed with the ability, the dedication, and the objectivity with which the staff personnel of Children's Bureau performed their individual responsibilities in the preparation of the study.

Whether we agree or disagree with these findings and recommendations it nonetheless appears that we are at the turning point in the history of the juvenile court as a tribunal for the administration of justice. One of the most discouraging and frustrating facts about the juvenile court is the absence of firmly held opinions as well as the lack of consensus among judges, law enforcement officers, legislators, newspaper men and the public in general as to what should or should not be done in juvenile matters. This controversy must be faced squarely, and must be resolved in the light of our understanding of the problem.

To be sure some of what has been recommended in this study is experimental and theoretical. It is a natural target for the attack of those who like to scoff at "do-gooders". Perhaps those individuals who are quick to be critical should step forward with so-called constructive and practical solutions to the problems of delinquency. If this occurs, this study will have been time and effort well spent.

If we are ever to make inroads in the ever increasing acceleration of delinquency, the overwhelming bulk of that progress will come on the local and community level. There is a surge of interest in the field, evidenced by the joint conferences in which the National and State Congress of Parents and Teachers participated. The task of informing the people of every community and of the state concerning the gravity of the juvenile problem and of the pitifully inadequate resources which are at hand cannot be over-emphasized. Creative substitutes must of necessity be developed in these areas to convert the energies and emotions that are now responsible for destruction, violence and crime, into useful and productive channels. To this end the reader of this abstract is challenged.