Detention Procedures in the Juvenile Court Process

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Detention Procedures in the Juvenile Court Process

I. INTRODUCTION

The recent tragedy of a 13-year old boy hanging himself in a jail cell while awaiting a juvenile court hearing has revealed a great need for a re-evaluation of the juvenile detention process in Minnesota much as In re Gault4 revealed a need for a re-evaluation of the juvenile court system in general. This Note will discuss what are generally accepted as the proper objectives and underlying theories of the detention process and contrast them with the detention process as practiced. The effects of detention upon the child will be discussed together with the effects of improper detention upon the system. The various aspects of the detention process will be broken down, discussed and analyzed, and where necessary, criticized and supplemented by suggested improvements.

Special emphasis has been placed upon the new Minnesota Juvenile Court Rules2 and the Minnesota Juvenile Court Act.3 The beneficial effects and the particular failings of the Rules and the Act will be discussed as they pertain to the detention process and, where necessary, amendments will be suggested.

II. DEFINITION OF DETENTION: DISTINGUISHED FROM OTHER FORMS OF CUSTODY

The concept and practice of detention is a fundamental aspect of the juvenile court system. Yet traditionally, this fundamental concept has been misunderstood and the practice has been abused. Detention is the “temporary care of children in physically restricted facilities pending court disposition or transfer to another jurisdiction or agency.”4 Since the essential element of detention is restraint, the standard detention facility has been described as “any temporary care facility with locked outer doors, a high fence or wall, and screens, bars, de-

1. 387 U.S. 1 (1967).
3. MINN. STAT. ch. 260 (1967) [hereinafter referred to in text as Act].
4. NAT'L COUNCIL ON CRIME AND DELINQUENCY, STANDARDS AND GUIDES FOR THE DETENTION OF CHILDREN AND YOUTH 1 (2d ed. 1961) [hereinafter cited as STANDARDS AND GUIDES].
tention sash, or other window obstruction designed to deter escape . . . .” 5 The only children requiring detention are those who have committed delinquent acts and require custody for their own protection or that of the community. 6

One recurring problem is the confusion arising between the concept of detention and the less restricting custodial procedure of shelter care. 7 The latter is the “temporary care of children in physically unrestricting facilities pending court disposition.” 8 It is normally used for dependent and neglected children but can also be used for delinquent children who do not require secure custody. For example, a child apprehended for a delinquent act whose home was not fit for his return and who is not likely to run away would be a proper subject for shelter care. Although shelter care may be used for delinquent children, the National Council on Crime and Delinquency (NCCD) emphasizes that the converse is not true—detention should never be used for dependent and neglected children. 9

Shelter care is available not only to the court but to other public and private family agencies. Examples of shelter care are subsidized boarding homes, receiving homes or temporary care institutions—all hopefully designed to provide care equivalent to that provided by a good family. Children requiring shelter care are usually infants, preschool children or school-age children in the lower grades.

In contrast, the NCCD recommends that detention be used only by the juvenile court and not by family agencies. 10 The primary reasons for such a recommendation are that satisfactory detention care requires specially designed, physically secure, fireproof buildings; in addition, children who require detention are for the most part disturbed adolescents who have been apprehended for serious violations of the law.

5. Id. at 2.
6. S. Norman, Detention Practice: Significant Developments in the Detention of Children and Youth 9 (1960) [hereinafter cited as Practice].
7. Detention, a procedure that occurs prior to adjudication, must also be distinguished from post-adjudicative custody or institutionalization.
8. W. Sheridan, Standards for Juvenile and Family Courts 23 (1966) [hereinafter cited as Sheridan]. This work was published in cooperation with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges. See also Standards and Guides, supra note 4, at 2.
10. Id.
Confusion between detention and shelter care can occur in the few states, such as Minnesota, where any legal holding is referred to as detention. The Rules define detention as "the temporary placement of a child in a detention facility pending filing of a petition in a juvenile court cause, or pending disposition of a cause commenced by filing of such petition." A juvenile court cause, in turn, is defined as "any action over which the juvenile court has original and exclusive jurisdiction . . . " a rather broad definition since the juvenile court has "original and exclusive jurisdiction" over neglected and dependent children as well as over delinquent children. Furthermore, both the Rules and the Act define detention facility to include a detention home, a licensed facility for foster care, a suitable place designated by the court and even a jail under special circumstances. Under the Rules and the Act, therefore, the term "detention" refers generally to both secure (detention) and shelter care treatment of juveniles.

In spite of this inclusive definition, the legislature apparently intended to distinguish the terms since it provided that children "alleged to be delinquent" may be detained in a detention home. Presumably, one who is not alleged to be delinquent may not be detained in a detention home. The question is virtually moot, however, since only two of the 87 counties in the state have detention home facilities. Whatever distinction was intended within the Act is therefore meaningless, and the very general and confusing definition contained in the Rules is all that is available.

