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Juvenile Delinquency and Crime: Achievements of the 1959 Minnesota Legislature

Professor Pirsig analyzes significant criminal and delinquency legislation enacted in Minnesota in 1959. First, he describes the act reorganizing the state agencies concerned with delinquent youths and criminals following the adjudication of delinquency or conviction of a crime. He also considers the legislation extending required probation service to all counties in the state. Finally, he devotes the major portion of the Article to discussion of some procedural problems that commonly arise in a delinquency proceeding and analysis of the solutions provided in the revised juvenile court code. Although his discussion focuses on the Minnesota statutes, it will undoubtedly have value for other states which are contemplating the enactment of, or have already enacted, similar legislation.

Maynard E. Pirsig*

The 1959 session of the Minnesota legislature was marked by the enactment of significant legislation in the field of criminal correction and juvenile delinquency. Probably in no other session since the turn of the century has the legislature accomplished so much in these areas; and, with the possible exception of California, no other state within recent years has duplicated the record of progress incorporated in the 1959 Minnesota legislation in the criminal law field. The juvenile court act of 1917 and the youth conservation act of 1947 were, of course, milestones which, no doubt, paved the way for the present legislation. But, in 1959, not one but three important acts were adopted. These are the creation of the corrections department, the extension of compulsory probation service to all juvenile courts of the state, and the revision of the juvenile court code.¹ This legislation places the state in the forefront in the respective areas with which it deals. Some of the provisions of each of these acts will be discussed in the following pages.

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¹ Several other important acts were also passed in the criminal law field, but they were of more limited scope and will not be considered in this Article.
I. Department of Corrections

There has now been established in this state a department of corrections which includes all the activities and facilities on the state level which relate to correctional and treatment programs for adult criminals and juvenile delinquents. An earlier major step in the direction of better organization had been taken in 1947 when the youth conservation commission was created, and in 1949, when administration of the state training school for boys at Red Wing and the home school for girls at Sauk Centre was transferred from the department headed by the director of public institutions to the youth conservation commission.

This youth conservation commission program has two aspects. One deals with youths adjudged delinquent by the juvenile courts of the state. The judge cannot commit the youth to a state institution but must commit him to the youth conservation commission. From that point on, the commission has complete power to determine what disposition should be made of the case to bring about the most effective rehabilitation and to carry out that disposition. The commission may place the youth on probation under the guidance of its own probation agents, or it may, instead, commit him or her to the above mentioned institutions. It decides when and under what conditions he shall be paroled and upon parole he is placed under the supervision of one of its own agents. Subject to the limitation that he cannot be held beyond the age of twenty-one, it determines when he shall be discharged.

The other aspect relates to youths under the age of twenty-one who are convicted of a felony by the district courts. Again, the court must commit the youth to the commission, if he is not dealt with locally; and again the commission has complete power of disposition and execution with the exception that, up to the present, the institutions to which the youth might be committed have not been under the control of the commission. For example, until the department of corrections act, the state reformatory for men had been under the commissioner of public welfare.

The purpose of these measures has been to provide an integrated program of treatment which avoids the conflict and lack of coordination which naturally arises when responsibility is divided among several agencies.

On the adult level, no similar type of integrated program or organization has heretofore existed. Commitment by a court which

4. Minn. Laws 1949, ch. 581. The subsequent development of the youth conservation program through camps and other facilities is beyond the scope of this discussion.
has found a defendant guilty of a felony has been to the appropriate penal institution. These institutions have been under the commissioner of public welfare. Release from these institutions before expiration of the maximum term fixed by the court has been the responsibility of the state parole board. The board has been appointed by the governor for fixed terms and has been independent of any other state department or division. The board also has maintained a staff of parole agents which supervised those placed by it on parole and, to some extent, those placed on probation by district courts.

When reorganization of the state government was proposed by the present administration, it became necessary to consider very concretely what type of organization should extend to the correctional field. Surprisingly, there was very little disagreement among those interested in this field as to the need for reorganization. But conflicting views developed as to the form the reorganization should take. Some students of the subject felt that both the adult program and the youth conservation program logically and properly belonged under the commissioner of public welfare. But objection to this suggestion developed, based in considerable part on the feeling that proper administration in the area of correction is of such importance that it should have the direct attention of the governor and the line of responsibility should be directly to him. Fears were expressed that the prospect of an effective administration would be less favorable if the several correctional agencies and facilities concerned constituted but a division in a large department also concerned with other important responsibilities. The latter view prevailed.

Another suggestion took the following form. The functions of the state parole board and those of the youth conservation commission were analyzed as falling into two separate and distinct categories. On the one hand, they performed what were deemed to be quasi-judicial functions, which included such duties as determining when and on what terms a prisoner should be put on parole, when parole should be revoked, and when a discharge should be granted. In the case of the youth conservation commission, these included such additional powers as placing a youth on probation or committing him to an institution. In another category were such activities as supervising probationers and parolees and the operation of the institutions, camps, and other facilities. These were considered to be administrative functions and should not be intermixed with the quasi-judicial functions in the same board or commission. The proposed lines of organization would be based on these separate functions. The parole board and the youth conservation commission

would be limited to the quasi-judicial functions and the new administrator to be established would be assigned the administrative duties. To this suggestion was added the further one that the qualifications and work of a probation or parole agent supervising adults were not essentially different from those of a similar agent supervising youths and that, therefore, the same agents could be used for supervising both, thus adding to the efficiency of the operation.

However, these suggestions also met with disagreement, particularly from those who had supported the youth conservation program. Two principal objections were raised. One was that the youth conservation program had shown that there were advantages in an integrated program of treatment in which both the so-called quasi-judicial and the administrative functions had been combined in a single agency. It was thought that these advantages would be lost in an organization in which these functions were separated. The other objection raised was that the treatment of youthful offenders could most effectively be carried out if personnel were selected for their special qualifications in dealing with youths. These considerations, it was thought, called for a vertical type of organization of the department in which decision-making, personnel, and facilities as they relate to youths would be administratively separated from those relating to adult criminals.

The latter view ultimately prevailed. The committee of the Minnesota State Bar Association which had considered the subject for a number of years and participated in these preliminary discussions, reported as follows:

As part of its original reorganization plan the state administration had first considered transferring the Youth Conservation Commission and the State Board of Parole to the Department of Welfare, where they would have been administered along with the adult prisons and reformatories. After consultation with members of this committee, the Administration proposed the creation of a new Department of Corrections which would include a Youth Conservation Division and an Adult Corrections Division.

Establishment of a Department of Corrections offers a means of bringing together into a single streamlined agency, diagnostic, institutional and parole services for adult offenders as the Youth Conservation Commission has done for juvenile and youth offenders. The present administrative separation of institutions and parole services hampers treatment aimed at rehabilitation of adult offenders. The proposal would make possible through the commissioner, the leadership that the adult corrections field urgently needs; to accomplish many desirable objectives, such as for instance, forestry camps that can combine the rescue of men with conservation of natural resources, at a cash saving to the State. A Department of Corrections could provide the Youth Conservation Commission and the Adult Division with many common housekeeping services, such as purchasing and accounting on a more modern and efficient basis than would be possible for smaller separate agencies.

The danger, however, of combining correctional services to children and
adults in one department is twofold: First, it can obliterate the distinction, that has taken half a century to achieve, between children and criminal adults. No gains of administrative efficiency would justify reattaching the stigma of "convict" to children. A second and related danger lies in the possible breakdown of the integration of diagnosis, institutional care, and parole which have become recognized as successive steps in one continuous process of rehabilitation, and which must therefore be under the control of the same administrative authority. This integration of the treatment process is a major strength of the Youth Conservation Commission. To break it down by placing all institutions, juvenile and adult, in one division, and all parole services, juvenile and adult, in another, would undo much of what Minnesota has gained over the last ten years in the handling of children and youthful offenders and would forestall any significant gains in the adult field.

After much study, this committee concluded that these pitfalls can be avoided through the establishment by law of two divisions in a Department of Corrections; a Division of Youth Conservation in which the essential structure and functions of the Youth Conservation Commission are retained intact, and a Division of Adult Corrections which will include adult probation, institutional care, and parole services organized along the same lines as the Youth Conservation Commission.

After a number of meetings, members of this committee and the administration agreed upon a proposed Department of Corrections that would have accomplished these goals.  

The advocates of a department of corrections were thus able to present a common front in urging the passage of the bill submitted and ultimately enacted. However, the revised bill which emerged as incorporating the common understanding contains evidences of its turbulent birth, and its provisions are consequently not always models of clarity. Since some amendment of these provisions may later be undertaken, the act will here be examined in some detail. In order that this examination may be kept in proper perspective and not detract from the very great achievement which the act represents, it should be said that the act proceeds on two basic and enlightened premises. One is that there shall be a single head of a single department which includes the whole of the correctional field on the state level including both adult crime and juvenile delinquency. To him and those responsible to him, the state is entitled to look for the proper administration of the state's services in this field. For the first time in the history of this state, an organizational structure has been established which permits the initiation and development of programs and facilities in the most efficient and effective manner. The other premise is that the department will be organized into two general divisions, one dealing with adult criminals, the other with

6. Id. at 40-42.
7. Minn. Laws 1959, ch. 263, § 1(1), providing: "The department of corrections is hereby created under the control and supervision of the commissioner of corrections which office is hereby established."
youths in accordance with the youth conservation act. Implicit in this organizational structure is the intent that each of the divisions will develop an integrated program of treatment applicable to its respective area. Since an integrated program already exists in large measure under the youth conservation act, one may expect that, at least initially, the greater impact of the establishment of the divisions will be in the adult field, and that the same striking results will there ensue that occurred with the development of the youth conservation program.

One may expect also, in the longer view, that there will be a more critical examination of our correctional programs and practices in both fields and a greater readiness to undertake new measures designed for more effective rehabilitation and reduced cost to the state.

A. Youth Conservation Division

Examining in detail, first, the provisions relating to the youth conservation commission, the new act provides:

The commissioner of corrections shall establish a division of youth conservation under the control and supervision of a deputy commissioner of corrections who shall be appointed by the commissioner, and who shall serve at the pleasure of the commissioner in the unclassified service of the state.8

The division of youth conservation is not to be confused with the former youth conservation commission. The commission is not explicitly created or preserved, but it is implicit that it will continue to function within the division of youth conservation. Section 10 of the act provides: “The youth conservation commission shall continue to exercise all powers and duties vested in or imposed upon such commission as heretofore constituted.”9

The commission is further dealt with by section 11, amending section 242.03 of the Minnesota Statutes, 1957, which is part of the youth conservation act. Section 242.03, as thus amended, reads:

The commission shall consist of five persons, including the commissioner of public welfare, a deputy commissioner of corrections in control of and supervising the division of youth conservation, and three others, at least one of whom shall be a woman appointed by the governor, with the consent of the senate. . . . The deputy commissioner of corrections shall be the chairman and director of the commission. The director as deputy commissioner of corrections in control of and supervising the division of youth conservation shall be responsible for the administration and enforcement of sections 242.01 to 242.54 with policy matters and decisions pertaining to the care, treatment, and disposition of persons committed to it determined by the commission.10

These several provisions would appear to make some substantial changes in the status of the youth conservation commission and its internal relationships. The director, who is now designated as a deputy commissioner of corrections, has become the appointee of the commissioner of corrections rather than of the governor. He no longer serves for a fixed term but at the pleasure of the commissioner of corrections. He is “in control of and supervising the division of youth conservation” and his primary responsibility for the administration and enforcement of the youth conservation act is to the commissioner of corrections rather than to the commission.

The youth conservation commission’s duties are to be confined to “policy matters and decisions pertaining to the care, treatment, and disposition of persons committed to it.” It may be doubted whether such a sharp line can be drawn between policy matters and decisions, on the one hand, and administration, on the other. The administration of the care, treatment, and disposition of youths must be made pursuant to innumerable decisions of policy which should not fall within the responsibilities of the commission. Decisions of policy underlie the determination of the degree of discipline to be administered and the kind of conduct for which it is imposed, the extent and type of individual counseling to be provided, the curriculum of the school, the type of work activities provided, the recreation made available, and other similar questions. The act hardly intended to entrust these matters to the commission, for in common understanding they rather clearly relate to the administration of an institution.

In all probability, no more was intended by the provision than that the commission is to determine such questions as whether a youth committed to it shall be placed in an institution or camp or placed on probation, and whether and when a youth should be placed on parole. It may include also, though this is subject to greater uncertainty, determination of the rules of conduct to be observed while on parole.