Misconceptions about the nature and proper function of these two very different types of care may lead to misuse of the available facilities, eventually resulting in harm to the child. For

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11. MJCR 1-2 (g).
12. MJCR 1-2 (b).
14. See MJCR 1-2 (b); MINN. STAT. § 260.175 (1967).
16. It is suggested that a proper reading of MINN. STAT. §§ 260.101 & 260.175 (1967) would provide the following:
   (1) If a child is charged with being dependent or neglected he may be detained at a licensed foster care facility or a suitable place designated by the court.
   (2) If the child is alleged to be delinquent and not a menace to himself, he may be detained in a place enumerated in (1) above or a detention home.
   (3) If the child is alleged to be delinquent and constitutes a menace to himself he may be detained in a place enumerated in (1) or (2) above or a detention home.
example, a juvenile with a record of violent offenses and an extremely volatile disposition who has been apprehended for assault with a dangerous weapon will need secure custody to insure the safety of both himself and the community. In contrast, a child who is found shoplifting a pocketknife, has no previous record and is found upon initial investigation to have an unsatisfactory home environment will not need to be placed in secure custody. The needs of such a child, if it is decided that he is to remain in custody, can better be served through an institution such as a foster home. To place these two children together and treat them alike would be potentially harmful to the shoplifter. The need for security measures in detention care and the need for a relaxed atmosphere in shelter facilities cannot be reconciled. The NCCD feels that most children who require detention are breaking away from family ties. They need vigorous activity and constructively directed group life which a boarding home is not designed to provide. Children who are more neglected than delinquent, however, need immediate removal from their homes but not secure custody. Many of these children can best be temporarily cared for by skillful foster parents under agency supervision.  

Unfortunately, it is quite common to find detention homes providing care to children with widely varying needs and ranging in age from infancy to late adolescence. The need for varying physical environments and programs makes it difficult, if not impossible, to use the same facility for both shelter and detention care and still meet acceptable standards for each.  

III. BACKGROUND AND GENERAL SCOPE

A. OBJECTIVES

1. In theory

The Minnesota Act expresses an intent to secure for each child care and guidance “preferably in his own home” and states that the court should seek to strengthen and preserve the child’s family ties whenever possible. It further requires that when a child is taken from his home, care should be provided which is “as nearly as possible equivalent to that which should have been

17. STANDARDS AND GUIDES, supra note 4, at 3.
18. SHERIDAN, supra note 8, at 26.
19. Id.
given by his parents." The National Probation and Parole Association (NPPA), in a more explicit statement, has suggested three principles upon which detention should be based: (1) Detention is to be used only for those children who must be detained; (2) the number of children detained should be kept to an absolute minimum, and (3) the detention period should be as short as possible, while remaining consistent with the service to be rendered.

The objectives presented by the NPPA follow from the premise that detention should begin the process of rehabilitation. In addition to securing custody and care for the child, the NPPA's goals for detention include constructive and satisfying recreational activities along with individual guidance through social casework and social group work. This is intended to enable the child to use the detention experience to better understand himself and, as a result, become better equipped to cope with his problems. One further objective announced by the NPPA is to screen out any undetected mental or emotional problems through observation and study of the child.

2. In Practice

In practice these principles and objectives have often been overlooked. The traditional purpose of detention has been what is commonly referred to as the "cold storage" concept—to hold children in custody until the court has time to investigate and act. Equally unsound is the widely held belief that the "threat" of punishment will act as a deterrent to a normal child and "stop him in his tracks." This view overlooks the possibility that a child may not come from a home with a normal social environment. Many of the children appearing before juvenile courts have been punished, beaten and branded as failures by their families. Carried to its extreme, the punishment theory may render detention the effective disposition of the case. Since it is doubtful that a child can be guided into a new way of life by a short term incarceration, a detention home should not be used as a children's jail.

22. H. Norman & S. Norman, DETENTION FOR THE JUVENILE COURT 4-7 (1946). Published in cooperation with the Nat'l Probation and Parole Ass'n [hereinafter cited as DETENTION].
23. PRACTICE, supra note 6, at 1.
24. DETENTION, supra note 22, at 2.
25. Id.
only disposition, it ought to be done after adjudication and not as an immediate reaction to the charge.26

A third objective of detention has been to prevent further criminal acts while the child is awaiting hearing. Society is protected while the child is held securely and the court is spared the embarrassment which may arise from an error in assessing the danger presented by the child.

The detention home should not be used by social agencies as a dumping ground for juveniles where the agencies cannot or will not provide suitable shelter care, nor should it be a replacement for the casework often needed by both the child and his parents to aid in the solution of underlying problems. Finally, detention should not be used for police investigation nor for the convenience of personnel making social studies or clinical examinations.27

The lack of understanding concerning the proper objectives of detention and the subsequent misuse of the detention process has resulted in needless and often harmful detention of many children. A recently conducted national survey found that out of all children detained overnight or longer, 43 percent are eventually released without ever being brought before a juvenile court judge, and half of all cases referred to juvenile courts are closed out at the intake stage before any judicial hearing.28

Statistics available in Minnesota similarly indicate that many children are being needlessly detained. The 1967 figures

26. Nat'l Council on Crime and Delinquency, Correction in the United States, 13 Crime and Delinq. 17 (1967) [hereinafter cited as Survey]. This is a survey of correctional agencies and institutions throughout the United States conducted by the N.C.C.D. for the President's Commission on Law Enforcement and Administration of Justice.
27. U.S. Children's Bureau, U.S. Dep't of HEW, Standards for Specialized Courts Dealing with Children 48 (1954) [hereinafter cited as Standards].
28. Vera Foundation, Bail in the United States (1964), cited in Survey, supra note 26, at 33. A New York legislative committee found that while over 2,300 children were detained in 1956 only 871 were committed to institutions. This means that more than 1,430 of the 2,300 children who were detained were released after their cases reached the court. Furthermore, the committee found that no evidence was presented concerning the urgency of detention for the 1,430 children. New York Joint Leg. Comm. on Court Reorganization II, Report on the Family Court 10–11 (1962).
29. No official statistics have been published in Minnesota concerning detention rates, number of children detained prior to hearing or final disposition or number of children detained without a petition. The Department of Corrections and the Attorney General's office, however, have compiled certain statistics based upon the number of juvenile petitions that have been filed. See notes 30 & 31, and text accompanying notes 106 & 108, infra.
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for rural counties show that two-thirds of all juveniles detained were eventually dismissed, transferred to other juvenile courts, placed or continued on court probation, or given some other disposition. These juveniles were detained in jail for an average period of four days. Similar figures are found for two urban counties. These figures are important if some correlation can be found between the need for detention and the need for post-adjudicative institutionalization. If such a correlation exists, the figures certainly indicate that detention is being overused, for many more juveniles are detained than are subsequently institutionalized after adjudication. It has been suggested that overuse of detention reflects a breakdown in intake control and also emphasizes the discrepancy between philosophy and practice.

30. There are three urban counties (population over 200,000) and 84 rural counties (population under 200,000) in Minnesota. In fiscal 1967, 11,267 juvenile delinquency petitions were filed. Of these 4,431 were from the three urban counties and 6,836 from the remaining 84 rural counties. The Minnesota Attorney General’s office projects from its figures that 20 to 30 percent of juveniles petitioned into the probate and juvenile courts in the 84 rural counties are detained in jail prior to final disposition. Comparing these figures to the final disposition of the petitions it is found that only nine percent of the juvenile cases are referred to the county or city attorney or committed to the Youth Conservation Commission on a new petition, and only three-tenths of one percent are committed to a county correction institution.

31. Statistics are unavailable for Ramsey County, which includes Saint Paul. In Hennepin County, which includes Minneapolis, 64 percent of the juveniles petitioned into the juvenile court were detained in 1967. The average length of detention was one day. In Saint Louis County, which includes Duluth, the rate of detention in 1967 was also 64 percent. The average length of a stay, however, was five and a half days.

Comparing these figures to the disposition statistics, the Department of Corrections found that in all the urban counties only three percent were committed to county correction agencies, four percent were committed to the Youth Conservation Commission on new petitions and six-tenths of one percent were referred to the county or city attorney. On the other hand, 93 percent were either dismissed (eight percent), transferred to other juvenile courts (five and four-tenths percent), placed or continued on court probation (71 percent) or disposed of in some other manner (eight percent).

32. Some allowance, however, should be made for the possibility that some juveniles who require detention at the time of apprehension may properly be placed on probation or given another form of noninstitutional treatment after adjudication. Such would be the case, for example, where a youth is intoxicated and violent when apprehended but later appears calm and contrite.

33. Sheridan, supra note 8, at 115. See also Survey, supra note 26, at 11.
B. Effects of Detention Upon the Child

1. Generally

When the nature of detention is fully understood, it is easier to realize the potential effect that such a practice can have on a child. Detention involves difficult adjustments to new living arrangements together with the separation of the child from his family at a time when he is upset and facing possible court action. The child's first detention experience may well influence his attitude toward society in general. As the NCCD observed, "[R]emoved from parents and the community agencies which failed him, he sizes up society's intentions by the kind of substitute care, guidance, and control he receives in detention."35

2. Detention in Jail

The detention of juveniles in jails is universally condemned by commentators. Jail detention can have a stigmatizing effect on a child, especially on his own concept of himself.36 The child in jail tends to see himself as a criminal, and he is thus in danger of adopting the values and behavioral attitudes of criminals.37 Jail detention is undesirable regardless of the attitude of the juvenile. Those who seek to gain status from the experience may bolster their delinquent self-image. Those who find a jail atmosphere alien become discouraged; they feel guilty and branded. Other children who identify with delinquent groups adopt the attitudes of the more sophisticated youngsters. Encouraged to defy authority, the potential delinquents may be considered "old-timers" when admitted to detention.38

One commentator has stated that even when children are separated from adults, jails and mass detention care make the "hostile more hostile and the withdrawn more withdrawn, and actually [push] antisocial, though treatable children, beyond the reach of clinical treatment."39 Detention itself as generally practiced thus plays a part in contributing to delinquency.40

Jail detention of juveniles may be characterized by enforced

34. Standards, supra note 27, at 45.
35. Survey, supra note 26, at 27.
36. Id.
37. Interview with Jewel Goddard, Director of Court Services for Hennepin County, in Minneapolis, Minnesota, Jan. 29, 1969.
38. Practice, supra note 6, at 11-12.
40. Id.
idleness, lack of supervision and rejection. The child becomes demoralized; his belief in himself is shattered or distorted. In a recent field survey the NCCD found that the lack of necessary supervision in jail detention results in physical and sexual aggression, suicide and even murder by other children held in the same jail. These incidents arise even where the juveniles are separated from adult prisoners. Tragedies have occurred in all parts of the country and each graphically illustrates the inadequate detention facilities and child welfare care available.

The recent tragedy of 13-year old Dane White focused attention on the problems inherent in Minnesota’s present scheme of detention. Dane White was originally apprehended for possession of a stolen automobile on September 4, 1968, and was released to the custody of his father on the same night. A delinquency petition was filed six days later. Hearings were scheduled, postponed and eventually continued until November 5. On October 6, Dane was taken into custody at the request of his father and detention was ordered to insure Dane’s presence at subsequent hearings. The November 5 hearing was continued until November 20 for procedural reasons. Dane hanged himself on November 17, after having been incarcerated for 41½ days.

An investigation conducted at the governor’s request revealed the following: Dane White had no record of serious delinquent behavior; he was without legal counsel until he had been in jail 28 days; there were three foster homes in the county, two of which could have accepted Dane; the court was ignorant of the presence of these foster homes and no effort was made to discover what alternative facilities were available; Dane was
never visited by a probation officer nor by any other representative of the court; the county welfare department was never informed of Dane's incarceration; and Dane was kept in virtual isolation during most of the 41½ days. Despite these findings, however, the investigation team concluded that there was no violation of Dane's statutory rights under the Minnesota Juvenile Court Act, nor any violation of constitutional standards established for juveniles by the Minnesota and United States Supreme Courts.