Even when the “policy” powers of the commission are so defined, it would seem evident that there must be a close working relationship between the department of corrections and its division of youth conservation, on the one hand, and the youth conservation commission, on the other; otherwise the best of programs developed by the department and the division can be frustrated. An important fact giving assurance of the necessary cooperation lies in the fact that the deputy commissioner appointed by the commissioner is the full-time member and chairman of the commission. His expertise and that of his staff will ordinarily result in their recommendations receiving the approval of the other members of the commission. The

11. The other three members serve part time and are appointed by the governor for six year terms. MInn. StAT. §§ 242.03-.04 (1957).
latter's contribution lies in the point of view, the suggestions, and on occasion, if need be, the veto-decision of the outsider not enmeshed in the details of administration.

Many administrative matters relate only indirectly to the care, treatment, or disposition of youths, such as the employment of personnel, statistical analyses, accounting and budgetary matters, clerical assistance, record keeping, which need not concern the commission and which can more effectively be administered by the department or division. It is evidently with this thought in mind that the act provides as follows:

Subject to the provisions of this act and to other applicable laws, the commissioner of corrections shall provide the youth conservation commission with all personnel, supplies, equipment, and other administrative services as may be required to enable the youth conservation commission to perform the duties and obligations imposed by law.\(^1\)

One further section pertaining to the youth conservation commission should be noted. Section 12 of the act amends section 242.46 of the Minnesota Statutes, so that the commissioner of corrections rather than the youth conservation commission appoints the parole agents. It provides:

The commissioner of corrections may appoint agents, who, under regulations prescribed by the youth conservation commission, shall investigate the homes of inmates previous to their parole and have supervision over those out on parole and those apprenticed, and who shall perform such other duties as the commissioner of corrections may require.

It is not clear whether these provisions intend only the appointment of the agents by the commissioner or include also their supervision under regulations prescribed by the commission. "Regulations prescribed by the youth conservation commission" probably does not mean regulations of general application, for this would seem properly a matter of administration not intended to be conferred upon the commission. The phrase probably refers to the conditions laid down by the commission in granting parole. In either event, the powers of appointment and supervision are subject to delegation by the commissioner.\(^2\)

The change in power of appointment from the youth conservation commission to the commissioner of corrections is confined in the section to parole agents. Equally important, but probably overlooked, would seem to be the personnel and heads of the state training school for boys, the similar home for girls, the new reception and diagnostic center approved in 1957, and the forestry camps. The statutes giving the power of appointment to the youth conservation commission give:

commission in these instances were not changed. Thus the commission has "the general management" of the school for boys,\textsuperscript{14} "the financial control and general supervision" of the school for girls together "with power and authority to appoint a superintendent and such other officers and employees as it may deem necessary and proper for the due administration of the affairs of the school ...,\textsuperscript{16} "the general control and management of the reception and diagnostic center ...,\textsuperscript{16} and the power to "establish and operate conservation camps."\textsuperscript{17}

B. Adult Corrections Division

With respect to the organization of the division of adult corrections, the drafters of the act had, of course, to deal with a different situation. There was no already existing integrated program corresponding to that of the youth conservation commission. The several penal institutions for adults were under the commissioner of public welfare, while parole and probation were the responsibility of the parole board, an independent agency.

Both of these agencies are, of course, within the new department of corrections. As already noted,\textsuperscript{18} the commissioner of corrections is the head of the entire department. He is to "establish a division of adult corrections which shall include probation, parole, and institutions, under the control and supervision of a deputy commissioner of corrections who shall be appointed by the commissioner."\textsuperscript{19}

\begin{itemize}
  \item \textsuperscript{14} \textit{Minn. Stat.} § 242.41 (1957).
  \item \textsuperscript{15} \textit{Minn. Stat.} § 242.53 (1957).
  \item \textsuperscript{16} \textit{Minn. Stat.} § 242.385 (1957).
  \item \textsuperscript{17} \textit{Minn. Stat.} § 242.37 (1957).
  \item \textsuperscript{18} \textit{Minn. Stat.} § 242.375 (1957) implicitly recognizes the power of the commission to "assign an employee of the commission as a superintendent of any institution or camp."
  \item The provision of § 10 of the department of corrections act that the commissioner of corrections shall provide the youth conservation commission with "all personnel ..., and other administrative services as may be required" might be said to include the personnel of the several institutions mentioned. But the same point could be made concerning its applicability to parole agents, and yet § 12 was apparently thought to be necessary.
  \item The point might also be made that by § 11 of the new act the deputy commissioner of corrections has been given the responsibility "for the administration and enforcement of sections 242.01 to 242.54," and that this includes the powers of appointment covered by the mentioned sections.
  \item Eight days after the department of corrections act was enacted, § 242.46 of the Minnesota Statutes was again amended but without effecting a change in the power of appointment, which remained in the youth conservation commission. \textit{Minn. Laws} 1959, ch. 693, § 2. This act, however, was concerned with providing probation facilities to the counties of the state, rather than with reorganization. Hence, it is believed that § 12 of the department of corrections act, quoted in the text, continues to remain in force.
  \item See text accompanying note 7 \textit{supra}.
  \item \textsuperscript{19} \textit{Minn. Laws} 1959, ch. 263, § 1(2).
\end{itemize}
Under these provisions, the commissioner of corrections, in establishing the division, may do two things: (1) place probation, parole, and institutions in the division, and (2) put the division under the control and supervision of his deputy. To effectuate the reorganization, section 2, subdivision 1, provides for the transfer of the institutions to the department:

All the powers and duties now vested in or imposed upon the commissioner of public welfare relating to the administration, management, and operation of the state prison, the state reformatory for men, and the state reformatory for women are hereby transferred to and vested in, and imposed upon the commissioner of corrections. All the powers and duties now vested in the commissioner of public welfare in relation to such institutions are hereby abolished.\textsuperscript{20}

This provision suggests that the commissioner may have supervision over institutions directly, but as noted, it is to be construed in light of the above mentioned provision that institutions may be placed by him in the division of adult corrections, in which case the deputy commissioner of adult corrections would deal with them.

\textsuperscript{20} Section 2(2) of the act also provides:
All the powers and duties now vested in, or imposed upon the commissioner of public welfare relating to prisons, jails and lockups, as contained in Minnesota Statutes 1957, Sections 256.02, 641.21, 641.22, 641.25, 641.26, 642.01, 642.02, 642.09, 642.10, and 642.11 are hereby transferred to, vested in, and imposed upon the commissioner of corrections. All the powers and duties now vested in the commissioner of public welfare in relation to such prisons, jails or lockups, are hereby abolished.

The phrase "administration, management, and operation" of the several mentioned institutions must be construed broadly to include duties formerly imposed on the commissioner of public welfare with respect to prisoners, and the like, even though they do not literally involve the "administration, management, and operation" of an institution. For example, the following sections would appear to be included:

\textsection{637.04}, which requires the state parole board to provide the commissioner of public welfare with reports on its activities taken with respect to prisoners in the institutions.
\textsection{637.07}, which requires the commissioner of public welfare to inform the state parole board as to the conduct of prisoners prior to their appearance before the board.
\textsection{637.10}, which requires parole agents of the parole board to make certain investigations as to dependents of prisoners when so required by the commissioner of public welfare.
\textsection{637.15}, which requires the commissioner of public welfare to transfer a pregnant female prisoner to a hospital.
\textsection{640.09}, which permits the commissioner of public welfare to visit prisoners without the permission of the warden. The original purpose for this provision no longer applies, but retention of it should cause no harm.
\textsection{640.19}, which permits the warden, with the consent of the commissioner of public welfare, to offer a reward of more than $25, but less than $100, for the apprehension and return of an escaped prisoner.
\textsection{640.24}, which deals with the sale by the commissioner of public welfare of binder twine manufactured at the state prison.
\textsection{640.44}, which deals with the use of prisoners in conservation work.
Under section 3, subdivision 1, the former parole board has become the adult corrections commission headed by a deputy commissioner of corrections:

The name of the board of parole and probation is hereby changed to the adult corrections commission. The duties of chairman of the adult corrections commission are hereby imposed upon the deputy commissioner of corrections controlling and supervising the division of adult corrections, in the department of corrections. Subject to the other provisions of this act and to other applicable law, the adult corrections commission shall continue to exercise all powers and duties vested in or imposed upon the state board of parole and probation as heretofore constituted but in the department of corrections.

This provision introduces some important changes with respect to the parole board, now called the adult corrections commission. The chairman is appointed by the commissioner of corrections rather than by the governor, and he serves at the pleasure of the commissioner rather than for a specified term. He thus appears to be primarily responsible to the commissioner rather than to the board and the governor. This follows closely the corresponding relationship established by the act with respect to the chairman of the youth conservation commission.

The last sentence of section 3, subdivision 1, quoted above, would appear to leave the powers of the parole board, or the adult corrections commission as it is now called, basically as they were prior to the new act. But the fact that this sentence is “subject to the other provisions of this act” may necessitate some qualifications to this conclusion.

No doubt is left as to the retention by the commission of the power to parole and discharge prisoners from the several institutions. The same is true of the power to make rules governing the granting of paroles and discharges, the fixing of the terms and conditions of parole, and the like. In amending the statutes which formerly gave these powers to the parole board, the term “adult corrections commission” was substituted for the “parole board.”

But in amending the section dealing with the supervising of parole agents, the term “commissioner of corrections” was substituted for the “parole board,” so that it now reads:

The commissioner of corrections, as far as possible, shall exercise super-

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21. Section 3(2) of the act requires the commissioner of corrections, “subject to the provisions of this act, and other applicable laws,” to provide the adult corrections commission “with all personnel, supplies and equipment, and other administrative services as may be required to enable the commission to perform its duties.”

22. See text accompanying note 10 supra.


vision over paroled and discharged convicts and probationers and, when deemed necessary for that purpose, may appoint state agents. . . . Every such agent or person shall perform such duties as the commissioner may prescribe in behalf of or in the supervision of probationers and prisoners paroled or discharged from the state prison, the state reformatory for men, or the state reformatory for women and any other adult correctional facilities. . . .25

Again, in amending section 610.38 of the Minnesota Statutes which, with other sections of chapter 610, deals with the power of district courts to place convicted persons on probation, the "commissioner of corrections" was substituted for the "state board of parole." It thus authorizes the district court to place a convicted person in certain counties on probation "under the supervision of the commissioner of corrections. . . ." The amended section now concludes: "The commissioner of corrections shall act as director of probation and parole and, for the purpose of carrying out the provisions of sections 610.37 to 610.39, the commissioner of corrections is authorized and empowered to provide such state agents."26

These sections thus seem to remove from the jurisdiction of the adult corrections commission the power of the former parole board to appoint probation and parole agents and the responsibility for their supervision. The function of the adult corrections commission appears to be confined to the determination of when parole shall be granted, the conditions and terms thereof, and when a discharge of the parolee should be issued. The powers of appointment and supervision of the agents are conferred upon the commissioner.

The act does not reserve to the adult corrections commission, as it did to the youth conservation commission, "policy matters and decisions pertaining to the care, treatment, and disposition" either as to persons in institutions or those placed on parole. However, the necessity of a close working relationship between the commission and the other branches of the department, noted in connection with the youth conservation commission, is of course equally applicable on the adult side. As indicated in connection with the youth conservation division,27 these powers of the commissioner may be delegated. The act provides:

Subject to the provisions of this act and to other applicable laws, the commissioner of corrections is authorized to organize the department and to employ such officers, employees, and agents as he may deem necessary to discharge the functions of his department, define the duties of such officers, employees, and agents and to delegate to them any of his powers, duties, and responsibilities, subject to his control and under such conditions as he may prescribe.28

27. See text accompanying note 13 supra.
These powers of delegation are in merely permissive terms—that is, he may exercise them in his discretion subject to the provision that he shall establish a division of adult corrections and a division of youth conservation. In the interest of efficiency, however, the following authority is granted: “When not prohibited by law, and when special circumstances warrant, the commissioner of corrections may direct that personnel, agents and facilities of one division shall be utilized in carrying out the duties of the other division.”

Finally, it should be noted that sentences of district courts continue to commit adult persons convicted of crimes to the institutions rather than to the department, division, or commission. As the new department of corrections takes concrete administrative form, it may well be that some modification of this sentencing procedure should be considered along the lines prevailing in the youth conservation act.

Governor Freeman has appointed to the position of commissioner of corrections, Mr. Will Turnbladh, formerly director of the National Probation and Parole Association and a man who, by his vast experience, has earned an enviable national reputation in the correctional field. Under his guidance, the development of the corrections department and its divisions will assuredly be the best possible. Although experience undoubtedly will point up a need for changes in the act, the adoption of the act and the appointment of Mr. Turnbladh may properly be regarded as the beginning of a new era in this state in the field of criminal correction. There will not only be more effective administration, but the state’s program will have a purpose and direction which it has never had before and which no other state has thus far achieved.