C. Effects Upon the Detention System

Improvident use of detention in those jurisdictions where facilities are available results in such overcrowding that those who should be detained, examined and treated fail to receive needed attention. This misuse also requires financing which could be better used to improve facilities and meet other necessary expenses. In 1965, two-thirds of all juveniles apprehended were admitted to detention facilities and held for an average of 12 days. This practice cost more than 53 million dollars—an average cost of 125 dollars per child. This cost factor must be considered together with the harm needless detention causes the child.

IV. THE MINNESOTA JUVENILE COURT RULES

Many persons have a voice in the decision to detain. Law enforcement officials, probation officers and the court may all be actively involved in the decision, and the Rules affect all levels at which the decision is made.

Careful study of the Rules reveals a design to decrease the number of children who are needlessly detained and to limit the time for which any child is detained. No child can be forgotten, since a series of notices, orders and reports force the parents, the court, the officer taking custody and the detention facility supervisor to take cognizance of—and often take an active part in—the detention of the juvenile.

47. MINN. ATT'Y GEN., INVESTIGATION REPORT: INCARCERATION AND DEATH OF DANE M. WHITE 59 (Dec. 1968).
48. Id. at 62-3.
49. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND AD. OF JUSTICE, TASK FORCE REPORT, JUVENILE DELINQUENCY AND YOUTH CRIME 36-37 (1967) [hereinafter cited as TASK FORCE].
A. Custody: Excessive Breadth of the Minnesota Act and the Effect of the Rules

Since intake normally begins with a local law enforcement agency, a partial solution to the excessive use of detention is available even before the court becomes involved. The major problem is that the custody statutes of many states, including Minnesota, are so broad that the police may take almost any child into custody and place him in detention. The Minnesota statute permits taking custody of a child (1) in accordance with the laws relating to arrests, (2) who has run away or (3) who has violated the terms of his parole or probation. At this point, no particular problems of vagueness or excessive breadth appear. The Act, however, further empowers a peace officer to take custody of a child when he finds the child in surroundings which the officer reasonably believes will "endanger" the child's "health or welfare." The Act also empowers the court to order custody when it appears from the petition that the child's "welfare requires that his custody be immediately assumed."

Phrases such as "endangering the child's health or welfare" are so vague that it is difficult to conceive of conditions which would not arguably so endanger a child. Coupled with the broad requirement of "reasonable belief," the power to take custody seems to have no limit. Dean Paulsen states that "the protection of children requires that police have broader powers to take juveniles into custody than to arrest adults." He thinks it is unrealistic to require a police officer to possess a warrant in order to take custody of a child. Paulsen also feels that the child's rights will be adequately protected if he is treated according to statutory provisions. Yet as the Dane White tragedy shows, a child can receive treatment in accordance with the

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50. In its broadest sense, intake involves bringing the child into the juvenile court process. For a general discussion of intake procedures see Standards, supra note 27, at 36.
56. Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 551 (1957).
57. Id.
letter of a juvenile court act and still be grossly mistreated. To avoid this, the peace officer must act cautiously. In so doing, he will also avoid placing undue burden on the detention facilities and the court. The officer must first decide if the situation is serious enough to bring to the attention of the court, since there are several available alternatives. He could refer the child to a welfare agency, especially in cases where neglect is suspected, give advice to the child or parent or offer a proper warning and admonishment. The police officer could seek help from the probation officer in determining where the child should be taken. This discretionary custody power of police officials poses additional problems in counties without detention home facilities. All counties have some sort of welfare and probation personnel available but there is often little coordination with police officials. Absent detention home facilities or detention intake personnel, the arresting officer becomes the sole arbiter in the detention decision. His decision stands until the court is notified and a hearing has taken place. This period could be several days under the Minnesota Act and the Rules. Thus in most counties, when an officer reasonably believes a child's health or welfare is endangered, the child will be detained in county jails or local lockups.

If the supervisor of the detention facility does not receive a continued detention order signed by the court within 24 hours of the child's detention, the Rules state that he must release the child to the custody of his parent or some other suitable person. In addition, the Rules provide that immediate notice be given the child and his parent informing them that the child cannot be held longer than 24 hours unless a detention order is signed by the court. Such a rule is recommended by most authorities.

One of the greatest shortcomings of the detention rules is the "weekend rule." This is a provision found in many sections

58. E.g., shelter care facilities, foster home and institutional resources and special foster homes offering appropriate group care. For a more complete discussion of available child-care services see STANDARDS AND GUIDES, supra note 4, at 7-9.
59. STANDARDS, supra note 27, at 37.
60. STANDARDS AND GUIDES, supra note 4, at 24.
61. See text accompanying notes 65-71 infra. See also Survey, supra note 26, at 29.
62. MJCR 1-2(a) (defining "parent").
63. MJCR 7-2(3).
64. See, e.g., SHERIDAN, supra note 8, at 61; STANDARDS, supra note 27, at 45.
of the Rules which excludes Saturdays, Sundays and holidays in setting detention period limits. This means that if a child is apprehended and taken into custody on a Friday afternoon or evening he can be detained until Tuesday without a court order. On a four day weekend, such as Labor Day, a child can be held for the entire length of the holiday weekend without any court cognizance whatsoever.

The Act permits invocation of the "weekend rule" to extend detention periods, but the courts are apparently not required to invoke the rule, and there is no compelling reason why they should. The Rules have been adopted and structured to eliminate unbridled authority to detain. They provide for several hearings to prevent unnecessary detention and to minimize actual detention. Yet the "weekend rule" contradicts this policy. If the only explanation is to provide the judges with uninterrupted weekends, the leisure gained is afforded at a cost of great potential harm to a number of children. The wisdom of adopting the "twenty-four" and "forty-eight" hour rules only to restrict their purpose and efficacy by such a provision is certainly open to question. The very least that could be expected would be to have a 24 hour phone service available during the weekend. The probation officer could hear the facts of the situation, interview the child if possible and then make a temporary decision as to the necessity of immediate detention.

In considering the length of time in which the detention decision may go unreviewed, the wisdom of vesting so much discretion in law enforcement officials is again questionable. Given the harmful effects that detention, particularly in jails, can have on a child, and the lack of most policemen's training in social studies and child care, this situation should not be permitted to exist. The problem is complicated by the fact that reliance on an individual officer's discretion will result in a lack of uniformity in custody and detention practices among and perhaps within counties.

The necessity of somewhat broader custody standards for juveniles than for adults means that simple answers to these

65. E.g., MJCR 7-2(1) (right to petition for release during first 48 hours); MJCR 7-2(3) ("24-hour rule"); MJCR 7-3(1) (application of "48-hour rule"); MJCR 7-3(2) ("72-hour rule"); MJCR 7-4 (automatic hearing upon expiration of detention order; "next court day").
67. MJCR 7-2(3); Minn. Stat. § 260.171(2) (1967).
68. MJCR 7-2(1) (c), 7-3(1); Minn. Stat. § 260.171(2) (1967).
69. Standards, supra note 27, at 45; Sheridan, supra note 8, at 61.
problems are not readily available. Partial solutions, however, in addition to amending the "weekend rule," are available. First, the training of police officers in the particular problems involved in dealing with juveniles should be encouraged.\textsuperscript{70} Second, in those jurisdictions utilizing detention home facilities and intake staff, court control over detention can be achieved through cooperation with law enforcement agencies. Authorization for detention, during or after court hours, should rest with a court intake service.\textsuperscript{71} In the majority of jurisdictions, where no detention homes and no intake staff are available, concrete procedures and rules, developed jointly among the court, probation officers and police agencies, would assure a greater degree of uniformity.

B. INTAKE

Initial detention intake is the responsibility of the probation department, under criteria established by the court and in cooperation with law enforcement agencies.\textsuperscript{72} Methods of detention intake vary greatly. In large urban jurisdictions with a detention home facility, there will probably be an intake staff available at the detention center to "screen out" those juveniles thought to require detention. In the less densely populated rural jurisdictions, there may be only one probation officer and he is often not even notified when a child has been detained by a local law enforcement official.\textsuperscript{73} The ideal procedure, as recommended by the NCCD, would require detention homes to be available.\textsuperscript{74} An "intake officer" would interview any child, whether in the police station or the lobby of the detention home, before the child is admitted to the facility. Detention intake service would be available 24 hours a day every day.\textsuperscript{75} The intake officer would notify the child's parents, investigate the child's back-

\textsuperscript{70}. \textit{STANDARDS}, \textit{supra} note 27, at 36. 
\textsuperscript{71}. \textit{See Survey}, \textit{supra} note 26, at 62. 
\textsuperscript{72}. \textit{STANDARDS AND GUIDES}, \textit{supra} note 4, at 25. 
\textsuperscript{73}. The probation officer in the Dane White case acted on behalf of five different counties. Dane White was taken into custody on October 7 and it was not until the hearing on November 5 that the probation officer was informed of the incarceration. When summoned by the court, the probation officer admitted that he lacked any familiarity with the county welfare facilities and therefore did not know if there were any foster homes available in the area. In fact, two of the three local foster homes were available to accept the boy. \textit{See MINN. ATT'Y GEN., INVESTIGATION REPORT; INCARCERATION AND DEATH OF DANE M. WHITE} (Dec., 1968) at 34-34(b). 
\textsuperscript{74}. \textit{STANDARDS AND GUIDES}, \textit{supra} note 4, at 23-31. 
\textsuperscript{75}. \textit{Id.} at 26.
ground and make the initial decision to detain or release the child.

The NCCD's suggested intake practices are applicable only in the very few jurisdictions with detention home facilities. Such methods are impossible to apply where the only semblance of an intake staff is a single probation officer whose services may even be shared among several counties. One solution to the problem of lack of personnel lies in the establishment of regional detention centers which would service a number of counties and would have a proper staff available at all times. This solution will be discussed in Section V.

The Rules have been drafted to insure not only that no child is unnecessarily detained but also that the detained child has every opportunity to confront the court and secure his release when appropriate. With these goals in mind, the Rules require, as a prerequisite to detain a child longer than 48 hours, that the detention supervisor receive a court order noting that a petition has been filed and directing further detention pending a formal detention hearing. Furthermore, a copy of the order must be delivered to the child and his parent.76

Notice must be given to the child's parent as soon as the child is taken into custody. If the child is detained, the child and his parent must be advised of various rights and the reasons for the action.77 These include the reasons for custody and detention, the location of the detention facility, the child's right to counsel and right to remain silent and the visitation and telephone rules. The child and his parent must be advised of their right to apply for the child's release during the first 48 hours of detention and of the "twenty-four-hour"78 and "forty-eight-hour"79 rules.