II. RURAL PROBATION SERVICE

For the first time in the history of this state, all juvenile courts must be provided with probation services, effective July 1, 1960. The great improvement by the extension of this facility is indicated by the following description of conditions in 1957 made by the Commission on Juvenile Delinquency, Adult Crime, and Corrections:

As long ago as 1899 Minnesota became the fourth state in the Union to authorize courts to grant probation and to appoint probation officers. But this early foresight had little practical effect, for 50 years later only seven of the 87 counties had hired local probation officers for juveniles. Following the impetus given to improved care of delinquent children by the establishment of the Youth Conservation Commission in 1947, the number of counties with some sort of locally provided probation services has gradually risen to 17. Of these, three have half-time services; one has one-quarter time services; and three counties jointly employ two probation officers. Insofar as they have any kind of probation services for juveniles,
The remaining 70 counties obtain it from YCC parole agents, from the staff of the County Welfare Boards, from the judge, the sheriff, members of the clergy, teachers, businessmen, and other volunteers.30

The new act applies only to counties with under 100,000 population. The three large metropolitan centers thus excluded maintain fully developed and generally adequate probation departments under special laws applicable to these counties.

Several principles underlie the legislation which was thus enacted. One is that the granting of probation to a juvenile found delinquent is a local responsibility and can usually be most effectively carried out on the local level; this can be best developed by permitting the judge to select his own probation officer. A second principle is that those selected as probation officers should have the qualifications necessary for the position. But even with the best of qualifications, an agent working in isolation in a county needs the contacts and advice available to him in the larger probation departments. On the state level, the natural agency to provide the necessary supervision is the division of youth conservation. A third principle pursued is that the probation and parole work of the division of youth conservation should be integrated with the probation services within each county, thus avoiding duplication of effort and employment by both the state and local governments of personnel performing similar duties. Finally, the act assumes that the youths of every county are entitled to the benefits of probation service and that, therefore, no county should be free to forego providing it.

The act provides three methods by which probation services will be provided.31 One is through appointment by the juvenile court of one or more full-time, salaried probation officers. The second permits the county welfare boards of two or more counties to authorize their juvenile court judges to jointly appoint such an officer to serve the respective counties.32 Under the third method, the county may ask that these services be provided by the division of youth conservation and, after July 1, 1960, the division must provide them regardless of request. When provided by the division, they must be paid for by the county based on an estimate made by the division of the cost of the services in fact rendered.33

With respect to the number of agents required, the act sets the standard of one probation officer for each 35,000 of population in the county if the county contains a city of 10,000 or more.34

32. The counties had this power prior to the act. See Minn. Stat. § 260.09 (1957).
33. Minn. Laws 1959, ch. 698, § 3(4).
34. Minn. Laws 1959, ch. 698, § 3(2).
must be made from a list supplied by the state civil service department of candidates who have qualified by taking the required civil service examination.\(^{35}\)

The agents appointed by the juvenile courts are under a duty to "provide probation and parole services to wards of the youth conservation commission resident in the counties they serve, and shall act under the orders of said commission in reference to any ward committed to their care by the commission."\(^{36}\) For this service, and without regard to whether or not it was utilized in any given period, each county in which such service is available will receive from the state annually a sum equal to the county's population multiplied by ten cents.\(^{37}\) The agents must also make monthly and annual reports to the commission "containing such information on number of cases cited to the juvenile court, offenses, adjudications, dispositions, and related matters as may be required by the youth conservation commission."\(^{38}\)

With such a close working relationship established between the division of youth conservation and the juvenile court probation officers, it may be expected that the juvenile court judges will consult with the division in the selection of probation officers and in developing policies and programs best suited to make the probation of youths in their communities as successful as possible. In turn, the division may be expected to make available to the juvenile courts, by way of suggestion and advice, the benefits of its knowledge and understanding gained from its extensive experience in dealing with delinquent youths.

In thus providing complete probation service to the juvenile courts of the state, the new act has offered a practical program of local responsibility joined in a working and practical relationship with the principal state agency, the division of youth conservation. In any development of an integrated program of treatment of delinquent youths, that kind of cooperative effort is indispensable.

III. REVISED JUVENILE COURT CODE

A. Underlying Principles

Another major achievement of the 1959 legislative session was the revision of the juvenile court code.\(^{39}\) This new code was the product

\(^{35}\) Ibid.
\(^{36}\) Minn. Laws 1959, ch. 698, § 3(3).
\(^{37}\) Minn. Laws 1959, ch. 698, § 3(5).
\(^{38}\) Minn. Laws 1959, ch. 698, § 3(3). It will be noted that the act speaks in terms of the youth conservation commission. In view of the provisions of the department of corrections act, discussed earlier in this Article, this must be construed to refer to the division of youth conservation which, through its deputy director, now has the responsibility for the administration of the probation and parole services relating to juveniles. See text commencing at note 10 supra.
\(^{39}\) Minn. Laws 1959, ch. 685.
of an interim legislative commission on public welfare assisted by an advisory committee whose members represented a wide variety of groups and agencies concerned with the various aspects of juvenile court work. The committee relied heavily on the recently revised Wisconsin children's code. The Wisconsin code, in turn, reflects the major influence of the Standards for Specialized Courts Dealing with Children, published in 1954 by the Children's Bureau of the Federal Government. The latter publication was, of course, also relied on by the Minnesota committee. There was need for a revision of the Minnesota code, for the former code had been enacted in 1917, and frequent changes had been made in it from time to time. As a result, it was confused in many respects, did not cover certain important problems, and failed to reflect certain accepted principles with respect to juvenile courts which have evolved as a product of experience.

The new code, as did the former one, deals with three areas of problems relating to juveniles. One area covers neglected children and involves such problems as failure to provide subsistence, education, physical welfare, and moral and spiritual training. Another relates to dependency, where the child suffers from want of care and sustenance because of the inability of his parents or those responsible for him to provide for him properly. The third concerns delinquency. The fact that these three areas are combined in a single code and that most of its provisions apply regardless which of the three is involved in a given proceeding evidences the belief of the drafters that in all three areas there exists an essentially common purpose—the welfare of the child. Hence, the authors of the new code are able to state its general purpose as applied to any proceeding brought under it as follows:

The purpose of the laws relating to juvenile courts is to secure for each minor under the jurisdiction of the court the care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental, and physical welfare of the minor and the best interests of the state; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the minor is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.

Not only is there present in all three areas the common purpose of protecting the welfare of the child, but elements of neglect and dependency on the one hand and delinquency on the other are often causally interrelated, with neglect and dependency constituting the

41. Minn. Laws 1959, ch. 685, § 1(2).
explanation for the delinquent behavior. Still it is important to differentiate the area of delinquency from those of neglect and dependency. Delinquent conduct, whether or not the product of neglect or dependency, presents special problems which require distinct remedial measures. One authority on the subject has suggested that "if the behavior is dangerous to the community, or is intolerable behavior, delinquency is indicated. If, however, the child, and not the community, is in danger, the child needs protection, but the delinquency is not indicated."42

(1) Meaning of Delinquency

Delinquency is defined in the code as follows:

"Delinquent child" means a child:
(a) Who has violated any state or local law or ordinance, except as provided in section 30, subdivision 1;
(b) Who has violated a federal law or a law of another state and whose case has been referred to the juvenile court; or
(c) Who is habitually truant from school; or
(d) Who is uncontrolled by his parent, guardian, or other custodian by reason of being wayward or habitually disobedient; or
(e) Who habitually deports himself in a manner that is injurious or dangerous to himself and others.43

This represents a narrowing and sharpening of the concept of delinquency as compared with the former code.44 A common criticism of many juvenile court acts has been that the definition of delinquency has been so broad as to apply to insignificant conduct of which every healthy and normal child is at one time or another guilty, but which is not indicative of any genuine delinquency problem.45 Clauses (c), (d), and (e) meet this criticism. Each requires a course of conduct which, if engaged in by a child, would indicate the need for intervention by the state to correct the developing behavior-pattern. Clause (c) requires that the child be habitually truant; clause (d) requires that he be wayward or habitually disobedient and, hence, uncontrolled; clause (e) specifies that he must habitually deport himself in a harmful manner. In each instance, an

43. Minn. Laws 1959, ch. 685, § 2(5).
44. The term "delinquent child" means a child who violates any law of this state or any city or village ordinance; or who is habitually truant or incorrigible; or who knowingly associates with vicious or immoral persons; or who without just cause and without the consent of his parents, guardian, or other custodian absents himself from his home or place of abode, or who knowingly visits any place which exists, or where his presence is permitted in violation of law; or who habitually uses obscene, profane, or indecent language; or who is guilty of lewd or immoral conduct involving another person.
45. Block & Flynn, Delinquency, The Juvenile Offender in America Today ch. 1 (1956); Rubin, op. cit. supra note 42, ch. 3.
isolated act of misbehavior is not sufficient. There must be a course of conduct showing the need for corrective measures by the state.

Clauses (a) and (b), however, do not reveal the same clarity of purpose. In accordance with the majority of juvenile court acts, these clauses literally appear to require only a violation of some law, whether it be federal, state, local or municipal. There has been almost no judicial interpretation of provisions of this character. Obviously, there may be technical violations of laws and ordinances, which, whether committed by youths or adults, do not evidence delinquent or immoral behavior and which do not warrant the application of the processes of the juvenile court. Clauses of this kind, it is believed, should be interpreted in the light of the purposes of the act and construed to apply primarily to those cases where the violation in fact evidences a disposition or mode of behavior which can justifiably be characterized as delinquent and which properly calls for the protective and rehabilitative measures available to the juvenile court. Ordinarily, the commission of a felony would be sufficient, without more, to show that the child is delinquent. But in the area of petty offenses, greater care should be exercised to determine that the offense does in fact evidence a delinquent disposition.

The approach which might well be taken in the latter cases is

46. People v. Pikunas, 260 N.Y. 72, 182 N.E. 675 (1932), in which the court said:

The Children's Court Act (Laws 1930, c. 393, sec. 2, par. 2 [d]) defines "delinquent child," . . . as a child "who, without just cause and without the consent of his parent, parents, guardians or other custodian, repeatedly deserts his home or place of abode," and thus applies to habitual truancy and not to a single act of truancy. The evidence in this case, so far as set forth in the record, indicates but one absence from home, accompanied, it is true, by an act or acts of sexual intercourse with a man who, defendant says, forced her to stay in a car with him. A child who is forced into a car and taken away from home without her consent cannot be said to "desert her home without good and sufficient cause," and one such act in its worst aspect is not to be described as repeatedly deserting one's home.

See also In re Hook, 95 Vt. 497, 504, 115 Atl. 730 (1921), quoted in note 47 infra.

47. In Krell v. Sanders, 168 Neb. 458, 96 N.W.2d 213 (1959), the court observed:

There is no proof of the charge made in the complaint that appellant was involved with others in an attack on Stewart which resulted in a fracture of his jaw. The charge that appellant was a delinquent child because of this alleged occurrence or otherwise was not established. The evidence is quite to the contrary. There was no previous misconduct of appellant claimed or shown. It was established at the hearing that appellant had no record of improper conduct and that his school experience was acceptable and satisfactory both as to comportment and scholarship. A single violation of a law of the state by a minor does not always permit of a conclusion that the transgressor is a juvenile delinquent. (Emphasis added.)

Id. at —, 96 N.W.2d at 222. The court quoted from In re Hook, 95 Vt. 497, 504, 115 Atl. 730, 733 (1921), as follows: "So, when analyzed, we find here only a single act of disobedience as a basis of the charge of delinquency. This was not enough. A child is not incorrigible who disobeys but once." Krell v. Sanders, supra at —, 96 N.W.2d at 222.
suggested by the provisions of the new code relating to traffic offenses. There has been considerable dissatisfaction in Minnesota and other states with leaving to the jurisdiction of the juvenile courts traffic offenses committed by youths. The reasons for this dissatisfaction were recently analyzed by the Minnesota Commission on Juvenile Delinquency, Adult Crime, and Corrections, which concluded that these cases should remain in the juvenile courts but that a traffic offense should not be regarded as evidencing delinquency unless the court specifically so finds. This point of view was incorporated in the new juvenile code, which provides:

A child who violates a state or local traffic law, ordinance, or regulation, shall be adjudicated a "juvenile traffic offender" and shall not be adjudicated delinquent, unless the court finds as a further fact that the child is also delinquent within the meaning and purpose of the laws relating to juvenile courts.

Disposition of the case, once a child is found to be a "juvenile traffic offender," is more restrictive than where he is found to be "delinquent." The court may "reprimand the child and counsel with the child and his parents"; continue the case for a reasonable period during which the conditions of the use of the car may be restricted; require the child to attend a drivers' school if one is available; or recommend to the highway department suspension or, under certain conditions, revocation of the child's driver's license.

The juvenile court also has the power to transfer the case to any court with a salaried judge, "if after a hearing, the court finds that the welfare of a juvenile traffic offender or the public safety would be better served under the laws controlling adult traffic violators. . . ." In counties with under 30,000 population, the probate courts now have the jurisdiction of municipal courts, and all probate judges are now compensated by a salary and are not dependent on fees. Hence, the juvenile court judge in a county with less than 30,000 population has several alternative means available to him of disposing of a juvenile traffic offense. He may retain the case as a juvenile judge and dispose of the case within the limits fixed by the new code for cases where no delinquency appears. Or he may, after a hearing, transfer the case to himself in his capacity as judge of the probate court exercising its criminal jurisdiction. He may, of course, also transfer the case to another court which has jurisdiction, such as a municipal court, if its judge is paid a salary and not by fees. In

49. Minn. Laws 1959, ch. 685, § 30(1).
50. Minn. Laws 1959, ch. 685, § 30(5).
52. Minn. Laws 1959, ch. 494, § 1(1).
practice, the last course ought seldom to be resorted to; both the public and the child are entitled to the experienced understanding and wisdom of the court especially established to deal with youths, even though no more is involved than the commission of a traffic offense. In counties over 30,000 population, of necessity, the transfer must be made to another court and ought, therefore, seldom to be made. In no event, under the act, is a juvenile traffic offender to be exposed to the evils too often associated with justices of the peace and the fee-paid municipal court judge.

The new code assumes that, except in the occasional case, the juvenile traffic offender will not be transferred to another court and will not be adjudicated a delinquent. He is simply a juvenile traffic offender and will be dealt with as such.

It is believed that a similar approach might well be developed under the act with respect to other petty offenses, although the procedures for doing so are not as well spelled out in the act. In all cases, an initial decision must be made whether any petition at all should be filed. With the services of probation officers now available in all counties, an intelligent screening of cases is now possible, so that those cases may be eliminated without any proceeding where an offense may technically have been committed but where the youth's realization that his conduct subjected him to the possibility of juvenile court action sufficiently serves the needs of the case. In other cases some proceeding in juvenile court will appear warranted. Experience has shown that in the large majority of cases coming before juvenile courts, the commission of the offense is not in dispute. In such cases the following provision can be resorted to without a finding of delinquency:

When it is in the best interests of the child to do so and when [the] child has admitted the allegations contained in the petition before the judge or referee, but before a finding of delinquency has been entered, the court may continue the case for a period not to exceed 90 days. During this continuance the court may enter an order in accordance with the provisions of subdivision 1, clauses (a) \[^{54}\] or (b) \[^{55}\] or enter an order to hold the child in detention for a period not to exceed 15 days on any one order for the purpose of completing any consideration, or any investigation or examination ordered in accordance with the provisions of section \[^{56}\].

\[^{54}\] Minn. Laws 1959, ch. 685, § 28(1)(a). This clause authorizes the court to "counsel the child or his parents, guardian, or custodian."

\[^{55}\] Minn. Laws 1959, ch. 685, § 28(1)(b). This clause authorizes the court to "place the child under the supervision of a probation officer or other suitable person in his own home under conditions" governing his conduct and that of his parents, guardian, or custodian.

\[^{56}\] Minn. Laws 1959, ch. 685, § 28(3).

Minn. Laws 1959, ch. 685, § 22(1) provides that "hearings may be continued or adjourned from time to time and, in the interim, the court may make such orders as it deems in the best interests of the minor in accordance with the provisions of sections 1 to 44."
The period of the continuance having been concluded without further complications, the case can then be dismissed without an adjudication of delinquency.

(2) Nature of Proceeding

In considering procedural problems under juvenile court acts, there has been a tendency to classify the proceedings as either civil or criminal. The conclusion usually reached is that it is not a criminal proceeding but is civil in nature, its object being the protection and care of the child and his restoration to society as a law-abiding citizen. Punishment for a criminal act is not involved. Thus, the Minnesota Supreme Court has said:

[F]or its protection and the good of the child, the state may, through its courts, place the child in charge of some person or institution for proper training and support. It matters little whether the danger to the child and society comes because of the fault of others or that of the child. The right of the state to step in and save the child is the same. In that view the restraint put on the child cannot be regarded as punishment for crime.57

This position is re-enforced by the new act, which provides that “A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court refers the matter to the appropriate prosecuting authority. . . .”58 The proceeding has also been characterized as involving the guardianship of the child and, hence, within the formerly restricted jurisdiction of probate courts.59

Yet, the full logical implications of characterizing the proceedings as civil have not been followed. Courts have found it difficult to ignore the fact that the proceedings in which delinquency is charged commonly involve a charge that a serious crime has been committed and that the right of the state to interfere with the liberty of the child and the right of the parents to his custody are involved. Hence, a tendency is present to insist on some of the protections afforded an adult in a criminal proceeding. Typical is the following observation:

While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of a crime, nevertheless, for all practical purposes, this is a legal fiction, presenting a challenge to credibility and doing violence to reason. Courts cannot and will not shut their eyes and ears to everyday contemporary happenings.

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57. Peterson v. McAuliffe, 151 Minn. 467, 469, 187 N.W. 226 (1922). See also State ex rel. Kmutson v. Jackson, 249 Minn. 246, 82 N.W. 2d 234 (1957); State ex rel. White v. Patterson, 188 Minn. 492, 249 N.W. 187 (1933); State ex rel. Olson v. Brown, 50 Minn. 353, 52 N.W. 935 (1892).

58. Minn. Laws 1959, ch. 685, § 28(3).

59. State ex rel. White v. Patterson, 188 Minn. 492, 249 N.W. 187 (1933).
It is common knowledge that such an adjudication when based upon a charge of committing an act that amounts to a felony, is a blight upon the character of and is a serious impediment to the future of such minor. Let him attempt to enter the armed services of his country or obtain a position of honor and trust and he is immediately confronted with his juvenile court record. And further, as in this case, the minor is taken from his family, deprived of his liberty and confined in a state institution. True, the design of the Juvenile Court Act is intended to be salutary, and every effort should be made to further its legitimate purpose, but never should it be made an instrument for the denial to a minor of a constitutional right or of a guarantee afforded by law to an adult.60

These attempts to classify a juvenile court proceeding as falling within some already-established category such as criminal or civil seem unwise and unnecessary. There is always the danger that they will result in the application of principles and procedures not suited to these proceedings. A juvenile court proceeding should be dealt with on its own merits and on the basis of its own special problems. Obviously, it is not a criminal proceeding. But neither is it merely a civil one. The proceeding involves state action in which the child and his parents face the prospect of an adjudication carrying with it unfavorable moral implications and social stigmatization, not to mention supervision, confinement of the child, and other limitations on his liberty. Such an adjudication ought not to be made lightly; and the procedures established should assure that they are not lightly made. Some of the protections afforded in a criminal case for this purpose may be needed also in a juvenile court case, but it is not necessary or desirable to characterize it as criminal in order to arrive at this result. These protections should be found to be implicit in the kind of fair hearing intended by the legislation establishing the juvenile court and its procedures.

One further general observation should be made about the nature of juvenile court hearings. Only limited reliance is placed upon the adversary method of presenting the case to the court. The proceeding is not entitled either "The State v. Johnny Smith," as in a criminal proceeding, or "William Doe, complainant v. Johnny Smith, defendant," as in a civil action. Instead, the title is "In the matter of the welfare of [Johnny Smith]."61 A petition is involved, but its purpose is not to serve as one of a series of pleadings to frame issues but to inform the child and other interested parties of the nature of the charge of delinquency being made which will be the basis of the ensuing hearing. There is no arraignment or plea as in a criminal case, or answer as in a civil action. They are not needed, since neither the child nor others are regarded as adversaries. Instead of a contest between adversaries, the hearing is intended to be more in the

61. Minn. Laws 1959, ch. 685, § 17(3).
nature of an investigation in which the judge and his staff have the principal responsibility for ascertaining the facts and determining the proper disposition to be made. The investigation, of course, includes the right of the child and other interested parties to present fully their contentions and evidence. Legislation such as the new code must be construed to have been drawn with this kind of hearing in mind.

B. Initiating Proceedings

There are two ways in which a case may come before the juvenile court in delinquency cases. One is by the filing of a petition charging delinquency, made by "some reputable person . . . having knowledge of a child . . . who appears to be delinquent . . ." Upon filing of the petition, a time for hearing is set and a summons is issued to the person having custody or control of the child, directing him to appear with the child at the appointed time and place. Notice of the hearing must also be served on certain other persons, such as "parents, guardians, or spouse of a legitimate minor or the mother, guardian, or spouse of an illegitimate minor," and also on the county welfare board if the proceeding was not initiated by it. A minimum of twenty-four hours must elapse between the time of service of the summons or notice and the hearing or, if served the day before, the hearing must be postponed at least a day. Provision is made for both personal and substituted service.

The other manner in which a case may come before the juvenile court is by way of transfer from another court before which the child has appeared on a criminal charge. The latter court cannot hear such a charge. As under the previous code, courts other than the juvenile court do not have jurisdiction of any criminal proceeding involving a minor, unless it has been transferred to them by the juvenile court. The act assumes that the child will be personally before the court at least in delinquency cases. There is no provision for adjudication by default. The act provides that "in any case when it appears to the court that the service will be ineffectual . . . the court may issue a warrant for the minor."
The new code explicitly provides that "the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, [or] a juvenile traffic offender . . . and in proceedings concerning any minor alleged to have been delinquent prior to having become eighteen years of age." 69 Therefore, when it appears that a youth under the specified age is before a court other than a juvenile court, that court has no alternative but to make the transfer. This is true regardless of the nature of the offense charged; the requirement is jurisdictional. Should the court proceed with the case even though unaware of the age of the youth, any resulting conviction would be void and any detention of the youth thereunder illegal. 70

The probate courts in counties with under 30,000 population now have jurisdiction of minor criminal offenses, similar to the corresponding jurisdiction of municipal courts under the general municipal court act. 71 Minors may, therefore, appear before them charged with criminal offenses which fall within the jurisdiction of the juvenile court and which the judge, therefore, ought to hear in that capacity. The requirement that the case be transferred to the juvenile court calendar of the court would appear to have been contemplated in the act. It is not enough that the judge hearing criminal cases is also the judge who presides in juvenile court cases. The act contemplates that before there is a decision that the case will be heard as a criminal case, there will be a hearing on the desirability of its being so considered. 72 For the judge to announce from the bench, when hearing criminal cases, that he will hear the criminal case as though he had made a transfer from the juvenile court calendar would by-pass this requirement.

The transfer is made by the transferring court's "filing with the . . . juvenile court a certificate indicating the name, age, and residence of the minor, the names and addresses of his parent or guardian, if known, and the reasons for his appearance in court, together with all papers, documents and testimony connected" with the case. 73 The act states that "the certificate has the effect of a petition filed in the juvenile court," but the judge, in his discretion, may direct the filing of a new petition. 74 The meaning and significance of the certificate will be considered in connection with petitions, discussed later in this Article.

68. State ex rel. Knutson v. Jackson, 249 Minn. 246, 82 N.W.2d 234 (1957).
70. State ex rel. Knutson v. Jackson, 249 Minn. 246, 82 N.W.2d 234 (1957).
72. See text commencing at note 152 infra.
73. Minn. Laws 1959, ch. 685, § 14(2). What the phrase "if known" qualifies is not clear from the subdivision.
74. Ibid.
In addition to the issuance of the certificate, the transferring court is required to take certain steps in effecting the transfer. It should direct “the minor to be taken immediately to the juvenile court and in no event shall detain the minor for longer than 48 hours after the appearance of the minor in the transferring court.” 75 The act appears to contemplate immediate transfer to the juvenile court, and any delay must be justified, such as by the fact that the juvenile court is closed over a holiday or weekend. But in any case, the period of detention cannot be longer than forty-eight hours.