The Rules also provide that the person who detains the child must promptly deliver a signed report to both the detention su-

76. MJCR 7-2(1)(c).
77. MJCR 7-1(2).
78. MJCR 7-1(2)(g). The "24-hour rule" is found in MJCR 7-2(3) and MINN. STAT. § 260.171(2) (1967).
79. MJCR 7-1(2)(h). "The 48-hour rule" is contained in MJCR 7-2(1)(c) and MJCR 7-3(1). There is also a "72-hour rule" provided for in MJCR 7-3(2). It should be noted that the "48-hour rule" is clearly stated in MJCR 7-1(2)(h) which provides for advising the child and his parents of the applicable rules. Nowhere else, however, is the rule stated so clearly. Consequently the rule providing for the automatic release of a child within 48 hours—unless both a petition has been filed and the court orders continued detention—must be read into MJCR 7-2(1)(c) & 7-3(1). However, the "48-hour rule" is specifically provided for in MINN. STAT. § 260.171(2) (1967).
The report must state the time that the child was taken into custody, the time that he was placed in the detention facility, the reasons why these measures were deemed necessary, and either that the child and his parents have been notified as required or the reasons why they have not been so notified.

C. Court Supervision

1. Stages: Initial, Formal, Subsequent

The Rules provide for court supervision in the form of hearings at three separate stages during the child's detention. First, even if the detaining officer's report appears to offer sufficient reason for detention, the child and his parents have a right to a summary hearing within 48 hours of the time of detention. At the conclusion of the summary hearing the court must enter an order directing the detention supervisor to: (a) release the child immediately, (b) release the child 48 hours after placed in detention or (c) continue the detention, if a petition has been filed, pending a formal detention hearing. This means that within 48 hours the child and his parents have had a chance to confront the court and explain why the child should not be detained. The court at this time has an opportunity to consider proper alternatives to detention and to apply the suggested standards discussed below.

Regardless of the outcome of the summary detention hearing, a formal detention hearing must still be held within 48 hours after filing the petition or by the court day next succeeding the date of filing, whichever is later. Where the child is placed in detention after the filing of a petition and not released within the first 48 hours, the hearing must be held not later than 72 hours after the child was placed in detention (excluding Saturdays, Sundays and holidays) or the court day next following the day the child was placed in detention, whichever is later. Both the Rules and the Act govern the conduct of the detention hearing. The formal detention hearing gives the child, his

80. MJCR 7-1(3).
81. See MJCR 7-1(2).
82. MJCR 7-2(1).
83. MJCR 7-2(1).
84. MJCR 7-3(1)(b).
85. MJCR 7-3(2).
86. See MJCR 7-3(3).
parent and his lawyer the opportunity to offer evidence and oral argument as to why the child should not be detained.

In addition to the summary hearing and the initial formal hearing, the Rules provide for subsequent hearings. At the end of the initial formal hearing, the court must enter an order either directing the release of the child or his continued detention for a fixed period not to exceed seven days.88 It is important to note that this order must include the reasons for the chosen measure and findings of fact which support such reasons. Moreover, additional detention hearings automatically follow the expiration of the order if the child has not yet been released. Thus, the child will always come within the personal cognizance of the court at least weekly.

2. Standards

Whether the actual detention decision is made by a probation officer, intake officer or peace officer, standards must be utilized in the decision-making process. These standards should be established and maintained by the court, for the court will be responsible for insuring uniformity of treatment and deciding whether the standards have been met. The establishment and maintenance of uniform standards will also lay the basis for subsequent appeals.

The Act requires that a juvenile shall be released except where the “immediate welfare of the child” or the “protection of the community” requires that he be detained.89 The Rules essentially reiterate this broad, vague provision of the Act.90 Other proposals attempt greater specificity. The Uniform Juvenile Court Act provides that a child cannot be detained unless detention is required (1) to protect the child or other persons and property, (2) because the child may run away, (3) because there is no one who can provide care and supervision for him or (4) because the court has signed a detention order.91 The comment to this section states: “Its provisions are consistent not only with current juvenile court acts but also the modern trend not to hold persons in confinement unless necessary to assure their appearance in court.”92 Although this method of

88. MJCR 7-3(3)(e).
90. The same provision may be found in Standard Juvenile Court Act, supra note 55, § 16.
91. Uniform Juvenile Court Act, supra note 55, § 14.
92. Uniform Juvenile Court Act, supra note 55, § 14, Comment.
listing the various standards is preferable to the language of the Minnesota Act, these standards are faulty in that they apply to shelter care as well as to detention. Because these two different types of care require different physical settings and programs, and since they apply to different types of youths, separate and distinct standards should be enumerated for each.

The recently proposed rules of procedure for the Hennepin County District Court\textsuperscript{93} provide another example of an attempt to particularize detention standards:

No child shall be placed or held in detention unless there is probable cause to believe that, if released, he would (a) be in danger, (b) be dangerous to himself, (c) be dangerous to others, or (d) not return for hearing; and the time of detention and the facts demonstrating the aforesaid probable cause shall be logged.\textsuperscript{94}

No statute, however, can provide for all the situations where detention would be proper. One solution is to list the standards to be used in making the decision and then to vest ultimate discretion in the court. This would give the intake personnel guidelines to follow and yet permit the judge to shape his decision in accordance with the facts that arise in the detention hearing. Another alternative is to have a general detention standard such as that of the Minnesota Act and add a caveat regarding its proper use. The United States Children's Bureau suggests that detention should be used only where a careful consideration of all the facts reveals a "clear necessity."\textsuperscript{95} Such a decision should be in accordance with sound procedures developed jointly by the court, police department and other agencies. Peace officers should detain a child only after all reasonable alternatives have been exhausted and the reason for doing so should be stated in writing and given to the court immediately.\textsuperscript{96} Furthermore, it has been suggested that the decision to detain should be based on demonstrated behavior rather than subjective opinion.\textsuperscript{97} This is especially important in determining whether there is a substantial probability that the child will run away or a likelihood that he will commit a serious offense pending court disposition.\textsuperscript{98}

\textsuperscript{93} Judge Lindsay Arthur of the Hennepin County District Court, Juvenile Division, recently proposed new rules of procedure for that court, and a district court committee is now studying these rules with a view toward adoption.