The requirement that the transferring court must order “the minor to be taken immediately to the juvenile court” appears inconsistent with the following provisions:

The transferring court may release the minor to the custody of his parent, guardian, custodian, or other person designated by the court on the condition that the minor will appear in juvenile court as directed. The transferring court may require the person given custody of the minor to post such bail or bond as may be approved by the court which shall be forfeited to the juvenile court if the minor does not appear as directed. The transferring court may also release the minor on his own promise to appear in juvenile court.76

However, the provisions probably can be reconciled in the following manner. The purpose of the requirement that the minor be taken immediately to the juvenile court is to prevent any unwarranted detention at the hands of the transferring court or the law enforcement officers. The objective is prompt transfer of the case to the juvenile court. If the last-quoted provisions are resorted to and the youth is not placed in detention, the same urgency of action in making the transfer is not required. If the child is placed in detention pending the transfer, it must be in a place specified by the act as one proper for juveniles.77

C. The Petition

With respect to the contents of the petition, the new code provides:

The petition shall set forth plainly:
(a) The facts which bring the child within the jurisdiction of the court;
(b) The name, date of birth, residence, and post office address of the child;
(c) The names, residences, and post office addresses of the parents;
(d) The name, residence, and post office address of his guardian if there be one, of the person having custody or control of the child, and of the

75. Minn. Laws 1959, ch. 685, § 14(3).
76. Ibid.
77. See Minn. Laws 1959, ch. 685, § 26. There are corresponding limitations on the place and period of detention where the law-enforcement officer takes a child into custody and proceedings are brought directly in the juvenile court. See Minn. Laws 1959, ch. 685, § 26.
nearest known relative if no parent or guardian can be found;
(e) The spouse of the child, if there be one. If any of the facts required
by the petition are not known or cannot be ascertained by the petitioner,
the petition shall so state.78

Clauses (b), (c), (d) and (e) appear to be aimed primarily at
providing, at an early and convenient point, the information speci-
fied for the use of the court and its personnel and to some extent to
indicate where and on whom service of summons and notices should
be made. Clause (a) is the important part of the section. It requires
that the facts bringing the child within the jurisdiction of the court
must not only be set forth but that they must be set forth plainly.
This varies to some extent from the former requirement.79 Neither
sheds much light on what is required, and the authors of both were
probably unaware of the difficulties encountered in Code pleading
in civil actions where the requirement was that the pleader must
state "facts constituting the cause of action."80

There are few judicial opinions in which the requirements of an
adequate petition are analyzed. It would seem that the test should
be whether the petition sufficently indicates what misconduct is
proposed to be shown at the hearing as establishing the delinquency
of the child. For this purpose a detailed statement is ordinarily not
needed. At the same time, the statement should not be couched in
such broad terms that it is meaningless. Thus, a general charge that
the child is a delinquent would be insufficient. Equally inadequate
would be a statement that the child has committed a criminal act or
engaged in criminal conduct, without additional specification of the
act or conduct. Such allegations give no lead as to what is intended
to be proved.81

When the charge involves the commission of a

78. Minn. Laws 1959, ch. 685, § 17(3).
79. Formerly, the petition was required to set forth "the facts of the alleged
dependency, neglect or delinquency." MINN. STAT. § 260.07 (1957).
analogy, although it involved a proceeding by a town in the juvenile and domestic
relations court to compel a husband to support his wife. The complaint alleged the
failure to support, stating it was contrary to "Revised Statutes, 1951 Title 44:1-1 to
44:1-160 Approved December 20, 1947 and the supplements thereto and amendments
thereof." Id. at 377, 153 A.2d at 373.
The court observed:
[N]o defendant should be required to go through 160 sections of a statute, plus
all the supplements thereto and amendments thereof, to find out what he is
charged with, especially when the 160 sections and "the supplements thereto
and amendments thereof" contain various and differing bases of liability, . . .
Due process means more than mere notice to a person that he is a defendant—
he is entitled to a complaint which informs him of the legal and factual basis
of the charge which he is called upon to face. . . .

It has been pointed out that our Juvenile and Domestic Relations Courts, as
well as our municipal courts, have come of age; and that they possess far greater
powers of fine, imprisonment, and the imposition of money judgments than in
criminal offense, the crime committed should be stated with some degree of specificity. The following should suffice:

The child above named is a delinquent child in that on the day of ______ 19_____, at ______, Minn., he [stole an automobile belonging to ________], [broke and entered into a store belonging to ________ with intent to commit a crime therein], [assaulted and beat one John Jones], or the like.

Of course, the petition can set forth as many misdeeds as may be desired to show the delinquent character of the child. The phrase "is a delinquent child" is believed to be an important allegation which should appear in all petitions, since the child's being delinquent is the basic reason for bringing him into court. Where the misconduct charged is not of itself indicative of delinquency, some such allegation of delinquency may be essential to the validity of the petition.82

Where the charge of delinquency does not involve a criminal act but relates rather to "habitual" truancy or to the fact that the child is uncontrolled "by reason of being wayward or habitually disobedient," or that he "habitually deports himself in a manner that is
injurious or dangerous to himself or others," the nature of the conduct charged is such that it can be stated only in general terms. Stating the charge in the terms of the statute should be sufficient. To do more would entail the relating of evidentiary details which would serve little purpose except possibly to involve the proceeding in technical arguments about confining the hearing to the details alleged. But since these allegations are very general, some limit to the proof intended should be indicated by setting out the dates between which the delinquent conduct is alleged to have occurred. The following is an example of this type of case:

The above named child is a delinquent child in that between , and , he [was and continues to be habitually truant from school], [was and continues to be uncontrolled by his parents (guardian) (uncle with whom he resides, his parents being deceased or as the case may be) by reason of being (wayward) (habitually disobedient)], [has deported, and continues to deport, himself in a manner that is injurious or dangerous to himself or others.] In view of the generality of these allegations, if the child, his representative, or others affected insist that by reason thereof they have not been able to prepare for the hearing, the court should be liberal in providing a more detailed indication of what is being claimed against the child and in granting a continuance if requested.

The purpose of the petition being to inform those who may oppose it of what they may expect to meet at the hearing, the evidence introduced at the hearing must necessarily be confined to the charges made in the petition. Otherwise, the requirement that there be a petition would be quite pointless. The petition would afford little assistance or protection to the parties if it alleged a given charge and the evidence produced at the hearing proceeded to prove another.

84. See Harry v. State, 246 Wis. 69, 77, 16 N.W.2d 390, 393 (1944), where the court stated:

[T]he language of the statute was used in charging this boy with being a delinquent child. It is contended that this fails to comply with the statutory requirement that the petition must briefly allege the facts which bring the child within the definition of the charge. The petition does allege that the child habitually departs himself so as to injure or endanger the morals or health of himself or others. This allegation is in the words of the statute and it is not considered that the petitioner is to set forth in detail the various acts of the child bringing him within the statute.


The evidence given in such cases should also be confined to the charges alleged in the petition filed in the case. . . . It was likewise error for the trial court . . . to hear and consider evidence about extraneous matters and misconduct of the child with which it was not charged in the petition presented in the case.

On the general rule against variances in the proof in civil cases, see 1 Pims. MINNESOTA PLEADING § 39 (4th ed. 1956).

That failure to object may waive the objection, see note 81 supra. However, where
These requirements and limitations should not cause any substantial problems for the juvenile courts. While the new code is silent on the question of amendment of the petition, the court undoubtedly has inherent power, on application or on its own motion, to cause the petition to be amended so as to allege new grounds for the charge of delinquency, should it become evident that the interests of the child and of the state demand it. If the petition is so amended, the court should, upon the request of any party, grant a continuance of the case for the purpose of meeting the new allegations.86

When a case comes before the juvenile court by transfer from another court before which the child has been brought on a charge of having committed a criminal offense, the act does not contemplate the initial filing of a complaint. The relevant provision is:

The court transfers the case by filing with the judge or clerk of juvenile court a certificate showing the name, age, and residence of the minor, the names and addresses of his parent or guardian, if known, and the reasons for his appearance in court, together with all papers, documents, and testimony connected therewith. The certificate has the effect of a petition filed in juvenile court, unless the judge of the juvenile court in his discretion directs the filing of a new petition, which shall supersede the certificate of transfer.87

Thus there is no requirement such as that applicable to petitions that there be "set forth plainly the facts which bring the child within the jurisdiction of the court." All that is needed is a certificate containing, besides informational data, "the reasons for his appearance in court." This certificate serves as the petition in the juvenile court. It would seem, therefore, that it should be subject to the same

the parties are not represented by counsel, a finding of waiver should be made with caution. Compare State ex rel. Knutson v. Jackson, 249 Minn. 246, 82 N.W.2d 234 (1957), in which the mother's waiver of notice of hearing was held invalid.

88. See Harry v. State, 246 Wis. 69, 80, 16 N.W.2d 390, 395 (1944), in which the court stated:

It is also contended that the court is limited to the charge contained in the petition, and that the original petition charging this boy with being a delinquent child limited the jurisdiction of the court to this particular charge. We do not consider this to be correct. When the child is once brought before the court and the facts are presented, the court may order the petition to be amended and adjudge the child to be a "neglected," "dependent," or "delinquent" child, as the facts warrant. To hold otherwise would defeat the purpose of the law. The purpose of the proceedings is to provide for the welfare of the child and to remove him from unfortunate surroundings. When the facts indicate that the child is not being properly reared or cannot be readily controlled, the child's best interests demand that he be subject to wiser or stronger authority. The only way this can be accomplished is to permit the court to proceed as the facts warrant at the time the determination is made.

The quotation fails to give sufficient recognition to the necessity of providing parties opposing the petition with an opportunity by way of a continuance to meet the new charges introduced.

under requirements, and that if the certificate does not meet these standards, the court should direct a more adequate petition to be filed, especially if any party claims the evidence developed at the juvenile court hearing contains charges of delinquency of which he was not advised through the certificate.

A like problem is presented when the child comes before the juvenile court charged with a traffic offense. Here, again, special provisions apply with respect to the statement of the charge which brings the child before the juvenile court. The act provides:

When a child is alleged to have violated any state or local traffic law, ordinance, or regulation, the peace officer making the charge shall file a signed copy of the notice to appear, as provided in . . . section 169.91, with the juvenile court of the county in which the violation occurred, and the notice to appear has the effect of a petition and gives the juvenile court jurisdiction.88

The notice so contemplated is undoubtedly adequate to permit the court to deal with the youth under the special provisions relating to juvenile traffic offenders. But the act specifically provides that a juvenile traffic offender is not a delinquent, unless there is a specific finding by the court to that effect.89 Of course, such a finding must be based on evidence introduced in the case which the youth or other interested parties have the opportunity to dispute. Under the principles already discussed, such evidence is not admissible, unless it is in support of a charge made prior to the hearing and of which the parties have been advised. Hence a new or supplemental petition would be required in order to bring into the case the broader question of the youth's delinquency.

D. The Hearing

Experience has shown that in a large majority of cases brought before the juvenile court, there is no question raised concerning the commission of the delinquent acts. It is conceded by all concerned that the acts took place, and the only question before the court is the proper disposition that should be made. The limitations on the hearing here discussed will usually arise in those cases in which the fact of the child's delinquency is in dispute. Thus the sources of information which the judge may use in considering the disposition to be made are much wider than are permissible in determining the question of delinquency.90

88. Minn. Laws 1959, ch. 685, § 30(2).
Under Minn. Stat. § 169.91 (1957), the required notice to appear "shall contain the name and address of the person arrested, his drivers license, or chauffeur's license number, the license number of his vehicle, the offense charged, and the time when and the place he is to appear in court."
89. See text commencing at note 49 supra.
90. "Before making a disposition in a case . . . the court may consider any
Few provisions in the new code deal with the requirements of the hearing. Those that appear are contained in a single section and, for the most part, are applicable equally to neglect and dependency cases as to those involving delinquency. The hearing is to be before the judge rather than before a jury and is to be "conducted in an informal manner." These requirements undoubtedly contemplate the kind of hearing that has been traditional with juvenile courts in which the judge and his staff, rather than the parties, bear the primary burden of ascertaining the facts. The following provision is an important one which settles a question which has frequently come up in other states:

The minor, parent, guardian or custodian have the right to counsel. If they desire counsel but are unable to employ it, the court shall appoint counsel to represent the minor or his parents or guardian in any other case in which it feels that such an appointment is desirable.

The hearing is not open to the public, and the court may "admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court." The right of a minor and his parent or guardian to be present at the hearing is recognized in a qualified fashion:

In a delinquency proceeding, after the child is found to be delinquent, the court may excuse the presence of the child from the hearing when it is in the best interests of the child to do so. In any proceeding the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so. The attorney or guardian ad litem, if any, has the right to continue to participate in proceedings during the absence of the minor, parent, or guardian.

report or recommendation made by the county welfare board, probation officer, or licensed child placing agency or any other information deemed material by the court." Minn. Laws 1959, ch. 685, § 27(2).
92. Minn. Laws 1959, ch. 685, § 22(1).
93. See text accompanying note 61 supra.

It is submitted that the right to counsel, as guaranteed by the federal and various state constitutions, is not only applicable to the juvenile court, but that the court is obliged to implement this basic guarantee by advising the juvenile of his right to counsel, and appointing counsel for him where he has none of his own.

The act further protects the interests of the child by authorizing the appointment of a guardian ad litem in appropriate cases. Minn. Laws 1959, ch. 685, § 22(4).
95. Minn. Laws 1959, ch. 685, § 22(1).
96. Minn. Laws 1959, ch. 685, § 22(5). Subdivision 3 of the same section provides that "the county attorney shall present the evidence upon request of the court."

The advisory committee observed:

Sol Rubin, counsel to the N.P.P.A. criticizes the present provision as bringing in the atmosphere of a prosecution, or at least an adversary aspect which should
The right of the child to be present at the hearing during consideration of the question whether he has been delinquent is thus indirectly recognized. He may be excluded only after a finding of delinquency, while the court considers what disposition should be made. The reasons for the provision are stated by the advisory committee as follows:

It is intended that the provision stating that the minor may be temporarily excused from a delinquency hearing after delinquency is determined will give the minor the right to be in court and confront witnesses, yet will authorize the court to excuse him temporarily during the disposition stage to talk to his parents or others about matters which might undermine the minor's confidence in his parents. When it is in the best interests of the minor to do so, the court may also temporarily excuse the parents from the hearing.\(^9\)

However, the right to exclude the parent under the above provisions may be open to some question. They appear to authorize the court to exclude the parent temporarily during the reception of evidence on the question of whether the child has been delinquent. However, since the right of the parent to retain custody of his child is involved, due process may require that the parent have an opportunity to hear this evidence in order to meet it effectively. This would be especially true when the parent is not represented by counsel.

Finally, the act provides: "The minor and his parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing." \(^8\)

Speaking about this provision, the advisory committee observed: "The proposal is intended to outline the basic rights of the individuals involved in the hearing without codifying the rules of evidence, many of which are inappropriate to the setting and unnecessary in a case tried before a judge rather than a jury." \(^9\)

E. Rules of Evidence

(1) In General

The comment of the advisory committee last quoted shows that the intent was to leave to the courts the development of the principles of evidence which are to prevail in juvenile court proceedings. Some of these principles will now be considered in the light of the

\(^{97}\) Id. at 42. The word "excuse" in the last sentence of the quoted statement is not an apt choice, since it implies a request for permission to leave. Exclusion by the court regardless of request is undoubtedly intended.

\(^{98}\) Minn. Laws 1959, ch. 685, § 22(6).

\(^{99}\) REPORT OF THE MINN. LEG. INTERIM COMM’N ON PUB. WELFARE LAWS 43 (1959). For a fuller discussion, see Paulsen, supra note 94; Rappeport, supra note 94; Annot., 43 A.L.R.2d 1128 (1955).
Judicial decisions which have heretofore considered the subject. While there has been a tendency to resolve these problems by classifying the proceedings as either civil or criminal, an analysis of the decisions confirms the belief that, by and large, the principles that have been worked out have been essentially in terms of the special needs of this type of proceeding.\textsuperscript{100}

The admissibility of confessions made by the child has received little consideration by the courts. The prohibition against admitting such evidence probably does not apply to the extent to which it has been recognized in criminal cases. Thus, it has been held that the requirement of independent proof of the corpus delicti before a voluntary confession can be considered is inapplicable to a juvenile court proceeding.\textsuperscript{101} However, where there is reason to believe that the confession offered in evidence was obtained by police threats or other third-degree methods, it should be rejected out of hand. Not only is a confession obtained from a youth by these methods particularly unreliable as evidence of what is actually confessed, but it is especially reprehensible that youths, whatever their misdeeds, should be exposed to these illegal police practices. Consider, for example, the testimony of a policeman who appeared in a New York case:

Q. Did you make any threats to him?
A. I think I possibly did, I said, "You ought to get a good licking right here," and one time he didn't answer me just right and I said, "I would like to punch you in the nose myself" but I didn't mean anything like that.
Q. You threatened to punch him in the nose unless he told you about the burglary?
A. I said that, yes.
Q. He became frightened and started to cry?
A. Yes.
Q. After that he told you about being connected with the burglaries?
A. Yes.

The court observed:

It seems rather queer that the protection which is given to adults... excluding from evidence their confessions produced by threats, should be withdrawn from young children more easily frightened than adults, and that such confessions should be considered of any weight.\textsuperscript{102}

The sound approach is suggested by the District of Columbia Municipal Court of Appeals in \textit{Matter of McDonald}:

\textit{"Where the evidence of the Government consists largely of the statements of the minor,}

\textsuperscript{100} See text commencing at note 67 \textit{supra.}
\textsuperscript{101} In \textit{re} Tillotson, 225 La. 573, 73 So. 2d 466 (1954).
\textsuperscript{102} People v. Fitzgerald, 244 N.Y. 307, 311-12, 155 N.E. 584, 586 (1927). The proceeding before the court was regarded as a criminal one, but it is still significant for juvenile court proceedings. In \textit{Borders v. United States}, 256 F.2d 458 (5th Cir. 1958), the point was raised but found to be factually without merit.
the court is duty bound to thoroughly investigate the circumstances under which the statements were made.”

The constitutional privilege not to testify against one's self applies to juvenile court proceedings. But the privilege probably extends no farther than to the refusal to testify. It does not include the right to have the court forewarn the child or others appearing for him that he has a right not to incriminate himself. Compelling a child to testify carries a three-fold implication. First, the juvenile court judge might use the testimony in adjudging the child a delinquent. However, since this is concededly not a criminal proceeding, this aspect of the objection has little content. Second, the possibility exists that at the end of the hearing, the judge may decide to refer the case to a criminal court for prosecution for a criminal offense. To compel testimony which might lead to this result could fall within the constitutional prohibition. The point is not met by the provision of the act that “any evidence given by the child in the juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court,” for the prosecution might be pursued as a result of the disclosure without the use of the evidence given. Third, the case may be one in which the compelled testimony might disclose the commission of some other crime unrelated to the charge being made and which might expose the child to a new juvenile court proceeding with possible transfer to a criminal court.

The extent to which a child can voluntarily waive the privilege against self-incrimination and the extent to which a juvenile court is foreclosed from referring a case for criminal prosecution, once the child is compelled to testify, are questions on which the judicial decisions appear to be silent. It would seem that to compel, or even invite, a child to make disclosure and then to refer the case for criminal prosecution would fall within the purview of the constitutional privilege.

The juvenile court will undoubtedly be required to recognize and apply the privileges against testifying resulting from such relationships as attorney-client, husband-wife, and physician-patient.

107. In Holmes' Appeal, 379 Pa. 599, 605, 109 A.2d 523, 525–26 (1954), the court stated that the child had not been compelled to testify: "He was questioned in the same manner and in the same spirit as a parent might have acted . . . ." In answer to the point that the case might be transferred to another court for criminal prosecution, the court observed: "But such a certification could not be made after the Juvenile Court had made an adjudication of delinquency nor, perhaps, after any self-incriminatory examination of the child." Id. at 605, 109 A.2d at 526.
These privileges arise from considerations of policy quite unaffected by the nature of the proceedings in which they are invoked.

(2) Hearsay

The question whether hearsay testimony may be introduced and considered has led to considerable confusion and some conflict. There is a disposition to interpret the cases as either permitting or not permitting its use, but an examination of the cases will indicate that the issue is seldom presented in this simple form. Typically, either the discussion was not necessary to the decision of the case, or there were other factors present besides the reception of hearsay evidence which account for the disposition of the case.

The case most often quoted is People v. Lewis, in which the court said:

When it is said that even in cases of lawbreaking delinquency constitutional safeguards and the technical procedure of the criminal law may be disregarded, there is no implication that a purely socialized trial of a specific issue may properly or legally be had. The contrary is true. ... The customary rules of evidence shown by long experience as essential to getting at the truth with reasonable certainty in civil trials must be adhered to. The finding of fact must rest on a preponderance of evidence adduced under those rules. Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Children's Courts than in any other court.

The statement on its face indicates that it was not the product of careful analysis, and the facts of the case provided no necessity for such analysis. The objection that had been raised to the proceeding was not the specific one that evidence had been improperly received, but the broad one that the requirements of proof which prevail in a criminal trial should have been applied. The appellate court rejected this contention and sustained the action of the Children's Court. To show that "the rights of the child and of the parents are thus amply safeguarded," the above statement was added. That the sweeping condemnation of hearsay, opinion, etc., was not intended as a definitive statement is evidenced by the fact that no recognition was given even to the obviously existing exceptions to the hearsay and opinion rules.

In In re Contreras, the youth before the juvenile court was charged with participation in a gang fight which resulted in serious injury to another youth. He denied the charge. His participation was sought to be established by the testimony of another participant, one Gill. At the hearing, however, Gill denied that Contreras had been

110. Id. at 178, 183 N.E. at 355.
involved in the fight, a denial in which he persisted notwithstanding the judge's assurance that "we are not going to tell the rest of the boys that you told us anything." A law-enforcement officer testified that, prior to the hearing, Gill had told him that Contreras had been involved in the fight. It was held that this evidence, without more, was not sufficient to permit the finding of delinquency to stand. The court said:

Surely, a minor charged in the juvenile court with acts denounced by law as a felony does not have lesser constitutional or statutory rights or guarantees than are afforded an adult under similar circumstances in the superior court. The record herein is barren of sufficient legal evidence to establish even reasonable or probable cause of the minor's guilt, and he should have been returned to his family, an institution that has ever been recognized as the foundation of society, and the sanctity of which the law has always upheld. A charge against a minor resulting in his removal from the custody of his parents cannot be regarded lightly, and such action is not justified unless facts be shown by evidence, the verity of which has been carefully and legally tested.113

There was but the barest mention of the hearsay rule. It seems evident that the issues presented in the case went much deeper than that rule. The case would appear to involve the basic question as to the degree of proof required to sustain a finding as serious as that of delinquency which may, and in this case did, result in a commitment to an institution. Moreover, there were overtones of hostility toward the child at the hearing which probably prejudiced his case, and he was not represented by counsel. Under these circumstances, the appellate court quite properly refused to permit the finding to stand, when it was based on nothing more than the hearsay statement reported by the law-enforcement officer and contradicted by the declarant under oath. But this case certainly is not authority for the proposition that no hearsay statements are admissible in juvenile court proceedings.

A somewhat similar situation was presented to the appellate court in In the Matter of Greene, in which the court considered the sufficiency of a petition in a collateral attack on an adjudication of delinquency. The petition alleged the following:

The proceedings were conducted solely by the judge who based his decision to send the appellant to the "Boys School and straighten him up" on hearsay information contained in an ex parte report furnished by his probation officer. That such report was not produced in evidence and the appellant was not advised of its contents nor afforded any opportunity to defend himself against any derogatory matter therein contained. That the entire proceedings were conducted in his absence and he was deprived of his liberty without being confronted by a single witness and without benefit of cross-examining those who had furnished information contained

112. Id. at 789, 241 P.2d at 632.
113. Id. at 790, 241 P.2d at 633.
in such ex parte report or denying such accusations by his own testimony.\textsuperscript{114}

This was rightly characterized as a "star chamber proceeding whereby a boy was torn from the custody of his parents and deprived of his liberty without a semblance of due process and by reason of a judgment that was not merely erroneous but absolutely void."\textsuperscript{115}

That the issues involved went far beyond the admissibility of hearsay evidence is self-evident.

A series of Nebraska decisions have insisted more emphatically on the exclusion of hearsay evidence, and yet, close examination of these decisions reveals that the position of this court is not clear and its reasoning is not satisfactory. The first of these, \textit{Krell v. Mantell},\textsuperscript{116} appears not to distinguish between unsworn testimony given in court and hearsay statements made outside of the hearing and offered in evidence; the court's condemnation evidently encompasses both.\textsuperscript{117} The opinion of the court evidenced a hostility to the informality of hearings in juvenile courts—an attitude which has persisted in later cases.\textsuperscript{118} Thus, in \textit{State ex rel. Fitzgerald v. Barkus}\textsuperscript{119} unsworn state-

\textsuperscript{114} 123 Ind. App. 81, 85–86, 108 N.E.2d 647, 649 (1952).

\textsuperscript{115} Id. at 86, 108 N.E.2d at 649.

\textsuperscript{116} 157 Neb. 900, 62 N.W.2d 308 (1954).

\textsuperscript{117} The attorney for the child made the following incomprehensible objection:

Then my first objection to the statement of Mr. Krell at this time is based upon these grounds: First, that it is unsworn and consequently it is a relation of what is classified as hearsay testimony and in the nature of an admission against interest of any parties in this lawsuit.

The court's opinion continued:

Mr. Krell then proceeded to make a detailed statement with regard to the defendant not under oath all of which was clearly and admittedly hearsay. Others were allowed to make statements not under oath and which likewise were hearsay.