\textsuperscript{94} PROPOSED JUVENILE COURT RULES FOR HENNEPIN COUNTY § 21.01 (Draft No. 2, Dec. 31, 1968).

\textsuperscript{95} STANDARDS, supra note 27, at 45.

\textsuperscript{96} Id.

\textsuperscript{97} See SURVEY, supra note 26, at 29.

\textsuperscript{98} Id. at 28.
Notwithstanding the numerous opinions on the propriety of detention, the power and discretion of the judge or referee to detain remain as broad as ever. Where the court staff is adequate and proper standards are utilized, this situation is perhaps desirable, but the lack of specific standards in the detention decision still invites abuse. No safeguards against improper use of detention are afforded by the Rules and the intended uniformity is only a matter of form.

It is submitted that the Rules should be amended to include a provision articulating standards closely following the standards set out by the NCCD. To reinforce the authority of the

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99. The N.C.C.D. has set forth the following standards in Standards and Guides, supra note 4, at 15-17, and they have been recopied in the comment to Standard Juvenile Court Act, supra note 55, § 17 (6th ed. 1959):

4. Children Who Should Be Detained:
   Children apprehended for delinquency should be detained for juvenile court, when, after proper intake interviews it appears that casework by a probation officer would not enable the parents to maintain custody and control, or would not enable the child to control his own behavior. Such children fall into the following groups:
   (a) Children who are almost certain to run away...
   (b) Children who are almost certain to commit an offense dangerous to themselves or to the community before court disposition or between disposition and transfer to an institution or another jurisdiction.
   (c) Children who must be held for another jurisdiction...
   In certain unusual cases nondelinquent material child witnesses may have to be detained for adult courts. Occasionally, children who require secure custody may be given overnight detention care as a courtesy to officials who are transporting them across a large state or from one state to another...

5. Children Who Should Not Be Detained:
   Children should not be detained for the juvenile court when, after proper intake interviews, it appears that casework by a probation officer would be likely to help parents maintain custody and control or would enable the child to control his own behavior. Such children and others who should not be detained fall into the following groups:
   (a) Children who are not almost certain to run away or commit other offenses...
   Included in this category are children involved in delinquency through accidental circumstances, and those whose parents can exercise [proper] supervision...
   (b) Neglected, dependent, and nondelinquent emotionally disturbed children, and delinquent children who do not require secure custody but must be removed from their homes because of physical or moral danger or because the relationship between child and parents is strained to the point of damage to the child. Detention should not be used as a substitute for shelter care.
   (c) Children held as a means of court referral. Detention should not be used for routine overnight care. Release to parents after twenty-four or forty-eight hours usually in-
Rules and to insure uniformity, it is further suggested that the Act be amended to include the same provision. Such standards will serve to protect juveniles from the harmful effects of unnecessary detention, as well as to prevent overcrowding and to reduce expenses in the few facilities presently available. The proper use of established standards can create uniformity, limit the discretion available to individuals and provide a basis for appellate supervision of detention orders signed by the court.

D. Facilities: The Use of Jails

1. National Scope

Despite the widespread condemnation of the use of jail detention, 93 percent of this country's juvenile court jurisdictions, serving 44 percent of the population, have no place to detain juveniles other than a county jail or police lockup. The total number of children held in county jails and police lockups exceeded 100,000 in 1965 and very few jurisdictions claimed that they never used jails for children. A statistic of even greater concern is that less than 20 percent of the jails in which children are held have been rated as suitable even for adult federal offenders. The tragic incidents discussed above graphically indicates that the child would not have been detained had effective court intake procedure functioned earlier.

(d) Children held for police investigation or social investigation who do not otherwise require secure custody.

Detention should not be used as merely a convenient way to hold a child for an interview, or for an investigation into his unsubstantiated connection with other offenses, or to facilitate the apprehension of suspected accomplices unless he himself is involved and the situation is serious.

(e) Children placed or left in detention as a corrective or punitive measure.

Other state or local facilities should be used for corrective purposes. The court should not permit a case to be "continued" in order to "teach the child a lesson." Detention should not be used as a punishment or as a substitute for a training school.

(f) Psychotic children, and children who need clinical study and treatment and do not otherwise need detention.

(g) Children placed in detention because of school truancy.

(h) Children who are material witnesses, unless secure custody is the only way to protect them or keep them from being tampered with as witnesses.

100. Survey, supra note 26, at 16; see also Task Force, supra note 49, at 37.
102. Id.
103. See note 44 supra.
lustrate the lack of facilities and personnel necessary to implement the lofty goals of the juvenile laws.\textsuperscript{104}

The reason underlying the use of jails for the detention of children is that many jurisdictions detain too few children to justify the cost of establishing a detention home.\textsuperscript{105} Since jail detention is a necessary evil in some jurisdictions, compensating measures and solutions must be found.