The court posed this question:

Can it be that it [the legislature] intended that trial should be had without the benefit of testimony of witnesses given under the sanction of oath or affirmation? \textit{Id.} at 906, 62 N.W.2d at 311. A decision that witnesses should testify under oath does not require that all hearsay evidence must be excluded.

The opinion of the court consists largely of quotations from \textit{People v. Lewis}, 260 N.Y. 171, 183 N.E. 353 (1932), and \textit{In re Hill}, 78 Cal. App. 23, 247 Pac. 591 (1926). However, the latter case involved dependency rather than delinquency, and the opinion was primarily concerned with undisclosed information given to the judge rather than with hearsay.

\textsuperscript{118} \textit{In re Godden}, 158 Neb. 246, 63 N.W.2d 151 (1954), presented a dependency case in which the juvenile court judge refused to require witnesses to testify under oath and denied counsel the right to cross-examine witnesses, on the ground that "this was only a clinical proceeding . . . and that the rules of evidence were not applicable." \textit{Id.} at 250, 63 N.W.2d at 155.

The adjudication was reversed, the appellate court saying:

If there is a contested issue of fact to be tried and determined in a proceeding by virtue of the statute concerning juvenile dependents or delinquents, as there is in this case, the result of an investigation ex parte and clinical in its nature may not be used as legal evidence in the trial of the contest, except insofar as it satisfies the requirements of the rules of evidence. It is sometimes said in de-
ments of three witnesses were taken prior to the hearing in the form of questions put by the deputy county attorney and the answers of the witnesses thereto. These statements were held to be "nothing more than reports of an ex parte investigation and inadmissible." But there were other objectionable features of the case which played a major part in bringing about a reversal of the juvenile court's decision. The boy and his widowed mother were not represented by counsel; proper notice required by statute appears not to have been given the mother; neither the boy nor his mother were advised "as to their legal rights or the consequences which could flow from the proceeding" and the boy "was called by the deputy county attorney as the first witness to testify against himself." As these factors played a major role in the decision, the case cannot be regarded as holding that the admission of hearsay testimony is, in itself, a ground for reversal.

In its latest pertinent decision, Krell v. Sanders, the Nebraska court has stated in strong terms the necessity of observing the rules of evidence and procedure of a civil action. The youth was charged with having been involved in an assault; this he and others denied at the hearing. But an assistant probation officer testified that the youth had told him otherwise before the hearing. The appellate court found that this was the only testimony supporting the charge and held that it could not be used. In so doing, the court said:

It has been previously said and is now affirmed that in a hearing before the Juvenile Court the customary rules of evidence must be adhered to and a finding of fact may not rest on or be sustained by hearsay or unsworn statements; that the essential processes, rules, and procedures of the law established and observed to guide and aid courts in the trial and decision of issues of fact are applicable to proceedings under the Juvenile Court Act and they are not permitted to be disregarded because the act refers to such a proceeding as a summary one; and that an issue of fact in such a proceeding must be heard and determined by observance of the rules of evidence that are considered essential and appropriate to ascertain the truth and to protect substantial rights in hearings had without a jury for the adjudication of issues of fact of civil cases in the district court.

linquency cases involving very serious juvenile misconduct that constitutional safeguards and the procedures of the criminal law may be disregarded, but even in this there is no implication that a purely informal, hasty trial of a contested issue of fact may properly or legally be had with only scant regard to rules of evidence or of procedure.

Id. at 252, 63 N.W.2d at 155-56.

119. 168 Neb. 257, 95 N.W.2d 674 (1959).

120. Id. at —, 95 N.W.2d at 677. Both Krell v. Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954) and In re Godden, 158 Neb. 246, 63 N.W.2d 151 (1954) were relied upon.

121. State ex rel. Fitzgerald v. Barkus, supra note 120 at —, 95 N.W.2d at 677.

122. Ibid.


124. Id. at —, 96 N.W.2d at 221-22.
The court concluded that "the hearsay, incompetent, and irrelevant testimony of the assistant probation officer must be and is disregarded in the consideration and decision of this appeal." A striking fact about the case is that the court makes no mention of what would appear to be the controlling principle governing the case and leading to the opposite conclusion, namely, that the statement of the boy to which the probation officer testified seems clearly to have constituted an admission or even a voluntary confession and hence would have been admissible in both civil and criminal cases as an exception to the hearsay rule. The explanation probably lies in the fact that the appellate court was convinced of the boy's innocence and would not permit a hearsay statement, even if admissible as an admission, to sustain a contrary finding. Had the decision been based on this ground, it would have been consistent with the import of the decisions in the cases under consideration.

While one may conclude, therefore, that the Nebraska decisions do not necessarily foreclose the reception of hearsay evidence in juvenile court cases, certainly the language employed by that court leans strongly toward that result. The attitude of the court may explain, in considerable part, the relatively numerous appeals from juvenile court decisions in that state.

The significant contribution of the cases so far considered would appear to be that appellate courts will not sustain an adjudication of delinquency which is based on flimsy and unreliable evidence, especially when the charge of delinquency is based on criminal conduct. If the adjudication is founded on nothing more than hearsay statements, not falling within the recognized exceptions, and especially where the declarants have denied making the statements or where the hearsay consists of gossip, rumor, or suspicion, appellate courts generally will not permit the adjudication to stand.

Consistent with these principles are those decisions which hold that if reliable evidence has established a substantial case showing the delinquent conduct of the child, the fact that hearsay evidence has also been received will not be a ground for reversal. The unfairly maligned case of Holmes' Appeal holds in accordance with this statement. In that case a convicted criminal, in his confession, implicated the youth who was brought into juvenile court. The appellate court sustained admission into evidence of the confession, notwithstanding...
standing the repudiation of the validity of the confession by the man
who made it. The court said:

It is true that subsequently the man who had made the confession repudi-
ated it and now stated that appellant did not participate in the robbery,
but of course the judge was not obliged to believe his retraction. He
admitted that he had made the confession and the fact that the testimony
of the detective was technically "hearsay" was therefore wholly unimpor-
tant. Moreover, from the very nature of the hearings in the Juvenile Court
it cannot be required that strict rules of evidence should be applied as
they properly would be in the trial of cases in the criminal court. Although,
of course, a finding of delinquency must be based on sufficient competent
evidence, the hearing in the Juvenile Court may, in order to accomplish
the purposes for which juvenile court legislation is designed, avoid many
of the legalistic features of the rules of evidence customarily applicable to
other judicial hearings. Even from a purely technical standpoint hearsay
evidence, if it is admitted without objection and is relevant and material to
the issue, is to be given its natural probative effect and may be received as
direct evidence. . . . Moreover, there is nothing in the record to indicate
that the judge who resided in the Juvenile Court acted in the final dis-
position of appellant's case on the basis of any conclusion that appellant
had in fact participated in the armed robbery of the church.129

One cannot read the case without concluding that the juvenile court
had before it a seriously disturbed child with a long history of delin-
quent conduct. To have reversed a finding of delinquency because
of the reception of the hearsay statement would have defeated the
rightful purposes of the juvenile court in the case, while contributing
nothing to the rights or interests of the child.

In the same vein is the decision in State v. Christensen.130 The
Utah juvenile court statute131 under consideration by the court in
that case went further than most juvenile court legislation in removing
the formalities associated with customary litigation. One of its
provisions permitted the court to "receive in evidence the verified
reports of probation officers, physicians, psychologists, psychia-
trists. . . ."132 In the case before the court, two letters were re-
ceived in evidence. One, which was verified, came from a school
superintendent and gave the results of an achievement test taken

129. Id. at 606, 109 A.2d at 526.
130. 119 Utah 361, 227 P.2d 760 (1951).
131. UTAH CODE ANN. § 14-7-25 (1943), quoted in part by the court as follows:
In all cases relating to the delinquency, neglect, dependency or other cases of
children and their disposition the court shall be regarded as exercising equity
jurisdiction. The court may conduct the hearing in an informal manner and
may adopt any form of procedure in such cases which it deems best suited to
ascertain the facts relating to such cases and to make a disposition in the best
interests of such children and of the public. . . . The court may hear evidence
in the absence of such children, and may compel children to testify concerning
the facts alleged in the petition.
119 Utah at 364, 227 P.2d at 761.
132. UTAH CODE ANN. § 14-7-25 (1943), quoted by the court in the Christensen
case. 119 Utah at 365, 227 P.2d at 762.
by the youth; the other, unverified, came from a physician and gave
the results of physical and psychological tests. Apparently the court
had no difficulty in upholding the admission of both. Both were
clearly hearsay statements. And one did not meet the statutory
requirements of verification, but the court could find no prejudice
to the child by its admission. One may observe that the letters illus-
trate the kind of hearsay which may serve as a reliable source of
information.

Implicit in the hearing contemplated by the new Minnesota
juvenile court code is the production of witnesses who testify to the
essential facts and who may be cross-examined on behalf of the
child, parents, and other interested parties. But it is the conclusion
of this writer, from a review of the decisions on the subject, and
based on the purposes, tenor, and provisions of the new code, that
the reception of hearsay statements, in and of itself without more, is
not error. The fundamental test of the validity of a finding of delin-
quency is: Does it rest on a substantial basis in the evidence, having
regard to the gravity and importance of the issues and consequences
involved? This may well require something more than a mere
preponderance of the evidence. The reception of hearsay evidence
bears only on this basic question. If the finding is so supported, the
fact that hearsay evidence was admitted during the course of the
hearing is not ground for setting the finding aside. For example,
there is little danger of receiving untrustworthy information in ad-
mitting into evidence the report of a physician or psychiatrist con-
cerning the physical or mental condition of the child, or a report
from the child's school concerning his attendance and scholarship
record, or a report from his employer concerning the child's ab-
senteeism. An affidavit from one who cannot attend the hearing,

133. The writer finds this test implicit in the provisions of the act. The extent to
which the test finds support in the constitutional requirements of due process is not
considered here. Compare In re McDonald, 153 A.2d 651 (1959), where the District
of Columbia Municipal Court of Appeals stated:

[T]he courts have said that the rights of a minor in the Juvenile Court stem
from three sources: (1) those expressly accorded the individual by the statute
itself; (2) those which are so fundamental as to be implied from the Act; and
(3) those rights within the meaning of due process insofar as that provision is
applicable to civil actions. Specifically, the constitutional safeguards peculiar to
criminal proceedings do not apply.

134. This principle prevails in administrative proceedings, see 2 Davis, Adminis-
trative Law Treaties § 14.08 (1953), and arbitration proceedings, see Uniform
Arbitration Act § 5(b); Minn. Stat. § 572.12(b) (1957); 3 Am. Jur. Arb. &
Award § 108 (1939); 6 C.J.S. Arb. & Award § 65 (1938).

Section 22, subdivision 6, of the new Juvenile Court Act, Minn. Laws 1959, ch.
655, quoted in the text accompanying note 98 supra, stemmed from these sources.

"The idea is derived from Minn. Stat. § 572.12(b), the Uniform Arbitration Act,
and U.S.C. § 1006, the Federal Administrative Procedure Act." Report of the
which was made under circumstances that negative any reason for falsification, also might well be received. The weight to be given such evidence will, of course, take into account that it has not been given in court, under oath or subject to cross-examination. If, in a particular case, the information so obtained should become the subject of serious dispute at the hearing and bear on an issue critical to the determination of delinquency, or if the court itself desires more complete information, the court should continue the case for the purpose of bringing the declarants into court to testify as witnesses. If, on the other hand, the adjudication rests on nothing more than hearsay, and especially if it is of an unreliable nature, such as gossip and rumor, or hearsay that is repudiated by the declarant, the basic test will not have been satisfied and the adjudication of delinquency should not be permitted to stand. These principles are in accordance with the modern trend in all fields of litigation toward relaxation of the rigid adherence to the hearsay rule, especially in cases before a judge rather than a jury.\textsuperscript{135} It should not be overlooked that this expanded concept of admissible evidence operates not only to make the proof of delinquency easier. When one considers the economic status and limited resources available to the average youth before the juvenile court, and to his family, it also may work to his advantage rather than to his disadvantage to be able to establish his innocence by means other than the production of witnesses in court.

F. Disposition

In addition to some general provisions in the act relating to the principles controlling, and the powers granted in, the disposition of cases coming before the juvenile court,\textsuperscript{136} there is a separate section dealing specifically with the disposition that may be made in delinquency cases.\textsuperscript{137} As compared with the previous code, this section states in clearer terms and, to some extent, broadens the powers of the judge. The section begins by providing:

If the court finds that the child is delinquent, it shall enter an order making any of the following dispositions of the case which are deemed necessary to the rehabilitation of the child:\textsuperscript{138}

Then follow several alternatives. Subdivision (a) provides:

Counsel the child or his parents, guardian, or custodian.\textsuperscript{139}

The power to consult would appear to reside in the judge without the necessity of the act's specifically providing for it, but it may be

\textsuperscript{135} See McCormick, Evidence §§ 300-05 (1954).
\textsuperscript{136} Minn. Laws 1959, ch. 685, § 27.
\textsuperscript{137} Minn. Laws 1959, ch. 685, § 28.
\textsuperscript{138} Minn. Laws 1959, ch. 685, § 28(1).
\textsuperscript{139} Minn. Laws 1959, ch. 685, § 28(1)(a).
well that it be expressed in order to emphasize that the goal in these cases is assistance and guidance with a view to rehabilitation rather than punishment. Any such consultation should be engaged in by the judge only with a clear conception of what it will accomplish by way of rehabilitation and how it will interrelate with other measures being taken. Unless the judge has gained the confidence of the child and his parents, his counseling may be of limited effectiveness and, if it descends to the level of lecturing or moralizing, it may do more harm than good.

Subdivision (b) provides:

Place the child under the supervision of a probation officer or other suitable person in his own home under conditions prescribed by the court including reasonable rules for his conduct and the conduct of his parents, guardian, or custodian designed for the physical, mental, and moral well-being and behavior of the child.\textsuperscript{140}

The reason for including the phrase "other suitable person" was stated by the advisory committee to be that "the juvenile judges feel this provision is essential in counties where probation service is unavailable or limited."\textsuperscript{141} With the adoption of the probation service act already discussed,\textsuperscript{142} this reason no longer has much force. However, it may still serve a useful purpose in those cases where the skilled services of a probation officer are not needed and where rehabilitation of the child can be effected under the direction of a private citizen of the community who is carefully selected for the purpose. The provision does not contemplate that this person need reside in the home.

Subdivision (c) provides:

Subject to the supervision of the court, transfer the legal custody of the child to one of the following:

(1) A child-placing agency; or
(2) The county welfare board; or
(3) A reputable individual of good moral character; or
(4) A county home school, if the county maintains a home school or enters into an agreement with a county home school.\textsuperscript{143}

An order under this clause must fix the length of time for which the period of legal custody is to run, but this order can be renewed from time to time or, after notice and hearing, a new disposition made.\textsuperscript{144}

Subdivision (d) provides:

Transfer legal custody by commitment to the youth conservation commission.\textsuperscript{145}

\textsuperscript{140} Minn. Laws 1959, ch. 685, § 28(1)(b).
\textsuperscript{141} REPORT OF MINN. LEG. INTERIM COMM’N ON PUB. WELFARE LAWS 55 (1959).
\textsuperscript{142} See text commencing at note 80 supra.
\textsuperscript{143} Minn. Laws 1959, ch. 685, § 28(1)(c).
\textsuperscript{144} Minn. Laws 1959, ch. 685, § 28(d).
\textsuperscript{145} Minn. Laws 1959, ch. 685, § 28(1)(d).
If such an order is made, the court loses jurisdiction to make any further disposition of the child. What disposition is thereafter to be made is determined by the youth conservation commission.\textsuperscript{146}

Subdivision (e) provides:

If the child is found to have violated a state or local law or ordinance which has resulted in damage to the property of another, the court may order the child to make reasonable restitution for such damage.\textsuperscript{147}

Cases often arise in juvenile courts in which the necessity on the part of the youth of having to pay for the damage or destruction he has caused will have a wholesome rehabilitative effect. But the power to require restitution must be exercised with great caution by the juvenile court judge lest the processes of the court be subverted into a device for collecting private claims. A dispute over the value of the property damaged or destroyed would engage the court in an issue having only a remote relation to the court's primary function of determining what is the best disposition to be made with respect to the child.

The remaining powers need not be quoted. The court may order medical care for the child, either at the expense of the parents, if they are able to pay for it, or at the expense of the welfare funds of the county.\textsuperscript{148} If the child has committed a felony, the court may also recommend to the commissioner of highways the cancellation of the child's driver's license until the child's eighteenth birthday, if "it is in the best interests of the child and of public safety" to do so.\textsuperscript{149}

This provision originated from a recommendation made by the Commission on Juvenile Delinquency, Adult Crime, and Corrections, which said in support of it:

The chronically or seriously delinquent youngster is almost sure to be an irresponsible and dangerous driver. Several law enforcement officers identified the delinquent youngsters as their most serious traffic problem. As a result much sympathy was expressed with Judge Tallakson's desire to restrict the driving of some persons under 18 who have been adjudged delinquent, regardless of whether or not their delinquencies involved the use of an automobile.\textsuperscript{150}

The provision should be administered in keeping with the policy so expressed.

The act also provides that, except when the child has been committed to the youth conservation commission, "the court may, within

\textsuperscript{146} For a statement of the powers of the youth conservation commission, see Minn. Stat., ch. 242, (1957) particularly §§ 242.10, .19.

\textsuperscript{147} Minn. Laws 1959, ch. 685, § 28(1)(e).

\textsuperscript{148} Minn. Laws 1959, ch. 685, § 28(1)(f).

\textsuperscript{149} Minn. Laws 1959, ch. 685, § 28(1)(g).

\textsuperscript{150} See Report of the Commission on Juvenile Delinquency, Adult Crime, and Corrections; Safer Driving by Juveniles in Minnesota 76 (1959).
90 days, expunge the adjudication of delinquency.” Presumably, the ninety days begins to run from the date of the order adjudicating the delinquency, rather than from the order of discharge. If such is the proper construction, its justification must lie in the belief that if the child requires a longer period of treatment than ninety days, the adjudication of delinquency should not be “expunged.” What the procedure is that “expunges” the adjudication is not clear. The term has no accepted meaning. It can hardly mean the destruction of the document containing the adjudication. It would appear to anticipate a new order cancelling or revoking the one previously made.

G. Transfer to Another Court

The new code provides:

Subdivision 1. When a child is alleged to have violated a state or local law or ordinance after becoming 14 years of age the juvenile court may enter an order referring the alleged violation to the appropriate prosecuting authority for action under laws in force governing the commission of and punishment for violations of statutes or local laws or ordinances. The order of reference terminates the jurisdiction of the juvenile court in the matter.

Subdivision 2. The juvenile court may order a reference only if
(a) A petition has been filed in accordance with the provisions of section 17,
(b) Notice has been given in accordance with the provisions of sections 18 and 19,
(c) A hearing has been held in accordance with the provisions of section 22, and
(d) The court finds that the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts.

Subdivision 3. When the juvenile court enters an order referring an alleged violation to a prosecuting authority, the prosecuting authority shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

These provisions indicate that the transfer of a case by the juvenile court to another court is intended to be something more than a perfunctory affair. The requirements with respect to the petition, notice to interested parties, and hearing must be substantially observed, and the rights afforded a child and other parties at a hearing preceding a finding of delinquency must likewise be accorded them before the transfer. Evidence must be taken and findings based thereon must be made.

151. Minn. Laws 1959, ch. 685, § 28(2).
152. Minn. Laws 1959, ch. 685, § 16.
We think the rule announced in the cases cited, when properly read, hold that under the provisions of the act creating the juvenile courts that it is necessary for this court to pass upon the question of defendant’s probable guilt, the nature and disposition of the crime committed, the character of the defendant,
Because the decision whether a transfer should be made is of such importance, the Minnesota Supreme Court has insisted upon substantial adherence to the procedural conditions of transfer. In *State ex rel. Knutson v. Jackson*, the juvenile court had ordered the transfer to the district court of a juvenile charged with the killing of his father, but prior notice of the proceeding had not been given to the mother. The ensuing sentence of the district court to life imprisonment on a plea of guilty was held void, and a writ of habeas corpus was granted releasing the youth from imprisonment. The court stated: "We do not see how the clear purpose of the act may be achieved if it is not mandatory that the proceeding set forth in c. 260 [the former juvenile court code] take place before a delinquent child may be prosecuted in the district court."

The question whether a transfer should be made will ordinarily arise only in cases where the child has committed a felony and evidences such deep seated criminal tendencies that state, as well as local, facilities are inadequate to remedy the condition. Since such transfer may result in the youth conservation commission's receiving the child by way of criminal conviction rather than on a commitment for delinquency, it would seem desirable that the juvenile court judges and the commission should adopt a common policy concerning the kind of cases in which transfers should be made.

A problem of some perplexity concerns the youth who has committed an offense while under the juvenile court age, but who is not apprehended or prosecuted until after he has passed that age. In the absence of specific statutory provisions to the contrary, courts have tended to hold that the youth may be prosecuted for the criminal offense without prior submission of the case to the juvenile court.
The Minnesota Supreme Court has indicated its approval of this view. This view, of course, permits law-enforcement officers who desire to circumvent the juvenile court to wait until after the youth has passed the juvenile court age and then prosecute for the criminal offense. Two provisions in the new code are designed to avoid this result. One is section 32, subdivision 1:

A violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court refers the matter to the appropriate prosecuting authority in accordance with the provisions of section 16 or to a court in accordance with the provisions of section 80.

The other provision is section 13, subdivision 1:

Except as provided in section 16, the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent, a juvenile traffic offender . . . and in proceedings concerning any minor alleged to have been delinquent prior to having become eighteen years of age. . . .

Under these provisions, an act constituting a crime committed by a youth while under the age of eighteen remains within the jurisdiction of the juvenile court until he reaches the age of twenty-one and cannot be made the subject of a criminal proceeding except upon transfer by the juvenile court.

Where criminal prosecution is deferred until after the youth is twenty-one and the criminal act charged occurred before he had reached eighteen, the statute of limitations will stand as a bar in most cases. The principal exceptions are cases of murder and cases in which the youth has fled the state during the intervening period. Should such cases arise, it is questionable whether courts


Respondent, of course, is no longer a juvenile and any original jurisdiction possessed by the juvenile court of Carver County terminated when he ceased to have such status. . . . Under the statutes and authorities cited, it follows that respondent is now unlawfully imprisoned and should be discharged from appellant's custody to Carver County officials for trial for the crime for which he was indicted.

See also State ex rel. Knutson v. Jackson, 249 Minn. 246, 82 N.W.2d 234 (1957).

161. A minor is defined as "an individual under 21 years of age." Minn. Laws 1959, ch. 685, § 2(9). A child is "an individual under 18 years of age and includes any minor alleged to have been delinquent prior to having become 18 years of age." Minn. Laws 1959, ch. 685, § 2(2).

161. Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court within three years after the commission of the offense; but the time during which the defendant shall not be an inhabitant of, or usually resident within, this state, shall not constitute any part of the limitation of three years.

will accept the contention that criminal prosecution must have the referral of the juvenile court, that the juvenile court has lost jurisdiction, and that prosecution, therefore, is impossible. Section 32, subdivision 1, may properly be read as requiring juvenile court referral prior to criminal prosecution regardless of the then age of the defendant, if the act was committed prior to the youth's attaining the age of eighteen. Being so required, the court has jurisdiction to order it. Wise precaution dictates that this course be followed and an order of referral obtained. Conflicting conceptions of responsibility are involved in these cases. A youth is not held responsible for his acts in the criminal law sense but, instead, is subjected to treatment and rehabilitation. By what transformation does he become responsible and liable to criminal punishment for that same act, which he committed in his youth, as he grows into manhood?

162. Note the reaction of the majority of the court to this possibility in People v. Ross, 235 Mich. 483, 442-43, 209 N.W. 663, 666 (1926):

Suppose a youth, one day under 15 years of age, lies in wait, deliberately shoots and kills a neighbor, robs and hides his body, conceals the weapon, and is not discovered as the murderer until he is one day past the age of 17 years, then, if my Brother is right, the offender is beyond the reach of the law, for his age at the date of the crime, fixes exclusive jurisdiction in the juvenile court, and that court has no jurisdiction over one arrested after reaching the age of 17 years, and he cannot be charged with a felony in the circuit court, for, at the date of the murder, he was not 15 years of age. There is no limitation of time within which one committing a murder must be charged therewith, and construction of this statute which would bar prosecution of a murderer, if a youth a few days under 15 years of age when he committed the crime, and avoids discovery until he is above the age of 17 years of age, cannot have my sanction.

163. A similar suggestion was not regarded with much favor in Scopillitti v. State, 41 Ohio App. 221, 180 N.E. 740 (1932). But in Wilson v. State, 65 Okla. Crim. 10, 82 P.2d 308 (1938), the court did not hesitate to require juvenile court action in a murder case, even though the youth was then over the juvenile court age. The point was not discussed and the case was later overruled in Ex parte Lewis, 85 Okla. Crim. 322, 356, 188 P.2d 367, 387 (1947).