2. Jail Detention in Minnesota

Minnesota ranks above the national average in the use of jail detention for juveniles. Available statistics show that of the 87 Minnesota counties serving 3.5 million people, only two, serving 1.3 million people, have detention home facilities available.\textsuperscript{106} None of the counties to which the Rules apply have such facilities. This means that 85 counties serving 63 percent of the population in Minnesota have no place to detain juveniles other than a jail.\textsuperscript{107} As a result, in 1966, 7,480 juveniles, or 11.6 percent of all persons confined, were held in county jails and lockups in Minnesota.\textsuperscript{108}

The Minnesota Juvenile Court Act permits the jail to be used as a detention facility when a room entirely separate from adults is provided.\textsuperscript{109} Jail detention can only be used, however, when the child is alleged to be delinquent or to have violated the terms of his probation or parole and then only if he constitutes such a “menace to himself” that he cannot be released or cared for in any other facility. These requirements do not seem to add anything to what should ordinarily be considered in the decision to detain.

The Act was amended in 1969 to require that whenever a child is held in jail longer than 48 hours, the court must notify the Commissioner of Corrections of the continued detention and

\textsuperscript{104} MINN. STAT. § 260.011 (1967) states: “[T]o secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.”

\textsuperscript{105} DETENTION, supra note 22, at 1.

\textsuperscript{106} See note 29 supra.

\textsuperscript{107} MINN. STAT. § 260.175 (1967) has been amended to include the Youth Conservation Commission reception and diagnostic center, (see MINN. STAT. § 242.385 (1967)), as a place of detention but conditions its use upon (1) the consent of the Commissioner of Correction and (2) agreement on the part of the county to pay the costs of such detention.

\textsuperscript{108} See note 29 supra.

the reason therefor. The Commissioner must then attempt
to relocate the child in appropriate detention facilities—whether
within that particular county or elsewhere in the state—or to
help determine suitable alternatives. This provision appears to
be a strong initial step and, if properly implemented, should
greatly aid in preventing extended periods of jail detention.

Further measures are needed. When juveniles are detained
in jails, the court must assume added responsibility. Accord-
ingly, the judge should: (1) make every effort to secure special
detention facilities, (2) while searching for special facilities, re-
quire separate quarters and non-punitive treatment of the child,
(3) make use of the jail only in extreme circumstances, and (4)
keep the length of the stay there to an absolute minimum. A
minimum age provision might be one interim measure that
would mitigate the jail detention problem. It is submitted
that the use of jails for the detention of juveniles should be
abolished entirely and that every county have access to proper
detention home facilities. This is admittedly a long range solu-
tion, the key to which lies in the establishment of state-con-
trolled, regional detention centers.

V. A MAJOR SOLUTION: STATE RESPONSIBILITY
AND REGIONAL DETENTION FACILITIES

In nearly every state, including Minnesota, counties carry
the responsibility for detention. Very few children, however,
require the secure care obtained through detention and most
counties detain too few children to justify maintaining a deten-
tion facility apart from the local jail.

John J. Downey has presented a solution which has found
widespread support to the problem of the lack of rural detention
facilities. The basic objectives of detention require a special-
ized physical plant, certain rudimentary services and a minimal
staff, regardless of how few children are being detained. Such

110. MINN. STAT. § 260.171, as amended, (Minn. Sess. L. Serv. ch.
556 § 1 (1969)).
111. STANDARD JUVENILE COURT ACT, supra note 55, § 17 (6th ed.
1959) provides for a minimum age of 16.
112. See MINN. STAT. § 260.101 (1967), empowering "any county or
group of counties" to maintain a detention home.
113. Downey, State Responsibility for Child Detention Facilities, 14
Juv. Cr. Judges J. 3 (Winter 1964). The author is a Detention Con-
sultant, Technical Aid Branch, Division of Juvenile Delinquency Serv-
ice, Department of Health, Education and Welfare.
114. Downey places the number at 15. Id. at 4.
a detention service is not practical unless it will serve a minimum of approximately 280 cases annually. \textsuperscript{115} It would take a county with a population of over 250,000 to generate so many cases, and only four percent of the nation's counties (and none of the Minnesota counties to which the Rules apply) can meet this requirement. Since counties are unable to provide the necessary facilities, Downey outlines the necessity and feasibility of regional detention centers under state supervision.\textsuperscript{116} Such a system would not only prevent the use of jails for the detention of juveniles but would afford an opportunity for improving all aspects of detention care. It could provide a well staffed intake service to insure the appropriate use of detention care for the children needing secure custody, and shelter care for those who need only treatment. Detention casework services could be centrally authorized and supplied. Such a network could be statutorily provided, and would be far more likely to effectuate the goals of detention than the system now in effect.

VI. CONCLUSION

Because of its deleterious effects on the child, detention should be used only when absolutely necessary. At the present time, it appears that many children are being needlessly detained, due essentially to the misunderstanding of the proper function of detention. The Minnesota Act invests law enforcement officials with an overly broad power to detain and consequently a significant number of children are being needlessly detained. Compounding this situation is the "weekend rule" which denies the child for an unnecessarily long period of time many of the safeguards provided in the Act and the Rules. Finally, the most serious handicap to effective detention procedure is the lack of adequate facilities, resulting in jail detention of

\textsuperscript{115} \textit{Id.} at 5.

\textsuperscript{116} Two types of regional detention services are expressly rejected. The first is "courtesy regional detention" where one large county operates the facilities and neighboring counties purchase service on a per capita or contractual basis. The difficulty with the plan is that the counties that own the facilities may choose either not to sell the services or to do so under conditions undesirable to the small counties. The second type is "intercounty regional detention," or "joint regional detention." Under this system, two or more counties work together to operate a detention facility. The author feels that the degree of coordination required of the various officials involved is greater than could realistically be expected.

many juveniles. The Rules go far to protect the rights of the child involved in the detention process. Certain revisions to the Rules suggested above would alleviate some difficulties, but far-ranging solutions can be found only in statutory reform.